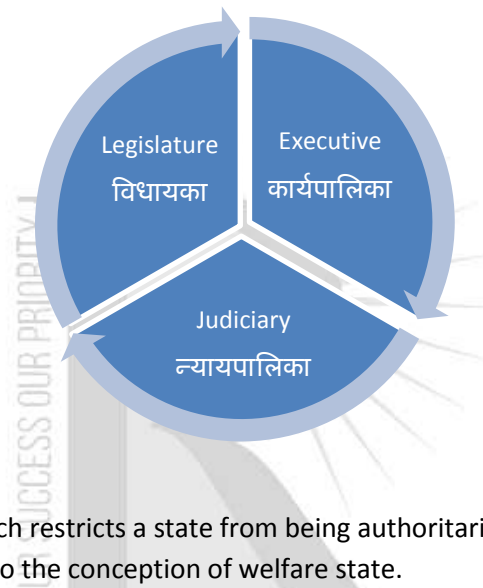


TOPIC- Introduction to Polity and Constitution

Basic Definitions

- ❖ Polity- Form and process of Civil Government or Constitution.
- ❖ Governance- Action/manner of governing a state.
- ❖ Constitution- It is fundamental and organic law of country, establishing the conception, character and organization of government and prescribing the extent of sovereign power and manner of its existence.

Organs of State



Constitutionalism –

Constitutionalism is an idea which restricts a state from being authoritarian i.e. restricts the state from subjugation of rights and leads to the conception of welfare state.

<u>Constitution</u>	<u>Constitutionalism</u>
A legal document establishing fundamental law of Land.	An ideology emphasizing on welfare of citizens.
Objective	Means of attaining the objective.
A component of constitutionalism.	A broad concept.

(A unit of RACE)

Components of Constitutionalism –

“Minimum Government, Maximum governance”

– Mr. Narendra Modi

- ❖ The constitution provides for powers of the organs of government and also laid down the procedure of exercising them.

(Constitution is Lex Rex I.e. Law is King of Kings) (Rule of Law and not Rule of people).

- ❖ Principle of ‘Check and Balance’: Separation of powers between the three organs and Other organs keeping a check on others.
- ❖ Temporariness of Government.
- ❖ Protecting rights of individuals and their dignity.

Classification of constitutions –

<p><u>WRITTEN</u></p> <ul style="list-style-type: none"> • Whose provisions have been codified into single legal document. • Ex. USA, INDIA. • Supremacy of constitution and not that of parliament. <p><u>ENACTED</u></p> <ul style="list-style-type: none"> ❖ Constitution brought into existence by a particular body at a particular time. ❖ Ex. Indian Constitution enacted by Constituent Assembly on 26th Nov. 1949. ❖ All written constitutions are enacted. <p><u>RIGID</u></p> <ul style="list-style-type: none"> ➤ The procedure of amendment is tough viz. Special Majority. Ex. USA <p><u>Federal</u></p> <ul style="list-style-type: none"> • Federal state is one having distribution/division of powers between the Centre and states, i.e. both have the freedom to operate in their allotted spheres of power, in coordination with each other. Ex. USA • Dual Government (National and Regional). • States may secede i.e. may leave the federation. • Rigid Constitution. • Supremacy of Constitution. 	<p><u>UNWRITTEN</u></p> <ul style="list-style-type: none"> • Whose provisions are not codified into single legal document. • Ex. Britain, New Zealand. • Supremacy of Parliament, as constitution is creation of parliament. <p><u>EVOLVED</u></p> <ul style="list-style-type: none"> ❖ Constitution emerged gradually over a period of time. ❖ Ex. British constitution brought into existence and changed by various bodies at different points of time. <p><u>FLEXIBLE</u></p> <ul style="list-style-type: none"> ➤ The procedure of amendment is easy viz. Simple Majority. Ex. Britain <p><u>Unitary</u></p> <ul style="list-style-type: none"> • <i>In the unitary system all powers of the Government are centralized in one Government that is Central Government Ex. Britain.</i> • <i>Single Government but the Union government may assign certain functions to the provincial governments but there is no distribution of powers.</i> • States have no right to secede. • Constitution may be Rigid (France) or flexible (Britain). • Constitution may be supreme (France) or may not be supreme (Britain).
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NATURE OF INDIAN CONSTITUTION

- FEDERAL FEATURES
- ✓ Division/Distribution of powers between center and state.
- ✓ Supremacy of constitution.
- ✓ Written Constitution.
- ✓ Rigidity of Constitution.
- ✓ Independent Judiciary.

NATURE OF INDIAN CONSTITUTION UNITARY FEATURES

- ❖ Single citizenship.
- ❖ Single Constitution.

Power of Parliament to legislate on matters of state list under certain circumstances (Article 249, 250, 252 and 253).

(i) In National Interest – Under Art-249, if Rajya Sabha declares that is necessary in the National Interest that the Parliament should make law on the matter in the state list then parliament becomes competent to make laws on that matter. Such resolution must be supported by 2/3 members of Rajya Sabha.

(ii) During National Emergency – Article-250, empowers the parliament to legislate with respect to the matters in the state list while a proclamation of National Emergency (Art-352) is in operation.

— The laws become inoperative on the expiration of 6 months after the emergency has ceased to operate.

(iii) When State makes request – Under Article 252, when the legislative of 2 or more state passed the resolution requesting to parliament to enact laws on a matter of state list then parliament can make laws for regulating that matter.

Note : Such a law can be amended or repealed only by the parliament.

(iv) To implement International treaty or agreement – Under Article 253, Parliament has a power to make any law for the whole or any state or any part of the territory of India in any matters in the state list for implementing of the international treaties. This provision enables the central govt. to fulfill its international obligations and commitments.

- ❖ Concurrent List.
- ❖ Administrative Directives under article 256 & 257.
- ❖ All India Services.
- ❖ Office of Governor.
- ❖ Integrated Judiciary (Single system of courts enforces both central laws and state law) .
- ❖ Indian Constitution is an unique blend of Unitary and Federal setup.
- ❖ Quasi Federal – K.C. Wheare.
- ❖ Cooperative Federalism – Granville Austin.
- ❖ Federation with a centralizing tendency – Ivor Jennings.

Sources of the constitution

From Government of India act – 1935

- Federal system
- Governor's office
- Public Service Commissions
- Structure of Judiciary
- Administrative details.

From British Constitution

- — Parliamentary form of system
- — Bicameralism

- — Superiority of lower house over upper house.
- — Nominal significance of state head
- — Power of President
- — Cabinet system and post of Prime Minister
- — Single citizenship
- — Prerogative writs
- — Parliamentary privileges
- — Collective responsibility of cabinet
- — Rule of law
- — Office of Comptroller and Auditor General of

From American Constitution

- — Fundamental rights
- — Independent Judiciary
- — Judicial review
- — Concept of written constitution
- — Concept of preamble.
- — Post of president.
- — Post of vice-president.
- — Supreme court.
- — Impeachment of the president.
- — Removal of Supreme Court and High Court Judges.
- — Supremacy of constitution.

From Irish constitution

- — Directive principles of state policies.
- — Method of election of president and their electoral college.
- — Nomination of 12 members to Rajya Sabha.

Canadian Constitution

- — Union cum federal system with powerful center.
- — Residuary powers with center.
- — Appointment of state governor by the center .
- — Advisory jurisdiction of supreme court (Art. 143)

Australian constitution

- — Concurrent list
- — Joint sitting of both the houses of parliament
- — Relation between center and state and distribution of power with respect to trade and commerce.

From Weimar constitution of Germany

- — Suspension of fundamental rights during emergency

From Soviet (USSR) Constitution

- — Fundamental duties
- — Ideals of Social, economic and political justice in preamble

French constitution

- — Republican structure
- — Ideals of liberty, equality and Fraternity

South African constitution

- — Procedure of Amendment in the constitution
- — Election of the members of Rajya Sabha

Japanese Constitution

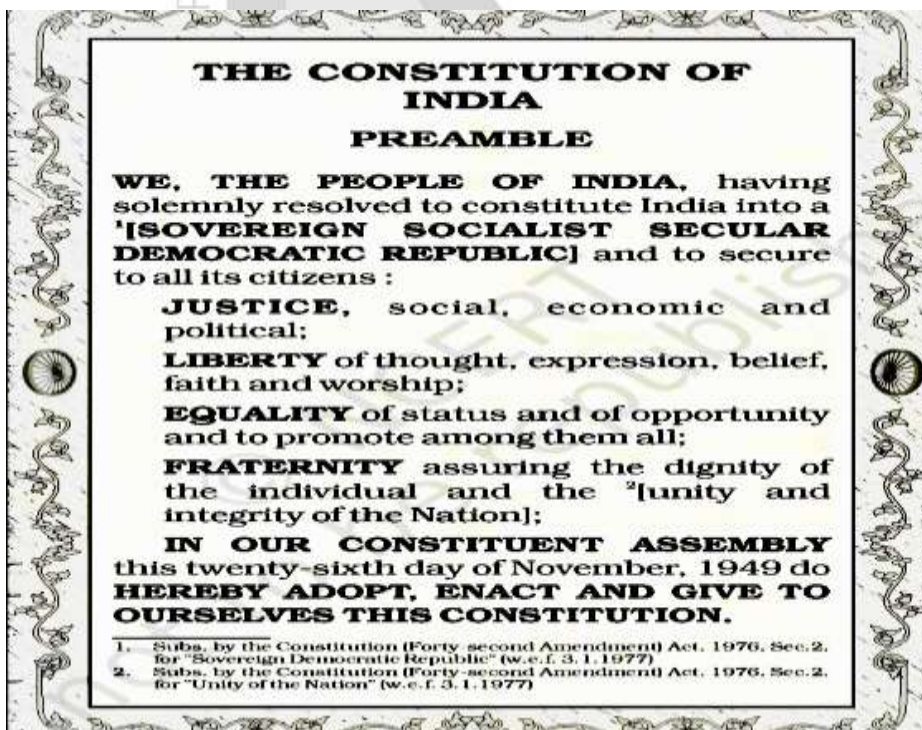
- — Term "Procedure established by law".

Facts about constitution

- Original Copies of Constitution were neither printed nor typed but were hand written by noted calligrapher Prem Bihari Narain Raizada in flowing italic style.
- Each page of the Constitution was uniquely decorated by artists of Shantiniketan including NandLal Bose and Beohar Ram ManoharSinha.
- The original Preamble was beautifully decorated by noted painter Beohar Ram ManoharSinha (who was born in Jabalpur M.P).
- The calligraphy of Hindi version of the original constitution was done by VasantKrishnVaidya and decorated by NandLal Bose.
NandLal Bose also designed Bharat Ratna and Padma Awards.
- Mr. S. N. Mukharjee was the chief draftsman of the constitution.
- Eminent Jurist, Diplomat and ICS Sir Benegal NarSing Rau (B.N Rau) was the constitutional advisor of constituent assembly.
- Elephant was adopted as the seal of the constituent assembly.
- First meeting of the Constituent Assembly was held on 09th December 1946 in the Constitution Hall (which is now called as the Central Hall of Parliament.)
- Indian Constitution is the lengthiest written constitution in the world. The English Version had 117, 369 words. Original constitution contained 395 articles and 8 schedules.
(Now it has approx. 448 articles and 12 schedules)
- The Constitution was adopted by the Constituent Assembly on 26th November 1949. The assembly took 2 years, 11 months and 17 days to complete the Constitution.
- Dr. SachchidanandaSinha, the senior most member of the assembly was appointed as the temporary president of the Constituent assembly.

- Dr. Rajendra Prasad was elected as the President, H.V.R. Iyenger as the secretary and H.C. Mukharjee and V.T. Krishnamachari were elected as Vice-Presidents of the Assembly.
- The national flag of India was designed by PingaliVenkayya. The ratio of width of the flag to its length is 2:3. It is a horizontal tricolour of India saffron (kesaria) at the top which signifies sacrifice, white in the middle which signifies peace and truth and India green at the bottom which signifies prosperity and fertility of nation. In the middle there is the Ashoka Chakra which depicts the Dharma Chakra; a wheel represented with 24 spokes. It is taken from the Lion Capital of Ashoka, Sarnath.
National Flag was adopted by the constituent assembly on July 22, 1947
- The national emblem was adopted on 26th January 1950. It is an adaptation from the **Sarnath Lion Capital of Ashoka**. In the original, there are **four lions**, standing back to back (only three lions are visible) mounted on an abacus with a frieze carrying sculptures in high relief of an **elephant**, a galloping **horse**, a bull and a lion separated by intervening wheels over a **bell-shaped lotus** (The bell-shaped lotus has been omitted). It is Carved out of a single block of polished sandstone, the Capital is crowned by the Wheel of the Law (**Dharma Chakra**)
The words **SatyamevaJayate** from **Mundaka Upanishad**, meaning '**Truth Alone Triumphs**', are inscribed below the abacus in **Devanagari script**.
 - Adoption of National Anthem – Jan 24, 1950
 - Adoption of National Song – Jan 24, 1950

PREAMBLE



Points to remember

- ❖ It is based on 'Objective Resolution' moved by Pt. Nehru on 13 Dec. 1946.
- ❖ It was the last part to be adopted by Constituent Assembly.
- ❖ It is the essence/summary of whole constitution and it tells the intention of our Constitution Makers.
- ❖ According to Hon'ble Supreme Court of India, it is a key to understand the mind of makers of constitution.

NATURE OF PREAMBLE

- ❖ It neither limits the power nor it confers substantive power to the three organs of government.
- ❖ It can't override the specific provision of Constitution. (Provisions prevails over Preamble.)
- ❖ It is non justiciable i.e. not enforceable in court of law.
- ❖ It is used to remove ambiguity surrounding the provisions of Constitution.

Ingredients

- Source of authority of Constitution – People of India.
- Nature of Indian State- Sovereign, *(Socialist, Secular), Democratic and Republic.
- Objectives of the Constitution- Justice, Equality, Liberty and Fraternity.
- Date of adoption – Nov. 26 1949.

*[Added in 42nd Constitutional Amendment Act, 1976]

Ideals of constitution

Sovereignty – It is the supreme political power of state which is unlimited in extent. It means country is supreme both externally and internally.

Socialist – It is used in context of economic planning. It aims in achieving ideals like removal of poverty, providing basic amenities etc. Indian socialism is based on democratic socialism and is different from Communism.

Secular – It means state doesn't recognize a particular religion as official religion of state. The state is religiously neutral and respects various religions.

Democratic – A state which is ruled by representatives elected by its citizens.

Republic – Head of state is elected and is not hereditary. Political offices are open to every citizens.

Aspirations are 4 in Number

Justice – Political (Art. 326), Social (Art. 14-18) and Economic.

Liberty – Freedom of individual: Thought, expression, belief, faith and worship (Art 19, 25-28)

Equality – of Status and opportunity (Article 15)

Fraternity – Sense of brotherhood.

Significance of Preamble

"Preamble express what we had thought or dreamt so long" – Alladi Krishnaswami Iyer

"Horoscope of our constitution" – K M Munshi

"It is the soul of our constitution which lays down the pattern of our political society." – Justice

Hidayatullah

Is preamble a part of Constitution?

"Not a part of Constitution."

– In Re. Berubari Union Case (1960)

Is a part of constitution? Constitution should be read and interpreted in light of preamble.”

– Keshavnanda Bharti vs. State of Kerela AIR 1973 SC

“It is an integral part of constitution.”

– LIC vs. Union of India AIR 1995 SC

Amendability of Preamble

In the historic Keshwnanda Bharti Case it was held that since the preamble is a part of constitution, it can be amended subject to the basic structure doctrine.

It has been amended only once by 42nd CAA 1976 which added three new words- secular, socialist and integrity.

Article 1-4

(The Union & its Territory)

Part I : India and its territory (Article 1-4)

❖ India i.e. Bharat is a Union of states

(the word federation is no where used in Constitution).

I. There was no agreement among states to join federation.

II. The states doesn't have power to secede.

❖ The territory of India include -

a) States

b) Union Territories

c) Territories acquired by India (Ex. Goa, Sikkim, Pondicherry etc.)

❖ Parliament may by law form new states, alter areas, boundaries or change the name of states. Only consultaion of states is required not concurance.

(India is indestructible union of destructible states.)

❖ Such alteration shall not be deemed to a constitutional amendment.

(Can be done by Simple Majority of Parliament.)

Does the power of Parliament includes power to transfer territory to foreign Country?

➤ **Berubari Case – 1960**

– At the time of partition of India and Pakistan, the task of demarcation of boundaries were assigned to Sir Cyril Radcliff. He distributed Thanas in India and Pakistan and the boundaries of such Thanas would going to be ultimate boundary between India and Pakistan.

– There was a Thana Berubari in Jalpaigudi district of West Bengal. Radcliff awarded it to India. But unfortunately it was not mentioned in the written text of the award. This gave opportunity to East Pakistan to claim on Berubari, siting a reason that Berubari falls on the map of East Pakistan.

– Dispute continued till '**Nehru-Noon' agreement** was signed in 1958 between India and East Pakistan. In the agreement the territory of Berubari was divided and distributed equally between India and East Pakistan.

– After criticism Union govt. decided to refer matter to the Supreme Court.

– Supreme Court said that Art-3(C) gave power to parliament to diminish the state territory but doesn't give power to secede.

– Mere, exercising the power under Art-3 was not sufficient then parliament has to bring an amendment under Art-368. So, 9th Constitutional Amendment Act 1960 was enacted to gave affect to the arrangement.

Background of Reorganization of States :

In 1950, the Constitution provided for four types of states – Part A, B, C and D. In all they were 29 in numbers.

The integration of Princely States was an ad hoc arrangement

There was a growing demand especially in south India for reorganization of states on Linguistic basis.

In June 1948, Government of India appointed Linguistic Provinces Commission under chairmanship of S. K. Dhar to review feasibility of this.

The commission submitted its report in Dec. 1948 and recommended reorganization on basis of administrative convenience and not on linguistic basis.

This led to resentment and govt. appointed JVP Commission (Jawaharlal Nehru, Vallabh Bhai Patel and Pattabhi Sitaramaiyah) in Dec 1948 to examine the question.

It submitted its report in April 1949 and rejected the reorganization on linguistic basis.

Death of A Congress leader Potti Sriramulu after 56 days of hunger strike led to popular agitation.

The Government was forced to create first linguistic state known as Andhra State in 1953 by separating Telugu speaking areas from Madras state.

Fazal ali Commission

Creation of Andhra intensified the demand from other regions for creation of states on linguistic basis.

The government in Dec. 1953 appointed a 3 member State Reorganization commission under chairmanship of Fazal Ali and other two members were K. M Panikkar and H. N Kunzru.

It submitted the report in Sept. 1955.

It accepted the language as the basis of reorganization but rejected the theory of 'one state one language'.

- ❖ It identified four major factors for reorganization –
 - (a) Preservation and strengthening of unity and security of country.
 - (b) Linguistic and cultural homogeneity.
 - (c) Financial, economic and administrative considerations.
 - (d) Planning and promotion of welfare of the people in each state as well as of nation as a whole.
- ❖ It suggested the abolition of four-fold classification of states and creation of 16 states and 3 centrally administered territories.
- ❖ The Govt. accepted these recommendations with minor modifications.
- ❖ By States Reorganization Act 1956 and 7th Constitutional Amendment Act 1956, 14 states and 6 union territories were created on Nov 1, 1956.

