

INDIAN POLITY

POLITY BY : AAKASH SIR

Union and Its Territory

Part – I

Articles 1 – 4

Article 1- India, that is, Bharat shall be a Union of States (rather than federation of States)
According to Article 1, the territory of India can be classified into 3 categories.

1. Territories of the State
2. Union territories.
3. Territories that may be acquired by the Govt. of India at any time.

Article 2- Article 2 empowers the Parliament to admit into the Union of India, or establish, new States on such terms and conditions as it thinks fits.

Article 3- Article 3 authorizes the Parliament to:

- (a) form a new State by separation of territory from any State or by uniting two or more States or by uniting any territory to a part of any State.
- (b) increase the area of any State.
- (c) diminish the area of any State.
- (d) alter the boundaries of any State.
- (e) alter the name of any State

Article 3 lays down two conditions:

1. A bill relating to Article 3 can be introduced in the Parliament only on the prior recommendation of the President.
2. Before recommending the bill, the President has to refer the same to the State Legislature concerned for expressing its views within a specified period.

Article 4- Article 2 and 3 are not to be considered as amendments of the Constitution under Article 368. i.e. they can be passed by simple majority.

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State Reorganisation

Demand- Reorganisation of States on the basis of language.

1. The Govt. of India in June 1948, appointed the linguistic provinces commission under the Chairmanship of S.K. Dhar also known as Dhar commission to examine the demand. This commission submitted its report in Dec 1948 and in its report rejected the demand.
2. In Dec 1948, congress appointed a linguistic provinces committee to again examine the demand. The committee consisted of 3 members, namely:

- Jawaharlal Nehru
 - Vallabhbhai Patel
 - Pattabhi Sitaramayya
- } **JVP
Committee**

This committee submitted its report in April 1949 and rejected the demand.

Note: The demand for a separate State intensified in the Telugu speaking region of madras. Potti Sriramulu, who fasted unto death for the creation of Andhra State, died on 56th day of fast unto death.

Due to the violence and unrest in the region, following the death of Potti Sriramulu, the Govt. of India was forced to create Andhra State, the first linguistic State, by separating Telugu Speaking areas from the Madras State.

3. The Govt. of India appointed a State reorganization commission in Dec. 1953 to examine the demand. The commission consisted of 3 members, namely:

- Fazl Ali (Chairman)
 - K.M. Panikkar
 - H.N. Kunzru
- } **Fazl Ali
Commission.**

This commission submitted its report in Sept. 1955 and in its report accepted the demand. But it rejected the theory of One language - One State.

Other recommendations of the commission:

- (a) Preservation and strengthening of the unity and security of the country.
- (b) Linguistic and cultural homogeneity
- (c) Financial, economic and administrative considerations
- (d) Planning and Promotion of the welfare of the people in each State as well as of the nation as a whole.

Note: By the 7th Constitutional Amendment Act, 1956 and the States reorganisation Act, 1956, the Part 7th of the Constitution was repealed and 14 States and 6 Union Territories were created on 1st Nov, 1956.

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Territory of India in 1956

State

1. Andhra Pradesh
2. Assam
3. Bihar
4. Bombay
5. Jammu and Kashmir
6. Kerala
7. Madhya Pradesh
8. Madras
9. Mysore
10. Orrisa
11. Punjab
12. Rajasthan
13. Uttar Pradesh
14. West Bengal

Union Territories

1. AandN Islands
2. Delhi
3. Himachal Pradesh
4. Laccadive, Minicoy and Amindivi Islands
5. Manipur
6. Tripura

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Citizenship

Part - 2

Articles 5 - 11

Article 5 - Persons domiciled in India.

Article 6 - Persons migrated from Pakistan to India.

Article 7 - Persons migrated from India to Pakistan but later returned.

Article 8 - Persons of Indian origin residing outside India.

Article 9 - No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign State.

Article 10 - Every person who is or is deemed to be a citizen of India shall continue to be such a citizen, subject to the provisions of any law made by Parliament.

Article 11 - Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

Citizenship Act, 1955

This Act provides for acquisition and loss of citizenship after the commencement of the Constitution.

Acquisitions of citizenship

5 way

1. By Birth
2. By Descent
3. By Registration
4. By Naturalization
5. By Incorporation of Territory

Loss of citizenship

3 ways

1. By Renunciation
2. By Termination
3. By Deprivation

Acquisition of Citizenship

1. By Birth

- A person born in India on or after 26th January 1950 but before 1st July 1987 is a citizen of India by birth irrespective of the nationality of his parents.
- A person born in India on or after 1st July 1987 is considered as a citizen of India only if either of his parents is a citizen of India at the time of his birth.
- Further, those born in India on or after 3rd December 2004 are considered citizens of India only if both of their parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of their birth.

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2. By Descent

- A person born outside India on or after 26th January 1950 but before 10th December 1992 is a citizen of India by descent, if his father was a citizen of India at the time of his birth.
- A person born outside India on or after 10th December 1992 is considered as a citizen of India if either of his parents is a citizen of India at the time of his birth.
- From 3rd December 2004 onwards, a person born outside India shall not be a citizen of India by descent, unless his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period. An application, for registration of the birth of a minor child, to an Indian consulate shall be accompanied by an undertaking in writing from the parents of such minor child that he or she does not hold the passport of another country.

3. By Registration

The Central Government may, on an application, register as a citizen of India any person (not being an illegal migrant) if he belongs to any of the following categories, namely:-

- (a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;
- (b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- (c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
- (d) minor children of persons who are citizens of India;
- (e) a person of full age and capacity whose parents are registered as citizens of India;
- (f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and is ordinarily resident in India for twelve months immediately before making an application for registration;
- (g) a person of full age and capacity who has been registered as an overseas citizen of India cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration.

A person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th August, 1947.

4. By Naturalisation

- The Central Government may, on an application, grant a certificate of naturalisation to any person (not being an illegal migrant) if he possesses the following qualifications:
 - (a) that he is not a subject or citizen of any country where citizens of India are prevented from becoming subjects or citizens of that country by naturalisation;
 - (b) that, if he is a citizen of any country, he undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted;

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- (c) that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;
- (d) that during the fourteen years immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven years;
- (e) that he is of good character;
- (f) that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution, and
- (g) that in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India.

However, the Government of India may waive all or any of the above conditions for naturalisation in the case of a person who has rendered distinguished service to the science, philosophy, art, literature, world peace or human progress. Every naturalised citizen must take an oath of allegiance to the Constitution of India.

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.

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.

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.

3. By Deprivation

It is a compulsory termination of Indian citizenship by the Central government, if-

- (a) the citizen has obtained the citizenship by fraud;
- (b) the citizen has shown disloyalty to the Constitution of India;
- (c) the citizen has unlawfully traded or communicated with the enemy during a war;
- (d) the citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years; and
- (e) the citizen has been ordinarily resident out of India for seven years continuously.

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Fundamental Rights

Part- 3

Article 12 –35

1. Part 3 of the Constitution is described as the **MAGNA CARTA** of India
2. Inspired from the Constitution of USA
3. Under Indian Constitution, some fundamental rights are available to foreigners.
4. They are not absolute. The State can impose reasonable restrictions on them. However, whether such restrictions are reasonable or not is to be decided by the Court.
5. They are justiciable i.e. a person can move the Court for their enforcement in case of their violation.
6. They are not permanent. They can be curtailed or repealed.
7. They can be suspended during the operation of the national emergency except the rights guaranteed by Article 20 and 21

Seven Fundamental Rights

1. Right to Equality [14 – 18]
2. Right to Freedom [19 – 22]
3. Right Against Exploitation [23 – 24]
4. Right to Freedom of Religion [25 – 28]
5. Cultural and Educational Rights [29 – 30]
6. Right to Property [31]
7. Right to Constitutional Remedies [32]

Note: By the 44th Constitutional Amendment Act, 1978, the Right to property, under Article 31, has been repealed. Now, Right to Property is a legal and Constitutional right, and not a fundamental right. At present, it is under Part XII, Article 300A of the Constitution.

Article 12 - Definition of State

1. Government and Parliament of India, i.e. executive and Legislative organs of the Union government.
2. Government and legislature of State i.e. executive and Legislative organs of State Government.
3. All local authorities i.e. Municipalities, Panchayats, etc.
4. All other authorities such as LIC, ONGC, etc.

Article 13 - Laws inconsistent with or in derogation of the fundamental rights.

1. All laws that are inconsistent with or in derogation of any of the fundamental right shall be void.
2. It provides for judicial review.

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3. Power of judicial review has been conferred upon the Supreme Court, under Article 32, and High Courts, under Article 226.
4. The term “law”, used in this Article, includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.
5. Nothing in this Article shall apply to any amendment of this Constitution made under Article 368 (**Explanation of this point is provided below**)-

Explanation:

- It was added by 24th Constitutional Amendment Act, 1971.
- Article 13 declares that a Constitutional Amendment is not a law and hence cannot be challenged.
- The Supreme Court in Kesavananda Bharati case, 1973 held that even if an amendment of the Constitution is not a “law” within the meaning of Article 13, still it can be Challenged on the ground that it violates a fundamental right that forms a part of the basic structure of the Constitution.

Article 14 - Equality before law.

1. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
2. This Article is available to both Indian as well as foreigners.
3. Concept of ‘equality before law’ - British
Concept of ‘equal protection of law’ - American
4. Article 14 forbids class legislation, but it permits reasonable classification of person, objects and transactions by law. But the classification should not be arbitrary, artificial or evasive.

Rule of law-

- The concept of ‘Rule of law’ was propounded by A.V. Dicey.
- This concept has the following 3 elements or aspects:
 - (i) Absence of arbitrary power
 - (ii) Equality before the law
 - (iii) The primacy of the rights of the individual.

Note: First and second elements are applicable to the Indian system and not the 3rd one. In the Indian system, the Constitution is the source of the individual rights.

- ‘Rule of law’ is a basic feature of the Constitution held by the Supreme Court. Hence, it cannot be destroyed even by a Constitutional amendment.

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Exceptions:

1. Article 361- Protection of President and Governors and Rajpramukhs.

1. The President, or the Governor shall not be answerable to any Court for the exercise and performance of the powers and duties of his office.
2. No criminal proceedings shall be instituted or continued against the President, or the Governor of a State, in any Court during his term of office.
3. No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any Court during his term of office.
4. No civil proceedings against the President, or the Governor of a State, shall be instituted during his term of office in any Court in respect of any act done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice has been delivered to him.

2. etc.

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—
 - (a) access to shops, public restaurants, hotels and places of public entertainment; or
 - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
3. Nothing in this Article shall prevent the State from making any special provision for women and children.
4. Nothing in this Article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. (Added by 1st Constitutional Amendment Act, 1951)
5. Nothing in this Article shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions. (Added by 93rd Constitutional Amendment Act, 2005)

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Article 16 - Equality of opportunity in matters of public employment

1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
2. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

Exceptions:

1. Parliament can prescribe residence as a condition for certain employment or appointment in a State or union territory or local authority or other authority.
2. Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
3. A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular religion or denomination.

Mandal Commission

The government, in 1979, appointed the Second Backward Classes Commission under the Chairmanship of B.P. Mandal (Mandal Commission) to Investigate the conditions of the socially and educationally backward classes and suggest measures for their advancement. The Commission submitted its report in 1980 and recommended 27% reservation for the OBCs in government jobs. 10 years later, the V.P. Singh government declared reservation of 27% in government jobs for the OBCs.

Note:

- The first Backward Classes Commission was appointed in 1953 under the Chairmanship of Kaka Kalelkar.
- Article 340- Appointment of a Commission to investigate the conditions of backward classes.

Article 17 - Abolition of Untouchability

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

Note:

- In 1955, Parliament enacted the Untouchability (Offences) Act, 1955. This act prescribed punishment for the practice of untouchability and for the enforcement of any disability arising therefrom.
- In 1976, the Untouchability (Offences) Act, 1955 has been comprehensively amended and renamed as the Protection of Civil Rights Act, 1955 to enlarge the scope and make penal provisions more stringent.

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- The term 'untouchability' has not been defined either in the Constitution or in the Act.

Article 18 - Abolition of titles

1. No title shall be conferred by the State.
2. No citizen of India shall accept any title from any foreign State.
3. No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
4. No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

Exceptions:

1. Military titles
2. Educational titles
3. National Awards- Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Sri.

Article 19 - Protection of certain rights regarding freedom of speech, etc.

- Article 19 guarantees to all citizens the six rights.
- Originally, Article 19 contained seven rights. But, the Right to acquire, hold and dispose of property was deleted by the 44th Constitutional Amendment Act of 1978.
- 6 rights are:

(a) Right to freedom of speech and expression.

- The State can impose reasonable restrictions on the exercise of freedom of speech and expression on the grounds of:
 1. Sovereignty and integrity of India (added by the 16th Constitutional Amendment Act, 1963)
 2. Security of the State
 3. Friendly relations with foreign States
 4. Public order
 5. Decency or morality
 6. Contempt of Court
 7. Defamation
 8. Incitement to an offence.
- By the 1st Constitutional Amendment Act, 1951, 3 more grounds of restrictions on freedom of speech and expression were added: public order, friendly relations with foreign States and incitement to an offence.
- The freedom of speech and expression includes freedom of the press.

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(b) Right to assemble peaceably and without arms

- 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

(c) to form associations or unions or co-operative societies

- The State can impose reasonable restrictions on the exercise this right on the grounds of sovereignty and integrity of India, Public order and morality.

(d) to move freely throughout the territory of India

- 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.

(e) to reside and settle in any part of the territory of India

- The State can impose reasonable restrictions on the exercise of this right on two grounds, namely, the interests of general public and the protection of interests of any Scheduled Tribes.

(g) 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 interests of the general public.

Article 20- Protection in Respect of Conviction for Offences

1. No ex post facto laws -

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 be subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the offence.

2. No double jeopardy -

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

3. No self-incrimination -

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

Article 21- Protection of Life and Personal Liberty

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

Note:

- In A.k. Gopalan Vs State of Madras(1950), the Supreme Court took a narrow interpretation of the Article 21 and held that the protection under Article 21 is available only against the executive and not against the legislature.

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- In Menaka Gandhi Vs Union of India(1978), the Supreme Court overruled its judgement in the A.K. Gopalan case and took a wider interpretation of the Article 21 and held that the 'procedure established by law' within the meaning of Article 21 must be "right, just and fair" and not "arbitrary, fanciful or oppressive". In other words, the right to life and personal liberty of a person can be deprived by law provided the procedure prescribed by that law is reasonable, fair and just.
- The Court has declared the following rights as part of Article 21:
 - Right to live with human dignity,
 - Right to privacy,
 - Right to travel abroad,
 - Right to reputation,
 - Right to livelihood, etc

Article 21A - Right to Education

The State shall provide free and compulsory education to all children of the age of 6 to 14 yrs in such a manner as the State may, by Law, determine.

Note: This Article was added by 86th Constitutional Amendment Act, 2002.

Article 22 - Protection Against Arrest and Detention.

It grants protection to persons who are arrested or detained. Detention is of 2 types, namely:

1. Punitive detention.
2. Preventive detention.

Punitive detention- When a person is convicted by a Court for an offence committed by him. Under punitive detention, following rights are available:

- (a) Right to be informed of the grounds of arrest.
- (b) Right to consult and to be defended by a legal practitioner. (i.e. lawyer)
- (c) Right to be produced before a magistrate within 24 hours, excluding the journey time.
- (d) Right to be released after 24 hrs unless the magistrate authorizes further detention.

Preventive detention- It means detention of a person without trial and conviction by a Court. Thus, it is based on suspicion.

The detention of a person cannot exceed 3 months unless an advisory board permits. Advisory board consists of judges of the High Court.

Note: The 44th Constitutional Amendment Act, 1978 has reduced the period of detention without obtaining the opinion of an advisory board from 3 to 2 month. However, this provision has not yet been brought into force. Hence, the original period of 3 months still continues.

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Article 23- Prohibition of Traffic in Human Beings and Forced Labour.

It prohibits traffic in human beings, begar, forced labour, etc. This right is available to both citizens and foreigners. It protects the individual not only against the State but also against private persons.

1. **Human trafficking**- buying and selling of men, women and children like goods, etc.
2. **Begar**- Compulsory work without remuneration.
3. **Forced labour**- Compelling a person to work against his/her will.

Exception: It permits the State to impose compulsory service for public purposes, for example military service or social service for which it is not bound to pay. However, in imposing such service, the State is not permitted to make any discrimination on grounds only of religion, race, caste or class.

Article 24- Protection of Employment of Children in Factories, etc.

It prohibits the employment of children below 14 yrs of age in any factory, mines construction works, railway, etc. However, employment in any harmless work is not prohibited.

Note: The Child Labour (Prohibition and Regulation) Amendment Act, 2016 prohibits the employment of children below 14 yrs in all occupation and processes. Further, the amendment act prohibits the employment of adolescents (14 to 18 yrs) in certain hazardous occupations and processes.

Article 25- Freedom of Conscience and Free Profession, Practice and Propagation of Religion

- (a) Freedom of conscience
- (b) Right to profess
- (c) Right to practice
- (d) Right to propagate

These right are available to all i.e. Indians and foreigners and these right are subject to:

- Public order
- Morality
- Health
- Other provisions of fundamental rights.

Note: Article 25 also contains 2 explanations:

1. Wearing and carrying of Kirpans is to be included in the profession of the Sikh religion.
2. The Hindus, in this context, Include Sikh, Jains and Buddhists.

Article 26- Freedom to Manage Religions Affairs

Every religious denomination or any of its section shall have the following rights:

- (a) Right to establish and maintain institutions for religious and charitable purposes;
- (b) Right to manage its own affairs in matters of religion;

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- (c) Right to own and acquire movable and immovable property;
- (d) Right to administer such property in accordance with law.

Article 25 guarantees rights of individuals, while Article 26 guarantees rights of religious denominations or their sections.

Article 27- Freedom from Taxations for Promotion of a Religion

No person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination. In other words, the State should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion. 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. The provision prohibits only levy of a tax and not a fee.

Article 28- Freedom from Attending Religions Instruction

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

Article 28 distinguishes between 4 types of educational institution:

- (a) Institutions wholly maintained by the State.
- (b) Institutions administered by the State but established under any endowment or trust.
- (c) Institutions recognized by the State
- (d) Institutions receiving aid from the State.

