EDEN IAS

INDIAN POLITY

UPSC PREP

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[INTRODUCTION]

CONSTITUTION AND CONSTITUTIONALISM

What is Constitution?

The definition of constitution is quite complex and has significantly evolved during the last two centuries. According to the Western conception, constitution is the document that contains the basic and fundamental law of the nation, setting out the organization of the government and the principles of the society. Yet, although many countries have a written constitution, we continue to see the phenomenon of "living constitution" in many parts of the world. As society change, so do laws and regulations. Furthermore, in some cases there is no single document that defines all aspects of the state, but rather several different documents and agreements that define the power of the government and provide a comprehensive – although not unitary – legal framework. Constitution has also been defined as:

- Basic norm (or law) of the state;
- System of integration and organization of norms and laws; and
- Organization of the government

CONSTITUTION

A constitution is an aggregate of fundamental principles or established precedents that constitute the legal basis of a polity, organisation or other type of entity, and commonly determine how that entity is to be governed. Constitution is an organic law that evolves over time. The constitution provides the foundation of the government, structuring the political organization and guaranteeing individual and collective rights and freedoms.

The idea of constitutionalism (and of constitution) is strictly linked with the progress and spread of democracies. In monarchic, totalitarian and dictatorial systems there is generally no constitution or, if it exists it is not respected. Individual and collective rights are often disregarded in dictatorial regimes, and the government cannot be held accountable as there is no legal document that defines its limits. The concept of constitutionalism has evolved during the last few centuries thanks to political changes and progress of democratic ideals.

CONSTITUTIONALISM

Constitutionalism is a system of governance in which the power of the government is limited by laws, checks and balances, in order to reconcile authority with individual and collective freedoms. The principle of constitutionalism must be understood in opposition to non-constitutionalism – a system in which the government uses its powers in an arbitrary fashion, without respecting the citizens' rights. The idea of constitutionalism is to create a limited government.

DIFFERENCE BETWEEN CONSTITUTION AND CONSTITUTIONALISM

The main difference between constitution and constitutionalism lies in the fact that the constitution is generally a written document, created by the government (often with the participation of the civil society), while constitutionalism is a principle and a system of governance that respects the rule of law and limits the power of the government. Most modern constitutions were written years ago, but laws and norms had already been evolving and mutating for centuries, and continue to do so. The constitution (and laws in general) is a living entity that should adapt to the changing features of the modern world and of modern societies.

Constitutionalism is based on the principles outlined in the constitution – or in other core legal documents – but it is also a principle of its own. The idea of constitutionalism is opposed to the concept of authoritarian and despotic rule and is based on the belief that the power of the government should be limited in order to prevent abuses and excesses;

The constitution is often a written document, while the principles of constitutionalism are generally unwritten. Both constitution and constitutionalism evolve with the promulgation of democratic ideals – although they do not always proceed at the same speed. There can be a constitutional form of governance – that respects the rights of the citizens and promotes democratic values – even though the national constitution is outdated. At the same time, an inefficient democratic government may not be able to rule in a constitutional way, despite the existence of a constitution.

WRITTEN CONSTITUTION vs UNWRITTEN CONSTITUTION

Written Constitution

- Written constitution is one which is found in one or more than one legal documents duly enacted in the form of laws. It is precise, definite and systematic. It is the result of the conscious and deliberate efforts of the people. **It is framed by a representative body duly elected by the people at a particular period in history.**
- **It is always promulgated on a specific date in history**. The **Constitution of India,** for example, is a written constitution. It was framed by a representative Constituent Assembly and was promulgated on a definite date, i.e., **26th January 1950**.
- A written constitution is generally rigid and a procedure separate from that of enacting ordinary law is provided for its amendment or revision. In other words a distinction between constitutional law and ordinary law is maintained. The first is regarded as superior to the second. **A written constitution may also be termed as an enacted constitution.**
- Modern written constitutions owe their origin to the charters of liberty granted by the kings in middle ages. But **the first written constitution framed by a representative constituent assembly was that of the United States of America**. This example was followed by France. During the 19th century a number of states framed their constitutions, all of which were written, with the exception of the constitution of England.

Unwritten Constitution:

- An unwritten constitution is one in which most of the principles of the government have never been enacted in the form of laws. **It consists of customs, conventions, traditions, and some written laws bearing different dates**. It is **unsystematic, indefinite and un-precise**. Such a constitution is **not the result of conscious and deliberate efforts** of the people.

- It is generally the result of historical development. **It is never made by a representative constituent assembly at a definite stage of history, nor is it promulgated on a particular date**. It is, therefore, sometimes called an **evolved** or **cumulative constitution**. The constitution of England is a classical example of an unwritten constitution. It is mainly the result of historical growth.

The foundation of the English Constitution was laid in the 13th century by **King John**, who issued the first charter of British freedom known as the **Magna Carta**. Since then it has been in the process of making through conventions and usages.

MAGNA CARTA

Magna Carta Libertatum (Great Charter of the Liberties), commonly called Magna Carta, is a charter of rights agreed to by **King John of England** at Runnymede, near Windsor, on **15 June 1215**.

Note-Distinction between written and unwritten constitution is, however, not scientific. There is no constitution which is wholly written. Nor is there any which is completely unwritten. Every written constitution has an unwritten element in it and every unwritten constitution has a written element. The constitution of the U.S.A. is a classical example of a written constitution. But even then it is overlaid with conventions and traditions. Although the major portion of the Constitution of England is based on conventions and traditions yet there are many written laws in it like the Magna Charta 1215, the Petition of Rights 1628, the Bill of Rights 1689, the Habeas Corpus Act 1679, the Acts of Settlement 1701, various Reforms Act of 1832, 1867, 1884, Parliamentary Act of 1911, and the Crown proceedings Act, 1947, etc., etc.

THEORY OF SEPARATION OF POWERS

The term **"trias politica"** or **"separation of powers"** was coined by **Charles-Louis de Secondat, Baron de La Brède et de Montesquieu**, an 18th century French social and political philosopher. His publication, **Spirit of the Laws**, is considered one of the great works in the history of political theory and jurisprudence, and it inspired the Declaration of the Rights of Man and the Constitution of the United States. Under his model, the **political authority of the state is divided into legislative, executive and judicial powers.** He asserted that, to most effectively promote liberty, these three powers must be separate and acting independently.

Separation of powers refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.

The traditional characterizations of the powers of the different branches of the government under the theory of separation of powers are envisaged as follows:

- The legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the government.
- The executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch.
- The judicial branch is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it.

While separation of powers is vital for the working of government, no democratic system exists with an absolute separation of powers or an absolute lack of separation of powers. Governmental powers and responsibilities intentionally overlap; they are too complex and interrelated to be neatly compartmentalized. As a result, there is an inherent measure of competition and conflict among the branches of government. For instance throughout American history, there has been an ebb and flow of preeminence among the governmental branches. Such experiences suggest that where power resides is part of an evolutionary process.

DOCTRINE OF CHECKS AND BALANCES

Building on the ideas of Polybius, Montesquieu, William Blackstone, John Locke and other philosophers and political scientists over the centuries, the framers of the U.S. Constitution divided the powers and responsibilities of the new federal government among three branches: the legislative branch, the executive branch and the judicial branch.

In addition to this separation of powers, the framers built a system of checks and balances designed to guard against tyranny by ensuring that no branch would grab too much power.

"If men were angels, no government would be necessary," James Madison wrote in the Federalist Papers, of the necessity for checks and balances. "In framing a government which is to be administered by men over men, the great difficulty is this: You must first enable the government to control the governed; and in the next place, oblige it to control itself."

Checks and balances are of fundamental importance in tripartite governments, such as that of the United States or India, which separate powers among legislative, executive, and judicial branches. Checks and balances, which modify the separation of powers, may operate under parliamentary systems through exercise of a parliament's prerogative to adopt a no-confidence vote in a government; the government, or cabinet, in turn, ordinarily may dissolve the parliament. Similarly the Judges are appointed by the executive while the laws passed by the legislature are tested in constitutional or supreme courts. The Judiciary can issue writs against the executive. The Judges can be removed from office upon an address of the parliament. Hence every organ of the government is controlled by the other two.

SEPARATION OF POWERS UNDER THE INDIAN CONSTITUTION

On a casual glance at the provisions of the Constitution of India, one may be inclined to say that that the doctrine of Separation of Powers is accepted in India. Under the Indian Constitution, executive powers are with the President, legislative powers with Parliament and judicial powers with judiciary.

The President's function and powers are enumerated in the Constitution itself. Parliament is competent to make any law subject to the provisions of the Constitution and there is no other limitation on it legislative power. The Judiciary is independent in its field and there can be no interference with its judicial functions either by the Executive or by the Legislature. The Supreme Court and High Courts are given the power of judicial review and they can declare any law passed by the Parliament or the Legislature unconstitutional. Taking into account these factors, some jurists are of the opinion that the doctrine of Separation of Powers has been accepted in the Indian Constitution.

However if we study the constitutional provisions carefully, it is clear that the doctrine of Separation of Powers has not been accepted in India in its strict sense. In India, not only there is functional overlapping but there is personnel overlapping also.