States		Union Territories
Andhra Pradesh	Punjab	Andaman & Nicobar Islands
Assam	Rajsthan	Delhi
Bihar	Uttar Pradesh	Himachal Pradesh
Bombay	West Bengal	Laccadives, Minicoy and Amindivi islands.
Jammu & Kashmir		Manipur
Kerela		Tripura
Madhya Pradesh		
Madras		
Mysore		
Orrisa		

Part II : Article 5-11 Citizenship / नागरिकता

Part II : Citizenship (Article 5-11)

- Citizen- An individual who enjoy full membership of political community i.e. he enjoys all the rights available under constitution and other laws of country.
- Rights available only to citizens of India: Guaranteed under Article 15, 16, 19, 29 and 30.
- Right to vote provided under Article 326.
- Right to contest elections to Parliament, state legislature and local bodies.
- Right to hold constitutional posts like Judge of Supreme Court and High Courts, CAG etc.

Modes of Acquiring Indian citizenship

Governed by Citizenship Act 1955

(Amended in 1986, 2003, 2005, and 2015.)

By Birth – Person born in India on or after 26th of January 1950 but before 1st July 1987 irrespective of the nationality .

- Person born in India after 1st July 1987 if either of his parents is a citizen of India at time of his birth.

- Person born in India after on or after 3rd Dec. 2004 if both of his parents is a citizen of India or one of his parents is a citizen and other is not an illegal migrant at time of his birth.

By descent – A person not born in India but at the time of birth one or both of his/her parents were Indians.

(on or after 26th Jan 1950 but before 10th Dec 1992 – If father was a citizen of India.)

(After 10th Dec 1992 if either of his parents is citizen of India.)

(After 03 Dec 2004, No person shall acquire citizenship by descent.)

By incorporation of new territories.

By Registration – Person of Indian origin ordinary resident for 7 years.

Person of Indian origin ordinary resident for of undivided India.

Woman married to Indian Citizens (Ordinary resident for 7 years)

Minor child of persons taking Indian Citizenship,

A person of full age and capacity if his parents are registered citizens of India.

By naturalization – Any person who is not an illegal migrant may apply if:

- Not a citizen of any country.

- If he renounces citizenship of any country.

- Either resided in India or been in service of Govt. of India for 12 months.

- Is of good character.

- If he is a resident for 12 years (during 12 months immediately before application and has either 11 years resided in India and fulfill all requirements of schedule III)

- Has adequate knowledge of any language specified in eighth schedule.

- That he intends to reside in India or to enter into or continue service with Govt. of India.

* Govt. may waive all or any of the above qualification to a person who has rendered service to science, philosophy, arts literature, world peace or human progress.

Loss of Citizenship

By renunciation – any citizen of full age and capacity Declaring renunciation.

By Termination – When an Indian citizen voluntarily acquires the citizenship of another country without any undue influence, duress or compulsion, citizenship automatically terminates.

By Deprivation – It is a compulsory termination by Central Government. If

(a) Citizenship is acquired by Fraud.

(b) Shown disloyalty to Constitution.

(c) Traded unlawfully or communicated with an enemy during war.

(d) Imprisoned in any country for 2 years, within 5years of naturalization.

(e) Residing outside the territory of India for continuous 7 years.

Citizenship (Amendment) Bill 2019:

The amendment proposes to permit members of six communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Pakistan, Bangladesh and Afghanistan — to continue to live in India if they entered India before December 14, 2014.

It also reduces the requirement for citizenship from 11 years to just 6 years.

Two notifications also exempted these migrants from the Passport Act and Foreigners Act.

A large number of organizations in Assam protested against this Bill as it may grant citizenship to Bangladeshi Hindu illegal migrants.

FUNDAMENTAL Rights/ मौलिक अधिकार (Part III)

Background of Fundamental rights –

- ❖ Fundamental Rights are necessary or essential for an individual to live a dignified human existence.

The origin of the concept of Fundamental rights may be traced from **Magna Carta** of Britain issued by the **King John in 1215**.

- The next important evidence in the same route is 'Bill of Rights' legislated by British parliament in 1689.
- In 1789 the people of France were given fundamental rights under the declaration of rights of man and citizens.
- In 1791 American constitution was amended with the addition of "**Bill of rights**" to provide fundamental rights.
- In 1928 Nehru Report/Swaraj Constitution demanded the fundamental rights the **same demand was raised by Mahatma Gandhi in 2nd round table conference (1931)**, but it was rejected by the British govt. **In this way the provision of fundamental rights were not given in the govt. of India act, 1935.**

Classification of fundamental rights – Right to equality (Art. 14-18).

- Right to freedom (Art. 19-22).
- Right against exploitation (Art. 23-24).
- Right to freedom of religion (Art. 25-28).
- Cultural and Educational Rights (Art. 29-30)
- Right to Constitutional Remedies (Art. 32).

*[Art. 31 was repealed by 44th CAA 1978. Right to property is now a legal right]

❖ Nature of Fundamental Rights

They are individual's rights. Few are available to only citizens while few are available to foreign nationals as well.

- ❖ Are subject to reasonable restrictions. They are not absolute.
- ❖ Generally enforceable against arbitrary (unreasonable) actions of state except Article 17, 23 and 24 which are enforceable against individuals.
- ❖ The aim of Fundamental Rights is to prevent a state from being totalitarian.
- ❖ Many of the fundamental rights are negative obligations of state negatively worded.
Ex Article 14 : State shall not deny to any person equality before law or equal protection of the laws.

- They are justiciable in nature. A person can directly move to Supreme Court for their enforcement U/Art. 32.
- They can be suspended during National Emergency except rights guaranteed under article 20 and 21.
- They are not sacrosanct or permanent. They can be amended by Parliament but without affecting the 'Basic Structure'

Article 12 and 13 / अनुच्छेद 12 और 13

Article 12 – It defines the term 'State' according to it, the state includes the following –

- a) The govt. and parliament of India.
- b) The govt. and legislature of state.
- c) All local authorities like panchayat, Municipalities, district board etc.
- d) All other authorities like Public Sector Unit, i.e., ONGC, SAIL, LIC etc.
 - State is defined in wider sense to cover all its agencies.
*Even a private body or agency working on behalf of state shall be covered in the definition. – Hon'ble Supreme Court.

Article 13 – **Laws inconsistent with or derogation of fundamental rights.**

- (1) All the laws in force in India immediately before commencement of this constitution (26 Jan 1950) that are inconsistent with or in derogation of any fundamental rights shall be void to the extent of such inconsistency.

Doctrine of Eclipse - Any such law is not dead altogether but overshadowed by the fundamental rights and remains dormant and eclipsed to the extent it comes under the shadow of the fundamental rights.

- (2) The state shall not make any law which takes away or abridges the fundamental rights and any law doing so shall be void to that extent.

Doctrine of Severability -

It means that, if only a part of law is consistent with fundamental right than only that part shall be void and not whole of the law.

It applies to both pre-constitutional laws and post-constitutional laws.

- (3) In article-13, the term **law** means –

- a) Permanent laws enacted by the parliament or the state legislature (Known as Acts).
- b) Temporary laws like ordinances issued by president (Art 123) or the state governors (Art. 213)
- c) Statutory instruments – like delegated legislations, rules, orders, notifications etc.
 - d) customs or Usages having force of law.

- (4) Article 13 also declares that constitutional amendment act (under article 368) is **not a law** and cannot be challenge in the Supreme Court

(* Added in 24th C.A.A, 1971)

JUDICIAL REVIEW

("Ubi Jus Ibi Remedium" : When there is a right, there is a remedy.)

It is (Writ Jurisdiction) power of Supreme Court (u/art 32) and High Court (U/art.226) to declare a law as unconstitutional and void if it is inconsistent with any part of Constitution.

The power is not only against legislative action but also executive action.

The principle is implied in concept of 'Supremacy of Constitution', 'independence of judiciary', 'division of powers' and 'doctrine of minimum government'.

Supreme Court in the leading case of Keshawnanda Bharti vs. State of Kerela, AIR 1976 SC held that Judicial Review is part of Basic Structure.

Basic Structure Doctrine / मूल संरचना सिद्धांत

- ❖ Notwithstanding anything in this Constitution, **Parliament** may in 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.
- ❖ The bill may be initiated in either House of Parliament.
- ❖ It shall be passed by special majority in both the houses i.e. majority of the **total membership** of that house and majority of not less than **2/3rd members** present and voting.
- ❖ It shall be presented to the President for assent who **shall** give his assent.

First Constitutional Amendment 1951 added Schedule 9 (Read with Article 31-B) which contained acts dealing with compulsory land acquisition by government and they were kept out of the ambit of Judicial scrutiny.

Shankari Prasad vs. Union of India 1951

Hon'ble Supreme Court held that Parliament's amendment power includes amendment of Fundamental rights.

Constitutional Amendment is not law under Article 13 (3)

17th Constitutional Amendment Act 1965 : Added more acts in IX Schedule.

Sajjan Singh vs. State of Rajasthan, 1965: Challenged 17th CAA.

Article 368 confers power on parliament to amend the constitution which extends to all the provisions of constitution including Part III.

Golaknath vs. State of Punjab 1967

Henry and William Golaknath held 500 acres land in Punjab.

- Punjab Government placed a law in IX schedule and seized lands leaving only a few acres. And distributed the seized lands to tenants.
- Hon'ble Supreme Court held that Parliament can't take away or abridge any Fundamental Right.
- Constitutional Amendment is also law u/art.13.

24th Constitutional Amendment Act 1971 –

It was enacted by Parliament to reverse Golaknath Case.

It added Article 13 (4) which declared that constitutional amendment act (under article 368) is not a law and cannot be challenge in the Supreme Court

- Parliament can take away Fundamental Rights and CAA is not law under definition of Article 13 (3.)

-25th Constitutional Amendment Act 1971 – Added article 31-C which provided that policies of Government giving effect to Part IV DPSP shall not be deemed to be void on ground that they are inconsistent with Article 14 or 19.

Keshavnanda Bharti vs. State of Kerela 1973

- Heard by a bench of 13 Judges, longest in history of India.
- Decided by the ratio of 7:6.
- Overruled Golakhnath Case and Upheld the validity of 24th CAA, 1971.
- Stated that parliament can take away or abridge FR but certain principles are inviolable and hence cant be amended.
These principles are called Basic Structure.
- The basic structure is to be interpreted by court.
- Also held that Preamble is a part of Constitution.

Ingredients of Basic Structure

- Supremacy of Constitution
- Sovereignty
- Secularism
- Separation of powers
- Federal Nature
- Unity & Integrity
- Welfare State
- Judicial review
- Parliamentary Form of Govt.
- Rule of Law
- Principle of equality
- Independence of judiciary
- Harmony between FR & DPSP
- Free and fair elections
- Limited power of parliament to amend constitution.

Article 14 right to Equality/ समता का अधिकार



Article 14 – Equality before law

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

It is a negative obligation of state i.e. the article prevents the state from denial of equality.

Equality before the law – The concept was originated in England. It is a negative concept as it means absence of any special privileges in the eyes of law.

- All the persons are subject to ordinary law of country administered by ordinary courts of law.
- No person is above the law.

(Lex Rex – Law is the king of kings)

Equal protection of Law –

It is borrowed from USA and is a positive concept. It means equality of treatment in equal circumstances i.e. equality amongst equals.

- Like should be treated alike without discrimination.
- Similar application of same laws to all the person in alike situations.
- It means while making law situational variable applicable among people will be taken into consideration.

Article 14 forbids class legislation but allows Reasonable classification –

The state shall not make any law for a particular class of people. Distinction between classes is allowed but not within the groups or class, this is known as **Intelligible differentia**.

The classification shall be reasonable i.e. just and fair. It shall not be arbitrary, evasive or discriminatory.

This is known as **Protective Distinction**.

Rule OF Law



Justitia – The Lady of Justice

The concept was propounded by British Legal Thinker A. V. Dicey.

He coined three principles of Rule of Law

- No person shall be punished in body or goods except for violation of ordinary law of land and in ordinary procedure of court. (**Supremacy of Law**)

- All persons are subject to ordinary law of land without any distinction of rank or position of strata i.e. absence of privilege and are subjected to jurisdiction of ordinary courts. (**Equality before law.**)

- Primacy of rights of individuals which are defined and enforced by courts of law and this results in Constitution.

(Constitution is result of ordinary law of land.)

In India only rule 1st and 2nd are applicable and not the 3rd one as in India the Constitution is supreme law of land and all the laws enacted shall be consistent with the provisions of constitution.

Constitution is the source of individuals rights.

Rule of Law is incorporated in Article 14 of the Constitution of India.

Supreme Court of India held that Rule of Law is part of basic structure.

Exceptions to Rule of LAW –

The rule of equality before law is not absolute but is subject to certain exceptions.

- The President of India and Governor of States enjoys following immunities (Art. 361)

- The President or Governor is not answerable in any court of law for the exercise and performance of powers and duties of his office.
- No criminal proceedings shall be instituted or continued against the President or the governor during term of his office.
- No process for arrest or imprisonment of the President or Governor in shall be any court during his term of office.
- No civil proceeding shall be initiated during his term of office in any court in respect of any act done by him in his personal capacity, whether before or after he entered upon his office, until the expiration of two months next after notice has been served to him.

- U/Art. 361 A, No person shall be liable to any civil or criminal proceedings in any court in respect of publication in a newspaper or by radio/television of a substantially true report of either house of parliament/state legislature.
- U/Art. 105, No MP shall be liable to any proceeding in any court in respect of anything said or any vote given by him in parliament.

U/Art. 194 No MLA shall be liable to any proceeding in any court in respect of anything said or any vote given by him in legislature.

Article 31-C is an exception to Article 14 which provides that the laws made by the state for implementing Directive Principles contained in Article 39 (b) and (c) can't be challenged on ground of violation of Article 14.

The foreign sovereigns, ambassadors and diplomats enjoys immunity from criminal and civil proceedings.

The UNO and its agencies also enjoys the diplomatic immunities.

Article 15 and 16/ अनुच्छेद 15 और 16

Article 15 – Prohibition of discrimination on certain grounds

Article 15(1) : The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.

Article 15(2) : No citizen shall, on grounds only of religion, race, caste, sex, and place of birth or any of them be subject to any disability, liability, restriction or condition with regard to

- (a) access to public shops, public restaurants, hotels and places of entertainment, or
- (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state fund or dedicated to the use of general public.

- **Article 15(3)** : State is permitted to make any special provision for women and children.
e.g. : Reservation of seats for women in local bodies or provision of free education for children (6-14yrs).
- **Article 15(4)** : The state is permitted to make any special provision for the advancement of any socially and educationally backward classes of citizen or for the scheduled castes and scheduled tribes.
- [added by 1st Constitutional Amendment Act 1951]

- **Article 15(5)** : The state is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs regarding their admission to educational institution including private educational institutions whether aided or unaided by the

state except minority educational institutions.

[Minorities : Muslim, Sikh, Christian, Buddhist, Zoroastrians, Parsis and Jain]

e.g. : Reservation of seats or fee concessions in public educational institutions.

(Added by 93rd CAA, 2005)

- **Article 15(6)** : The state is empowered to make any special provision for making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) Such special provision for the advancement of any economically weaker sections related to their admission to educational institutions would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

(Added by 103rd CAA, 2019)

Article 16 – Equality of opportunity in matters of public employment

Article 16(1) : There shall be an equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

Article 16(2) : No citizen shall on grounds only of religion, race, caste, sex, and place of birth or any of them be ineligible for, or discriminated against in respect of any employment or office under the state.

Article 16(3) : Nothing in this article shall prevent parliament from making laws prescribing, in regards to class or classes of employment or appointment to a public office under govt. of or any local authority within a state/UT, any requirement as to residence prior to such employment.

16 (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.

Note – This is known as Catch-Up Rule.

*[(4A) Nothing in this article shall prevent the State from making any provision for reservation **[in matters of promotion, with consequential seniority, 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.]

* Ins. by the Constitution (Seventy-seventh Amend Act 1995)

** Subs. by the Constitution (Eighty-fifth Amendment) Act, 2001retrospectively w.e.f. 17-6-1995).

- [(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

* . Ins. by the Constitution (Eighty-first Amendment) Act, 2000

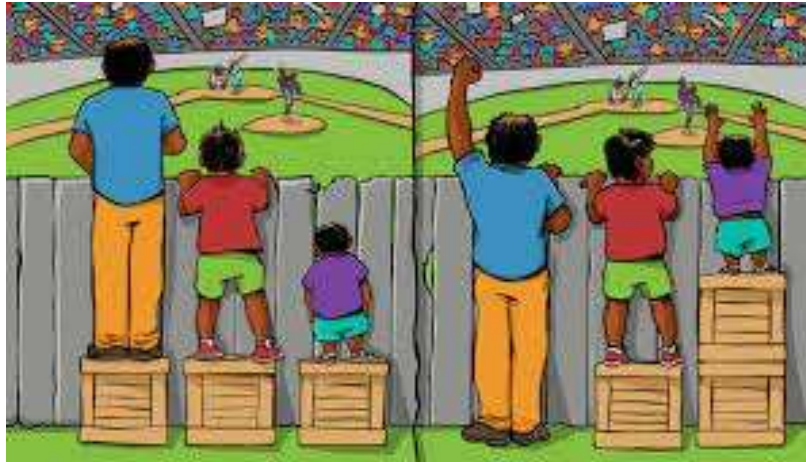
Note- This is known as Carry Forward rule.

(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.

*[(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.]

* Ins. by the Constitution (One Hundred and Third Amendment) Act, 2019

Reservation in India and the Mandal commission



Level

/स्तरीय खेल

Playing Field

मैदान

BACKGROUND

State of Madras v. Champakam Dorairajan, 1951

The case led to the First Amendment in the constitution.

Art. 15 (4) Ins. by the Constitution (First Amendment) Act, 1951, which provided for special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

First backward class commission was established in 1953 under chairmanship of **Kaka Saheb Kalekar**.

Submitted its report in 1955.

M. R. Balaji And Others vs State Of Mysore , 1962

Not more than 50% reservation in jobs in a single year.

Mandal Commission

In 1979, the Janta Government appointed second backward class commission under leadership of B. N. Mandal to identify the conditions of socially backward classes and suggest measures for their betterment.

The commission submitted its report in 1980.

The commission identified 3743 backward castes which constituted 52% of population excluding SC & ST population.

It recommended for 27% reservation in jobs for OBCs so that total reservations amounts to 50%.

In 1990, V.P. Singh govt. implemented it.

In 1991 P.V. Narsimha Rao's govt. made two changes:

- (a) Concept of creamy layer i.e. preference to poorer section among the OBCs.
- (b) 10% reservation for economically weaker section of higher classes.

Indra Sawhney vs Union of India, 1992

Hon'ble Supreme Court held that reservation in favor of OBC up to 27% of seat as constitutionally valid. Provided that creamy-layer section of OBC isn't entitled for reservation.

Total number of reserved seats shall not exceed 50% except in some exceptional conditions.

No reservations in promotions but in initial appointments only.

The 'carry forward' rule in case of back log vacancies is valid.

The Parliament enacted the 77th **Constitutional Amendment Act** 1995 which introduced Article 16(4A) to nullify the ruling with regard to reservation in promotions.