In (a) religious instruction is completely prohibited, in (b) religious instruction is permitted, in (c) and (d) religious instruction is permitted on a voluntary basis.

Article 29- Protection of Interest of Minorities

- (1) Any section of 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.
 - (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, or language.
- The first provision protects the right of a group.
 - The second provision guarantees the right of a citizen as an individual irrespective of the community to which he belongs.

Note: Article 29 grants protection to both religious Minorities as well as linguistic minorities.

Article 30- Right of Minorities to Establish or Administer Educational Institutions.

It grants the following right to minorities, whether religious or linguistic:

- (1) All minorities shall have the right to establish and administer educational institutions of their choice, etc.

Note:

- The protection under Article 30 is confined only to minorities, whether religious or linguistic, and does not extend to any section of citizens.
- The term 'minorities' has not been defined anywhere in the Constitution.

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Article 32- Right to Constitutional Remedies

- Article 32 is a basic feature of the constitution.
- Dr. B.R. Ambedkar described Article 32 as heart and soul of the constitution.
- 5 writs:
 - (a) Habeas corpus – “To have the body of”
 - (b) Mandamus – “We command”
 - (c) Prohibition – “To forbid”
 - (d) Certiorari – “To be certified”
 - (e) Quo- warranto – “By what authority or warrant”

Article 33- It empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, paramilitary forces, police forces, intelligence agencies, etc.

Note: Under Article 33, only Parliament can make laws and not State Legislatures

Article 34- It provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India.

Article 35- The power to make laws shall vest only in the Parliament and not in the State Legislatures to give effect to certain specified fundamental rights.

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Directive Principles of State Policy

Part IV

Article 36 – 51

- Borrowed from the Constitution of Ireland (Ireland borrowed from Spain).
- Dr. B.R. Ambedkar described these principles as Novel features of the Constitution.
- DPSP along with Fundamental Rights contain the philosophy of the Constitution and is the soul of the Constitution.
These are the instructions issued to the legislature and the executive.
- They seek to establish social and economic democracy and a welfare State.
- They are non-justiciable
- They can be classified into 3 broad categories:
 - (1) Gandhian
 - (2) Socialistic
 - (3) Liberal-Intellectual

Article 36- Definition of State (same as Article 12)

Article 37- These principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. However, in case of their violation, Courts cannot enforce them i.e. they are non-Justiciable.

Article 38- To promote the welfare of the people by securing a social order permeated by justice- social, economic and political- and to minimize inequalities in income, status, facilities and opportunities.

Article 39- To secure:

- (a) the right to adequate means of livelihood for all citizens;
- (b) the equitable distribution of material resources of the community for the common good;
- (c) prevention of concentration of wealth and means of production;
- (d) equal pay for equal work for both men and women;
- (e) preservation of the health and strength of workers and children against forcible abuse; and
- (f) opportunities for healthy development of children.

Article 40- To organize village panchayats and endow them with necessary powers and authority to enable them to function as units of self government.

Article 41- To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.

Article 42- To make provision for just and humane conditions of work and maternity relief.

Article 43- To secure a living wage, a decent standard of life and social and cultural opportunities for all workers and to promote cottage industries on an individual or co-operation basis in rural areas.

Article 44- To secure for all citizens a uniform civil code throughout the country.

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- Article 45-** To provide early childhood care and education to all children until they complete the age of 6 years.
- Article 46-** To promote the educational and economic interests of SCs, STs and other weaker sections of the society and to protect them from social injustice and exploitation.
- Article 47-** To raise the level of nutrition and the standard of living of people and to improve public health and to prohibit the consumption of intoxicating drinks and drugs which are injurious to health.
- Article 48-** To organise agriculture and animal husbandry on modern and scientific lines and to prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds.
- Article 49-** To protect monuments, places and objects of artistic or historic interest which are declared to be national importance.
- Article 50-** To separate the judiciary from the executive in the public services of the State.
- Article 51-** To promote international peace and security; maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration.

New Directive principles:

- Article 39A-** To promote equal justice and to provide free legal aid to the poor.
- Article 43A-** To take steps to secure the participation of workers in the management of industries.
- Article 48A-** To protect and improve the environment and to safeguard the forests and wildlife of the country.

Note: Article 39A, 43A, and 48A were added by 42nd Constitutional Amendment Act, 1976.

Article 43B- To promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.

Note: Article 43B was added by 97th Constitutional Amendment Act, 2011

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Emergency Provisions Part- XVIII Articles 352 – 360

- Borrowed from Govt. of India Act, 1935.
- There are 3 types of emergencies:
 1. National Emergency (Article 352)
 2. President's Rule (Article 356)
 3. Financial Emergency (Article 360)

1. National Emergency (Article 352)

The President can declare a National emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.

Note: National Emergency has been imposed 3 times so far:

1. 1962 – China
2. 1971 – Pakistan
3. 1975 – On ground of internal disturbances.

Important Amendments:

A. By 38th Constitutional Amendment Act, 1975-

- Made the declaration of emergency by the President non-Justiciable
- Empowered the President to declare different proclamations of national emergency on different simultaneously.

B. By 42nd Constitutional Amendment Act, 1976-

- A proclamation of National emergency may be applicable to the entire country or only a part of it, that is the President can limit the operation of a national emergency to a specified part of India.
- The effect of national emergency on executive and legislature extends not only to a State where the emergency is in operation but also to any other State.

C. By 44th Constitutional Amendment Act, 1978-

- The term internal disturbance was replaced by armed rebellion.
- The President can declare national emergency only on the written recommendation of the cabinet.
- Repealed the provision which gave immunity to national emergency from judicial review.

Parliamentary Approval and Duration

The Parliament must approve national emergency within one month from the date of its issue by special majority. Once approved by both the Houses, it continues for 6 months and after every 6 months approval of Parliament is required by special majority. National emergency can be extended to an indefinite period subject to the periodic approval of Parliament.

6+6+6+6.....

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Revocation of National emergency

1. The President can revoke national emergency at any time without the approval of Parliament.
2. If the Lok Sabha passes a resolution for revocation of national emergency by simple majority, then the President has to revoke it.

Difference between approval and revocation of National Emergency

Approval

1. Approval of both Lok Sabha and Rajya sabha
2. To be approved by special majority

Revocation

1. Approval of Lok Sabha only
2. To be approved by simple majority

Effects of National Emergency

1. Effect on the Centre-State Relations
2. Effect on the life of Lok Sabha and Legislative Assembly
3. Effect on Fundamental Right.

1. Effect on the Centre-State relations

- The executive power of the union shall extend to the giving of directions to any State as to the manner in which the executive power is to be exercised. Thus, the State governments are brought under the complete control of the Centre.
- The distribution of Legislative powers between the Centre and States gets suspended and the Parliament becomes empowered to make laws on any subject mentioned in the State list. Such a law made by the Parliament continues only for six months from the date of expiration of emergency.

2. Effect on the Fundamental Rights

- i) During national emergency, the fundamental rights are suspended. This provision has been borrowed from the Constitution of Germany.
- ii) Articles 358 and 359 explain the effect of national emergency on the fundamental rights.
- iii) Article 358 deals with the suspension of fundamental rights under Article 19
- iv) Article 359 deals with the suspension of other fundamental rights.

After the changes introduced by the 44th Constitutional Amendment Act 1978 in Article 358 and 359, scope of Article 358 and 359 has been restricted. As a result of the 44th Constitutional Amendment Act 1978:

- During internal emergency, Articles 19, 20 and 21 are not suspended.
- During external emergency, Articles 20 and 21 are not suspended.

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3. On the life of Lok Sabha and Legislative Assembly.

During national emergency, the life of Lok Sabha and Legislative Assembly may be extended by a law of Parliament for one year at a time for any length of time. However, they cannot continue for more than six months from the date of expiration of emergency.

2. President's Rule (Article 356)

Also known as State Emergency or Constitutional Emergency.

Article 355- It shall be the duty of the union to protect every State against external aggression and internal disturbance and to ensure that the Govt. of every State is carried on in accordance with the provisions of this Constitution.

The President's Rule can be proclaimed under Article 356 on two grounds:

(A) Article 356 (B) Article 365

A. Article 356 - If the President is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provision of this Constitution, the President is empowered to issue a proclamation.

Note: The President can act either on the report of the Governor of the State or otherwise i.e. even without the Governor's report.

B. Article 365: Whenever a State fails to comply with or to give effect to any direction from the Centre, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with provisions of the Constitution.

Parliamentary Approval and Duration

The Parliament must approve President's rule within 2 months from the date of its issue by simple majority. Once approved by both the Houses, it continues for 6 months and after every 6 months approval of Parliament is required by simple majority. President's Rule can be extended for a maximum period of 3 years.

Revocation of President's Rule

The President can revoke President's rule at anytime without the approval of Parliament.

Note: By the 44th Constitutional Amendment Act, 1978, a new provision was introduced. According to this provision, the President's rule can be extended, beyond one year, by 6 months at a time only when the following 2 conditions are fulfilled-

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- (a) A proclamation of national emergency should be in operation in the whole of India, or in the whole or any part of the State; and
- (b) The Election commission must certify that the general elections to the Legislative Assembly of the concerned State cannot be held on account of difficulties.

Effect of President's Rule

1. During the President's Rule, the executive and Legislative powers of the State comes under the control of the Centre.
2. There is no effect of President's Rule on the High Courts(judiciary) of the State.
3. There is no effect on the fundamental rights of the citizens.
4. During the President's Rule, the President dismisses the State Council of Ministers and the State Governor on behalf of the President carries on the State administration.
5. The State Legislative Assembly is either suspended or dissolved and the Parliament passes bills and budget of the concerned State.
6. The Parliament can delegate the power to make laws for the State to the President or to any other authority. If the Parliament delegates the power to the President, then the President in consultation with the members of Parliament from that State makes the law. Such a law made by the President is known as President's Act.
7. A law made by the Parliament or by the President, or as the case may be continues to remain in operation even after the expiration of President's rule. However, the concerned State Legislature is authorised or empowered to repeal or alter such a law.

Note: unlike national emergency, where a law made by the Parliament on a State subject continues for only six months from the date of expiration of emergency, a law made during the imposition of President's Rule in a State continues to remain in force even after President's Rule has ceased to operate.

3. Financial Emergency (Article 360)

The President can proclaim a Financial Emergency, if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.

Parliament approval and duration

The Parliament must approve Financial Emergency within 2 months from the date of its issue by simple majority. Once approved by the both the Houses, it continues indefinitely.

In this case, there is no need for the periodic approval of Parliament after every six month and there is no maximum period.

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Revocation of Financial Emergency

The President can revoke Financial Emergency at any time without the approval of Parliament.

Effects of Financial Emergency

The executive authority of the union extends to the giving of directions to any State. Under these directives-

Any State may be required by the union to reduce the salaries and allowances of all or any class of persons employed by the State and reserve all money or financial bills for consideration of the President after they are passed by the legislature of the State.

It shall be competent for the President to issue directions for the reduction of salaries and allowances of all or any class of persons serving the union, including judges of the Supreme Court and the High Courts.

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President and Vice President Part- 5 Articles 52 – 78

Part 5, Articles 52 –78 deal with the union executive

The union executive consists of :

- (a) The President
- (b) The Vice President
- (c) The Prime Minister
- (d) The Council of Ministers
- (e) The Attorney General of India

- President is the head of the Indian State
- President is the 1st citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.
- Vice-President is the ex-officio Chairman of the Rajya Sabha.
- President is the nominal executive.

Qualification

President

1. Should be a citizen of India
2. Should have completed 35 yrs of age
3. Should be qualified for election as a member of the House of the people i.e. Lok Sabha
4. Should not hold any office of profit.

Note:

- The nomination of a candidate election to the office of the President must be subscribed by atleast 50 electors as proposers and 50 electors as seconders.

- Every candidate has to make a deposit of Rs. 15,000 in the RBI. In case the candidate fails to secure 1/6th of the the votes polled,the security shall be forfeited.

Vice-President

1. Should be a citizen of India
2. Should have completed 35 years of age
3. Should be qualified for election as a member of the Council of State i.e Rajya Sabha
4. Should not hold any office of profit.

Note:

- The nomination of a candidate for election to the office of vice President must be subscribed by at least 20 electors as proposers and 20 electors as secondors.

- Every candidate has to make a security deposit of Rs. 15,000 in the RBI. In case, the candidate fails to secure 1/6th of the votes polled, the security shall be forfeited

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Election

President

1. Elected members of the Lok Sabha
2. Elected member of the Rajya Sabha
3. Elected member of the State Legislative Assembly
4. Elected member of the Legislative Assemblies of the Union Territories of Delhi and Puducherry.

Vice-President

1. Elected and nominated members of the Lok Sabha.
2. Elected and nominated member of the Rajya Sabha

$$\text{Value of the vote of an M.P} = \frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}}$$

$$\text{Value of the vote of an M.L.A} = \frac{\text{Total Population of state}}{\text{Total number of elected MLA}} \times \frac{1}{1000}$$

$$\text{Electoral Quota} = \frac{\text{Total number of valid votes polled}}{1+1} + 1$$

Note: The President and Vice-President's election is held in accordance with the system of proportional representation by means of single transferable vote and the voting is by secret ballot.

Conditions of office

President

1. He should not be a member of either House of Parliament or a House of the State Legislature. If any such person is elected as President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as President
2. He should not hold any other office of profit.
3. He is entitled to such emoluments allowances and privileges as may be determined by Parliament
4. His emoluments and allowances cannot be diminished during his term of office.

Vice- President

1. He should not be a member of either House of Parliament or a House of the State legislature. If any such person is elected as Vice-President he is deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President
2. He should not hold any other office of profit.

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Election Disputes

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

1. All doubts and disputes in connection with election of the President or Vice President shall be inquired into and decided by the Supreme Court whose decision is final.
2. If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him before the date of the decision of the Supreme Court shall not be invalidated and continue to remain in force.
3. Parliament may by law regulate any matter relating to or connected with the election of President or Vice-President.
4. The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatsoever reason among the members of electoral college.

Oath

President

Chief Justice of India administers oath of office to the President

Vice-President

- President of India administers oath of office to the Vice-President.

Note: While President in his oath swears to preserve, protect and defend the Constitution, there is no such mention in the oath of Vice-President.

Tenure

President

5 years

Vice-President

5 years

Salary

President

5 Lakh per month

Vice-President

Vice-President receives salary in the capacity as the ex-officio Chairman of the Rajya Sabha.

Vacancy

President

- Expiry of his tenure
- Resignation
- Removal
- Death
- Otherwise

Vice-President

- Expiry of this tenure
- Resignation
- Removal
- Death
- Otherwise

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Note: If the office of President falls vacant by resignation, removal, death or otherwise, then election should be held within 6 months from the date of occurrence of such a vacancy.

Note: If the office of Vice-President falls vacant by resignation, removal, death or otherwise, then election should be held as soon as possible

Note: In the absence of President, Vice-President acts as the President. In case the office of the Vice-President is vacant, then CJI or in his absence senior most judge of the Supreme Court acts as the President.

Resignation

President

To the Vice-President.

Vice President

To the President.

Impeachment of the President [Article 61]

1. President is impeached for violation of the Constitution. However, the Constitution does not define the meaning of it.
2. The charges can be initiated by either House of Parliament, that is, Lok Sabha or Rajya Sabha.
3. The charges should be signed by 1/4th members of the House.
4. 14 days' notice should be given to the President .
5. Such resolution has to be passed by a majority of 2/3rd of the total membership of the House.
6. Once the resolution has been passed by either House by 2/3rd of the total membership, it is sent to the other House which should investigate the charges or cause the charge to be investigated.
7. The President shall have the right to appear and to be represented at such investigation.
8. If the other House also sustains the charges and passes the impeachment resolution by a majority of 2/3rd of the total membership, then the President stands removed from his office from the date on which the resolution is so passed.
9. Thus, an impeachment is a quasi-judicial procedure in the Parliament.

Difference between Election and Removal of President

Election

1. Elected members of the Lok Sabha
2. Elected members of the Rajya Sabha
3. Elected members of the State Legislative Assembly
4. Elected members of the Legislative Assemblies of the Union Territories of Delhi and Puducherry.

Removal

1. Elected and nominated members of the Lok Sabha.
2. Elected and nominated members of the Rajya Sabha.

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Powers and functions of the President.

1. Executive powers
2. Legislative powers
3. Financial powers
4. Judicial powers
5. Diplomatic powers
6. Military powers
7. Emergency powers

Veto Power of the President.

The President, under Article 111, has following alternatives:

1. To give his assent; or
2. To withhold his assent; or
3. To return the bill, if it is not a money bill.

The Indian President has 3 veto, namely;

- (a) **Absolute Veto-** To withhold his assent to the bill.
- (b) **Suspensive Veto-** When the President returns a bill for reconsideration. However, if the bill is passed again by the Parliament, then the President has to give his assent to the bill.
- (c) **Pocket veto-** When the President takes no action on the bill. He can keep the bill pending for an indefinite period.

Ordinance Making Power of the President (Article 123)

1. An ordinance is a temporary piece of legislation, i.e. it is a temporary law.
2. This Article is intended to enable the President to promulgate ordinances during the recess of Parliament.
3. The President can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session.
4. An ordinance made when both the Houses are in session is void.
5. An ordinance promulgated under this Article shall have the same force and effect as an Act of Parliament.
6. An ordinance can be issued only on those subjects on which the Parliament can make laws.
7. Every ordinance shall be laid before both the Houses of Parliament when it reassembles.
8. An ordinance may be withdrawn at any time by the President.
9. Ordinance making power of the President is not a discretionary power and he can exercise this power only on the advice of the Council of Ministers.
10. An ordinance cannot be issued to amend the Constitution.

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Max. life of an ordinance - 6 month and 6 weeks:

6 months - The maximum gap between the 2 sessions of the Parliament.

6 weeks - The time period within which the Parliament has to take an action or else the ordinance shall cease to operate.

Note: The 38th Constitutional Amendment Act, 1975 made the promulgation by the President, Governors and administrators of Union Territories non-justiciable. However, the 44th Constitutional Amendment Act, 1978 deleted this provision, thus the President's satisfaction is justiciable on the ground of malafide.

Pardoning Power of the President (Article 72)

The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence-

- (a) in all cases where the punishment or sentence is by a Court martial.
- (b) in all cases where the sentence is a sentence of death.
- (c) in all cases where the punishment or sentence is for an offence against a union law.