Separation of Powers and Judicial Pronouncements in India

The first major judgment by the judiciary in relation to Doctrine of separation of power was in ***Ram Jawaya v State of Punjab***. The court in the above case was of the opinion that the doctrine of separation

of power was not fully accepted in India. Further, the view of Mukherjea J. adds weight to the argument that the above-said doctrine is not fully accepted in India. According to him:

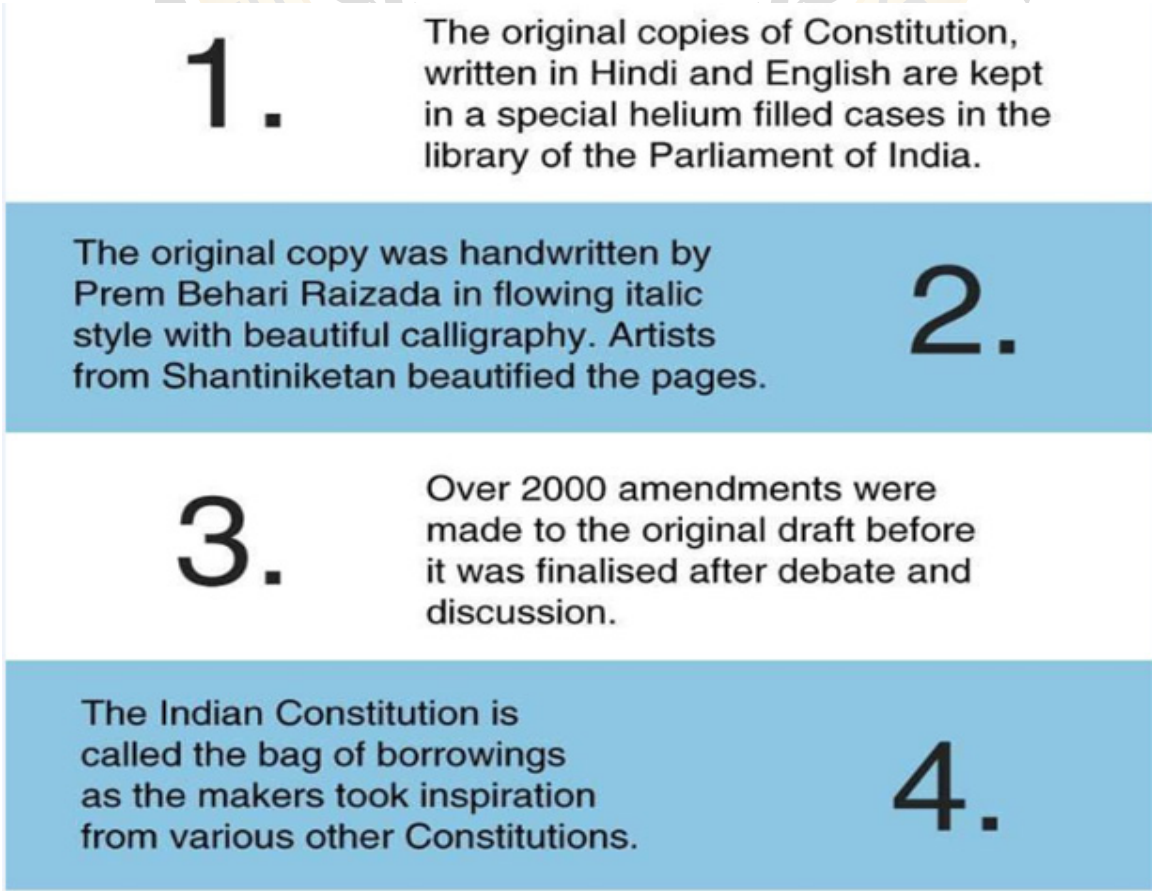
"The Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the government have been sufficiently differentiated and consequently it can very well be said that our constitution does not contemplate assumption, by one organ or part of the state, of functions that essentially belong to another".

Then in ***Indira Nehru Gandhi v. Raj Narain***, where the dispute regarding Prime Minister's election was pending before the Supreme Court, it was held that adjudication of a specific dispute is a judicial function which parliament, even under constitutional amending power, cannot exercise. So, the main ground on which the amendment was held ultra vires was that when the constituent body declared that the election of Prime Minister wouldn't be void, it discharged a judicial function that according to the principle of separation it shouldn't have done. The place of this doctrine in the Indian context was made a bit clearer after this judgment.

The Supreme Court in ***Keshavananda Bharti v State of Kerala*** was of the view that amending power was subject to the basic features of the Constitution. And hence, any amendment tampering these essential features will be struck down as unconstitutional. Beg J. added that **separation of powers is a part of the basic structure of the constitution**. None of the three separate organs of the republic can take over the functions assigned to the other. Hence this further confirmed the opinion of the court in relation to the doctrine of separation of power.

In India, we follow a separation of functions and not of powers. And hence, we don't abide by the principle in its rigidity. Hence in India the strict separation of powers in American sense is absent.

SALIENT FEATURES OF THE INDIAN CONSTITUTION



Though borrowed from almost every constitution of the world, the constitution of India has several salient features that distinguish it from the constitutions of other countries. These features are:

1) Longest known written constitution

The Constitution of India is the lengthiest of all the written constitutions of the world. It is a very comprehensive, elaborate and detailed document. The original constitution of 1949 contained **395 Articles** which were divided into **22 parts**. Originally there were **8 schedules** in the constitution. However since its inception the constitution has underwent numerous amendments which added new articles, parts and schedules. As of Jan, 2019 the Constitution of India has **448** articles in **25 parts** and **12 schedules**. Several factors have contributed to the elephantine size of our Constitution. They are:

a) Geographical expanse of the country and its diversity

b) The Government of India Act, 1935-from which most of the constitution is drawn

c) Single constitution for the Union and all states, except the state of Jammu and Kashmir (which has right to draw its own constitution under Article 370)

d) Dominance of legal luminaries in the constituent assembly

e) The Constitution contains not only the fundamental principles of governance but also detailed administrative provisions. Further, those matters which in other modern democratic countries have been left to the ordinary legislation or established political conventions have also been included in the Indian constitutional document.

f) Indian constitution incorporates some of the judicial interpretations to minimise litigation and this also has added to the bulk of the Constitution.

2) Drawn From Various Sources

Most of the provisions of the Indian constitution are substantially borrowed from other known constitutions of the world. The constituent assembly assessed many constitutions and drafted one taking all the provisions that best applied to India's diversity. **Dr B R Ambedkar** proudly acclaimed that the **Constitution of India has been framed after 'ransacking' all the known Constitutions of the World**.

SOURCES	FEATURES BORROWED
Government of India Act, 1935	Federal Scheme, Office of Governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
Constitution of Britain	Parliamentary form of government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
Constitution of USA	Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of supreme court and high court judges, Post of vice president, Functions of president and vice-president and Preamble of the constitution.

Constitution of Ireland	Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.
Constitution of Canada	Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
Constitution of Australia	Concurrent List, freedom of trade, commerce and intercourse, and joint sitting of the two Houses of Parliament.
Constitution of Germany	Suspension of Fundamental Rights during Emergency
Constitution of USSR (Soviet Constitution)	Fundamental duties, The ideals of Justice-Social, Economic and Political.
Constitution of France	The ideal of Republic in the Preamble and the ideals of liberty, equality and fraternity in the Preamble.
Constitution of South Africa	Procedure of amendment, Election of members to the Rajya Sabha
Constitution of Japan	Concept of "Procedure established by law"

3) Blend of Rigidity and Flexibility

An important distinctive feature of the Indian Constitution is that it seeks to impart flexibility to a written federal constitution. A rigid Constitution is one that requires a special procedure for its amendment, as for example, the American Constitution. A flexible constitution, on the other hand, is one that can be amended in the same manner as the ordinary laws are made, as for example, the British Constitution. The Constitution of India is neither rigid nor flexible but a synthesis of both. Article 368 provides for two types of amendments:

a) **Some provisions can be amended by a special majority of the Parliament, i.e., a two-third majority of the members of each House present and voting, and a majority (that is, more than 50 per cent), of the total membership of each House.**

b) **Some other provisions can be amended by a special majority of the Parliament and with the ratification by half of the total states.**

At the same time, the Parliament has been given the power to alter or modify many of the provisions of the constitution by simple majority and by ordinary legislative procedure, by laying down that such changes shall not be deemed as 'amendments' to the constitution. Notably, these amendments do not come under the purview of Article 368. Further post ***Keshavananda Bharti***, the amending powers of the parliament has been circumscribed by the doctrine of basic structure.

4) Federal System with Unitary Bias

The Constitution of India is essentially federal with subsidiary unitary features. It has all the basic elements of a federal polity viz.

- **Dual Government**
- **Division of Powers**
- **Supremacy of the Constitution**
- **Authority of Courts**
- **Bicameralism**

However, the Indian Constitution also contains a large number of unitary or non-federal features, viz., a strong Centre, single Constitution, single citizenship, flexibility of Constitution, integrated judiciary, appointment of state governor by the Centre, all-India services, emergency provisions, and so on.

Moreover, the term 'Federation' has nowhere been used in the Constitution. Article 1, of the Indian Constitution, describes India as a 'Union of States' which implies two things: one, Indian Federation is not the result of an agreement between the states; and two, no state has the right to secede from the federation.

Hence, the Indian Constitution has been variously described as **'federal in form but unitary in spirit'**, **'quasi-federal'** by **K C Wheare**, **'bargaining federalism'** by Morris Jones, 'co-operative federalism' by Granville Austin, **'federation with a centralising tendency'** by **Sir Ivor Jennings**, and so on.

However an ardent observer of the Indian constitution like **Prof Alexandrowicz** has taken great pains to combat the view that the Indian federation is 'quasi-federation'. He infact says that **"India is a case sui generis".**

5) Parliamentary Form of Government

The Constitution of India has opted for the British parliamentary System of Government rather than American Presidential System of Government. The parliamentary system is based on the principle of co-operation and coordination between the legislative and executive organs while the presidential system is based on the doctrine of separation of powers between the two organs.

The parliamentary system is also known as the 'Westminster' model of government, responsible government and cabinet government. The Constitution establishes the parliamentary system not only at the Centre but also in the states. The features of parliamentary government in India are:

a) **Presence of nominal and real executives;**
b) **Majority party rule,**
c) **Collective responsibility of the executive to the legislature,**
d) **Membership of the ministers in the legislature,**
e) **Leadership of the prime minister or the chief minister,**
f) **Dissolution of the lower House (Lok Sabha or Assembly).**

Even though the Indian Parliamentary System is largely based on the British pattern, there are some fundamental differences between the two. For example, the Indian Parliament is not a sovereign body like the British Parliament. Further, the Indian State has an elected head (republic) while the British State has hereditary head (monarchy). In a parliamentary system whether in India or Britain, the role of the Prime Minister has become so significant and crucial that the political scientists like to call it a 'Prime Ministerial Government'.

WESTMINSTER SYSTEM

The Westminster system is a democratic parliamentary system of government modelled after that of the United Kingdom's parliamentary system. This system consists of a series of procedures for operating a legislature. The British Parliament is bicameral and has three parts, consisting of the Sovereign (the Queen-in-Parliament), the House of Lords, and the House of Commons (the primary chamber). The two houses meet in the Palace of Westminster in the City of Westminster, one of the inner boroughs of the capital city, London.