81st Constitutional Amendment Act 2000 inserted Art. 16(4 B) which nullified the ruling on BackLogs.

85th Constitutional Amendment Act 2001 provided for consequential seniority in reservation in promotions.

In **M. Nagaraj v. Union Of India 2006 case**, hon'ble Supreme Court while upholding the constitutional validity of Art 16(4A) held that any such reservation policy in order to be constitutionally valid shall satisfy the following three constitutional requirements:

The SC and ST communities should be socially and educationally backward.

The SC and ST communities are not adequately represented in public employment.

Such a reservation policy shall not affect the overall efficiency of the administration.

In **Jarnail Singh vs Lachhmi Narain Gupta case of 2018**, the Supreme Court held that reservation in promotions does not require the state to collect quantifiable data on the backwardness of the Scheduled Castes and the Scheduled Tribes.

The Court held that creamy layer exclusion extends to SC/STs and, hence the State cannot grant reservations in the promotion to SC/ST individuals who belong to the creamy layer of their community.

102nd Constitution Amendment Act, 2018

In 1993 National Commission for backward classes was established as a statutory body by act of Parliament.

102nd Constitution Amendment Act, 2018 provides constitutional status to the National Commission for Backward Classes (NCBC). Inserted new Articles 338 B and 342 A.

The Commission consists of five members including a Chairperson, Vice-Chairperson and three other Members appointed by the President by warrant under his hand and seal.

The amendment also brings about changes in Article 366.

Article 338B provides authority to NCBC to examine complaints and welfare measures regarding socially and educationally backward classes.

Article 342 A empowers President to specify socially and educationally backward classes in various states and union territories. He can do this in consultation with Governor of concerned State. However, law enacted by Parliament will be required if list of backward classes is to be amended.

One Hundred and Third Amendment) Act, 2019

Article 16 (6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.

Article 17 (Prohibition of Untouchability) And Article 18 (Abolition of Titles)

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 and punishable in accordance with law.
- No exception to this right.
- Enforceable against both state and citizens.
- Untouchability is an offence punishable under Civil Rights Protection Act, 1955 and SCs & STs (Prevention of Atrocities) Act 1989.
- Hon'ble Supreme Court held that this right under this article is available against private individuals and it is the duty of state to take necessary action to ensure that this right isn't violated.

Article 18 – Abolition of Titles

- a) State will not confer any title **except military or academic distinction** to anybody whether a citizen or a non-citizen.
- b) It prohibits a citizen of India from accepting any title from any foreign state.
- c) A non-citizen holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the president.

The article prohibits the hereditary titles of nobility like Rai Sahab, Diwan, Rai Bahadur, Maharaja, Maharajadhiraj etc. These were conferred by colonial states is banned because these are against the principle of 'Equality of Status' and 'Social Justice'.

National Awards such as Bharat Ratan or Padam Awards were initiated in 1954 by presidential notification.

These are civilian honors and therefore kept outside the ambit of Article 18 (1).

Balaji Raghvan vs. state of tamil nadu 1996

It was contested that Conferring of National Awards violates of Article 18 (1).

Supreme Court held that National Awards does not violate of principle of equality.

The principle of equality doesn't mandate that merits should not be recognized.

These awards aren't titles as awardee isn't expected to use them in form of title.

Article 19 – Right to freedom of speech Etc.

Article – Right to freedom

Article 19 (1) (a) – Right to freedom of speech and expression.

Freedom of Speech and expression has emerged as the most important fundamental right.

Its scope has been increased by the judiciary by giving liberal interpretation.

Hon'ble Supreme Court held it to be an inseparable part of Right to Life and Liberty.

It includes Right to express views, opinion, beliefs and convictions freely by word of mouth, writing, printing, picturing or an any other manner.

The SC held that the freedom of Speech and expression includes the following.

(i) Freedom of press.

- Sakal Papers vs. Union of India, 1962

Press is the fourth pillar of democracy. Art. 19 (1) (a) includes freedom of press.

(ii) Freedom of commercial advertisement.

- Tata Press vs. MTNL 1995

Advertisement is a form of freedom of expression.

(iii) Right against taping of telephonic conversation.

(iv) Right to know about govt. activities.

This right is manifested under the RTI Act, 2005.

(v) Freedom of silence.

(vi) Right to demonstrate but not right to strike.

(vii) Right to hoist National Flag.

- Naveen Jindal vs. U.o.I, 2005

Waving National Flag on top of building is also included in this right. However due respect shall be shown.

Article 19(2) : The State can impose reasonable restrictions on the enjoyment of Right to freedom of speech and expression only on the ground mentioned below:

Sovereignty and Integrity of State

Friendly relations with a foreign state.

Public order

Decency

Morality

Contempt of Court

Defamation (Section 499 of IPC)

Incitement of an offence

Certain offences related to speech

Section 124-A :Sedition

Section 153-A : Promoting enmity between different religious groups on grounds of religion, race, place of birth, residence language etc.

Section 298 – uttering words etc. with deliberate intent to wound religious feelings.

Section 506 – Criminal intimidation

Section 509 – Words, gesture or acts intended to insult the modesty of a woman.

Article 19 (1)(b) – Right to assemble peaceably and without arms.

It includes right to hold public meetings, demonstrations and take out processions.

The freedom can be exercised only on public land and the assembly shall be peaceful and unarmed.
Does not include right to strike and bandh.

19 (3) – Restriction : Sovereignty and Integrity of State, or public order.

Section 144 Cr.P.C (1973) : A magistrate can impose restrictions on an assembly, meeting, procession or demonstration if there is an apprehension of obstruction, annoyance or danger to human life, property, health or safety or there is a threat to public peace.

Section 141 of IPC (1860) defines an Unlawful Assembly – An assembly of 5 or more persons is an unlawful assembly if the objective is unlawful i.e.

- (a) to do an illegal act
- (b) a legal act by illegal/unlawful means
- (c) to commit any mischief or trespass
- (d) to force some person to do an unlawful act.
- (e) to threaten the government or its officials in discharge of their functions.

Rangnathan vs. State of Tamil Nadu, 2003

Hon'ble Supreme Court held that civil servants doesn't have any legal right to go on strikes. They should take other remedies to redress their grievances

CPI (M) vs Bharat Kumar Palicha and Ors. 1998

There is no right to bandh. It is illegal as it carries element of coercion. It creates disturbance in normal life.

Article 19 (1)(c) – Right to form associations or unions or co-operative societies.

Article 19 (4) - Restriction : Sovereignty and Integrity of State, or public order or morality.

Article 19 (1)(d) – Right to move freely throughout the territory of India.

Article 19 (1)(e) – Right to reside and settle in any part of the territory of India.

Article 19 (5) – Restriction to sub clause (d) and (e) :

Interest of general public or protection of interests of scheduled tribes.

19 (1)(g) – Right to practice any profession or to carry on any occupation, trade or business.

Article 19 (6) - Restriction : Interest of general public and any law providing for

(a) professional or technical qualifications necessary for practicing any profession or for carrying any trade or business.

(b) Complete or partial exclusion of citizens or otherwise.

Protection in respect of conviction

Article 20 – Protection in respect of conviction

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

a) **No ex-post-facto law** – No person shall be convicted of any offence except for violation of law in force

at the time of the commission of the fact charged as an offence.

An ex-post-facto law is one having **retrospective effect**. Such effect is prohibited by this provision. This limitation is only on Criminal laws and not civil/taxation laws.

Ex. RTI Act 2005 was enacted with retrospective effect.

b) **Protection from Double Jeopardy** – No person shall be prosecuted and punished for the same offence more than once.

This immunity is not available against departmental or administrative actions as they are not judicial in nature.

Ex. Civil Services conduct rules says that if a civil servant is punished/dismissed on criminal grounds then disciplinary action can be taken by the department.

This protection doesn't apply to the preventive detention or demanding security from a person.

c) **Protection from Self Incrimination** – No person accused of any offence shall be compelled to be a witness against himself in a criminal proceeding.

Explanation : The Protection against self In-Crimination extends to both oral evidence and documentary evidences. However, it doesn't extend to

(a) Compulsory production of documents.

(b) She/he cannot deny to give thumb impression, specimen signature, blood samples etc.

(c) Compulsory exhibition of body.

Right to life and liberty

Article 21 – Protection of life and personal liberty

Article 21 - No person shall be deprived of his life or personal liberty except according to procedure established by law.

This right is available to both citizens and non-citizens.

As the constitutional form of government continue to evolve in India, Art. 21 undergone greatest changes due to liberal interpretation by Apex Court.

Acc. To hon'ble Supreme Court in **Kharak Singh vs. State of UP** held that "Art. 21 not only guarantees right to life, but right to a dignified life"

Without Art. 21 all other rights will be meaningless.

Even if other fundamental rights had not been provided, a liberal interpretation of Art. 21 will implicitly lead to such rights.

It is Art. 21 that makes difference between a police state and a constitutional state.

It is article 21 i.e. the backbone of part III.

It aims in improving quality of life.

Art. 21 is a composite right and has given a rise to large no. of rights.

Art. 21 includes

- a.) Right to healthy environment. (M. C Mehta vs. Union of India)
- b.) Right to sleep (Re. Ramleela Maidan vs. Home Secretary, Union of India)
- c.) Right to livelihood.
- d.) Right to speedy trial.
- e.) Right against sexual harassment at workplace
(Vishakha vs. State of Rajasthan 1997)
- f.) Right to education.
- g.) Right to move abroad (Maneka Gandhi vs. Union of India 1978)
- h.) Right to Privacy.

Procedure Established by law & Due process of law

A. K. Gopalan vs. State of Madras, 1950

Supreme Court gave narrow interpretation of term 'personal liberty'.

It held that the protection is available only against arbitrary executive action and not legislative actions.

It was held that Art 21 provides protection to individual and can't be punished if doesn't violate any law. The punishment shall be done in accordance with 'procedure established by law'.

Maneka Gandhi vs. Union of India, 1978

It overruled the earlier decision and gave widest possible interpretation to liberty.

Also it was held that personal liberty not only means liberty relating to body or person.

Article 21 includes right to go abroad.

The protection shall be available not only against executive action but also legislative action.

Principle of natural justice has been incorporated in art 21.

The law depriving person from his life or liberty shall be just, fair & reasonable and shall not be oppressive, forceful or arbitrary.

Thus art. 21 also includes 'Due process of law'

Also it was held that Art. 14, 19 & 21 are not mutually exclusive as they jointly aim in reasonableness and fairness. (Golden Triangle).

Procedure Established by Law – It is a British concept.

The validity of law that has prescribed a procedure can't be questioned on the ground that it is unreasonable, unjust, and unfair.

The court will examine a law only on point of legislative competence and will not go behind the motive of law.

Due process of Law – It is an American Concept. It means the procedure prescribed by law for depriving a person shall be just, fair and reasonable. It means that a court will not only examine a law from the point of view of legislative competence but from the point whether intention of law is bona fide or mala fide.

The principle of natural justice shall be applied.

Principle of Natural Justice

Audi Altrum Partem – Every person shall be given a reasonable opportunity to be heard, no person shall be punished unheard.

Nemo Dat Causa Sua – No person shall be a judge in his own cause.

Rule against Bias – An authority shall act bona fide without any bias.

Exception to Article 21

Constitutionality of Death Penalty.

Indian Penal Code and a few other criminal laws provides for Death penalties in 'rarest of the rare cases' in certain grave offences like murder etc.

The constitutional validity of Death Penalty was upheld by Supreme Court in plethora of cases if it is given in procedure established by law and the due process of law is followed.

(Death Penalty is an exception and Right to life is a rule.)

Exception to death penalty

Article 72 – Clemency power of President

Article 161 – Clemency power of Governor.

Right to education

Art. 21-A was inserted in 86th CAA 2002.

It declares that the state shall provide free and compulsory education to all the children of the age of six to fourteen years in such a manner state may determine.

This provision makes only elementary education a fundamental right not higher education.

Earlier the provision for free and compulsory education for children under Article 45 in Part IV.

Now Article 45 reads – "The state shall endeavor to provide early childhood care and education for all the children until they complete the age of six years."

It also added 51 A (K) which reads- "It shall be the duty of parents/Guardians to provide opportunities of education to his child or ward between 6 to 14 years of age."

Mohini Jain vs. State of Karnataka 1992

Right to education is inclusive in Article 21 – Right to life.

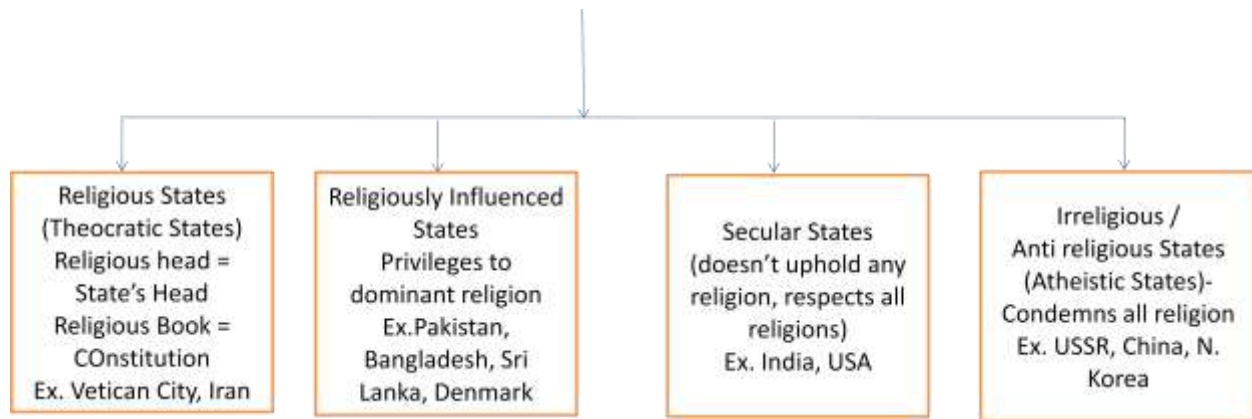
Unnikrishnan vs. State of Andhra Pradesh

Free education for children of 6-14 years of age.

In pursuance of Article 21A the parliament enacted the Right of Children to Free and Compulsory education Act 2009 (RTE Act)

Secularism and Religious Freedom

Classification of states on the Basis of relationship with religion

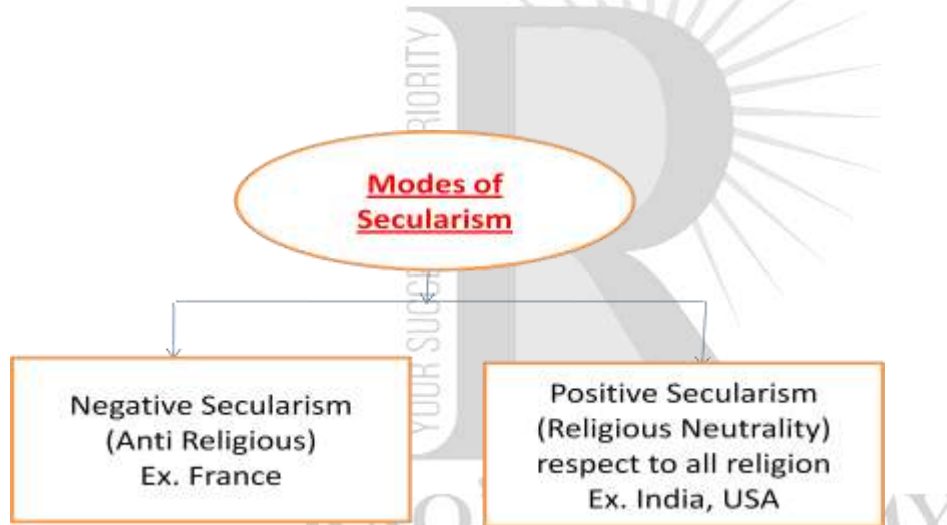


Secularism

The term was coined by George Holyoake in 19th century.

Secular – It means state doesn't recognize a particular religion as official religion of state.

The state is religiously neutral and respects various religions.



Secularism in Indian Context

The term was added in the Constitution by the 42nd CAA 1976.

However the nature of Indian is secular since the conception of our constitution. Our Constitution Makers rejected the Idea of making the state on communal lines like Pakistan.

The idea of Secularism was implicit/implied in Article 25-28 which provided for Religious freedoms to Indian Citizens.

“When India says it is a secular country, it doesn't mean that the relevance of religion in personal lives is lost; it also doesn't mean that secularism in itself is a positive religion or state acquired any divine right. It simply means state shall be religiously neutral.” – Dr. Sarvapalli Radhakrishnan

In Indian context there is no complete separation between religion and state. Indian model provides rights to religious minorities; state doesn't intervene in religious affairs till the religion is followed within the ambit of law. This is known as watchful ambivalence.

Article 25 – Freedom of conscience and free profession, practice, propagation of religion

Article 25 says that all are equally entitled to –

- a) **Freedom of conscience** – Means a person has a right of his religious thoughts and freedom to declare his individual religion and he has a right to be theist or atheist.
- b) **Right to profess** – Right to express one's religious beliefs and faith openly and freely.
- c) **Right to practice** – Performance of religious worship, rituals, ceremonies and exhibition of belief and ideas.
- d) **Right to propagate** – A person can promote his religious beliefs and principles .

However the state can impose reasonable restrictions on grounds of Public Order, Health, morality and Part III (Fundamental Rights).

Explanation – The wearing and carrying of kirpan shall be deemed to be included in the profession of the Sikh religion. But in the interest of security a person cannot be allowed to carry a kirpan in flights.

Article 26 – Freedom to manage religious affairs

- Under article-26, Subject to **public order, morality and health**, every religious denomination or any of its section shall have the following rights –

- a) Right to establish and maintain religious and charitable institutions.
- b) Right to manage its own affair in matters of religion.
- c) Right to own and acquire movable and immovable property.
- d) Right to administer such property in accordance with law.

What is religious denomination?

A group following any religion.

This group shall follow certain unique essential practices.

Article 27 – Freedom from taxation for promotion of religion

No person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination.

However Art. 27 doesn't prohibit state from collecting fee for religious purpose. Fee is primarily payment made in public interest for specific services rendered by state.

Article 28 – Freedom from attending religious instructions or religious worship in certain educational institutions

- **Article 28 (a)** – No religious instruction shall be provided in any educational institution which is wholly maintained out of state funds.
- **Article 28 (b)** – Religious instructions are permitted in that educational institutions which are administered by the state but has been established under any endowment or trust which requires that religious instructions shall be imparted in such institutions.
- **Article 28 (c)** – Religious instructions are permitted on voluntary basis in those institutions which are recognized by state or receiving aid from the State.

Right to constitutional remedies

Right to constitutional remedies

“Ubi Jus Ibi Remedium”

– Where there is a right, there is a remedy.

Article-32 is different from other fundamental rights in the sense that it is remedial in nature, that provides machinery for the effective enforcement of fundamental rights. Means, the right to get fundamental rights protected is in itself a fundamental right. This makes the fundamental rights real and enforceable.

Dr. Ambedkar stated that **“Article-32 is heart and soul of the Indian constitution.”**

Article 32 has made Supreme Court as **protector of Fundamental Rights**. Under this article an individual may approach the Apex court directly for enforcement of his fundamental rights.