The Pardoning Power of the President includes the following:

- 1. **Pardon-** To completely absolve the convict.
- 2. **Commutation-** To change the character of a sentence i.e. to change the punishment.
- 3. **Remission-** To reduce the amount of punishment without changing the character of punishment.
- 4. **Respite-** To award a lesser sentence due to some special fact.
- 5. **Reprieve-** Temporary suspension of the punishment fixed by law.

Other important powers related to the President

- (a) President can appoint a commission to investigate into the conditions of SCs, STs and OBCs.
- (b) President can appoint an inter-State Council to promote Centre-State and inter State cooperation.
- (c) President can declare any area as schedule area and has powers with respect to the administration of scheduled areas and tribal areas.
- (d) No demand for a grant can be made except on President's recommendation.
- (e) President is the supreme commander of the defence forces of India, **etc.**

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Supreme Court and High Court

Supreme Court [SC]

Part 5

Articles 124-147

High Court [HC]

Part 6

Articles 214-232

Number of Judges

SC

- 1950 → 8 [CJI + 7]
- 1956 → 11
- 1960 → 14
- 1978 → 18
- 1986 → 26
- 2009 → 31
- 2019 → 34 [CJI + 33]

HC

- The Constitution does not fix the number of judges of a HC. Each Court is to consist of such number of Judges as may be deemed necessary by the President.

Qualification

SC

1. A citizen of India
2. a) Must have been a Judge of a High Court for at least 5 years; or
b) must have been an advocate of a High Court for at least 10 years; or
c) must be in the opinion of the President a distinguished jurist.

HC

1. A citizen of India
2. a) Held a judicial office for at least 10 years; or
b) has been an advocate of a High Court for at least 10 years.

Appointment

SC

- Every Judge of the SC shall be appointed by the President after consultation with such of the judges of the SC and of the HCs in the States as the President may deem necessary.
Provided that in the case of appointment of a judge other than the Chief Justice, the CJI shall always be consulted.

HC

- Every Judge of a HC shall be appointed by the President after consultation with the CJI and the Governor of the State.
In the case of appointment of a judge other than the Chief Justice, the Chief Justice of the HC is also consulted.

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Controversy over consultation

1. Ist Judges case [S.P. Gupta Vs Union of India case], 1982.

The Court held that the word "consultation" does not mean concurrence that is, it is non-binding.

2. IInd Judges case [S.C Advocates on Record Association Vs Union of India], 1993.

- In this case, the SC changed its stance and overruled the Ist Judges case. The Court held that consultation means concurrence or binding. Hence, the advice tendered by the CJI is binding on the President.
- The 2nd judges case introduced the collegium system.
- The Court gave primacy to the views of CJI and CJI will consult 2 senior most judges of the SC before giving advice to the President.
- The Court also held that the CJI should be the senior most judge of the SC.
- Furthermore, the Court ruled that no appointment of a judge of the HC can be made, unless it is in conformity with the opinion of the CJI.

3 IIIrd Judges case [Presidential Reference], 1998.

- The collegium would consist of CJI and 4 senior-most judges of SC in case of appointments to the SC.
- The collegium would consist of CJI and 2 senior-most judges of SC in case of appointments to the HC.
- In the case of appointments to the SC, the CJI should not send the recommendation to the President if out of 4 Judges, 2 judges give an adverse opinion. Therefore, CJI needs the nod of 3 judges out of 4.

4. IVth Jugdes caes [SC Advocate on Record Association and another Vs Union of India], 2015.

- The SC upheld the primacy of the collegium by striking down the NJAC Law.
- Acc. to the SC, NJAC would affect the independence of the judiciary, which is a part of the basic structure of the Constitution.

Note: The 99th Constitutional Amendment Act, 2014 and the National Judicial Appointment Commission [NJAC] Act, 2014, were introduced by the government to replace the existing collegium system with the NJAC. However, the SC in 4th Judges case declared both 99th Constitutional Amendment Act and NJAC as unConstitutional and void.

Oath:

SC

- Administered by the President or by a person appointed by the President for this purpose.

HC

- Administered by the Governor or by a person appointed by the Governor for this purpose.

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Tenure

SC

- He holds office until he attains the age of 65 years

Note:

- a. The Constitution has not fixed the tenure of a judge of the SC
- b. The age of a judge of the SC shall be determined by such authority and in such manner as Parliament may by law provide. **[This provision was added 15th Constitutional Amendment Act, 1963]**

HC

- He holds office until he attains the age of 62 years.

Note:

- a. The Constitution has not fixed the tenure of a judge of a HC.
- b. If any question arises as to the age of a judge of a HC, the question shall be decided by the President after consultation with the CJI and the decision of the President shall be final. **[This provision was added by the 15th Constitutional Amendment Act, 1963].**

Salary

SC

- The salaries, allowances, privileges, leave and pension of the judges of the SC are determined from time to time by the Parliament.

Note: The salaries of the judges of the SC and also of HCs cannot be varied or reduced by Parliament except during periods of financial emergency, when the President may by order reduce the salaries of the judges of the SC and of HCs.

- Salary of CJI- 2,80,000/month
- Salary of a judge of- 2,50,000/month the SC

Note: The salaries, allowances and pensions of the judges of the SC are charged on the Consolidated Fund of India and are not subject to vote of Parliament.

HC

- The salaries, allowances, privileges, leave and pension of the judges of a HC are determined from time to time by the Parliament.

- Salary of CJ of HC- 2,50,000/month
- Salary of a judge- 2,25,000/month of a HC

Note: The salaries and allowances of judges of HC are charged on the Consolidated Fund of the State and hence are non-votable.

Their pensions are charged on the Consolidated Fund of India.

Resignation

SC

To the President

HC

To the President

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Removal of a Judge

Article 124(4)- A Judge of the SC shall not be removal from his office except by an order of the President passed after an address by each House of Parliament supported by special majority [under Article 368] has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

Note: Special majority [under Article 368] is a majority of the total membership of the House and by a majority of not less than 2/3rd of the members of that House present and voting.

Article 124(5)- Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4) [Article 124(4)].

Note: Such procedure has been laid down in the Judges (Inquiry) Act, 1968.

Article 217(1)(b)- A Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court.

Note: Article 217(1)(b) is for the removal of a Judge of a HC.

Article 218- The Provisions of clauses (4) and (5) of Article 124 shall apply in relation to a HC as they apply in the relation to the SC with the substitution of references to the HC for references to the SC.

Explanation:

- From the Articles mentioned above, which deals with the removal of a Judge, following points can be inferred:
 - (a) The procedure to remove a Judge of the SC and of a HC is same.
 - (b) There are only 2 grounds provided in the Constitution to remove a Judge, namely:
 - 1. Misbehaviour
 - 2. Incapacity.
 - (c) The President can remove a judge of the SC or a judge of a HC.
 - (d) The address for the removal of the judge has to be presented in the same session or else the process ends.

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Procedure to remove a Judge

1. The motion to remove a Judge can be introduced either in the Lok Sabha or in the Rajya Sabha.
2. In the case of Lok Sabha, the motion has to be signed by 100 members. And in the case of Rajya Sabha, the motion has to be signed by 50 members.
3. The motion has to be presented to the Speaker/Chairman.
4. The Speaker/Chairman may admit or refuse to admit the motion.
5. If Speaker/Chairman rejects, the process ends.
6. If it is admitted, then a committee will be constituted by Speaker/Chairman to investigate the charges.
7. The committee will consist of:
 - (a) The CJI or a Judge of the SC.
 - (b) a Chief Justice of a HC
 - (c) a distinguished jurist in the opinion of the Speaker/Chairman.
8. If the committee says no, then process ends.
9. If the committee says yes, then House can take up the consideration of the motion.
10. The motion has to be passed by special majority (under Article 368).
11. Once the motion is passed by the first House, where the motion was introduced, it is sent to the 2nd House which has to pass it by special majority (under Article 368)
12. After the motion is passed by each House of Parliament by special majority, an address is presented to the President in the same session for such removal.

Note: The process for impeachment/removal started in accordance with the provisions of the Judges (Inquiry) Act, 1968 does not lapse on the dissolution of the House of the People i.e. Lok Sabha. No Judge has been removed/impeached so far.

Jurisdiction and powers of the Supreme Court

1. Original Jurisdiction (Article 131)

Article 131 defines the exclusive and the original jurisdiction of the Supreme Court.

A Court has original jurisdiction when it has authority to hear and determine a case in the first instance. It has exclusive jurisdiction when it has authority to hear and determine a case which no other Court can hear or determine.

The Supreme Court shall have exclusive original jurisdiction in any dispute-

- (a) Between the Government of India and one or more States; or
- (b) Between the Government of India and any State or States on one side and one or more other States on the other; or
- (c) Between two or more States.

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

- Note:**
- Disputes arising out of the treaties entered before the commencement of the Constitution will be discussed under Article 143, which is the advisory jurisdiction.
 - The Inter-State Water Disputes Act of 1956 has excluded the original jurisdiction of the Supreme Court in case of interState water dispute that is disputes between States with respect to the use, distribution or control of the water of inter-State river or river valley.

With regard to the exclusive original jurisdiction of the Supreme Court, two points should be noted.

First, The dispute must involve a question (whether of law or fact) on which the existence or extent of a legal right depends.

Second, the Supreme Court in its original jurisdiction cannot entertain suits brought by private individuals against the Government of India.

- Note:**
- Where a private individual has a claim against the government of India the case must go in the first instance to the local Courts and from there it can go to the Supreme Court in appeal provided that the appeal fulfils other requirements of law.

In 1961, the first suit, under the original jurisdiction of the Supreme Court, was brought by West Bengal against the Centre.

2. Writ jurisdiction

The Supreme Court is empowered to issue writs for the enforcement of the fundamental rights.

In this case, the Supreme Court has original jurisdiction but not exclusive original jurisdiction. The high Courts are also empowered to issue writs for the enforcement of the fundamental rights. Thus, in case of violation of fundamental rights, an aggrieved citizen has the option of moving either the High Court or the Supreme Court directly.

It must be noted that, the Supreme Court can issue writs only for the enforcement of the fundamental rights and not for other purposes. But, the Parliament, under Article 139, can authorise the Supreme Court to issue writs for the purpose other than enforcement of fundamental rights.

3. Advisory jurisdiction

The President, under Article 143, is authorised to seek the opinion or advice of the Supreme Court in the two categories of matters:

- a) On any question of law or fact that has arisen or is likely to arise and question is of such nature and of such public importance that government think it is expedient to obtain the opinion of the Supreme Court and the Court may report to the President its opinion thereon.

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Note: In this case, the Supreme Court may tender or may refuse to tender its opinion to the President

b) The President may, notwithstanding anything in the proviso to Article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall report to the President its opinion thereon.

Note: • In this case, the Supreme Court must tender its opinion to the President.

- The proviso to Article 131 deals with any dispute arising out of any pre-Constitution treaty, that is, the treaties entered before the commencement of the Constitution. Hence, the President can refer any such dispute to the Supreme Court for its opinion.

In both the cases, the advisory opinion of the Supreme Court under this Article is not binding on the President.

Furthermore, a question of law which has already been decided by the Supreme Court in the exercise of its judicial powers cannot be referred to the Court under Article 143. The Court cannot sit in appeal against its earlier decisions in the exercise of its advisory jurisdiction under Article 143.

4. Appellate Jurisdiction

It can be classified under four heads:

a. Appeals in Constitutional Cases (Article 132)

An appeal shall lie to the Supreme Court from any judgement or order of a High Court, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

Explanation of the above Article:

- Article 132 deals with questions involving interpretation of the Constitution arising out of any proceedings in a High Court - Civil, criminal, or other proceeding.
- This Article makes Supreme Court ultimate interpreter of the Constitution.

Now let us examine the expression '**substantial question of law**' used in this Article:

The word "substantial" here means a question regarding which there is a difference of opinion, that is, when there is a difference of opinion between two High Courts over the interpretation of this Constitution. A question will not be a substantial question when the law on the subject has been finally and effectively decided by the Supreme Court.

The rationale behind this is that on questions involving the interpretation of the Constitution, the Supreme Court should have the last say. Divergent interpretations on Constitutional questions by different High Courts would be very undesirable.

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b. Appeals in civil matters (Article 133)

An appeal shall lie to the Supreme Court from any judgement or order in a civil proceeding of a High Court, if the High Court certifies that -

- the case involves a substantial question of law of general importance; and
- that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

Explanation of this article:

- Article 133 deals with the appeals to the Supreme Court from decisions of High Courts in civil proceedings.
- This Article was amended with effect from 27 February 1973. Before the amendment, only those civil cases that involved a sum of Rs.20,000 could be appealed before the Supreme Court. But this monetary limit was removed by the 30th Constitutional Amendment Act, 1972. The result is that now all appeals, irrespective of their monetary value, can be taken to the Supreme Court, provided they involve a substantial question of law.

c. Appeals in criminal matters (Article 134)

1. An appeal shall lie to the Supreme Court from any judgement, order or sentence in a criminal proceeding of a High Court if the High Court:-
 - a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
 - b) has taken before itself any case from any subordinate Court and convicted the accused person and sentenced him to death; or
 - c) Certifies that the case is a fit one for appeal to the Supreme Court.
2. Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final order or sentence in criminal proceedings of a High Court in the territory of India subject to such conditions and limitations as may be specified in such laws

Explanation:

There are two modes by which an appeal from any judgement of a High Court can be brought before the Supreme Court-

1. Without a certificate of the High Court.
2. With a certificate of the High Court.

1. Without certificate -

Where High Court has given a death sentence.

Note: Sub clause (a) and (b) of this Article deals with those cases where a High Court has given a death sentence.

Parliament is empowered under clause (2) of this Article to enlarge the appellate jurisdiction of the Supreme Court in regard to criminal matters.

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In 1970, Parliament extended the criminal appellate jurisdiction of the Supreme Court. Accordingly, a person can approach to Supreme Court without certificate in case of-

- Life imprisonment.
- Where imprisonment is not less than 10 years.

d. Special leave to appeal by the Supreme Court (Article 136)

The Supreme Court may, in its discretion, grant special leave to appeal from any judgement in any matter passed by any Court or tribunal in the territory of India (except military tribunal and Court martial).

- Note:**
- The Term “any Court” used in this Article includes High Courts and lower Courts or subordinate Courts. Hence, the power to grant special leave is not confined to judgements of the High Courts. It can be granted even against the decision of the lower Courts such as of magistrates.
 - It is a discretionary power.
 - It can be granted in any judgement whether final or interlocutory.
 - By virtue of this Article, the Court can grant special leave in civil cases, in criminal cases, in income tax cases, and any variety of other cases.

5. Power of Judicial Review

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 in violation of the Constitution, then such a law or an order can be declared as unconstitutional.

Other powers of the Supreme Court:

1. Article 129- Supreme Court to be a Court of record.

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

Explanation:

A Court of record is a Court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any Court.

This Article also says that the Court shall have the power to punish for contempt of itself. As a matter of fact, once you make a Court a Court of record by statute, the power to punish for contempt necessarily follows from that position.

The Contempt of Courts Act, 1971

Section 2(a) of this act defines contempt of Court as criminal contempt or civil contempt.

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1. Civil Contempt- Under section 2(b) of this Act, Civil contempt means wilful disobedience to any judgement, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court.

2. Criminal Contempt-

Under section 2(c) of this Act, criminal contempt means the publication of any matter or the doing of any other act which-

- i. scandalises or lowers the authority of a Court; or
- ii. prejudices or interferes with the due course of a judicial proceeding; or
- iii. interferes or obstructs the administration of justice in any other manner.

Note:

- The purpose of contempt jurisdiction is to uphold the majesty and dignity of law Courts.
- Article 129 and 215 of the Constitution empowers the Supreme Court and High Court respectively to punish people for their respective contempt.
- Clause (2) of Article 19 empowers the State to impose reasonable restrictions on the exercise of the freedom of speech and expression on the ground of contempt of Court.

Under this Act-

- i. Innocent publication and distribution of matter,
 - ii. Fair and accurate report of judicial proceeding,
 - iii. Fair criticism of judicial act,
- do not amount to contempt of Court.

2. Article 137 - Review Petition

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

Explanation:

- Article 137 empowers the Supreme Court to review its own judgements.
- The power is exercisable in accordance with, and subject to, the rules of the Court made under Article 145 or any law made by Parliament.
- A review will lie in the Supreme Court on the following 3 grounds:
 - i. discovery of new and important matters or evidence;
 - ii. mistake or error apparent on the face of the record;
 - iii. any other sufficient reason.

Note:

- **Error of law on the face of record -**

A mistake of law that is made by an inferior Court or tribunal in reaching a decision and is apparent from the record of its proceedings.

The Supreme Court can quash an order for error apparent on the face of the record. The error must be of one of law not fact. The error apparent on the face of record should not be an error which has to be fished out and searched.

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Error apparent on the face of record means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning. Or in other words, an error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record.

Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law.

3. Article 141 - Law declared by Supreme Court to be binding on all Courts.

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

Explanation:

- The expression "law declared" implies the law-creating role of the Court.
- It also means Constitution does not prohibit the judiciary from making the law.
- The expression "all Courts" means Courts other than the Supreme Court.
- The Supreme Court is not bound by its own decisions and may overrule its previous decisions.

It must be noted that the decision of the Supreme Court is binding on the High Courts and they cannot ignore it on the ground that relevant provisions were not brought to the notice of the Supreme Court, or the Supreme Court laid down the legal position without considering all the points, and therefore its decision is not binding.

Independence of Supreme Court

Following provisions are there in the Constitution to ensure independence-

- i. System of appointment of judges.
- ii. System of removal.
- iii. The salaries and pensions of judges are non-votable by the Parliament.
- iv. The conduct of judges cannot be discussed on the floor of House except at the time of removal.

Other important articles related to Supreme Court

- i. **Article 126-** The President can appoint a judge of the Supreme Court as an Acting Chief justice of India when-
 - (a) The office of Chief Justice of India is vacant; or
 - (b) The Chief Justice of India is temporarily absent; or
 - (c) The Chief Justice of India is unable to perform the duties of his office.
- ii. **Article 127-** If at any time there is a lack of quorum of the judges of the Supreme Court available to hold or continue any session of the Court, the chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, appoint a judge of High Court as an ad hoc judge of the Supreme Court for a temporary period. The judge so appointed should be qualified for appointment as a judge of the Supreme Court.

