

# Index

1. Introduction
2. Preamble
3. Union and its Territory
4. Citizenship
5. Fundamental Rights
6. DPSPs
7. Fundamental Duties
8. Amendment of Constitution
9. Basic Structure
10. Systems of Government
11. Federal System
12. Centre-State Relations
13. President
14. Vice-President
15. Council of Ministers
16. Parliament

# Index

17. Governor
18. State Executive
19. State Legislature
20. Supreme Court
21. Anti-Defection Law
22. Election Commission
23. Finance Commission
24. CAG
25. Attorney General
26. Advocate General

*A Focus on Shaping Future of Millions*

# Introduction

Following are some of the salient features of Constitution of India:

1. Longest Written Constitution
2. Various Provisions are borrowed from Constitutions of other countries
3. Blend of Rigid and Flexible provisions. Some features are those that can never be changed in Indian Constitution like Basic Structure Doctrine. But there are other features which can be changed even by a simple majority.
4. Federal System with Unitary Bias
5. Parliamentary Form of Government
6. Synthesis of Parliamentary Sovereignty and Judicial Supremacy
7. Integrated and Independent Judiciary
8. Fundamental Rights
9. Directive Principles of State Policy
10. Fundamental Duties
11. Secular State
12. Universal Adult Franchise
13. Single Citizenship
14. Independent Bodies like ECI, CAG, UPSC, etc.
15. Emergency Provisions
16. Three Tier Government

# Introduction

## Schedules of Indian Constitution:

### Schedule I

- **Articles:** 1 and 4
- **Details about:**
  - Names of the States and their territorial jurisdiction.
  - Names of the Union Territories and their extent.

### Schedule II

- **Articles:** 59, 65, 75, 97, 125, 148, 158, 164, 186 & 221
- It contains provisions relating to the emoluments, allowances, privileges and so on of:
  - The **President** of India
  - The **Governors** of States
  - The **Speaker** and the **Deputy Speaker** of the Lok Sabha
  - The **Chairman** and the **Deputy Chairman** of the Rajya Sabha
  - The **Speaker** and the **Deputy Speaker** of the **Legislative Assembly** in the states

# Introduction

- The Chairman and the Deputy Chairman of the Legislative Council in the states
- The Judges of the Supreme Court
- The Judges of the High Courts
- The Comptroller and Auditor-General of India

## Schedule III

- Articles: 75, 84, 99, 124, 146, 173, 188 and 219
- Forms of Oaths or Affirmations for:
  - The Union ministers
  - The candidates for election to the Parliament
  - The members of Parliament
  - The judges of the Supreme Court
  - The Comptroller and Auditor-General of India
  - The state ministers
  - The candidates for election to the state legislature
  - The members of the state legislature
  - The judges of the High Courts

# Introduction

## Schedule IV

- **Articles:** 4 and 80
- Allocation of **seats in the Rajya Sabha** to the states and the union territories.

## Schedule V

- **Articles:** 244
- Provisions relating to the administration and control of **scheduled areas and scheduled tribes**.

## Schedule VI

- **Articles:** 244 and 275
- Provisions relating to the administration of **tribal areas** in the states of Assam, Meghalaya, Tripura and Mizoram.

## Schedule VII

- **Articles:** 246
- **Division of Power** between Union and States into
  - i. Union List
  - ii. State List
  - iii. Concurrent List

# Introduction

## Schedule VIII

- **Articles: 344 and 351**
- Deals with **languages** recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages.

## Schedule IX

- **Articles: 31-B**
- Acts and Regulations (originally 13 but presently 282) of the state legislatures dealing with land reforms and abolition of the zamindari system and of the Parliament dealing with other matters.
- This schedule was added by the **1st Amendment (1951)** to protect the laws included in it from judicial scrutiny on the ground of violation of fundamental rights.
- However, in 2007, the Supreme Court ruled that the laws included in this schedule after April 24, 1973, are now **open to judicial review**.

# Introduction

## Schedule X

- **Articles:** 102 and 191
- Provisions relating to disqualification of the members of Parliament and State Legislatures on the ground of defection.
- This schedule was added by the **52nd Amendment Act of 1985**, also known as **Anti defection Law**.

## Schedule XI

- **Articles:** 243-G
- Specifies the powers, authority and responsibilities of **Panchayats**. It has **29 matters**. This schedule was added by the **73rd Amendment Act of 1992**.

## Schedule XII

- **Articles:** 243-W
- Specifies the powers, authority and responsibilities of **Municipalities**. It has **18 matters**. This schedule was added by the **74th Amendment Act of 1992**.



# Introduction

## Sources of Indian Constitution:

S.no	Sources	Features Borrowed
1	GOI Act, 1935	Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
2	British	Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
3	US	Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice president.
4	Irish	Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.

# Introduction

## Sources of Indian Constitution:

S.no	Sources	Features Borrowed
5	Canada	Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
6	Australia	Concurrent List, freedom of trade, commerce and inter-course, and joint sitting of the two Houses of Parliament.
7	Weimar	Suspension of Fundamental Rights during Emergency
8	Soviet	Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
9	French	Republic and the ideals of liberty, equality and fraternity in the Preamble.
10	Japan	Procedure established by Law.

# Preamble

## Text of Preamble

### **THE CONSTITUTION OF INDIA**

### **PREAMBLE**

**WE, THE PEOPLE OF INDIA**, having solemnly resolved to constitute India into a **<sup>1</sup>[SOVEREIGN, SOCIALIST SECULAR DEMOCRATIC REPUBLIC]** and to secure to all its citizens:

**JUSTICE**, social, economic and political;

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

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

**FRATERNITY** assuring the dignity of the individual and the **<sup>2</sup>[unity and integrity of the Nation]**;

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

1. Subs. by the Constitution ( Forty-second Amendment) Act, 1976, Sec.2, for "Sovereign Democratic Republic" (w.e.f.3.1.1977)

2. Subs. by the Constitution ( Forty-second Amendment) Act, 1976, Sec.2, for "Unity of the Nation" (w.e.f.3.1.1977)

# Preamble

## Sovereign

- The word 'sovereign' implies that India is **neither a dependency nor a dominion of any other nation**, but an independent state<sup>2</sup>. There is no authority above it, and it is free to conduct its own affairs (both internal and external)

## Socialist

- The Indian brand of socialism is a 'democratic socialism' and not a '**communistic socialism**' (also known as 'state socialism') which involves the nationalisation of all means of production and distribution and the abolition of private property.
- **Democratic socialism**, on the other hand, holds faith in a 'mixed economy' where both public and private sectors co-exist side by side
- As the Supreme Court says, Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. Indian socialism is a **blend of Marxism and Gandhism**, leaning heavily towards Gandhian socialism'

# Preamble

## Secular

- A Secular state is one in which religion does not interfere in matters of social, economic and political life of citizens of a country.

## Democratic

- In the context of Indian Preamble, Democracy does not only mean political democracy but also social and economic democracy.

## Republic

- A state is considered to be a republic if it has an elected head of a state.
- India is a republic country because the President is elected.
- UK is not a republic because it does not have an elected head of a state.

## Justice

- It implies all forms of Justice- social, political and economic which is secured through various provisions like Fundamental Rights and DPSP.

# Preamble

## Liberty

- The term 'liberty' means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.
- The Preamble secures to all citizens of India liberty of thought, expression, belief, faith and worship, through their Fundamental Rights, enforceable in court of law, in case of violation.

## Equality

- The term 'equality' means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.
- The Preamble secures to all citizens of India equality of status and opportunity.
- This provision embraces three dimensions of equality- civic, political and economic.
- Fundamental Rights and DPSPs helps to realize this objective of our Preamble.

# Preamble

## Fraternity

- Fraternity means a **sense of brotherhood**. The Constitution promotes this feeling of fraternity by the system of single citizenship.
- The Preamble declares that fraternity has to assure two things- **the dignity of the individual and the unity and integrity of the nation**.

## Is Preamble part of Indian Constitution?

- **Berubari Union Case (1960)** : Preamble is not a part of Constitution
- **Keshavananda Bharati Case (1973)** : Preamble is an integral part of the Constitution.
- Two things should be noted:
  - The Preamble is **neither a source of power to legislature nor a prohibition upon the powers of legislature**.
  - It is **non-justiciable**, that is, its provisions are not enforceable in courts of law.
- Hence, the current opinion held by the Supreme Court that the Preamble is a part of the Constitution, is in consonance with the opinion of the founding fathers of the Constitution.

# Preamble

## Amendability of Preamble

- Preamble can be amended, subject to the condition that no amendment is done to the 'basic features'
- In other words, the Court held that the basic elements or the fundamental features of the Constitution as contained in the Preamble cannot be altered by an amendment under Article 368
- The Preamble has been amended only once so far, in 1976, by the **42nd Constitutional Amendment Act**, which has added three new words— **Socialist, Secular and Integrity**- to the Preamble. This amendment was held to be valid.

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# Union and its Territory

## Article 1

- Article 1 describes India, that is, Bharat as a 'Union of States' rather than a 'Federation of States'
- The territory of India can be classified into three categories:
  - Territories of the states
  - Union territories
  - Territories that may be acquired by the Government of India at any time.

## Article 2

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

## Article 3

- Parliament may by law:
  - form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State
  - increase the area of any State
  - diminish the area of any State
  - alter the boundaries of any State
  - alter the name of any State

# Union and its Territory

- However, Article 3 lays down **two conditions** in this regard:
  - A bill contemplating the above changes can be introduced in the Parliament only with the prior recommendation of the President
  - Before recommending the bill, the President has to refer the same to the state legislature concerned for expressing its views within a specified period.
- Further, the power of Parliament to form new states includes the power to form a new state or union territory by uniting a part of any state or union territory to any other state or union territory

## Dhar Commission and JVP Commission

- Both of these commissions rejected the idea of creation of states on linguistic lines

## Fazl Ali Commission

- It recommended creation of states on linguistic lines.

# Citizenship

## How is Citizenship defined?

- Citizenship signifies the relationship between individual and state.
- Like any other modern state, India has two kinds of people—citizens and aliens.
- Citizens are full members of the Indian State and owe allegiance to it.
- They enjoy all civil and political rights. Citizenship is an idea of exclusion as it excludes non-citizens.
- There are two well-known principles for the grant of citizenship:
  - While 'jus soli' confers citizenship on the basis of place of birth, 'jus sanguinis' gives recognition to blood ties.
  - From the time of the Motilal Nehru Committee (1928), the Indian leadership was in favour of the enlightened concept of jus soli.
  - The racial idea of jus sanguinis was also rejected by the Constituent Assembly as it was against the Indian ethos.

# Citizenship

## Constitutional Provisions

- Citizenship is listed in the **Union List** under the Constitution and thus is under the exclusive jurisdiction of Parliament.
- The Constitution **does not define** the term 'citizen' but details of various categories of persons who are entitled to citizenship are given in Part 2 (Articles 5 to 11).
- Unlike other provisions of the Constitution, which came into being on January 26, 1950, these articles were enforced on **November 26, 1949** itself, when the Constitution was adopted.

## Article 5

- It provided for citizenship **on commencement of the Constitution.**
- All those **domiciled and born in India** were given citizenship.
- Even those who were domiciled but not born in India, but either of whose parents was born in India, were considered citizens.
- Anyone who had been an **ordinary resident for more than five years**, too, was entitled to apply for citizenship.

# Citizenship

## Article 6

- It provided rights of citizenship of certain persons who have migrated to India from Pakistan.
- Since Independence was preceded by Partition and migration, Article 6 laid down that anyone who migrated to India before July 19, 1949, would automatically become an Indian citizen if either of his parents or grandparents was born in India.
- But those who entered India after this date needed to register themselves.

## Article 7

- It provided Rights of citizenship of certain migrants to Pakistan.
- Those who had migrated to Pakistan after March 1, 1947 but subsequently returned on resettlement permits were included within the citizenship net.
- The law was more sympathetic to those who migrated from Pakistan and called them refugees than to those who, in a state of confusion, were stranded in Pakistan or went there but decided to return soon.

# Citizenship

## Article 8

- It provided Rights of citizenship of certain persons of Indian origin residing outside India.
- Any Person of Indian Origin residing outside India who, or either of whose parents or grandparents, was born in India could register himself or herself as an Indian citizen with Indian Diplomatic Mission.

## Article 9

- It provided that if any person voluntarily acquired the citizenship of a foreign State will no longer be a citizen of India.

## Article 10

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

## Article 11

- It empowers Parliament to make any provision with respect to the acquisition and termination of citizenship and all matters relating to it

# Citizenship

## Acquisition of Citizenship

### 1. By Birth

- Every person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of his/her parents.
- Every person born in India between 01.07.1987 and 02.12.2004 is a citizen of India given either of his/her parents is a citizen of the country at the time of his/her birth.
- Every person born in India on or after 3.12.2004 is a citizen of the country given both his/her parents are Indians or at least one parent is a citizen and the other is not an illegal migrant at the time of birth.

### 2. By Descent

- A person born outside India on or after January 26, 1950 is a citizen of India by descent if his/her father was a citizen of India by birth.
- A person born outside India on or after December 10, 1992, but before December 3, 2004 if either of his/her parent was a citizen of India by birth.