Article 32 enables the SC to issue 5 prerogative writs for enforcement of Fundamental Rights.

1) **Habeas Corpus** - It is a Latin term which literally means **“To have the body ”**.

It is an order issued by court to a person or an authority who has illegally detained any person, to produce the detainee before the court.

The court asks the person or authority to provide the reason for such detention and if there is no justification, the person is set free. Thus, this writ is a bull work of individual liberty against arbitrary detention.

This writ is associated with the safeguards given under Article 21 and Article 22.

Shivkant Shukla Vs. ADM Jabalpur, 1975

It is known as black chapter of Indian Judiciary.

person's right to life cannot be upheld by a High Court under Article 226 of the Indian Constitution during a National Emergency.

2) **Mandamus** – It is a Latin term that means, **“command”**.

This writ is issued by Judiciary to public official who refrains from performing his or her public duties that he/she is obliged to do. It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

This writ cannot be issued against –

- a) A private individual or body,
- b) President of India or the state governors.
- c) Chief justice of Supreme Court and High courts, when acting in judicial capacity.

3) **Prohibition** - It is issued by superior court to a lower court when lower court tries to exceed the limit (Ultra Vires) of Jurisdiction vested in it. This writ can be issued only against Judicial and Quasi Judicial authorities. It is not available against administrative authorities, legislative bodies and private individuals or bodies.

Note - Quasi Judicial bodies are administrative authorities which have some characteristics of judicial body but are not strictly bound by the Rules of procedure are Quasi Judicial bodies.

For e.g. : Administrative tribunal, Lok Adalat, National and State Human Right commission, National and state information commission, central vigilance commission, revenue courts etc.

4) **Certiorari** - The term certiorari means **“to be certified or to be informed”**. It is issued by a higher court to a lower court or tribunal after completion of trial and pronouncement of judgment/order to quash the order of the latter in a case if the order, direction or judgment was in excess of its jurisdiction (Ultra Vires) or no jurisdiction or error of law.

It is preventive as well as curative.

5) **Quo-Warranto** - The literal meaning of Quo-Warranto is **“by what authority”**.

This writ is issued by the court to restrain a person from acting in public office to which he/she is not entitled.

How Article 32 is different from the Article 226

Article 32 gives power to Supreme Court whereas Article 226 gives power to the High court

Article 32 is invoked for the enforcement of fundamental Rights whereas Article 226 is invoked for enforcement of fundamental right as well as other legal rights too.

Power to issue writs under Article 32 is mandatory for the Supreme court whereas High court has discretionary power to issue writs under Article 226

Article 32 is suspended during the period of the emergency whereas Article 226 cannot be suspended during emergency

Territorial Jurisdiction of the High court under Article 226 is narrower than the Territorial jurisdiction of Supreme court under Article 226.

The order passed by the Supreme court under Article 32 will always supersede the order passed by the High courts under Article 226.

Article 32 is itself a fundamental right (Right to constitutional Remedies) whereas Article 226 is not a fundamental Right.

Directive principles of state policy

PART-IV (ARTICLE 36 – 51) DPSP - Borrowed from Ireland.

These are the directives or guidelines which state must bear in mind while performing or formulating policies.

It aims in establishment of a welfare state and doesn't only ensure only political democracy but also socio-economic justice.

They are unique blend of Gandhian Socialism, western-liberalization and Indian Freedom struggle.

Features of DPSP

They are non-justiciable in nature. They can be enforced only when incorporated into policies by government.

They are positive obligation of state that imposes moral responsibility to ensure welfare of people. According to Dr. Ambedkar - “They are not enforceable in court of law, but they are enforceable in court of people. Hence no popular government can ignore them while formulating and implementing policies.

Article 38 – The state will promote the welfare of the people and will protect their **social, Economic and political rights.**

Article 39 – Certain principles to be followed by state-

(a) – The state will work to provide livelihood to citizen of India.

Article 39 (b) – The equitable distribution of material resources of the community for the common-goods.

Article 39 (c) – Prevention of concentration of wealth and means of production.

Article 39 (d) – **Equal pay for equal work for man and woman.**

Article 39 (e) – To secure opportunity of health development of children.

* **Article 39 - A**– State will promote equal Justice and to provide free legal aid to the poor.

*Added 42nd CAA, 1976

Article 40 – To organize **village panchayat** system and provide sufficient power of working and promote self governance.

(Gandhian DPSP)

Acc. To Mahatma Gandhi “India resides in villages” and hence India will develop if the villages are developed.

He advocated for decentralization of powers and local self governance.

Article 41 – The state shall secure within the limits of its economic capacity and development the right to work, education and government aid in case of unemployment, old age and sickness.

Article 42 – To make provision for securing Just and humane condition of work and maternity relief.

Article 43 – To secure living wages, a decent standard of life and to provide social and cultural opportunity for workers.

Article 43-A Participation of workers in management of industries.

(*Added in 42nd CAA, 1976)



Committee to implement UCC in M.P.: Chouhan

BHOPAL.

Joining the ranks of his BJP counterparts in other States, Madhya Pradesh CM Shivraj Singh Chouhan on Thursday said a panel would be formed to implement the Uniform Civil Code in the State. » **Page 3**

Article 44 – To secure uniform civil code throughout the country.

(Goa is the only state in India that has uniform civil code or common civil code regardless of religion, gender, caste. Goa has common family law. In Goa Hindu, Muslim, Christians all are bound with same law related to marriage, Divorce, Succession etc.)

Article 45 – Provision for free and compulsory education for children

To provide early childhood care and education for all children until they complete the age of 6 yrs.

(*Note : This directive was changed by 86th Constitutional Amendment Act 2001.)

Article 46 – To promote educational and economic interests of SC/ST and other weaker sections of the society and to protect them from social injustice and exploitation.

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

Article 48 – To organize agriculture and animal husbandry on modern and scientific pattern.

To protect and improve the environment and to safe guard forests and wild life.

To prohibit the slaughter of cows, calves and other milching animals and draught cattle and to improve their breeds.

Article 49 – To protect the places and object of Historic interest which are declared to be of National importance.

Article 50 – Separation of Judiciary from executive.

Article 51 – Promotion of international peace and security.

Fundamental duties

Part IV-a Article 51-A : Fundamental Duties

- The fundamental duties in the Indian constitution are inspired by the constitution of erstwhile USSR.
- The fundamental duties were not a part of original constitution.
 - In 1976, the congress party set up the **Sardar Swarna Singh Committee** to make recommendation about fundamental duties. The committee suggested the incorporation eight fundamental duties in the constitution, but govt. included 10 fundamental duties through **42 Constitutional Amendment Act (1976)**.

According to **Article 51 (A)**, it shall be the duty of every citizen of India,

- a) To abide our constitution and respect it's ideals and institutions, the National flag and the National Anthem.
- b) To cherish and follow the noble ideals that inspired the National struggle for freedom.
- c) To up hold 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 among all the people of nation and to respect the dignity of women.
- f) To value and preserve the rich heritage of the country's composite culture.
- g) To protect and improve the natural environment including forest, lakes, rivers and wild life and to have compassion for living creatures.
- h) To develop scientific temper, humanism and the spirit of enquiry and reform.
- i) To safe guard public property and avoid violence.
- j) To promote excellence of individual and collective activity so that nation will rise to the higher level.

k)* It would be the duty of parents or Guardians, to provide opportunities for education to his child or ward between the age of six and fourteen years.

(*Added by the 86th Constitutional Amendment Act, 2002.)

- The Fundamental Duties are confined to citizens only and do not extend to foreigners.
- Some of them are moral duties while other is civic duties.
- They refer to such values which had been a part of Indian tradition, Mythology, practices.
- Generally, Fundamental Duties are non-justiciable in nature. But in some cases they are, like to insult the National Flag, Monuments or so.
- The constitution does not provide for their direct enforcement by the courts. However, parliament is free to enforce them by suitable legislation.

Part V The Union

The President

Droupadi Murmu become the **15th President of India**.

She defeated opposition's joint candidate Yashwant Sinha.

Voting for the presidential poll ended on 18th of July and the results were declared on 21st July.

She was administered oath on July 25.



52. The President of India.—There shall be a President of India.

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 Defense 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.

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.]

{Ins. by the Constitution (Seventieth Amendment) Act, 1992, s. 2 (w.e.f. 1-6-1995)}

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.

The vote value of one member of legislative assembly (MLA) of state =

***Total Population of State /Total no. of elected MLA from that state X 1/1000**

The vote value of one Member of Parliament (MP) =

Total votes assigned to elected MLA/Total no. of MP.

(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 in 1971 census.

Single Transferable Vote system ensures that the successful candidate is elected by the **absolute majority** of votes.

A candidate in order to be declared elected to the office of president must secure a fixed quota of votes i.e., **50% + 1 more than total no. of ballot votes polled**.

Each Elected member of electoral college is given only 1 ballot paper while casting his vote voter is required to indicate his preferences by making 1st, 2nd, 3rd, 4th and so on, against the name of the

candidate. This means that the voter will have to indicate as many preferences as there are candidates in the election. Preferentially his vote goes to the candidate to whom he gives his 1st preference vote.

In first phase the 1st preference votes are counted, in case a candidate secures the required quota in this phase then he is declared elected.

Otherwise, the process of transfer of votes is set in motion. The ballots of the candidate securing the least no. of 1st preference votes are cancelled and his 2nd preference votes are transferred to the 1st preference votes of other candidate.

Article 56 – Term of office of President

- Art 56 (1) – The president shall hold office for a term of 5 years from the date on which he enters upon his office.
- Art. 56 (1) (a) – The president may submit his/her resignation to the vice president.
 - Art 56 (1) (b) – The President may be removed from the office by the process of impeachment provided in Art-61 for the violation of the constitution.
 - Art. 56(2) This resignation will be communicated as soon as possible to the speaker of Lok sabha by vice president.
 - Art 56 (1)(C) – In the expiration of his tenure he shall continue to hold office until his successor (next president) enters upon his office.

Article 57 – Qualification for Re-election for President

Article 58 – Qualification for president office

- 1) He should be citizen of India.
- 2) He should have completed the age of 35 years.
- 3) Having qualification to be a member of Lok Sabha.
- 4) He should not hold any office of profit under the union govt. or any state govt. or any local authority.
- 5) The nomination of a candidate for election of office of President must be subscribed by at least 50 Electors as a proposers and 50 electors as a seconders.
- 6) Every candidate has to make security of 15,000 Rs. In the Reserve Bank of India. The deposit is liable to be forfeited in the case the candidate fails to secure **1/6th of the total valid vote polled.**

59. Conditions of President's office.—

(A unit of RACE)

- (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.

60. Oath or affirmation by the President (Third Schedule)

—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 functions 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."

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.

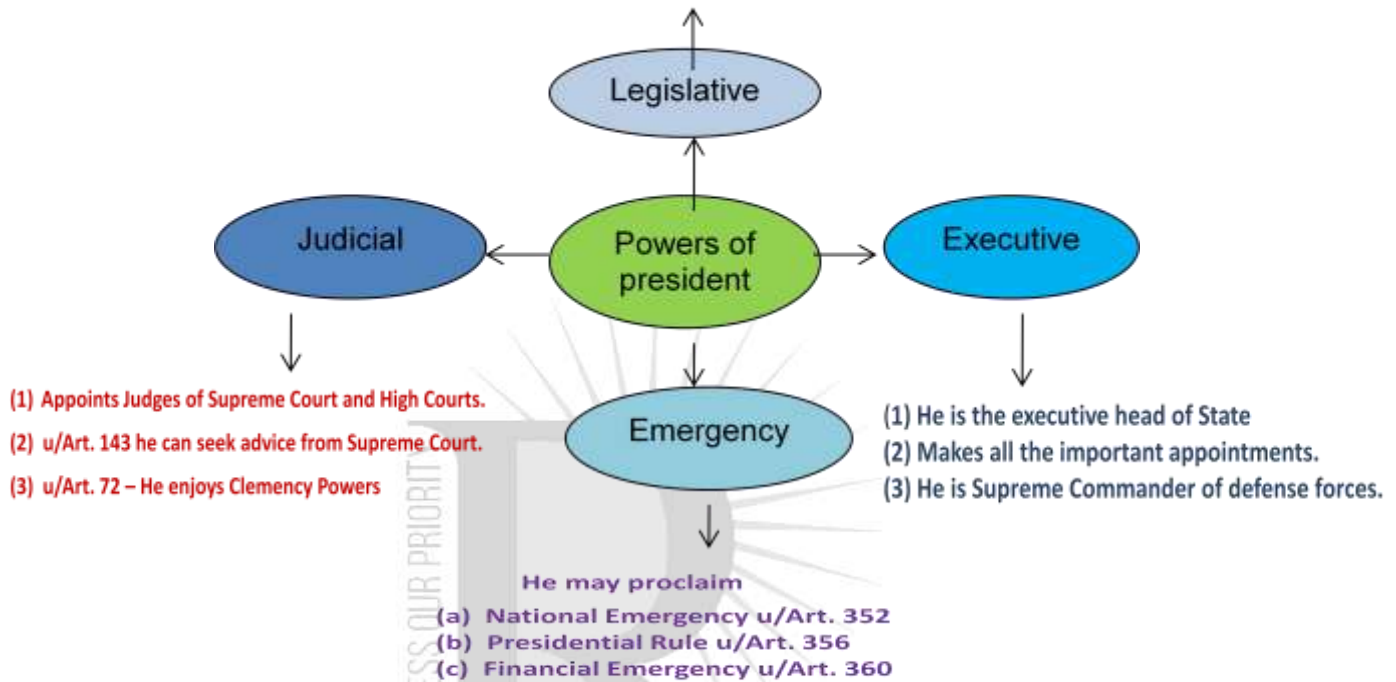
62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy.—

(1) An election to fill a vacancy caused by the expiration of the term of office of 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.

TOPIC-Powers of the president

- (1) He is an integral part of parliament
- (2) A bill becomes act only after his assent
- (3) u/Art. 123 he can promulgate ordinances.



Executive powers

Article 77 : (1) The executive power of the Union shall be expressed to be taken in the name of the President.

- (2) All the instruments and orders shall be authenticated the President.
 - (3) He shall make the rules for transaction of business of the Union.
 - (4) He appoints the Prime Minister and his cabinet.
 - (5) He appoints the Attorney General.
 - (6) He appoints the Comptroller and Auditor General, Chief Election Commissioner and other election commissioners, the chairman and members of UPSC, the Governors of States & the chairman and members of Finance Commission.
 - (7) He directly administers the Union Territories through administrators appointed by him.
 - (8) International treaties and agreements are negotiated on behalf of President
- He appoints diplomats.

Legislative powers

- (1) He summons and prorogue the Parliament and dissolve Lok Sabha.
- (2) He also summons the Joint sitting of Parliament.
- (3) He addresses the first session after each general elections and first session of each year.
- (4) He nominates 12 members in Rajya Sabha.

- (5) His prior recommendation is required to present certain types of bill.
Ex. Money Bills,
Bill for formation of new states etc
- (6) A bill passed by both the houses of Parliament becomes an act only after the assent of President.
- (7) Article 123 : He can promulgate ordinances when Parliament is not in session.

Judicial powers

- (1) He appoints the Chief Justice and other Judges of Supreme Court and High Courts.
- (2) U/Art. 143 he can seek advice from the Supreme Court on any question of law or fact.
- (3) U/Art. 72 He can grant pardon, reprieve (stay in execution of sentence) , respite (lesser sentence due to some special reason such as pregnancy or disability) and remit (reducing the period without changing its character) punishment or suspend, commute (substitution of one form to lighter form, ex. Death sentence to lifetime imprisonment) the sentences.

Emergency powers

President may proclaim

- (a) National emergency – Article 352
- (b) President's Rule – Article 356 & 365.
- (c) Financial emergency – Article 360

Financial Powers

Money Bills (Art. 110) can be introduced only with his prior recommendation.

He causes to be laid before the Parliament the annual financial statements (Art. 112).

No demand of grants can be made without his recommendation.

He can make advances out of contingency fund of India.

A finance commission (Art. 280) is constituted by him after every 5 years.

The Vice President

Art-63 of the constitution provides that there shall be a vice-president of India. His office is the 2nd highest constitutional post in India.

- The post of Vice-President has been **taken from America**.

Art-64 : The vice-president shall be an ex-officio chairman of Rajya Sabha.

- As the chairman of the Rajya Sabha, he presides over the proceeding of the house and functions with reference to all its matters as the counter part of the speaker in Lok Sabha.

- But, as the vice-president as such, no functions has been assigned to him in the constitution. He draws his salary in the capacity of Chairman of Rajya Sabha.

Extra Shots : When a bill is introduced in Rajya Sabha then vice-president decides whether it is a finance bill or not. If he is of the opinion a bill introduced in Rajya Sabha is a money bill then he would refer the bill to speaker of lok sabha for deciding it.

Article 65 – In the event of the occurrence of any vacancy in the office of the president by the reason of his death resignation or removal then vice-president shall act as a president until the date when on which new president elected.

- While acting as a president or discharging the functions of president the vice-president shall not perform the duties of the office of the chairman of Rajya Sabha.

Election of the Vice-president

Article 66 – The Election of the Vice-president is indirect and in accordance with the system of proportional representation by the means of single transferable votes and secret ballot.

- The Electoral College which elects the vice-president consists of members of **both the houses of parliament**.

Qualifications [Art-66(3)]

Article 66 (3) – To be eligible for election as vice-president person should fulfill the following qualifications –

1. He should be citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of Rajya Sabha.
4. He should not hold any office of profit under the union govt., any state govt., any local authority or any other public authority.

The nomination of a candidate for election to the office of vice president must be subscribed by at least 20 Electors as proposers and another **20 Electors as a secondors** and every candidate has to make security deposit of **15,000 Rs.** in RBI.

Art 66 (4) – The vice-president shall not be a member of either house of parliament or of a house of a legislature of any state and if any member of such house is elected as a vice president then he shall be deemed to vacated his seat.

Term of office (Art-67)

[Art-67(a)] The Vice president hold office for a term of 5 years from the date on which he enters upon his office however he can resign his office at any time by addressing this resignation letter to the president

Art-67(b) – Removal of vice President

Vice President can be removed from his office before completion of term. He can be removed by a **resolution of Rajya Sabha passed by an absolute majority** (that means a simple majority of the total strength of the house) and agreed by the lok sabha by simple majority of present and voters. No such resolution can be move unless at least 14 days advance notice has been given to him.

No ground has been mentioned in the constitution for his removal.

Art-67 (c) : The Vice president can hold office beyond his term of 5 years until his successor assumed charges. He is also eligible for re-election to that office and he may be elected for any number of terms.

Art-69 : The oath of office in secrecy is administered by president to vice-president.

Vacancy in office

A Vacancy in Vice President's office can occur in any of the following ways –

1. On the expiry of his tenure of 5 years.
2. By his resignation.
3. By his removal.
4. By his death.
5. When his election declared void.

Article 71 – All doubts and disputes relating to or connects with the presidential and vice president election shall be inquired into and decided by the Supreme Court whose decision shall be final.

Article 71 (4) – The Election of Vice-President cannot be challenge on the ground that the electoral college was incomplete (11th CAA 1961)

- If the election of vice-president is declared void by Supreme Court than Act, done by him before the date of such declaration Supreme Court are not invalidated.