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- iii. Article 128-** The chief Justice of India may, at any time, with the previous consent of the President, request any person who has held the office of a judge of the Supreme Court or who has held the office of a judge of High Court and is duly qualified for appointment as a judge of the Supreme Court to sit and act as a Judge of the Supreme Court.

Jurisdiction and Powers of High Court

1. Original Jurisdiction

- a. Matters related to will, marriage, divorce, company laws, contempt of Court, etc
- b. Disputes relating to the elections of MP, MLA and MLC
- c. Enforcement of fundamental rights of citizens, etc.

2. Writ Jurisdiction

High Court is empowered to issue writs, under Article 226, for the enforcement of fundamental rights of the citizens and for any other purpose.

The High Court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction. **(This Provision was added by the 15th Constitutional Amendment Act of 1963)**

3. Power of judicial review

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 in violation of the Constitution, then such a law and an order can be declared as unconstitutional.

Other important points related to High Court

Article 222- Transfer of a judge from one High Court to another

The President may, after consultation with the chief justice of India, transfer a judge from one High Court to any other High Court.

Explanation:

- No transfer can be made without consultation with the chief Justice of India.
- Transfer of judges can be made only in public interest.
- Any transfer which is not in public interest can be challenged in the Courts as ultra vires or without jurisdiction.
- Transfer cannot be used as a threat or punishment to judges.
- The expression "judge" in Article 222(1) includes chief Justice.

Third Judges case 1998

The Supreme Court held that that in case of the transfer of High Court judges, the chief Justice of India should consult the collegium of four senior most judges of the Supreme Court and the chief Justice of both the High Court that is the High Court from which the judge is being transferred and the High Court where a judge is to be transferred.

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Common High Court

The Parliament can establish a common High Court for two or more States or for two or more States and a Union Territory. **(This provision was added by the 7th Constitutional Amendment Act of 1956).**

Note: By the 15th Constitutional Amendment Act of 1963, retirement age of high court judge was raised from 60 to 62 years.

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Parliament

Part v

Articles 79 – 122

Article 79– There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

Explanation:

- The Parliament consist of three parts-
 1. the President
 2. the Council of States
 3. the House of the People
- In 1954, the Council of States and the House of the People adopted the Hindi names Rajya Sabha and Lok Sabha respectively.
- The Council of States or Rajya Sabha is the Upper House.
- The House of the People or Lok Sabha is the Lower House.
- Lok Sabha represents the people of India and Rajya Sabha represents the States and Union Territories of India.

Article 80– Composition of the Council of States

- The Rajya Sabha consists of two classes of members-
 1. Representatives of the States, and
 2. members nominated by the President.
- The maximum limit of representatives of the States is fixed at 238.
- The President nominates 12 members to the Rajya Sabha and the members shall consist of persons having special knowledge or practical experience in Literature, science, art and social service.

Note: At present, Rajya Sabha has 245 seats.

- The fourth schedule to the Constitution deals with the allocation of seats in the Rajya Sabha to States and Union Territories.
- The representatives of each State in the Rajya Sabha shall be elected by the elected MLAs of the State.

Note: Members of the Legislative Council (MLC) of the State do not participate in the elections to the Rajya Sabha.

- The election is held in accordance with the system of proportional representation by means of the single transferable vote.
- The seats are allotted to the States in the Rajya Sabha on the basis of population.
- The representatives of the Union Territories shall be chosen in such manner as Parliament may by law prescribe.

Note: Constitution prescribes only for representation of the States by proportional representation, but in case of Union Territories, it leaves it on Parliament. The Parliament has prescribed electoral college especially constituted for the purpose and even for UT's the election is held in accordance with the system of proportional representation by means of the single transferable vote. Only Delhi and Puducherry have representation in Rajya Sabha.

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Article 81– Composition of the House of the People.

The Lok Sabha consists:

1. Not more than 530 members directly elected by the voters in the States.
2. Not more than 20 members to represent the Union Territories to be chosen in such manner as Parliament may By law provide; and
3. Not more than two members belonging to the Anglo-Indian community appointed by the President under Article 331.

Explanation:

- Members of the Lok Sabha are directly elected by the people and the election is based on the principle of universal adult franchise.
- The Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the members of Lok Sabha from the Union Territories are also chosen by direct election.
- By the 104th Constitutional Amendment Act 2019, the provision for nomination of not more than two members from Anglo-Indian community by the President has been repealed.
- The maximum strength of the Lok Sabha is fixed at 552 and at present, the strength is 545.
- Under Article 330, the Constitution has provided for reservation of seats for Schedule Castes and Schedule Tribes in the Lok Sabha.

Note: A total of 131 seats are reserved for SCs(84) and STs(47) in the Lok Sabha.

- Under Article 332, the Constitution has provided for reservation of seats for Schedule Castes and Schedule Tribes in the Legislative Assemblies of the State.
- Under Article 334, the reservation of seats for SCs and STs in the Lok Sabha and in the Legislative Assemblies of the States shall cease to have effect on the expiration of a period of 80 years from the commencement of the Constitution.

Note: Earlier, it was 70 years from the commencement of the Constitution, but after 104th Constitutional Amendment Act, the reservation has been extended to 2030, which is 80 years from the commencement of the Constitution.

Article 82– Readjustment after each Census.

Upon the completion of each census, the allocation of seats in the Lok Sabha to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine.

Explanation:

- Constitution prescribes periodic reallocation of seats among the States after census.
- The Parliament is empowered to determine the authority.
- The Parliament has enacted the Delimitation Commission Act in 1952, 1962, 1972 and 2002.

Note: Delimitation Commission is also known as Boundary Commission.

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- The 42nd Constitutional Amendment Act of 1976 has frozen the allocation of seats in the Lok Sabha for 25 years that is till the year 2000 at the 1971 census.
- The 84th Constitutional Amendment Act 2001 has further frozen the allocation of seats in the Lok Sabha for another 25 years, that is till the year 2026.

Composition of delimitation commission

Its composition is not fixed, and it is to be determined by Parliament.

- Chairman- Retired or sitting judge of Supreme Court.
- Chief Election Commissioner or other Election Commissioners as ex-officio members.
- State Election Commissioners.

Article 83 – Duration of Houses of Parliament

- The Rajya Sabha is a permanent body and it is not subject to dissolution.
- One third of the members of Rajya Sabha shall retire after every second year.
- The term of office of a member of the Rajya Sabha is six years.
- The Lok Sabha is a temporary body and it is subject to dissolution.
- The normal life of Lok Sabha is five years which can be dissolved sooner by the President on the recommendation of Prime Minister. However, the life of Lok Sabha can be extended by a law of Parliament during national emergency for one year at a time for any length of time.

Article 84 – Qualification for membership of Parliament

- He should be a citizen of India.
- He should make and subscribe an oath or affirmation before some person authorised by the election commission.
- He should be not less than 30 years of age in the case of Rajya Sabha and not less than 25 years of age in the case of Lok Sabha.
- He should possess such other qualifications as may be prescribed by Parliament.

The Parliament has laid down the following additional qualifications in the Representation of People Act 1951;

1. Must be registered as an elector in any Parliamentary constituency. This is same for both, Lok Sabha and Rajya Sabha.
2. To contest a seat reserved for Schedule Castes or Schedule Tribes, the person must be a member from that Community.

Article 85 – Sessions of Parliament, prorogation and dissolution

1. Sessions of Parliament

There are usually three sessions in a year-

- **Budget session-** from February to May.
- **Monsoon session-** from July to September
- **Winter session-** from November to December

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Note:

- Maximum gap between the two sessions of Parliament cannot be of more than six months.
- The President shall from time to time summon each House of Parliament to meet.

2. Prorogation

- Prorogation is the act of terminating a Parliamentary session, or in other words a prorogation ends a session.
- Prorogation is done by the President.

3. Dissolution

- The President has the power to dissolve the Lok Sabha.
- Dissolution ends the life of Lok Sabha and a general election must then be held to elect a new Lok Sabha.

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

Article 87 – Special address by the President.

The President shall address both Houses of Parliament assembled together on following occasions-

- The first session after each general election to the Lok Sabha.
- At the commencement of the first session of each year.

Article 88 – Rights of Ministers and Attorney General as respects Houses.

- Every Minister and the Attorney General of India shall have the right to speak and take part in the proceedings of either House, and in joint sittings of the Houses, and any committee of Parliament of which he may be a member.
- The right given to a Minister or the Attorney General is of participation but not of voting.
- A Minister can vote only in the House of which he is a member, though he is entitled to participate in the proceedings of the other House.

Articles 89-98 (Officers of Parliament)

Chairman and Deputy Chairman

- The Vice-President of India shall be ex-officio Chairman of the Rajya Sabha.
- The Chairman is not a member of the Rajya Sabha.
- The Deputy Chairman is elected from amongst the members of Rajya Sabha.
- The Deputy Chairman may resign his office by writing under his hand addressed to the Chairman.
- The Deputy Chairman is directly responsible to the Rajya Sabha and he is not subordinate to the Chairman.
- Salaries and allowances of Chairman and Deputy Chairman of the Rajya Sabha are fixed by Parliament by law and are the expenditure charged upon the Consolidated Fund of India.
- During any period when the Vice-President acts as the President, the duties of the office of Chairman shall be performed by the Deputy Chairman.

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- If the office of Chairman is vacant, the Deputy Chairman performs the duties of Chairman. If the office of Deputy Chairman is also vacant, then the duties of the office shall be performed by such member of the Rajya Sabha as the President may appoint for the purpose.
- In the absence of the Chairman, the Deputy Chairman performs the duties. If both Chairman and Deputy Chairman are absent, then any member of the panel of vice chairpersons can perform the duties of Chairman. In case no member of the panel is present then such other person as may be determined by the Rajya Sabha shall act as Chairman.

Note:

- The Chairman of the Rajya Sabha nominates not more than 10 members from amongst the members of Rajya Sabha to the panel of vice-chairpersons.
- The Chairman cannot vote in the first instance. He votes only in the case of deadlock. Such a vote is known as casting vote.

Removal of Chairman

- Vice-President is the ex-officio Chairman of the Rajya Sabha.
- Chairman of the Rajya Sabha can be removed from his office only when the Vice-President of India is removed.
- To remove the Chairman, a resolution of the Rajya Sabha has to be passed by effective majority of Rajya Sabha and by simple majority of Lok Sabha.
Provided that no such resolution shall be moved unless at least 14 days' notice has been given.

Removal of Deputy Chairman

- To remove the Deputy Chairman, a resolution of the Rajya Sabha has to be passed by effective majority of Rajya Sabha.
Provided that no such resolution shall be moved unless at least 14 days' notice has been given.

Note: There is no role of Lok Sabha in the removal of Deputy Chairman.

Speaker and Deputy Speaker

- Speaker is a member of the Lok Sabha.
- Speaker is the head of the Lok Sabha.
- Speaker always belongs to the ruling party and the Deputy Speaker belongs to opposition party(since 11th Lok Sabha).
- There is no mention of oath of office of the Speaker, and the Speaker takes oath as a Member of Parliament.
- Speaker maintains order and decorum in the House.
- Speaker is the ultimate interpreter of the Constitution in the House.
- Speaker determines the breach of privilege or contempt of House.
- Speaker is the Chairman of Business Advisory Committee, the Rules Committee and the General Purpose Committee.
- The Speaker cannot vote in the first instance. He votes only in the case of deadlock. Such a vote is known as casting vote.

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- Speaker is elected from amongst the members of Lok Sabha.
- Deputy Speaker is also elected from amongst the members of Lok Sabha.
- The date of election of the Speaker is decided by the President.
- The date of election of the Deputy Speaker is decided by the Speaker.
- The Speaker may resign his office by writing under his hand addressed to the Deputy Speaker.
- The Deputy Speaker may resign his office by writing under his hand addressed to the Speaker.
- The Deputy Speaker is directly responsible to the Lok Sabha and he is not subordinate to the Speaker.
- Salaries and allowances of Speaker and Deputy Speaker of the Lok Sabha are fixed by Parliament by law and are the expenditure charged upon the Consolidated Fund of India.
- If the office of the Speaker is vacant, the Deputy Speaker performs the duties of the Speaker. If the office of Deputy Speaker is also vacant, then the duties of the office shall be performed by such member of the Lok Sabha as the President may appoint for the purpose.
- In the absence of Speaker, the Deputy Speaker performs the duties. If both Speaker and Deputy Speaker are absent, then any member of the panel of chairpersons can perform the duties of the Speaker. In case, no member of the panel is present then such other persons as may be determined by the Lok Sabha shall act as Speaker.

Removal of Speaker

- To remove the Speaker, a resolution of the Lok Sabha has to be passed by effective majority of Lok Sabha.
Provided that no such resolution shall be moved unless at least 14 days' notice has been given.

Removal of Deputy Speaker

- To remove the Deputy Speaker, a resolution of the Lok Sabha has to be passed by effective majority of Lok Sabha.
Provided that no such resolution shall be moved unless at least 14 days' notice has been given.

Speaker Pro Tem

- The President appoints, from amongst the members of Lok Sabha, Speaker Pro Tem (usually a senior most member).
- The President administers oath to the Speaker Pro Tem.
- The first sitting of newly elected Lok Sabha is presided by the Speaker Pro Tem.
- Speaker Pro Tem administers oath to the members of Lok Sabha.

Article 99– Oath or affirmation by members.

Every member of either House of Parliament shall, before taking a seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation.

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

- 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, which is simple majority.

Note: There are few exceptions in our Constitution where special or effective majority is required.

- **Casting Vote-** The Chairman or Speaker, or a person acting as such, shall not vote in the first instance, but shall exercise a casting vote in the case of equality of votes.
- **Quorum-** 1/10 of the total number of members of the House.
If at any time during a meeting of House there is no quorum, it shall be the duty of the Chairman or the Speaker either to adjourn the House or to suspend the meeting until there is a quorum.

Article 101- Vacation of Seats.

1. No person shall be a member of both Houses of Parliament at same time.

Under the Representation of People Act 1951 following provisions have been laid with respect to multiple elections. (under Chapter 6 of the RPA 1951).

- Any person who is chosen a member of both the Houses of Parliament and who has not taken his seat in either House may intimate within 10 days in which of the Houses he wishes to serve. In default of such intimation a seat in the Rajya Sabha shall become vacant.
- If a person who is already a member of the House of the People (Lok Sabha) and has taken his seat in such House is chosen a member of the Rajya Sabha, his seat in the Lok Sabha shall become vacant.
- If a person who is already a member of the Council of States (Rajya Sabha) and has taken his seat in such Council is chosen a member of the Lok Sabha, his seat in the Rajya Sabha shall become vacant.
- If a person is elected to more than one seat in a House, then, unless within the prescribed time he resigns all but one of the seats, all the seats shall become vacant. In other words, such a person has to choose one seat and resign from all other seats otherwise all the seats will become vacant (the explanation of this point is provided below).

Explanation:

- Under Section 70 of RPA, 1951, if a person is elected to more than one seat, then he has to choose one seat.
- Under Section 33(7) of RPA, 1951, an individual can contest from two Parliamentary constituencies.
- Rule 91 of the Conduct of Election Rules, 1961 mentions that the time within which a person may resign from all but one seat is 14 days from the date of his election. Further, such resignation shall be addressed to the Speaker or the Chairman of the House concerned.

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Hence, an individual can contest from 2 Parliamentary constituency but, if elected from both, he has to resign one seat within 14 days otherwise both seats shall become vacant.

- 2. Article 101(2)–** 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.

Explanation of Article 101(2) :

A person cannot be an MP and MLA or MLC at the same time. If a person is chosen a member of both of Parliament and of State Legislature, then such a person has to resign his seat in the State Legislature within 14 days or else his seat in the Parliament shall become vacant.

Note: Under Rule 2 of the Prohibition of simultaneous membership rules, 1950, made by the President under Article 101(2), the time period specified is 14 days.

- 3.** A member of either House of Parliament may resign his seat by writing to the Chairman or the Speaker, as the case may be. If the resignation is accepted by the presiding officer, the seat becomes vacant.

Note: By the 33rd Constitutional Amendment Act 1974, a proviso has been added in Article 101 (3), which states that- Provided that in the case of any resignation, the Chairman or the Speaker, as the case maybe, is satisfied that such a resignation is not voluntary or genuine, he shall not accept such resignation.

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

Provided that in computing the said period of 60 days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

Article 102– Disqualifications for membership.

Clause (1) - A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament:

- i. If he holds any office of profit under the Government of India or the Government of any State;
- ii. If he is of unsound mind and stands so declared by a Court;
- iii. If he is in an undischarged insolvent;
- iv. If he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
- v. If he is so disqualified by or under any law made by Parliament.

Note: A person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

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Clause (2) - A person shall be disqualified for being a member of either House of Parliament if he is disqualified under the 10th Schedule.

Note: Disqualification under 10th schedule which is related with Anti-Defection law will be done separately under the chapter Anti-Defection law.

Article 103– Decision on questions as to disqualification of members.

If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Article 102, the question shall be referred for the decision of the President and his decision 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.

Explanation:

Election commission advises the President on matters relating to the disqualifications of members of Parliament mentioned in Clause (1) of Article 102. The decision of the President is final in this regard, however, the President is required to act in accordance with the opinion of the Election Commission.

Article 107- Provisions as to introduction and passing of Bills.

- Except money bills and financial bills, all bills may originate in either House of Parliament.
- A bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.
- A bill pending in the Rajya Sabha which has not been passed by the Lok Sabha shall not lapse on the dissolution of the Lok Sabha.
- A bill pending in the Lok Sabha shall lapse on dissolution of the Lok Sabha.
- A bill which is passed by the Lok Sabha but is pending in the Rajya Sabha shall lapse on the dissolution of the Lok Sabha.

Article 108– Joint sitting of both Houses in certain cases.

If after a bill has been passed by one House and transmitted to the other House –

- a. The Bill is rejected by other House;
- b. The Houses have finally disagreed as to the amendments to be made in the Bill;
- c. More than 6 months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it.

Note: Above mentioned are the 3 conditions in which there may be a joint sitting between the Lok Sabha and Rajya Sabha.

- The President may, unless the bill has elapsed because of dissolution of the Lok Sabha, summon a joint sitting for the purpose of deliberating and voting on the Bill.
- There is no provision of joint sitting in case of-
 1. Money Bill; and
 2. Constitutional Amendment Bill.
- In reckoning any such period of six months, no account shall be taken of any period during which the House (other House to which the Bill has been transmitted) is prorogued or adjourned for more than 4 consecutive days.