# Citizenship

## Acquisition of Citizenship

- If a person born outside India or or after December 3, 2004 has to acquire citizenship, his/her parents have to declare that the minor does not hold a passport of another country and his/her birth is registered at an Indian consulate within one year of birth.

### 3. By Registration

- Citizenship can also be acquired by registration. Some of the mandatory rules are:
  - A person of Indian origin who has been a resident of India for 7 years before applying for registration.
  - A person of Indian origin who is a resident of any country outside undivided India.
  - A person who is married to an Indian citizen and is ordinarily resident for 7 years before applying for registration.
  - Minor children of persons who are citizens of India.



# Citizenship

## Acquisition of Citizenship

### 4. By Naturalisation

- A person can acquire citizenship by naturalisation if he/she is ordinarily resident of India for 12 years (throughout 12 months preceding the date of application and 11 years in the aggregate) and fulfils all qualifications in the third schedule of the Citizenship Act.

### 5. By Incorporation of Territory

- If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India. Such persons become the citizens of India from the notified date.
- For example, when Pondicherry became a part of India, the Government of India issued the Citizenship (Pondicherry) Order, 1962, under the Citizenship Act, 1955.

# Citizenship

## Loss of Citizenship

### 1. By Renunciation

- Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship. Upon the registration of that declaration, that person ceases to be a citizen of India. However, if such a declaration is made during a war in which India is engaged, its registration shall be withheld by the Central Government.
- Further, when a person renounces his Indian citizenship, every minor child of that person also loses Indian citizenship. However, when such a child attains the age of eighteen, he may resume Indian citizenship.

### 2. By Termination

- When an Indian citizen voluntarily (consciously, knowingly and without duress, undue influence or compulsion) acquires the citizenship of another country, his Indian citizenship automatically terminates. This provision, however, does not apply during a war in which India is engaged.

# Citizenship

## Loss of Citizenship

### 3. By Deprivation

- It is a compulsory termination of Indian citizenship by the Central government, if:
  - the citizen has obtained the citizenship by fraud
  - the citizen has shown disloyalty to the Constitution of India
  - the citizen has unlawfully traded or communicated with the enemy during a war
  - the citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years
  - the citizen has been ordinarily resident out of India for seven years continuously.

## Single Citizenship

Citizenship Act does not provide for dual citizenship or dual nationality. It only allows citizenship for a person listed under the provisions above i.e. by birth, descent, registration or naturalisation.

# Citizenship

## Citizenship Amendment Bill, 2019

- The amendment proposes to permit members of six communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Pakistan, Bangladesh and Afghanistan — to continue to live in India if they entered India before December 14, 2014.
- It also reduces the requirement for citizenship from 11 years to just 6 years.
- Two notifications also exempted these migrants from the Passport Act and Foreigners Act.
- A large number of organisations in Assam protested against this Bill as it may grant citizenship to Bangladeshi Hindu illegal migrants.
- The justification given for the bill is that Hindus and Buddhists are minorities in Bangladesh, and fled to India to avoid religious persecution, but Muslims are a majority in Bangladesh and so the same cannot be said about them.

# Fundamental Rights

## Introduction

- The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35.
- The framers of the Constitution derived inspiration from the Constitution of USA (i.e., Bill of Rights).
- Part III of the Constitution is rightly described as the Magna Carta of India.
- It contains a very long and comprehensive list of 'justiciable' Fundamental Rights.
- The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination.
- They uphold the equality of all individuals, the dignity of the individual, the larger public interest and unity of the nation.
- The Fundamental Rights are meant for promoting the ideal of political democracy.
- The Fundamental Rights are named so because they are guaranteed and protected by the Constitution
- They are 'fundamental' also in the sense that they are most essential for the all-round development (material, intellectual, moral and spiritual) of the individuals.

# Fundamental Rights

## Introduction

- Originally, the Constitution provided for **seven Fundamental Rights**:
  - 1) Right to equality (Articles 14-18)
  - 2) Right to freedom (Articles 19-22)
  - 3) Right against exploitation (Articles 23-24)
  - 4) Right to freedom of religion (Articles 25-28)
  - 5) Cultural and educational rights (Articles 29-30)
  - 6) Right to property (Article 31)
  - 7) Right to constitutional remedies (Article 32)
- However, the **right to property** was deleted from the list of Fundamental Rights by the **44th Amendment Act, 1978**.
- It is made a legal right under Article 300-A in Part XII of the Constitution. So at present, there are **only six Fundamental Rights**

## Features of Fundamental Rights

- Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.

# Fundamental Rights

- They are **not absolute** but qualified. The state can impose reasonable restrictions on them.
- Most of them are available **against the arbitrary action of the State**, with a few exceptions like those against the State's action and against the action of private individuals.
- Some of them are **negative in character**, that is, place limitations on the authority of the State, while others are **positive in nature**, conferring certain privileges on the persons.
- They are **justiciable**, allowing persons to move the courts for their enforcement, if and when they are violated.
- They are **defended and guaranteed by the Supreme Court**. Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgement of the high courts.
- They are **not sacrosanct or permanent**. The Parliament can curtail or repeal them but only by a constitutional amendment act and not by an ordinary act. Moreover, this can be done without affecting the 'basic structure' of the Constitution.

# Fundamental Rights

- They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. Further, the six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression (i.e., external emergency) and not on the ground of armed rebellion (i.e., internal emergency).
- Most of them are directly enforceable (self-executory) while a few of them can be enforced on the basis of a law made for giving effect to them.
- Their application to the members of armed forces, para-military forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 33).
- Their application can be restricted while martial law is in force in any area. Martial law means 'military rule' imposed under abnormal circumstances to restore order (Article 34). It is different from the imposition of national emergency.



# Fundamental Rights

## Definition of State (Article 12)

- The term 'State' has been used in different provisions concerning the fundamental rights. Hence, **Article 12** has defined the term for the purposes of Part III.
- According to it, the State includes the following
  - **Government and Parliament of India**, that is, executive and legislative organs of the Union government.
  - **Government and legislature of states**, that is, executive and legislative organs of state government.
  - **All local authorities**, that is, municipalities, panchayats, district boards, improvement trusts, etc.
  - **All other authorities**, that is, statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.
- Thus, State has been defined in a **wider sense** so as to include all its agencies. It is the actions of these agencies that can be challenged in the courts as violating the Fundamental Rights.

# Fundamental Rights

## Laws Inconsistent with Fundamental Rights (Article 13)

- Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.
- In other words, it expressively provides for the doctrine of judicial review.
- This power has been conferred on the Supreme Court (Article 32) and the high courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.
- Further, Article 13 declares that a constitutional amendment is not a law and hence cannot be challenged.
- However, the Supreme Court held in the Kesavananda Bharati Case (1973) that a Constitutional amendment can be challenged on the ground that it violates a fundamental right that forms a part of the 'basic structure' of the Constitution and hence, can be declared as void.

# Right to Equality

## Article 14

- Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- This provision confers rights on all persons whether citizens or foreigners.
- Moreover, the word 'person' includes legal persons, viz, statutory corporations, companies, registered societies or any other type of legal person.

## Equality before Law

- The concept of 'equality before law' is of British origin.
- It connotes:
  - the absence of any special privileges in favour of any person
  - the equal subjection of all persons to the ordinary law of the land administered by ordinary law courts,
  - no person (whether rich or poor, high or low, official or non-official) is above the law.
- It is a negative concept

# Right to Equality

## Equal Protection of Laws

- The concept of 'equal protection of laws' is of **American origin**.
- It connotes:
  - the **equality of treatment under equal circumstances**, both in the privileges conferred and liabilities imposed by the laws
  - the similar application of the same laws to all persons who are similarly situated
  - the **like should be treated alike** without any discrimination.
- It is a positive concept

## Rule of Law (By A.V. Dicey)

It has 3 elements:

- **Absence of arbitrary power**, that is, no man can be punished except for a breach of law.
- **Equality before the law**, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts

# Right to Equality

- The primacy of the rights of the individual, that is, the constitution is the result of the rights of the individual as defined and enforced by the courts of law rather than the constitution being the source of the individual rights.

The Supreme Court held that the 'Rule of Law' as embodied in Article 14 is a 'basic feature' of the constitution. Hence, it cannot be destroyed even by an amendment.

## Exceptions to Equality

- The President of India and the Governor of States enjoy various immunities under Article 361
- No person shall be liable to any civil or criminal proceedings in any court in respect of the publication in a newspaper (or by radio or television) of a substantially true report of any proceedings of either House of Parliament or either House of the Legislature of a State (Article 361-A).

# Right to Equality

- No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof (Article 105).
- No member of the Legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof (Article 194).
- Article 31-C is an exception to Article 14. It provides that the laws made by the state for implementing the Directive Principles contained in Article 39(b) or 39(c) cannot be challenged on the ground that they are violative of Article 14.
- The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.
- The UNO and its agencies enjoy the diplomatic immunity.

# Right to Equality

## Prohibition of Discrimination on Certain Grounds

- **Article 15** provides that the State shall not discriminate against any citizen on grounds **only of religion, race, caste, sex or place of birth.**
- No citizen shall be subjected to any disability, liability, restriction or condition on grounds **only of religion, race, caste, sex, or place of birth** with regard to
  - access to shops, public restaurants, hotels and places of public entertainment
  - the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly by State funds or dedicated to the use of general public.
- **Exceptions to this rule:**
  - Women and Children
  - SCs and STs
  - OBCs
  - EWS

# Right to Equality

## Equality of Opportunity in Public Employment

- **Article 16** provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State.
- No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of **only religion, race, caste, sex, descent, place of birth or residence.**
- **Exceptions to this rule:**
  - **Women and Children**
  - **SCs and STs**
  - **OBCs**
  - **EWS**

## Abolition of Untouchability

- **Article 17** abolishes 'untouchability' and forbids its practice in any form.
- **Protection of Civil Rights Act, 1955** to punish people practicing untouchability.
- The Supreme Court held that the right under **Article 17** is available **against private individuals**



# Right to Equality

## Abolition of Titles (Article 18)

- It prohibits the state from conferring any title (except a military or academic distinction) on any body, whether a citizen or a foreigner.
- It prohibits a citizen of India from accepting any title from any foreign state.
- A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the president.
- No citizen or foreigner holding any office of profit or trust under the State is to accept any present, emolument or office from or under any foreign State without the consent of the president.

**Note:** In 1996, the Supreme Court upheld the constitutional validity of the National Awards—Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Sri.

**Note:** These National Awards were instituted in 1954. The Janata Party government headed by Morarji Desai discontinued them in 1977. But they were again revived in 1980 by the Indira Gandhi government.

# Right of Freedom

## Freedom of Speech and Expression

- It implies that every citizen has the right to express his views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner.
- The Supreme Court held that the freedom of speech and expression includes the following:
  - Right to propagate one's views as well as views of others.
  - Freedom of the press.
  - Freedom of commercial advertisements.
  - Right against tapping of telephonic conversation.
  - Right to telecast, that is, government has no monopoly on electronic media.
  - Right against bundh called by a political party or organisation.
  - Right to know about government activities.
  - Freedom of silence.
  - Right against imposition of pre-censorship on a newspaper.
  - Right to demonstration or picketing but not right to strike.

# Right of Freedom

- The State can impose **reasonable restrictions** on the exercise of the freedom of speech and expression on the grounds of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence.

## Freedom of Assembly

- Every citizen has the **right to assemble peaceably and without arms.**
- It includes the right to hold public meetings, demonstrations and take out processions.
- This provision does not protect violent, disorderly, riotous assemblies, or one that causes breach of public peace or one that involves arms.
- This right **does not include** the right to strike.
- The State can impose **reasonable restrictions** on the exercise of right of assembly on two grounds, namely, sovereignty and integrity of India and public order including the maintenance of traffic in the area concerned.

# Right of Freedom

## Freedom of Association

- All citizens have the right to form associations or unions or co-operative societies.
- It includes the right to form political parties, companies, partnership firms, societies, clubs, organisations, trade unions or any body of persons.
- Reasonable restrictions can be imposed on the exercise of this right by the State on the grounds of sovereignty and integrity of India, public order and morality

## Freedom of Movement

- This freedom entitles every citizen to move freely throughout the territory of the country.
- He can move freely from one state to another or from one place to another within a state.
- The grounds of imposing reasonable restrictions on this freedom are two, namely, the interests of general public and the protection of interests of any scheduled tribe.

# Right of Freedom

## Freedom of Residence

- Every citizen has the right to reside and settle in any part of the territory of the country.
- This right has two parts:
  - the right to **reside** in any part of the country, which means to stay at any place temporarily
  - the right to **settle** in any part of the country, which means to set up a home or domicile at any place permanently.
- The State can impose **reasonable restrictions** on the exercise of this right on two grounds, namely, the interest of general public and the protection of interests of any scheduled tribes.

## Freedom of Profession

- All citizens are given the right to practise any profession or to carry on any occupation, trade or business.
- The State can impose **reasonable restrictions** on the exercise of this right in the interest of the general public.

