

# Preamble

POLITY BY ROHIT YADAV SIR

**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.
- Preamble 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.

### **2. Nature of Indian State**

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

#### **(a) Sovereign**

- 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.

### (b) Socialist

- The word “socialist” was added in the Preamble by the 42nd Constitutional Amendment Act, 1976.
- 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.

### (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.

### (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.

## 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.

## 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-

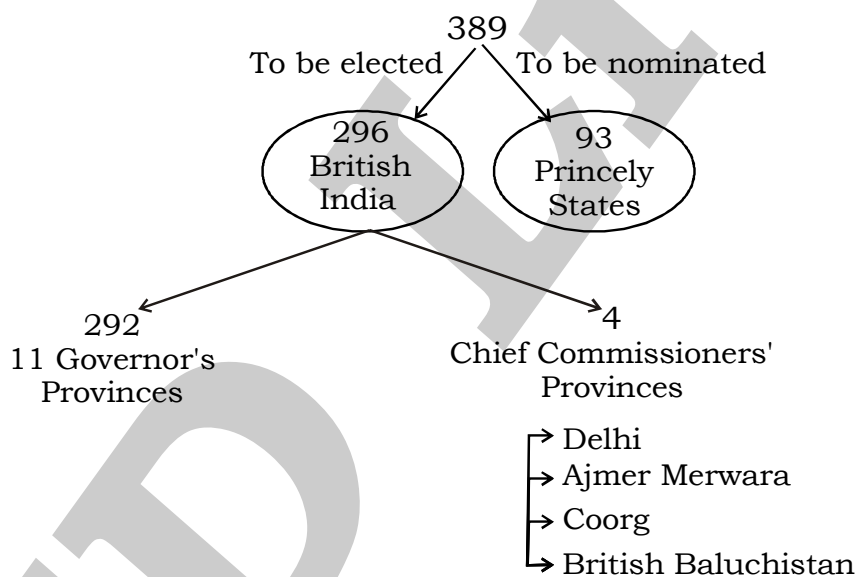
- In this case also, the Supreme Court again held that the Preamble is an integral part of the Constitution.

### 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

### 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.

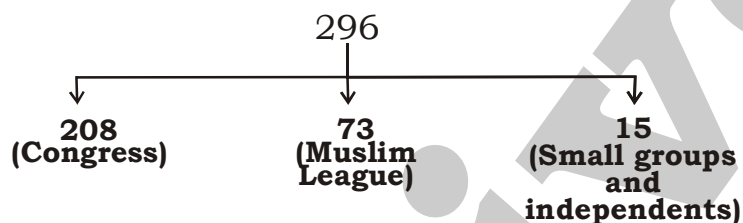
# Making of the Constitution

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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.

# Making of the Constitution

### 22 July 1947

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

### 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.

**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

# Making of the Constitution

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### 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 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.

# Union and Its Territory

### Part-1 Articles 1-4

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**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.

### 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.

**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. Andaman & Nicobar Islands
2. Delhi
3. Himachal Pradesh
4. Laccadive, Minicoy and Amindivi Islands
5. Manipur
6. Tripura

**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

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 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.

# Fundamental Rights

### Part- 3 Article 12 –35

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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.

#### **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

#### **Note:**

- The concept of rule of law was given by A.V. Dicey.
- '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.

#### **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. Civil proceedings against the President, or the Governor of a State can be instituted after giving 2 months notice.

##### **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 be discriminated on grounds of religion, race, caste, sex, place of Birth in public places. For examples- shops, hotel, public restaurants, wells, tanks, bathing ghats, roads etc.

#### **Exception:**

1. State can make special provisions for women and children.
2. State can make special provisions for advancement of any socially and educationally backward classes of citizens or for the SCs and the STs including reservation in admission to educational institutions (public or private).

#### **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. The state can make any provision for reservation of appointments or post in favour of any backward class of citizens.

