

# INDIAN POLITY

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## **1 The Constitution**

### **1.1 Evolution of the Constitution**

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#### **Acts of British Parliament before 1935**

- After the Indian Rebellion of 1857, the British Parliament took over the reign of India from the British East India Company and British India came under the direct rule of the Crown.
- The British Parliament passed the Government of India Act of 1858 to this effect, setting up the structure of government in India.
- It also established the office of the Governor-General of India along with an Executive Council in India, consisting of high officials of the British Government.
- The Indian Councils Act of 1861 provided for a Legislative Council consisting of the members of the Executive council and non-official members.
- The Indian Councils Act of 1892 established provincial legislatures and increased the powers of the Legislative Council.
- The Government of India Acts of 1909 and 1919 further expanded participation of Indians in the government.

#### **Government of India Act 1935**

- The provisions of the Government of India Act of 1935, though never implemented fully, had a great impact on the constitution of India.
- Many key features of the constitution from this Act like the federal structure of government, provincial autonomy, bicameral legislature consisting of a federal assembly and a Council of States, separation of legislative powers between the center and provinces are some of the provisions of the Act, which are present in the Indian constitution.

#### **The Cabinet Mission Plan**

- In 1946, British Prime Minister Clement Attlee formulated a cabinet mission to India to discuss and finalize plans for the transfer of power from the British Raj to Indian leadership as well as provide India with independence under Dominion status in the Commonwealth of Nations.
  - The Mission discussed the framework of the constitution and laid down in some details that the procedure to be followed by the constitution drafting body.
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- The Constituent Assembly first met and began work on 9 December 1946.

### **Indian Independence Act 1947**

- The Indian Independence Act, which came into force on 18 July 1947, divided British Indian territory into two new states: India and Pakistan.
- The Act relieved the British Parliament of any further rights or obligations towards India or Pakistan and granted sovereignty over the lands to the respective Constituent Assemblies.
- When the Constitution of India came into force on 26 January 1950, it repealed the Indian Independence Act. India ceased to be a dominion of the British Crown and became a sovereign democratic republic.
- 26 November 1949 is also known as National Law Day.

### **1.2 Making of the Constitution**

- Formation of the Constituent Assembly on the recommendation of the Cabinet Mission on 26 November, 1946.
  - The Constituent Assembly was elected by the members of the Provincial Legislative Assemblies (Lower House only)
  - The Constituent Assembly consisted of 389 members including 93 representatives of the princely states. The Indian National Congress had 211 members and the Muslim League had 73 members.
  - Jawaharlal Nehru, C. Rajagopalachari, Rajendra Prasad, Sardar Vallabhbhai Patel, Dr Ambedkar, Maulana Abul Kalam Azad, Shyama Prasad Mukherjee and Nalini Ranjan Ghosh were some important figures in the Assembly.
  - First sitting of the Constituent Assembly held on 9 December 1946.
  - Dr. Sachidanand Sinha acted as the provisional President of the Constituent Assembly until 11, December 1946.
  - Election of the Rajendra Prasad as the President of the Constituent Assembly on 11, December 1946.
  - The design of the National Flag was adopted by the Constituent Assembly on 22, July, 1947.
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- Appointment of the Drafting Committee under the chairmanship of Dr. B. R. Ambedkar along with six other members on 29, August, 1947.
- The other members of the Drafting Committee were N. Gopaldaswamy Ayyanger, Alladi Krishnaswamy Ayyar, K.M. Munshi, Mohammad Saadullah, B.L. Mitter (letter replaced by N. Madhav Rao and Dr. D. P. Khaitan) (later replaced by T. T. Krishnamachari)
- The '**Draft Constitution of India**' was published in February, 1948.
- The '**Constitution**' received the Signature of the President of the Constituent Assembly and was declared to be passed on 26 November, 1949.
- The provisions related to Citizenship, elections, provisional parliament etc. were given effort on 26, November 1949.
- The Assembly met in sessions open to the public, for 166 days, spread over a period of 2 years, 11 months and 18 days before adopting the Constitution.
- After many deliberations and some modifications, the 308 members of the Assembly signed two hand-written copies of the document (one each in Hindi and English) on 24 January 1950.
- The National Anthem was adopted by the Constituent Assembly on 24 January 1950.
- The rest of the constitution came into force on 26, January, 1950.

### 1.3 The Borrowed Features

- |                                      |     |
|--------------------------------------|-----|
| • Rule of Law                        | UK  |
| • Law-making procedure               | UK  |
| • Single Citizenship                 | UK  |
| • Parliamentary system of Government | UK  |
| • Legislative process                | UK  |
| • Bi-cameralism                      | UK  |
| • Preamble                           | USA |
| • Fundamental Rights                 | USA |
| • Amendment Procedure                | USA |
| • Independence of Judiciary          | USA |
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- Judicial Review USA
- Function of the Vice President USA
- Supreme Court and its power USA
- The institution of the Vice-President USA
- Idea of concurrent subject Australia
- Directive principles of State policy Ireland
- Method of nominating members to the upper House Ireland
- Election of President Ireland
- Emergency provisions Germany
- Idea of proportional representation in Rajya Sabha South Africa
- Amendment of the Constitution South Africa
- The name 'union' Canada
- Appointment of the State Governors by the Center Canada
- Division of Powers Canada
- Residuary powers Canada
- Federation with a strong centre Canada
- Fundamental Duties USSR
- Concept of Republic France
- Ideals of Liberty, Equality and Fraternity France

#### 1.4 Schedules

Schedules are lists in the Constitution that categorize and tabulate bureaucratic activity and policy of the Government.

- **First Schedule** (Articles 1 and 4) — States and Union Territories – This lists the states and territories of India, lists any changes to their borders and the laws used to make that change.
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- **Second Schedule** (Articles 59, 65, 75, 97, 125, 148, 158, 164, 186 and 221) — Emoluments for High-Level Officials – This lists the salaries of officials holding public office, judges and Controller and Auditor-General of India.
- **Third Schedule** (Articles 75, 99, 124, 148, 164, 188 and 219) — Forms of Oaths – This lists the oaths of offices for elected officials and judges.
- **Fourth Schedule** (Articles 4 and 80) – This details the allocation of seats in the *Rajya Sabha* (the upper house of Parliament) per State or Union Territory.
- **Fifth Schedule** (Article 244) – This provides for the administration and control of Scheduled Areas and Scheduled Tribes (areas and tribes needing special protection due to disadvantageous conditions).
- **Sixth Schedule** (Articles 244 and 275) - Provisions for the administration of tribal areas in Assam, Meghalaya, Tripura, Mizoram.
- **Seventh Schedule** (Article 246) - The union (central government), state, and concurrent lists of responsibilities.
- **Eighth Schedule** (Articles 344 and 351) - The official languages.
- **Ninth Schedule** (Article 31-B) - Articles mentioned here are immune from judicial review.
- **Tenth Schedule** (Articles 102 and 191) — "Anti-defection" provisions for Members of Parliament and Members of the State Legislatures.
- **Eleventh Schedule** (Article 243-G) — Panchayat Raj (rural local government).
- **Twelfth Schedule** (Article 243-W) — Municipalities (urban local government).

### 1.5 Parts of the Constitution

Parts are the individual chapters in the Constitution, focusing on specific issues of law.

Part 1	-	The Union and its Territory
Part 2	-	Citizenship
Part 3	-	Fundamental Rights
Part 4	-	Directive Principles of State policy
Part 4A	-	Fundamental Duties
Part 5	-	Union Government (Legislature, Executive and Judiciary)
Part 6	-	The State Government (Legislature, Executive and Judiciary)
Part 7	-	Repealed

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Part 8	-	Union Territories
Part 9	-	Panchayats
Part 9A	-	Municipalities
Part 10	-	Scheduled and Tribal Areas
Part 11	-	Centre State Relations
Part 12	-	Financial Relationship between the Union and the State
Part 13	-	Trade and Commerce within the Territory of India
Part 14	-	Services under the Union and the States
Part 14A	-	Tribunals
Part 15	-	Election
Part 16	-	Special provisions for certain classes
Part 17	-	Official Language
Part 18	-	Emergency Provisions
Part 19	-	Miscellaneous
Part 20	-	Amendment of the Constitution
Part 21	-	Temporary, Transitional & Special Provisions
Part 22	-	Short title, Commencement, Authoritative text in Hindi, Repeals

### **1.6 Important Articles**

1. India is union of States
  2. Establishment & Admission of States to Union
  3. Formation of new States and alteration of areas, boundaries or names of existing States
  9. Indian citizenship will cease if a person acquires the citizenship of any other country
  10. Indian citizenship by birth
  14. Equality before law/Rule of Law
  15. No discrimination on grounds of religion, race, caste, sex place of birth
  16. Equality of opportunities in matter of public employment
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17. Abolition of untouchability
  18. Abolition of titles
  19. Six freedoms
    - a. Speech & Expression
    - b. Assembly
    - c. Association
    - d. Movement
    - e. Residence
    - f. Occupation
  21. Protection of life & personal liberty
  22. Protection against arrest and detention in certain cases
  23. Prohibition of traffic in human beings and forced labour
  24. Prohibition of employment of children in factories, etc
  25. Freedom of religion
  29. Protection of interests of minorities
  30. Right of minorities to establish and administer educational institutions
  32. Remedies for enforcement of Fundamental rights
  34. Restriction on Fundamental rights while martial law is in force in any area
  - 39A. Equal justice and free legal aid
  40. Organisation of village panchayats
  42. Provision for just and humane conditions of work and maternity relief.
  - 43A. Participation of workers in management of industries
  44. Uniform civil code for the citizens
  45. Provision for free and compulsory education for children
  46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.
  47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health
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- 48A. Protection and improvement of environment and safeguarding of forests and wild life.
  - 49. Protection of monuments, places and objects of national importance
  - 50. Separation of judiciary from executive
  - 51. Promotion of international peace and security
  - 51A. Fundamental Duties
  - 61. Impeachment of the President
  - 72. Power of President to grant pardons, etc and to suspend, remit or commute sentences in certain cases
  - 74. Council of Ministers to aid and advise the President
  - 76. Attorney-General for India
  - 78. Duties of Prime Minister as respect the furnishing of information to the President, etc
  - 86. Right of President to address and send messages to Houses
  - 108. Joint sitting of both Houses in certain cases
  - 110. Definition of 'Money Bills'
  - 111. Assent of Bills by the President
  - 112. Annual Financial Statement
  - 114. Appropriation Bills
  - 123. Power of President to promulgate Ordinances during recess of Parliament
  - 129. Supreme Court to be court of record
  - 136. Special leave to appeal by the Supreme Court
  - 139. Writs issued by Supreme Court of any other purpose than those mentioned in article 32
  - 139A. Transfer of certain cases by the Supreme Court to itself.
  - 143. Power of the President to consult the Supreme Court
  - 148. Comptroller and Auditor-General of India
  - 169. Abolition or creation of Legislative Councils in States
  - 199. Definition of "Money Bills"(State Legislature)
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- 201. Bills reserved for consideration for the President
  - 202. Annual financial statement (States)
  - 213. Power of the Governor to promulgate Ordinances during recess of Legislature
  - 215. High Courts to be courts of record
  - 222. Transfer of a Judge from one High Court to another
  - 226. Power of High Courts to issue certain writs
  - 243B. Constitution of Panchayats
  - 243Q. Constitution of Nagarpalika
  - 244. Administration of Scheduled Areas and Tribal Areas
  - 248. Residuary powers of legislation
  - 249. Power of Parliament to legislate with respect to matter in the State List in the national interest
  - 251. Inconsistency between laws made by parliament under articles 249 and 250 and laws made by the Legislatures of States
  - 253. Legislation for giving effect to international agreements
  - 263. Provisions with respect to an Inter-State Council
  - 265. Taxes not to be imposed save by authority of law
  - 266. Consolidated Funds and Public Accounts of India and of the States
  - 267. Contingency Fund
  - 268. Duties levied by the Union but collected and appropriated by the States
  - 269. Taxes levied and collected by the union and distributed between the Union and the States.
  - 272. Taxes, which are levied and collected by the Union and may be distributed between the Union and the States.
  - 275. Grants-in-aid to States
  - 280. Finance Commission
  - 292. Borrowing by the Government of India
  - 293. Borrowing by States
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300. Right to property (no person shall be deprived of his property except by authority of law)
312. All India Services
315. Public Service Commissions for the Union and for the States
- 323A. Administrative tribunals
- 323B. Tribunals for other matters
324. Superintendence, direction and control of elections to be vested in an Election Commission
326. Election of the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage
330. Reservations of seats for SC & ST in the Lok Sabha
331. Nomination of two members in the Lok Sabha from the Anglo-Indian community
332. Reservation of seats for Scheduled Caste and Scheduled Tribes in the Legislative Assemblies of the States
333. Representation of the Anglo-Indian Community in the Legislative Assemblies of the States
338. Special Officer for Scheduled Castes and Scheduled Tribes, etc
343. Hindi in Devnagari script as the official language of the union
- 350B. Special Officer of linguistic minorities
352. National emergency (on grounds of external aggression or armed rebellion)
356. Failure of the constitutional machinery in the state (President's Rule)
360. Financial emergency
- 363A. Recognition granted to Rulers of Indian States to cease and privy purses to be abolished
368. Power of the parliament to amend the constitution
370. Provision related to the state of Jammu & Kashmir
- 394A. Translation of constitution in Hindi Language
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## 1.6 Salient Features of the Constitution