# Right of Freedom

## Freedom of Profession

- Further, the State is empowered to:
  - prescribe professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business
  - carry on by itself any trade, business, industry or service whether to the exclusion (complete or partial) of citizens or otherwise
- This right does not include the right to carry on a profession or business or trade or occupation that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc.). The State can absolutely prohibit these or regulate them through licencing.

## Protection in respect of Conviction for Offences (Article 20)

- Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation.

# Right of Freedom

- Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation.
- **No ex-post-facto law:** No person shall be
  - convicted of any offence except for violation of a law in force at the time of the commission of the act, nor
  - subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.
- **No double jeopardy:** No person shall be prosecuted and punished for the same offence more than once.
- **No self-incrimination:** No person accused of any offence shall be compelled to be a witness against himself.

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# Right of Freedom

## Protection of Life and Personal Liberty

- Article 21 declares that no person shall be deprived of his life or personal liberty **except according to procedure established by law.**
- This right is available to **both citizens and non-citizens.**
- Supreme Court has declared the following rights as part of Article 21:
  - Right to live with human dignity.
  - Right to decent environment including pollution free water and air and protection against hazardous industries.
  - Right to livelihood.
  - Right to privacy.
  - Right to shelter.
  - Right to health.
  - Right to free education up to 14 years of age.
  - Right to free legal aid.
  - Right against solitary confinement.
  - Right to speedy trial.
  - Right against handcuffing.
  - Right against inhuman treatment.
  - Right against delayed execution.
  - Right to travel abroad.



# Right of Freedom

## Protection of Life and Personal Liberty

- Right against custodial harassment.
- Right to emergency medical aid.
- Right to timely medical treatment in government hospital.
- Right not to be driven out of a state.
- Right to fair trial.
- Right of prisoner to have necessities of life.
- Right of women to be treated with decency and dignity.
- Right against public hanging.
- Right to hearing.
- Right to information.
- Right to reputation.
- Right of appeal from a judgement of conviction
- Right to social security and protection of the family
- Right to social and economic justice and empowerment
- Right against bar fetters
- Right to appropriate life insurance policy
- Right to sleep
- Right to freedom from noise pollution
- Right to electricity

# Right of Freedom

## Right to Education

- Article 21A declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may determine.
- This provision was added by the 86th Constitutional Amendment Act of 2002.
- In pursuance of Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009.

## Protection against Arrest and Detention

- Article 22 grants protection to persons who are arrested or detained.
- Detention is of two types, namely, punitive and preventive.
- Punitive detention is to punish a person for an offence committed by him after trial and conviction in a court.
- Preventive detention, on the other hand, means detention of a person without trial and conviction by a court.

# Right of Freedom

## Protection against Arrest and Detention (Article 22)

- Detention is of two types, namely, **punitive and preventive**.
- Punitive detention is to punish a person for an offence committed by him after trial and conviction in a court.
- Preventive detention, on the other hand, means detention of a person without trial and conviction by a court.
- The Article 22 has two parts—the first part deals with the cases of ordinary law and the second part deals with the cases of preventive detention law.
  - The first part of Article 22 confers the following rights on a person who is arrested or detained under an **ordinary law**:
    - i. Right to be informed of the **grounds of arrest**.
    - ii. Right to consult and be defended by a **legal practitioner**.
    - iii. Right to be produced before a magistrate within **24 hours**, excluding the journey time.
    - iv. **Right to be released after 24 hours** unless the magistrate authorises further detention.

# Right of Freedom

- The second part of Article 22 grants protection to persons who are arrested or detained under a preventive detention law. This protection is available to both citizens as well as aliens and includes the following:
  - i. The detention of a person cannot exceed three months unless an advisory board reports sufficient cause for extended detention. The board is to consist of judges of a high court.
  - ii. The grounds of detention should be communicated to the detenu. However, the facts considered to be against the public interest need not be disclosed.
  - iii. The detenu should be afforded an opportunity to make a representation against the detention order.
- The 44th Amendment Act of 1978 has reduced the period of detention without obtaining the opinion of an advisory board from three to two months.

# Right against Exploitation

## Prohibition of traffic in human beings and forced labour (Article 23)

- Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.
- In this regard, the Bonded Labour System (Abolition) Act, 1976; the Minimum Wages Act, 1948; the Contract Labour Act, 1970 and the Equal Remuneration Act, 1976 were made.

## Prohibition of employment of children in factories, etc. (Article 24)

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

# Freedom of Religion

## Freedom of conscience and free profession, practice and propagation of religion (Article 25)

- Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. The implications of these are:
  - Freedom of conscience
  - Right to profess one's religious beliefs and faith openly and freely
  - Right to practice religious worship, rituals, ceremonies and exhibition of beliefs and ideas
  - Right to propagate one's religious beliefs to others or exposition of the tenets of one's religion
- Article 25 covers not only religious beliefs (doctrines) but also religious practices (rituals). Moreover, these rights are available to all persons—citizens as well as non-citizens.
- These rights are subject to public order, morality, health and other provisions relating to fundamental rights.

# Freedom of Religion

- Further, the State is permitted to:
  - regulate or restrict any economic, financial, political or other secular activity associated with religious practice
  - provide for social welfare and reform or throw open Hindu religious institutions of a public character to all classes and sections of Hindus.

**Note:** Wearing and Carrying of kirpans is to be included in the profession of the Sikh religion.

**Note:** Hindus include Sikhs, Jains and Buddhists.

## Freedom to manage religious affairs (Article 26)

- Every religious denomination or any section thereof shall have the right to:
  - to establish and maintain institutions for religious and charitable purposes
  - to manage its own affairs in matters of religion
  - to own and acquire movable and immovable property
  - to administer such property in accordance with law.

# Freedom of Religion

- **3 Conditions** for a group to be religious denomination:
  - It should be a collection of individuals who have a system of **beliefs** (doctrines) which they regard as conducive to their spiritual well-being
  - It should have a **common organisation**
  - It should be designated by a **distinctive name**
- Example- Ramakrishna Mission, Ananda Marga
- Rights under Article 26 are subject to **public order, morality and health**

## Freedom from Taxation for Promotion of a Religion (Article 27)

- No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the **promotion or maintenance of any particular religion or religious denomination.**
- This provision prohibits the State from favouring, patronising and supporting one religion over the other. This means that the taxes can be used for the promotion or maintenance of all religions.



# Freedom of Religion

## Freedom from attending Religious Instruction (Article 28)

- Under Article 28, no religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- However, this provision shall not apply to an educational institution administered by the State but established under any endowment or trust, requiring imparting of religious instruction in such institution.
- Further, no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to attend any religious instruction or worship in that institution without his consent. In case of a minor, the consent of his guardian is needed.

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# Cultural and Educational Rights

## Protection of Interest of Minorities (Article 29)

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

## Right of minorities to establish and administer educational institutions (Article 30)

- All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

# Right to Constitutional Remedies

## Right to Constitutional Remedies (Article 32)

- Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen.
- The Supreme Court has ruled that Article 32 is a basic feature of the Constitution. Hence, it cannot be abridged or taken away even by way of an amendment to the Constitution.
- The Supreme Court and High Courts shall have power to issue directions or orders or writs for the enforcement of any of the fundamental rights. The writs issued may include habeas corpus, mandamus, prohibition, certiorari and quo-warranto.

## Types of Writs

### 1. Habeas Corpus

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

# Right to Constitutional Remedies

- Thus, this writ is a bulwark of individual liberty against arbitrary detention.
- The writ of habeas corpus can be issued against both public authorities as well as private individuals.

## 2. Mandamus

- It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform.
- It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.
- The writ of mandamus cannot be issued against
  - a private individual or body
  - to enforce departmental instruction that does not possess statutory force
  - when the duty is discretionary and not mandatory
  - to enforce a contractual obligation
  - against the president of India or the state governors
  - against the chief justice of a high court acting in judicial capacity.

# Right to Constitutional Remedies

## 3. Prohibition

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

## 4. Certiorari

- It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case.
- Thus, unlike prohibition, which is only preventive, certiorari is both preventive as well as curative.
- Certiorari is also not available against legislative bodies and private individuals or bodies.

# Right to Constitutional Remedies

## 5. Quo-Warranto

- It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.
- The writ can be issued only in case of a substantive public office of a permanent character created by a statute or by the Constitution.
- It cannot be issued in cases of ministerial office or private office.
- Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.

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# DPSP

## Basics about DPSPs

- The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51
- The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution.
- The Directive Principles along with the Fundamental Rights contain the philosophy of the Constitution and is the soul of the Constitution.
- Dr B R Ambedkar described these principles as 'novel features' of the Indian Constitution.

## Features of DPSPs

- DPSPs denotes the ideals that the State should keep in mind while formulating policies and enacting laws. These are the constitutional instructions or recommendations to the State in legislative, executive and administrative matters.
- The Directive Principles resemble the 'Instrument of Instructions' enumerated in the Government of India Act of 1935.

# DPSP

- The Directive Principles constitute a very comprehensive economic, social and political programme for a modern democratic State. They aim at realising the high ideals of justice, liberty, equality and fraternity as outlined in the Preamble to the Constitution.
- The Directive Principles are non-justiciable in nature, that is, they are not legally enforceable by the courts for their violation. Therefore, the government (Central, state and local) cannot be compelled to implement them.
- The Directive Principles, though non-justiciable in nature, help the courts in examining and determining the constitutional validity of a law.

## Article 38

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



# DPSP

- The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst diverse groups of people.

## Article 39

- The State shall, in particular, direct its policy towards securing
  - that the citizens, men and women equally, have the right to an adequate means of livelihood
  - that the ownership and control of the material resources of the community are so distributed as best to subserve the common good
  - that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment
  - that there is equal pay for equal work for both men and women
  - that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength

# DPSP

- that children are given **opportunities and facilities** to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

## Article 39A

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

## Article 40

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

# DPSP

## Article 41

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

## Article 42

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

## Article 43

- The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

# DPSP

## Article 43A

- The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry

## Article 43B

- The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies

## Article 44

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

## Article 45

- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

# DPSP

## Article 46

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

## Article 47

- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

## Article 48

- The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

# DPSP

## Article 48A

- The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country

## Article 49

- It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament, to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

## Article 50

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

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# DPSP

## Article 51

- The State shall endeavour to—
  - promote international peace and security
  - maintain just and honourable relations between nations
  - foster respect for international law and treaty obligations in the dealings of organised peoples with one another
  - encourage settlement of international disputes by arbitration

## Conflict between Fundamental Rights and DPSPs

- The justiciability of Fundamental Rights and non-justiciability of Directive Principles on the one hand and the moral obligation of State to implement Directive Principles (Article 37) on the other hand have led to a conflict between the two since the commencement of the Constitution.
- **Champakam Dorairajan Case:** Supreme Court ruled that in case of conflict between Fundamental Rights and DPSPs, former would prevail.

# DPSP

- **Golaknath Case:** Supreme Court ruled that the Parliament cannot take away or abridge any of the Fundamental Rights, which are 'sacrosanct' in nature. In other words, the Court held that the Fundamental Rights cannot be amended for the implementation of the Directive Principles.
- **24th Amendment Act (1971):** Parliament has the power to abridge or take away any of the Fundamental Rights by enacting Constitutional Amendment Acts and inserted Article 31C in the constitution.
- **Article 31C**
  - No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b) and (c) shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14, 19 or 31
  - No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.



# DPSP

- **Keshavananda Bharati Case:** Supreme Court declared the above second provision of Article 31C as unconstitutional and invalid on the ground that **judicial review is a basic feature of the Constitution**
- **42nd Amendment Act (1976):** It extended the scope of the above first provision of Article 31C by including within its protection any law to implement any of the Directive Principles and not merely those specified in Article 39(b) and (c)
- **Minerva Mills Case (1980):** This amendment was declared **invalid and unconstitutional** by Supreme Court. It means that the **Directive Principles were once again made subordinate to the Fundamental Rights**. Supreme Court also held that 'the Indian Constitution is founded on the **bedrock of the balance between the Fundamental Rights and the Directive Principles**.'

Therefore, the present position is that the Fundamental Rights enjoy supremacy over the Directive Principles.

# Fundamental Duties

- Though the rights and duties of the citizens are correlative and inseparable, the original constitution contained **only the fundamental rights and not the fundamental duties**.
- In other words, the framers of the Constitution did not feel it necessary to incorporate the fundamental duties of the citizens in the Constitution.
- However, they incorporated the **duties of the State** in the Constitution in the form of Directive Principles of State Polity.
- Later in **1976**, the fundamental duties of citizens were added in the Constitution. In 2002, one more Fundamental Duty was added.
- The Fundamental Duties in the Indian Constitution are inspired by the Constitution of erstwhile **USSR**
- None of the Constitutions of major democratic countries like **USA, Canada, France, Germany, Australia** and so on specifically contain a list of duties of citizens.
- **Japanese Constitution** is, perhaps, the only democratic Constitution in world which contains a list of duties of citizens.