#### **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.

#### **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.
- 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.
  - (b) Right to assemble peaceably and without arms
  - (c) to form associations or unions or co-operative societies
  - (d) to move freely throughout the territory of India
  - (e) to reside and settle in any part of the territory of India
  - (g) to practise any profession, or to carry on any occupation, trade or business.

**Note:** The freedom of speech and expression includes freedom of press.

#### **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.
- 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.

#### **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

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

#### **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 means that the taxes can be used for the promotion or maintenance of all religions.

#### **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.

**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 term 'minorities' has not been defined anywhere in the Constitution.

#### **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:

# **Fundamental Rights**

## **Part- 3 Article 12 –35**

POLITY BY ROHIT YADAV SIR

- (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.

# Directive Principles of State Policy

### Part IV Article 36 – 51

POLITY BY ROHIT YADAV SIR

- 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.

# Directive Principles of State Policy

### Part IV Article 36 – 51

POLITY BY ROHIT YADAV SIR

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

# Fundamental Duties

**Part-4A**  
**Article - 51A**

**POLITY BY ROHIT YADAV SIR**

- 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.

#### 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.
  - President is the nominal executive.
  - The office of Vice-President has been borrowed from USA.
  - Vice-President is the ex-officio chairman of the Rajya Sabha.
  - Article 52- President of India
  - Article 63- Vice-President of India

#### Qualification

##### President (Article 58)

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 for 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 security 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 (Article 66)

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

### Election

#### President (Article 54)

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 (Article 66)

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 (Article 59)

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.

#### Vice-President (Article 66)

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.

## 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.

## Oath

### President (Article 60)

Chief Justice of India administers oath of office to the President

### Vice-President (Article 69)

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

## Tenure

### President (Article 56)

5 years

### Vice-President (Article 67)

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 (Article 62)

- 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.

### Vice-President (Article 68)

- 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 (Article 56)

To the Vice-President.

### Vice President (Article 67)

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 from both Houses by a majority of 2/3rd of the total membership of the House.

#### 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.

#### 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. 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.
3. An ordinance can be issued only on those subjects on which the Parliament can make laws.
4. An ordinance cannot be issued to amend the Constitution.

#### **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.

#### **Pardoning Power of the President (Article 72)**

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. **Reprive-** Temporary suspension of the punishment fixed by law.

**Note:** Only President can pardon a death sentence.

#### **Other important powers of 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.**

**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.

**Note:**

- The 7th Constitutional Amendment Act of 1956, provided for the appointment of same person as Governor for two or more States.
- The office of Governor has been borrowed from Government of India Act, 1935.
- Governor is the Head of the State.
- Governor is the nominal executive.

**Article 155- Appointment of Governor**

- The Governor of a State shall be appointed by the President.
- The appointment of Governor has been borrowed from Canadian Constitution.

**Article 156- Term of Office of Governor**

- (i) 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.

- (ii) The Governor gives his resignation to the President.

- (iii) 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.

# Governor

## Part 6 Articles 153-167

**POLITY BY ROHIT YADAV SIR**

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

**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.
3. Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.
4. The emoluments and allowances of the Governor shall not be diminished during his term of office.

**Article 159- Oath or affirmation by the Governor**

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.

# Governor

**Part 6**  
**Articles 153-167**

**POLITY BY ROHIT YADAV SIR**

- 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:

- he may give his assent, or
- he may withhold his assent, or
- 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:**

- (i) Governor acts as the chancellor of universities in the state.
- (ii) Governor can summon or prorogue the state legislature.
- (iii) Governor can dissolve the legislative assembly.
- (iv) Money bills can be introduced only on the recommendation of the Governor.
- (v) The appointment, posting and promotion of District Judges are made by the Governor in consultation with the High Court.
- (vi) Governor, in consultation with the State High Court and the State Public service commission, appoints persons to the judicial service of the 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