### ***A written Constitution:-***

The Constitution of India is a written document. It is one of the lengthier and the most detailed constitutional document in the world. Originally, it consisted of 395 Articles and 8 Schedules now it consists of over 444 Articles and 12 schedules.

### ***Drawn from different sources:-***

The Indian Constitution is said to be a borrowed Constitution as far as its framers gathered the best features of the existing constitutions. However, the adopted features have been modified to the existing conditions and needs of the country.

### ***Parliamentary system of government:-***

The Constitution provides a parliamentary system of the government at the Centre as well as in the States in which the executive is responsible to legislature.

### ***Federation with a strong Centre:-***

The Constitution describes India as Union of States. It is a federation, which is not the result of any agreement among the units, & the units therefore cannot secede from it, like a federation there is division of powers between the Centre & the State.

### ***Secular State:-***

The Constitution makes India a secular state. There is no official or state religion for India. All citizens irrespective of their religion are to be considered and treated as equal.

### ***Single Citizenship:-***

The Constitution provides for a single citizenship for the whole country namely the citizenship of India. There is no separate citizenship for the states.

### ***More flexible than rigid:-***

The Indian constitution is more flexible as it can be amended according to changing times and need of the hour by simple process. There are very few amendments, which require ratification by the State legislature.

### ***Universal Adult Franchise:-***

The Indian Constitution provides for Universal adult franchise without any qualification of sex, property taxation or the like.

### ***Independence of Judiciary:-***

The Constitution provides for an independent judiciary ensuring that the Centre and the States remain within their respective jurisdiction and that fundamental rights are protected.

### ***Bicameral Legislature:-***

The Constitution provides for a bicameral legislature consisting of Lok Sabha and Rajya Sabha.

### ***Fundamental Rights:-***

The Constitution guarantees certain individual rights, which are justiciable. They are however, subject to restrictions in the interest of security of the state.

### ***Fundamental Duties:-***

By the 42<sup>nd</sup> Amendment Act 1976, list fundamental duties of the Citizen were included. They are not, however justiciable.

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**Directive Principles:-**

The Directive principle though not justiciable are fundamental to the governance of the country. No government can ignore them. They provide the social and economic basis for democracy.

**1.7 The Preamble****We the People of India:-**

It signifies that the people of India through their representatives assembled in a sovereign Constituent Assembly ordain the Constitution of India. Thus, it declares that the ultimate sovereignty lies with the people of India and that the Constitution rests on their authority.

**Socialist:-**

The Forty-second Amendment added the word 'socialist' to the Preamble. It implies social and economic equality.

- **Social equality** in this context means the absence of discrimination on the grounds only of caste, colour, creed, sex, religion, or language. Under social equality, everyone has equal status and opportunities.
- **Economic equality** in this context means that the government will endeavor to make the distribution of wealth equal and provide a decent standard of living for all. This is in effect emphasized a commitment towards the formation of a welfare state. India has adopted a socialistic and mixed economy and the government has framed many laws to achieve the aim.

**Secular:-**

- The Forty-second Amendment (1976) inserted the word secular into the preamble. It implies equality of all religions and religious tolerance. India, therefore does not have an official state religion.
- Every person has the right to preach, practice and propagate any religion they choose.
- The government must not favour or discriminate against any religion. It must treat all religions with equal respect. All citizens, irrespective of their religious beliefs are equal in the eyes of law.
- No religious instruction is imparted in government or government-aided schools.
- The Supreme Court in *S.R Bommai v. Union of India* held that secularism was an integral part of the basic structure of the constitution.

**Democratic:-**

- The first part of the preamble "We, the people of India" and, its last part "give to ourselves this Constitution" clearly indicate the democratic spirit involved even in the Constitution. India is a democracy.
  - The people of India elect their governments at all levels (Union, State and local) by a system of universal adult suffrage; popularly known as "one man one vote".
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- Every citizen of India, who is 18 years of age or above, and not otherwise debarred by law, is entitled to vote. Every citizen enjoys this right without any discrimination on the basis on caste, creed, colour, sex, religion or education.

**Republic:-**

As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a lifetime or until, he abdicates from the throne.

A democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. An electoral college elects the President of India for a term of five years. The post of the President of India is not hereditary. Every citizen of India is eligible to become the President of the country.

**Sovereign:-**

It means that the country is free or independent in its external or internal matters. There is no external subordination. The Country is free to conduct its external and internal affairs.

**Justice:-**

Our Constitution professes to secure to all its citizens, social, economic and political justice.

**Social Justice:-**

It prohibits artificial social barriers. "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

**Economic Justice:-**

There will be no discrimination between men and women because of economic values. In positive term, it implies adequate payment for equal work for all.

**Political Justice:-**

It ensures free and fair participation of the people in their political life.

**Liberty:-**

It means freedom of thought, expression, belief, faith and worship.

**Fraternity:-**

It means ensuring the dignity of the individual and Unity and integrity of the nation.

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## 2 Reorganization of States

1953 – 1<sup>st</sup> linguistic State, Andhra Pradesh was created.

1956 - States Reorganisation Act passed. Thus, 4-fold distribution of State was replaced by classification of linguistic lines.

1960 - Bifurcation of the Bombay State into Maharashtra and Gujarat States.

1962 – State of Nagaland formed.

1966 – State of Punjab was split into State of Punjab, State of Haryana and Union Territory of Chandigarh.

1969 – Meghalaya was made a Sub-State within Assam.

1970 – Himanchal Pradesh was upgraded from Union Territory to a State.

1971 – Manipur, Tripura and Meghalaya were made into States. Mizoram and Arunachal Pradesh as Union Territories.

1975 – Sikkim was admitted as 22<sup>nd</sup> State.

1986 – Mizoram and Arunachal Pradesh were given the status of states.

1987 – Goa became the 25<sup>th</sup> State of the Indian Union.

2000 – Three new states of Chhattisgarh, Jharkhand and Uttaranchal were created in November 2000

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### 3 Citizenship

#### 3.1 Single Citizenship

- The Indian Citizenship Act passed in 1955 laid down the law for acquisition and termination of citizenship.
- Parliament could regulate the right of citizenship law under Article 11.
- Article 5-8 confers citizenship on 'every person' who was covered on the following categories at the time of the commencement of the constitution.
  - i. Domiciled in India and born in India.
  - ii. Domiciled, not born in India but either of whose parents was born in India.
  - iii. Domiciled, not born in India but ordinarily resident for more than five years.
  - iv. Resident of India but migrated to Pakistan after 1 March 1947 and later return to India on resettlement permit. (Art-7)
  - v. Resident in Pakistan but who migrated to India before 19 July 1948 or who came after that date but had resided in India for more than six months and got registered in the prescribed manner. (Art-6)
  - vi. Resident of outside India, but who or either of whose parents or grandparents were born in India. (Art-8)
- The citizenship act, 1955, also laid down how the citizenship of India may be lost. It may happen in any of the three ways:-
  - (a) Renunciation: - It is voluntary act which a person holding the citizenship of India as well as that of another country may adjure one of them.
  - (b) Termination: - It shall take place by operation of law as soon as a citizen of India voluntarily acquires the citizenship of another country.
  - (c) Deprivation: - It is compulsory termination of the citizenship of India, by an order of the government of India, if it is satisfied as to the happening of certain contingencies, e.g. that Indian citizenship had been acquired by a person fraud, or that he has shown himself to be disloyal or disaffected towards the constitution of India.

#### 3.2 Dual Citizenship:

- Dual Citizenship for People of Indian Origin (PIOs): In December 2003 a new law was passed which permits the people of Indian origin in 16 (Further more countries are added) viz. Australia, Canada, Finland, France, Greece, Ireland, Israel, Italy, The Netherlands, New Zealand, Portugal, Cyprus, Sweden, Switzerland, UK and US, to have dual Citizenship status.
  - This will enable them to participate in the economic activities and acquire real states.
  - However, they are not permitted to cast their votes or get elected to the legislature or occupy any constitutional office.
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## 4 Fundamental Rights

- They are justiciable, amendable and suspendable.
- "Right to property" has been eliminated from the list of fundamental rights (by deleting article 31 & 19(f). by 44<sup>th</sup> amendment 1978 and placed under chapter IV, part XII, article 300 A.
- Rights granted only for citizens are – Article 15, 16, 19, 30.
- Rights granted against executive – Article 21.
- Rights granted against legislature – Article 15, 17, 18, 18, 20 and 24.
- Article 19 remains automatically suspended during national emergency imposed on the ground of war of external aggression.
- During national emergency, the president can suspend Article 32.
- Article 20, 21 remain in force even during national emergency.
- According to a Supreme Court judgment article, 21 & 22 and right to move the court for the writ habeas corpus shall remain in force.

### 4.1 Right to Equality

- Equality before law – Article 14.
- Discrimination against any citizen on grounds of caste, race, sex, religion, place of birth/entry into a public place – Article 15.
- Equality of opportunity in public employment – Article 16.
- Abolition of untouchability – Article 17.
- Conferring of title – Article 18.