# Fundamental Duties

## List of Fundamental Duties (Article 51A)

According to Article 51A, 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 that inspired the 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 and to renounce practices derogatory to the dignity of women
- f. to value and preserve the rich heritage of the country's composite culture
- g. to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures
- h. to develop scientific temper, humanism and the spirit of inquiry and reform

# Fundamental Duties

- i. to safeguard public property and to abjure violence
- j. to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement
- k. to provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

## Features of Fundamental Duties

- Some of them are moral duties while others are civic duties.
- They refer to such values which have been a part of the Indian tradition, mythology, religions and practices.
- Fundamental Duties are confined to citizens only and do not extend to foreigners.
- Like the Directive Principles, the fundamental duties are also non-justiciable. The Constitution does not provide for their direct enforcement by the courts. Moreover, there is not legal sanction against their violation. However, the Parliament is free to enforce them by suitable legislation.

# Fundamental Duties

## Swaran Singh Committee

- Swaran Singh Committee suggested the incorporation of **eight Fundamental Duties** in the Constitution but the **42nd CAA (1976)** included ten Fundamental Duties.
- Certain recommendations of the Committee were **not accepted by the Congress Party** and hence, not incorporated in the Constitution. These include:
  - The Parliament may provide for the **imposition of such penalty or punishment** as may be considered appropriate for any non-compliance with or refusal to observe any of the duties.
  - No law imposing such penalty or punishment shall be called in question in any court on the ground of infringement of any of Fundamental Rights or on the ground of repugnancy to any other provision of the Constitution.
  - **Duty to pay taxes** should also be a Fundamental Duty of the citizens.

# Amendment of Constitution

- Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure.
- It states that the Parliament may, in exercise of its constituent power, amend by way of addition, variation or repeal any provision of the Constitution in accordance with the procedure laid down for the purpose.
- However, the Parliament cannot amend those provisions which form the 'basic structure' of the Constitution. This was ruled by the Supreme Court in the Kesavananda Bharati case (1973)

## Procedure for Amendment

- An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament and not in the state legislatures.
- The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.

# Amendment of Constitution

- The bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
- Each House must pass the bill separately. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
- If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
- After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
- The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament. After the president's assent, the bill becomes an Act.

# Amendment of Constitution

## Types of Amendment

- Article 368 provides for two types of amendments, that is, by a **special majority of Parliament** and also through the **ratification of half of the states** by a simple majority.
- But, some other articles provide for the amendment of certain provisions of the Constitution by a **simple majority of Parliament**, that is, a majority of the members of each House present and voting (similar to the ordinary legislative process).
- Therefore, the Constitution can be amended in three ways
  - Amendment by **simple majority of the Parliament**
  - Amendment by **special majority of the Parliament**
  - Amendment by **special majority of the Parliament and the ratification of half of the state legislatures.**



# Amendment of Constitution

## By Simple Majority of Parliament

A number of provisions in the Constitution can be amended by a simple majority of the two Houses of Parliament outside the scope of Article 368. These provisions include:

- Admission or establishment of new states.
- Formation of new states and alteration of areas, boundaries or names of existing states.
- Abolition or creation of legislative councils in states.
- Second Schedule—emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
- Quorum in Parliament.
- Salaries and allowances of the members of Parliament.
- Rules of procedure in Parliament.
- Privileges of the Parliament, its members and its committees.
- Use of English language in Parliament.
- Number of puisne judges in the Supreme Court.
- Conferment of more jurisdiction on the Supreme Court.
- Use of official language.

# Amendment of Constitution

- **Citizenship**—acquisition and termination.
- **Elections** to Parliament and state legislatures.
- **Delimitation of constituencies**.
- **Union territories**.
- **Fifth Schedule**—administration of scheduled areas and scheduled tribes.
- **Sixth Schedule**—administration of tribal areas.

## By Special Majority of Parliament

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

The provisions which can be amended by this way includes:

- **Fundamental Rights**
- **Directive Principles of State Policy**
- **All other provisions which are not covered by the first and third categories.**

# Amendment of Constitution

## By Special Majority of Parliament and Consent of States

- Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority.
- If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed.
- The provisions which can be amended by this way includes:
  - Election of the President and its manner.
  - Extent of the executive power of the Union and the states.
  - Supreme Court and high courts.
  - Distribution of legislative powers between the Union and the states.
  - Any of the lists in the Seventh Schedule.
  - Representation of states in Parliament.
  - Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

# Basic Structure

## Emergence of Basic Structure Doctrine:

- **1st Amendment Act:** This act was formulated for implementation of Land Reforms but it curtailed Right to Property under Article 31
- **Shankari Prasad Case (1951):** 1st Amendment Act was challenged on ground of violation of Fundamental Right under Article 31. But Supreme Court ruled that the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights.
- **Golaknath Case (1967):** Supreme Court reversed its earlier stand. Supreme Court ruled that the Fundamental Rights are given a 'transcendental and immutable' position and hence, the Parliament cannot abridge or take away any of these rights.
- Parliament then enacted **24th Amendment Act 1971**. It declared that the Parliament has the power to abridge or take away any of the Fundamental Rights under Article 368 and such an act will not be a law under the meaning of Article 13.

# Basic Structure

## Emergence of Basic Structure Doctrine:

- **Keshavananda Bharati Case (1973):** Supreme Court overruled its judgement in the Golak Nath case. It upheld the validity of the 24th Amendment Act (1971) and stated that Parliament is empowered to abridge or take away any of the Fundamental Rights.
- At the same time, it laid down a new doctrine of the **'basic structure' of the Constitution**.
- It ruled that the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution.
- This means that the Parliament cannot abridge or take away a Fundamental Right that forms a part of the 'basic structure' of the Constitution.

## Elements of Basic Structure of the Constitution

- Supremacy of the Constitution
- Sovereign, democratic and republican nature of the Indian polity
- Secular character of the Constitution
- Separation of powers between the legislature, the executive and the judiciary
- Federal character of the Constitution

# Basic Structure

- Unity and integrity of the nation
- Welfare state (socio-economic justice)
- Judicial review
- Freedom and dignity of the individual
- Parliamentary system
- Rule of law
- Harmony and balance between Fundamental Rights and Directive Principles
- Principle of equality
- Free and fair elections
- Independence of Judiciary
- Limited power of Parliament to amend the Constitution
- Effective access to justice
- Principles (or essence) underlying fundamental rights.
- Powers of the Supreme Court under Articles 32, 136, 141 and 142
- Powers of the High Courts under Articles 226 and 227

# Systems of Government

## Parliamentary System of Government

- **Nominal and Real Executives:** The President is the nominal executive (**de jure executive** or titular executive) while the Prime Minister is the real executive (**de facto executive**). Thus, the President is head of the State, while the Prime Minister is head of the government.
- **Majority Party Rule:** The political party which secures **majority seats in the Lok Sabha** forms the government. The leader of that party is appointed as the Prime Minister by the President; other ministers are appointed by the President on the advice of the prime minister.
- **Collective Responsibility:** This is the **bedrock principle** of parliamentary government. The ministers are collectively responsible to the Parliament in general and to the Lok Sabha in particular (**Article 75**). They act as a team, and swim and sink together. The principle of collective responsibility implies that the Lok Sabha can remove the ministry (i.e., council of ministers headed by the prime minister) from office by passing a **vote of no confidence**.

# Systems of Government

- **Political Homogeneity:** Usually members of the council of ministers belong to the same political party, and hence they share the same political ideology. In case of coalition government, the ministers are bound by consensus.
- **Double Membership:** The ministers are members of both the legislature and the executive. This means that a person cannot be a minister without being a member of the Parliament. The Constitution stipulates that a minister who is not a member of the Parliament for a period of six consecutive months ceases to be a minister.
- **Leadership of Prime Minister:** The Prime Minister plays the leadership role in this system of government. He is the leader of council of ministers, leader of the Parliament and leader of the party in power.
- **Dissolution of Lower House:** The lower house of the Parliament (Lok Sabha) can be dissolved by the President on recommendation of the Prime Minister.



# Systems of Government

- **Secrecy:** The ministers operate on the principle of secrecy of procedure and cannot divulge information about their proceedings, policies and decisions. They take the oath of secrecy before entering their office. The oath of secrecy to the ministers is administered by the President.

## Presidential System of Government

- The American President is both the head of the State and the head of government. As the head of State, he occupies a ceremonial position. As the head of government, he leads the executive organ of government.
- The President is elected by an electoral college for a fixed tenure of four years. He cannot be removed by the Congress except by impeachment for a grave unconstitutional act.
- The President governs with the help of a cabinet or a smaller body called 'Kitchen Cabinet'. It is only an advisory body and consists of non-elected departmental secretaries. They are selected and appointed by him, are responsible only to him, and can be removed by him any time.

# Systems of Government

- The President and his secretaries are **not responsible to the Congress** for their acts. They neither possess membership in the Congress nor attend its sessions.
- The President **cannot dissolve** the House of Representatives—the lower house of the Congress.
- The **doctrine of separation of powers** is the basis of the American presidential system. The legislative, executive and judicial powers of the government are separated and vested in the three independent organs of the government.

## Merits of Parliamentary System

- Harmony between Legislature and Executive
- Responsible Government
- Prevents Despotism of Executive
- Ready Alternative Government
- Wide Representation

# Systems of Government

## Demerits of Parliamentary System

- Unstable Government
- No Continuity of Policies
- Dictatorship of Cabinet
- Against doctrine of Separation of Powers
- Government by Amateurs

**Table 12.1** Comparing Parliamentary and Presidential Systems

<i>Parliamentary System</i>	<i>Presidential System</i>
<b>Features:</b>	<b>Features:</b>
<ol style="list-style-type: none"> <li>1. Dual executive.</li> <li>2. Majority party rule</li> <li>3. Collective responsibility.</li> <li>4. Political homogeneity</li> <li>5. Double membership.</li> <li>6. Leadership of prime minister.</li> <li>7. Dissolution of Lower House.</li> <li>8. Fusion of powers.</li> </ol>	<ol style="list-style-type: none"> <li>1. Single executive.</li> <li>2. President and legislators elected separately for a fixed term.</li> <li>3. Non-responsibility</li> <li>4. Political homogeneity may not exist.</li> <li>5. Single membership</li> <li>6. Domination of president.</li> <li>7. No dissolution of Lower House.</li> <li>8. Separation of powers.</li> </ol>
<b>Merits:</b>	<b>Demerits:</b>
<ol style="list-style-type: none"> <li>1. Harmony between legislature and executive.</li> <li>2. Responsible government.</li> <li>3. Prevents despotism.</li> <li>4. Wide representation.</li> </ol>	<ol style="list-style-type: none"> <li>1. Conflict between legislature and executive.</li> <li>2. Non-responsible government.</li> <li>3. May lead to autocracy.</li> <li>4. Narrow representation.</li> </ol>
<b>Demerits:</b>	<b>Merits:</b>
<ol style="list-style-type: none"> <li>1. Unstable government.</li> <li>2. No continuity of policies.</li> <li>3. Against separation of powers</li> <li>4. Government by amateurs.</li> </ol>	<ol style="list-style-type: none"> <li>1. Stable government.</li> <li>2. Definiteness in policies.</li> <li>3. Based on separation of powers.</li> <li>4. Government by experts</li> </ol>

# Systems of Government

## Why India adopted Parliamentary System of Government?

- **Familiarity with the System:** The Constitution-makers were somewhat familiar with the parliamentary system as it had been in operation in India during the British rule.
- **Preference for a Responsible Government:** Dr B R Ambedkar pointed out in the Constituent Assembly that 'a democratic executive must satisfy two conditions: stability and responsibility. The American system gives more stability but less responsibility. The British system, on the other hand, gives more responsibility but less stability.
- **Need to avoid deadlock between legislature and executive:** The framers of the Constitution wanted to avoid the conflicts between the legislature and the executive which are bound to occur in the presidential system prevalent in USA.
- **Heterogenous Nature of Indian Society makes Parliamentary system more suitable as it is more representative.**

# Systems of Government

Indian Parliamentary System	British or Westminster Parliamentary System
India is a republic	Britain has a constitutional monarchy
Indian system is based on doctrine of sovereignty of constitution	Britain system is based on doctrine of sovereignty of Parliament
Prime Minister may be a member of any of the houses of Parliament	Prime Minister should be a member of Lower House only.
In India, people who are not MPs can also be appointed as ministers	Usually MPs are appointed as ministers
India does not have any concept of legal responsibility	They have the system of legal responsibility of ministers for the acts done while they are in office
There is no system of shadow cabinet in India	There is a shadow cabinet in Britain

# Federal System

Federal Government	Unitary Government
Dual Government (Centre and State)	Single Government
Written Constitution	May be written or unwritten.
Division of Powers between Centre and State	No Division of Powers
Supremacy of Constitution	Constitution may or may not be supreme
Independent Judiciary	Judiciary may or may not be independent
Rigid Constitution	Constitution may be rigid (France) or flexible (Britain)
Bicameral Legislature	Legislature may be bicameral (Britain) or unicameral (China)

# Federal System

## Federal Features of Constitution

- **Dual Polity:**
  - The Constitution establishes a dual polity consisting the Union at the Centre and the states at the periphery.
- **Written Constitution:**
  - The Constitution is not only a written document but also the lengthiest Constitution of the world.
- **Division of Powers:**
  - The Constitution divided the powers between the Centre and the states in terms of the Union List, State List and Concurrent List in the Seventh Schedule.
- **Supremacy of Constitution:**
  - The Constitution is the supreme (or the highest) law of the land. The laws enacted by the Centre and the states must confirm to its provisions.
- **Rigid Constitution:**
  - Indian Constitution becomes rigid when it comes to amending the federal features of the political system.