### PM (Article 75)

- PM is the real executive.
- PM is the head of the government.
- The PM is appointed by the President and the other Ministers are appointed by the President on the advice of the PM.
- The PM is appointed, not elected
- The party which secures majority in the Lok Sabha, the leader of such party is appointed as PM by President [Parliamentary convention].
- The President may appoint a person as PM and then ask him to prove majority in the Lok Sabha within a reasonable period.
- The President administers oath to the PM and other Ministers.
- The term of the PM is not fixed, and he holds the office during the pleasure of the President. However, the President cannot dismiss the PM at anytime. PM holds office as long as he enjoys the majority in the Lok Sabha.
- The salary and allowances of the PM are determined by the Parliament from time to time.
- The salaries and allowances of Ministers are determined by the Parliament from time to time.

### CM (Article 164)

- CM is the real executive.
- CM is the head of the government.
- The CM is appointed by the Governor and the other Ministers are appointed by the Governor on the advice of the CM.
- The CM is appointed, not elected
- The party which secures majority in the Legislative Assembly, the leader of such party is appointed as CM by Governor [Parliamentary convention].
- The Governor may appoint a person as CM and then ask him to prove majority in the Legislative Assembly within a reasonable period.
- The Governor administers oath to the CM and other Ministers.
- The term of the CM is not fixed, and he holds the office during the pleasure of the Governor. However, the Governor cannot dismiss the CM at anytime. CM holds office as long as he enjoys the majority in the Legislative Assembly.
- The salary and allowances of the CM are determined by the State Legislature from time to time.
- The salaries and allowances of Ministers are determined by the State Legislature from time to time.

# Prime Minister and Chief Minister

POLITY BY ROHIT YADAV SIR

- PM and Ministers can be member of either House of the Parliament.
- A minister who is not a member of either House of Parliament for any period of 6 consecutive months shall cease to be a Minister.
- A Minister who is a member of one House of Parliament has the right to speak and to take part in the proceedings of other House also, but he can vote only in the House of which he is a member.
- The Council of Ministers shall be collectively responsible to the Lok Sabha.
- Ministers are individually responsible to the President.
- The total number of Ministers, including the PM, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. [This provision was added by the 91<sup>st</sup> Constitutional Amendment Act, 2003]
- CM and Ministers can be member of either House of the State Legislature.
- A minister who is not a member of either House of State Legislature for any period of 6 consecutive months shall cease to be a Minister.
- A Minister who is a member of one House of State Legislature has the right to speak and to take part in the proceedings of other House also, but he can vote only in the House of which he is a member.
- The Council of Ministers shall be collectively responsible to the Legislative Assembly.
- Ministers are individually responsible to the Governor.
- The total number of Ministers, including the CM, in the Council of Ministers shall not exceed 15% of the total strength of the Legislative Assembly. But the number of Ministers, including the CM, in a State shall not be less than 12. [This provision was added by the 91<sup>st</sup> Constitutional Amendment Act, 2003]

### Article 74

- (i) 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. However, 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.
- (ii) The advice tendered by Ministers to the President shall not be inquired into in any Court.

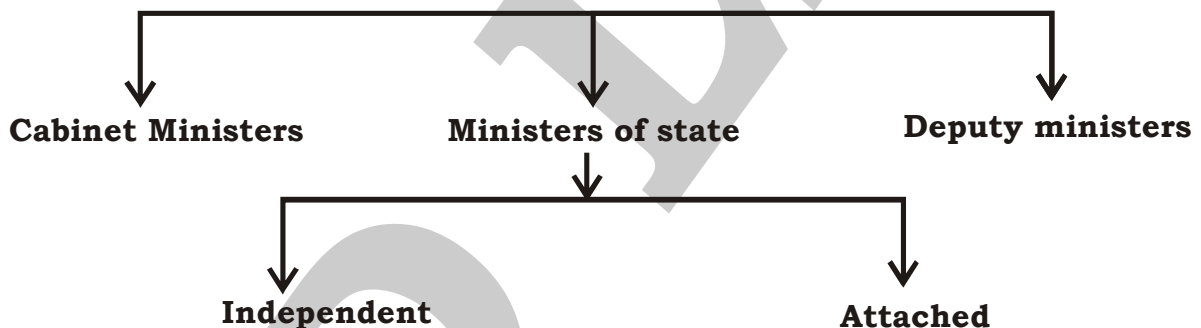
### Note:

- The 42<sup>nd</sup> Constitutional Amendment Act, 1976 made the President bound by the advice of the Cabinet.
- The 44<sup>th</sup> Constitutional Amendment Act, 1978 empowered the President to send back once the advice of the cabinet for reconsideration. But, the reconsidered advice is to be binding on the President.