### 4.2 Right to Particular Freedom

- Six freedoms –
    - (a) To freedom of speech and expression;
    - (b) To assemble peaceably and without arms;
    - (c) To form associations or unions;
    - (d) To move freely throughout the territory of India;
    - (e) To reside and settle in any part of the territory of India;
    - (g) To practise any profession, or to carry on any occupation, trade or business – Article 19.
  - Protection in respect of conviction and prosecution for offences – Article 20.
  - No person shall be deprived of his life or personal liberty except according to procedure established by law – Article 21
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- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine - Article 21A (Included by the Constitution (Eighty-sixth Amendment) Act, 2002)
- Preventive detention – Article 22.

#### **4.3 Right against Exploitation**

- Prohibition of forced labour – Article 23.
- Prohibition of child labour below 14 years – Article 24.

#### **4.4 Right to Freedom of Religion**

- Freedom of conscience & Religion – Article 25.
- Freedom to manage religious affairs – Article 26.
- Freedom not to pay taxes for religious promotion – Article 27.
- Freedom not to attend religious instructions – Article 28.

#### **4.5 Cultural and Educational Rights**

- Protection of interest of minorities – Article 29 & 30.

#### **4.6 Right to Constitutional Remedies**

- Right to move the court (Supreme Court or High Court) in the event of the violation of fundamental rights – Article 32.

#### **4.7 The Writs**

##### **4.7.1 Habeas Corpus:**

- The Writ of Habeas Corpus is in the nature of an order. It is issued against wrong detention. By issuing such a Writ, the court can require that a person who has been imprisoned and can be brought before it, in order to know the reason of his detention and set him free if no legal justification for the imprisonment.
  - The words Habeas Corpus literally mean to have a body. The writ may be addressed to any person whatever are official or a private person who has another person in his custody.
  - The writ is available for (i) enforcement of fundamental rights (ii) where the order of imprisonment or detention is Ultra Vires.
  - The writ is not available for (i) detention of persons outside the jurisdiction of the court (ii) Imprisonment by court of law on criminal charges.
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#### **4.7.2 Mandamus:**

- Mandamus means command. It commands the person to whom it is addressed to perform some public or quasi-public legal duty that he has refused to perform and the performance of which cannot be enforced by any other adequate legal remedy.
- The writ is mainly issued for the enforcement of fundamental rights.

#### **4.7.3 Prohibition:**

- The Supreme Court or a High Court an inferior court or a lower court for bidding the latter to discontinue preceding a case, which is outside its jurisdiction, issues the writ of prohibition.
- The writ of Prohibition differs from the writ of mandamus is that while mandamus commands activity, prohibition commands inactivity.
- Further, while mandamus is available against not only judicial authorities, prohibition as well as certiorari are issued only against judicial or quasi-judicial authorities.

#### **4.7.4 Certiorari:**

- The Writ of certiorari is issued to a lower court after a case has been decided by it quashing the decision or order. It is issued where a court acts beyond its jurisdiction.
- Though both, prohibition and certiorari are issued against courts or tribunals exercising judicial or quasi-judicial powers certiorari is issued to quash the order of decision of the tribunal while prohibition is issued to prohibit the tribunal from making the ultra vires order or decision.
- While prohibition is available at an earlier stage, certiorari is available later stage, on similar grounds. The object of both is to secure that the jurisdiction of an inferior court or tribunal is properly exercised and that it does not usurp the jurisdiction, which it does not possess.

#### **4.7.5 Quo Warranto:**

- The court enquires into the legality of the claim of a person to public office and to remove him from its enjoyment if the claim is not well founded by a proceeding.
  - Condition for the issue of Writ of Quo Warranto to the office must be public and it must be created by statute or by the Constitution itself.
  - The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another. There has been a contravention of the constitution by a statute or statutory instrument in appointing such person to that office.
  - The fundamental basis of the proceeding of Quo Warranto is that the public has interest to see that unlawful claimant does not usurp a public office.
-

## 5. Directive Principles of State Policy

- Part IV of the constitution (Article 36-51) provides the directive principles of state policy.
  - They are not enforceable in the court of law.
  - They are fundamental in the governance of the country.
  - It shall be the duty of the state to apply these principles in making laws.
  - These principles are directed towards the ideals of making a true welfare state.
  - Some of the important Directive Principles are as follows:
    - (a) Minimisation of the inequalities in income status, facilities and opportunities – Article 39(e)
    - (b) Equal right to men and women to an adequate means of livelihood – Article 39(a)
    - (c) Equal pay for equal work for both men and women – Article 39(d)
    - (d) Protection to the health and strength of the workers, men & women and the children of tender age – Article 39 (e)
    - (e) Protection against exploitation to children and the young – Article 39 (b)
    - (f) Equal justice and free legal aid – Article 39 (A).
    - (g) Organisation of village Panchayat – Article 40.
    - (h) Public assistance in case of unemployment, old age, sickness etc. – Article 41.
    - (i) Provision for just and humane conditions of work and maternity relief – Article 42.
    - (j) Development of cottage industries – Article 43.
    - (k) Participation of workers in management of industries – Article 43(A)
    - (l) Uniform civil code for citizens – Article 44.
    - (m) Free and compulsory education for children – Article 45
    - (n) Promotion of educational and economic interest of SCs, STs and other weaker sections – Article 46.
    - (o) Protection and improvement of environment, forests & wild life – Article 46.
    - (p) Protection of national monuments – Article 49.
    - (q) Separation of judiciary from executive – Article 50.
-

## 6. Fundamental Duties

- The Fundamental Duties are ten in number [Art-51 A (Part IV A)], which has been inserted by the 42<sup>nd</sup> Amendment Act, 1976. These duties are not justiciable.
  - It shall be the duty of every citizen of India.
    - (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
    - (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
    - (c) to uphold and protect the sovereignty, unity and integrity of India;
    - (d) to defend the country and render national service when called upon to do so;
    - (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
    - (f) to value and preserve the rich heritage of our composite culture;
    - (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
    - (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
    - (i) to safeguard public property and to abjure violence;
    - (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.]
-

## 7. The Union Executive

### 7.1 The President

#### Appointment:-

- Elected by indirect election by an electoral college.
- Election held by the system of proportional representation by means of the single transferable vote.
- The electoral college consists of -
  - (a) The elected members of both Houses of Parliament and
  - (b) The elected members of the Legislative Assemblies of the states.

#### Eligibility Condition:-

- Must be a citizen of India.
- Must be of 35 years of age.
- Must be qualified for the election as a member of the House of the People.
- Cannot hold any other office of the profit.

#### Salary and emoluments:-

- Salary is ₹1.5 lakh per month (including allowances & emoluments).
- The pension is 50% of the salary.

#### Powers and Functions:-

##### Executive Powers

- Execution of the law enacted by the legislature.
  - Appoints & removes the high dignitaries of the state.
  - Appoints & removes
    - The Prime Minister of India.
    - Other ministers of the union.
    - The Attorney-General of India.
    - The comptroller and Auditor-General of India.
    - The judges of the Supreme Court.
    - The judges of the High Courts of the states.
    - The Governor of the states.
    - A commission to investigate interference with water-supplies
    - The finance commission.
    - The Union Public Service Commission and joint commission for a group of states.
    - The Chief Election Commissioner and other members of the election commission.
    - A special officer for the scheduled casts and tribes.
    - A commission, to report on the administration of scheduled areas.
    - A commission, to investigate into the condition on backward classes.
-

- A commission, on official language. Special officer for linguistic minorities
- President is a constitutional head who acts on the advice of the Council of Ministers.
- In making some of the appointments, the President is required to consult persons other than his ministers as well!

### **Military Powers:-**

- Commands the armed forces.
- Takes action as declaration of war or peace or the employment of the defence forces.

### **Diplomatic Powers:-**

- Negotiates treaties and agreements with other countries subject to ratification by the parliament.
- Appoints Indian representatives to other countries and receives diplomatic representatives of other states.

### **Legislative powers:-**

- Summons a joint sitting of both Houses of Parliament in case of deadlock between two Houses.
- Prorogues the Houses of the Parliament.
- Dissolves the Lower House.
- Addresses both the Houses of parliament when assembled together, at the first session after each general election to the House.
- Addresses a joint sitting of both Houses at the commencement of the first session of each year.
- Addresses either House or their joint sitting, at any time, and to require the attendance of members for this purpose [Art 86(1)]
- Nominates certain member to both the Houses upon the supposition that adequate representation of certain interests.
- In the council of states, 12 members are nominated by the President from person having special knowledge or practical experience of Literature, Science, Art and Social service [(80 (1))]
- Nominates not more than two members to the House of the people from the Anglo Indian community, if he is of opinion that the Anglo Indian community is not adequately represented in that House [Art- 331]
- Causes certain reports and statements laid before parliament.
- The constitution requires the previous sanctions or recommendation of the President introducing legislation on some matters like –
  - A bill for the formation of new states or the alteration of boundaries etc. of existing states. [Art 3]
  - A Money Bill [Art 117(1)]

### **Ordinance Power:-**

- If at any time when both Houses of Parliament are not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may issue an ordinance.
-



- The ordinance ceases to operate, if not approved within six weeks of the reassembly of Parliament.
- The President may withdraw the ordinance at any time.

### **The pardoning power:-**

- Has the power to grant pardon, reprieve, respite, suspension, remission or commutation in respect of punishment or sentence by court-martial, offences against laws made under the union and concurrent lists.
- The only authority for pardoning a sentence of death is the president.

### **Emergency powers:-**

- Under article 352, the President may proclaim a State of emergency in the whole or part of India if he is satisfied that a grave situation exists whereby the security of India or part of its territory is threatened by war or external aggression or armed rebellion.
- When a proclamation of emergency is in operation, the President may suspend the enforcement of fundamental rights [Art 359]
- Under article 356, in case of failure of constitutional machinery in any State, the president may impose by proclamation President's rule in that State.
- Article 360 empowers the President to declare financial emergency.

### **Terms:-**

- Terms of office is five years from the date on which he enters upon his office [art 56-57]

### **Removal:-**

- By resignation in writing under his hand addressed to the Vice-President of India.
- For violation of the constitution, by the process of impeachment on at least 14 days' notice by at least 2/3 majority of the House and agreed to by the other House.

## **7.2 The Vice-President**

### **Appointment:-**

- Elected by an electoral college.
- The electoral college consists of-
  - Members of both Houses of Parliament.
  - The system of proportional representation by means of single transferable vote (Art -66) is applied.

### **Terms:-**

- For the period of 5 years.