Powers and functions of Vice-President

- 1) He acts as ex-officio chairman of Rajya Saba.
- 2) He act as a president in the absence of president due to death, resignation or impeachment or otherwise. Hence, the primary role of the vice-president is clearly that of the **political stand by**.
- 3) In Rajya Sabha, he cast deciding vote in condition of tie.

Prime minister and his council of ministers



India as a parliamentary form of govt. where the president is only the nominal head of the state and the Prime Minister is the Real head of the govt.

Article 74 – Council of Minister to aid and advice the president

- (i) There shall be a council of minister with the prime minister as the head to **aid and advice** the president who will exercise his functions according to it.

Provided that the President may require the Council to reconsider the advice and the President shall act in accordance with such advice.

- (ii) The advice tendered by ministers to the president shall not be inquired in any court.

Composition of the council of Minister

Constitution doesn't lay down any provisions regarding the structure and composition of council of ministers. The council of ministers consists of 3 categories of ministers namely –

- 1) Cabinet minister
- 2) Minister of state
- 3) Deputy ministers
- 4) Parliamentary secretariat

1) **Cabinet Minister** - They are the senior ministers and head of the important portfolios of the govt. like home, defense, finance, external affairs etc. They are the members of the cabinet, attend its meetings and play an important role in deciding policies. They may also hold additional charges of other ministries.

These ministers are not merely political chiefs of their department but their responsibilities transcend departmental boundaries into the entire field of administration.

2) **Minister of States** - The minister of states can either be given independent charge or can be attached to cabinet ministers.

3) **Deputy Ministers** - They are the junior ministers and have no separate charge of any dept. They are directly attached to the cabinet ministers or ministers of states and assist them in their administrative political and their parliamentary duty. They are not the members of cabinet and do not attend cabinet meetings.

4) **Parliamentary Secretary** - They are the members of the last category of council of ministers and they have no department under their control.

Article 75 – Other provisions as to ministers

(1) The Prime Minister shall be appointed by the president and the other minister shall be appointed by the president on the advice of PM.

* The constitution does not contain any specific procedure for the selection and appointment of the PM. The President invites leader of Party having Majority in Lok Sabha to form government. When no party has clear majority in the Lok Sabha then the president may exercise his personal discretion in the selection and appointment of the PM.

The Prime Minister may be a member of any of the two houses of parliament.

(1-A) After the 91st CAA 2003, the total members of council of minister shall not exceeds 15% to the total strength of Lok Sabha.

(1-B) 52nd CAA 1985 added Xth Schedule which provides for Disqualification on ground of Anti defection..

A member of either house of parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister.

(Aaaya Raam, Gaya Raam)

(2) The minister shall hold office during the pleasure of president.

(3) The council of minister shall be collectively responsible to the Lok Sabha.

Our Constitution provides only collective responsibility, which means that **there could be no confidence motion for a single minister**. The entire council of minister is jointly responsible to the Lok Sabha for all acts of govt. that means **they sail and sink together**. If it loses the confidence of the house then entire council of ministers must resign.

(4) The president shall administer the oath of office in secrecy to the ministers. (Schedule III)

(5) The Member of Parliament either Lok Sabha or Rajya Sabha could be appointed as a minister. A person who is not a member of either house of parliament can also be appointed as a minister. But within 6 months he must become member of either house of parliament, otherwise he ceases to be minister.

* A minister who is a member of one house of parliament has the right to speak and to take part in the proceedings of other house also. But he can vote only in the house of which he belongs to.

(6) Salaries and allowances shall be fixed from time to time by Parliament and shall be specified in Second Schedule.

Attorney General of India

Article 76 - Attorney General of India

1) The Attorney General is appointed by the president he must be qualified to be appointed as a judge of the Supreme Court.

2) It shall be the duty of Attorney General to give advice to the govt. of India and to perform such other duties of a legal character assign to him by president.

3) In the performance of his duties, the attorney general shall have the right of audience in all courts in the territory of India as the chief law offices of the govt.

4) He shall hold the office during the pleasure of president and shall receive such remuneration as the president may determine.

Article 88 – The Attorney General of India shall have the Right to speak in either house, in any joint sitting in any committee of parliament but not entitled to vote.

Limitations

1. He cannot advice against the govt. of India.

2. He cannot defend any accused person in criminal prosecution without the permission of govt. of India.

3. He should not accept appointment as a Director in a company or corporation without the permission of govt. of India.

However, the Attorney General is not a full time legal adviser of govt. of India. Hence, he does not fall in the category of govt. servant. Further, he is not debarred from private legal practice.

The Rajya sabha

Rajya Sabha is the council of state i.e. representation of states at federal level.

It is the permanent house i.e. not subjected to dissolution.

The tenure of the members of Rajya Saba is 6 years. $1/3^{\text{rd}}$ members are retired in every 2 years.

It has elected and nominated members.

The President can appoint not more than 12 members having special knowledge or practical experience in the filed of arts, science, literature and social service.

The maximum strength of Rajya Saba is 250 (238 elected and 12 nominated members).

Currently the total strength of Rajya Sabha is 245.

Election of members

233 Members are elected from states and two union territories (Delhi and Pudducherry) by system of proportional representation and by means of single transferable vote.

In 2003, the system of secret ballot has been replaced by **open ballot system** in order to curb cross voting.

The Representatives of the states in the Rajya sabha are elected by the elected members of the state legislative assemblies. (**Elected MLAs**).

Schedule IV provides for allocation of seats in Rajya Sabha.

The seats are allotted to the state in Rajya Sabha on the basis of population. Thus, the state having larger population have more seats in the Rajya Sabha like U.P. has maximum 31 members in the Rajya Sabha.

Qualifications of members

Must be a citizen of India.

Must not be less than 30 years of age.

Must be a registered voter in any of the Lok Sabha Constituency.

(After 2003, the residential requirement of candidate contesting Rajya Sabha election to Rajya Sabha has been removed.)

Posses such other qualifications as may be described by Parliament.

Relevance of rajya sabha

It provides for constitutional basis of representation of states at federal level, therefore the upper house is a constitutional necessity.

Though it is the second chamber but it is not the secondary chamber of the parliament.

The Rajya Sabha prohibits hasty legislations that may be passed by Lok Sabha and it also has opportunity of recruiting talent and expertise.

All the ordinary bills, constitutional amendment bills and resolution seeking approval of emergency proclaimed by The President shall have to be passed in Rajya Sabha as well.

Certain type of bills can only be introduced in Rajya Sabha.

Even though Council of Ministers is responsible to Lok Sabha, the Rajya Sabha plays an effective role in controlling C.o.M as the Lok Sabha generally agrees with government.

Special powers of Rajya Sabha

Due to its Federal Character, the Rajya Sabha has been given two exclusive or special powers that are not enjoyed by the Lok Sabha.

1) Article 249 – Rajya Sabha has the special power (Pass the Resolution with 2/3rd majority Present & Voters) Rajya Sabha has special power to declare that it is necessary and expedient in the National interest that parliament may make law. With respect to a matter in the state list but such law will remain enforced not more than 1 year.

2) Article 312 – Rajya Sabha has special power to pass resolution that can authorized the parliament to create new All India Services common to both center and state.

Unequal Status

(i) Money bill can only be introduced in the Lok Sabha and Rajya Sabha cannot amend or reject it and would have to return the bill to lok sabha within 14 days either with or without recommendations. Lok Sabha is not compelled to accept any recommendation made by Rajya Sabha.

(ii) Rajya Sabha can only discuss budget but cannot vote on the demands for grants which is exclusive privilege for the Lok Sabha.

(iii) A Resolution for **discontinuance** of the National Emergency can be passed only by the lok sabha.

(iv) The Rajya Sabha cannot remove the council of ministers by passing No confidence motion. This is because the council of Minister are collectively responsible to the Lok Sabha.

The Lok sabha

Lok Sabha

The Lok Sabha or House of People is the popular house of Parliament. The member of this house are directly elected by the People of India.

Article 81 - Composition of Lok Sabha

The constitution provides that Lok Sabha shall not exceed 552 members, out of these 530 members from states, 20 from UTs.

2 additional members of the Anglo Indian Community were also nominated by the president of India on the advice of govt. of India which was abolished in Jan. 2020 by 104th CAA, 2019.

104th Amendment

Article 331: It states that the **President** can nominate two members of the Anglo-Indian community to the Lok Sabha if the community is not adequately represented.

Article 333: It states that the **Governor** of a State may if he is of the opinion that the Anglo Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate one member of that community to the Assembly.

Article 334(b): The reservation of the Anglo Indian community in the Legislative bodies shall cease to have effect on the expiration of a period of seventy years from the commencement of this Constitution:

Duration of Lok Sabha

Article 83 (2) - Duration of Lok Sabha : The term of Lok Sabha is 5 years from the date of its 1st meeting after the general election. After which it automatically dissolved. However, the President is authorised to dissolve the Lok Sabha at any time **before** the completion of 5 years and this cannot be challenge in court of law.

When the proclamation of National Emergency is in force then the term of Lok Sabha can be extended by a law of parliament for one year at a time, for any length of time. However, this extension cannot continue beyond a period of 6 months after Emergency has ceased to operate.

Note : By 42nd CAA 1976, the tenure of Lok Sabha was extended to 6 years. It was again reduced to 5 years by 44th CAA 1978.

Qualifications to be a member lok sabha

- 1) One must be a citizen of India.
- 2) He must not be less than 25 years of age for the lok sabha.
- 3) He must be registered as an elector for a parliamentary constituency.

Offices in Lok sabha

Speaker and Deputy Speaker of Lok Sabha

Article 93 - Speaker and Deputy Speaker of Lok Sabha - Speaker and Deputy Speaker are elected as soon as by the lok sabha among its own members. This election is to be held on the very 1st sitting of the house held after the general election. This meeting is to be presided over by the **Protem speaker**.

Article 94 The Speaker of the last lok sabha vacates his office immediately before the 1st meeting of the newly elected lok sabha. However, he has to vacate his office earlier in following cases -

- 1) If he ceases to be a member of the Lok Sabha.
- 2) If he resigns to the deputy speaker.
- 3) If he is removed by a resolution passed by absolute majority of the Lok Sabha and such a resolution can be moved only after giving 14 days advance notice.

Article 96 When a resolution for the removal of the speaker is under the consideration of house then he cannot preside the sitting of the house though he may be present. However, He can speak and take part in the proceedings of the house and vote in the 1st instance, though not in the case of an equality of vote.

Note : Whenever the lok sabha is dissolved the speaker does not vacate his office and continues till the newly elected lok sabha.

Protem Speaker

Protem Speaker - The speaker of the lok sabha vacate his office immediately before the first meeting of the newly elected lok sabha therefore, the president may appoint the senior most member of the lok sabha as Protem Speaker.

- The president himself administers oath to the protem speaker.
- He had all the powers of the speaker.
- He presides over the 1st sitting of the newly elected lok sabha.
- His main duty is to administer oath to the new members.
- He also helps the house to elect new speaker.
- His office ceases to exist when the new speaker is elected by the house.

Powers and duties of Lok sabha speaker

The speaker is the head of lok sabha and its representatives. He is the principal spokesman of the house and his decision in all parliamentary matter is final. In these capacities he is vested with vast, varied and vital responsibilities.

- He derives his powers and duties from 3 sources.
 - 1) The constitution of India.
 - 2) The rules of procedures and conduct of business of lok sabha.
 - 3) Parliamentary conventions.(Residuary powers that is unwritten or unspecified in the rules).

Powers and Duties

- 1) He maintain order and decorum of the house.
- 2) He adjourn the house or suspends the meeting in absence of Quorum.
- 3) He does not vote in the 1st instance but he can exercise a casting vote in case of tie.
- 4) He presides over a joint sitting of the two houses of parliament.
- 5) He decides whether a bill is money bill or not.
- 6) He can allow a secret sitting of the house on the request of the leader of house.
- 7) He appoints the chairman of all the parliamentary committees of the lok sabha and supervises their functions.
- 8) He decides the questions of disqualification of the member of lok sabha arising on the ground of defection under the provisions of 10th schedule.

Deputy Speaker of the lok sabha

Like Speaker, deputy speaker is also elected by the members of lok sabha after the election of speaker.

— Whenever, the office of deputy speaker falls vacant then lok sabha elects another member to fill the vacancy.

— The deputy speaker performs the duties of speaker's office when it is vacant and during that time he assumes all the powers of the speaker.

He resigns to the speaker or he may be removed by the same process as used to removal of the speaker.

Types of Leaders in Parliament

Leader of the house - As per the parliamentary rules, there should be a leader of house in the lok sabha as well as in the Rajya Sabha. When it comes to lok sabha the PM should be leader of house, but in that case he has to be a member of lok sabha, if he is not then any other minister who is also a member of lok sabha would be appointed by the PM to function as the leader of the house.

- When it comes to Rajya sabha then any minister who is also a member of Rajya Sabha would be appointed by the PM to function as the leader of house.

- The leader of the house in either house is an important functionary and exercises direct Influence on the conduct of business and he also nominate deputy leader of house.

Leader of opposition - As per the parliamentary rule, the leader of opposition is the politician who leads the official position in either house of parliament of India. His allowances are equivalent to a cabinet minister.

- His main functions are to provide a constructive criticism of the policies of the govt. and to provide an alternative government.

- To claim the status of official position in either house then a largest opposition party has to secure **10% seats of the total strength** of the house.

(This is popularly known as Mavlankar Formula. G.V. Mavlankar was the first speaker of Lok Sabha.)

Whip - A Whip is an officer of a political party whose task is to ensure party discipline in legislature. This usually means ensuring that members of the party vote according to wish of the party rather than according to their own individual ideology.

The office of whip is not mentioned in the constitution of India even not in the parliamentary statute but it is based on the conventions of the parliamentary govt. Every political party whether ruling or opposition has its own whip in the parliament. He is appointed by the political party to serve as an assistant floor leader. He is in charge with the responsibility of ensuring the attendance of his party members in large number and securing their support in favor of or against for a particular issue.

PARLIAMENTARY PROCEEDINGS

Sessions of the Parliament

Article 85 (1) – It empowers the president to summon each house at such intervals that there should not be more than 6 months gap between the two sessions. Normally there are 3 sessions of parliament each year.

1. Budget Session – Feb to May (Longest)
2. Monsoon Session – July to Sep
3. Winter Session – Nov to Dec (Shortest)

PARLIAMENTARY PROCEEDINGS

Article 118 – Rules of Procedure :

Each house of parliament may makes rules for its regulation, procedure and conducts of business.

Question hour : The 1st hour of every parliamentary sitting is reserved for asking and answering of questions. It is during the question hour members ask questions on different aspects of administration and the govt. policies in the national as well as international spheres and ministers usually give answers.

- All Questions are addressed to the chairman/speaker and govt. is obliged to answer them.

Questions are of 3 types -

1) **Starred Questions** : A starred question is one, on which member wishes an oral answer in the house. It is distinguished by **asterisk mark (*)**.

- The Members are allowed to ask supplementary questions on it.

2) **An Unstarred Questions** : An unstarred question is one, which does not need an oral answer and on which no supplementary question can consequently be asked and answer to such question has to be given in written.

3) **A short notice questions** : A questions relating to matter of public importance may be ask within a notice of less than 10 days and it is answered orally. The members are allowed to ask supplementary question in it.

Points to remember: (i) It will be decided by the Speaker/Chairman whether the question is considered as the starred or unstarred.

(ii) The maximum period of notice for starred or unstarred question is 10 days.

Zero hour - Unlike the question hour, the Zero hour is not mentioned in the rules of parliamentary proceedings.

- The Zero hour starts in Parliament after question hour and last till the agenda of the day is taken up.

(Gap between Question hour and agenda is zero hour)

- During zero hour members can ask any question without prior notice from the members.

- It is the Indian innovation which has been in practiced since 1962.

Parliamentary Motions

1. No Confidence Motion : No confidence motion is not mentioned in India constitution.

According to **lok sabha rule-198** no confidence motion can be moved and its proposal can only be taken in lok sabha.

Article-75 states that the ministry stays in office so long as it enjoys the confidence of majority of members of lok sabha. If any member feels that the governing party has lost the support of majority then lok sabha can remove the majority from office by passing no confidence motion.

- This motion needs to be supported by at least 50 MPs and the speaker has to receive a written notice by the member of parliament and the date is scheduled for vote which needs to be within 10 days after the notice has been received.

- The appointed govt. has to prove a majority during the floor test to remain in power. If they fail in floor test or no confidence motion has passed then the govt. has to resign.

2. Confidence Motion - Like Zero hour, confidence motion is an Indian innovation.

The proposal of confidence motion can only be taken in lok sabha. If any allied party criticizes the

policies of ruling party and made declare to take his support back then president may check whether ruling party is having majority in lok sabha or not. Confidence motion can be taken by PM or any member of council of minister.

3. Closure Motion – It is moved to cut short the debate on matter. If it is approved the matter is immediately stopped and put to vote.

(i) Simple Closure : A member moves that the matter having been sufficiently discussed be now put to vote.

(ii) Closure by Compartments – Clauses of a bill or resolution are grouped into parts, the debate covers the part as whole and the entire part is put to vote.

(iii) Kangaroo Closure – Only important clauses are debated and taken for vote and other are skipped and taken as passed.

(iv) Guillotine Closure – Un-discussed clauses of a bill are also put to vote with discussed ones, as the time for discussion is over.

4. Calling Attention Motion - This motion can be introduced by a member to call the attention of a minister to a matter of urgent public importance and a minister is expected to make authoritative statement from him on that matter.

It can be introduced in any house of the parliament.

- Like zero hour, it is also an Indian innovation in the parliamentary procedure and has been in existence since **1954**.

5. Adjournment Motion : The Primary objective of an adjournment motion is to draw the attention of lok sabha to a recent specific matter of urgent public importance. It is allowed only in lok sabha and such motion needs a support of **at least 50 members**.

It interrupts the normal business of the house and is therefore an extra ordinary tool of control on government.

6. Motion of Thanks - Motion of thanks is a motion in an Indian parliament which follows the address of president of India to the joint sitting of the lok sabha and Rajya Sabha. At the commencement of 1st session of new lok sabha and 1st session of every year.

This speech is the statement of the govt. policies and is approved by the cabinet. In this speech president highlights legislative and policy activities of the govt., achievement of previous years and broad agenda of upcoming year.

- **At the end of the discussion the motion is put to vote. This motion must be passed in the house. Otherwise, it amounts to the defeat of govt.**

7. Censure Motion - This motion can be moved only in lok sabha and can be taken by opposition. It is moved for censuring the council of ministers for specific policies and actions. It can be moved against an individual minister or a group of ministers or the entire council of minister. If it is passed then govt. does not need to resign.

Note : If the censure motion is passed against the govt. then council of minister shall pass a confidence motion as soon as possible to regain the trust of the house.

8. Breach of Privilege Motion – Art. 105 provides for privileges of members of parliament. This motion deals with the breach of privilege of one or more members or the house by a minister by distorting facts or withholding facts.

9. Point of Order – It can be raised by a member when proceeding of the House doesn't follow the normal procedure. No debate is allowed on PoI. It suspends the proceeding and hence is another extra ordinary tool to control government.