### Article 163

1. There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion.
3. The advice tendered by Ministers to the Governor shall not be inquired into in any Court.

### Composition of the Council of Ministers



# Parliament

**Part V**  
**Articles 79 – 122**

**POLITY BY ROHIT YADAV SIR**

**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-
  - (i) The President
  - (ii) The Council of States
  - (iii) 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 members of Rajya Sabha are elected by 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.

## **Article 81– Composition of the House of the People.**

### **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 Assembly of the States will continue for 80 years from the commencement of the Constitution, that is till 2030.

**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.**

### **Explanation:**

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

**Note:** Delimitation Commission is also known as Boundary Commission.

- 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 of 2001 has further frozen the allocation of seats in the Lok Sabha for another 25 years, that is till the year 2026.

## **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.

## **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.

### **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, without being entitled to vote.
- 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 gives his resignation 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.
- 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

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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.

## **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.
- He acts as the ex-officio chairman of Indian Parliamentary Group.
- 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.
- 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.
- Speaker gives his resignation to Deputy Speaker.
- The deputy speaker gives his resignation to 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

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the panel is present then such other persons as may be determined by the Lok Sabha shall act as Speaker.

**Note:** The Speaker of the Lok Sabha nominates not more than 10 members from amongst the members of Lok Sabha to the panel of chairpersons.

## **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**

President, or some person appointed by him, administers oath to the member of Parliament.

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

- 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.

## **Article 101- Vacation of seats**

1. A person cannot be a member of both Houses of Parliament at the same time.
  - (a) If a person is elected to both the Houses of Parliament, he must inform within 10 days in which House he desires to serve, otherwise his seat in the Rajya Sabha becomes vacant.
  - (b) 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. 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.
3. Members of Lok Sabha give their resignation to the Speaker and Members of Rajya Sabha give their resignation to the Chairman.

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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:

**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.

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

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

Election Commission advises the President on matters relating to the disqualifications of Member of Parliament. The decision of the President is final in this regard.

**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 summon a joint sitting of the Parliament.
- There is no provision of joint sitting in case of-
  1. Money Bill; and
  2. Constitutional Amendment Bill.
- At the joint sitting, the bill is passed by simple majority.
- 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 matters specified in Article 110. For example, the imposition, abolition, remission, alteration or regulation of any tax, etc.
- 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.

**Article 111– Assent to Bills.**

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

**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.
- The PAC consist of 22 members, out of which 15 are from Lok Sabha and 7 are from 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.
- 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:
  - (i) Audit report on appropriation accounts.
  - (ii) Audit report on finance accounts.
  - (iii) 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.
- 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.

**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 cannot be elected as a member of the Committee.
- 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.

**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.

**Types of Questions****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.

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## **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.

## **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.

# **State Legislature**

**Part 6**  
**Articles 168 – 212**

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## **Article 168- Constitution of Legislatures in States.**

### **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:
  1. Uttar Pradesh
  2. Bihar
  3. Maharashtra
  4. Karnataka
  5. Andhra Pradesh
  6. Telangana

### **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.

## **Article 169- Abolition or Creation of Legislative Councils in States.**

### **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

# State Legislature

**Part 6**  
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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 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.**

### **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**

### **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.

## **Important points regarding 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:

# State Legislature

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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.