6) Reconciliation between Parliamentary Sovereignty and Judicial Review

The Indian constitution wonderfully adopts the via media between the American system of Judicial Supremacy and the English principle of Parliamentary Supremacy, by endowing the Judiciary with the power of declaring a law as unconstitutional if it is beyond the competence of the legislature according to the distribution of powers provided by the constitution, or if it is in contravention of the fundamental rights guaranteed by the constitution or of any other mandatory provision of the constitution but at the same time depriving the judiciary of any power of judicial review of the wisdom of the legislative policy. Our constitution thus places the supremacy at the hands of the legislature as much as that is possible within the bounds of a written constitution (Art 368). Thus the scope of judicial review is narrower in India when compared to America and the Indian parliament is relatively weaker than the British parliament. This beautiful synthesis makes the Indian constitution unique and attractive. In short India has avoided the extremes

7) Integrated and Independent Judiciary

The Indian Constitution establishes a judicial system that is integrated as well as independent. The Supreme Court stands at the top of the integrated judicial system in India. Below it, there are high courts at the state level. Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts enforces both the central laws as well as the state laws, unlike in USA, where the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary. The Supreme Court is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the Constitution.

8) Fundamental Rights subject to reasonable restrictions

Fundamental rights are a group of rights that uphold liberty and freedom. They are fundamental and cannot be encroached upon by the state. However the American experience demonstrates that a written guarantee of fundamental rights has a tendency of creating an individualistic-centered society and state which may at times prove to be dangerous to the common welfare. Hence the guarantee of individual rights in our constitution has been very carefully balanced with the need for the security of the sate itself. This has been achieved by incorporating reasonable restrictions in **Part III** (the part dealing with Fundamental Rights) of the constitution. Part III of the Indian Constitution guarantees six fundamental rights

1) **Right to Equality** (Articles 14–18)
2) **Right to Freedom** (Articles 19–22)
3) **Right against Exploitation** (Articles 23–24)
4) **Right to Freedom of Religion** (Articles25–28)
5) **Cultural and Educational Rights** (Articles 29–30)
6) **Right to Constitutional Remedies** (Article 32)

The Fundamental Rights are meant for promoting the idea of political democracy. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. They are justiciable in nature, that is, they are enforceable by the courts for their violation. The aggrieved person can directly go to the Supreme Court which can issue the writs of habeas corpus, mandamus, prohibition, certiorari and quo warranto for the restoration of his rights.

The Fundamental Rights are not absolute and are subject to reasonable restrictions. Further, they are not sacrosanct and can be curtailed or repealed by the Parliament through a constitutional amendment act. They can also be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21.

It is further added by political scientist that fundamental rights for Indians have also been intended to overturn the inequalities of pre-independence social practices. Precisely, they have also been used to abolish untouchability and thus prohibit discrimination on the basis of religion, race, caste, sex, or place of birth. They also prohibit trafficking of human beings and forced labour. They also protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own education institutions.

9) Directive Principles of State Policy

They are enumerated in Part IV of the Constitution. They can be classified into three broad categories—socialistic, Gandhian and liberal–intellectual.

The directive principles are meant for promoting the ideal of social and economic democracy. They seek to establish a 'welfare state' in India. However, unlike the Fundamental Rights, the directives are non-justiciable in nature, that is, they are not enforceable by the courts for their violation. Yet, the Constitution itself declares that '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'. Hence, they impose a moral obligation on the state authorities for their application. But, the real force (sanction) behind them is political, that is, public opinion.

In the Minerva Mills Case (1980), the Supreme Court held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles'.

10) Fundamental Duties

The constitution of 1949 had no provisions for fundamental duties. Fundamental duties were added during the operation of internal emergency (1975–77) by the 42nd Constitutional Amendment Act of 1976 on the recommendation of the Swaran Singh Committee. A new part of the constitution viz. Part IV A and a new article viz. Article 51 was created for it. This article added ten fundamental duties which were raised to eleven after the 86th Constitutional Amendment Act of 2002 which added one more fundamental duty.

The fundamental duties serve as a reminder to citizens that while enjoying their rights, they have also to be quite conscious of duties they owe to their country, their society and to their fellow-citizens. However, like the Directive Principles, the duties are also non-justiciable in nature.

11) Universal Adult Franchise

This part of the Constitution promotes the policy of 'one person one vote'. According to this part of the Constitution, every individual of 18 years and above have a right to vote irrespective of their age, gender, race, colour, religion, etc. The Indian Constitution adopts universal adult franchise as a basis of elections

to the Lok Sabha and the state legislative assemblies. Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, race, religion, sex, literacy, wealth, and so on. The voting age was reduced to 18 years from 21 years in 1989 by the 61st Constitutional Amendment Act of 1988.

The introduction of universal adult franchise by the Constitution-makers was a bold experiment and highly remarkable in view of the vast size of the country, its huge population, high poverty, social inequality and overwhelming illiteracy.

Universal adult franchise makes democracy broad-based, enhances the self-respect and prestige of the common people, upholds the principle of equality, enables minorities to protect their interests and opens up new hopes and vistas for weaker sections.

12) Single Citizenship

Though the Indian Constitution is federal and envisages a dual polity (Centre and states), it provides for only a single citizenship, that is, the Indian citizenship. In countries like USA, on the other hand, each person is not only a citizen of USA but also a citizen of the particular state to which he belongs. Thus, he owes allegiance to both and enjoys dual sets of rights—one conferred by the National government and another by the state government.

In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them excepting in few cases like tribal areas, Jammu and Kashmir, and so on.

13) Independent Bodies

The Indian Constitution not only provides for the legislative, executive and judicial organs of the government (Central and state) but also establishes certain independent bodies. They are envisaged by the Constitution as the bulwarks of the democratic system of Government in India. These are:

a) **Election Commission** to ensure free and fair elections to the Parliament, the state legislatures, the office of President of India and the office of Vice-president of India.

b) **Comptroller and Auditor-General of India** to audit the accounts of the Central and state governments. He acts as the guardian of public purse and comments on the legality and propriety of government expenditure.

c) **Union Public Service Commission** to conduct examinations for recruitment to all-India services15 and higher Central services and to advise the President on disciplinary matters.

d) **State Public Service Commission** in every state to conduct examinations for recruitment to state services and to advice the governor on disciplinary matters.

The Constitution ensures the independence of these bodies through various provisions like security of tenure, fixed service conditions, expenses being charged on the Consolidated Fund of India, and so on.

14) Emergency Provisions

The Indian Constitution contains elaborate emergency provisions to enable the President to meet any extraordinary situation effectively. The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution. The Constitution envisages three types of emergencies, namely:

a) **National emergency** on the ground of war or external aggression or armed rebellion16 (Article 352);

b) **State emergency** (President's Rule) on the ground of failure of Constitutional machinery in the states (Article 356) or failure to comply with the directions of the Centre (Article 365); and

c) **Financial emergency** on the ground of threat to the financial stability or credit of India (Article 360).

During an emergency, the Central Government becomes all-powerful and the states go into the total control of the centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique but rare.

15) Three-tier government

The constitution of 1949 provide for a federal polity between the centre and the states however the 73rd and 74th constitutional amendment acts added a third tier viz. PRIs and ULBs.

The 73rd Amendment Act of 1992 gave constitutional recognition to the panchayats (rural local governments) by adding a new Part IX and a new Schedule 11 to the Constitution. Similarly, the 74th Amendment Act of 1992 gave constitutional recognition to the municipalities (urban local governments) by adding a new Part IX-A and a new Schedule 12 to the constitution.

16) Co-operative Societies

The 97th Constitutional Amendment Act of 2011 gave a constitutional status and protection to co-operative societies. In this context, it made the following three changes in the Constitution:

1) It made the right to form co-operative societies a fundamental right (Article 19).

2) It included a new Directive Principle of State Policy on promotion of cooperative societies (Article 43-B).

3) It added a new Part IX-B in the Constitution which is entitled as "The Cooperative Societies" (Articles 243-ZH to 243-ZT).

The new Part IX-B contains various provisions to ensure that the cooperative societies in the country function in a democratic, professional, autonomous and economically sound manner. It empowers the Parliament in respect of multi-state cooperative societies and the state legislatures in respect of other co-operative societies to make the appropriate law.

17) No communal representation

The framers of the Indian constitution abolished the communal representation which in its trail had brought in the bloody and lamentable partition of India. In the Indian constitution there is no reservation of seats except for the scheduled castes and scheduled tribes and for Anglo-Indians.

UNIT-II

[PROCEDURE FOR AMENDMENT]

PROCEDURE FOR AMENDMENT

To evolve and change with all changes in the society and environment is a necessity for every constitution. The makers of the Constitution of India were fully aware of this need. As such, while writing the constitution, they also provided for a method of its amendment. Further they decided, to make the constitution both rigid as well as flexible. They laid down a flexible amendment method in respect of its some parts and for several others they provided for a rigid method.

Part XX of the Constitution of India contains only one Article 368. It incorporates the procedure for amending the constitution. It deals with the power of the Parliament to amend the constitution. It lays down two special methods for the amendment of various parts of the constitution. Along with it the Union Parliament has the power to change some specified features/parts of the Constitution by passing an ordinary law. However such changes shall not be deemed as amendments to the constitution. The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:

- An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament.
- The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
- The bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
- Each House must pass the bill separately. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
- If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
- After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.

When a constitution amendment bill is presented before the President, the President shall give his assent to the bill. He can neither withhold his assent nor return the bill for the reconsideration of the Parliament.

Once the Presidential assent is obtained, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

TYPES OF AMENDMENTS UNDER ARTICLE 368

Two Special Methods of Amendment under Art 368 are

I. Amendment by Special Majority of Parliament:

Most parts of the Constitution (with exception of some specific provisions) can be amended by this method. Under this method, the Constitution can be amended by the Union Parliament alone. For this purpose a constitutional amendment bill should be passed by each of the two houses of Union Parliament by a special majority i.e. a majority (that is, more than 50 per cent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of fact whether there are vacancies or absentees at the time of voting. It is a rigid method in so far as it prescribes a special majority for amending the constitution but it is also a flexible method to an extent because under it no ratification by the states is required.

II. Amendment by Special Majority of the Parliament and by consent of the States:

For amending those provisions of the Constitution which are related to the federal structure not only the constitutional amendment bill should be passed by both houses of the parliament by a Special Majority (i.e. absolute majority + majority of not less than $2/3^{rd}$ of the members present and voting) but also not less than half of the state legislatures shall ratify it by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

- Election of the President.
- Extent and Scope of the executive power of the Union and the states.
- Provisions regarding the Supreme Court and High Courts.
- Distribution of legislative powers between the Union and the states.
- Any of the lists in the Seventh Schedule.
- Representation of states in the Parliament.
- The provisions of Article 368.