### **Eligibility condition:-**

1. Must be a citizen of India.
-

2. Completed the age of 35 years.
3. Cannot hold any other office of the profit.
4. Qualified for election as a member of the Rajya Sabha (Art- 66)

**Powers and functions:-**

- Ex-Officio chairman of the Rajya Sabha (ART -64)
- As the chairman of Rajya Sabha, presides over the proceeding of the House and functions but has no right to vote in any proceedings (Art-64)
- Acts as the President in the event of a vacancy in the office of President by reason of his death, resignation or removal or otherwise.
- While acting as President or discharging the functions of President, he may not perform the duties of he chairman of Rajya Sabha (Art-64)

**Removal:-**

- By resignation to the President.
  - By resolution with 14 days' notice passed by majority of all then members of Rajya Sabha and agreed to by Lok Sabha (Art 67, 68 & 71).
-

## 8 COMPOSITION OF PARLIAMENT:-

- The supreme legislature of the union of India is called Parliament.
- It consists of-
  - (a) The President
  - (b) The council of states and
  - (c) The House of the people

### 8.1 RAJYA SABHA

- Formed on 3<sup>rd</sup> April, 1952.
- First sitting on 13<sup>th</sup> May, 1952.
- The members of Rajya Sabha are elected by the elected members of the State Legislative Assemblies.
- The system of proportional representation by means of single transferable vote [Art 80 (4)] is applied.
- The council of States consists of not more than 250 members [Art 80 (1)]
  - 12 members are nominated by the president having special knowledge or special experience on Literature, Science, Art & Social Service [Art 80(3)].
  - The remainder i.e., 238 shall be representatives of the States and the union territories.
- The Rajya Sabha at present consists of 252 members.
- A permanent body.
- The allocation of seats to each State or UT & numbers of seats allotted to each in Rajya Sabha are specified in the Fourth Schedule
- The nominated members do not participate in the election of the President of India.
- The term of an individual member of Rajya Sabha is six years.
- 1/3<sup>rd</sup> of its members retire at the expiration of every second years.
- The Vice-President is the ex-officio chairman, elected by the members of both House of Parliament.
- Deputy Chairman is elected by the members the Rajya Sabha.
- The age of a member must not be less than 30 years.
- When the office of the chairman is vacant or he is acting as the Vice-President or discharging the function of President, his duties are performed by the deputy chairman.
- If the office of the Deputy Chairman is also vacant, the duties are performed by such manner of the Rajya Sabha as the President may appoint for that purpose.
- If Chairman and Deputy Chairman both are absent from the sitting of the House then such person as may be determined by the rule of procedure of the council and if no such person is present such other person as may be determined by the council may act as chairman.(Art- 91)

### 8.2 LOK SABHA:-

- Maximum number of members from the States is not more than 530 [Art 8(1) (a)]
  - There should not be more than 20 representatives of union territories.
  - There should not be more than 2 members of the Anglo-Indian community nominated by the President (Art 331)
-

- The representatives of the States are directly elected by the people of States.
- In the beginning, the maximum strength was 500.
- It has been increased thrice from 500 to 520 in 1956, to 525 in 1962 and to 545 in 1973.
- At present, the maximum strength is 552, based on 1981 census.
- There shall be no change in the number of seats in Lok Sabha until the year 2000 by 42<sup>nd</sup> amendment of 1976 [Art 81 (3)]
- Seats are reserved for the scheduled caste & scheduled tribes state wise on the basis of population ratios from where only SC/S can contest.
- At present, the number of seats reserved for SC and ST is 79 and 40 respectively.
- The term of the House is 5 years, but the President may dissolve it earlier.
- When a proclamation of emergency is in force, the term can be extended for a period not exceeding one year.
- Not exceeding in any case a period of six months after the proclamation has ceased to operate (Art 83)
- The age of member must 25.
- A member may be disqualified on grounds of defection under the tenth schedule which was added to the constitution by the 52<sup>nd</sup> amendment.
- Presided appoints the speaker, chosen by the Lok Sabha from among its members.
- In the absence of the speaker, the Deputy speaker discharges the functions.
- It has three sessions in a year-
  - (a) Budget Session (Feb-May)
  - (b) Monsoon Session (July-Sept.)
  - (c) Winter Session (Nov. - Dec.)
- The House may declare a seat vacant if the concerned members fails to attend the House for more than 60 days without permission

### **8.3 Speaker:-**

#### **Functions-**

- Presides over meetings of the House.
- Exercises a casting vote in the ease of equality of votes.
- Maintains order within the Lok Sabha and interprets its rules of procedure.
- In the absence of quorum, it is his duty to adjourn the House or to suspend the meeting until there is quorum.
- Presides over a joint sitting of the two Houses of Parliament [Art 118(4)].
- Certifies that a bill is a money bill.

#### **Removal:-**

- By resignation to the Deputy speaker.
  - By the resolution of the House, with 14 days' notice, passed by a majority of all the members of the House (Art 94)
-

## 9. LEGISLATIVE PROCEDURE

### 9.1 Ordinary bills

- Introduced either in the House by a minister or by a private member.
- When a bill is passed in one House, it is transmitted to the other House.
- The other House may reject the bill. In such a case the provision of joint sitting may be applied by the President [Art 108 (1)]
- It may pass the bill with amendments.
- In this case the bill is returned to the originating House.
- If the House which originated the bill accepts the bill as amended by the other House, it is presented to the President for his assent (Art 111)
- If the originating House does not agree to the amendments made by the other House and there is final disagreement as to the amendments between the two Houses, and six months have passed the president may summon a joint sitting to resolve the deadlock [Art 108 (1) (b)]

### 9.2 Financial bills

- Related to revenue or expenditure.
  - These are of two classes
- A. First Class:-which contains any of the matters specified in article 110 for the money bill but does not contain solely these matters.
- First class financial bill cannot be introduced in the Rajya Sabha.
  - Recommendation of the President is required for introduction.
  - Rajya Sabha has the same power to reject or amend it.
  - It has to be passed in the council for states through three readings like ordinary bills.
  - In case of a final disagreement between the two Houses over such bill, the provision for joint-sitting (Art-108) is applied.
- B. Second Class:-Which contains provisions involving expenditure from the consolidated fund [Art 117 (3)]
- May be initiated in either House and the council of States has full power to reject or amend it.
  - The president's recommendation is not a condition precedent to its introduction.
  - In this case it is sufficient if the President's recommendation is received before the bill is considered.
  - Without such recommendation, the consideration of such bill cannot take place [Art 117 (3)]
  - There is a provision of joint sitting in case of deadlock between two Houses.

### 9.3 Money Bills

- Decided by the speaker that a bill is a money Bill.
  - After passing by the House of the people, it is transmitted to the Rajya Sabha for its recommendations with the speaker's certificate that it is a money bill.
  - The Rajya Sabha cannot reject or amend it.
  - It must, within a period of fourteen days from the date of receipt of the bill, return the bill to the House of the people which may thereupon either accept or reject all or any of the recommendations of the council of States.
  - If it is not returned within the said period, it shall be deemed to be passed by both Houses.
  - When a bill is sent to the Rajya Sabha or presented to the President for assent, a certificate of the speaker is endorsed on it that is a money bill. [Art 110(4)]
-

- A money bill can only be introduced in the Lok Sabha, not in the Rajya Sabha [Art 109(1)]
- It can only be introduced with the recommendation of the President. However no recommendation of the President is necessary for the moving of an amendment making provision for the reduction or abolition of an tax [Art 117 (1), proviso]
- A money bill contains only provisions with respect to all or any of the following matters [Art 110 (1)]
- The imposition, abolition, remission, alteration or regulation of any tax.
- The regulation of the borrowing of money or the giving of any guarantee by the government of India.
- The custody of the consolidated fund or the contingency fund, the payment or withdrawal of money from such fund.
- The appropriation of money out of the consolidated fund of India.
- The declaring of any expenditure to be charged on the consolidated fund of India.
- The receipt of money on account of consolidated fund of India or the public account of India, or the custody or issue of such money or the audit of the accounts of the union or of a State.
- A money bill is introduced in the Lok Sabha only on the recommendation of the President.

#### **9.4 Constitution Amendment Bill:-**

- Provision of amendment under article 368.
  - Introduced in either of the House.
  - It should be passed by each House of parliament with the prescribed special majority.
  - Duly passed/ratified bill is presented to the President for his assent and his assent is mandatory.
  - The President has no option to withhold his assent or return the bill to the House for reconsideration.
  - In all cases of amendments of constitution this bill is passed by the union Parliament.
  - An amendment of the constitution is initiated only by the introduction of this bill for the purpose in either House of Parliament.
  - It is presented to the President for his assent and upon such assent being given to the Bill, the constitution stands amended accordance with the terms of the bill.
  - There is no provision for a joint session.
-

## 10. Parliamentary Committee

**There are two types of Parliamentary committees in India-**

### 10.1 Standing committee-

- Permanent in nature
- Elected by the House or nominated by the speaker/chairman every year or from time to time, as the case may be.
- Categorised in terms of the nature of their functions as:-
  - Financial Committee
  - House Committee
  - Enquiry committee
  - Scrutiny committee
  - Service Committee

### 10.2 Adhoc committee

- Constituted by the House or by the speaker/chairman, to consider and report on specific matters and become functionless officially officio as soon as they have completed their work on these matters.

#### 10.1.1 Financial committees:-

##### Committee on estimates

- Consists of thirty members of Lok Sabha
- Acts as the "continuous economy committee" and its criticism and suggestions act as a deterrent on extravagance in public expenditure.
- Makes detailed examination of annual budget estimates.
- Duty of the estimates committees to point out the defects and bring to the notice of parliament the need for change in policy.

##### The public accounts committee

- The oldest financial committee.
- Consists of 22 members (15 from Lok Sabha & 7 from Rajya Sabha).
- A member of opposition is being appointed as the chairman since 1967, as a matter of practice.
- Described as the 'twin-sister' of the estimates committee.
- Deals with the accounts showing the appropriation of sums granted by the House for the expenditure of the government of India in order to ascertain whether the money has been spent as authorized by parliament and for the purpose for which it was granted.
- It is assisted by the comptroller and Auditor-General of India who participates in its meetings.

##### Committee on Public undertakings:-

- Consisting of 22 members (15 elected from Lok Sabha & 7 from Rajya Sabha)
-

- The chairman is appointed by the speaker from among the members of the committee drawn from Lok Sabha.
- Examines the reports and accounts of the public undertakings specified in the rules of procedure in the reports of the comptroller and Auditor-Genera.
- Examines the content of the autonomy an efficiency of the public undertakings, whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices.

### **10.1.2 House Committees:-**

#### **Business advisory committee**

- In each House, there is a business advisory committee.
- In Lok Sabha, the committee consists of 15 members including the speaker who is the ex officio chairman.
- In Rajya Sabha it consists of 11 members, including the deputy chairman who is the ex officio chairman.
- The speaker/ chairman, nominates the committee.
- The function of the committee is to recommend the time that should be allocated for the transaction of such legislative and other business as initiated by the government.
- In Rajya Sabha, the committee also recommends the time that should be allocated for the discussion of private members bills and resolutions.
- It may recommend to the government to bring forward particular subject for discussion in the House and recommend allocation of time for such discussion.

#### **Committee on private members' bills and resolutions:-**

- Consists of 15 members of Lok Sabha with the Deputy speaker as its chairman.
- The function of the committee is to allot time to time private members bills and resolutions.
- It examines private members' bills seeking to amend the constitution before their introduction in Lok Sabha.
- There is no such committee in Rajya Sabha.

#### **Committee on absence of members from the sittings of the House:-**

- Consisting 15 members of Lok Sabha.
- Considers all applications from members for cause of absence from the sittings of the House.
- Examines every case where a member has been absent for a period of sixty days or more, without permission from the sittings of the House.