### Supreme Court [SC]

#### Part - 5

#### Articles 124-147

### Number of Judges

#### SC

- 1950 → 8 [CJI + 7]
- 2019 → 34 [CJI + 33]

**Note:** The Parliament can increase the number of judges of Supreme Court

### Qualification

#### SC

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

### Appointment

#### SC

- The President appoints every Judge of the Supreme Court.
- The President, while appointing the Judges, consults the CJI and a collegium of 4 senior most Judges of the Supreme Court.

### Oath

#### SC

- Administered by the President

### High Court [HC]

#### Part - 6

#### Articles 214-232

#### 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.

#### HC

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

#### HC

- The President appoints every Judge of the High Court.
- The President, while appointing the Judges, consults the CJI and a collegium of 2 senior most Judges of the Supreme Court .

#### HC

- Administered by the Governor

### 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.

#### 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. By the 15 Constitutional Amendment Act, 1963, the retirement age of High Court Judges was increased from 60 to 62 years.

### Salary

#### SC

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

### Removal of a Judge

- (a) The procedure to remove a Judge has been borrowed from USA.
- (b) The procedure to remove a Judge of the SC and of a HC is same.
- (c) There are only 2 grounds provided in the Constitution to remove a Judge, namely:
  1. Misbehaviour
  2. Incapacity
- (d) The President can remove a judge of the SC or a judge of a HC.

- (e) The address for the removal of the judge has to be presented in the same session or else the process ends.
- (f) The motion to remove a Judge can be introduced either in the Lok Sabha or in the Rajya Sabha.
- (g) 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.
- (h) The motion has to be presented to the Speaker/Chairman.
- (i) If motion is admitted, then a committee will be constituted by Speaker/Chairman to investigate the charges.
- (j) The motion has to be passed by special majority from both the Houses of Parliament.
- (k) No Judge has been removed so far.

### **Jurisdiction and powers of the Supreme Court**

#### **1. Original Jurisdiction (Article 131)**

The SC shall have exclusive original jurisdiction in any dispute-

- (a) between the Centre and one or more States;
- (b) between 2 or more States, etc.

#### **Note:**

- In 1961, the 1st case, under the original Jurisdiction of the SC, was brought by West Bengal against the Centre.
- The Inter-State water Disputes Act of 1956 has excluded the original jurisdiction of the SC in case of interstate water disputes.

#### **2. Writ jurisdiction**

The Supreme Court is empowered to issue writs for the enforcement of the fundamental rights under Article 32.

#### **3. Advisory Jurisdiction**

- The President under Article 143, is authorised to seek the opinion or advice of the Supreme Court.
- The advice given by the Supreme Court is not binding on the President.

#### **4. Power of judicial review**

To examine the constitutional validity of laws and orders of both the Central and State Governments.

## **Jurisdiction and Power 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 under Article 226, is empowered to issue writs for the enforcement of fundamental rights of citizens.

### **3. Power of judicial review**

To examine the constitutional validity of laws and orders of both the Central and State Governments.

## **Other important points related to High Court**

### **1. 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.

### **2. 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).**

# Amendment of the Constitution

## Part- XX Article 368

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- 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.

- 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.
- 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.

#### Note:

- (i) A merger takes place when 2/3 of the members of the party have agreed to such merger.

# Anti-Defection Law

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(ii) 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.

- 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.

# **Election Commission**

## **Part XV Article 324**

POLITY BY ROHIT YADAV SIR

- 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.
- Election Commission consist of the Chief Election Commissioner and two Election Commissioner (Total 3 members).
- The appointment of the Chief Election Commissioner and other Election Commissioners shall be made by the President.
- 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.
- 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.
- 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 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

# **Election Commission**

## **Part XV Article 324**

POLITY BY ROHIT YADAV SIR

- 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.

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

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

- 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 can be removed in the same manner and in the same procedure as provided for a Judge of the Supreme Court.
- 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.
- 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 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.

#### **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.
2. The reports of the CAG relating to the accounts of a State shall be submitted to the Governor 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.