# Federal System

## Federal Features of Constitution

- **Independent Judiciary:**
  - The Constitution establishes an independent judiciary headed by the Supreme Court for two purposes:
    - to protect the supremacy of the Constitution by exercising the power of judicial review
    - to settle the disputes between the Centre and the states or between the states.
- **Bicameralism:**
  - The Constitution provides for a bicameral legislature consisting of an Upper House (Rajya Sabha) and a Lower House (Lok Sabha).
  - The Rajya Sabha represents the states of Indian Federation, while the Lok Sabha represents the people of India as a whole.

## Unitary Features of Constitution

- **Strong Centre:**
  - The division of powers is in favour of the Centre and highly inequitable from the federal angle.



# Federal System

## Unitary Features of Constitution

- **Strong Centre:**
  - The division of powers is in favour of the Centre and highly inequitable from the federal angle.
- **States not Indestructible:**
  - Unlike in other federations, the states in India have no right to territorial integrity.
  - The Parliament can by unilateral action change the area, boundaries or name of any state.
  - Moreover, it requires only a simple majority and not a special majority.
  - Hence, the Indian Federation is “an indestructible Union of destructible states”. The American Federation, on the other hand, is described as “an indestructible Union of indestructible states”.
- **Single Constitution:**
  - The Constitution of India embodies not only the Constitution of the Centre but also those of the states.

# Federal System

## Unitary Features of Constitution

- **Flexibility of Constitution:**
  - The bulk of the Constitution can be amended by the unilateral action of the Parliament, either by simple majority or by special majority.
- **No equality of State Representation:**
  - The states are given representation in the Rajya Sabha on the basis of population. Hence, the membership varies from 1 to 31.
  - In US, on the other hand, the principle of equality of representation of states in the Upper House is fully recognised.
  - Thus, the American Senate has 100 members, two from each state. This principle is regarded as a safeguard for smaller states.
- **Emergency Provisions:**
  - During an emergency, the Central government becomes all powerful and the states go into the total control of the Centre.
  - It converts the federal structure into a unitary one without a formal amendment of the Constitution.

# Federal System

## Unitary Features of Constitution

- **Single Citizenship:**
  - There is only Indian Citizenship and no separate state citizenship.
  - All citizens irrespective of the state in which they are born or reside enjoy the same rights all over the country.
- **Integrated Judiciary:**
  - The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the state high courts below it.
- **Appointment of Governor:**
  - The governor, who is the head of the state, is appointed by the President.
- **All India Services:**
  - The members of these services are recruited and trained by the Centre which also possess ultimate control over them.
  - Thus, these services violate the principle of federalism under the Constitution.

# Federal System

## Unitary Features of Constitution

- **Parliament authority over State List:**
  - The Parliament is empowered to legislate on any subject of the State List if Rajya Sabha passes a resolution to that effect in the national interest.
- **Integrated Election Machinery:**
  - The Election Commission conducts elections not only to the Central legislature but also to the state legislatures.
  - But, this body is constituted by the President and the states have no say in this matter. The position is same with regard to the removal of its members as well.
- **Veto over State Bills:**
  - The governor is empowered to reserve certain types of bills passed by the state legislature for the consideration of the President.
  - The President can withhold his assent to such bills not only in the first instance but also in the second instance.

# Centre-State Relations

## Centre-State Legislative Relations (Article 245-255)

### Article 245. Extent of Laws made by Parliament and State Legislature

- Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
- No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

### Article 246. Subject Matter of Laws made by Parliament and State Legislature

- Union List (List I of Schedule VII): Centre has the exclusive power to make laws.
- State List (List II of Schedule VII): State has the exclusive power to make laws.
- Concurrent List (List III of Schedule VII): Both Parliament and State Legislature have the power to make laws. In case of any conflict between their provisions, Parliament law would prevail.

# Centre-State Relations

## Article 246A. Special Provision for GST

- Parliament and State Legislature have the power to make laws for **imposition of GST**.
- Parliament has **exclusive power** to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

## Article 247.

- Parliament may by law provide for the establishment of any **additional courts** for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

## Article 248. Residuary Powers of Legislation

- **Parliament** has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.
- Such power shall include the power of making any law **imposing a tax** not mentioned in either of those Lists.

# Centre-State Relations

## Article 249. Power of Parliament to legislate in State List items in national interest

- If the Rajya Sabha declares that it is necessary in the **national interest** that Parliament should make laws on a matter in the State List, then the Parliament becomes competent to make laws on that matter.
- Such a resolution must be supported by **two-thirds of the members present and voting**.
- The resolution remains in force for **one year**; it can be **renewed any number of times** but not exceeding one year at a time.
- The laws cease to have effect on the expiration of **six months** after the resolution has ceased to be in force.

## Article 250. Power of Parliament to legislate in State List items during National Emergency

- The Parliament acquires the power to legislate with respect to matters in the State List, while a **proclamation of national emergency** is in operation.

# Centre-State Relations

**Article 252. Power of Parliament to legislate in State List items when States make a request**

- When the legislatures of two or more states pass resolutions requesting the Parliament to enact laws on a matter in the State List, then the Parliament can make laws for regulating that matter.

**Article 253. Power of Parliament to legislate in State List items to implement International Agreements:**

- The Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or conventions.

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# Centre-State Relations

## Centre-States Administrative Relations (Article 256 to 263)

### Obligation of States and Union

- The executive power of every state is to be exercised in such a way
  - as to ensure compliance with the laws made by the Parliament
  - as not to impede or prejudice the exercise of executive power of the Centre in the state.

### Centre's direction to States

- Centre is empowered to give directions to the states in the following matters:
  - the construction and maintenance of means of communication (declared to be of national or military importance) by the state
  - the measures to be taken for the protection of the railways within the state
  - the provision of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups in the state
  - the drawing up and execution of the specified schemes for the welfare of the Scheduled Tribes in the state

# Centre-State Relations

## Centre-States Financial Relations (Article 268 to 293)

### Article 268. Taxes Levied by the Centre but Collected and Appropriated by the States

- This category includes the following taxes and duties:
  - **Stamp duties** on bills of exchange, cheques, promissory notes, policies of insurance, transfer of shares and others.
  - **Excise duties** on medicinal and toilet preparations containing alcohol and narcotics.
- The proceeds of these duties levied within any state **do not form a part** of the Consolidated Fund of India, but are assigned to that state.

### Article 268A. Service Tax Levied by the Centre but Collected and Appropriated by the Centre and the States

- Taxes on services are **levied** by the Centre. But, their proceeds are **collected as well as appropriated** by both the Centre and the states. The principles of their collection and appropriation are formulated by the Parliament.

# Centre-State Relations

## Article 269. Taxes Levied and Collected by the Centre but Assigned to the States

- The following taxes fall under this category:
  - Taxes on the sale or purchase of **goods** (other than newspapers) in the course of inter-state trade or commerce.
  - Taxes on the consignment of goods in the course of **inter-state trade or commerce**.
- The net proceeds of these taxes do not form a part of the Consolidated Fund of India. They are assigned to the concerned states in accordance with the principles laid down by the Parliament.

## Article 271. Surcharge on Certain Taxes and Duties for Purposes of the Centre

- The Parliament can at any time levy the **surcharges on taxes and duties** referred to in Articles 269 and 270 (mentioned above).
- The proceeds of such surcharges go to the **Centre exclusively**. In other words, the states have no share in these surcharges.

# Centre-State Relations

## Article 270. Taxes Levied and Collected by the Centre but Distributed between the Centre and the States

- This category includes all taxes and duties referred to in the Union List except the following:
  - Duties and taxes referred to in Articles 268, 268-A and 269 (mentioned above)
  - Surcharge on taxes and duties referred to in Article 271 (mentioned below)
  - Any cess levied for specific purposes.
- The manner of distribution of the net proceeds of these taxes and duties is prescribed by the President on the recommendation of the **Finance Commission**.

## Borrowing by Centre and States

- The Central government can borrow either **within India or outside** upon the security of the Consolidated Fund of India or can give guarantees, but both within the limits fixed by the Parliament. So far, no such law has been enacted by the Parliament.

# Centre-State Relations

- Similarly, a state government can borrow within India (and not abroad) upon the security of the Consolidated Fund of the State or can give guarantees, but both within the limits fixed by the legislature of that state.
- The Central government can make loans to any state or give guarantees in respect of loans raised by any state. Any sums required for the purpose of making such loans are to be charged on the Consolidated Fund of India.
- A state cannot raise any loan without the consent of the Centre, if there is still outstanding any part of a loan made to the state by the Centre or in respect of which a guarantee has been given by the Centre.

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# President

## Article 52. President of India

- There shall be a President of India.

## Article 53. Executive Power of Union

- The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
- The supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

## Article 54. Election of President

- The President shall be elected by the members of an electoral college consisting of:
  - the elected members of both Houses of Parliament
  - the elected members of the Legislative Assemblies of the States

**Note:** Nominated Members cannot vote in Presidential election.

**Note:** Members of Legislative Council cannot vote in Presidential election.

# President

**Note:** In this article, the term State includes NCT Delhi and Puducherry.

## Article 55. Manner of Election of President

- The Constitution provides that there shall be uniformity in the scale of representation of different states as well as parity between the states as a whole and the Union at the election of the President.
- To achieve this, the number of votes which each elected member of the legislative assembly of each state and the Parliament is entitled to cast at such election shall be determined in the following manner:

- **Step 1: Calculate Value of Vote of an MLA**

$$\begin{aligned} &\text{Value of the vote of an MLA} \\ &= \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000} \end{aligned}$$

- **Step 2: Calculate Value of Vote of MP**

$$\begin{aligned} &\text{Value of the vote of an MP} = \\ &\frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}} \end{aligned}$$

# President

- The President's election is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot.
- A candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes.

$$\text{Electoral quota} = \frac{\text{Total number of valid votes polled}}{1+1 = (2)} + 1$$

- Whoever gets the fixed quota of Votes is declared the winner.

## Article 56. Term of Office of President

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

**Note:** The President may, by writing under his hand addressed to the Vice-President, **resign** his office.

**Note:** The President may, for violation of the Constitution, be removed from office by **impeachment** in the manner provided in article 61

**Note:** The President shall, notwithstanding the expiration of his term, **continue to hold office** until his successor enters upon his office



# President

## Article 57. Eligibility for re-election

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

## Article 58. Qualifications for election as President

- No person shall be eligible for election as President unless he:
  - is a citizen of India
  - has completed the age of 35 years
  - is qualified for election as a member of the House of the People.
- A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

# President

## Article 59. Conditions of President's Office

- The President shall not be a member of either House of Parliament or of a House of the Legislature of any State and if so, he shall be deemed to have vacated that office on the date he enters his office as the President.
- The President shall not hold any other office of profit.
- The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law
- The emoluments and allowances of the President shall not be diminished during his term of office.

## Article 60. Oath or Affirmation by President

- Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court available, an oath or affirmation.

# President

## Article 61. Impeachment of President

- When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.
- No such charge shall be preferred unless
  - the proposal to prefer such charge is contained in a resolution which has been moved after at least 14 days' notice signed by at least 1/4th of the total members of the House has been given of their intention to move the resolution
  - such resolution has been passed by a majority of 2/3rd of the total membership of the House.
- When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge and the President shall have the right to appear and to be represented at such investigation.
- If as a result of the investigation a resolution is passed by a majority of at least 2/3rd of the total membership of the House, declaring that the charge has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

# President

## Article 62. Time of Holding Elections

- An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.
- An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than 6 months from, the date of occurrence of the vacancy

## Article 72. Pardoning Power of President

- Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:
  - Punishment or sentence is for an offence against a Union Law
  - Punishment or sentence is by a court martial (military court)
  - Sentence is a sentence of death.

# President

## Article 72. Pardoning Power of President

- The pardoning power of the President is **independent of the Judiciary**; it is an executive power. But, the President while exercising this power, **does not sit as a court of appeal**.
- The pardoning power of the President includes the following:
  - **Pardon**: It removes both the sentence and the conviction and completely absolves the convict.
  - **Commutation**: It denotes the substitution of one form of punishment for a lighter form.
  - **Remission**: It implies reducing the period of sentence without changing its character.
  - **Respite**: It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.
  - **Reprieve**: It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

# Vice-President

## Article 63. Vice-President of India

- There shall be a Vice-President of India.