#### **Rules committee**

- In Lok Sabha, it consists of 15 members, including the speaker who is the ex officio chairman of the committee.
  - In Rajya Sabha consists of 16 members including the chairman and the deputy chairman.
  - Considers matters of procedure and conducts of business in the House.
  - Recommends any amendments or additions to the rules that may be deemed necessary
  - Suggestion for amendments or additions to the rules can be made member of the House, minister or the committee itself.
-



### 10.1.3 Enquiry Committees

- Both in Lok Sabha & Rajya Sabha.
- In Lok Sabha, it consists of 15 members.
- Examines every petition which, after presentation to the House, stands referred to the committee.
- Reports to the House on specific complaints made in the petitions after taking such evidence as it deems fit.
- Suggests remedial measures, either on specific case under review or in a general way to prevent such cases in future.
- Considers representations, including letters and telegrams received from various individuals and associations which are not covered by the rules relating to petitions & gives directions for their proper disposal.

### Committee on privileges

- In Lok Sabha it consists of 15 members.
- In Rajya Sabha, it has 10 members.
- The function of this committee is of a semi-judicial nature and it is vested with wide powers.
- Performs a vital role in safeguarding the power and prestige of parliament and its members.

### 10.1.4 Scrutiny committees

#### Committee on Govt. Assurances

- Committee of Lok Sabha consists of 15 members.
- Committee of Rajya Sabha has 10 members.
- Scrutinises the assurances so given by Ministers on the floor of the House and to report to the House, the extent to which such assurances have been implemented.

#### Committee on subordinate legislation

- The committee of each House consists of 15 members nominated by the speaker/chairman.
- Scrutinizes and reports to the House whether the powers to make rules, sub-rules, regulations, by parliament by status have been properly exercised within such conferment or delegation, as the case may be.

#### Committee on welfare of scheduled castes and scheduled tribes

- Consisting of 30 members (20 from Lok Sabha and 10 from Rajya Sabha) elected by the respective House of parliament from amongst their members.
- Considers the report of the commissioner for SC and ST and reports to parliament as to the measures taken or required to be taken by the government thereon.
- Examines and reports on all matters pertaining to the welfare of the SC & ST including their representation in the different services, working of their welfare programmes, etc.
- Ensures the effective implementation of the constitutional safeguard for these backward communities.

### 10.1.5 Service committees

#### General purposed committee

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- In each House there is a general purpose committee.
- The presiding officer of the concerned House is the ex officio chairman of the committee.
- Consists of deputy speaker or deputy chairman.
- Constituted to advise on such ad hoc matters concerning the affairs of the House & its members as do not & appropriately fall within the purview of any other parliamentary committee.

## **11. PRIME MINISTER AND COUNCIL OF MINISTERS**

### **11.1 PRIME MINISTER:**

#### **Appointment**

- Appointed by the President (the leader of the party in majority in the Lok Sabha).

#### **Eligibility Condition**

- Must be qualified for the election as a member of the Lok Sabha.
- Must be of 25 years.
- Cannot hold any other office of the profit.

#### **Terms**

- Five years with the term of Lok Sabha.

#### **Powers**

- Leader of the Lok Sabha.
- Power of selecting the other Ministers and also advising the President to dismiss any of them individually, or require any of them to resign.
- The allocation of portfolios amongst the Ministers and transfer a Minister from one Department to another.
- He is the chairman of the Cabinet, summons its meeting and presides over them.
- He is in charge of coordinating the policy of the Government and has, accordingly, a right of supervision over all the departments.
- Resignation of other ministers merely creates a vacancy, the resignation or death of Prime Minister dissolves the Cabinet.

#### **Duties**

- To communicate to the President of all decisions of the Council of Ministers relating to the administration of the affairs of the union and proposals for legislation.
  - To furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for.
  - If the President so requires, to submit for the consideration of decision taken by a minister but which has not been considered by the council.
-

## 11.2 DEPUTY PRIME MINISTER

- The post of Deputy prime Minister is not known to the Constitution, although seven persons have occupied this post since the inauguration of the Constitution. Sardar Vallabhbhai Patel was the first Deputy Prime Minister in Nehru's Ministry.
- The Deputy prime Minister occupies position next to the Prime Minister.
- He assists the Prime Minister and discharges his duties when he is not available.

## 11.3 COUNCIL OF MINISTERS

- Appointed by the President on the advice of the Prime Minister.
  - Allocation of portfolios amongst them is made by the President.
  - The number of members of the Council of Ministers is not specified in the Constitution, determined according to the exigencies of the time.
  - Hold offices during the pleasure of the President.
  - Collectively responsible to the Lok Sabha but individually to the President.
  - They are classified under three ranks but this classification does not find any mention in the constitution.
    - (1) Cabinet Ministers.
    - (2) Minister of States.
    - (3) Deputy Minister.
  - A Minister who is a member of one House has a right to speak in and to take part in the proceedings of the other House though he has no right to vote in the House of which he is not a member (Art- 88)
  - There is no bar to the appointment of person from outside the legislature as Minister. But he cannot continue as Minister for more than 6 months.
  - In practice, the Council of Ministers seldom meets as a body.
  - It is the Cabinet, as inner body within the council, which shapes the policy of the Government. Ministers of States & Deputy Ministers are not members of the Cabinet.
-

## 12 THE STATE EXECUTIVE

### GOVERNOR

#### Appointment

- Appointed by the President (Art 155)

#### Terms

- For the period of five years.
- Holds office at the pleasure of the President (Art 156)
- The pleasure of the President cannot be questioned in the Court.
- The Governor may, writing under his hand addressed to the President, resign from his office.

#### Eligibility condition

- Must be citizen of India.
- Completed the age of 35. (Article 157)
- Cannot be member of Parliament or of any of the state legislature.
- Cannot hold any other office of the profit.

#### Salary & emoluments

- Gets a monthly emoluments of ₹ 1 Lakh (Act 158, under 1987 Act )
- Entitled to free official residence.
- Given to such allowances and privileges as were enjoyed by a provincial governor at the commencement of the constitution.
- When the same person is appointed as Governor of two or more states, the emoluments and allowances payable to the governor is allocated among the states in such proportion, as the president may be order determine.

#### Powers and functions

- The Governor is to be guided by the Council of Ministers (Art 163)

The Governor possesses the followings powers:-

#### Executive Powers

- Appoints the Advocate General, the members of the State Public Service Commission and judges of subordinate courts (Art 165, 316, 283 and 284).
  - Members of the State Public Service Commission cannot be removed by the Governor.
  - Appoints the Chief Minister and other ministers on the advice of the Chief Minister.
  - Determines the royalty for mineral licenses to District-Councils in case of tribal areas of Assam (under the 6<sup>th</sup> schedule)
  - Makes report to the President about the failure of the constitutional machinery in the state.
  - Gives assents to Bills.
  - Reserves a state bill for the consideration of the President (Article 200)
-

**Legislative Powers**

- nominates the members to the Legislative Council of the state from the fields of literature, science, art co-operative movement and social service [Art 17 (3) (e) (5)]
- Nominates to the legislative Assembly, a person from the Anglo-Indian community if he feels the community needs representation. (Art -333)
- Summons and prorogues the two Houses of the legislature and can dissolve the Legislative Assembly of the state (Art- 174)
- Issues ordinance, which are valid up to 6 months.
- Power to nominate two women in the Legislative Assembly of J & K.

**Judicial Powers**

- The power to grant pardons. Power to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends. (Art- 161)

**Financial Powers**

- Causes the Annual Financial Statement to be laid before the House or Houses (Art 202).
  - A money bill cannot be introduced and demand for grant cannot be moved without the recommendation of the Governor.
-

### 13. THE STATE LEGISLATURE

- The Legislature of state consists:-
  - Governor
  - Legislative Assembly
  - Legislative Council

#### 13.1 Legislative Assembly

- The Legislative Assembly of a state consists of not more than 500 and not less than 60 members chosen by direct election from territorial constituencies.
- Seats are reserved for the SC/ST on the basis of population from where only SC/ST candidate can contest for the election.
- The term is five years.
- Eligibility for membership
- Must be a citizen of India
- Must not be less than 25 years of age.
- The Assembly has a Speaker and Deputy Speaker elected by the House and having the same position and functions as their Lok Sabha counterparts.
- As regards Money Bills, the will of the Assembly prevails, and the Assembly is not bound to accept any such recommendations of the Council.
- If a Bill (other than Money Bill) is passed by the Legislative Assembly and the Council-
  - Rejects the bill, or
  - Passes it with such amendments as are not agreeable to pass the Assembly, or
  - Does not pass the bill within 3 months from the time when it is laid before the council.
- The Assembly has power to pass the Bill with or without further amendments, and transmit the Bill to the Council again.
- If the Council-
  - With holds again it for a period of 1 month
  - Rejects the bill
  - Proposes amendments not agreeable to the Assembly.
 The Bill is deemed to have been passed.
- The Council of Ministers is responsible only to the Assembly.
- In the case of a Bill originating in the council, the Assembly has the power of rejecting and putting an end to the Bill forthwith.

#### 13.2 Legislative Council

- The procedure prescribed the creation of the Legislative Council of the state by a resolution of the Legislative Assembly of the state concerned passed by a special majority of the Assembly (Art-169)
  - The size of the Legislative Council varies with that of the Legislative Assembly.
  - The membership of the council being not more than one third of the membership of the Legislative Assembly and not less than 40. (Art 17(1))
-

- It is partly elected and partly nominated body.
  - Elections to the Council are to be held by the system of proportional representation by single transferable vote (Art -170-171)
  - 5/6 of the total number of members of the Council are, elected by electorates consisting
  - 1/3 of the total number of members of the Council elected by electorates consisting of members of local bodies, such as municipalities, district boards.
  - 1/12 elected by graduate's constituency.
  - 1/12 by teacher's constituency.
  - 1/3 by member of the Legislative Assembly.
  - 1/6 nominated by the Governor.
  - It is not a subject to dissolution. But one third of its members retire on the expiry of every second year [Art 172 (2)]
  - Eligibility for membership:-
    - Must be a citizen of India.
    - Must not be less than 30 years of age (Art -173)
  - In the case of Bill originating in the Council of States and transmitted to the Assembly, after its passage in the Council, if the legislative Assembly either rejects the Bill or makes amendments which are not agreed to by the Council, there is an immediate end of the Bill, and Assembly has no power to pass it.
-

## 14. THE JUDICIARY

### 14.1 The supreme court

- Article 124 provides for the establishment of the Supreme Court with a chief justice and seven other judges.
- It authorizes parliament to increase the number of judges by law.
- The number as fixed by law in 2008 was 31 in addition to the chief justice.
- Appointment of judges.
- Appointed by the president after consultation with the council of ministers such judges of the Supreme Court and of the high courts as he may deem necessary.
- Usually the senior most judge of the Supreme Court is appointed as chief justice.
- The advice of the Chief Justice is obligatory.

### Qualification of the Judges

- A citizen of India.
- A distinguished jurist or
- Has been a high court judge for at least 5 years.
- Has been an advocate of a high court for at least 10 years.

### Salary

- The chief justice gets ₹ 1 lakh per mensem as the basic salary.
- Other judge age ₹ 90,000 per mensem.