MODIFICATIONS OUTSIDE ARTICLE 368

In respect of some provisions of the Constitution the Parliament has been given the power to make necessary changes through ordinary legislation and by simple majority of members of both of its Houses. It is, indeed, an easy method and lies outside the scope of Article 368. However one must not forget that these modifications shall not be deemed as amendments to the constitution even though they may bring incidental, subsequential or consequential changes to the text of the constitution. These provisions include:

- Admission or establishment of new states.
- Formation of new states and alteration of areas, boundaries or names of existing states.
- Abolition or creation of legislative councils in states.
- Provisions related to Second Schedule—emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.

- Quorum in Parliament.
- Salaries and allowances of the members of Parliament.
- Rules of procedure in Parliament.
- Privileges of the Parliament, its members and its committees.
- Use of English language in Parliament.
- Number of puisne judges in the Supreme Court.
- Conferment of more jurisdiction on the Supreme Court.
- Use of official language.
- Citizenship—acquisition and termination.
- Elections to Parliament and state legislatures.
- Delimitation of constituencies.
- Creation and abolition of legislature in Union territories.
- Provisions related to Fifth Schedule—administration of scheduled areas and scheduled tribes.
- Provisions related to Sixth Schedule—administration of tribal areas.

These methods of amendment reflect a mixture of rigidity and flexibility in the Indian Constitution.

CRITICAL ANALYSIS OF THE AMENDING POWER OF THE PARLIAMENT

Many political scientists have criticised the amending procedure prescribed under the constitution on the following grounds

- The critics hold that since the process of amendment does not provide for a system of getting consent or approval of the people of India, it is an undemocratic method. This charge is unfounded because the parliament is directly or indirectly elected by the people of India and to have instruments of direct democracy in a vast country like India seems an illogical argument.
- The Parliament alone can amend most of the constitutional provisions and this goes against the federal spirit. The federal features include a say of the states hence this charge seems unfounded too.
- Some scholars believe that the procedure is very rigid especially with respect to the ratification part. However when compared to other federal polities like USA the procedure prescribed under 368 appears relatively easy.
- Some critics also object to the system of judicial review which permits the Supreme Court and every High Court to judge the constitutional validity of the amendments passed by the Parliament. Regarding this charge one must remember that the Supreme Court can nullify any constitutional amendment only on the grounds of violation of basic structure.

The ease with which subsequent amendments have been made to the constitution only testifies the success of the procedure prescribed under Article 368. In fact the procedure is not so flexible as to allow the ruling parties to change it according to their whims. Nor is it so rigid as to be incapable of adopting itself to the changing needs.

UNIT-III

[PREAMBLE]

TEXT OF THE PREAMBLE

The term 'Preamble' means the introduction to a statute. It is the introductory part of the constitution. A preamble may also be used to introduce a particular section or group of sections.

> 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 **26th day of November, 1949**, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Note- The words **SOCIALIST, SECULAR** and **integrity** were added by the **Constitutional (Fourty second) Amendment Act, 1976.**

The Preamble reveals four ingredients or components:

1. **Source of authority of the Constitution**: The Preamble states that the Constitution derives its authority from the people of India.
2. **Nature of Indian State**: It declares India to be of a sovereign, socialist, secular democratic and republican polity.
3. **Objectives of the Constitution**: It specifies justice, liberty, equality and fraternity as the objectives.
4. **Date of adoption of the Constitution**: It stipulates November 26, 1949 as the date.

The preamble to the Constitution of India is a brief introductory statement that sets out guidelines, which guides the people of the nation, and presents the principles of the Constitution. **The hopes and aspirations of the people are described in the Preamble** to the Indian Constitution. **The preamble can be referred to as the preface which highlights the entire Constitution**.

The preamble is based on the **Objectives Resolution** which was drafted and moved in the Constituent Assembly by **Pt. Jawaharlal Nehru** on **13 December 1946**. **Dr. B. R. Ambedkar** described the preamble in the following words:-

"It was, indeed, a way of life, which recognizes liberty, equality, and fraternity as the principles of life and which cannot be divorced from each other: Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things."

The American Constitution was the first to begin with a Preamble. Many countries, including India, followed this practice. **The term 'preamble' refers to the introduction or preface to the Constitution.** It contains the summary or essence of the Constitution. **N. A. Palkhivala, an eminent jurist and constitutional expert**, called the Preamble as the **'identity card of the Constitution.'**

HISTORY OF THE PREAMBLE

The Preamble to the Indian constitution is based on "Objective Resolution". Jawaharlal Nehru introduced an objective resolution on December 13, 1947, and it was adopted by Constituent assembly on 22 January 1947. The drafting committee of the assembly in formulating the Preamble in the light of "Objective Resolution" felt that the Preamble should be restricted to defining the essential features of the new state and its basic socio-political objectives and that the other matters dealt with Resolution could be more appropriately provided for in the substantive parts of the Constitution.

The committee adopted the expression **'Sovereign Democratic Republic'** in place of 'Sovereign Independent Republic' as used in the "Objective Resolution," for it thought the independence was implied in the word Sovereign. The committee added the word Fraternity which was not present in the Objective Resolution. "The committee felt that the need for fraternal concord and goodwill in India was never greater than now and that this particular aim of the new Constitution should be emphasized by special mention in the Preamble." In other respect the committee tried to embody in the Preamble "**the spirit and, as far as possible, the language of "Objective Resolution**."

OBJECT, PURPOSE AND SCOPE OF THE PREAMBLE

The Preamble does not grant any power but it gives a direction and purpose to the Constitution. It outlines the objectives of the whole Constitution. The Preamble contains the fundamentals of the constitution. The preamble to an Act sets out the main objectives which the legislation is intended to achieve.

The proper function of the preamble is to explain and recite certain facts which are necessary to be explained and recited before the enactment contained in an act of Parliament could be understood. A preamble may be used for other reasons, such as, to limit the scope of certain expressions or to explain facts or introduce definitions. It usually states or professes to state, the general object and meaning of the legislature in passing the measure.

Hence it may be legitimately consulted for the purpose of solving an ambiguity or fixing the connotation of words which may possibly have more meaning, or determining of the Act, whenever the enacting part in any of these respect is prone to doubt. In a nutshell, a court may look into the object and policy of the Act as recited in the Preamble when a doubt arises in its mind as to whether the narrower or the more liberal interpretation ought to be placed on the language which is capable of bearing both meanings.

In **A.K Gopalan v. State of Madras**, it was contended that the preamble to our constitution which seeks to give India a 'democratic' constitution should be the guiding start in its interpretation and hence any law made under Article 21 should be held as void if it offends the principles of natural justice, for otherwise the so-called "fundamental" rights to life and personal liberty would have no protection. The majority on the bench of the Supreme Court rejected this contention holding that 'law' in Article 21 refers to positive or state made law and not natural justice and that this meaning of the language of Article 21 could not be modified with reference to the preamble.

In **Berubari Union case** the Supreme Court held that the preamble had never been regarded as the source of any substantive power conferred on the government or on any of its departments. The court further explained that "what is true about the powers is equally true about the prohibitions and limitations". It, therefore, observed that the preamble had limited application. The court laid down that the preamble would not be resorted to if the language of the enactment contained in the constitution was clear.

However, "if the terms used in any of the articles in the constitution are ambiguous or capable of two meanings, in interpreting them some assistance may be sought in the objectives enshrined in the Preamble." In **State of Rajasthan v. Basant Nahata** it was held that a preamble with an ordinary Statute is to be resorted only when the language is itself capable of more than one meaning and not when something is not capable of being given a precise meaning as in case of public policy.

In **Keshavananda Bharati** case the Supreme Court attached much importance to the preamble. In this case, the main question before the Supreme Court related to the scope of amending power of the Union Parliament under Article 368 of the Constitution of India. The Supreme Court traced the history of the drafting and ultimate adoption of the Preamble. **Chief Justice Sikri observed**,

"No authority has been referred before us to establish the propositions that what is true about the powers is equally true about the prohibitions and limitations. Even from the Preamble limitations have been derived in some cases. It seems to me that the preamble of our Constitution is of extreme importance and the constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble."

A majority of the full bench held that the objectives specified in the preamble contain the basic structure of our constitution, which cannot be amended in exercise of the power under Article 368 of the constitution. It was further held that being a part of the constitution, the preamble was not outside the reach of the amending power of the Parliament under Article 368. It was in the exercise of this amending power that the Constitution (42nd Amendment) Act 1976 amended the preamble inserting therein, the terms socialist, secular and integrity.

In the 1995 case of **Union Government v. LIC of India** also the Supreme Court has once again held that the Preamble is an integral part of the Constitution.

PREAMBLE AS A PART OF THE CONSTITUTION

It has been highly a matter of arguments and discussions in the past that whether Preamble should be treated as a part of the constitution or not. The vexed question whether the Preamble is a part of the Constitution or not was dealt with in two leading cases on the subject:

Berubari Case

Berubari case was the Presidential Reference "under Article 143(1) of the Constitution of India on the implementation of the Indo-Pakistan Agreement Relating to Berubari Union and Exchange of Enclaves which came up for consideration by a bench consisting of eight judges headed by the Chief Justice B.P. Singh. Justice Gajendra gadkar delivered the unanimous opinion of the Court.

The court ruled out that the Preamble to the Constitution, containing the declaration made by the people of India in exercise of their sovereign will, no doubt it is "a key to open the mind of the makers" which may show the general purposes for which they made the several provisions in the Constitution but nevertheless the Preamble is not a part of the Constitution.

Keshavananda Bharati case

Keshavananda Bharati case has created history. For the first time, a bench of 13 judges assembled and sat in its original jurisdiction hearing the writ petition. Thirteen judges placed on record 11 separate opinions. To the extent necessary for the purpose of the Preamble, it can be safely concluded that the majority in Keshavananda Bharati case leans in favor of holding,

- That the Preamble to the Constitution of India is a part of the Constitution;
- That the Preamble is not a source of power or a source of limitations or prohibitions;
- The Preamble has a significant role to play in the interpretation of statutes and also in the interpretation of provisions of the Constitution.

Keshavananda Bharati case is a milestone and also a turning point in the constitutional history of India. D.G. Palekar, J. held that the Preamble is a part of the Constitution and, therefore, is amendable under Article 368. It can be concluded that Preamble is an introductory part of our Constitution. The Preamble is based on the Objective Resolution of Nehru. Preamble tells about the nature of state and objects that India has to achieve. There was a controversial issue whether Preamble was part of Indian Constitution there were a number of judicial interpretation but finally Keshavananda Bharati case it was held that the Preamble is a part of the Constitution.