Parliamentary Committees

Parliamentary is an apex legislative institution of India. Its functions are varied, complex and voluminous. Moreover, it has neither the adequate time nor necessary expertise to make detailed scrutiny of all legislative measures and other matters.

Therefore, parliament is assisted by number of committees in charge of its duties.

— Composition, functions and tenure of such committees are decided by parliamentary rules, accordingly, parliamentary committee means a committee that –

1. Appointed or elected by the house or nominated by the speaker or chairman.
2. Work under the direction of the speaker or chairman.
3. Present its report to the house or to the presiding officer.
4. It has a secretariat provided by the Lok Sabha or Rajya Sabha.

❖ Broadly parliamentary committees are of two types –

1. Standing Committee – It is a permanent committee and constituted every year or periodically and work on the continuous basis.
2. Ad-hoc Committee – These are temporary committees and appointed for specific purpose when they cease to exist when they finish the task assigned to them and submit the report.

Standing Committee

On the ground of nature and functions performed by them, standing committees can be classified into 6 categories.

1) Financial Committees

(i) Public Account Committee (PAC) –

It is the oldest and most important committee of parliament.

- It was est. 1st time in 1921 under the provision of govt. of India Act, 1919.
- It consists of 22 members, 15 from lok sabha and 7 from Rajya Sabha.
- Lok Sabha members are elected by single transferrable vote system from among its members.

Whereas, Rajya Sabha members are nominated by Chairman.

- The term of office of the member is one year.

- A minister cannot be elected as a member of this committee. If any member become a minister then he has to seize membership.
- The chairman of the committee is appointed from amongst its members by the speaker. Until 1967 the chairman of the commission belong to the ruling party. However, since 1967 the convention has been developed whereby the chairman of the committee is selected invariably from the opposition.

Functions

- (i) To examine the annual audit report of CAG.
- (ii) To examine that the money that has been disbursed was legally available for the applied services of purpose.
- (iii) The committee examine the public expenditure not only from legal and formal point of view but also from view of economy, wisdoms, prudence etc. and to bring out the cases of waste, lost, corruption and inefficiency.
- (iv) In the fulfillment of above functions the committee is assisted by CAG. Hence, he is considered as a Guide, Friend and Philosopher of PAC.

ii) Estimate Committee

- (i) It is the biggest parliamentary committee consisting of 30 members. All are elected from Lok Sabha only, according to the principle of proportional representation by the means of single transferable vote.
- (ii) Term of office of member is 1 year.
- (iii) Minister cannot be elected as a member of this committee.
- (iv) The chairman of the committee is appointed by lok sabha speaker from among its members and he is invariably from ruling party.
- (v) The 1st estimate committee was constituted in 1950 on the recommendation of John Mathai and the 1st Chairman was M.A. Ayyangar.
- (vi) The main function of this committee is to examine the estimate included in the budget and suggest economies in public expenditure. Hence, it has been describes as 'Continuous Economy Committee'.

iii) Committee on Public Undertakings

This committee was created in 1964 on the recommendations of Krishna Menon Committee. It consisted of 22 members – 15 (from Lok Sabha), 7 (from Rajya Sabha) Chairman from Ruling Party.

Functions

- To examine reports and accounts of public undertaking companies.
- To examine the reports of CAG and Auditor General on public undertakings.

SOME EXTRA SHOTS ABOUT PARLIAMENT

- Disqualification to be a member of Parliament
- 1) If he hold any office of Profit under the Union or state govt. (Decided by President)
- 2) If he is of unsound mind.
- 3) If he is declared as insolvent.
- 4) If he has acquired the citizenship of foreign state.

- 5) If he is so disqualified under any law made by the parliament.
- 6) He must not have been convicted for any offence resulting in imprisonment for 2 or more years. (But the detention of a person under a preventive detention law is not subjected to disqualification).
- 7) Disqualification on the ground of defection.

The constitution also lays down that a person shall be disqualified from being a member of parliament if he is so disqualified under the provisions of the Xth schedule.

- a) If he voluntarily gives up the membership of the political party on whose ticket he is elected to the house.
- b) If he votes or abstains from voting in the house contrary to any direction given by his political party or by whip.
- c) If any independent elected member joins any political party.
- d) If any nominated member joins any political party after the expiry of 6 months.

Note : The questions of disqualification under the 10th schedule is decided by in case of Rajya Sabha and speaker **in case of Lok Sabha**.

Vacating of Seats - A member of parliament vacates his seat under following conditions –

1) **Double Membership** – A person cannot be a member of both the houses of parliament at the same time, representation of people act (1951) provides following conditions for –

- (i) If a person is elected to both the houses of parliament he must intimate within 10 days in which house he desire to serve. In default of such intimation, his seat in the Rajya Sabha becomes vacant.
- (ii) If a sitting member of one house is also elected to the other house then his seat in the first house becomes vacant.
- (iii) If a person is elected to the two seats in a house. He should exercise his option for one otherwise both seats become vacant.

2) **Resignation** – A member may resign his seat to the chairman of Rajya Sabha or the speaker of Lok Sabha as the case may be.

3) **Absence** – A house can declare the seat of member vacant if he is absent from all its meetings for a period of 60 days without its permission.

Facts related to Lok Sabha

- 1st Lok Sabha was constituted on 17th April 1952 and the 1st session of this Lok Sabha commenced on 13th May 1952.
- 1st Lok Sabha speaker – G. V. Mavalankar.
- 1st dept. Lok Sabha Speaker – Ananth Ksyanam Ayyangar.

Note : Members of the parliament cannot be arrested in any civil matter before and after of 40 days of duration of any parliamentary sitting.

- **Article 100** – Quorum - In a parliamentary term

Quorum means the minimum no. of members required to be present in order to transact business of the house.

- According to Article 100 Quorum must be 1/10th of the total no. in each house including the presiding

Officer.

Note : If there is no Quorum during the meeting of house then it is the duty of Presiding officer either to adjourn or to suspend the meeting until there is Quorum.

Legislative PROCEDURE IN PARLIAMENT

Bills

Bill introduced in the parliament are of two kinds

1. Government Bill
2. Private member Bill

The bill which are introduced by ministers are known as govt. bill.

Private member bills are introduced by any other member of parliament. Though both are governed by same general procedure and pass through the same stages in the house.

❖ Bills can be classified into following parts on the ground of procedure–

1. Ordinary Bill
2. Money Bill
3. Finance Bill
4. Constitution Amendment Bill

Ordinary Bill – Which are concerned with any matter other than money, finance and constitutional amendment bill.

- The constitution has laid down separate procedures for the enactment of all 4 types of bill.
- Ordinary bill has to pass through following 5 stages in the parliament before it find the place on the statute book.

— **1st-Reading – Under this stage this stage an ordinary bill can be introduced in the either house of parliament with prior intimation. Such a bill can be introduced either by minister or by any other member.**

- The member who wants to introduce the bill has to ask for the leave or permission of the house and when it is granted then mover of the bill introduces it by reading its **reason, title and objective. No discussions on the bill takes place at this stage. Later, the bill published in the Gazette of the India.**

2nd -Reading – This level is highly important regarding dialogue and discussion on the bill. Here bill receives the detailed scrutiny and assumes the final shape. This stage involves 3 more sub stages. –

Stage-I – Stage of General Discussion

Under this sub-stage the printed copies of the bill distributed to all the members. The principles of the bill and its provisions are discussed generally but the detail of the bill is not discussed.

Stage-II At this stage the house can take any one of the following **4 actions** –

- **1st Action** – It may take the bill into consideration immediately or on some other fixed day.
- **2nd Action** – It may refer the select committee.
- **3rd Action** – It may refer the bill to a joint committee of the two houses.
- **4th Action** – It may circulate the bill to know the public opinion.

Stage-III – Consideration Stage

The house after receiving the bill from select committee considers the provisions of the bill clause by clause and each clause is discussed and voted upon separately. **The members can also move amendments and if accepted then they become part of the bill.**

3rd -Reading – Third stage is the last stage to pass the bill at this stage debate is confined to the acceptance or rejection of a bill as a whole and no amendments are allowed apart from language corrections.

- If the majority of members present and voters accepted the bill then bill is regarded as passed by the house.

- Thereafter, the bill is authenticated by the presiding officer of the house and transmitted to the 2nd house for consideration and approval.

4th -Reading – Bill in the second house

In the second house bill again passes through all the 3 stages i.e. 1st, 2nd and 3rd – Readings. After that there would be **4 alternatives in front of second house** –

- 1) It may pass the bill as sent by the 1st house i.e. without amendments.
- 2) It may passed the bill with amendments and return it to the 1st house for reconsideration.
- 3) It may reject the bill altogether.
- 4) It may not take any action and thus keeps the bill pending.

If the 2nd house passes the bill without any amendments or the 1st house accepts the amendments suggested by 2nd house then the bill is deemed to have been passed by both the houses and the same is sent to the president for his assent. But on the other hand, if the 1st house rejects the amendments suggested by the 2nd house or the 2nd house rejects the bill altogether or the 2nd house does not take any action for **6 months then deadlock is deemed to have takes place and to resolve such deadlock president can summon joint sitting on the bill. (Art-108)**

5th -Assent of the President (Article-111)

Every bill after being passed by both the houses of parliament is presented to the president for his assent and under Art-111 there are 3 alternates before the president –

- 1) He may give his assent to the bill after which bill becomes an act.
- 2) He may with hold his assent on the bill.

3) He may return the bill for reconsideration of the house.

MONEY BILL

Article-110 : A bill is deemed to be a money bill if it contains **only** provisions dealing with all or any of the following matters –

1. The imposition, abolition, remission or alteration of any tax.
2. The regulation of borrowing of money by the union govt.
3. The payment of money into or the withdrawal of money from consolidated fund or contingency fund or public account of India or any provision related to the custody of these funds.
4. The appropriation of money out of the consolidated fund of India.
5. Declaration of any expenditure charged on the consolidated fund of India or increasing the amount of any expenditure. E.g. – Salary of president.

- According to Article-110 (2), a bill shall not be deemed to be a money bill by reason only that it provides for –
 1. If it is related to the imposition of fines or other normal penalties.
 2. If it is related to the payment of fees for licenses or fees for any other services.
 3. The imposition, abolished, Remission, alternation or regulations of any tax by any **local authority for local purposes**.
- **Article 110 (3)** – The Speaker of lok sabha has unquestionable powers to decide whether bill is a money bill or not. His decision in this regard cannot be questioned in any court of law or in either house of parliament or even the president.

Article 109 - The constitution lays down a special procedure for the passing of money bill in the parliament.

- 1) A money bill can only be introduced in the lok sabha with the prior permissions of president.
- 2) Every money bill is a **govt. bill**.
- 3) After a money bill is passed by the lok sabha, it is transmitted to the Rajya sabha with the certification of lok sabha speaker.
- 4) The Rajya Sabha has limited power with regard to a money bill. **It cannot reject or amend** the money bill. But it can only make the recommendation.

- It must return the bill to the lok sabha within **14 days** with or without recommendation. The lok sabha can either accept or reject all or any of the recommendation of the Rajya Sabha.

- If the lok sabha accepts any recommendation the bill is then deemed to have been passed by both the houses in modified form.

- If lok sabha does not accept any recommendation the bill is there deemed to have been passed by both the houses in the form originally passed by lok sabha without any change.

- If Rajya sabha does not return the bill within 14 days then the bill is deemed to be have been passed by both the houses.

5) Finally, when money bill is presented to the president he may either give his assent to the bill or withhold assent to the bill but **cannot return the bill for reconsideration** of both the houses of parliament.

FINANCE BILL

- Finance bills are those bills that deal with fiscal matters i.e. revenue or expenditure. It is of 3 types-

1. Money bill (Article-110)
2. Finance bill-I [Article 117(1)]
3. Finance bill-II [Article 117 (3)]

This implies that **all money bills are finance bills. But all finance bills are not money bills.**

Only those financial bills are money bills which contain exclusively those matters which are mentioned in Article 110. On the other hand financial bill-I and II deal with Art-117.

Article 117 (1) - Financial Bill (type-I)

-A financial bill-I is a bill that contains not only any or all the matters mentioned in Article-110 but also **other matters** of general legislation.

- In two respects financial bill type-I is similar to money bill.

- 1) Both of them can be introduced in Lok Sabha only.
- 2) Both of them can be introduced only on the recommendation of the President.

- Apart from these two conditions finance bill-I is governed by the same legislative procedure applicable to ordinary bills. Hence it can either be rejected or amended by Rajya Sabha.

Article 117 (3) - Financial bill (type – II)

A financial bill type-II contains provisions involving expenditure from the consolidated fund of India but does not include any of the matters mentioned in Article-110.

(Like funds for space exploration program, giving money to any other nation.)

- It is treated as an ordinary bill and in all respects it is governed by the same legislative procedure which is applicable to ordinary bills.

TOPIC- SUPREME COURT

Organization

- At present, the Supreme Court consists of 34 Judges. (33+1)
- In 2019, the number was increased from 30 to 33.

Oath/Affirmation : (2nd Schedule)

- Administered by the President.
- To bear true faith and allegiance to the Constitution of India as by law established, to uphold the sovereignty and integrity of India and to duly & faithfully and to the best of his ability, knowledge and judgment discharge the duties without fear or favor, affection or ill-will.

Salaries and Allowances (3rd Schedule)

- The salaries, allowances, privileges and the pension of the judges of the Supreme Court are determined time to time by parliament.

- They cannot be varied after their appointment except during the financial emergency.
(Security of tenure)
- To be charged on consolidated fund of India.

Term of Office of Judge of SC

The constitution has not fix the tenure of the judge of SC but –

- 1) He may hold the office up to the age of 65 years.
- 2) He may resign his office to the president.
- 3) He may be removed from his office by the president on the recommendation of parliament.

Removal process of Judge

- A judge can be removed from his office by the President.
- A Judge of the SC can be removed from his office only on two grounds –
 - 1) Proved misbehavior or
 - 2) Incapacity
- The removal address must be supported by **special majority** of each house of the parliament
(Majority of total membership of the house and majority of 2/3rd members present and voting)
- The president can issue the removal order only after an address by parliament has been presented to him in the same session for such removal.

It regulates the procedure of removal of Supreme Court judges in below manner –

- 1) Removal motion can be introduced in any house of parliament but it requires the assent of 100 Lok sabha members or 50 Rajya Sabha members.
- 2) The speaker or Chairman may admit the motion or refuse to admit it.
- 3) If it is admitted then speaker or a chairman will constitute a 3 members committee to investigate the charges alleged on Judges committee consist of –
 - (i) The Chief Justice of India or judge of the Supreme Court.
 - (ii) Chief Justice of High Court.
 - (iii) A distinguished jurist.
- If committee finds the judge guilty then the house can take up the consideration of removal motion.
- 4) After motion is passed by each house of the parliament then it is presented to the president for removal of judge.
(Provision of the joint sitting is not there).

Seat of the Supreme Court

The constitution declares Delhi as the seat of the Supreme Court but it also authorizes the Chief Justice of India to appoint other place or places as a seat of Supreme Court.

Power of Judicial Review (Article 13)

Judicial Review is the power of SC to examine the legislative and executive action to be determined whether such actions are consistent with the constitution or not. Actions, which are judged inconsistent are declared unconstitutional and therefore null and void.

A Court of Record

Under Article-129, The SC shall be a court of records as it.

1. The Judgments of SC are recorded and considered as authorities and served as cases, law

and proceedings. These records are admitted as final evidence.

2. It has a power to punish for contempt not only of itself but also of High Courts, Sub-ordinate courts and tribunals.

TOPIC- JUDICIARY (COLLEGIUM VS. NJAC)

यतो धर्मस्ततो जयः



The constitution of India provides for an Independent and powerful judicial system.(Article 50 Provides for Separation of powers and functions of executive and judiciary.)

The judiciary in India act as the **Guardian of the constitution** and the **protector of fundamental rights** of people.

One of the unique features of the Indian constitution is that though India has adopted the Federal system, it provides for a single integrated judicial system.

The Supreme Court controls and runs the judicial administration of India. All courts of India are links of a single judicial system.

The Supreme Court is situated at the Pinnacle of the Indian Judicial system below which there are High Courts in each states or group of states. Below the High Courts, there are sub-ordinate courts. Like-district and metropolitan court.

- The supreme court of India was inaugurated on **28 Jan 1950**. It succeeded the federal court of India and this federal court came into existence in 1937, under govt. of India Act, 1935.
- 1st HC of British India (India) was established on 2 July 1862 at Kolkata Where as second one was Bombay and third one was Madras.

- Article 124-147 in Part-V of the constitution deal with the organization, independence, Jurisdiction, Powers, Procedures and so on of the Supreme Court.
- The Parliament is authorized to regulate them.
- According to the Art-124, the Judge of Supreme Court is appointed by the president. The Chief justice is appointed by the President after consultation with such judges of the Supreme Court and high court as he deems necessary.
- The other judges are appointed by the President after consultation of Chief justice and such other judges of Supreme Court and High Courts as he deems necessary.
- The consultation with the Chief Justice of India is **obligatory** in case of appointment of Judges other than Chief Justice of India.
- **Qualifications of Judges**
 1. He must be citizen of India.
 2. He should have been a judge of High Court for 5 consecutive years.
 3. He should have been an advocate of HC for 10 consecutive years.
 4. He should be distinguished jurist in the opinion of the president.
- The Chief Justice of India would recommend the senior most Judge of Supreme Court to be the next CJI.
- In 1973 after the famous Keshawnanda Bharti Case, Indira Gandhi Govt. appointed Justice A. N. Ray as CJI, superseding 3 senior judges. This lead to a tussle between Executive and Judiciary.

S.P Gupta vs. Union of India 1982 (1st Judges cases) :

Decision – Consultation doesn't mean concurrence. Therefore, President is not compelled to obey the suggestion given by Chief Justice of India. (No primacy of the recommendation)

2nd Judges case (1993) :

Decision – Consultation means concurrence. Therefore, advice tendered by Chief Justice of India is binding on the president.

But Chief Justice of India has to consult with two of his senior most colleagues. (Primacy of the recommendation)

SC also ruled that the senior most judge would be appointed as Chief Justice of India.

This lead to Collegium System in India.

Collegium – Chief Justice of India + 2 Senior most Judges.

3rd Judges cases (1998) :

Decision – Consultation of plurality judges.

Collegium – Chief Justice of India + 4 Senior most Judges.

- The Collegium comprises the chief justice of India along with 4 other senior judges. This system has been in trend system since the judgment of 2nd judges cases i.e. from 1993.

But it became more effective after 3rd judges cases, from 1998.

The collegium system is a system under which appointment/elevation of judges/transfer of judges or so are decided by a forum of Chief Justice of India and 4 senior most judge. Note : Collegium System is not mentioned in original Constitution nor in successive amendments.

- NJAC was proposed body which would have been responsible for the appointment & transfer of judges to the higher judiciary in India.

This commission was est. by amending the constitution of India through **99th CAA, 2014** which inserted a new **Article – 124(A)**.

- **Composition of NJAC [Article-124(A)]**

NJAC would have consisted of the following 6 members –

1. Chief Justice of India (Chairperson, ex-officio).
2. Two other senior judges of Supreme Court next to the Chief Justice of India.
3. The Union Minister of law and justice.
4. Two eminent persons.