### Removal

- Retirement at the age of 65 years.
- By an order of the President passed after an address by each House of parliament "on the ground of misbehavior or incapacity" supported by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting is presented to him in the same session.

### Power and jurisdiction of the court

- Under article 131 it has power to hear and determine the disputes between-
    - The Govt. of India and one more States.
    - The Govt. of India and one or more States on one side and one or more States on the other.
    - Two or more States.
  - Under the new article 139 A inserted by the 44th amendment in 1978, the supreme court may transfer to itself cases from one or more high courts if these involve questions of law or of great importance.
    - Entertain an application for the issue of a constitutional writ for the enforcement of fundamental right. Under writ jurisdiction (art 32)
    - The individual has the right to directly move the Supreme Court by presenting a petition.
  - It is the highest court of appeal from all courts in the territory of India under appellate jurisdiction regarding civil, criminal & constitutional matters.
-



- It has an advisory jurisdiction to give its opinion, on any question of law or fact of public importance as may be referred to its consideration by the president.

## **14.2 THE HIGH COURT**

- Consists of the chief justice and other judges.
- At present the number of High Court is 21 in India.

### **Appointment**

- Judges of the high court are appointed by the president after consultation with the chief justice of India, the Governor of the State & the chief justice of the high court.
- The chief justice of the high court is appointed by the President after consultation with the chief justice of India & the Governor of the State.

### **Eligibility**

- Must be a citizen of India.
- Ten years' service in a judicial office or
- Ten years experience as a high court advocate.

### **Salary**

- A judge of the high court gets a salary of ₹ 80,000 per mensem.
- Chief justice of the high court gets a salary of ₹ 90,000 per mensem.

### **Removal**

- By retirement at the age of 62 years.
- By resignation in writing addressed to the President.
- By being appointed a judge of the Supreme Court or being transferred to any other high court, by the president.
- By the president on an address of both Houses of Parliament, supported by the vote of 2/3 of the member present, on the ground of proved misbehaviour or incapacity.

### **Powers of the high courts**

- Each high court has powers of superintendence over all the courts and tribunals (Article 227)
  - Every high court has power throughout the territory under its jurisdiction to issue to any person or authority directions, orders or writs including writs of habeas corpus, prohibition, quo warranto and certiorari or any of them for the enforcement of the fundamental rights or for any other purpose (Art 226)
  - The appellate jurisdiction of the high court is both civil & criminal.
-

## **15. Important Amendment**

### **Tenth Amendment, 1961**

- Added two new territories of Dadra and Nagar Haveli to the List of Union territories in the First Schedule.
- Added a new Article 239-A to provide for the creation of the Legislatures and Council of Ministers in certain Union territories.

### **Twelfth Amendment 1962**

- By this Amendment the territories of Goa, Daman and Diu were included as a Union in the First Schedule.

### **Fourteenth Amendment, 1962**

- This amendment added the territory of Pondicherry, a French establishment, as a Union territory in the First Schedule.

### **Fifteenth Amendment, 1962**

- Raised the retirement age of High Court judges from 60 years to 62 years by amending Art, 217.

### **Twenty-First Amendment, 1966**

- Amended Schedule VIII to the Constitution, added "Sindhi" as constitutionally recognized language in India.

### **Twenty-Fourth Amendment, 1971**

- Passed to remove difficulties created by the decision of Supreme Court in Golaknath v. State of Punjab.
- It not only removed the restrictions placed by the Goalk Nath's case but has extended the power of amendment by adding the words, "Parliament may amend by way of addition, variation or repeal any provision of the Constitution."

### **Twenty-Sixth Amendment, 1971**

- This amendment was necessitated by the decision of the Supreme Court in Privy Purse case (Madhav Rao Sindia v. Union of India), in which the Presidential Order derecognizing the privileges of the Ex-Rulers of Indian States was declared unconstitutional.
- The Amendment omitted Arts, 291 and 362 and inserted a new Article, Art 363-A, which abolished the right of privy purse and all rights, liabilities and obligation in respect of privy purses.

### **Twenty-Eight Amendment, 1972**

- Abolished the special privileges enjoyed by the Members of the Indian Civil Services.
-

### **Thirty-First Amendment, 1974**

- Amended Art. 81(1) and raised the strength of the Lok Sabha from 525 to 545.

### **Thirty-Sixth Amendment, 1975**

- It amended the first Schedule to the Constitution and included Sikkim as the 22<sup>nd</sup> State of the Indian Union.

### **Fortieth Amendment, 1976**

- Substituted a new Article for the existing Art. 297 empowers Parliament to specify by law the limits of the country's territorial waters, the continental shelf, the exclusive economic zone and other maritime zones.

### **Forty-First Amendment, 1976**

- It raised the age of retirement of the Chairman and Members of the State Public Service Commission from 60 to 62 years, with a view of bring it in line with the retirement age of the High Court Judges.

### **Forty-Second Amendment, 1976**

- Inserted three new words 'Socialist' 'Secular' and 'integrity' in the Preamble.
  - Gave supremacy to the directive principles over the fundamental rights
  - The Act added three new directives to the Constitution : (1)Equal justice and free legal aid, Art,39(A); (2)Participation of workers in the management of industries, Art 43-A; (3) Protection and improvement of environment and safeguarding of forests and wild life, Art 48-A.
  - Added a new Part IV A to the Constitution which lays down ten fundamental duties for the citizens of India.
  - Article 55 was amended to make it clear that the 'population' of the country for the purposes of allocation of seats in Parliament and the State Assemblies will be determined on the basis of the 1971 census and will remain the same till the year 2000.
  - Amended Art. 74 which now make it clear that the President shall be bound by the advice of the Council of Ministers.
  - Empowers the Supreme Court to transfer cases from the one High Court to another High Court if it expedient to do so for the ends of justice.
  - The Law providing for a creation of the all India Judicial service shall not be deemed to be an amendment of the Constitution for the purposes of Article 368.
  - The amendment added a new chapter to the Constitution, entitled ad "Tribunals". Consists of it Article – Art.323-A provides for the establishment of Administrative Tribunals for determining
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disputes relating to the recruitment and conditions of service of Central Government servants and servants of the States. Article 323-B provides for the creation of various other tribunals.

- In Article 352 it has inserted the following words : “ in respect of the whole of India or of enable the President to make a Proclamation of emergency either in respect of any part of the country or the whole of India.

#### ***Forty-Fourth Amendment, 1978***

- Article 71 “as originally enacted” gave jurisdiction to the Supreme Court to decide election disputes of the President and the Vice President.
- Article 74 as amended by the 42<sup>nd</sup> Amendment made the advice of the Cabinet binding on the President. The 44<sup>th</sup> Amendment retains the amendment but adds a new provision which provides that “the President may require the Council of Minister to reconsider its advice tendered by them and that the President shall act in accordance with the advice tendered after such reconsideration”.
- Took away the right to property from the category of fundamental rights and makes it a right which can be regulated by ordinary law. Consequently, it has replaced Art, 19(1)(f) and Art 31.
- It has inserted a new Article 300A under the Heading “Right to Property” in Part XII of the Constitution which provides that-“no person shall be deprived of his property save by authority of law”.
- Omitted Art. 329 – A which was inserted by the 42<sup>nd</sup> Amendment Act and which took away the power of the court to decide the election disputes of the Prime Minister and the Speaker of the Lok Sabha.
- Amended article 352, by inserting- “The President shall impose national emergency on the written advise of the/union Cabinet(the word finds mention in the Constitution for the first time)

#### ***Fifty-Second Amendment Act, 1985***

- Amended Articles 101 102 190 and 191 and added Tenth Schedule to the constitution which is related to anti-defection law.

#### ***Fifty-Fourth Amendment Act, 1986***

- Amended Parts D of the second Schedule of the Constitution and raises the salary of the Chief Justice of India from Rs. 5000 to Rs. 10,000, those of Supreme Court Judges and Chief Justices of High Courts from Rs. 4000 to Rs. 9000 and High Court Judges from Rs. 35000 to Rs. 8000.

#### ***Fifty-Eight Amendment, 1987***

- Provided for an authoritative text of the Constitution in Hindi and says that the translation of this Constitution shall have the same meaning as the original thereof.

#### ***Sixty-First Amendment Act, 1989***

- Amendment Art, 326 of the Constitution and reduced the voting age from 21 to 18 years.
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***Sixty-Second Amendment Act, 1989***

- Extended the reservation of seats for SC's and ST's in the Central and State Legislative Assemblies from 40 years to 50 years.

***Sixty-Fifth Amendment Act, 1990***

- Amended Article 338 of the Constitution and provided for the establishment of a "National Commission for Scheduled Caste and Scheduled Tribes" in place of a special officer for the SC's and ST's (b) It shall consist of a Chairman, Vice-Chairman and five other members.

***Sixty Ninth Amendment Act, 1991***

- Added two new Articles, Art 239 AA and 239 AB to the Constitution.
- Artt. 239 AA provides for the establishment of Legislative Assembly and Council of Ministers for the National Capital of Delhi.
- The new Art 239 AB provides for the imposition of the President rule in the case of failure of constitution machinery in the National Capital Territory.

***Seventieth Amendment Act, 1992***

- Amended the Eighth Schedule of Constitution and added three more Indian Language as Official languages namely, Nepali, Konkani and Manipuri making the total number 18.

***Seventy Third Amendment Act, 1992***

- Added a new Part IX to the Constitution consisting 16 Articles and new Schedule "Schedule Eleven".
- These articles provides for the Constitution, composition, election, duration and powers and responsibilities and power to levy taxes and duties by the Panchayti Rajya Institution in the rural areas.
- The Eleventh Schedule contain 29 subjects on which the Panchyats shall have administrative control.

***Seventy-Fourth Amendment Act, 1992***

- A new part IX-A to the Constitution relating to urban local bodies which consists of 18 Articles and a new Schedule "Twelfth Schedule".
  - These Articles provide for the constitution, composition, election, duration of municipalities and power and responsibilities upon municipalities in respect of preparation of plans of economic development and levy taxes and duties by municipalities.
  - The Twelfth Schedule contains 18 subjects on which the municipalities shall exercise administrative control.
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**Seventy Fifth Amendment Act, 1993**

- It has amended Article 323-B and added a new Clause (h) providing for establishment of tribunals for regulation and control of tenancy issues including the rights, title and interests of landlord and tenants.

**Seventy Sixth Amendment Act**

- Included the Tamil Nadu Act on 69% reservation of seats for backward classes in government jobs and educational institutions in the 9<sup>th</sup> schedule to the constitution.

**Seventy Seventh Amendment Act**

- Passed to invalidate the effect of the Supreme Court judgement in the Mandal Commission case.
- Provides for reservation in promotions in government jobs in favour of SCs and STs, if they are inadequately represented.