Hence, the current opinion held by the Supreme Court that the **Preamble is a part of the Constitution,** is in consonance with the opinion of the founding fathers of the Constitution. However, two things should be noted:

- The Preamble is neither a source of power to legislature nor a prohibition upon the powers of legislature.
- It is non-justiciable, that is, its provisions are not enforceable in courts of law.

AMENDABILITY OF THE PREAMBLE

The issue that whether the preamble to the constitution of India can be amended or not was raised before the Supreme Court in the famous case of Keshavananda Bharati v. State of Kerala, 1973. **The Supreme Court has held that Preamble is the part of the constitution and it can be amended but, Parliament cannot amend the basic features of the preamble.** The court observed, "**The edifice of our constitution is based upon the basic element in the Preamble. If any of these elements are removed the structure will not survive and it will not be the same constitution and will not be able to maintain its identity**."

The preamble to the Indian constitution was amended by the 42nd Amendment Act, 1976 whereby the words Socialist, Secular, and Integrity were added to the preamble by the 42nd Amendment Act, 1976, to ensure the economic justice and elimination of inequality in income and standard of life. Secularism implies equality of all religions and religious tolerance and does not identify any state religion. The word integrity ensures one of the major aims and objectives of the preamble ensuring the fraternity and unity of the state.

KEY WORDS IN THE PREAMBLE

The preamble begins with the words "We the people of India..." thus clearly indicating the source of all authority of the constitution. At the dawn of independence, we were 350 million (approximately). This figure constituted $1/6^{th}$ of humanity. The words "We, the people of India" declares in unambiguous terms that the Constitution has been adopted, enacted and given to themselves by the people of India. It emphasizes the sovereignty of the people and the fact that all powers of government flow from the people. It is the people of India on whose authority the Constitution rests. The preamble surmises that it is the people of India who are the authors of the constitution.

Although the constitution was not directly voted upon by the people of the country as it was practically impossible for four hundred million people to take part in the voting, it is clear from the Preamble that the framers of the constitution has been promulgated in the name of the people, attached importance to the sovereignty of the people and the constitution. The constitution is not based on the mandate of several states which constitute the units of the Union.

In this sense also, the constitution is one, given by the people of the country to themselves. Pt. Jawahar Lal Nehru in the constituent assembly stated that the word 'People' indicated that the constitution was not

created by the States, nor by the people of the several States but by the people of India in their aggregate capacity. By analogy, even the Constitution of U.S.A., in spite of the fact that it was actually born out of the agreement between the number of independent states, professes to be established by the people of the United States, and not by the federating states in their sovereign capacities.

The words "we the people of India" echo in the opening words in the preamble to the constitutions of the United States and of Ireland. It is emphasized that the constitution is founded on the authority of the people, in whom is vested the ultimate sovereignty. The Supreme Court in ***Union of India* v. *Madangopal*** referred to these words in the preamble while recognizing the power of the Indian legislatures, to enact laws with retrospective operation beyond the commencement of the constitution itself. The court observed that "our constitution as appears from the preamble derives its authority from the people of India".

'We, the people if India', means in other words, 'we, the citizens of India', whether voters or non- voters. The terms- 'people of India' and 'citizens' are synonyms terms. Both the words describe the political body which lays the basis of sovereignty and which hold the power and conduct of the government through their representatives; they are what we familiarly call the 'sovereign people' and every citizen is one of this people and they are a constituent member of this sovereignty.

Constitutional expert D.D. Basu has stated that though the constitution of India has been made by men who cannot be said to be fully representatives of the nation and it has been ratified by a direct vote of the people, the Constitution of India, like that of the United States professes that is has been founded on the consent and acquiescence of the people. The preamble says that the people of India enacted and adopted the constitution, after "having solemnly resolved…" It explains that the founding fathers had given serious thought to the provisions of the Constitution. They had performed a sacred duty and exercised full wisdom and political knowledge on their part. They had no axe to grind beyond "securing a good and workable constitution".

Sovereign

According to Preamble, the constitution of India has been pursuance of the solemn resolution of the people of India to constitute India into a 'Sovereign Democratic Republic', and to secure well-defined objects set forth in the preamble. Sovereignty denotes supreme and ultimate power. It may be real or normal, legal or political, individual or pluralistic. In monarchial orders, sovereignty was vested in the person of monarchs. But, in the republican form of governments, which mostly prevail in the contemporary world, sovereignty is shifted to the elected representatives of the people.

According to D.D Basu, the word 'sovereign' is taken from Article 5 of the constitution of Ireland. 'Sovereign or supreme power is that which is absolute and uncontrolled within its own sphere'. In the words of Cooley, "*A state is sovereign when there resides within itself supreme and absolute power, acknowledging no superior*".

Sovereignty, in short, means the independent authority of a state. It has two aspects- external and internal. **External sovereignty** or sovereignty in international law means the independence of a state of the will of other states, in her conduct with other states in the comity of nations. Sovereign in its relation between states and among states signifies independence. The external sovereignty of India means that it can acquire foreign territory and also cede any part of the Indian territory, subject to limitations(if any) imposed by the constitution.

On the other hand, **internal sovereignty** refers to the relationship between the states and the individuals within its territory. Internal sovereignty relates to internal and domestic affairs and is divided into four organs, namely, the executive, the legislature, the judiciary and the administrative.

Though India became a sovereign country on 26th January 1950, having equal status with the other members of the international community, she decided to remain in the Commonwealth of Nations. Pandit Nehru declared that India will continue – "her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of the independent nations and as such the Head of the Commonwealth". Her membership of the Commonwealth of Nations and that of the United Nations Organization do not affect her sovereignty to any extent. It is merely a voluntary association of India and it is open to India to cut off this association at her will, and that it has no constitutional significance.

Socialist

The constitutional commitment to the goal of socio-economic justice, as envisaged by the original preamble by the constitution of India has been fortified by the **Constitution (42nd Amendment) Act, 1976**. The term 'socialist' literally means a political-economic system which advocates the state's ownership of the means of production, distribution, and exchange.

Concise Oxford Dictionary defines 'socialism' as a political and economic theory of a social organization which advocates that the means of production, distribution, and exchange should be owned or regulated by the community as a whole." Professor M.C Jain Kagzi while noting that socialism has interspersed in the provision of the constitution remarks that preambular reference was intended ushering in a socio-economic revolution.

The term 'socialist' has not been defined in the constitution. Professor M.P Jain observes that the term 'does not, however, envisage doctrinaire socialism in the sense of insistence on state ownership as a matter of policy'. It does not mean total exclusion of private enterprise and complete state ownership of material resources of the nation. D.D. Basu regards that the Supreme Court has gone a step further toward social justice. P.M Bakshi understands socialism in the context of social justice. A broad spectrum of Indian jurists and authors admit the relevance of socialism in India. Swarn Singh, the chief architect of the 42nd Amendment Act, 1976 explained that by the word 'socialism' nothing more was meant than what was explained at the Awadi session of Congress, which is short aimed at a 'mixed economy'.

Mrs. Indira Gandhi, the then Prime Minister, further explained that the term 'socialist' was used simply to indicate that the goal of the state in India was to secure a 'better life for the people' or 'equality of opportunity'. She said that socialism like democracy was interpretable differently in different countries. She, thus, made it clear that India had her own concept of socialism and all she wanted was a better life for the people.

That the framers wished to go socialist was never in doubt. Our first Prime Minister and a member of the Constituent Assembly Pt. Jawaharlal Nehru exclaimed: "I stand for socialism and I hope, India will stand for Socialism and that India will go towards the constitution of a socialist state, and I do believe that the whole world will go that way."

In ***Excel Wear* v. *Union of India*** the Supreme Court observed that "the addition of the word socialist might enable the courts to lean more in favor of nationalization and state ownership of the industry. But, so long as private ownership of industries is recognized and governs an overwhelming large proportion of our economic structure, the principle of socialism and social justice cannot be pushed to such an extent so as to ignore completely or to a very large extent, the interest of another section of the public, namely, the private owners of the undertaking."

In ***D.S Nakara* v. *Union of India*** the court observed that "the basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave." The

principal aim of the socialist State, the Supreme Court held, was to eliminate inequality in income and status and standard of life.

In ***Air India Statutory Corporation* v.** ***United Labour Union*** the Supreme Court elaborated the concept of "socialism" and stated that the word socialism was expressly brought in the constitution to establish an egalitarian social order through rule of law as its basic structure.

In ***Samatha* v.** ***State of Andhra Pradesh*** the Supreme Court observed that the word Socialist used in the Preamble must be read from the goals, **Article 14, 15, 16, 17, 21, 23, 38, 39, 46** and all other cognate Articles sought to establish, i.e. to reduce inequalities in income and status and to provide equality of opportunities and facilities.

Secular

In Webster's Dictionary, the word 'secular' has been described as a 'view of life', or of any particular matter based on premise that religious considerations should be ignored or purposefully excluded or as a system of social ethics based upon doctrine that ethical standards and conduct be determined exclusively without reference to religion. It is the rational approach to life and it refuses to give a plea for religion.

For the first time, by the 42nd amendment of the constitution in 1976, the term-secular' was inserted into the Preamble but without a definition of the term. Secular is derived from the Latin word speculum, which means an indefinite period of time. Before the mid-nineteenth century, the word 'secular' was occasionally used with contempt.

Although the term secular was not included anywhere in the constitution, as it was originally adopted on November 26, 1949, the founding fathers of the constitution were clear in their mind as to what they meant by secularism. The word secular has no Indian origin. It traces its origin from West in the context of the Christian religion. Unlike in the West, in India secularism was never born out of the conflict between the church or the temple and the State. It was rooted in India's own past history and culture. It is based on the desire of the founding fathers to be just and fair to all communities irrespective of their number.

The term secular inserted by the **Constitution (42nd Amendment) Act, 1976**, explains that the state does not recognize any religion as a state religion and that it treats all religions equally, and with equal respect, without, in any manner, interfering with their individual rights of religion, faith or worship. It does not mean that it is an irreligious or atheistic state. Nor, it means that India is an anti-religious state. It neither promotes nor practices any particular religion, nor it interferes with any religious practice. The constitution ensures equal freedom to all religions.