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- Where the President has notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill.
- At the joint sitting, if the Bill is passed by simple majority then the Bill is deemed to have been passed by both the Houses.
- Speaker of the Lok Sabha presides over the joint sitting of the Parliament. In his absence, the Deputy Speaker presides, and in his absence Deputy Chairman of the Rajya Sabha presides. If the Deputy Chairman is also absent, then any such person as determined by the members present at the joint sitting, presides.

Note: The above point makes it clear that the Chairman of the Rajya Sabha does not preside over the joint sitting.

- The quorum to constitute a joint sitting is 1/10 of the total number of members of the two Houses.

So far, the bills that have been passed in joint sittings are-

- i. Dowry Prohibition Bill, 1960.
- ii. Banking Service Commission (Repeal) Bill, 1977.
- iii. Prevention of Terrorism Bill, 2002.

Article 109– Special procedure in respect of Money Bills.

- A Money Bill can not be introduced in the Rajya Sabha.
- A Money Bill can be introduced only in the Lok Sabha.
- A Money Bill can be introduced only on the recommendation of the President, that is it can be introduced only by a Minister and not by a Private Member.
- After a Money Bill has been passed by the Lok Sabha it shall be transmitted to the Rajya Sabha for its recommendations.
- The Rajya Sabha has only 14 days within which it has to return the bill to the Lok Sabha along with its recommendation.
- The Lok Sabha may either accept or reject all or any of the recommendations of the Rajya Sabha.
- If the Lok Sabha accepts any of the recommendations of the Rajya Sabha, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Rajya Sabha and accepted by the Lok Sabha.
- If a Money Bill passed by the Lok Sabha and transmitted to the Rajya Sabha for its recommendations is not returned to the Lok Sabha within 14 days, it shall be deemed to have been passed by both Houses In the form in which it was passed by the Lok Sabha.
- When a Money Bill is presented to the President for his assent, the President may either give his assent to the Bill or withhold his assent to the Bill, but the President cannot return a Money Bill.

Article 110– Definition of Money Bills.

- This Article defines a Money Bill.
- A Money Bill is a Bill which contains only provisions dealing with all or any of the following matters, namely –
 - a. the imposition, abolition, remission, alteration or regulation of any tax;
 - b. the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial

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- obligations undertaken or to be undertaken by the Government of India;
- c. The custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of money's from any such Fund.
 - d. The appropriation of moneys out of the Consolidated Fund of India.
 - e. The declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure.
 - f. The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State;
 - g. Any matter incidental to any of the matters specified above.
- A bill shall not be deemed to be a money bill by reason only that it provides for
 - i. the imposition of fines or other pecuniary penalties; or
 - ii. the demand or payment of fees for licences or fees for services rendered; or
 - iii. imposition, abolition, remission, alteration, or regulation of any tax by any local authority or body for local purposes.
 - If any question arises whether a bill is a Money Bill or not, the decision of the Speaker of the Lok Sabha shall be final.
 - There shall be endorsed on every Money Bill, the certificate of the Speaker of the Lok Sabha signed by him that it is a Money Bill-
 - when it is transmitted to the Rajya Sabha, and
 - when it is presented to the President for assent.

Article 111- Assent to Bills.

Note: This Article will be discussed in the topic "Veto Power of the President".

Article 117- Special provisions as to Financial Bills.

The distinction between a Money Bill and a financial bill is-

- i. A Money Bill is a Bill which contains only provisions dealing with the matters specified in Article 110.
 - ii. A financial Bill is a Money Bill to which provisions of general legislation have also been added that is apart from dealing with matters specified in Article 110, it also deals with other matters also.
- Financial bills are of three kinds:
 - i. Money Bills- **Article 110**
 - ii. Financial Bills (I)- **Article 117(1)**
 - iii. Financial Bills(II)- **Article 117(3)**
 - All Money Bills are financial Bills, but all financial Bills are not Money Bills.

Financial Bills (I)

- Financial Bills (I) and Money Bills have the following two common characteristics:
 - i. they can be introduced only in the Lok Sabha and not in the Rajya Sabha; and
 - ii. they can be introduced only on the recommendation of the President.
- Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

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- Financial Bill (I) will be passed in the same manner in which an ordinary Bill is passed. Hence, on a Financial Bill (I) joint sitting is possible and the President may return this Bill for reconsideration of the Houses.

Financial Bills (II)

- It contains provisions involving expenditure from the Consolidated Fund of India, but it does not include any of the matters specified in Article 110.
- This bill can be introduced in either House of the Parliament.
- At the time of introduction of the Bill, the recommendation of the President is not required.
- President's recommendation is required only at the time of the passing of the Bill that is at the time of consideration of the Bill.
- Joint sitting is possible on this Bill and the President may return this Bill for reconsideration of the Houses.

Note: On Financial Bills (I) and (II), the President may either give his assent, or withhold his assent, or return the Bill for the reconsideration Of the Houses.

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.

Parliamentary committees

1. Public Accounts Committee(PAC)

- The committee on Public accounts was first set up in 1921 under the Montague-Chelmsford Reforms.
- During the days of the interim government, the then finance minister acted as the Chairman of the committee, and later on, after the Independence, the finance minister became the Chairman. This naturally restricted the free expression of views and criticism of the Executive.
- The committee on Public accounts underwent a radical change with the coming into force of the Constitution when the committee became a Parliamentary committee functioning under the control of the Speaker with a non-official Chairman appointed by the Speaker from among the members of Lok Sabha elected to the committee.
- The Minister of Finance ceased to be a member of the committee vide rule 309 (i) of the rules of procedure and conduct of business in Lok Sabha.
- The Public accounts committee is now constituted every year under rule 308 of the rules of procedure and conduct of business in Lok Sabha.
- The Public accounts committee consist of not more than 22 members comprising of 15 members from the Lok Sabha and not more than 7 members from the Rajya Sabha.
- The members are elected by Parliament every year from amongst its members according to the principle of proportional representation by means of the single transferable vote.
- Prior to the year 1954–55, the committee consisted of 15 members who were elected by Lok Sabha from amongst its members. But with effect from the year 1954-55, 7 members from the Rajya Sabha are also being associated with the committee.

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- Since 1967, the Chairman of the Public account committee is selected invariably from the opposition.
- The term of office of the members is one year.
- A minister cannot be elected as a member of the committee.
- The Chairman of the Committee is appointed by the Speaker from amongst the members of the Committee from Lok Sabha.
- The current Public Accounts Committee is headed by Adhir Ranjan Chowdhury.
- The PAC examines the annual audit reports of the CAG.
- The CAG submits three audit reports to the President which are laid before the Parliament, namely.
 1. Audit report on appropriation accounts.
 2. Audit report on finance accounts
 3. Audit report on Public undertakings.

2. Estimates committee

- The committee on estimates, constituted for the first time in 1950, is a Parliamentary committee consisting of 30 members, elected every year by the Lok Sabha from amongst its members.
- The Chairman of the committee is appointed by the Speaker from amongst its members.
- A minister cannot be elected as a member of the committee and if a member after selection to the committee is appointed a minister, the member ceases to be a member of the committee from the date of such appointment.
- The term of office is one year.
- All the members in this committee are from Lok Sabha only.
- The members are elected according to the principles of proportional representation by means of single transferable vote.
- The functions of the estimates committee are:
 - i. To report what economies, improvements in organisation, efficiency or administrative reform, consistent with the policy underlying the estimates maybe affected;
 - ii. To suggest alternative policies in order to bring about efficiency and economy in administration;
 - iii. To examine whether the money is well laid out within the limits of the policy implied in the estimates; and
 - iv. To suggest the form in which the estimates shall be presented to Parliament.

The committee does not exercise its functions in relation to such public undertakings as are allotted to the committee on Public undertakings.

- Soon after it is constituted, the committee selects such of the estimates relating to a ministry or department of the central government or such of the statutory and other bodies of the central government as may seem fit to the committee. The committee also examines matters of special interest which may arise or come to light in the course of its work or which are specially referred to it by the House or the Speaker.

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- The recommendations of the committee are embodied in its reports which are presented to Lok Sabha.
- After a report has been presented to Lok Sabha, the ministry or department concerned is required to take action on the recommendations and conclusions contained in the report within a period of six months or as directed by the committee. The replies of the government are examined by the committee and an Action Taken Report is presented to Lok Sabha.

3. Committee on Public undertakings.

- This committee consist of 22 members, 15 are elected by the Lok Sabha every year from amongst its members and 7 members are elected by Rajya Sabha.
- The Chairman is appointed by the Speaker from amongst the members of the committee.
- A minister is not eligible to become a member of the committee. If a member after his election to the committee is appointed a minister, he ceases to be a member of the committee from the date of such appointment.
- The term of office is one year.
- The members are elected according to the principle of proportional representation by means of single transferable vote.
- The functions of the committee are:
 - i. To examine the reports and accounts of public undertakings.
 - ii. To examine the reports of the Comptroller and auditor general of India(CAG) on the Public undertakings.
 - iii. To examine, in the context of the autonomy and efficiency of the Public undertakings, whether the affairs of the Public undertakings are being managed in accordance with sound business principles and prudent commercial practices.
 - iv. To exercise such other functions vested in the Public accounts committee and the estimates committee in relation to public undertakings which are allotted to it by the Speaker from time to time.
- The recommendations of the committee are embodied in their reports which are presented to Parliament. After a report has been presented to the House, the Ministry or Undertaking concerned is required to take action on various recommendations and conclusions contained in the report. The replies of the Government are examined by an Action Taken Sub-Committee/Committee and an Action Taken Report is presented to the House.

Question Hour

- The first hour of every sitting of Parliament is devoted to questions and that Hour is called the Question Hour.
- It is during the Question Hour that members can ask questions on every aspect of administration and governmental activity.

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Types of Questions

- Questions are of four types:

i. Starred Questions

- A starred question is one to which a member desires an oral answer in the House and which is distinguished by an asterisk Mark.
- When a question is answered orally, supplementary questions can be asked.

ii. Unstarred Questions

- Answer to such a question is not given orally, but in a written form.
- Consequently, no supplementary questions can be asked.

iii. Short Notice Questions

- A short notice question is one which relates to a matter of urgent public importance and can be asked with notice of less than 10 days.
- It is answered orally followed by supplementary questions.

iv. Questions to a Private Member

- It is asked when the subject matter of question pertains to any bill, resolution or any matter relating to the business of the House for which that member is responsible.
- For such questions, the same procedure is followed as in the case of questions addressed to Minister.

Note: The list of Starred, Unstarred, Short Notice Questions and Questions to Private Members are printed in green, white, light pink and yellow colour, respectively, to distinguish them from one another.

Zero Hour

- The emergence of Zero Hour can be traced to early 60s when many issues of great public importance and urgency began to be raised by members immediately after Question Hour without any prior notice.
- The Zero Hour starts immediately after the Question Hour and it is referred as the time gap between the end of Question Hour and the beginning of the regular business.
- Zero hour is an Indian innovation in the field of Parliamentary procedures.
- Zero hour is not mentioned in the Rules of Procedure.
- The matters are raised by members without any prior notice.

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Prime Minister and Council of ministers

- Prime Minister is the real executive.
- Prime Minister is the head of the government.

Article 74- Council of Ministers to aid and advise President.

Clause(1)- There shall be a Council of Ministers with the prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.

Explanation:

Clause (1) of Article 74 [Article 74(1)] was amended by 42nd Constitutional Amendment Act 1976. Before the 42nd Amendment, Article 74(1) Stated that, "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions".

From the wordings of Article 74, as it stood before its amendment in 1976, one could infer that the functions of the Council of Ministers are merely advisory, and it is left to the President to accept the advice or ignore the same. To make matters clear beyond doubt, 42nd Amendment Act amended Article 74(1) in 1976 and made it explicit that the President shall, act in accordance with such advice.

Proviso to Article 74(1)- Provided that the President may require the Council of Ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.

Explanation:

The 44th Constitutional Amendment Act 1978 added a proviso to Article 74(1). Earlier, there was no such provision that the President may require the Council of Ministers to reconsider such advice.

Clause(2)- The question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired into any Court.

Explanation:

Article 74(1) barred Courts from inquiring into the advice given by the Council of Ministers to President. The Supreme Court in S.R. Bommai case held that Article 74(2) bars judicial review on the advice given by the Ministers, but it does not bar scrutiny of the material on the basis of which the advice is given. In other words, the Court cannot enquire into the advice given by the Ministers, however it can ask for the material on the basis of which the advice is given.

Article 75- Other provisions as to Ministers.

Clause(1)- The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

Explanation:

- The Prime Minister is appointed by the President. It simply means that the Prime Minister is not elected.
- Under the Constitution, the President is the authority to appoint the Prime Minister, but it does not mean that the President can exercise this power in his discretion. The power has to be exercised in accordance with the conventions of the Parliamentary system of government. Thus, the President has to appoint the leader of the majority party in the Lok Sabha.

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- However, Circumstances can arise in which the President may have to exercise his personal judgement in selecting the Prime Minister, for example, where the Prime Minister in his office dies or resigns on personal grounds. In such circumstances, the President may explore the possibilities of finding a person who could form a coalition with the help of two or more parties and command the support of the Lok Sabha.
- The Constitution does not require that a person must prove or establish his majority in Lok Sabha before he is invited to be the Prime Minister. The President may first invite and appoint him the Prime Minister and then ask him to prove his majority or seek vote of confidence in Lok Sabha within a reasonable time.
- The President can appoint only those persons as Ministers who are recommended by the Prime Minister.

Clause(1-A)- The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total number of members of the Lok Sabha.

Note: Clause (1-A) was added by the 91st Constitutional Amendment Act of 2003.

Clause(1-B)- A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under the 10th Schedule shall also be disqualified to be appointed as a Minister.

Note: Clause (1-B) was also added by the 91st Constitutional Amendment Act of 2003.

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

Explanation:

- The term of the Prime Minister is not fixed and he holds office during the pleasure of the President.
- However, the Prime Minister remains in his office as long as he enjoys majority in the Lok Sabha.
- The term “Ministers” or “Minister” in this and subsequent clauses includes the Prime Minister.
- Each Minister holds his office at the President’s pleasure indicates that his office is at all time at the Prime Minister’s disposal.

Note: The pleasure of President means pleasure of Prime Minister.

- Clause(2) only applies to the dismissal of Ministers. It does not apply to the dismissal of the Council of Ministers.
- Ministers are individually responsible towards President(or Prime Minister).

Clause(3)- The Council of Ministers shall be collectively responsible to the Lok Sabha.

Explanation:

- This is the bedrock principle of Parliamentary government.
- This means that all the Ministers own joint responsibility to the Lok Sabha.
- When the Lok Sabha passes a no-confidence motion against the Council of Ministers, all the Ministers have to resign.
- Collective responsibility also means that Cabinet decisions bind all Cabinet Ministers, even if they argued in opposite directions in cabinet.
- If a Minister is not prepared to defend the policy of the government, then he must resign.

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Clause (4)- Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the third Schedule.

Explanation:

- The President shall administer the oath of office and secrecy to a Minister.
- The oath is specified in the third schedule.

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

Explanation:

- A Minister, including the Prime Minister, can be a member of either Lok Sabha or Rajya Sabha.
- A person who is not a member of either House of the Parliament can also be appointed as the Minister. However, such a person appointed has to become a Member of either House of the Parliament within six months or else he ceases to be a Minister.

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

Explanation:

- Clause (6) makes the salary of Ministers votable by Parliament.
- A Minister gets the salary and allowances that are payable to a Member of Parliament.

Article 77- Conduct of business of the Government of India.

Clause(1)- All executive action of the Government of India shall be expressed to be taken in the name of the President.

Explanation: Explaining clause (1) the Supreme Court has observed:

As required by Article 77(1), all executive actions of the Government of India have to be expressed in the name of the President; but this would not make that order an order passed by the President personally. That being so, the order carries with it no immunity. The immunity available to the President under Article 361 of the Constitution cannot be extended to the orders passed in the name of the President under Article 77(1) or Article 77(2) of the Constitution.

Accordingly an action against a Minister in the Court for his illegal act could not be denied on the basis of Article 77(1) read with Article 361.

Note: Article 361 will be discussed separately under Fundamental Rights.

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

Clause(3)- The President shall make rules for the more convenient transaction of the business of the government of India, and for the allocation among ministers of the said business.

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

It shall be the duty of the Prime Minister-

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

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

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

Composition of the Council of Ministers:

The Council of Ministers consist of three categories of Ministers, namely:

- Cabinet Ministers
- Ministers of State
- Deputy Ministers

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Chief Minister and State Council of Ministers

Article 163- Council of Ministers to aid and advice Governor.

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

Explanation:

- The form of government in the States is Parliamentary.
- As we have seen that Article 74, after its amendment, expressly makes the advice of the Council of Ministers binding on the President. However, Article 163 remains in its original form.
- Clause (1) Clarifies that unless the Constitution requires him to act in his discretion he is obliged to act on the aid and advice of his Council of Ministers.
- The exercise of discretion by the Governor is subjected to judicial review.
- The situations in which the Governor may exercise in his discretion are:
 - i. The appointment of the Chief Minister.
 - ii. Dismissal of a ministry which has lost the confidence of the Legislative Assembly but refuses to resign.
 - iii. The dissolution of the Legislative Assembly.
 - iv. To reserve a bill for the consideration of the President.
 - v. To recommend the imposition of President's rule.
 - vi. Taking disciplinary action against a judge of the subordinate judiciary under Article 235 where the Governor must act on the recommendation of the High Court and not of the Council of ministers if there is any difference of opinion.

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

Clause(3)- The question whether any, and if so what, advice was tendered by the Ministers to the Governor shall not be enquired into any Court.

Article 164- Other provisions as to Ministers.

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

Provided that in the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, 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.

Clause(1-A)- 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, including the Chief Minister, in a State shall not be less than 12.

Clause(1-B)- A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under the 10th schedule shall also be disqualified to be appointed as a Minister.

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

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

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

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

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

Clause(1)- All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

Clause(2)- 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 instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

Clause(3)- 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 as respects the furnishing of information to Governor, etc.

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

- (a) 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;
- (b) To furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and
- (c) 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.

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Amendment of the Constitution

Part- XX

Article 368

- The procedure for amendment of the Constitution is borrowed from the Constitution of South Africa.