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

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

## Article 65. Vice-President to act as President

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

## Article 66. Election of Vice-President

- He is elected by the members of an **electoral college** consisting of the members of both Houses of Parliament.
- Electoral College consists of **elected and nominated members of the Parliament**.
  - It does not include the members of the state legislative assemblies

# Vice-President

- He is elected in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot

## Article 67. Term of Office of Vice-President

The Vice-President shall hold office for a term of 5 years from the date on which he enters upon his office

**Note:** Vice-President may, by writing under his hand addressed to the President, resign his office

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

**Note:** Vice-President shall continue to hold office until his successor enters upon his office

# Vice-President

## Article 68. Time of holding elections

- An election to fill a vacancy caused by the **expiration of the term of office** of Vice-President shall be completed before the expiration of the term.
- An election to fill a vacancy in the office of Vice-President occurring by **reason of his death, resignation or removal, or otherwise** shall be held as soon as possible after the occurrence of the vacancy

## Article 69. Oath or Affirmation by Vice President

Every Vice-President shall, before entering upon his office, make and subscribe before the **President, or some person appointed in that behalf by him**, an oath or affirmation

## Article 70. Discharge of President's functions in other contingencies

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



# Vice-President

## Article 71. Matters related to election of President or Vice-President

- All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the **Supreme Court** whose decision shall be final.
- If the election of a person as President or Vice-President is declared void by the Supreme Court, **acts done by him** in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court **shall not be invalidated** by reason of that declaration.
- **Parliament** may by law **regulate any matter** relating to or connected with the election of a President or Vice-President.

# Council of Ministers

## or Vice-President

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

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

## Article 75. Other Provisions for Council of Ministers

- The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.
- The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total members of the Lok Sabha

# Council of Ministers

- The Ministers shall hold office during the pleasure of the President.
- The Council of Ministers shall be collectively responsible to the House of the People.
- Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.
- A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.
- The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

## Article 77. Conduct of business of Government of India

- All executive action of the Government of India shall be expressed to be taken in the name of the President.

# Council of Ministers

- Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President
- The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

## Article 78. Duties of Prime Minister

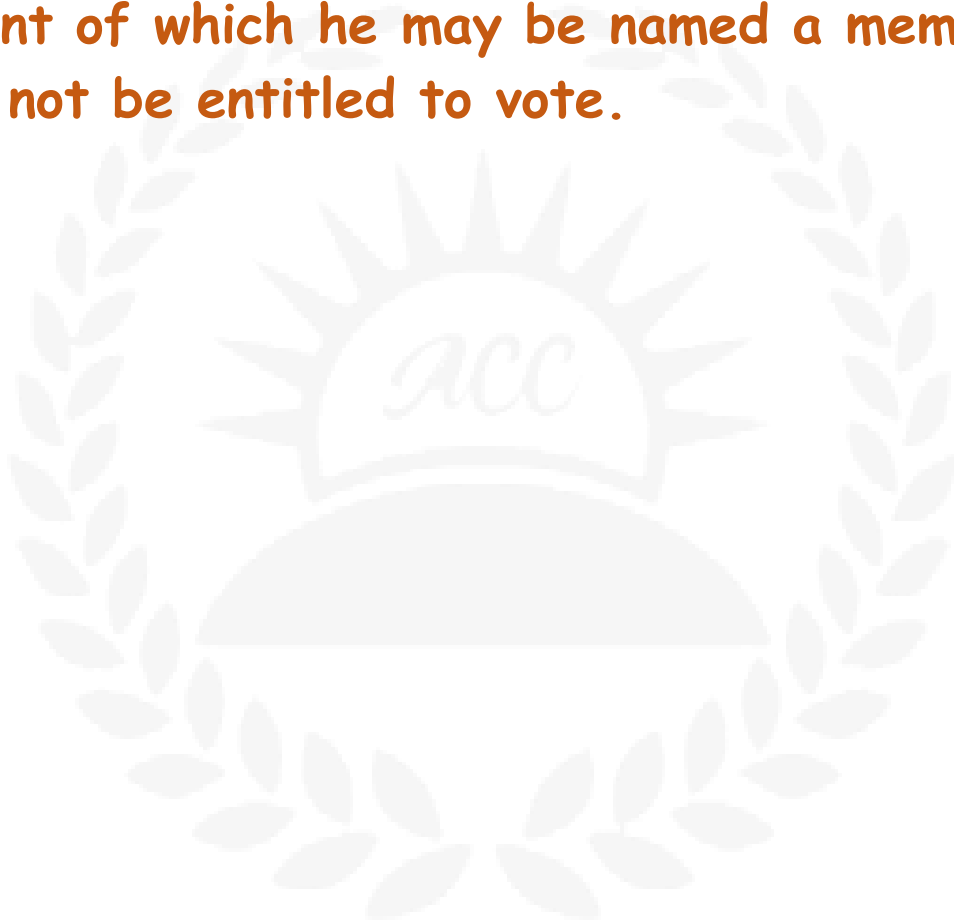
It shall be the duty of the Prime Minister:

- to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation
- 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 the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

# Council of Ministers

## Article 88. Rights of Ministers as respects Houses

Every minister shall have the right to speak and take part in the proceedings of either House, any joint sitting of the Houses and any Committee of Parliament of which he may be named a member. But he shall not be entitled to vote.



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# Parliament

## Article 79. Constitution of Parliament

There shall be a Parliament for the Union which shall consist of

- President
- Council of States (Rajya Sabha)
- House of the People (Lok Sabha)

## Article 80. Composition of Council of States

- The Council of States shall consist of:
  - 12 members to be nominated by the President
  - not more than 238 representatives of the States and of the Union territories
- The allocation of seats in the Council of States to States and Union Territories shall be in accordance with Fourth Schedule.
- The members to be nominated by the President shall consist of persons having special knowledge or practical experience in respect of matters such as Literature, science, art and social service
- The representatives of each State in the Rajya Sabha shall be elected by the elected members of the State Legislative Assembly in accordance with the system of proportional representation by means of the single transferable vote

# Parliament

## Article 81. Composition of House of People

- The House of People shall consist of:
  - not more than **538 members** chosen by direct election from territorial constituencies in the States,
  - not more than **20 members** to represent the Union territories
- For the purpose of holding direct elections to the Lok Sabha, each state is divided into **territorial constituencies**. In this respect, the Constitution makes the following two provisions:
  - Each state is allotted a number of seats in the Lok Sabha in such a manner that the ratio between that **number and its population is the same for all states**. This provision does not apply to a state having a population of **less than six millions**.
  - Each state is divided into territorial constituencies in such a manner that the **ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state**.

# Parliament

## Article 82. Readjustment after each census

- After every census, a readjustment is to be made in
  - allocation of seats in the Lok Sabha to the states
  - division of each state into territorial constituencies.
- Parliament is empowered to determine the authority and the manner in which it is to be made. Accordingly, the Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose.

### Note:

Till 2026,

- the allocation of seats in the House of the People to the States as readjusted on the basis of the 1971 census
- the division of each State into territorial constituencies as may be readjusted on the basis of the 2001 census



# Parliament

## Article 83. Duration of Houses of Parliament

- **Rajya Sabha**
  - It is a continuing House. It is never dissolved.
  - But, 1/3rd members of Rajya Sabha retire every 2 years.
- **Lok Sabha**
  - It is dissolved every 5 years and then the fresh elections are held.
  - President is also authorised to dissolve Lok Sabha before 5 years

## Article 84. Qualifications of MPs

- He must be a citizen of India.
- He must make and subscribe to an oath or affirmation before the person authorised by the election commission for this purpose.
- He must be at least 30 years of age in the case of the Rajya Sabha and at least 25 years of age in the case of the Lok Sabha.
- He must possess other qualifications as prescribed by Parliament.

# Parliament

## Article 85. Sessions of Parliament, prorogation and dissolution

- The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but **6 months** shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.
- The President may from time to time:
  - **prorogue** the Houses or either House
  - **dissolve** the House of the People.

## Article 86. Right of President to address and send messages to Houses

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

# Parliament

## Article 87. Special Address by President

- At the commencement of the first session after each general election to Lok Sabha and at the commencement of the first session of each year the President shall address both Houses of Parliament assembled together.

## Article 88. Right of Ministers and Attorney General as respects Houses

- Every Minister and the Attorney-General of India shall have the right to speak in and take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

## Article 89. Chairman and Deputy Chairman of Rajya Sabha

- The Vice-President of India shall be ex officio Chairman of the Council of States.
- The Council of States shall choose a member of the Council to be its Deputy Chairman

# Parliament

## Article 90. Vacation, Resignation and Removal from office of Deputy Chairman

- A member holding office as Deputy Chairman of the Council of States:
  - shall vacate his office if he ceases to be a member of the Council
  - may at any time, by writing under his hand addressed to the Chairman, resign his office
  - may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council

## Article 91. Power of Deputy Chairman to perform duties of Chairman

- While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

# Parliament

- During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

## Article 92

- It states that Chairman or Deputy Chairman should not preside over Rajya Sabha while a resolution for his removal is under consideration.

## Article 93. Speaker and Deputy Speaker of House of People

- The House of the People shall choose two members of the House to be respectively Speaker and Deputy Speaker

# Parliament

## Article 94. Vacation, Resignation and Removal from office of Speaker and Deputy Speaker

A member holding office as Speaker or Deputy Speaker of the House of the People:

- shall **vacate his office** if he ceases to be a member of the House of the People
- may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, **resign his office**
- may be **removed from his office** by a resolution of the House of the People passed by a majority of all the then members of the House

## Article 95. Power of Deputy Speaker to perform duties of Speaker

- While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

# Parliament

- During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

## Article 96.

It states that Speaker or Deputy Speaker should not preside over Lok Sabha while a resolution for his removal is under consideration.

## Article 97. Salaries of Presiding Officers

There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the **Second Schedule**.

# Parliament

## Article 98. Secretariat of Parliament

- Each House of Parliament shall have a **separate secretarial staff**  
**Note:** However, creation of posts common to both Houses of Parliament is also permitted.
- **Parliament may by law** regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.
- Until Parliament makes such law, the President may, after consultation with the Speaker or the Chairman make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Lok Sabha or Rajya Sabha.

## Article 99. Oath or Affirmation by Members

- Every member of either House of Parliament shall, before taking his seat, make and subscribe before the **President**, or some person appointed in that behalf by him, an **oath or affirmation** according to the form set out for the purpose in the **Third Schedule**.



# Parliament

## Article 100. Voting in Houses

- All questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.
- The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.
- The quorum to constitute a meeting of either House of Parliament shall be 1/10th of the total number of members of the House.
- If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

# Parliament

## Article 101. Vacation of Seats

- No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.
- No person shall be a member both of Parliament and of a House of the Legislature of a State, and if a person is chosen a member both of Parliament and of a House of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.
- If a member of either House of Parliament:
  - becomes subject to any of the disqualifications mentioned in Article 102 or
  - resigns his seat by writing under his hand addressed to the presiding officer and his resignation is accepted by the officer, his seat shall thereupon become vacant.

# Parliament

- If for a period of 60 days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than 4 consecutive days.

## Article 102. Disqualifications for membership

- He holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder
- He is of unsound mind and stands so declared by a competent court
- He is an undischarged insolvent
- He is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State
- He is so disqualified by or under any law made by Parliament.

# Parliament

## Article 103. Decisions on questions as to disqualification of members

- In any question arises relating to disqualification of members of Parliament, the **decision of President shall be final**
- Before giving any decision on any such question, the President shall obtain the **opinion of the Election Commission** and shall act according to such opinion.

## Article 104. Penalty

- If requirements of Article 99 is not satisfied, he shall be liable in respect of each day on which he so sits or votes to a **penalty of 500 rupees** to be recovered as a debt due to the Union.

## Article 105. Power and Privileges of Houses of Parliament

- There shall be **freedom of speech** in the Parliament
- Powers, privileges and immunities of each House of Parliament shall be determined by **Parliament by law.**

# Parliament

## Article 106. Salary and Allowances of Members

- Salary and Allowances of members shall be determined by Parliament by law.

## Article 107. Introduction and Passing of Bills

- A Bill may **originate** in either House of Parliament.
- A Bill shall be deemed to have been passed by the Houses of Parliament if it has been agreed to by both Houses by **ordinary majority**
- A Bill pending in Parliament shall not lapse by **reason of the prorogation of the Houses.**
- A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a **dissolution of the House of the People.**
- A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, **lapse on a dissolution of the House of the People.**

# Parliament

## Article 108. Joint Sitting of both Houses

- Joint sitting is an extraordinary machinery provided by the Constitution to resolve a deadlock between the two Houses over the passage of a bill. A deadlock is deemed to have taken place under any one of the following three situations after a bill has been passed by one House and transmitted to the other House:
  - if the bill is rejected by the other House
  - if the Houses have finally disagreed as to the amendments to be made in the bill
  - if more than six months have elapsed from the date of the receipt of the bill by the other House without the bill being passed by it
- President can summon both the Houses to meet in a joint sitting for the purpose of deliberating and voting on the bill.
- Joint Sitting is not applicable for Money Bills and Constitutional Amendment Bills
- The Speaker of Lok Sabha presides over a joint sitting of the two Houses and the Deputy Speaker, in his absence.