The Supreme Court in ***St. Xavier's College v. State of Gujarat*** explained "secularism is neither anti-God nor pro-God, it treats alike the devout, the agnostic and the atheist. It eliminates God from the matters of the state and ensures that no one shall be discriminated against on the grounds of religion". That, every person is free to mold or regulate his relations with his God in any manner. He is free to go to God or to heaven in his own ways. And, that worshipping God is left to be dictated by his own conscience.

In ***S.R Bommai v. Union of India*** a nine-judge bench of the apex court observed that the concept of "Secularism" was very much embedded in our constitutional philosophy. What was implicit earlier had been made explicit by the constitution (42nd amendment) in 1976.

In ***Aruna Roy v. Union of India*** the Supreme Court has said that secularism has a positive meaning that is developing, understanding and respect towards different religions. Recently in ***I.R Coelho v. State of Tamil Nadu*** it has been held that secularism is a matter of conclusion to be drawn from various Articles conferring Fundamental Rights. "If the secular character is not to be found in Part III", the Court ruled, **"*it cannot be found anywhere else in the Constitution, because every fundamental right in Part III stands either for a principle or a matter of detail*".**

In ***Valsamma Paul* v. *Cochin University*** the apex court emphasized that inter-caste marriages and adoption were two important social institutions through which "secularism" would find its fruitful and solid base for an egalitarian social order under the Constitution of India. "Secularism," the court said, was a bridge between religions in a multi-religious society to cross over the barriers of their diversity. In the positive sense, it was the cornerstone of an egalitarian and forward-looking society which our constitution endeavored to establish.

Democratic

The term Democracy is derived from the Greek words '*demos*' which means 'people' and '*kratos*' which means 'authority'. It thus means government by the people. Democracy may properly be defined as that form of government in the administration of which the mass of the adult population has some direct or indirect share.

The Supreme Court in ***Mohan Lal v. District Magistrate, Rai Bareilly*** observed: "Democracy is a concept, a political philosophy, an ideal practiced by many nations culturally advanced and politically mature by resorting to governance by representatives of the people elected directly or indirectly". The basic principle of democracy in a society governed by the rule of Law is not only to respect the will of the majority but also to prevent the dictatorship of the majority".

Democracy may be a direct or indirect democracy. In a direct democracy, every people exercise the power of the government. The people as a whole not only carry on the government but can even change the constitution by their direct vote. In an indirect democracy, the people elect their representatives who carry on the administration of the government directly. It is also known as representative democracy. In India, the Constitution provides for a Parliamentary Representative Democracy.

The apex court in ***Union of India v. Association for Democratic Reforms,*** observed: "A successful democracy posits an 'aware' citizenry". "Democracy cannot survive", the court said, without free and fair elections, without free and fairly informed voters." This states that free and fair elections are the most important features of democracy. Thus democracy implies that all three powers of the government i.e. the executive, the legislature and the judiciary should be separate, yet mutually independent. Democracy is also a way of life and it must maintain human dignity, equality and rule of law.

Thus, the sovereign Constitutional state established by the framers could only be Ramrajya and people's democracy. Only in the democratic state the sovereignty would be vested in the people and the Nation. In reaffirmation to the democratic principle, the Constitution was adopted, enacted and adopted by the Constituent Assembly in the name of, and for "We, the People of India."

Republic

A republic means a state in which the supreme power rests in the people and their elected representatives or officers, as opposed to one governed by the king or a similar ruler. The word 'republic' is derived from ***res publica***, meaning public property or commonwealth. According to Montesquieu, "a republican government is that in which a body, or only a part of people, is possessed of the supreme power". The term 'republic' is used in distinction to the monarchy.

A republic means a form of government in which the head of the state is an elected person and not a heredity monarch like the king or the queen in Great Britain. Under such a system, political sovereignty is vested in the people and the head of the state is the person elected by the people for a fixed term. In a wider sense, the word 'republic' denotes a government where no one holds the public power as a proprietary right, but all power is exercised for the common good-where inhabitants are the subjects and free citizens at the same time. The constitution of India envisions

The Indian government as a 'republican form of government', in which, the ultimate power resides in the body of the people exercised via universal adult suffrage. The president of India who is the executive head of the state is elected by the people (though indirectly) who holds office for a term of five years. All citizens are equal in the eyes of law, there is no privileged class and all public offices are open for all the citizens without any distinction on the basis of race, caste, sex or creed.

In a republic, the state sovereignty is vested in and held by the people, and the political power is exercised popularly as an expression of the people's sovereign command, grace or pleasure. The Constitution is adopted and given to themselves by the People. The Constitution of India has been adopted enacted and given "To ourselves by "We, the People".

Justice

The preamble of the constitution of India professes to secure to all its citizens political, economic and social justice. Social justice means the abolition of all sorts of inequities which may result from the inequalities of wealth, opportunity, status, race, religion, caste, title and the like. To achieve this ideal of social justice, the constitution lays down the directives for the state in Part IV of the constitution.

In ***Air India Statutory Corporation v. United labor Union*** the Supreme Court observed that the aim of social justice was to attain a substantial degree of social, economic and political equality which was the legitimate expectation and constitutional goal. It was held that social justice was a dynamic device to mitigate the sufferings of the poor, weak, Dalits, tribals and deprived sections of the society and to elevate them to the level of equality, to live a life with dignity of the person.

The expression 'economic justice' means justice from the standpoint of economic force. In short, it means equal pay for equal work, that every person should get his just dues for his labor irrespective of his caste, sex or social status.

Political justice means the absence of any unreasonable or arbitrary distinction among men in political matters. The constitution has adopted the system of universal adult suffrage, to secure political justice.

The expression 'justice' is the harmonious reconcilement of individual conduct with the general welfare of society. An act or conduct of a person is said to be just if it promotes the general well-being of the community. Therefore, the attainment of the common good as distinguished from the good of individuals is the essence of justice. Justice is considered to be the primary goal of a welfare state and its very existence rests on the parameters of justice.

Liberty

The preamble of the constitution of India professes to secure the liberty of belief, thought, expression, faith, and worship which are essential to the development of the individuals and the nation. Liberty or freedom signifies the absence of external impediments of motion. It implies the absence of restraint. Liberty is the power of doing what is allowed by law.

Aristotle stated that in democracy, liberty is supposed, for it is commonly held that no man is free in any other government. Liberty is a concept of multiple strands. No universally accepted definition of liberty exists, although statesmen and judges, among others, have attempted to give an all-comprising definition of the same. Liberty in the preamble of the constitution of India does not mean mere absence of restraint of domination. It is a positive concept of the 'right to liberty of thought, expression, belief, faith, and worship'.

Acharya J.B Kriplani observed that 'liberty of thought, expression, belief, faith and worship' all these freedoms can be only be guaranteed on the basis of non-violence. Democracy is closely connected with the concept of liberty. Therefore, certain minimal rights are to be enjoyed by every person in a community for free and civilized existence in civil society. In an ordered society, the liberty of no individual can be absolute or unfettered.

It must be subject to social control, in order to protect the collective interests of the aggregate of the individuals who constitute that society. For example, for prevention and investigation of crimes and the prosecution of criminals. In order, to sustain democracy, liberty is not to degenerate into license. This has been highlighted by Justice Ramaswamy in his dissenting opinion in Kartar Singh's Case.

Liberty is the most cherished possession of a man. Liberty is the right of doing an act which the law permits. Constitution has recognized the existence of rights in every man. "Liberty is confined and controlled by law, whether common law or statute. It is regulated freedom. It is not abstract or absolute freedom. The safeguards of liberty lie in the good sense of the people and in the system of representative and responsible government, which has been evolved. Liberty is itself the gift of law and may be the law forfeited abridged".

It was held in ***Meyer v. Nebraska***, "Liberty denotes not merely freedom from bodily restraint but also the right of the individual to contract, engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

According to John Salmond, "the sphere of my legal liberty is that sphere of activity within which the law is contend to leave me alone". The constitutional law of the country has fully guaranteed liberty through its mechanisms, judiciary and established rules of justiciability.

Equality

Guaranteeing of certain rights to each individual is meaningless unless all equality is banished from the social structure, and each individual is assured of equal status and opportunity for the development of what is best in him. Rights carry no meaning if they cannot be enjoyed equally by all members of the community. One of the main tasks of the constitution makers was to ensure equality of status and opportunity for all and to provide the basis for ultimately establishing an egalitarian society. They proceeded to achieve these objectives by incorporating a set of fundamental principles into the Constitution.

D.D. Basu has observed that it is the same equality of status and opportunity that the constitution of India professes to offer to the citizens by the preamble. Equality of status and opportunity is secured to the people of India by abolishing all distinctions and discriminations by the state between citizen and citizen on the ground of religion, race, caste sex and by throwing open 'public places', by abolishing untouchability and titles, by securing equality for opportunity in the matters relating to employment or matters relating to employment or appointment to any office under the state.

It is exactly this equality of status and opportunity that our constitution professes to offer to the citizens by the preamble. The principle of equality of law means not the same law should apply to everyone, but that a law should deal alike with all in one class; that these should be equality of treatment under equal circumstances. It means "that should not be treated unlike and unlikes should not be treated alike. Likes should be treated alike." Equality is one of the magnificent cornerstones of Indian democracy. An equality status permeates the basic structure of the constitution.

Fraternity

Fraternity means the spirit of brotherhood, a feeling that all people are children of the same soil, the same motherland. The term was added to the preamble by a drafting committee of the constituent assembly, "*as the committee felt the need for fraternal concord and the goodwill in India was never greater than by then in this particular aim of the new Constitution should be emphasized by special mention in the preamble*".

The drafting committee has taken notice of the diversities of India based on race, religions, languages and cultures. The fraternity is the cementing factor of the inherent diversities. Fraternity means brotherhood, the promotion of which is absolutely essential for a country which is composed of many race and religions.

Brotherhood is a particular kind of relationship which links all human beings, irrespective of gender and generation. A democratic system will function in a healthy manner only if there is a spirit of brotherhood, oneness among the people of the land. The fraternity is not possible unless the dignity of each individual is preserved and mutually respected. The longing for forming company paves the way for fraternity. Peaceful co-existence, live and let live others, mutual understanding, feeling for inter-se cooperation, attitude of adjustment, sacrifice, to be useful to others, enjoyment of common weal, solidarity for defence of all and other good human qualities develop fraternity- are the promotion for the concept of fraternity.