Amendment Procedure

The procedure for the amendment of the Constitution as laid down in Article 368 is as follows-

1. A Constitutional amendment bill can be introduced either in the Lok Sabha or in the Rajya Sabha.
2. The bill cannot be introduced in the State Legislature.
3. The bill does not require the recommendation of the President for its introduction.
4. The bill can be introduced either by a minister or by a private member.
5. The bill must be passed in each House by special majority.
6. Each House must pass the bill separately.
7. In case of any deadlock between the 2 House, there is no provision for holding a joint sitting.
8. The bill, after being passed from both the House by special majority, is presented to the President for assent.

Note: By the 24th Constitutional Amendment Act, 1971, it is mandatory for the President to give his assent on a constitutional amendment bill.

Types of Amendments

There are 3 ways in which the Constitution can be amended;

1. By simple majority.
2. By special majority.
3. By special majority and the ratification of half of the State Legislatures.

Amendments in the following provision require ratification of half of the State Legislature-

1. The election and manner of election of the President [Article 54 and Article 55]
2. The extent of executive power of the union [Article 73].
3. The extent of executive power of the State [Article 162].
4. Provisions dealing with the Supreme Court [Chapter IV of Part V]
5. Provisions dealing with the High Courts in the States [Chapter V of Part VI]
6. High Courts for Union Territories [Article- 241]
7. Distribution of Legislative powers between the Union and the States [Chapter I of Part XI]
8. 7th Schedule of the Constitution [List I, II and III]
9. The representation of States in Parliament [Schedule IV]
10. Article 368, i.e. the power and procedure of amendment of the Constitution.

INDIAN POLITY

POLITY BY : AAKASH SIR

State Legislature

Part VI

Articles 168 – 212

Article 168- Constitution of Legislatures in States.

1. For every State there shall be a Legislature which shall consist of the Governor, and
 - (a) in the States of Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Karnataka, Tamil Nadu, Telegana and Uttar Pradesh, two Houses;
 - (b) in other States, one House.
2. Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

Explanation:

- The State Legislature consist of the Governor, Legislative Assembly and Legislative Council.
- At present, there are only 6 States where both, Legislative Assembly and Legislative Council, are present. They are:
 - (i) Uttar Pradesh
 - (ii) Bihar
 - (iii) Maharashtra
 - (iv) Karnataka
 - (v) Telangana
 - (vi) Andhra Pradesh

Notes:

- The 7th Constitutional Amendment Act, 1956, has provided for a Legislative Council in Madhya Pradesh. However, there is no notification issued by the President in this regard. Hence, Madhya Pradesh continues to have only one House.
- Earlier, Jammu and Kashmir had a Legislative Council, but that was established under the Constitution of Jammu and Kashmir, which is Separate from the Constitution of India. The Jammu and Kashmir Reorganisation Act, 2019 has abolished the Legislative Council.
- Recently, Andhra Pradesh Legislative Assembly has passed a resolution to abolish the Legislative Council. But, under the Constitution, the Parliament has the authority to abolish the Legislative Council.
- By the Tamil Nadu Legislative Council (Abolition) Act, 1968, the Legislative Council was abolished in Tamil Nadu. By the Tamil Nadu Legislative Council Act, 2010, the name of the State of Tamil Nadu was included in Article 168(1)(a). However, the President is yet to issue an order for appointing a date for the inclusion of Tamil Nadu into the Constitution.

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The Tamil Nadu Legislative Council (Repeal) Bill, 2012 was introduced in the Rajya Sabha on May 4, 2012 to repeal the Tamil Nadu Legislative Council Act, 2010.

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

1. Notwithstanding anything in Article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.
2. Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.
3. No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

Explanation:

- Under Article 169, the Parliament can abolish or create a Legislative Council in a State by passing a bill. Such a bill has to be passed by simple majority. But, the Parliament can do so only when the Legislative Assembly of the State passes a resolution for the abolition of the Legislative Council or the creation of such a Council, as the case may be. Such a resolution has to be passed by special majority.

Article 170- Composition of the Legislative Assemblies

- The Legislative Assembly is composed of members chosen by direct election.
- The Legislative Assembly of each State shall consist of not more than 500, and not less than 60, members. In other words, the maximum strength is 500 and minimum strength is 60.
- However, there are exceptions in certain States, where the number of seats are below 60 and the States are:
 1. Arunachal Pradesh- minimum 30.
 2. Sikkim- minimum 30.
 3. Goa- minimum 30.
 4. Mizoram- minimum 40.
 5. Nagaland- minimum 46.

Note: Under Article 332, the seats, in the Legislative Assemblies, are reserved for Schedule Castes and Schedule Tribes.

Article 171- Composition of the Legislative Councils.

1. The total number of members in the Legislative Council of a State having such a Council shall not exceed one third of the total number of members in the Legislative Assembly of that State:
Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

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2. Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).
3. Of the total number of members of the Legislative Council of a State:
 - (a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;
 - (b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;
 - (c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;
 - (d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;
 - (e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).
4. The members to be elected under sub-clauses(a), (b) and (c) of clause(3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.
5. The members to be nominated by the Governor under sub-clause(e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely: Literature, science, art, co-operative movement and social service.

Explanation:

- The members of the Legislative Council are indirectly elected.
- The maximum strength of the Legislative Council is fixed at $\frac{1}{3}$ of the total strength of the Legislative Assembly and the minimum strength is fixed at 40.
- Of the total number of members of the Legislative Council of a State-
 1. $\frac{1}{3}$ are elected by the MLA of the State,
 2. $\frac{1}{3}$ are elected by the members of local bodies in the State,
 3. $\frac{1}{12}$ are elected by graduates
 4. $\frac{1}{12}$ are elected by teachers.
 5. $\frac{1}{6}$ are nominated by the Governor.

Note: The Governor nominates those persons who have special knowledge or practical experience of literature, science, art, cooperative movement and social service.

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Article 172- Duration of State Legislatures.

1. Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly:

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

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

Explanation:

- The normal duration of the Legislative Assembly is five years but it can be dissolved sooner by the Governor. However, during the national emergency, the duration of Legislative Assembly can be extended by a law of Parliament for one year at a time for any length of time.
- The Legislative Council is a permanent body, not subject to dissolution, but one-third of its members retire on the expiration of every second year.

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

Every Minister and the Advocate-General for a State shall have the right to speak in, and to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not be entitled to vote.

Legislative procedure in State legislature

1. Money Bills

The procedure to pass a money bill is same as it is in the case of passing a money bill in the Parliament.

2. Ordinary Bills

- An ordinary bill can be introduced in either House of the State legislature.
- This bill can be introduced either by a minister or by a private member.
- This bill has to be passed by simple majority.
- Once the bill is passed by the first House, it is transmitted to the second House for consideration and passage.
- After the bill has been passed by both the Houses, the bill is sent to the Governor for his assent.
- In case of a unicameral legislature, a bill is sent directly to the Governor after it has been passed by Legislative Assembly.

Case-1 When an ordinary bill is passed by the Legislative Assembly and transmitted to the Legislative Council, the Legislative Council has four alternatives:

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1. It may pass the bill without amendments;
2. It may pass the bill with amendments and return it to the Assembly for reconsideration;
3. It may reject the Bill; and
4. It may not take any action.

Note:

- The Legislative Assembly is not bound to accept the recommendations of the Legislative Council.
- If the Legislative Council rejects the bill, then the Assembly may pass the bill again and transmit the same to the Council. If the Council rejects the bill again, then the bill is deemed to have been passed by both the Houses in the form in which it was passed by the Assembly for the second time.
- The Legislative Council can delay a bill for a maximum period of four months (three months in the first instance and one month in the second instance).

Case-2 When an ordinary bill, which is passed by the Legislative Council and transmitted to the Legislative Assembly, is rejected by the Legislative Assembly, the bill ends.

Note: There is no provision for joint sitting in State Legislature, in case of any deadlock between the Houses. Hence, it is clear that the Constitution has given more powers to the Legislative Assembly even in the case of an ordinary bill.

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Governor

Part VI

Articles 153-167

Part 6, Articles 153–167 deal with the State executive

The State executive consists of :

- (a) The Governor
- (b) The Chief Minister
- (c) The Council of Minister
- (d) The Advocate General of State

Article 153- Governors of States.

There shall be a Governor for each State:

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

Note: The 7th Constitutional Amendment Act of 1956, provided for the appointment of same person as Governor for two or more States.

Article 155 - Appointment of Governor.

The Governor of a State shall be appointed by the President.

Article 156 - Term of office of Governor.

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

Note: The Governor has no guarantee of tenure and he may be removed by the President at any time. There is no specific procedure provided in the Constitution for the removal of the Governor.

2. The Governor may, by writing under his hand addressed to the President, resign his office.
3. A Governor shall hold office for a term of five years from the date on which he enters upon his office:
Provided that a Governor shall continue to hold office until his successor enters upon his office.

Article 157- Qualifications for appointment as Governor.

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

Article 158- Conditions of Governor's office.

1. The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.
2. The Governor shall not hold any other office of profit.

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

Note:

- Emoluments, allowances and privileges available to a Governor are determined by the Governor's (Emoluments, Allowances and Privileges) Act, 1982.
 - At present, the salary of the Governor is Rs.3,50,000.
4. Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.
 5. The emoluments and allowances of the Governor shall not be diminished during his term of office.

Article 159- Oath or affirmation by the Governor.

The oath of office to the Governor is administered by the chief Justice of the concerned State High Court and in his absence, the senior-most judge.

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

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

Note:

- The Governor cannot pardon a death sentence. But, the Governor can suspend, remit or commute the death sentence.
- Only the President can pardon a death sentence.

Article 200- Assent to bills

Under Article 200, the Governor has following options on a bill passed by the State Legislature:

1. He may give his assent, or
2. he may withhold his assent, or
3. he may return the bill, or
4. he may reserve the bill for the consideration of the President.

Note:

- The Governor cannot return a money bill.
- The Governor can return a bill only once. If the bill is passed again by the State Legislature with or without amendments, the Governor has to give his assent to the bill.
- Under this Article, the Governor has been directed not to assent to, but to reserve for consideration by the President, any bill which would, in the opinion of the Governor, if passed into law, endanger the position of the State High Court.

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- The power vested in the Governor to reserve a bill for the consideration of the President is discretionary.

Article 201- Bills reserved for consideration

When a Bill is reserved by a Governor for the consideration of the President, the President has following options:

- (i) he may give his assent, or
- (ii) he may withhold his assent, or
- (iii) he may return the bill.

Note:

- When a bill is returned, the House or Houses shall reconsider it within a period of six months. If it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.
- The President cannot return a money bill for the reconsideration of the State Legislature.

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

Other important points related to Governor:

- Governor acts as the chancellor of universities in the State.
- Governor can summon or prorogue the State legislature.
- Governor can dissolve the Legislative Assembly.
- Money bills can be introduced only on the recommendation of the Governor.
- The appointment, posting and promotion of District Judges are made by the Governor in consultation with the High Court.
- Governor, in consultation with the State High Court and the State Public Service Commission, appoints persons to the judicial service of the State.

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Attorney – General of India and Advocate – General of State

Attorney-General (AG)

Part- 5 Article – 76

1. AG is is the highest law officer of the country.
2. AG is appointed by the President
3. The person to be appointed as the AG should be qualified to be appointed a judge of the Supreme Court
4. AG receives such remuneration as the President may determine
5. The term of office of the AG is not fixed by the Constitution
6. AG holds office during the pleasure of the President
7. AG gives his resignation letter to the President
8. AG has the right of audience in all Courts in the territory of India.

Advocate-General (AG)

Part- 6 Article – 165

1. AG is the highest law officer of the State.
2. AG is appointed by the Governor
3. The person to be appointed as the AG should be qualified to be appointed a judge of the High Court.
4. AG receives such remuneration as the Governor may determine
5. Th term of office of the AG is not fixed by the Constitution.
6. AG holds office during the pleasure of the Governor.
7. AG gives his resignation letter to the Governor.
8. AG is entitled to appear before any Court of law within the State

INDIAN POLITY

POLITY BY : AAKASH SIR

Union Public Service Commission (UPSC) and State Public Service Commission (SPSC) Part - XIV Article 315 to 323

UPSC

1. Qualification

One-half of the members of Commission should be such persons who have held office for atleast 10yrs either under the Govt. of India or under the Govt. of a State

2. Appointment

The Chairman and other members of the Commission shall be appointed by the President

3. Strength

The Constitution without specifying the strength of the Commission has left the matter to the discretion of the President, who determines its composition.

4. Tenure

The Chairman and members of the of the Commission hold office for a term of 6 years or until they attain the age of 65 years, whichever is earlier.

5. Resignation

To the President

6. Conditions of Service

The Constitution authorises the President to determine the conditions of service of the Chairman and other members of the commission.

SPSC

1. Qualification

One-half of the members of Commission should be such person who have held office for atleast 10yr either under the Govt. of India or under the Govt. of a State

2. Appointment

The Chairman and other members of the Commission shall be appointed by the Governor.

3. Strength

The Constitution without specifying the strength of the Commission has left the matter to the discretion of the Governor, who determines its composition.

4. Tenure

The Chairman and members of the of the Commission hold office for a term of 6 years or until they attain the age of 62 years, whichever is earlier.

Note: By the 41st Constitutional Amendment Act, 1976 the retirement age was increased from 60 to 62 years

5. Resignation

To the Governor.

6. Conditions of Service

The Constitution authorises the Governor to determine the conditions of service of the Chairman and other members of the commission.

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Note: The conditions of service of the Chairman or a member cannot be varied to his disadvantages after his appointment.

7. Removal (same for UPSC and SPSC)

- (a) The President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be-
 - (a) is adjudged an insolvent; or
 - (b) engages during his term of office in any paid employment outside the duties of his office; or
 - (c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.
- (b) The President can also remove the Chairman or any other member of a Public Service Commission on the ground of misbehaviour. In this case, the President has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, the President can remove the Chairman or a member. The advice tendered by the Supreme Court in this regard is binding on the President.
- (c) The President, in the case of UPSC, and the Governor, in the case of SPSC, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference.
- (d) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Govt. of India or the Govt. of a State or participates in any way in the profit or in benefit or emolument arising therefrom otherwise than as a member and in common with the other member of an incorporated company, he shall be deemed to be guilty of misbehaviour.

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

On ceasing to hold office:

- (a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;
- (b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- (c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

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- (d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

Article 320- Functions of Public Service Commissions.

1. It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.
2. It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
3. The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted:
 - (a) on all matters relating to methods of recruitment to civil services and for civil posts;
 - (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
 - (c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;
 - (d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;
 - (e) and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them.

Article 321-Power to extend functions of Public Service Commissions.

An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission

Article 322-Expenses of Public Service Commissions.

The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

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Article 323-Reports of Public Service Commissions.

- (1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament.
- (2) It shall be the duty of a State Commission to present annually to the Governor of the State a report as to the work done by the Commission, and the Governor shall, on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

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Election Commission

Part XV

Article 324

- Election Commission is a permanent and an independent Constitutional body.
- The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President shall be vested in the Election Commission.
- Election Commission is common to both the central government and the State governments.
- Article 324 has made the following provisions with regard to the composition of Election Commission:
 1. 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.
 2. The appointment of the Chief Election Commissioner and other Election Commissioners shall be made by the President.
 3. When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.
 4. The President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission.
 5. The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine.

Note:

- From 1950 to 15th October, 1989 - one member (CEC*)
- From 16th October, 1989 to January 1990 - three members (CEC and 2 EC**)
- From January 1990 to October 1993 - one member (CEC)
- Since October 1993 - three members (CEC and 2 EC)

CEC* - Chief Election Commissioner

EC** - Election Commissioner

- The Chief Election Commissioner and the two other Election Commissioners have equal powers. They receive equal salary, allowances, which are similar to those of a judge of the Supreme Court.
- In case of difference of opinion amongst the Chief Election Commissioner and/or two other Election Commissioners, the matter is decided by the Commission by majority.
- They have a tenure of six years, or up to the age of 65 years, whichever is earlier.

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- They can resign at any time by addressing their resignation to the President.
- They can also be removed before the expiry of their tenure.
- The Chief Election Commissioner is provided with the security of tenure. The Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a judge of the Supreme Court.
- The conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment.
- Any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.
- The Constitution has not prescribed the qualifications of the members of the Election Commission.

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 grant recognition to political parties and to allot election symbols to them.
- To act as a Court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them
- To determine the code of conduct to be observed by the parties and the candidates at the time of elections.
- To advise the President and the Governor on matters relating to the disqualifications of members of Parliament and members of State Legislature respectively.
- 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.

The Setup

- The Commission has a separate secretariat at New Delhi, consisting of about 300 officials, in a hierarchical set up. Two or three Deputy Election Commissioners and Director Generals who are the senior most officers in the secretariat assist the Commission. They are generally appointed from the national civil service of the country and are selected and appointed by the Commission with tenure.
- At the State level, the election work is supervised, subject to overall superintendence, direction and control of the Commission, by the Chief Electoral Officer of the State, who is appointed by the Commission from amongst senior civil servants proposed by the concerned State government.
- At the district and constituency level, the District Election Officers, Electoral Registration Officers and Returning Officers, who are assisted by a large number of junior functionaries, perform election work.

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

There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

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

The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

INDIAN POLITY

POLITY BY : AAKASH SIR

Comptroller and Auditor General of India (CAG)

Part - V

Articles 148-151

- The CAG is the head of the Indian Audit and Accounts Department.
- The CAG is the guardian of the public purse.
- The CAG is common to both the Centre and the State.
- CAG acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament.
- According to Dr B.R. Ambedkar, "the CAG shall be the most important officer under the Constitution of India".
- The CAG is appointed by the President of India.
- The President administers oath to the CAG.
- The CAG holds office for a period of six years or up to the age of 65 years, whichever is earlier.
- The CAG can resign from his office by addressing the resignation letter to the President.
- The CAG shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court. In other words, the CAG can be removed from his office by the President on the ground of proved misbehaviour or incapacity on an address of Parliament in the manner provided in Clause (4) of Article 124, relating to the removal of judges of the Supreme Court. Thus, the CAG does not hold his office till the pleasure of the President.
- The salary and other conditions of service of the CAG shall be such as may be determined by Parliament by law. His salary is equal to that of a judge of the Supreme Court:
Provided that neither the salary of the CAG nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.
- The 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.
- The conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the CAG shall be such as may be prescribed by rules made by the President after consultation with the CAG.
- The administrative expenses of the office of the CAG, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.
- It shall be the duty of the CAG-
 - (i) To audit all expenditure from the Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly and to ascertain whether the moneys shown in the accounts as having been disbursed were legally available for and applicable to the service or purpose to which they have been applied or charged;

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- (ii) To audit all transactions of the Union and of the States relating to Contingency Funds and Public Accounts;
- (iii) To audit all trading, manufacturing, profit and loss accounts and balance-sheets and other subsidiary accounts kept in any department of the Union or of a State; and in each case to report on the expenditure, transactions or accounts so audited by him.
- The CAG shall audit all receipts and expenditure of any body or authority substantially financed from Union or State Revenues and to report on the receipts and expenditure audited by him.