**Seventy Eighth Amendment Act**

- Place land reform acts and amendments to these act under Schedule 9 of the constitution

**Seventy Ninth Amendment Act**

- Extend reservation for SC / ST and nomination of Anglo Indian members in Parliament and State Assemblies for another ten years i.e. up to 2010

**Eightieth Amendment Act**

- Implement Tenth Finance Commission recommendation to simplify the tax structures by pooling and sharing all taxes between states and The Centre

**Eighty-First Amendment Act**

- Protect SC / ST reservation in filling backlog of vacancies

**Eighty Second Amendment Act**

- Permit relaxation of qualifying marks and other criteria in reservation in promotion for SC / ST candidates

**Eighty Third Amendment Act**

- Exempt Arunachal Pradesh from reservation for Scheduled Castes in Panchayati Raj institutions

**Eighty Fourth Amendment Act**

- Extend the usage of 1971 national census population figures for statewise distribution of parliamentary seats
-

***Eighty Sixth Amendment Act***

- Provides Right to Education until the age of fourteen and Early childhood care until the age of six

***Eighty Seventh Amendment Act***

- Extend the usage of 1971 national census population figures for statewide distribution of parliamentary seats

***Eighty Ninth Amendment Act***

- The National Commission for Scheduled Castes and Scheduled Tribes was bifurcated into The National Commission for Scheduled Castes and The National Commission for Scheduled Tribes

***Ninety First Amendment Act***

- Restrict Cabinet size to 15 % of legislative members & to strengthen Anti Defection laws

***Ninety Second Amendment Act***

- Enable Levy of Service Tax & Include Bodo, Dogri and Maithali as National Languages

***Ninety Third Amendment Act***

- To enable provision of reservation for other backward classes (O.B.C.) in government as well as private educational institutions

***Ninety Fourth Amendment Act***

- To provide for a Minister of Tribal Welfare in newly created Jharkand and Chattisgarh States
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## 16. Emergency Provisions

There are three kinds of emergency provisions:

- Article 352 – National Emergency arising out of war external aggression or armed rebellion within the country.
- Article 356 – Constitutional Emergency, President's Rule arising out of the failure of Constitution Machinery in the States.
- Article 360 – Financial Emergency arising out of threat of financial ability or credit of India.
- Proclamation of Emergency has to be approved by both the Houses of Parliament separately, within one month by the total membership of the House and not less than 2/3rds of the members present and voting.
- For further continuation, similar resolution will be required every 6 months. Not less than 11/10 of the members in Lok Sabha may requisition a meeting on this matter.
- To discontinue the proclamation a resolution by Lok Sabha (simple majority) is required.

### 16.1 Effects of National Emergency

#### ***Executive***

- Executive power of Union shall extend to the giving of directions to any states as to the manner in which their executive power is to be exercised.
- State Government though not suspended, will be under the complete control of the Union Executive.

#### ***Legislative***

- Parliament has the right to extend the normal life of Lok Sabha, for a period not exceeding 1 year at a time and not exceeding beyond a period of 6 months after the proclamation has ceased to operate.
- Division of powers into various lists as given in the Constitution ceases to operate, Union Parliament can make laws regarding any subject which it thinks necessary.

#### ***Financial***

- President can modify the various constitutional provisions relating to financial allocation between Centre and States. But order will not effect the financial year in which proclamation itself ceases to operate.

#### ***Fundamental Rights***

- Article 358 suspending Article 10 came into operation automatically as soon as proclamation of Emergency on the ground of war external aggression is issued.
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- Article 359 suspending of enforcement of Fundamental Rights shall relate only those Fundamental Rights which are specified in the President's order.

This can be done any grounds under Article 352 war, external aggression or armed rebellion. Article 20 and 21 are exceptions which cannot be suspended.

### **Use of Article 352**

- First time in October 26, 1962
- Second time in December 1971

2<sup>nd</sup> was in operation when the 3<sup>rd</sup> proclamation of June 25, 1975 was made on internal disturbances. 2<sup>nd</sup> and 3<sup>rd</sup> were revoked in March 1977.

### **16.2 Effects of President's Rule**

- Union government assumes control over all functions in the State administration except judicial.

Duration

- i. Ordinarily for a period of 2 months. The 2 month period can be extended by a resolution of both houses to 6 months at a time to a maximum duration of 3 years.
- ii. But if the duration is to be extended beyond one year two other conditions have to be satisfied (44 Amendment):
  - A proclamation of Emergency is in operation in the whole of India or any part of the State.
  - Election Commission certifies difficulties in holding general elections to the Legislative Assembly of the State concerned.

It has been strongly urged that the power under Article 356 cannot be used to dismiss a Government so long as it commands the confidence of the legislature. Constitution Emergency is proclaimed by President either on a report of the Governor or even without i. Only subjective view of the President is required. The President is not bound to disclose the reasons. Thus its propriety cannot be questioned by the courts.

### **16.3 Effects of Financial Emergency**

- Executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the direction.
  - Reduction of Salaries and allowances of all or any classes of persons serving in connection with the affairs of the state.
  - Requires Money Bills or other financial bills to be reserved for the consideration of the President after they are passed by the State legislature.
-

- Reduction of salaries of any class of persons serving in connection with affairs of the Union including the judges of High Court and Supreme Court.

### **Duration**

Ordinarily for a period of 2 months unless before the expiry of that, it is approved by resolutions of both Houses of Parliament. Till now Financial Emergency has not been declared.

## **17. Amendment Process**

### ***By Simple Majority***

- About two dozen articles needs just simple majority and the assent of the President to bring an amendment in the Constitution.

For example:

- Eligibility for citizenship
- Remuneration for the Supreme Court and the High Court Judges.
- Creation or abolition of the Legislative Council of the State.
- Creation of a new State increasing or decreasing the areas of a State.
- Changing the name of the state or abolition of a state in complete and its assimilation with another state or states.

### ***By Special Majority***

- The bill should be passed by both the Houses, of the Parliament with a special majority of  $2/3^{\text{rd}}$  of its member present and voting and the majority of the total strength of the house.
- Then it has to receive the confirmation of the President.
- The Amendment Bill can be brought in either of the two House of the Parliament.

### ***By special majority & Ratification of State Legislature***

- The third procedure is similar to the second with the addition of one more clause that is the passed bill should be ratified by at least half of the state of legislatures in the country.
  - The third procedure was deemed necessary by the Constitution makers for they thought that the representative of the provincial government would hardly agree to a Constitution, which can be amended without states playing any role event for subjects that concern them.
  - In addition, it would have violated the principle of Federation if the change governing the Centre-state relations had been without state consent.
  - Through this procedure viz. ratification by state legislature the following provisions of the Constitution can be amended.
    - Art 54 election of the President.
    - Article-55-election procedure of the President.
    - Article 73-expansion of the executive power of the Union and State respectively
    - Article241 & Chapter 5 of Part VI High Court of Union Territories of State respectively.
    - Legislature relations between Centre and the States.
    - Any subject under Schedule VII.
    - States representation in the Parliament.
-

- Article-368 itself to bring changes in the procedures of Amendment.

## **18. Some Important Functionaries**

### **18.1 The Attorney General**

- Appointed by the President.
- Hold office at the pleasure of the President.
- Must be qualified to become a judge of the Supreme Court.
- Gives advice to the Union Government on legal matters referred to him by the President.
- Represents the Government of India in all the courts within the territory of India.
- Has right to speak and participate in the proceedings of the Lok Sabha and the Rajya Sabha without a right to vote.

### **18.2 The Chief Election Commissioner**

- Appointed by the President.
  - Normally he holds office for five year which can be extended by 1 year at a time but he cannot continue in office beyond 58 years of age.
  - He may be removed on similar grounds as provided for the judges of the Supreme Court.
  - The Chief Election Commission gets such salaries and allowances as determined by the President from time to time but it can't be changed to disadvantage during his tenure.
  - He is head of the Election Commission and associated with all the functions what the Election Commission performs.
  - Some of the important functions are as follows:
    - To prepare electoral rolls.
    - To supervise machinery for elections so that it may be held in free and fair manner.
    - To appoint election tribunals to settle doubts and disputes in connection with elections.
    - To give recognition to a political party and allot symbols.
    - To issue a code of conduct to be observed all parties and peoples at the time of election.
    - To advise The President or The Governor on a matter relating to a disqualification of legislator.
-

### 18.3 The Comptroller and Auditor General of India

- The CAG controls the entire financial system of the country- both at the Union as well as State levels.
- The CAG is appointed by the President and the term of his office shall be 6 years from the date on which he assumed office.
- He shall vacate his office on attainment of the age of 65 years or on the Completion of the 6 year term, whichever is earlier.
- He may resign his office by writing under his hand, addressed to the President.
- The CAG can be removed only on an address from both Houses of Parliament on the ground of proved misbehaviors or incapacity. The procedure of CAG's removal is the same as that of a Supreme Court/High Court Judge.
- His salary is equal to that of a judge of the Supreme Court i.e.-Rs.90,000 per mensem. The salaries etc, of the CAG and his staff shall be charged upon the consolidated fund of India and shall be thus non-vote able. The CAG shall be disqualified for any further Government office after retirement.

The duties and power of the CAG are as follows:

- To audit and report on all expenditure from the Consolidated Fund of India and of State/Union territory having a legislative assembly as whether such expenditure has been in accordance with law.
  - To audit and report on all expenditure from the contingency funds and Public Accounts of the Union and of the State.
  - To audit and report on receipts and expenditure of all bodies/authorities substantially financed from Union/State revenues as well as Government Companies and Cooperation.
  - The CAG in India only audits the expenses and has no control over issue of the money a function which is covered by the expression comptroller. Therefore the prefix 'Comptroller' is a misnomer in Indian context.
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## 19. Parliamentary Committees

COMMITTEES	NUMBER OF MEMBERS	FUNCTIONS
1. Committee on Estimates	30 members from Lok Sabha	Examines the annual budget Estimates & suggest measures To ensure improvement
2. Committee on Public Accounts	22 member – 15 from Lok Sabha and 7 from Rajya Sabha	Ensures that public is spent in Accordance with Parliament Decisions.
3. Committee on Public Undertakings	16 members -10 from Lok Sabha and 5 from Rajya Sabha	It scrutinizes the working of Public undertakings.
4. Business Advisory Committee	5 from Rajya Sabha 15 members with speaker as chairman	It plans and regulate the Business of the House & re-commend time to be allotted for discussion of various matters
5. Committee on private Members Bill	15 members nominated by the Speaker	It classifies and allocates time to Bills introduced to Private Members
6. Rules Committee	15 members with speaker as chairman	It consider matters of procedure and conduct of business in the House.
7. Committee of absent Members	15 nominated members from Lok Sabha	Examines the leave application and absence of members of the Lok Sabha.
8. Committee of privileges	15 members nominated by the Speaker	Looks into cases regarding violation of privileges of members of Parliament and recommends Suitable measures.
9. Committee of petition	15 members nominated by the Speaker	Consider the merit of petition submitted to it and make re-commendation to the Houses remedial measures.
10. Committee on Welfare of SC/ST	30 members drawn from both House	Consider all matter relating to SCs/ STs and seas whether Constitutional Safeguards in respect of these Classes are properly implemented.
11. Committee of Government Assurances	15 members nominated by the Speaker	Examines how far assurance and Undertaking given by ministers on the Floor of the House have been Implemented.
12. Committee on Subordinate legislation	15 members	Scrutinizes whether the power to make regulations rules etc conferred by the Constitution or statues are properly exercised.