The expression 'to promote among them all' preceding the word 'fraternity' is significant in this respect. 'Among them, all' promotes, more particularly the word 'all'-not only among underprivileged classes but also among the entire people of India. 'Do hereby adopt, enact' etc. has been borrowed from the last line the preamble of the Irish constitution. In the words of the Supreme Court- fraternity means a sense of common brotherhood of all Indians. In a country like ours with so many disruptive forces of regionalism, communalism, and linguist, it is necessary to emphasize and re-emphasize that the unity and integrity of India can be preserved only by a spirit of brotherhood. India has one citizenship and every citizen should feel that he is Indian first irrespective of other bases.

The dignity of the Individual

Dignity of the individuals is to be maintained for the promotion of fraternity. Therefore, the preamble of the constitution of India assures the dignity of each and every individual. This dignity is assured by securing to each individual equal fundamental rights and at the same time, by laying down a number of directives for the state to direct its policies towards, inter alia, securing to all citizens, men and women equally, the right to an adequate means of livelihood, just and humane conditions of work, a decent standard of life.

The constitution of India seeks to achieve 'dignity of individual' by guaranteeing equal fundamental rights to each individual, so that he can enforce minimal rights, if invaded by anybody in the court of law. The dignity of individual in a nation is the dignity of the nation itself. The preamble of constitution of India recognizes and ensures enforcement of Fundamental Right necessary for existence, the full development of personality, dignified lives such as equality and freedom of the Indians. It is to be noted that our Supreme Court has read the preamble with article 21 to come to the conclusion that the right to dignity is a fundamental right.

THE PREAMBLE TO THE CONSTITUTION: A COMPARATIVE STUDY

Preamble is an introductory part of the Constitution. Every constitution has its own preamble. There is a comparative study of the preamble of the USA and Canada as below:

The Preamble of the Constitution of USA

The Preamble of the constitution of the USA declares,

"We the people of United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessing of liberty to ourselves, and our posterity, do ordain and establish this Constitution for the United States of America".

The preamble of the constitution of the USA, in a precise form, contains a "declaration" and a descriptive objective. The declaration is to the effect that the people of the United States "ordain and establish" the constitution for the United States of America.

On the other hand, the preamble of the constitution of India serves two purposes:

- It indicates the source from which the constitution derives its authority, and
- It also states the objects which the constitution seeks to establish and promote.

The Constitution of India, like that of the United State of America, strikes one as a monumental piece prepared by men of great eminence and patriotism. Undoubtedly there is a difference between the constitution of U.S.A and India in phraseology and emphasis – more than a century and a half has passed between the adoptions of two Constitutions, many world events of far-reaching social and economic consequence had taken in the meantime and people's ideas had passed through radical transformations.

The constitution of U.S.A is the supreme law of the land. It guarantees the fundamental right of person, property, and liberty. It is however, noteworthy that these rights were incorporated in the constitution by a number of amendments effected after the constitution was promulgated. They were not enumerated in the original draft of the constitution. But by subsequent amendment individual liberty has been effectively safeguarded. Only 133 years later with the 19th amendment, women acquired the right to vote. The rights of the citizen are made enforceable by recourse to judiciary.

These rights cannot be modified or suspended except by a constitutional amendment. The constitution of the U.S.A is based on popular sovereignty in the U.S.A is attributed to the people. Unlike the United Kingdom where the hereditary monarchy is the head of the state, the United States of America is a republic with the president as the elected head of the state. The constitution has derived its authority from the people.

Thus the constitution of the U.S.A is a unique constitution presenting a constitutional model entirely different from the U.K. Its stability and strength is the envy of the different constitution of the world. Some of the developing democracies like Sri Lanka and Pakistan have opted for it. The constitution has aura of the sacred about it. It occupies a shrine up in the higher stretches of American reverence.

The Preamble of the Constitution of Canada

The constitution of Canada consists of many laws as well as political convention and judicial practices. The preamble state that the province of Canada nova Scotia and new Brunswick have expressed their desire to be federally united into one domain under the crown with the constitution similar in the Principle to that of the united kingdom. The preamble of the constitution has cited the fourfold objective:

- To fulfill the desire of the constituent units of Canada to form into a union under the crown.
- That such a union would be conducive to the welfare of the provinces and promote the interest of the British Empire.
- That a legislative authority and an executive government be provided for.
- To enable the eventual admission into the union of other parts of British North America.

Compared to the Canadian Preamble, the Indian Preamble lays down that the main objective of state is:

- To establish democratic, republic, sovereign, socialist and secular state
- To achieve Justice- social, economic and political;
- Liberty of thoughts, expression, belief, faith and worship;
- Equality of status and opportunity; and
- Fraternity assuring the dignity of the individual and the unity and integrity of the nation.

As Indian Preamble lays down the basic structure of Indian Constitution which is not as such depicted in the Preamble of Canada and USA, so it can be concluded that Indian Preamble is more structured than Preamble of USA and Canada.

INTERPRETATION VALUE OF THE PREAMBLE

The Preamble of Indian Constitution reflects the basic structure and the spirit of the Constitution. It is regarded that the preamble serves as a channelizing tool for the interpretation of the constitution as a whole. The preamble acts as the preface of the constitution of India and lays down the philosophical ideas. It represents the entire constitution in its written words.

The Preamble declares four aims in the governance of India-

1. Justice- social, economic and political;
2. Liberty of thoughts, expression, belief, faith, and worship;
3. Equality of status and opportunity;
4. And Fraternity assuring the dignity of the individual and the unity and integrity of the nation.

PREAMBLE AS PROJECTOR OF 'DESIRED ESTABLISHED STATE'

The Preamble proclaims the solemn resolution of the people of India to constitute India into a 'Sovereign socialist secular democratic republic'. The Preamble was adopted with the constitution in the constituent assembly. It came into effect in 1950 along with the constitution. The original draft of the constitution opened with the words 'Sovereign Democratic Republic' in the first line.

The words 'Socialist and Secular' were inserted by the 42nd amendment in 1976. The same amendment contributed to the changes of the words unity of the nation into unity and integrity of the nation. The significance of the preamble of the Indian Constitution lies in the 'We the People'. These words emphasize that ultimately the powers are vested in the hands of the people of India.

According to the preamble of the constitution of India, the word Sovereign occupies a vital role in the country. It means supreme or independent and embodies India is internally and externally sovereign and is free from the control of any foreign power. The word Socialist also has enormous significance as it implies economic and social equality. The word was added by the 42nd Amendment Act 1976 during the emergency.

The Preamble also guarantees secularism. The word Secularism was also inserted into the preamble by the 42nd Amendment Act 1976. Secularism implies equality of all religions and religious tolerance and does not identify any state religion. The preamble of the Indian Constitution also puts forth the words Democratic and Republic. India follows a Democratic form of government.

The people of India elect their government at all levels such as Union, State and local by a system of universal adult franchise. India is also a Republic, in a country where the head of the state is elected directly or indirectly, for a fixed tenure. The president of India is the titular head of the state. Thus, the preamble plays a pivotal role.

PREAMBLE AS INTERPRETER OF LEGISLATION AND STATUTES

The Constitution of India starts with a preamble which contains the spirit of the constitution. Every legislation framed is in conformity with the spirit of the preamble and thus the constitutionality and objects of the statutes are tested. It contains the recitals showing the reason for the enactment of any legislation and prevents the legislation to fall in the arms of ambiguity.

In Kashi Prasad v. State of U.P the court held that even though the preamble cannot be used to defeat the provisions of the legislation itself, but it can be used as a vital source in making the interpretation of the legislation.

As a provider of Authority to the Indian Constitution:

The preamble to the constitution of India begins with 'We the People of India', thus conferring that the authority of the constitution lies in the people of India, who have themselves led to the enactment of the Constitution for their own governance. The provision of the constitution of India cannot be overridden by the Preamble.

In Re Berubari, the Supreme Court held that the Preamble was not a part of the constitution and therefore it could not be regarded as a source of any substantive power. In Keshavananda Bharati's case, the Supreme Court rejected the above view and held the preamble to be a part of the constitution. The constitution must be read in light of the preamble. The preamble could be used for the amendment power of the parliament under Article 368 but basic elements cannot be amended. The 42nd Amendment has inserted the words "Secularism, Socialism, and Integrity" in the preamble.

GENERAL RULES OF INTERPRETATION OF THE CONSTITUTION

- If the words are clear and unambiguous, they must be given the full effect.
- The constitution must be read as a whole.
- Principles of Harmonious construction must be applied.
- The constitution must be interpreted in a broad and liberal sense.
- The court has to infer the spirit of the constitution from the language.
- Internal and External aids may be used while interpreting.
- The Constitution prevails over other statutes.

To conclude, it will not be wrong to say that the spirit or the ideology behind the Constitution is sufficiently crystallized in the preamble.

UNIT-IV

[UNION AND ITS TERRITORY]

NAME OF THE UNION

Articles 1 to 4 under Part-I of the Constitution deal with the Union and its territory.

The Name and territory of the Union is incorporated in **Article 1** of the Indian constitution it reads as:

> **1. (1) India, that is Bharat, shall be a Union of States.**
> **(2) The States and the territories thereof shall be as specified in the First Schedule.**
> **(3) The territory of India shall comprise—**
>
> **(a) The territories of the States;**
> **(b) The Union territories specified in the First Schedule; and**
> **(c) Such other territories as may be acquired.**

Article 1 describes India, that is, Bharat as a 'Union of States' rather than a 'Federation of States'. This provision deals with two things: one, name of the country, and two, type of polity.

INDIA OR BHARAT?

There was no unanimity in the Constituent Assembly with regard to the name of the country. Some members suggested the traditional name (Bharat) while others advocated the modern name (India). Hence, the Constituent Assembly had to adopt a mix of both ('India, that is, Bharat')

Under Article 1, the country is described as **'Union'** although its Constitution is federal in structure. According to **Dr B R Ambedkar**, the phrase **'Union of States'** has been preferred to **'Federation of States'** for two reasons:

1) **The Indian Federation is not the result of an agreement among the states like the American Federation**;
2) **The states have no right to secede from the federation.**

The Indian Federation is an indestructible Union of destructible Units

The federation is a Union because it is indestructible. Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute.

TERRITORY OF THE UNION

According to Article 1, the territory of India can be classified into three categories:

1) **Territories of the states**
2) **Union territories**
3) **Territories that may be acquired by the Government of India at any time.**

The phrases' Union of India' and 'Territory of India' need to be distinguished. The Union of India includes only the States which enjoy the Status of being members of the federal system and share a distribution of powers with the Union. The Union Territories are not included in the "Union of States" whereas the expression "Territory of India" includes not only the States, but also the Union Territories and such other territories as may be acquired by India. The States and the Territories, thereof, are specified in the First Schedule of the Constitution.