Article 150- Form of accounts of the Union and of the 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.

1. The reports of the 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.
2. The reports of the 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.

Article 279 - Calculation of “net proceeds”, etc.

- This Article defines “net proceeds” of a tax. It means all the proceeds of tax reduced by the cost of collection.
- The net proceeds of any tax or duty shall be ascertained and certified by the CAG, whose certificate shall be final.

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Anti-Defection Law

- The 10th schedule of the Indian Constitution deals with the Anti-Defection Law.
- The 10th schedule was inserted in the Constitution by the 52nd Constitutional Amendment Act, 1985.

Features of 52nd Constitutional Amendment Act, 1985

- It provides for the disqualification of the Members of Parliament and the State legislatures on the ground of defection from one political party to another, that is floor crossing.
- It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of a legislature based on a petition by any other member of the House.
- The decision on question as to disqualification on ground of defection is referred to the Chairman or the Speaker of such House, and his decision is final.
- This Act amended four Articles(101, 102, 190 and 191) of the Constitution.

Provisions of the Act

1. Grounds for disqualification:

Case-1 Members of political parties

- i. If he voluntarily gives up his membership of political party.

Note: The phrase 'voluntarily gives up his membership' has a wider meaning. The law provides for a member to be disqualified if he voluntarily gives up his membership. However the Supreme Court has interpreted that in the absence of a formal resignation by the member, the giving up of membership can be inferred by his conduct. In other words, voluntarily resignation need not to be a formal resignation. It will be interpreted in a broad sense which means his actions are such that he has voluntarily given up his membership. [**Ravi Naik Vs Union of India, 1994**]

- ii. If he votes or abstains from voting in the House, contrary to any direction issued by his political party. However, if the member has taken prior permission, or is condoned by the party within 15 days from such voting or abstention, the member shall not be disqualified.

Case-2 Independent members

If an independent candidate joins a political party after the election.

Case-3 Nominated members

If a nominated member joins a party six months after he becomes a member of the legislature. In other words, he may join any party within six months.

2. Exceptions:

- The law allows a party to merge with or into another party provided that at least 2/3 of its legislators are in favour of the merger. In such a scenario, neither the members who decide to merge, nor the ones who stay with the original party will face disqualification.

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Note:

- (i) A merger takes place when 2/3 of the members of the party have agreed to such merger.
- (ii) Paragraph 3 of the 10th schedule originally recognised a 'split' if at least one-third members of the legislature party decided to form or join another political party. However this provision was done away with by the 91st Constitutional Amendment Act 2003. The amendment, which came into force in January 2004, does not recognise a split in a legislature party.
- If a member, after being elected as the Presiding officer, voluntarily gives up the membership of his party or rejoins it after he ceases to hold that office.

91st Constitutional Amendment Act of 2003

This Amendment Act has made the following provisions:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

Kihoto Hollohan vs Zachillhu and Others case (Speaker's decision subject to judicial review)

- Paragraph 6 of the Tenth Schedule clearly said that the Speaker's or the Chairperson's decision on questions of disqualification on ground of defection shall be final as all such proceedings shall be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of Article 212.
- Further, Paragraph 7 said, "Notwithstanding anything in this Constitution, no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule".
- While upholding the Constitutional validity of the Tenth Schedule, a Constitution Bench of the Supreme Court in Kihoto Hollohan vs Zachillhu and Others (1991) declared paragraph 7 unconstitutional. It also said the Speaker's decision was subject to judicial review as he acted as a tribunal while deciding cases under the anti-defection law.

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Note: In other words, the law initially Stated that the decision of the Presiding Officer is not subject to judicial review. This condition was struck down by the Supreme Court in 1992, thereby allowing appeals against the Presiding Officer's decision in the High Court and Supreme Court. However, it held that there may not be any judicial intervention until the Presiding Officer gives his order.

Rule-Making Power

The presiding officer of a House is empowered to make rules to give effect to the provisions of the Tenth Schedule.

According to the rules, the presiding officer can take up a defection case only when he receives a complaint from a member of the House. Before taking the final decision, he must give the member (against whom the complaint has been made) a chance to submit his explanation. He may also refer the matter to the committee of privileges for inquiry. Hence, defection has no immediate and automatic effect.

Time Limit

The law does not specify a time-period for the Presiding Officer to decide on a disqualification plea. Given that Courts can intervene only after the Presiding Officer has decided on the matter, the petitioner seeking disqualification has no option but to wait for this decision to be made.

G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly (1996)

In this case the question was whether a member can be said to voluntarily give up his membership of a party if he joins another party after being expelled by his old political party. The Supreme Court in this case held that once a member is expelled, he is treated as an 'unattached' member in the House. However, he continues to be a member of the old party as per the Tenth Schedule. So if he joins a new party after being expelled, he can be said to have voluntarily given up membership of his old party.

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Panchayati Raj

Evolution of Panchayati Raj

1. Balwant Rai Mehta Committee

- The Government of India, in January 1957, appointed a committee to examine the working of the Community Development Programme (CDP) and the national extension service and to suggest measures for their better working. This committee submitted its report in November 1957.
- The Chairman of this committee was Balwant Rai Mehta.
- The committee in its report recommended the scheme of democratic decentralisation, also known as Panchayati Raj.
- Important recommendations by the committee:
 1. Establishment of three tier Panchayati Raj system:
 - a) Gram panchayat at the village level.
 - b) Panchayat Samiti at the block level.
 - c) Zila Parishad at the district level.
 2. The gram Panchayat should be constituted with directly elected representatives.
 3. The Panchayat Samiti and Zila parishad should be constituted with indirectly elected representatives.
 4. The panchayat samiti should be the executive body while the zila parishad should be the advisory and supervisory body.
 5. The district collector should be the Chairman of the zila parishad.
- In January 1958, the National Development Council (NDC) accepted the recommendations of the committee. The Council did not insist on a single rigid pattern.
- Rajasthan(Nagaur district) became the first State to establish Panchayati Raj, followed by Andhra Pradesh.

2. Ashok Mehta committee

- The Janata Government, in December 1977, appointed a committee on Panchayati Raj institution which submitted its report in August 1978 and made 132 recommendations to revive and strengthen the declining Panchayati Raj system in the India.
- Important recommendations by the committee:
 1. The three-tier system of Panchayati Raj should be replaced with two-tier system:
 - a) Zila Parishad at the district level
 - b) Mandal Panchayat for a group of villages (total population–15,000 to 20,000).

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2. Zila parishad should be the executive body and responsible for planning at the district level.
3. There should be an official participation of political parties at all levels of Panchayat elections.
4. The Panchayati Raj institutions should have compulsory powers of taxation to mobilise their own financial resources.
5. A minister of panchayati raj should be appointed in the State Council of ministers to look after the affairs of the panchayati raj institutions.
6. A Constitutional recognition should be accorded to the panchayati raj institutions.

3. G V K Rao committee.

- The planning commission, in 1985, appointed this committee.
- The committee came to conclusion that the developmental process was gradually bureaucratised and divorced from the Panchayati Raj and addressed it as grass without roots.
- Important recommendations by the committee:
 1. The Zila parishad should be of pivotal importance in the scheme of democratic decentralisation. According to the committee, the district is the proper unit for planning and development and the Zila Parishad should become the principal body for management of all development programmes which can be handled at that level.
 2. District Development Commissioner should act as the chief executive officer of the Zila Parishad.
 3. Elections to the Panchayati Raj institutions should be held regularly.

4. L M Singhvi Committee

- The Rajiv Gandhi government, in 1986, appointed this committee.
- The Chairman of this committee was L M Singhvi.
- Important recommendations by the committee:
 1. Panchayati Raj institutions should be Constitutionally recognised.
 2. Constitutional provisions to ensure regular, free and fair elections to the Panchayati Raj bodies.
 3. Nyaya Panchayats should be established for a cluster of villages.
 4. The judicial tribunals should be established in each State to adjudicate controversies about election to the Panchayat Raj institutions, their dissolution and other matters related to their functioning.

73rd Constitutional Amendment Act of 1992

- The Act accorded Constitutional status to the Panchayati Raj institutions.
- It added a new part IX to the Constitution which deals with the Panchayats.
- Part IX of the Constitution contains Article 243 to Article 243 O.

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- It also added a new 11th Schedule to the Constitution. This schedule consist of the 29 functional items of the panchayats.
- The act has two parts:
 1. Compulsory provisions, and
 2. voluntary provisions

Salient Features of the Act:

1. Gram Sabha (Article 243-A)

- “Gram Sabha” means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level. In other words, it is a village assembly consisting of all the registered voters in the area of a Panchayat.
- A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.

2. Constitution of Panchayats (Article 243-B)

- There shall be constituted in every State, Panchayats at the village, intermediate and district levels.
- Panchayats at the intermediate level may not be constituted in a State having a population not exceeding 20 lakhs.

3. Composition of panchayats (Article 243-C)

1. All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area. In other words, all the members of Panchayats at the village, intermediate and district levels shall be elected directly by the people.
2. The Legislature of a State may, by law, provide for the representation:
 - (a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;
 - (b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;
 - (c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;
 - (d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within:
 - (i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;
 - (ii) a Panchayat area at the district level, in Panchayat at the district level.

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3. The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.
4. The Chairperson of:
 - (a) a panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and
 - (b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

4. Reservation of seats (Article 243-D)

1. Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Panchayat (at all the 3 tiers) in proportion of their population to the total population in the Panchayat area and such seats may be allotted by rotation to different constituencies in a Panchayat.
2. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.
3. The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:
Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women.
4. Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

5. Duration of panchayats, etc (Article 243-E)

1. Every Panchayat, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer.
2. An election to constitute a Panchayat shall be completed-
 - (a) before the expiry of its duration of 5 years;
 - (b) before the expiration of a period of six months from the date of its dissolution:
Provided that where the remainder of the period, for which the dissolved Panchayat would have continued, is less than six months, it shall not be necessary to hold any election for constituting the Panchayat for such period.
3. A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued had it not been so dissolved.

6. Disqualifications for membership (Article 243-F)

1. A person shall be disqualified for being chosen as, and for being, a member of a Panchayat:

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(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than 25 years of age, if he has attained the age of 21 years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

2. If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications, the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

7. Powers, authority and responsibilities of Panchayats (Article 243-G)

The Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level with respect to-

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the 11th Schedule.

8. Powers to impose taxes by, and Funds of, the Panchayats (Article 243-H)

The Legislature of a State may, by law,:

- (a) authorise a Panchayat to levy, collect and appropriate taxes, duties, tolls and fees;
- (b) assign to a Panchayat taxes, duties, tolls and fees levied and collected by the State Government;
- (c) provide for making grants-in-aid to the Panchayats from the Consolidated Fund of the State; and
- (d) provide for Constitution of Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

9. Constitution of Finance Commission to review financial position (Article 243-I)

(1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (73rd Amendment) Act, 1992, and thereafter at the expiration of every 5th year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to:

- (a) the principles which should govern:
 - (i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State.
 - (ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats;

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- (iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;
 - (b) the measures needed to improve the financial position of the Panchayats;
 - (c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.
- (2) The Legislature of a State may, by law, provide for the composition of the Commission, the qualifications which shall be requisite for appointment as members and the manner in which they shall be selected.
- (3) The Governor shall cause every recommendation made by the Commission together with an explanatory memorandum as to the action taken to be laid before the Legislature of the State.

10. Audit of accounts of Panchayats (Article 243-J)

The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts.

11. Elections to the Panchayats (Article 243-K)

- (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.
- (2) The conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:
Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.
- (3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions.
- (4) The Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

12. Application to Union Territories (Article 243-L)

The President may, by public notification, direct that the provisions of this Part shall apply to any Union territory subject to such exceptions and modifications as he may specify in the notification.

13. Bar to interference by Courts in electoral matters (Article 243-O)

- (a) The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies shall not be called in question in any Court;
- (b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

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PESA Act of 1996

Article 243M of the Constitution, while exempting the Fifth Schedule areas from Part IX of the Constitution, provides that Parliament may by law extend its provisions to the Scheduled and Tribal Areas subject to such exceptions and modifications as may be specified in such law and no such law shall be deemed to be an amendment to the Constitution. On the basis of the report of the Bhuria Committee submitted in 1995, the Parliament enacted the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) to extend Part IX of the Constitution with certain modifications and exceptions to the Scheduled V areas. At present Scheduled V areas exist in 10 States viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana. The Ministry of Panchayati Raj is the nodal Ministry for implementation of the provisions of PESA in the States.

Features of the Act

- (a) A State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;
- (b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;
- (c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;
- (d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;
- (e) every Gram Sabha shall-
 - i. approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;
 - ii. be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;
- (f) every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in clause(e);
- (g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution;

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;

Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;

- (h) the State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level:

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Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat;

- (i) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;
- (j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;
- (k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;
- (l) the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;
- (m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-
 - (i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
 - (ii) the ownership of minor forest produce;
 - (iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;
 - (iv) the power to manage village markets by whatever name called;
 - (v) the power to exercise control over money lending to the Scheduled Tribes;
 - (vi) the power to exercise control over institutions and functionaries in all social sectors;
 - (vii) the power to control over local plans and resources for such plans including tribal sub-plans;
- (n) the State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha.

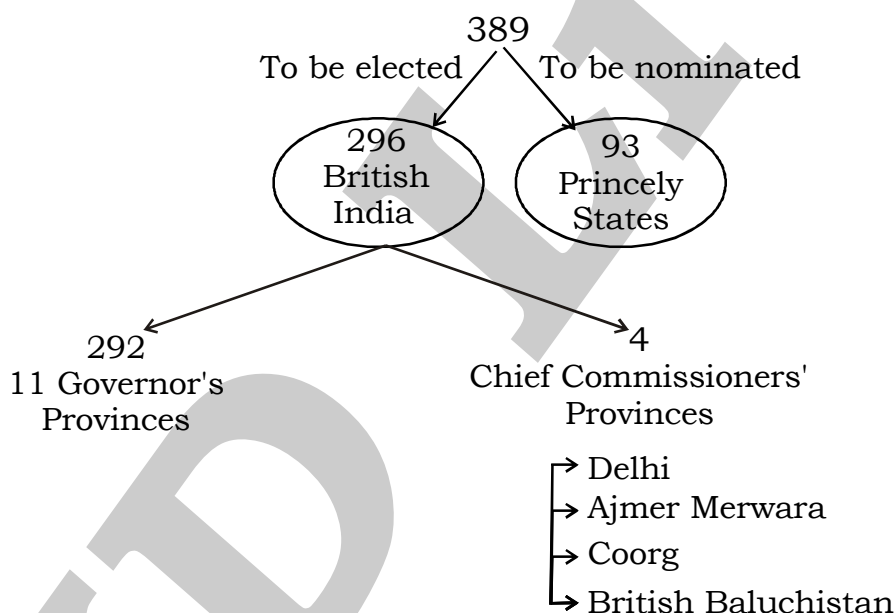
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Making of the Constitution

Cabinet Mission Plan (1946)

- The members of the Cabinet Mission were:
 - a) Lord Pethick Lawrence (Secretary of State for India)
 - b) Sir Stafford Cripps (President of the Board of Trade)
 - c) A.V Alexander (First Lord of Admiralty)
- It arrived in New Delhi on 24 March 1946.
- It Published its plan on 16 May 1946.
- The Constituent Assembly was constituted under the scheme formulated by the Cabinet Mission plan.
- The features of the scheme were:
 - (a) The total strength of the Constituent Assembly- 389



- The arrangement was:
 - i) 292 members were elected through the Provincial Legislative Assemblies;
 - ii) 93 members represented the Indian Princely States; and
 - iii) 4 members represented the Chief Commissioners' Provinces.

Note:

- As to its composition, members were chosen by indirect election by the members of the provincial Legislative Assemblies, according to the scheme recommended by the Cabinet Mission.
 - (b) Each province and princely State were to be allotted seats in proportion to their respective population. Roughly, one seat was to be allotted for every million population.

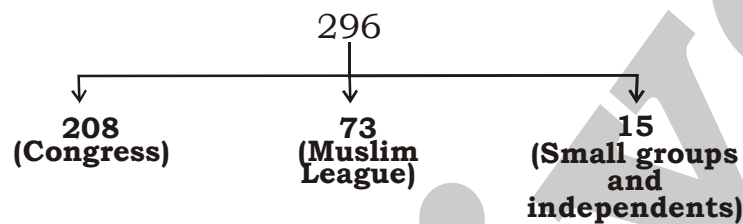
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- (c) Seats allocated to each British Province were to be divided among the three principal communities -
- Muslims,
 - Sikhs and
 - General (all except Muslims and Sikhs), in proportion to their population.

Note: The Constituent Assembly was to be partly elected and partly nominated body.

- The elections to the Constituent Assembly (for 296 seats) were held in July-August 1946.



- Indian national Congress won 208 seats.
- The Muslim league won 73 seats.
- Small groups and independents won remaining 15 seats.

Note: Community-wise representation in the Constituent Assembly (1946):

- | | | | |
|-------------------|-------|---------------------|------|
| • Hindus | - 163 | • Muslims | - 80 |
| • Schedule Castes | - 31 | • Indian Christians | - 6 |
| • Backward Tribes | - 6 | • Sikhs | - 4 |
| • Anglo-Indians | - 3 | • Parsees | - 3 |

Timeline

9 December 1946

- The Constituent Assembly held its first meeting.
- It was attended by 211 members.
- The first person to address the Constituent Assembly was J. B. Kripalani.
- Dr. Sachchidananda Sinha (the oldest member) was appointed as the Temporary President.

11 December 1946

- Dr. Rajendra Prasad (President of the Constituent Assembly)
- H. C. Mukherjee (Vice-President)
- B. N. Rau (Constitutional Advisor)

13 December 1946

- Jawaharlal Nehru moved the 'Objective Resolution' in the Constituent Assembly.