# Parliament

## Article 108. Joint Sitting of both Houses

- The quorum to constitute a joint sitting is one-tenth of the total number of members of the two Houses.
- The joint sitting is governed by the Rules of Procedure of Lok Sabha and not of Rajya Sabha.
- If the bill in dispute is passed by a majority of the total number of members of both the Houses present and voting in the joint sitting, the bill is deemed to have been passed by both the Houses.
- The Constitution has specified that at a joint sitting, new amendments to the bill cannot be proposed except in two cases:
  - those amendments that have caused final disagreement between the Houses
  - those amendments that might have become necessary due to the delay in the passage of the bill

# Parliament

## Article 109. Procedure for Money Bills

- A Money Bill shall not be introduced in the Council of States.
- After a money bill is passed by the Lok Sabha, it is transmitted to the Rajya Sabha for its consideration.
- The Rajya Sabha has restricted powers with regard to a money bill. It cannot reject or amend a money bill. It can only make the recommendations. It must return the bill to the Lok Sabha within 14 days, whether with or without recommendations.
- The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha.
- If the Lok Sabha accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form.
- If the Lok Sabha does not accept any recommendation, the bill is then deemed to have passed by both the Houses in the form originally passed by the Lok Sabha without any change.



# Parliament

- If the Rajya Sabha does not return the bill to the Lok Sabha within 14 days, the bill is deemed to have been passed by both the Houses in the form originally passed by the Lok Sabha.
- Thus, the Lok Sabha has more powers than Rajya Sabha with regard to a money bill.
- Finally, when a money bill is presented to the president, he may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the Houses.

## Article 110. Definition of Money Bills

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

- The imposition, abolition, remission, alteration or regulation of any tax
- The regulation of the borrowing of money by the Union government

# Parliament

- The custody of the CFI or the contingency fund of India, the payment of moneys into or the withdrawal of money from any such fund
- The appropriation of money out of the CFI
- Declaration of any expenditure charged on the CFI or increasing the amount of any such expenditure
- The receipt of money on account of the CFI 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
- Any matter incidental to any of the matters specified above.

However, a bill is not to be deemed to be a money bill by reason only that it provides for:

- the imposition of fines or other pecuniary penalties
- the demand or payment of fees for licenses or fees for services rendered
- the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

# Parliament

## Article 111. Assent to Bills

When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

# Parliament

## Article 112. Annual Financial Statements

- The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part referred to as the **annual financial statement**
- The estimates of expenditure embodied in the annual financial statement shall show separately:
  - the sums required to meet expenditure described by this Constitution as expenditure charged upon the **Consolidated Fund of India**
  - the sums required to meet other expenditure proposed to be made from the **Consolidated Fund of India**and shall distinguish expenditure on revenue account from other expenditure.

## Expenditure Charged on Consolidated Fund of India

- The emoluments and allowances of the **President** and other expenditure relating to his office

# Parliament

- the salaries and allowances of the **Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People**
- **debt charges** for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt
- the salaries, allowances and pensions payable to or in respect of **Judges of the Supreme Court**
- the pensions payable to or in respect of **Judges of the Federal Court**
- the **pensions payable** to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction in relation to any area included in Governor's Province of the Dominion of India
- the salary, allowances and pension payable to or in respect of the **Comptroller and Auditor-General of India**

# Parliament

- any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal
- any other expenditure declared by this Constitution or by Parliament by law to be so charged

## Article 113. Procedure in Parliament with respect to Estimates

- So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.
- So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.
- No demand for a grant shall be made except on the recommendation of the President

# Parliament

## Article 114. Appropriation Bills

- As soon as may be after the grants under article 113 have been made by the House of the People, a Bill shall be introduced to provide for the appropriation out of the CFI of all moneys required to meet:
  - the grants so made by the House of the People
  - the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.
- No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the CFI, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.
- Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.

# Parliament

## Article 115. Supplementary, Additional or Excess Grants

The President shall

- if the amount authorised by any law made in accordance with **Article 114** to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year
- if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.



# Parliament

## Article 116. Votes on Account, Votes of Credit and Exceptional Grants

The House of the People shall have power:

- to make any grant in advance in respect of the **estimated expenditure for a part of any financial year** pending the completion of the procedure prescribed in article 113 for the voting of such grant and the passing of the law in accordance with the provisions of article 114 in relation to that expenditure
- to make a grant for **meeting an unexpected demand** upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement to make an exceptional grant which forms no part of the current service of any financial year,

and Parliament shall have power to **authorise by law** the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.

# Parliament

## Article 117. Special Provision as to Financial Bills

- A Bill or amendment making provision for any of the matters specified in article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States  
**Note:** No recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.
- A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.
- A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

# Parliament

## Article 120. Language to be used in Parliament

- Business in Parliament shall be transacted in Hindi or in English
- The Chairman of the Council of States or Speaker of the House of the People, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother-tongue.

## Article 121. Restriction on discussion in Parliament

- No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

## Article 122. Courts not to inquire into proceedings of Parliament

- The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

# Governor

## Article 153

There shall be a Governor for each state

**Note:** same person appointed as Governor for two or more states.

## Article 154: Executive Power of State

- The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
- Nothing in this article shall-
  - (a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or
  - (b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

## Article 155: Appointment of Governor

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

# Governor

## Article 156 : Term of office of Governor

- The Governor shall hold office during the **pleasure of the President**.
- The Governor may, by writing under his hand addressed to the President, **resign his office**.
- Subject to the foregoing provisions of this article, a Governor shall hold office for a **term of five years** from the date on which he enters upon his office.

**Note:** Notwithstanding the expiration of his term, governor shall **continue to hold office** until his successor enters upon his office.

## Article 157 : Qualifications for appointment of Governor

No person shall be eligible for appointment as Governor unless he is a **citizen of India** and has completed the age of **35 years**.

# Governor

## Article 158: Conditions of Governors' Office

- The Governor shall not be a member of either House of Parliament or of a House of State Legislature.
- And if a member of either House of Parliament or of a House of the State Legislature is appointed as Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.
- The Governor shall not hold any other office of profit.
- The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law.
- The emoluments and allowances of the Governor shall not be diminished during his term of office.

# Governor

## Article 213 : Power of Governor to promulgate Ordinances during recess of Legislature.

If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate Ordinances.

The Governor shall not, without instructions from the President, promulgate any such Ordinance if-

- a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or
- he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or
- an Act of the State Legislature containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

# Governor

- An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance-
  - shall be laid before the State Legislative Assembly and shall cease to operate at the expiration of **6 weeks** from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council
  - **may be withdrawn** at any time by the Governor.

## Legislative Powers

- The Governor is **part of the State Legislature**.
- He can **Summon, Prorogue, and Dissolve** the state legislative assembly. Governor can exercise these powers on the aid and advice of the council of ministers headed by the Chief Minister.



# Governor

- He has Veto powers i.e., Absolute Veto, Suspensive Veto, Pocket Veto and Referential Veto (Article 200).
- Referential Veto- The Governor can reserve the bill for the consideration of the President.
- He can address the state legislature at the commencement of the first session after each general election and the first session of each year.
- He nominates one-sixth of the members of the State Legislative Council.
- He lays the reports of the State Public Service Commission, State Finance Commission, State Human Rights Commission, and Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.
- Article 213: He can promulgate ordinance when the State legislature is not in session.
- He decides on the question of disqualification of members of the State legislature in consultation with the Election Commission.

# Governor

## Financial Powers

- **Money bills** can be introduced in the state legislature only with the **prior consent of the Governor**.
- He can make **advances out of the contingency fund of the state** to meet any unforeseen expenditure.
- He constitutes the **State Finance Commission every five years** for sharing the finances between the state government and local bodies.
- It is the responsibility of the Governor to represent the **Annual Financial Statement** in the state legislature every year.

## Judicial Powers

- **Article 161**: He can grant pardons, reprieves, respites, and remissions of punishment or suspend, remit, and commute the sentence.
- He makes **appointments, postings, and promotions of the district judges** in consultation with the state high court.
- **Article 217**: He is consulted by the president while appointing the judges of the concerned state high court.

# State Executive

## Article 164: Other provisions as to Ministers

- The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister
- The Ministers shall hold office during the pleasure of the Governor
- In Chhattisgarh, Jharkhand, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may, in addition, be in charge of the welfare of the Scheduled Castes and backward classes or any other work.
- The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed 15% of the total number of members of the Legislative Assembly of that State  
Provided that the number of Ministers shall not be less than 12
- The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

# State Executive

- Before a Minister enters upon his office, the Governor shall administer so him the oaths of office and secrecy according to the forms set out for the purpose in the Third Schedule.
- A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

## Article 166. Conduct of business of the Government of a State

- All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
- Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instruction which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

# State Executive

- The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

## Article 167. Duties of Chief Minister

It shall be the duty of the Chief Minister of each State:

- to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation
- to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for
- if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

# State Legislature

## Article 168. Constitution of State Legislature

- For every State, there shall be a Legislature which shall consist of the Governor, and:
  - in the States of Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Karnataka, Tamil Nadu, Telangana and Uttar Pradesh, two Houses (Legislative Assembly and Council)
  - in other States, one House (Legislative Assembly)

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

- Parliament may by law provide for the abolition of the Legislative Council or for the creation of such a Council if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than 2/3rd of the members of the Assembly present and voting.
- No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

# State Legislature

## Article 170: Composition of the Legislative Assemblies

- The Legislative Assembly of each State shall consist of **not more than 500** but **atleast 60** members chosen by **direct election** from territorial constituencies in the State
- For the purposes of election of MLAs, each State shall be divided into territorial constituencies in such manner that the **ratio between the population of each constituency and the number of seats** allotted to it shall be the same throughout the State
- Upon the **completion of each census**, the total seats and division of each state into territorial constituencies shall be readjusted by such authority and in such manner as **Parliament** may by law determine.

**Note:** Such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly

# State Legislature

**Note:** Until the completion of 2026 census, it shall not be necessary to readjust-

- the total number of seats in the Legislative Assembly of each State as readjusted based on the 1971 census
- the division of such State into territorial constituencies as may be readjusted based on the 2001 census

## Article 171: Composition of the Legislative Councils

- The total number of members in the Legislative Council of a State having such a Council shall not exceed  $\frac{1}{3}$ rd of the total number of members in the Legislative Assembly of that State.

**Note:** Total number of members in the Legislative Council of a State shall be at least 40 members

- Election of members of Legislative Council:
  - Local bodies elects  $\frac{1}{3}$ rd members
  - Graduates of 3rd year standing elects  $\frac{1}{12}$ th members
  - Teachers of 3 years standing elects  $\frac{1}{12}$ th members
  - MLAs of State elects  $\frac{1}{3}$ rd members



# State Legislature

- Remaining 1/6th members are nominated by Governor from the field of arts, literature, social service, science, cooperative movement, etc.
- Elections shall be held in accordance with the system of **proportional representation** by means of the **single transferable vote**

## Article 172: Duration of State Legislatures

- Every Legislative Assembly of every State, unless sooner dissolved, shall continue for **5 years from the date appointed for its first meeting**
- During National Emergency, duration of legislative assembly may be extended by Parliament by law for a period not exceeding **1 year at a time** and not extending in any case beyond a period of **6 months** after the Proclamation has ceased to operate.
- The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible **1/3rd of the members** thereof shall retire on the expiration of **every second year**

# State Legislature

## Article 173: Qualifications of a member of State Legislature

A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he:

- is a **citizen of India**, and makes and subscribes before some person authorised in that behalf by the Election Commission an **oath or affirmation** according to the form **set out for the purpose in the Third Schedule**
- is, in the case of a seat in the Legislative Assembly, at least **25 years** of age and in the case of a seat in the Legislative Council, at least **30 years** of age
- possesses **such other qualifications** as may be prescribed in that behalf by or under any **law made by Parliament**.

Remaining Provisions of State Legislature are similar to Parliament

# Supreme Court

- The Indian Constitution has established an integrated judicial system with the supreme court at the top and the high courts below it.
- Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts.
- This single system of courts is adopted from the Government of India Act of 1935
- Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court.

## Composition of Supreme Court

- Originally there were 8 judges (one chief justice and seven other judges)
- At present, the Supreme Court consists of 34 judges (1 chief justice and 33 other judges)
- In 2019, the centre notified an increase in the number of Supreme Court judges from 31 to 34, including the Chief Justice of India

# Supreme Court

## Appointment of Judges

- The judges of the Supreme Court are appointed by the president.
- The chief justice is appointed by the president after consultation with such judges of the Supreme Court and high courts as he deems necessary.
- The other judges are appointed by president after consultation with the chief justice and such other judges of the Supreme Court and the high courts as he deems necessary.
- Consultation with the CJI is mandatory for appointment of judges other than the CJI.

## Qualifications to be a Supreme Court Judge

- Citizen of India
- He should have been
  - A HC judge for 5 years
  - HC advocate for 10 years
  - Distinguished jurist in the opinion of the President
  - No minimum age

# Supreme Court

## Oath or Affirmation

- A person appointed as a Supreme Court Judge has to make and subscribe an oath or affirmation before the President, or some person appointed by him for this purpose.

## Salaries and Allowances

- The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament.
- They cannot be varied to their disadvantage after their appointment except during a financial emergency.

## Tenure of Judges

The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard:

- He holds office until he attains the age of 65 years
- He can resign his office by writing to the president.
- He can be removed from his office by the President on the recommendation of the Parliament.

# Supreme Court

## Removal of Judges

- A judge of the Supreme Court can be removed from his Office by an order of the president.
- The President can issue the removal order only after an address by Parliament has been presented to him.
- The address must be supported by a special majority of each House of Parliament

The Judges Enquiry Act (1968) regulates the process of removal of a Supreme Court judge:

- A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
- The Speaker/Chairman may admit the motion or refuse to admit it.
- If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
- The committee should consist of
  - the chief justice or a judge of the Supreme Court,
  - a chief justice of a high court, and
  - a distinguished jurist.