(To be nominated by committee consisting of Chief Justice of India, Prime Minister and leader of opposition in lok sabha or whip).

- On 16 Oct 2015, the constitutional bench of SC by 4 : 1 majority upheld the collegiums system and struck down NJAC as unconstitutional and thus repealed the NJAC at 99th CAA 2014.

TOPIC- POWERS OF SUPREME COURT

The constitution has confirmed very extensive jurisdiction and vast power on the Supreme Court.

- It is also the final interpreter and guardian of the constitution and guarantor of the Fundamental Rights of the Citizens.
- Further it has advisory and supervisory power.
- Its Judgments are binding on all the courts and are enforceable throughout the country.
- Its previous decisions are not binding on itself, i.e. Supreme Court has power to review its own judgments.
- It is authorized to withdraw the cases pending in high courts and either to dispose them by own or transfer to other high court.

1. Original Jurisdiction (Art-131) –

It is an exclusive jurisdiction of Supreme Court, also refers as a primary jurisdiction. Under this jurisdiction of SC extend to those cases on which it has authority to hear and decide in the first

instance. Under this jurisdiction SC exercises as a federal court. – It can directly hear special type of cases which cannot be heard by any other court like-

- (i) Dispute between govt. of India and one or more states.
- (ii) Dispute between the govt. of India and one or more states on one side and one or more states on other side.
- (iii) Dispute between two or more states.

– This Jurisdiction of SC does not extend to the following matters –

- (i) A dispute arising out of any pre-constitutional treaty, agreement or other similar instrument which continues to be in operation.
- (ii) Inter-State water disputes. (Article-262)
- (iii) Matters referred to the finance commission. (Art-280)
- (iv) Ordinary commercial dispute between center and state.

2. Writ Jurisdiction (Art. 32) –

It is the Concurrent Jurisdiction of both Supreme Court and High Court (Art. 226). It covers Matters related to Fundamental Rights.

However, There is a difference between Writ Jurisdiction of the Supreme Court and High Court. The SC can issue writs only for the enforcement of Fundamental Rights but High Courts can issue writs also for other purposes.

It means that the Subject Matter Writ Jurisdiction of HC is wider than that of the SC.

While the territorial Jurisdiction of Supreme Court is broader as it extends to whole of India.

Further, U/Art. 32 it is mandatory for Supreme Court to entertain a writ petition for enforcement of Fundamental Rights while HC may or may not enforce the Fundamental Rights and other Legal Rights, instead it may suggest some other legal remedy or may even refuse the enforcement.

Therefore Hon'ble Supreme Court is protector of Fundamental Rights and not High Courts.

3. Appellate Jurisdiction

Appellate jurisdiction means the power of higher courts to hear and decide appeals against a judgment of the lower court. The Supreme Court has appellate jurisdiction where it hears the appeal against the judgment of the High Court and this makes it the highest and final court of appeal.

□— Appeals can be classified under 4 heads –

a) Appeals in the constitutional matter [Art-132] - A constitutional case in one arising out of different interpretations of the constitution mainly regarded as Fundamental Rights. In such constitutional cases an appeal can be taken to Supreme Court against the judgment of High Court. If HC certifies that the case involves a substantial question of law that requires the interpretation of constitution.

Such type of cases can only be heard by constitutional bench and it requires at least 5 judges of SC under Art-145(3).

b) Appeals in the civil matters (Art-133)

A dispute relating to property, marriage, money, contract and service are called civil cases. In civil cases, an appeal lies to the Supreme Court from any judgment of high court certifies.

c) Appeals in the Criminal matters [Art-134]

Any appeal may be bought to the Supreme Court against a decision of High Court in criminal cases.

d) Appeal by special leave [Art-136]

It is the discretionary power of Supreme Court.

Special leave petition means that you take special permission to be heard in appeal against any High Court or tribunal's final or interlocutory judgment. This is an exceptional and extra ordinary power of Supreme Court and hence is exercised very cautiously.

4. Advisory Jurisdiction of Supreme Court

(Art-143)

It is also termed as a consultative jurisdiction. The constitution authorizes the president to seek the opinion of the Supreme Court in the two categories of matter—

- i) On any question of law or fact of the public importance which is arisen or which is likely to arise. In this case Supreme Court may tender or refuse to tender its opinion to the president.
- ii) On any case arising out of any pre-constitutional treaty, agreement, covenants or other similar instruments. In this case Supreme Court must tender his opinion to the president.

5. Power of Judicial Review (Art. 13)

Judicial Review is the power of SC to examine the legislative and executive action to be determined hether such actions are consistent with the constitution or not. Actions, which are judged inconsistent are declared unconstitutional and therefore null and void.

Judicial Review is needed for the following reasons –

- i. To uphold the principle of the supremacy of the constitution.
- ii. To maintain the federal equilibrium between centre and states.
- iii. To protect the Fundamental Rights of citizens.

❑ **3) Prohibition** - It is issued by superior court to a lowercourt when lower court tries to exceed the limit (UltraVires) of Jurisdiction vested in it. This writ can be issued only against Judicial and Quasi Judicial authorities. It is not available against administrative authorities, legislative bodies and private individuals or bodies.

❑ **Note** - Quasi Judicial bodies are administrative authorities which have some characteristics of judicial body but are not strictly bound by the Rules of procedure are Quasi Judicial bodies.

For e.g. : Administrative tribunal, Lok Adalat, National and State Human Right commission, National and state information commission, central vigilance commission, revenue courts etc.

4) Certiorari - The term certiorari means “to be certified or to be informed”. It is issued by a higher court to a lower court or tribunal after completion of trial and pronouncement of judgment/order to quash the order of the latter in a case if the order, direction or judgment was in excess of its jurisdiction (Ultra Vires) or no jurisdiction or error of law. It is preventive as well as curative.

5) Quo-Warranto - The literal meaning of Quo-Warranto is “by what authority”. This writ is issued by the court to restrain a person from acting in public office to which he/she is not entitled.

TOPIC- PUBLIC INTEREST LITIGATION & JUDICIAL ACTIVISM

Public Interest Litigation (PIL) means a litigation in ‘public interest’.

The right or capacity to appear in court (Locus Standi) is made liberal in case of PIL where any public spirited individual or organization can approach the court.

Even a post card addressed to court can be regarded as PIL.

PIL has enormously increased the scope of Fundamental Rights.

It helped in serving following purposes :

i) It has created awareness among people about their rights and increased the role of judiciary in safeguarding them.

ii) It has enlarged the scope of Fundamental Rights by providing liberal interpretation and helped in controlling legislature and executive.

iii) It has forced the legislature and executive to discharge their constitutional obligations towards people.

iv) Through PIL, the judiciary have made an attempt to provide a corruption free administration and a livable environment.

Criticism of PIL

PIL is often criticized on the ground that it has interfered with the normal functioning of court and has created in choking the legal system. Due to its misuse and frivolous litigation it is often mocked as Private Interest Litigation, Paisa Interest Litigation, Political Interest Litigation etc.

Safeguards against Frivolous PILs

The Supreme Court has evolved new rules to control misuse. SC has now established that in case of misuse the court have power to impose exemplary fines.

Further the person filing PIL has to establish prima facie case before the court and the burden of proof lies on that person.

The court has also started appointing screening committees of public spirited lawyers and individuals to scrutinize the PIL.

❑ Grounds for rejection of PILs

- i) When PIL is brought to attain private aim of third party or the person bringing the petition.
- ii) If the party bringing PIL is not acting Bona Fide (in good faith) or if the petition is frivolous in nature.
- iii) If petitioner fails to establish prima facie case.

❑ Few famous PILs are

- 1) M C Mehta vs. Union of India, 1986
- 2) M C Mehta vs. Union of India, 1988
- 3) M C Mehta vs. Union of India, 1991
- 4) Parmanand Katara vs. Union of India
- 5) DK Basu vs Union of India

- It connotes the assertive role of Judiciary to force the other organs of govt. to discharge their assigned constitutional functions.

It has helped in reinforcing the strength of democracy and reaffirm the faith of people in Rule of Law.

- This development is due to insensitive and irresponsible administration that disregard the public welfare. It is the phenomenon which developed in last 20-25 years to ensure that legislature or executive aren't negligent.
- PIL is the major facilitator of Judicial Activism.
- However sometimes the Judicial Activism seems Judicial Overreach, attributing too much interference

in the functions of other two organs.

Hence it's a welcome measure only in short run. If it is carried for long then it will destroy the concept of

concept of separation of power.

- No organ of govt. shall assume more powers at expense of other organs without adequate not responsibility, therefore the Judiciary should employ.
- self restrain, evolve a code of ethics for judges. Activism shall be used as the last resort.

Part-VI

THE STATES - (Article 152-237)

Article 152 – Definition of the State - The Constitution of India envisages the same pattern of govt. in the states as that for the centre i.e. parliamentary govt.

Part-VI of the constitution deals with the govt. in the states (was not applicable to the state of J

& K, which enjoyed a special status under Art-370 and had a separate constitution of its own.
*[Since 31st Oct, 2019 impact of Art-370 come to an end.]

Special Status - Constitutional Provision– Art-371, – Parliament 2/3rd Majority – Number of Special Status states - 9

Special Category Status – National Development Council – Number of Special category Status states - 10

Note : There is a huge difference between the term special status and special category status. Special status is guaranteed by the constitution of India through an act passed by 2/3rd majority in both the houses of parliament whereas, special category status is guaranteed by national development council (NDC).

Several other states enjoy special status and have certain special provisions applicable to only each one of them separately.

E.g. – 1) State of Maharashtra and Gujarat (Art-371).

2) Nagaland (Art-371-A)

3) Assam (Art-371-B)

4) Manipur (Art-371-C)

5) Andhra Pradesh (Art-371-D and E both)

6) Sikkim (Art-371-F) 7) Mizoram (Art-371-G)

8) Arunachal Pradesh (Art-371-H)

9) Goa (Art-371-I)

Special status empowers legislative and political rights. Whereas special category status deals only with economic, administrative and financial aspects.

The concept of the special category states was first introduced in 1969, when the 5th Finance Commission sought to provide certain disadvantages to states with preferential treatments in the form of central assistance and tax breaks.

The special status given to the states based on the certain parameters

1. Hilly and difficult terrain
2. Low resource base.
3. Sizeable share of tribal population
4. Low population density and
5. Hostile location.

TOPIC- GOVERNOR

Article 153 – There shall be a governor for each state but 7th CAA, 1956 states that the same person may be appointed as governor for two or more states.

Article 154 – Executive power of the state shall be vested in the governor and shall be exercised

by him in accordance with Council of Minister. The Governor also acts as an agent of the central govt. Therefore, the office of a governor has a dual role.

Article 155 – Qualification

1. One should be citizen of India.
2. He should have completed the age of 35 yrs.

(Note : There are two conventions regarding the appointment of governor.

- 1. He should not belong to that state where he is appointed.**
- 2. While appointing the governor the president is required to consult the chief minister of state consent.)**

Appointment – By President of India.

Resignation – To President of India.

Tenure – Hold office in Pleasure of President.

Governor shall hold office for a term of five years from the date on which he enters upon his office.

Oath – By Chief Justice of the High Court of the State, or, in his absence, or the seniormost Judge of that HC.

Sarkaria Commission (1983) –

The commission was setup in 1983 by the central govt. to examine the centre state relationship.

Chairman – **Ranjit Singh Sarkaria**. Recommendation on appointment of governor –

1. One should be an eminent person.
2. Must be a person from outside the state.
3. Must not have participated in active politics at least for some time before its appointment.
4. He should be appointed with consultation of Chief Minister of concerned state, vice-president and speaker of the lok sabha.

Powers and Functions

A governor enjoys executive, legislative, financial and judicial powers near to be similar to the president of India. But he has no diplomatic, military or emergency powers like the president.

He primarily performs two functions :

- i) As the constitutional head of state.
- ii) As the agent of center at the state.

1) Executive Powers

- (i) All executive action is to be taken in the name of governor. (ii) He appoints Chief Minister and other ministers on the advice of Chief Minister. They hold office up to his pleasure.
- (iii) He appoints minister of Tribal welfare who could also be incharge of the welfare of scheduled cast and backward classes of Madhya Pradesh, Chhattisgarh, Jharkhand and Odisha (Article – 164-1).
- (iv) He appoints state election commissioner and also determines his conditions of service and tenure. However, he can be removed only in like manner and on the like ground as a judge of the High Court.

(v) He appoints and chairman of state public service commission. They can be removed by the president on the report of Supreme Court on the reference made by president.

(vi) He appoints advocate general.

(vii) Governor acts as a chancellor of universities in the state. Hence, he also appoints vice-chancellors in university in states.

2) Legislative Powers

(i) He can summon and prorogue the state legislature and dissolve the state legislative assembly

(ii) He addresses the state legislature at the commencement of 1st session after each general election and 1st session of each year.

(iii) He nominates the **1/6th** of the members of the **legislative council** for amongst the persons having special knowledge or practical experience in the field of literature, science, art, social services and co-operative movement -Art – 171(5)

* (iv) He can nominate one member to the state legislative assembly from the Anglo Indian community (Art-333).

Repealed after 104th amendment act 2021.

(v) He decides the question of disqualification of members of state legislative but in consultation with election commission.

(vi) When a bill passed by state legislature is presented to the governor for his assent then under Art-200, he has 4 alternatives.

- Give his assent to the bill, or
- No with hold his assent, or
- Except in the case of Money Bill, he may return the bill for re-consideration.
- He may reserve the bill for the consideration of the president .

(vii) Under Art-213, Governor may promulgate ordinances when the state legislature is not in the session.

- The ordinance must be approved by the state legislative within 6 week from its reassembly.

3) Financial Powers

(i) He produces the Annual financial statement (State Budget) before the state legislative.

(ii) A money bill cannot be introduced without prior permission of governor.

(iii) He can make advances out of the contingency fund of the state to meet any unforeseen expenditure.

(iv) He constitutes the finance commission for every 5 years to review the financial position of Panchayat and municipalities.

4) Judicial Powers

i) He can grant the pardon, reprieves, respites or remissions from punishments or suspend and commute the sentence of any person.

But governor cannot pardon death sentence and punishments by court martial.

ii) He is consulted by the President while appointment of judges of concerned High Court.

iii) He makes appointments, postings and promotions of District Judges in consultation with HC.

iv) He appoints other judges of state in consultation with HC and State PSC.

5) Discretionary Powers

There are certain areas where the Governor may have to use his discretion.

(i) Appointment of new Chief Minister in a situation where no single party or leader commands majority support.

(ii) Dismissing a ministry when it refuses to resign even after losing majority support in the house or after being defeated in a No Confidence Motion.

(iii) Determining the royalty for Mineral licenses to district councils in the case of Tribal areas of Assam under the 6th Schedule.

(iv) Advising the president of the failure of constitution machinery to impose president rule. (Article 356)



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Did the Kerala Governor just 'sack' the state's Finance Minister?

Arif Mohammed Khan has written to Chief Minister Pinarayi Vijayan that K N Balagopal has 'ceased to enjoy [his] pleasure'. But the CM has already rejected the Governor's demand to drop the Minister from his Cabinet.

Pleasure of Governor

This provision does not mean that the Governor has the power to sack a minister. There has been no occasion in the history of the republic so far of a Governor unilaterally removing a minister from the government.

According to Subhash Kashyap – “Pleasure should not continue when the ministry had lost confidence in the legislative assembly, Governor would use his Pleasure to dismiss it.”

Discretion of Governor

7 judges Bench of Hon'ble Supreme Court in **Shamsher Singh vs. state of Punjab 1974** case stated that -

"We have adopted Parliamentary democracy therefore Governor is nominal head who shall act in accordance with advice of Council of Ministers.

Discretionary power extends only in case of hung assembly.

Hon'ble Apex Court in the **Nabam Rebia judgment (2016)** ruled that the exercise of Governor's discretion Article 163 is not extra-ordinary, it is limited and the exercise of discretion should not be arbitrary. It must be a choice dictated by reason, actuated by good faith and tempered by caution.

NCT Delhi vs. Union of India, 2017 - Elected representatives shall have real powers.

- (i) President is elected whereas governor is nominated.
- (ii) President can be removed only by the process of impeachment whereas Governor holds office during the pleasure of president.
- (iii) With regard to money bill president has two alternatives i.e. to give or with hold his assent.
Whereas the governor has 3 alternative i.e. to give or with hold his assent or he may reserve the bill for the consideration of president.
- (iv) On the subject of ordinary bill president has 3 alternatives, Viz. – To give or with hold his assent or return the bill for reconsideration.
Whereas governor has one more option, apart from three above mentioned, i.e. He may reserve the bill for the President.
- (v) Both can promulgate ordinance, but under some subjects governor is barred from promulgating an ordinance without the instruction from the president.
 - If a bill containing some provisions would have been requires presidents prior sanction for introduction.
 - If a bill containing the same provisions would have been reserved by the governor for the consideration of the president.
- (vi) With a regard to pardoning powers, president can pardon, reprieve, respite, remit, suspend or commute a death sentence. He is the only authority to pardon a death sentence.
On the other hand governor cannot pardon a death sentence but to suspend it for certain extent and he can't pardon sentence of court martial.

TOPIC- STATE COUNCIL OF MINISTER

In the Parliamentary form of govt. the state council of minister is headed by Chief Minister as a real executive authority.

- The council of minister in the state is an exact replica of the council of minister at the centre. They resemble in the formation, functioning and role of the administration.
- The constitution provides a broad and general view of the principles of parliamentary system of govt. in Article-163 and Article-164.

Article 163 – Council of Minister to Aid and Advice the governor

1. There shall be a council of minister with the Chief Minister as the head to aid and advice the governor in the exercise of his function. 2. The advice tendered by ministers to the governor shall be not be inquired in any account.

Article 164 (1) – The Chief Minister shall be appointed by the governor and other ministers are appointed by governor on the advice of Chief Minister. Also Tribal Minister in MP, CG, Jharkhand and Odisha.

- In the scheme of Parliamentary system of govt. provided by the constitution. The governor is the nominal executive authority (de Jure executive – as a matter of law) and Chief Minister is the real executive (de facto executive – as a matter of fact).

A member of either house of state legislative belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. (91st CAA, 2003)

Article 167 – It shall be the duty of Chief Minister to communicate the governor of the states all decisions of the council of minister relating to the administration of affairs of the state and proposal for legislation.

STATE LEGISLATURE

□ Article 168 – State Legislature :

For every state there shall be a legislative which consists of governor and legislative assembly (Vidhan Sabha) except than in some states there are two house the legislative assembly and the legislative council. {Bicameral Legislature – 6 states }

(1) Bihar 2) Uttar Pradesh 3) Maharashtra 4) Karnataka 5) Andhra Pradesh 6) Telangana)

[Previously there was a legislative council for state of J&K]

Note : (i) The 7th CAA, 1956 provided for the legislative council in MP. However, the notification of this effect has to be made by the president. So far no such notification has been made. Hence, MP continues to have 1 house MP.

(ii) Andhra Pradesh got the legislative council created in 1957 and got the same abolished in 1985. The legislative council in Andhra Pradesh was again revived in the 2007.

(iii) The legislative council of Tamil Nadu has been abolished in 1986 and that of Punjab and West Bengal in 1969.