## 20. Some Important Facts:

### 20.1 Content of Oath:

#### OFFICE

- President
- Minister for Union
- Members of parliament
- Chief justice and Judges of Supreme Court
- Comptroller and Auditor General
- Chief justice and judges of High Courts

#### CONTENTS OF OATH

To preserve, protect and defend the constitution & law

To bear true faith and allegiance to the constitution, to uphold sovereignty and integrity of India, to do right to all manner of people

To bear true faith and allegiance to the constitution, to uphold sovereignty and integrity of India, to faithfully discharge the duty.

To bear true faith and allegiance to the constitution, to uphold sovereignty and integrity of India, to perform duties, of office to best of ability, knowledge and judgment, without fear and favour and to uphold constitution and laws

Do

Do

### 20.2 CONSTITUTIONAL AMEDEMMENTS

#### CONCEPTS/PROVISIONS

- National Commission of SCs & STs
- Abolition of the classification of states into three categories
- Abolition of privy purses and other privileges of the princess
- Abolition of special privileges of I.C.S. officer
- Reservation in promotions in govt. jobs for SCs & STs in states
- The word "union cabinet"
- President bound by the advice of Council of Ministers
- National emergency under article 352 to be imposed on the written advice of the union cabinet
- Anti-Defection law
- Voting age to be 18 years

#### CONSTITUTIONAL AMEDEMMENT ACT

65<sup>th</sup> Amd, 1990

7<sup>th</sup> Amd, 1956

26<sup>th</sup> Amd, 1972

28<sup>th</sup> Amd, 1972

77<sup>th</sup> Amd, 1995

44<sup>th</sup> Amd, 1978

42<sup>nd</sup> Amd, 1976

44<sup>th</sup> Amd, 1978

52<sup>nd</sup> Amd, 1985

61<sup>st</sup> Amd, 1989

- Legislative Assembly for Delhi 69<sup>th</sup> Amd, 1991
- Deletion of "Right to property from" the list of Fundamental Rights 44<sup>th</sup> Amd, 1978
- Incorporation of the words socialist, secular and integrity in preamble 42<sup>nd</sup> Amd, 1976
- Incorporation of Fundamental Duties 42<sup>nd</sup> Amd, 1976
- Inclusion of Konkani, Manipuri and Nepalese in 8<sup>th</sup> schedule 71<sup>st</sup> Amd, 1992
- Constitutional status Panchayats 73<sup>rd</sup> Amd, 1993
- Constitutional status to Nagar palika 74<sup>th</sup> Amd, 1993
- President's power to refer back a matter to the council of ministers for reconsideration 44<sup>th</sup> Amd, 1978
- Statehood to Goa 56<sup>th</sup> Amd, 1987
- Authoritative text of the constitution in Hindi 58<sup>th</sup> Amd, 1987

### 20.3 MODE OF RESIGNATION

#### OFFICE

- High Court Judge
- Chief Justice, HC
- Supreme Court Judge
- Chief Justice, SC
- Speaker Lok Sabha
- Dy, Dpeaker Lok Sabha
- Chairman, Rajya sabha
- Dy. Chairman, Rajya sabha
- C.A.G
- Chief Election Commissioner
- Governor
- Prime Minister

#### RESIGNATION TO

President  
 President  
 President  
 President  
 Dy.Speaker, L S  
 Speaker, LS  
 President  
 Chairman, RS  
 President  
 President  
 President

### 20.4 MODE OF OATH

#### OFFICE

- President
- Vice-President
- Chief Justice, Supreme Court
- Speaker
- Chief Justice, High Court

#### OATH BY/ IN PRESENCE OF

Chief Justice, Supreme Court  
 President or some person appointed by him  
 President  
 President  
 Governor

- Chief Minister
  - Prime ministers and other Ministers
- Governor  
President

## 20.5 HIGH COURTS AND THEIR JURISDICTION

Territorial jurisdiction	Principal Seat	Bench(s)
State of Uttar Pradesh	Allahabad	Lucknow
State of Andhra Pradesh	Hyderabad	
State of Maharashtra, and Goa and U.T. of Dadra and Nagar Haveli and Daman and Diu	Bombay	Nagpur, Panaji and Aurangabad
State of West Bengal and U.T. of Andaman and Nicobar Islands	Calcutta	Circuit Bench at Port Blair
State of Chhattisgarh	Bilaspur	
National Capital Territory of Delhi	Delhi	
States of Assam, Manipur, Meghalaya, Nagaland, Tripura, Mizoram and U.T. of Arunachal Pradesh	Guwahati	Kohima (established on 1.12.1972), Imphal (established on 24.1.72), Agartala (established on 24.1.72), Shillong (established on 4.9.74), Aizwal (established on 5.7.90), and Itanagar (established on 12.8.2000).
State of Gujarat	Ahmedabad	
State of Himachal Pradesh	Shimla	
Jammu & Kashmir	State of Jammu & Kashmir	Srinagar & Jammu
Jharkhand	State of Jharkhand	Ranchi
Karnataka	State of Karnataka	Bangalore
Kerala	State of Kerala and U.T. of Lakshadweep	Ernakulum
Madhya Pradesh	State of Madhya Pradesh	Jabalpur Gwalior and Indore
Madras	State of Tamil Nadu and U.T. of Pondicherry	Madras Madurai
Orissa	State of Orissa	Cuttack
Patna	State of Bihar	Patna
Punjab & Haryana	State of Punjab and Haryana and U.T. of Chandigarh	Chandigarh
Rajasthan	State of Rajasthan	Jodhpur



		Jaipur
Sikkim	State of Sikkim	Gangtok
Uttaranchal	State of Uttaranchal	Nainital

## 20.6 LOK SABHA & ITS SPEAKERS

### LOK SABHA

- 1<sup>st</sup> Lok Sabha
- 2<sup>nd</sup> Lok Sabha
- 3<sup>rd</sup> Lok Sabha
- 4<sup>th</sup> Lok Sabha
- 5<sup>th</sup> Lok Sabha
- 6<sup>th</sup> Lok Sabha
- 7<sup>th</sup> Lok Sabha
- 8<sup>th</sup> Lok Sabha
- 9<sup>th</sup> Lok Sabha
- 10<sup>th</sup> Lok Sabha
- 11<sup>th</sup> Lok Sabha
- 12<sup>th</sup> Lok Sabha
- 13<sup>th</sup> Lok Sabha
- 14<sup>th</sup> Lok Sabha
- 15<sup>th</sup> Lok Sabha

### SPEAKERS

Ganesh Vasudev Mawalankar, M.  
Anantshayanam Ayyangar  
M. Anantshayanam Ayyangar  
Hukam Singh  
Nilam Sanjeeva Reddy, Dr. Gurdayal  
Singh Dhillon  
Dr. Gurdahyal Singh Dhillon, Baliram  
Bhagat  
Nilam Sanjeeva Reddy, K.D. Hegde  
Dr. Balram Jhakar  
Dr. Balram Jhakar  
Ravi Rai  
Shivaraj V. Patil  
P.A. Sangama  
G.M.C. Balayogi  
Manohar Joshi  
Somnath chattergee  
Meira kumar (Present)

## 20.7 Representation of States and Union Territories

S. No.	State / UTs	Lok Sabha	Rajya Sabha
1	Andhra Pradesh	42	18
2	Arunachal Pradesh	2	1
3	Assam	14	7
4	Bihar	40	16
5	Jharkhand	14	6
6	Goa	2	1
7	Gujarat	26	11
8	Haryana	10	5
9	Himachal Pradesh	4	3
10	Jammu & Kashmir	6	4

S. No.	State / UTs	Lok Sabha	Rajya Sabha
<u>11</u>	<u>Karnataka</u>	<u>28</u>	<u>12</u>
<u>12</u>	<u>Kerala</u>	<u>20</u>	<u>9</u>
13	Madhya Pradesh	29	11
14	Chattisgarh	11	5
15	Maharashtra	48	19
16	Manipur	2	1
17	Meghalaya	2	1
18	Mizoram	1	1
19	Nagaland	1	1
20	Orissa	21	10
21	Punjab	13	7
22	Rajasthan	25	10
23	Sikkim	1	1
24	Tamil Nadu	39	18
25	Tripura	2	1
26	Uttar Pradesh	80	31
27	Uttaranchal	5	3
<u>28</u>	<u>West Bengal</u>	<u>42</u>	<u>16</u>
<u>29</u>	<u>Andaman &amp; Nicobar</u>	<u>1</u>	<u>-</u>
<u>30</u>	<u>Chandigarh</u>	<u>1</u>	<u>-</u>
<u>31</u>	<u>Dadra &amp; Nagar Haveli</u>	<u>1</u>	<u>-</u>
<u>32</u>	<u>Daman &amp; Diu</u>	<u>1</u>	<u>-</u>
<u>33</u>	<u>Delhi</u>	<u>7</u>	<u>3</u>
<u>34</u>	<u>Lakshadweep</u>	<u>1</u>	<u>-</u>
<u>35</u>	<u>Pondicherry</u>	<u>1</u>	<u>1</u>

## 20.8 IMPORTANT CASES

- **Keshavanand Bharti v. state of Kerala, 1973 :**

Basic features of the constitution are not subject to amendment under article 368, by the parliament.

- **K.C.G. Narayan v. State of Orissa, 1953 :** Concept of colourable legislation

- **K.T.Moopil Nair v. state of Kerala, 1961 :** Concept of colourable legislation

- **Motor General Traders v. state of Andhra Pradesh, 1984 :** Doctrine of severability

- **S.P. Gupta v. Union of India case, 1982 :** Concept of Public Interest Litigation

- **Union of India v. Pratibha Banerjee, 1995 :**

The High court judges are not government servants. They are holder of constitutional office.

- **Supreme Court Advocate on record association v. union of India, 1993 :**

Appointment of Supreme Court judges and High Court judges in conformity with the opinion of the chief justice of India and transfer of High court judges and chief justice in conformity with the opinion of the chief justice of India.

- **Spencer & Co. v. Vishwadarshan distributors, 1995 :**

Order of the Supreme Court (though it is in the form of a request) is a judicial order and binding on High courts.

- **Ravi Chandran Iyer v. Justice A.M. Bhattacharjee, 1995 :**

Only chief justice of India can take action against an erring High Court judge or chief justice whose wrong conducts fall short of punishment by Parliament (through the process of removal)

- **Kihotu Hollohon v. Zachilhu & others, 1991 :**

In the cases of political defection the decision of the speaker is subject to judicial examination

- **Indira Gandhi v. Raj Narayan, 1975 :**

Judicial Review, Rule of law, free and fair election is basic features of the constitution

- **Maneka Gandhi v. Union of India, 1978 :**

Right to life and personal liberty (article 21) to citizens against the arbitrary action of the legislature as well

- **Minerva Mills v. Union of India, 1981 :** Independence of judiciary is a part of basic feature.

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- **Fertilizer corporation of India v. Union of India :**

Right to constitutional remedies is a basic feature of the constitution is not subject to amendment.

- **Indra Sawhney v. Union of India, 1993 :**

27% reservation for OBCs total reservation not to exceed 50% creamy layer to be excluded and such disputes fall under the jurisdiction of the Supreme Court only.

- **M. Karunanidhi v. Union of India, 1979 :** Chief Ministers and ministers are public servants.

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