# Supreme Court

- After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
- Finally, the president passes an order removing the judge.
- No judge of the Supreme Court has been impeached so far.

## Acting Chief Justice

President can appoint a judge of the SC as the acting CJI when

- Office of CJI is vacant
- CJI is temporarily absent
- CJI is unable to perform his duties

## Adhoc Judges

- The CJI can appoint a HC judge as an ad hoc judge of the SC for a temporary period when there is a lack of quorum of permanent judges to hold or continue any session of the SC
- CJI needs
  - Previous consent of the President
  - Consultation with the Chief Justice of the HC concerned.

# Supreme Court

- The ad hoc judge needs to be qualified to be appointed as a permanent judge of the SC.
- Ad hoc judge needs to attend the sittings of the SC in priority of other duties of his office.
- While ad hoc judge, he enjoys all the jurisdiction, powers and privileges of a SC judge.

## Retired Judges

- CJI can request a retired SC judge or a duly qualified retired HC judge to act as a temporary SC judge.
- Needs previous consent of the President and of the person to be so appointed.

## Seat of Supreme Court

- The Constitution declares Delhi as the seat of the Supreme Court.
- It also authorises the chief justice of India to appoint other place or places as seat of the Supreme Court.
- He can take decision in this regard only with the approval of the President.



# Supreme Court

## Procedure of the Court

- SC with President's approval makes rules for regulating generally the practice and procedure of the Court
- 5 Judge benches for Constitutional cases or Presidential references under **Article 143**
- Not less than 3 judges for other cases
- Judgements delivered by open court

## Independence of Supreme Court

- SC has a **significant role** on the Indian democratic political system
  - Federal court
  - Highest court of appeal
  - Guarantor of fundamental rights
  - Guardian of the Constitution

Thus independence needed for effective discharge of its duties.

- It should be **allowed to do justice without fear or favour.**

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Supreme Court:

# Supreme Court

- **Mode of Appointment**
  - The judges of the Supreme Court are appointed by the President in consultation with the members of the judiciary itself.
  - This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.
- **Security of Tenure**
  - The judges of the Supreme Court can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution.
- **Fixed Service Conditions**
  - The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament.
  - They cannot be changed to their disadvantage after their appointment except during a financial emergency.

# Supreme Court

- **Expenses Charged on Consolidated Fund**
  - The salaries, allowances and pensions of the judges and the staff as well as all the administrative expenses of the Supreme Court are charged on the Consolidated Fund of India.
- **Conduct of Judges cannot be Discussed**
  - The Constitution prohibits any discussion in Parliament or in a State Legislature with respect to the conduct of the judges of the Supreme Court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.
- **Ban on Practice after Retirement**
  - The retired judges of the Supreme Court are prohibited from pleading or acting in any Court or before any authority within the territory of India.
- **Power to Punish for its Contempt**
  - The Supreme Court can punish any person for its contempt. Thus, its actions and decisions cannot be criticised and opposed by any body.

# Supreme Court

- Freedom to Appoint its Staff
  - The Chief Justice of India can appoint officers and servants of the Supreme Court without any interference from the executive.
  - He can also prescribe their conditions of service.
- Its Jurisdiction cannot be Curtailed
  - The Parliament is not authorised to curtail the jurisdiction and powers of the Supreme Court.
  - The Constitution has guaranteed to the Supreme Court, jurisdiction of various kinds. However, the Parliament can extend the same.
- Separation from Executive
  - The Constitution directs the State to take steps to separate the Judiciary from the Executive in the public services.
  - This means that the executive authorities should not possess the judicial powers

# Supreme Court

## Jurisdiction and Powers of Supreme Court

The jurisdiction and powers of the Supreme Court can be classified into the following:

- **Original Jurisdiction**

- As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation:

- Between the Centre and one or more states
- Between the Centre and any state or states on one side and one or more other states on the other side; or
- Between two or more states.

- In the above federal disputes, the Supreme Court has exclusive original jurisdiction.

Exclusive means, no other court can decide such disputes.

- Original means, the power to hear such disputes in the first instance, not by way of appeal.

- **Writ Jurisdiction**

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

# Supreme Court

- The Supreme Court is empowered to issue writs including habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of the fundamental rights of an aggrieved citizen.
- The Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court not exclusive.
- The high courts are also empowered to issue writs for the enforcement of the Fundamental Rights.

**Note:** Difference between the writ jurisdiction of the SC and the HCs:

- Supreme Court: only for FRs.
- High Court: for FRs as well as legal rights (wider jurisdiction)

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# Supreme Court

- Appellate Jurisdiction

- Enjoys a wide appellate jurisdiction:
  - Appeals in constitutional matters
  - In civil matters
  - In criminal matters
  - Appeals by special leave
- Appeal by Special Leave: The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country.

- Advisory Jurisdiction

- The Constitution (Article 143) authorises the president to seek the opinion of the Supreme Court in the two categories of matters:
  - On any question of law or fact of public importance which has arisen or which is likely to arise.
  - On any dispute arising out of any pre-constitution treaty, agreement engagement.

# Supreme Court

- **Court of Record**

- As a Court of Record, the Supreme Court has two powers:
  - The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony.
  - It has power to punish for contempt of court, either with simple imprisonment for a term up to **six months** or with fine up to **₹2,000** or with both.

- **Power of Judicial Review**

- Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution, they can be declared as illegal, unconstitutional and invalid.

- **Constitutional Interpretation**

- The Supreme Court is the **ultimate interpreter of the Constitution**. It can give final version to the spirit and content of the provisions of the constitution.



# Supreme Court

- While interpreting the constitution, the Supreme Court applies various doctrines in interpreting the constitution.
- Other Powers
  - It decides the disputes regarding the election of the president and the vice president.
  - Enquires into the conduct and behaviour of the Chairperson and members of the UPSC, on a reference made by the President.
    - If found guilty of misconduct, can recommend their removal
    - Recommendation of the SC is binding on the President in this regard
  - It has power to review its own judgement or order.
  - It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court.
  - Its law is binding on all courts in India.

# Anti-Defection Law

The 52nd Amendment Act of 1985 provided for the disqualification of the members of Parliament and the state legislatures on the ground of defection from one political party to another.

## Disqualification

- **Members of Political Parties:**
  - A member of a House belonging to any political party becomes disqualified for being a member of the House, if he:
    - voluntarily gives up his membership of such political party; or
    - votes or abstains from voting in such House contrary to any direction issued by his political party without obtaining prior permission of such party and such act has not been condoned by the party within 15 days.
- **Independent Members:**
  - An independent member of a House (elected without being set up as a candidate by any political party) becomes disqualified to remain a member of the House if he joins any political party after such election.

# Anti-Defection Law

- **Nominated Members:**

- A nominated member of a House becomes disqualified for being a member of the House if he joins any political party **after the expiry of six months** from the date on which he takes his seat in the House.

## Exceptions

- If a member goes out of his party as a result of a **merger of the party with another party**. A merger takes place when two-thirds of the members of the party have agreed to such merger.
- If a member, **after being elected as the presiding officer** of the House, voluntarily gives up the membership of his party or rejoins it after he ceases to hold that office.

## Deciding Authority

- Any question regarding disqualification arising out of defection is to be decided by the **presiding officer of the House**.

# Anti-Defection Law

## 91st Amendment Act, 2013

- The total number of ministers, including the Prime Minister, in the Central Council of Ministers shall not exceed 15 per cent of the total strength of the Lok Sabha (Article 75)
- A member of either House of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister (Article 75)
- The total number of ministers, including the Chief Minister, in the Council of Ministers in a state shall not exceed 15 per cent of the total strength of the Legislative Assembly of that state. But, the number of ministers, including the Chief Minister, in a state shall not be less than 12 (Article 164)
- A member of either House of a state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister (Article 164).

# Anti-Defection Law

- A member of either House of Parliament or either House of a State Legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to hold any remunerative political post.
- The provision of the Tenth Schedule (anti-defection law) pertaining to exemption from disqualification in case of split by one-third members of legislature party has been deleted. It means that the defectors have no more protection on grounds of splits.

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# Election Commission

**Article 324** of the Constitution provides that the power of **superintendence, direction and control** of elections to parliament, state legislatures, the office of president of India and the office of vice-president of India shall be vested in the election commission.

Thus, the Election Commission is **an all-India body** in the sense that it is common to both the Central government and the state governments.

## Composition

Article 324 of the Constitution has made the following provisions with regard to the composition of election commission:

- The Election Commission shall consist of the **chief election commissioner** and such number of other election commissioners, if any, as the **President** may from time to time fix.
- The appointment of the chief election commissioner and other election commissioners shall be made by the **President**.

# Election Commission

- When any other election commissioner is so appointed, the chief election commissioner shall act as the **chairman** of the election commission.
- The president may also appoint **after consultation** with the election commission such regional commissioners as he may consider necessary to assist the election commission.
- The **conditions of service and tenure of office** of the election commissioners and the regional commissioners shall be **determined by the president**.

## Powers and Functions

- To determine the **territorial areas** of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.
- To prepare and periodically revise **electoral rolls** and to register all eligible voters.
- To notify the **dates and schedules of elections** and to scrutinise nomination papers.
- To grant **recognition to political parties** and allot election symbols to them.

# Election Commission

- To act as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.
- To appoint officers for inquiring into disputes relating to electoral arrangements.
- To determine the code of conduct to be observed by the parties and the candidates at the time of elections.
- To prepare a roster for publicity of the policies of the political parties on radio and TV in times of elections.
- To advise the president on matters relating to the disqualifications of the members of Parliament.
- To advise the governor on matters relating to the disqualifications of the members of state legislature.
- To cancel polls in the event of rigging, booth capturing, violence and other irregularities.
- To request the president or the governor for requisitioning the staff necessary for conducting elections.
- To supervise the machinery of elections throughout the country to ensure free and fair elections.



# Election Commission

- To advise the president whether elections can be held in a state under **president's rule** in order to extend the period of emergency after one year.
- To **register political parties** for the purpose of elections and grant them the status of national or state parties on the basis of their poll performance

## Independence of Election Commission

Article 324 of the Constitution has made the following provisions to safeguard and ensure the **independent and impartial functioning** of the Election Commission:

- The chief election commissioner is provided with the **security of tenure**. He cannot be removed from his office except in same manner and on the same grounds as a judge of the Supreme Court.
- The service conditions of the chief election commissioner **cannot be varied to his disadvantage** after his appointment.
- Any other election commissioner or a regional commissioner **cannot be removed from office** except on the recommendation of the chief election commissioner.

# Finance Commission

- **Article 280** provides for a **Finance Commission** as a quasi-judicial body. It is constituted by the president of India every **5th year** or at such earlier time as he considers necessary.
- The Finance Commission consists of a **chairman and 4 other members** to be appointed by the president. They hold office for such period as specified by the president in his order. They are eligible for reappointment.
- The Constitution authorises the Parliament to determine the qualifications of members of the commission and the manner in which they should be selected.
- The **chairman** should be a person having **experience in public affairs** and the four other members should be selected from amongst the following:
  - A judge of **high court** or one qualified to be appointed as one.
  - A person who has **specialised knowledge of finance** and accounts of the government.
  - A person who has **wide experience in financial matters** and in administration.
  - A person who has **special knowledge of economics**.

# Finance Commission

## Power and Functions

- The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states of the respective shares of such proceeds.
- The principles that should govern the grants-in-aid to the states by the Centre i.e. out of the consolidated fund of India
- The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the state finance commission
- Any other matter referred to it by the president in the interests of sound finance.

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# CAG

## Introduction

- **Article 148** provides for an independent office of the Comptroller and Auditor General of India (CAG).
- He is the head of the **Indian Audit and Accounts Department**
- He is the **guardian of the public purse** and controls the entire financial system of the country at both the levels—the Centre and the state.
- His duty is to **uphold the Constitution of India** and laws of Parliament in the field of financial administration.

## Article 148. CAG

- There shall be a Comptroller and Auditor-General of India who shall be **appointed by the President** by warrant under his hand and seal and shall only be removed from office in like manner and on the **like grounds** as a Judge of the Supreme Court.
- Every person appointed to be the CAG shall make and subscribe before the **President**, or some person appointed in that behalf by him, an **oath or affirmation** according to the form set out for the purpose in the **Third Schedule**.

# CAG

- The salary and other conditions of service of the CAG shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule. His salary and other benefits cannot be varied to his disadvantage after his appointment.
- CAG shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.
- Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.
- The administrative expenses of the office of the CAG shall be charged upon the Consolidated Fund of India.

# CAG

## Article 149. Duties and Powers of CAG

- CAG shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament

## Article 150. Form of account of Union and States

- The accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the CAG prescribe.

## Article 151. Audit Reports

- The reports of CAG relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.
- The reports of CAG relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

# Attorney General of India

## Article 76. Attorney General of India

- The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.
- It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.
- In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.
- The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

# Advocate General of India

## Article 165. Advocate General of India

- The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.
- It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.
- The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

Conduct of Government Business

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