22 January 1947

- Objective Resolution was unanimously adopted by the Constituent Assembly.

22 July 1947:

- The Constituent Assembly adopted the national flag.
- It was designed by Pingali Venkayya.

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15 August 1947

- India achieved independence.

Note: As a result of the partition under the Mountbatten Plan of 3 June, 1947, a separate Constituent Assembly was set up for Pakistan and representatives of some Provinces ceased to be members of the Assembly. As a result, the membership of the Assembly was reduced to 299.

29 August 1947

- Drafting Committee was appointed.
- Dr. B. R. Ambedkar was the Chairman of the Drafting Committee.
- Drafting committee consisted of seven members, namely:
 - i) Dr. B. R. Ambedkar
 - ii) N. Gopalaswamy Ayyangar
 - iii) Alladi Krishnaswamy Ayyar
 - iv) Dr. K. M. Munshi
 - v) Syed Mohammad Saadulla
 - vi) N. Madhava Rau (He replaced B.L. Mitter)
 - vii) T. T. Krishnamachari (He replaced D. P. Khaitan)

16 July 1948

- V. T. Krishnamachari was elected as 2nd Vice-President of the Constituent Assembly.

26 Nov 1949

- The Constituent Assembly of India adopted the Constitution.
- The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 schedules.
- Some provisions of the Constitution came into force on this day. They are related to citizenship, elections, provisional Parliament, temporary and transitional provisions, and short title. Following are the Articles related with these provisions:

Articles - 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392, 393, 394.

Note:

- **Article 394 - Commencement**

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

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24 Jan 1950

- National anthem was adopted.
- National song was adopted.
- Dr. Rajendra Prasad was elected as the first President of India.
- Last meeting of the Constituent Assembly.

26 Jan 1950

- Constitution of India came into force.
- It was on this day in 1930 that Poorna Swaraj day was celebrated.

Major and minor committees

Major Committees:

1. Union Powers Committee – Jawaharlal Nehru
2. Union Constitution Committee – Jawaharlal Nehru
3. Provincial Constitution Committee – Sardar Patel
4. Drafting Committee – Dr. B.R. Ambedkar
5. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – Sardar Patel. This committee had the following five sub-committees:
 - (a) Fundamental Rights Sub-Committee – J.B. Kripalani
 - (b) Minorities Sub-Committee – H.C. Mukherjee
 - (c) North-East Frontier Tribal Areas and Assam Excluded and Partially Excluded Areas Sub-Committee – Gopinath Bardoloi
 - (d) Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee – A.V. Thakkar
 - (e) North-West Frontier Tribal Areas Sub-Committee.
6. Rules of Procedure Committee – Dr. Rajendra Prasad
7. States Committee (Committee for Negotiating with States) – Jawaharlal Nehru
8. Steering Committee – Dr. Rajendra Prasad

Minor Committees:

1. Finance and Staff Committee – Dr. Rajendra Prasad
2. Credentials Committee – Alladi Krishnaswami Ayyar
3. House Committee – B. Pattabhi Sitaramayya
4. Order of Business Committee – Dr. K.M. Munshi
5. Ad-hoc Committee on the National Flag – Dr. Rajendra Prasad
6. Committee on the Functions of the Constituent Assembly – G.V. Mavalankar
7. Ad-hoc Committee on the Supreme Court – S. Varadachari (Not an Assembly Member)
8. Committee on Chief Commissioners' Provinces – B. Pattabhi Sitaramayya
9. Expert Committee on the Financial Provisions of the Union Constitution – Nalini

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Ranjan Sarkar (Not an Assembly Member)

10.Linguistic Provinces Commission – S.K. Dhar (Not an Assembly Member)

11.Special Committee to Examine the Draft Constitution – Jawaharlal Nehru

12.Press Gallery Committee – Usha Nath Sen

13.Ad-hoc Committee on Citizenship – S. Varadachari

Other important facts

- The original Constitution of India was handwritten by Prem Behari Narain Raizada.
- The original Constitution is handwritten, with each page uniquely decorated by artists from Shantiniketan including Beohar Rammanohar Sinha and Nandalal Bose.
- The Calligraphy of the Hindi version of the original Constitution was done by Vasant Krishan Vaidya.
- The handwritten Constitution was signed on 24 January, 1950, by 284 members of the Constituent Assembly.
- Total time - 2 years, 11 months and 18 days.
- Total expenditure - approx. Rs.64 lakh
- Total sessions - 11

Note: It held 11 sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution.

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Parliamentary System

- The Constitution of India provides for a Parliamentary form of government, both at the Centre and in the States.
- Articles 74 and 75 deal with the Parliamentary system at the Centre and Articles 163 and 164 in the States.
- Modern democratic governments are classified into Parliamentary and Presidential on the basis of nature of relations between the executive and the Legislative organs of the government.
- The Parliamentary system of government is the one in which the executive is responsible to the legislature for its policies and acts.
- The Presidential system of government is one in which the executive is not responsible to the legislature for its policies and acts.
- The Parliamentary government is also known as cabinet government or responsible government or Westminster model of government and is prevalent in Britain, Japan, Canada, India among others.

Note:

- Ivor Jennings called the Parliamentary system as 'cabinet system' because the cabinet is the nucleus of power in a Parliamentary system.
- The Parliamentary government is also known as 'responsible government' as the cabinet (the real executive) is accountable to the Parliament and stays in office so long as it enjoys the latter's confidence.
- It is described as 'Westminster model of government' after the location of the British Parliament, where the Parliamentary system originated.
- The Presidential government is also known as non-responsible or non-Parliamentary or fixed executive system of government and is prevalent in USA, Brazil, Russia, Sri Lanka among others.

FEATURES OF PARLIAMENTARY GOVERNMENT

Some important features or principles of Parliamentary government in India are:

1. Nominal and Real Executives

The President is the nominal executive while the Prime Minister is the real executive. Thus, the President is head of the State, while the Prime Minister is head of the government.

2. 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.

3. 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.

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4. 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.

5. Leadership of the Prime Minister

The Prime Minister plays the leadership role in this system of government.

6. Dissolution of the Lower House

The lower House of the Parliament can be dissolved by the President on recommendation of the Prime Minister.

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Federal System

- Governments can be classified into unitary and federal on the basis of the nature of relations between the national government and the regional governments.
- **Unitary Government-** All the powers are vested in the national government and the regional governments, if at all exist, derive their authority from the national government.
- **Federal Government-** Powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently.

Federal features of the Constitution

Some important federal features of the Constitution of India are explained below:

1. Dual Polity

The Constitution establishes a dual polity consisting the Union at the Centre and the States at the periphery.

2. Written Constitution

- Originally, Indian Constitution contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules.
- It specifies the structure, organisation, powers and functions of both the Central and State governments and prescribes the limits within which they must operate.

3. Division of Powers

- The powers are divided between the Centre and the States in terms of the Union List, State List and Concurrent List in the Seventh Schedule.

Note:

- (i) Union list - 100 Subjects
- (ii) State list - 61 Subjects
- (iii) Concurrent list - 52 Subjects
- Both the Centre and the States can make laws on the subjects of the concurrent list, but in case of a conflict, the Central law prevails.
- The residuary subjects (i.e, which are not mentioned in any of the three lists) are given to the Centre.

4. Supremacy of the 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.

5. Rigid Constitution

The division of powers established by the Constitution as well as the supremacy of the Constitution can be maintained only if the method of its amendment is rigid.

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6. Independent Judiciary

The Constitution establishes an independent judiciary headed by the Supreme Court for two purposes:

- (i) to protect the supremacy of the Constitution by exercising the power of judicial review; and
- (ii) to settle the disputes between the Centre and the States or between the States.

7. 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.

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Preamble

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

JUSTICE, social, economic and political;

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

EQUALITY of status and of opportunity;

and to promote among them all

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

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

- The term 'preamble' refers to the introduction to the Constitution.
- Preamble contains the summary of the Constitution.
- A preamble is an introductory Statement in a document that explains the document's philosophy and objectives. It generally sets the ideals and goals which the makers of the Constitution intend to achieve through that Constitution. Therefore, it is also regarded as a key to open the mind of the makers of the Constitution.
- The ideals behind the Preamble to India's Constitution were laid down by Jawaharlal Nehru's Objectives Resolution, adopted by the Constituent Assembly on January 22, 1947.
- N. A. Palkhivala called the Preamble as the identity card of the Constitution.
- Pandit Thakur Das Bhargava called the Preamble as the soul of the Constitution.

Explanation:

1. Source of authority of the Constitution

The words, "we, the People of India..." clearly indicates the source of authority of the Constitution. It emphasizes the sovereignty of the people.

2. Nature of Indian State

It declares India to be a sovereign, socialist, secular, democratic and a republic nation.

(a) Sovereign

- Sovereignty denotes supreme and ultimate power.
- Sovereignty means the independent authority of the State, not being subject to the control of any other State or external power.
- The word 'sovereign' in the Preamble of India implies that India is neither a dependency nor a dominion of any other nation, but an independent State. India is sovereign because it can make or unmake any decision with respect to itself without interference by any other country.

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- Types of Sovereignty: External and Internal

External sovereignty-

- a. It refers to the capacity of the State to act independently and autonomously on the world stage.
- b. Furthermore, the external sovereignty of India also means that India can either acquire a foreign territory or cede a part of its territory in favour of a foreign State.

Internal sovereignty-

- a. It refers to the relationship between a sovereign power and its subjects. In other words, the relationship between the State and the individuals within its territory. It indicates that State has the ultimate power to decide what is law.

b) Socialist

- The word “socialist” was added in the Preamble by the 42nd Constitutional Amendment Act, 1976.
- The addition of “socialist” indicates the incorporation of the philosophy of “socialism” in the Constitution, which aims at elimination of inequality in income and status and standards of life (D.S Nakara Vs Union of India, 1983).
- In Excel Wear Vs Union of India, 1978, the Supreme Court observed that the addition of the word “socialist” might enable the Courts to lean more and more in favour of nationalisation and State ownership of industry.
- In 2000, in the case of G B Pant University of Agriculture and Technology Vs State of Uttar Pradesh, the Supreme Court ruled that the ‘Democratic socialism’ aims to end poverty, ignorance, disease and inequality of opportunity.
- India has adopted 'Democratic Socialism'. It holds faith in a mixed economy where both private and public sectors co-exist side by side.

(c) Secular

- The word “secular” was added in the Preamble by the 42nd Constitutional Amendment Act, 1976.
- A secular State, in Indian context, means that the State protects all religions equally and does not itself uphold any religion as the State religion.
- In St. Xavier’s College Vs State of Gujarat case, the Supreme Court explained that “ secularism is neither anti-God nor pro-God, it treats alike the devout, the agnostic and the atheist. It eliminates God from the matters of the State and ensures that no one shall be discriminated against on the grounds of religion”.
- In S. R. Bommai case, 1994, Supreme Court held that the secularism is a part of the basic structure of the Constitution.
- In Aruna Roy Vs Union of India, 2002, the Supreme Court held that Secularism has a positive meaning, that is, developing understanding and respect towards different religions.

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(d) Democratic

- The word democracy comes from the Greek words "demos", meaning people, and "kratos" meaning power. Thus, in democracy, ultimate power lies with the people.
- The Indian Constitution provides for representative Parliamentary democracy under which the executive is responsible to the legislature for all its policies and actions.
- The term 'democratic' is used in the preamble in the broader sense embracing not only political democracy but also social and economic democracy.

(e) Republic

- The term 'republic' in our Preamble indicates that India has an elected head called the President.
- India is a republic because the head of the State is elected and is not a hereditary monarch.
- Moreover, in a republic, political sovereignty is vested in the people.

3. Objectives of the Constitution

It specifies justice, liberty, equality and fraternity as the objectives.

(a) Justice

The term 'justice' in the Preamble embraces three distinct forms— social, economic and political.

- i) Social Justice - It denotes the equal treatment of all citizens without any social discrimination.
- ii) Economic Justice - It denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of inequalities in wealth, income, etc.
- iii) Political Justice - It means that all citizens should have equal political rights.

(b) Liberty

The term 'liberty' means the absence of restraints on the activities of individuals. However, it does not mean that an individual has absolute liberty to do whatever he or she feels like.

(c) 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.

(d) Fraternity

Fraternity means a sense of brotherhood. It is a feeling that all people are children of the same soil, the same Motherland.

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4. Date of adoption of the Constitution

The date of adoption of the Constitution is 26 November, 1949.

Preamble as Part of the Constitution

Berubari Union case, 1960

- In this case, Supreme Court held that the Preamble is not a part of the Constitution.

Kesavananda Bharati case, 1973

- In this case, Supreme Court overruled its earlier judgement and held that Preamble is a part of the Constitution.

LIC of India case, 1995

- In this case also, the Supreme Court again held that the Preamble is an integral part of the Constitution.

Amendability of the Preamble

- The Supreme Court, in Kesavananda Bharati case(1973), held that the Preamble is a part of the Constitution and can be amended under Article 368 of the Constitution.
- 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
 - Integrity

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Municipalities

- In 1687-88, the first municipal corporation in India was set up at Madras and in 1726, the municipal corporations were set up in Bombay and Calcutta.
- Lord Ripon's Resolution of 1882 has been hailed as the 'Magna Carta' of local self-government. He is called as the father of local-self government in India.
- Under the provincial autonomy scheme introduced by the Government of India Act of 1935, local self-government was declared a provincial subject.

74th Constitutional Amendment Act of 1992

- The Act accorded Constitutional status to the Municipalities.
- It added a new part IX-A to the Constitution which deals with the Municipalities.
- Part IX-A of the Constitution contains Article 243-P to Article 243-ZG.
- It also added a new 12th Schedule to the Constitution. This schedule consist of the 18 functional items of the municipalities.

Salient Features of the Act

1. Constitution of Municipalities (Article 243-Q)

- (1) There shall be constituted in every State,:
 - (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;
 - (b) a Municipal Council for a smaller urban area; and
 - (c) a Municipal Corporation for a larger urban area.
2. In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

2. Composition of Municipalities (Article 243-R)

- (1) All the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.
- (2) The Legislature of a State may, by law, provide:
 - (a) for the representation in a Municipality of:
 - (i) persons having special knowledge or experience in Municipal administration without the right to vote in the meetings of municipality;
 - (ii) the members of the House of the People (Lok Sabha) and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

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(iii) the members of the Council of States (Rajya Sabha) and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees (other than ward committees);

(b) the manner of election of the Chairperson of a Municipality.

3. Constitution and composition of Wards Committees, etc.(Article 243-S)

- (1) There shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more.
- (2) The Legislature of a State may, by law, make provision with respect to:
 - (a) the composition and the territorial area of a Wards Committee;
 - (b) the manner in which the seats in a Wards Committee shall be filled.
- (3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.
- (4) Nothing in this Article shall be deemed to prevent the Legislature of a State from making any provision for the Constitution of Committees in addition to the Wards Committees.

4. Reservation of seats (Article 243-T)

- (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality in Proportion of their population to the total population in the municipal area and such seats may be allotted by rotation to different constituencies in a Municipality.
- (2) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.
- (3) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.
- (4) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens. In other words, the State Legislature may make any provision for the reservation of seats in any municipality or offices of chairpersons in municipalities in favour of backward classes.

5. Duration of Municipalities, etc (Article 243-U)

- (1) Every Municipality, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

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- (2) An election to constitute a Municipality shall be completed,:
- (a) before the expiry of its duration of 5 years;
 - (b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election for constituting the Municipality for such period.

- (3) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued had it not been so dissolved.

6. Disqualifications for membership (Article 243-V)

- (1) A person shall be disqualified for being chosen as, and for being, a member of a Municipality:
- (a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than 25 years of age, if he has attained the age of 21 years;
 - (b) if he is so disqualified by or under any law made by the Legislature of the State.
- (2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications, the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

7. Powers, authority and responsibilities of Municipalities, etc (Article 243-W)

The Legislature of a State may, by law, endow the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to:

- (i) the preparation of plans for economic development and social justice;
- (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the 12th Schedule.

8. Power to impose taxes by, and Funds of, the Municipalities (Article 243-X)

The Legislature of a State may, by law,:

- (a) authorise a Municipality to levy, collect and appropriate taxes, duties, tolls and fees;
- (b) assign to a Municipality taxes, duties, tolls and fees levied and collected by the State Government;
- (c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and

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- (d) provide for Constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom, as may be specified in the law.

9. Finance Commission (Article 243-Y)

- (1) The Finance Commission constituted under Article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor as to:
 - (a) the principles which should govern:
 - (i) the distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State;
 - (ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;
 - (iii) the grants-in-aid to the Municipalities from the Consolidated Fund of the State;
 - (b) the measures needed to improve the financial position of the Municipalities;
 - (c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.
- (2) The Governor shall cause every recommendation made by the Commission together with an explanatory memorandum as to the action taken to be laid before the Legislature of the State.

10. Audit of accounts of Municipalities (Article 243-Z)

The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

11. Elections to the Municipalities (Article 243-ZA)

- (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission.
- (2) The Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

12. Application to Union Territories (Article 243-ZB)

The President may, by public notification, direct that the provisions of this Part shall apply to any Union territory subject to such exceptions and modifications as he may specify in the notification.

13. Bar to interference by Courts in electoral matters (Article 243-ZG)

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243ZA shall not be called in question in any Court;
- (b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

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Fundamental Duties

- The Fundamental Duties in the Indian Constitution are inspired by the Constitution of erstwhile USSR.
- In 1976, the Congress Party set up the Sardar Swaran Singh Committee to make recommendations about fundamental duties.
- The committee recommended the inclusion of a separate chapter on fundamental duties in the Constitution.
- The Government accepted these recommendations and enacted the 42nd Constitutional Amendment Act in 1976.
- This amendment added a new part, namely, Part IVA to the Constitution.
- This new part consists of only one Article, that is, Article 51A which specified 10 Fundamental Duties of the citizens.
- Though the Committee suggested the incorporation of 8 Fundamental Duties in the Constitution, the 42nd Constitutional Amendment Act, 1976 included 10 Fundamental Duties.
- In 2002, one more Fundamental Duty was added.
- At present, there are 11 Fundamental Duties.

List of Fundamental Duties

It shall be the duty of every citizen of India:

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

Note: The 11th duty was added by 86th Constitutional Amendment Act, 2002.