□ **Article 169** – The constitution provides for the abolition or creation of legislative council in the state by Parliament. For that purpose, legislative assembly of the consent state has to pass a resolution by special majority.

Note : This act of parliament is not to be deemed as an amendment of the constitution for the purpose of Art-368 because it is passed by simple majority.

□ **Article 170** – The Legislative assembly of each state shall consist of not more than 500 members and not less than 60 members chosen by direct election from territorial constituencies in the state.

Exceptions:

State	Minimum	Current Status
Arunachal Pradesh	30	60
Mizoram	40	40
Sikkim	30	32
Goa	30	40
Puducherry	30	33

□ **Article 170 (2)** – For the elections of members to the assembly each state shall be divided into territorial constituency in such a manner that the ratio between the population of each constituency and number of seats allotted to it be the same throughout the state.

□ **Article 170 (3)** – Upon the completion of census the total number of seats in the legislative assembly in each state and the division of each state into territorial constituencies shall be done by **delimitation commission**.

□ **Article 332** – Reservation of seats for Scheduled Caste and Scheduled Tribe in the legislative assembly of the state.

□ **Article 172 (1)** – Every legislative assembly of every state shall continue for 5 years from the date of its 1st meeting. It can be dissolved before 5 years. The term of assembly can be increased by 1 year during the National emergency by a law of parliament for 1 year for one time.

□ **Article 171** – Composition of legislative council or Vidhan Parishad

□ The members of the legislative council are indirectly elected.

□ The maximum strength of council is fixed at 1/3rd of the total strength of the legislative

assembly (Vidhan Sabha) and Minimum strength is fixed at 40.

□ It means that the size of the council is depends upon the size of the assembly of the concerned state.

□ **Manner of Election (Article-171)**

1) 1/3rd members shall be elected by electorates consisting of members of municipalities district boards and other such local authorities in the state as parliament made it with law.

2) 1/3rd member shall be elected by the electorates consisting of the members of legislative assembly of the state from amongst the persons who are not the members of the assembly.

3) 1/12th members shall be elected by electorate consisting of persons who have been for at least 3 years engaged in teaching in such educational institutions in the state which is not lower than in standard than that of a secondary school and as may be prescribed by or any other law made by the parliament.

4) 1/12th members shall be elected by electorates consisting of the graduates of 3 years and residing within the state.

5) **Art-171(5)** - 1/6th members are nominated by the governor from amongst the person having special knowledge or practical experience in the field of Art, Science, literature, social service and cooperative movements.

Note : 5/6th of the total members of the legislative council are indirectly elected and 1/6th are nominated by the governor.

Point to remember : A member of state legislative may resign his seat to the chairman of legislative council or speaker of legislative assembly, as the case may be. The seat falls vacant when resignation is accepted. – However, Chairman or speaker not accept the resignation if he is satisfied that it is not voluntary or genuine.

LEGISLATIVE PROCEDURE IN STATES

- The SLC doesn't enjoy equal legislative powers with assembly.
- It is the secondary chamber.
- It can't reject or amend any bill (Ordinary/Money/Finance bill)
- Money Bill can't be introduced in SLC. The procedure to be followed is similar to that of Parliament.
- A finance bill also can't be introduced in SLC.
- An ordinary bill can be introduced in either house. If it is introduced in SLC and after being passed it is transmitted to SLA.
If the bill is rejected by SLA, it comes to an end.
- ❖ If a finance bill or Ordinary bill is introduced in and passed by SLA then it is transmitted to SLC which has following options –

- (i) Pass the bill.
- (ii) Reject the bill.
- (iii) Doesn't take any action for 3 months.
(In above two cases, the bill goes to SLA and if it passes the bill for 2nd time then it is retransmitted to upper house and on expiry of one month after it is received for 2nd time the bill is deemed to have been passed by both the houses.)

If SLC suggest amendment to the bill then the bill is sent back to SLA. If SLA accepts the amendment then the bill is deemed to be passed with amendments.

If the SLA rejects the amendment and passes the bill for 2nd time the bill is deemed to have been passed by both the houses without amendment.

- Thus SLC can't reject or amend the bill passed by SLA by virtue of its own legislative powers.
- It can at best only delay the passage of bill passed by SLA for a period of 3+1 = 4 months.
- The relevance of SLC is that it acts as a revisory house and prevents the hasty legislations.
- Further because of nomination facility, it helps in recruitment of talent and expertise into administration

No joint sitting to break a deadlock.

Joint Sitting is only possible during the Governor's address at the beginning of Budget session and 1st session after general elections to SLA.

HIGH COURTS AND SUBORDINATE JUDICIARY

In British India High Court, were created by Indian council Act, 1861. Thus in 1862 three High Courts came into existence.

1) Kolkata HC – It was the oldest HC est. on 2nd July 1862.

2) Mumbai HC – 14 Aug 1862.

3) Madras HC – 15 Aug 1862.

After 1950, a HC existing in the province became the HC for the corresponding state.

Article 214-231 in Part-VI of the constitution deals with the HC.

The constitution provide for a HC for each state but 7th CAA, 1956 authorize the parliament to est. a common High Court for two or more states or for a UTs.

❖ Article-214 – There shall a HC for each state but under Art-231 common HC can be estd. for two or more states and UT.

Note : There is no Uniformity among the HC, regarding the number of Judges.

The president determines the strength of HC time to time depending upon its workload.

❖ **Article 217 – Appointment of Judges**

The Judges of the High Court are appointed by president. The Chief Justice of High Court is appointed by president after having consultation of Chief Justice of India and Governor of the state concerned.

Qualifications

1. One should be a citizen of India.
2. He should have held the judicial office in the territory of India for 10 years. Or He should have been an advocate in HC for 10 years.

☐ **Article 219 – Oath administer by Governor**

- ☐ **Tenure** - The constitution has not fixed the tenure of judge of HC. But he holds the office up to the age of 62 years. (raised the age from 60 years by 15th CAA 1963)
- ☐ He can resign from his office to president.
- ☐ He can be removed by the same process as applied on the removal of Judge of the SC. [Article 124(4)].

Restriction on Practice

Under Article-220 any judge who has worked as a permanent judge of a high court can practice after his/her retirement only in Supreme Court or in those High Court where he/she has not served as a Judge. And He/She cannot practice in other courts or Tribunals.

Original Jurisdiction – The cases which can directly be filed in HC. Exclusive and first instance jurisdiction -

- 1) Admiralty – issues related to territorial water (12 nautical miles from coast)
- 2) Probate & Matrimony – Will, marriage, divorce etc.
- 3) Election Petition – Dispute related to elections of MP & MLA.

Writ Jurisdiction (Article 226): Extends to both Fundamental Rights and Legal rights.

Discretionary not mandatory.

Concurrent jurisdiction of both SC and HC.

Appellate jurisdiction – it hears appeals against the judgment of subordinate courts in both civil and criminal matters.

Supervisory Jurisdiction (Art. 227)–

HC supervises all the subordinate courts. However this power is not unlimited. It is an extra ordinary power hence exercised very cautiously.

- **Subordinate Courts**

Every state of India is divided into district for judicial administration each under the jurisdiction of district court. The court of the district judge and other lower courts are called sub-ordinate courts and the organizational structures of the subordinate courts can be classified into 3 parts

-
- (i) Civil Court.
- (ii) Criminal Court
- (iii) Revenue Court.

□ Article 233 – The Judges of the sub-ordinate court are appointed by the governor in consultation with the CJ of HC of concerned state.

□ Qualifications : At least 7 years practice as a lawyer is necessary for direct entry.

Age of retirement – 60 years

□ Removal : A district judge is the highest judicial official of concerned district. He may be removed from his office by the governor on the confirmation of the HC Collegium.

PART-VIII (ARTICLE 239-243)

UNION TERRITORY AND THEIR ADMINISTRATOR

The states are the member of the federal system and share distribution of power with system. On the other hand, UTs are those areas which are under the direct control and administration of central govt. Hence, they are also known as centrally administered territory.

The UTs have been created due to some reasons –

- 1.) Political and administrative consideration – Delhi and Chandigarh.
- 2.) Cultural distinctiveness – Daman and Diu, Puducherry, Dadar and Nagar Haveli.
- 3.) Strategic importance – Andaman and Nicobar, Islands and Lakshadweep.

Creation of Union Territories

In 1874, British constituted certain areas as a scheduled district later they come to be known as chief commissioner regions. – After the Independence they were mainly placed in the category of Part-C & Part-D.

– In 1956 they were constituted as a Union Territory by 7th CAA 1956.

– Gradually, some of these UTs have been elevated to statehood. Thus, Himachal Pradesh, Manipur, Tripura, Mizoram, Arunachal Pradesh and Goa, which are state today, were formerly UTs. On the other hand the territories that were acquired from the Portuguese and the French's were constituted as a UT.

Administration of UTs (Article 239-241)

Article 239-241, In Part-VIII of the constitution deals with the UTs. The provision of legislative council and legislative assembly was not there in the original constitution.

☑ Article 239 – It empowered the parliament to make any provision for the administration of UTs by law.

Hence, by 14th CAA 1962, Article-239 (A) was inserted in the constitution, which created the local legislative in certain UTs. In this way Legislative Assembly were constituted in Puducherry (1963) and Delhi (1992).

Every UT is administered by the president acting through an administrator appointed by him.

– An administrator of the UT is an agent of the president but not the head of the state like governor. He is usually called as the lieutenant governor. – The president may also appoint the governor of the neighbouring states as the administrator of UT. A governor so appointed shall discharged the functions of the administrator independently of the advice of the council of minister of the state.

– The UT of Puducherry and Delhi are provided with the legislative assembly and council of ministers headed by Chief Minister. But the establishment of such institutions in the UTs does not diminish the Supreme Control of the president and parliament over them. The parliament can make laws on any subject of three lists for the UTs. This power of parliament also extends to Puducherry and Delhi. Even then they have their own legislature. – The legislative assembly of Puducherry can also makes laws on any subject of the state list and concurrent list. This applies to the Delhi assembly also but there, the legislative and executive powers in respect of public order, police, land and also matters related to these 3 areas have retained by the Union to be handled through the Lieutenant Governor of Delhi.

SPECIAL PROVISION FOR DELHI

The 69th CAA, 1991 (came into force in 1992) provided a special status of UT to Delhi and re-designated it the National Capital territory of Delhi and designated the administrator of Delhi as a Lieutenant governor. – It created a legislative assembly and a council of Minister for Delhi. Previously, Delhi had metropolitan council as an executive council.

– The strength of assembly is fixed at 70 members and the strength of the council of ministers is fixed 10% i.e. 7.

– The Chief Minister is appointed by the president. The ministers are appointed by the president on the advice of CM and the ministers hold the office during the pleasure of President of India. – The council of Minister shall be collectively responsible to the legislative assembly of Delhi.

– In case of difference of opinion between the Lieutenant Governor and their ministers then Lieutenant Governor refers the matter to the president for the decision and act accordingly.

– In case of failure of constitutional machinery the president can impose in his territory this can be done on the report of Lieutenant Governor or otherwise. This provision resembles Article-356, which deals with the imposition of president's rule in the state.

– The Parliament can est. a High Court for UT or put in under the jurisdiction of High Court of adjacent states.

Note : Delhi and Kashmir are only UTs which have a High Court of their own.

– Article 239 (B) – The Administrator of Lieutenant Governor can promulgate ordinances with the prior permission of president during the recess of assembly. Every such ordinance must be approved by assembly with 6 weeks from its reassembly. He can also withdraw on ordinance at any time.

Note : Lieutenant Governor or administrator of UTs cannot promulgate an ordinance when the assembly is dissolve or suspended.

Emergency

(Part XVIII)

One of the most important features of Indian federation is the Emergency Powers that have been conferred on federal government. A federal govt. is considered as weak form of govt.

because of division of powers. Therefore, in order to meet an emergency situation the constitutional makers have conferred vast emergency powers on Union Executive. These are borrowed from Weimar constitution of Germany. The Constitution provides for 3 types of emergency:-

- a) National Emergency – Article 352 provides for proclamation of emergency in the nature of National level.
- b) Emergency in a state U/Article 356 which is commonly known as President's Rule.
- c) Financial Emergency provided U/Article 360.

RAO'S ACADEMY

for Competitive Exams
(A Unit of RACE)

National Emergency

– U/Article 352 if the President is satisfied that there exists a grave emergency whereby the security of Indian or any part of the territory of India is threatened by war, external aggression or Armed Rebellion then he may proclaim National Emergency.

After 42nd Amendment 1976, a National Emergency can be proclaimed for whole of India or a part of it if the Council of Ministers (CoM) in written advises the president.

After 38th CAA 1975 the President is empowered to issue different proclamation of emergency on different ground i.e. emergency on the ground of war, external aggression, armed rebellion or emergency proclaimed on the ground of eminent danger of three, whether or not there is proclamation already issued by president.

The President enjoys the power to remove an emergency that is enforced.

The proclamation of an emergency U/Article 352 except a proclamation to revoke a national emergency shall be placed before both the house of parliament for its approval. It shall cease to be enforced after 30 days after its proclamation unless it is approved by both the houses before expiration of 30 days. If it is approved by parliament it shall remain in force till not more than 6 months from day of its approval. The approval shall be in the form of resolution passed with a special majority of $2/3^{\text{rd}}$ member present and voting and by a majority of total strength of house. The parliament can approve the emergency for as many times but each time for 6 month. If Lok Sabha is dissolved within 30 days period then emergency shall be approved by Rajya Sabha within one month and it shall be approved by Lok Sabha within 1 month after its constitution.

Further the Lok Sabha by simple majority can disapprove the continuation of emergency by a special session. If LS passes such a resolution the president shall remove the National Emergency only on written advice of COM.

Safeguards introduced by 44 CAA against misuse of emergency provisions

- (1) Under original constitution the grounds for Proclamation of Emergency were War, External Aggression & Internal Disturbance. The expression internal disturbance is a vague one *even a* peaceful demonstration by people could be interpreted to mean internal disturbance. Therefore it has been changed to armed rebellion.
- (2) The legal definition of rebellion is an organized attempts to overthrows a legally elected govt. through non-democratic means such a rebellion must be armed.
- (2) Earlier, President could proclaim national emergency even on oral advice of PM whereas now he can proclaim National Emergency on written advice of COM.
- (3) When the Parliament approves National Emergency, it was to be in force for an indefinite time period till president revoke it whereas now it shall be in force for a period not more than 6 months when approved by parliament. Further the approval by the parliament was to be approved by simple majority while now it is to be approved by special.
- (4) Earlier there was no parliamentary control over executive while emergency is proclaimed whereas now a special session can be conveyed it not less than $1/10^{\text{th}}$ members of Lok Sabha given in writing to speaker if the Lok Sabha is already in regular session, or to president if Lok Sabha is not in session expressing the intention to move a resolution for the disapproval of continuation of emergency.

Such an emergency session shall be conveyed within 14 days after vote is served. Such disapproval is done by Lok Sabha by a simple majority.

(5) U/Article 358 before 44th CAA, the FR given under article 19 was automatically suspended whether emergency imposed was external or internal whereas the right U/Article 19 is automatically suspended only if emergency proclaimed is external.

(6) U/Article 359, originally the enforcement of one or more of FR can be suspended by the president by a separate proclamation but at present the operation of FR given U/Article 20 & 21 can't be suspended by president.

Effects of National Emergency

(1) If national emergency is proclaimed the distribution of powers between center and state stand automatically suspended and there emerges a full-fledged unitary state. The state COM isn't dismissed but it comes under the effective administrative control of Union. Under normal times center can issue administrative directions to the state only on certain specified subjects such as maintenance of communication & Railway property. Whereas if National Emergency is proclaimed the center is free to issue administrative directives on any subject and they are binding on state.

2) The state legislative assembly is not suspended, it continues to function but because of suspension of distribution of powers the parliament assumes concurrent legislative jurisdiction over the subject under the state list. The Parliament by Law can increase the life of Parliament and legislative assembly beyond 5 years term for a period of not more than 1 year at a time. The parliament may extend the tenure for any number of times but for each time for 1 year. However the life of SLA/Parliament shall not go beyond 6 months after National Emergency comes to an end.

3) The center is empowered to suspend distribution of financial resources with states. It is free to make use of all the financial resources to meet the emergency situations.

4) U/Article 358 & 359 the ratification of president under Article 352 is subject to judicial review and proclamation of national emergency can be challenged in court of law on the ground of mala fide use of power by the president.

Presidential Rule in States

U/Article 356 the president on receipt of a report from the governor or other sources and satisfied that a situation has arisen in which a govt. of state can't be carried in accordance with the constitutional provisions then by a proclamation of emergency he may assume the power of State COM.

He may also suspend/dissolve the SLA of state.

He may also declare that the power of legislature of state shall be exercisable by the parliament.

The emergency proclaimed U/article 356 shall cease to be in force at the expiry of 2 months if it is approved by both the houses of parliament before 2 months. Once approved it shall be in force for a period of 6 month from the date of approval. It can be extended for a period of 1 year in ordinary circumstances. If it is to be extended beyond 1 year then two conditions are to be satisfied.

- a) There shall be a national emergency enforced in whole or part of India.
- b) The election commission of India shall certify that under prevailing situation of state a general election to SLA can't be held.

In such a situation the parliament can extend the emergency for 2 more years each time for not more than 6 months. The approval is by simple majority. If Lok Sabha stands dissolved the President Rule shall be approved by RS and within one month is to be approved by Lok Sabha.

Safeguard Against the use of Article 356

- (1) 42nd CAA provided that the approval given by Parliament was to be valid for a period not more than one year from the date of proclamation of President rule but 44th CAA brought it down to 6 months.
- (2) The original constitution provided for extending it for a maximum period of period of 3 years each time the parliament approved it for a period of 6 months but 44th CAA introduced 2 conditions if the president rule goes beyond.

Effect of President's Rule

- (1) *The* state council of minister is necessarily dismissed and the executive function of state COM is taken over by center.
- 2) On legislate – the SLA is either dissolved or suspended. The state legislature is not functional and the parliament may legislate on state subject.

S. R. Bommai vs. Union of India 1994 Judgement

In this historic verdict, Hon'ble Supreme Court laid down certain restrictions on the centre for imposing the President's Rule on states.

- It said that the power of the President to dismiss a government of a state is not absolute.

- It said that the President should use this power only after his proclamation (of imposing President's Rule) has been approved by both Houses of the Parliament.
- Until then, the President can only suspend the Legislative Assembly.
- In case the proclamation does not get the approval of both the Houses, it lapses at the end of a period of two months, and the dismissed government is revived.
- The suspended Legislative Assembly also gets reactivated.
- The SC also stated that the proclamation of the imposition of Article 356 is subject to judicial review.
- Presidential Rule shall be the last resort; floor test should be conducted before imposing it.
- It can be imposed only in case of failure of constitutional machinery and not that of administrative machinery.

Financial Emergency

If the president is satisfied that a situation has arisen whereby the financial stability or credibility of India or any part thereof is threatened he may issue a proclamation imposing financial emergency over the country. It shall be approved by *both* the houses within *2 months* from date of proclamation. Once approved by parliament it shall be in force for an indefinite time until it is removed by president.

The executive authority of center shall extend. Further the Union can direct the state to reduce salary/allowances of the civil Servants or the Constitutional Dignities. The president may direct the governor to reserve all money/financial bill passed by SLA.