#### Duties and Powers of CAG

1. He audits the accounts related to all expenditure from the Consolidated Fund of India, consolidated fund of each state and consolidated fund of each union territory having a Legislative Assembly.
2. He audits all expenditure from the Contingency Fund of India and the Public Account of India as well as the contingency fund of each state and the public account of each state.
3. He audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by any department of the Central Government and state governments.

**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.

**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

**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.

- (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.

**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.

**Article 323-Reports of Public Service Commissions.**

- (1) UPSC submit its reports to the President.
- (2) SPSC submit its reports to the Governor.

**Note:** UPSC conducts examination for All India Services.

### Evolution of Panchayati Raj

#### 1. Balwant Rai Mehta Committee

- The Government of India, in January 1957, appointed Balwant Rai Mehta committee. The committee submitted its reports in November 1957.
- 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.
- In January 1958, the National Development Council (NDC) accepted the recommendations of the committee.
- 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).

#### 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.

#### 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.
- It also added a new 11th Schedule to the Constitution. This schedule consist of the 29 functional items of the panchayats.

#### Salient Features of the Act:

1. Organisation of Gram Sabha in a village or group of villages.
2. Establishment of panchayats at the village, intermediate and district levels.
3. Direct elections to all seats in panchayats at the village, intermediate and district levels.
4. Indirect elections to the post of chairperson of panchayats at the intermediate and district levels.
5. 21 years to be the minimum age for contesting elections to panchayats.
6. Reservation of seats (both members and chairpersons) for SCs and STs in panchayats at all the three levels.
7. Reservation of one-third seats (both members and chairpersons) for women in panchayats at all the three levels.
8. Fixing tenure of five years for panchayats at all levels and holding fresh elections within six months in the event of supersession of any panchayat.
9. Establishment of a State Election Commission for conducting elections to the panchayats.
10. Constitution of a State Finance Commission after every five years to review the financial position of the panchayats.

# **Panchayati Raj**

**Part-IX**  
**Articles 243-243O**

**POLITY BY ROHIT YADAV SIR**

**Note:**

- Gram Sabha is the foundation of Panchayati Raj.
- Gram Sabha is a village assembly consisting of all the registered voters in the area of a Panchayat.
- A panchayat reconstituted after premature dissolution does not enjoy the full period of five years but remains in office only for the remainder of the period.

- 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. 21 years to be the minimum age for contesting elections to Municipalities.
3. The act provides for the reservation of seats for the scheduled castes and the scheduled tribes in every municipality in proportion of their population to the total population in the municipal area.
4. It provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for woman belonging to the SCs and the STs).
5. The act provides for a five-year term of office for every municipality. However, it can be dissolved before the completion of its term.
6. Establishment of a State Election Commission for conducting elections to the Municipalities.
7. Constitution of a State Finance Commission after every five years to review the financial position of the Municipalities.
8. All the members of a municipality shall be elected directly by the people of the municipal area. For this purpose, each municipal area shall be divided into territorial constituencies to be known as wards.
9. A municipality reconstituted after premature dissolution does not enjoy the full period of five years but remains in office only for the remainder of the period.

# Emergency Provisions

### Part- XVIII Articles 352 – 360

POLITY BY ROHIT YADAV SIR

- 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 grounds 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.

# Emergency Provisions

## Part- XVIII Articles 352 – 360

POLITY BY ROHIT YADAV SIR

### 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.....

### 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

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

# Emergency Provisions

### Part- XVIII Articles 352 – 360

POLITY BY ROHIT YADAV SIR

- (i) During internal emergency, Articles 19, 20 and 21 are not suspended.
- (ii) During external emergency, Articles 20 and 21 are not suspended.
- 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.

# Emergency Provisions

### Part- XVIII Articles 352 – 360

POLITY BY ROHIT YADAV SIR

#### 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.

#### 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.

##### Revocation of Financial Emergency

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

##### Effects of Financial Emergency

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.

The President may 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.

- 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 conform 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.

### 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.

- 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.

### **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.