The names of states and union territories and their territorial extent are mentioned in the first schedule of the Constitution. At present, there are 29 states and 7 union territories. The provisions of the Constitution pertaining to the states are applicable to all the states (except Jammu and Kashmir) in the same manner.

However, the special provisions (under Part XXI) applicable to the States of Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Telangana, Sikkim, Mizoram, Arunachal Pradesh, Goa and Karnataka override the general provisions relating to the states as a class. Further, the Fifth and Sixth Schedules contain separate provisions with respect to the administration of scheduled areas and tribal areas within the states. Being a sovereign state, **India can acquire foreign territories according to the modes recognised by international law**

- Cession (following treaty, purchase, gift, lease or plebiscite)
- Occupation (hitherto unoccupied by a recognised ruler)
- Conquest or subjugation.

ADMISSION OR ESTABLISHMENT OF NEW STATES

Article 2 of the Indian constitution deals with the admission or establishment of new states, it reads as:

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

2A. [Sikkim to be associated with the Union] Rep. by the Constitution (Thirty-sixth Amendment) Act, 1975, s. 5 (w.e.f. 26-4-1975)

Under Article 2, the Constitution vests power with Parliament for the admission or establishment of new States. By using this power Parliament has admitted, for example, the French settlements of Pondicherry, Karaikal, Mahe and Yanam, the Portuguese settlements of Goa, and Daman and Sikkim, etc, into India. Article 2 relates to admission or establishment of new states that were/are not part of the India. On the other hand, Article 3 deals with establishment or creation of new states after reorganization of existing states which are already parts of India.

Thus, Article 2 grants two powers to the Parliament: (a) the power to admit into the Union of India new states; and (b) the power to establish new states. The first refers to the admission of states which are already in existence while the second refers to the establishment of states which were not in existence before.

SIKKIM –A PECULIAR CASE OF INTEGRATION

The term 'Sikkim' literally means new palace in the Limbu language. Historically, Sikkim was a small Buddhist kingdom with close religious and cultural ties to the Tibet. Since 17th century, it was ruled by its hereditary monarch called Chogyal. From 1886 onwards, it remained a British Protectorate subject to British Paramountcy, thus its position was like other princely states of India.

In 1947, when India became independent, a popular vote in Sikkim rejected joining Indian Union. However, those were the days to rise of communists in China. When China's People's Liberation Army marched into Tibet in 1950, India vociferously protested against this invasion but was unable to do anything substantial. As China neared its victory in Tibet, Nehru rushed through a series of defense treaties with Bhutan (August, 1949), Nepal (July, 1950) and Sikkim (Dec ember, 1950). These countries constituted Nehru's definition of a redrawn security zone. Throughout 1950s, Nehru tried to demonstrate his serious commitment towards this Himalayan doctrine. In February 1951, Nehru established the North and North-Eastern Defence Committee and visited the North-East Frontier Agency (NEFA), Sikkim and Bhutan. In summary, Nehru offered support to Nepal, Bhutan and Sikkim in case of Chinese invasion. The treaty signed between India and Sikkim made the kingdom to hand over all of Sikkim's external relations to India, allowed the stationing of Indian troops and prohibited the kingdom from "dealings with any foreign power".

Thus, this treaty gave Sikkim status of a protectorate with Chogyal as the Monarch. Chogyal Tashi Namgyal died in 1963 and was succeeded by his son Palden Thondup Namgyal. However, there was a growing dichotomy among the people and Namgyals. Namgyals wanted full sovereignty but majority of the people of the state including some local political fronts wanted removal of monarchy and a democratic set up along with accession to Union of India. This finally culminated in wide spread agitation against Sikkim Durbar in 1973. These agitations led to a complete collapse of administration.

On 8 May 1973, a historic agreement was signed between the Chogyal, the Government of India and the political leaders of Sikkim, which acknowledged the important role of the people in the affairs of Sikkim. In 1974, the Sikkim Assembly passed a Government of Sikkim Act, 1974, which paved the way for setting up the first ever responsible government in Sikkim and sought Sikkim's representation in the political institutions of India. India also passed the 35th Amendment Act 1974 which inserted a new article 2A {Sikkim to be associated with Union} and a 10th schedule.

But making Sikkim an associate state of the Union would have set wrong precedence in longer term. Additional anomaly was exclusion of Sikkim MPs from voting in election of President and Vice-President. In 1975, the Kazi Lhendup Dorjee (Prime Minister in Sikkim) appealed to the Indian Parliament for a change in Sikkim's status so that it could become a state of India. In April that year, the Indian Army took over the city of Gangtok and disarmed the Palace Guards. Then came a referendum in 1975 which approved {by around 97% votes} abolition of monarchy and complete merger of Sikkim with India. This referendum has been a subject of debates, criticism and conspiracy theories in western, Chinese and communist media, which called it an illegal annexation.

The referendum was followed by yet another amendment of Indian Constitution as Thirty-sixth Amendment Act, 1975. The Article 2-A and Xth schedule were repealed and name of Sikkim was added as a state under first Schedule of the Constitution. With this, Sikkim emerged as India's 22nd state on 26th April, 1975. The Sikkim State day is observed on 16th May of every year because this was the day when the first Chief Minister of Sikkim assumed office.

TENTH SCHEDULE OF INDIAN CONSTITUTION-PRESENT STATUS

10th Schedule was omitted in 36th amendment; it was later reinserted by **52nd Amendment Bill**, 1985 as **Anti Defection Law**. Special Provisions for Sikkim enjoys Constitutional safeguards under **Article 371(F)**. Safeguards are mentioned under **part XXI-**Temporary, transitional and special provisions of the Indian constitution.

China's stand on Sikkim's merger

For decades after 1975, China refused to accept Sikkim as an integral part of India, insisting that the referendum conducted was a farce and merger was actually a forcible annexation by India. It continued to release maps showing Sikkim as an Independent State.

However, for the first time in 2003, China removed Sikkim from its website of Independent Asian countries. China was the only country at that point of time that did not recognize Sikkim as an Indian State. Earlier, China was saying that it would recognize Sikkim as a part of India in exchange for full Indian recognition of Tibet as a part of China.

India and China had signed a memorandum of understanding to start border trade through Nathu La Pass in Sikkim and Tibet. India had interpreted Nathu La's acceptance as the Indian trade point by China as its approval of recognizing Sikkim as an integral part of India. In the 2005 joint statement issued during the visit of Chinese Premier Wen Jiabao to India, it was stated that Sikkim "is no longer an issue in India-China relations".

FORMATION OF NEW STATES AND ALTERATION OF NAMES, AREAS ETC

Article 3 of the Indian constitution deals with the Formation of new states and alteration of areas, boundaries or names of existing states, it reads as:

3. Parliament may by law—

(a) Form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
(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:

[**Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States , the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired**.]

Under Article 3, the Constitution empowers Parliament to form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State. The Constitution further states that Parliament has the power to increase or diminish the area of any State or to alter the boundaries or names of any State. However, Parliament has to follow certain procedures in this regard. A Bill giving effect to any or all the changes stated above can be introduced in either House of the Parliament, only on the recommendation of the President. If such a bill affects the area, boundary or name of a State, then the President, before introducing it in the Parliament, shall refer the Bill to the State Legislature concerned for its opinion, fixing a time limit within which an opinion may be expressed by the State Legislature. The President may extend the time limit so specified. If the State Legislature fails to express an opinion within the stipulated time limit then it is deemed that it has expressed its views. If it submits its views within the period so specified or extended, Parliament is not bound to accept or act upon the views of the State Legislature, Further, it is not necessary to make fresh reference to the State Legislature every time an amendment to the Bill is proposed and accepted. The Bill is passed with simple majority.

However, in the case of Union Territories, it is not necessary to obtain the views of Legislatures of Union Territories before a Bill affecting their boundaries or names is introduced. For example, such Bill in respect of Mizoram, Arunachal Pradesh and Goa, Diu and Daman were introduced in Parliament without obtaining such views. Article 3, thus demonstrates the vulnerability and dependence of the States' territorial integrity on the Union whereas in federations like the USA or Australia, the boundaries or name of States cannot be altered by the federation without the consent of the States.

LAWS MADE UNDER ARTICLE 2 AND 3

Article 4 refers to the laws made under articles 2 and 3 that provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters. It reads as:

> **4. (1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.**
>
> **(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.**

Article 4 allows for consequential changes in the First Schedule (names of the States in the Union of India) and Fourth Schedule (number of seats each State is allotted in the Rajya Sabha). It also says that says that no law altering existing States or creating a new State will be considered a constitutional amendment. It is in line with the earlier provisions of requirement of only simple majority in the Parliament and suggests the complete control of Union over territories of individual States of the Union.

CESSION OF INDIAN TERRITORY TO OTHER COUNTRY

Does the power of Parliament to diminish the areas of a state (under Article 3) include also the power to cede Indian territory to a foreign country? This question came up for examination before the Supreme Court in a reference made by the President in 1960. The decision of the Central government to cede part of a territory known as Berubari Union (West Bengal) to Pakistan led to political agitation and controversy and thereby necessitated the Presidential reference.

The Supreme Court held that the power of Parliament to diminish the area of a state (under Article 3) does not cover cession of Indian territory to a foreign country. Hence, Indian territory can be ceded to a foreign state only by amending the Constitution under Article 368. Consequently, the 9th Constitutional Amendment Act (1960) was enacted to transfer the said territory to Pakistan. On the other hand, the Supreme Court in 1969 ruled that, settlement of a boundary dispute between India and another country does not require a constitutional amendment. It can be done by executive action as it does not involve cession of Indian territory to a foreign country.

The 100th Constitutional Amendment Act (2015) was enacted to give effect to the acquiring of certain territories by India and transfer of certain other territories to Bangladesh in pursuance of the agreement and its protocol entered into between the Governments of India and Bangladesh. Under this deal, India transferred III enclaves to Bangladesh, while Bangladesh transferred 51 enclaves to India. In addition, the deal also involved the transfer of adverse possessions and the demarcation of a 6.1-km undemarcated border stretch. For these three purposes, the amendment modified the provisions relating to the territories of four states (Assam, West Bengal, Meghalaya and Tripura) in the First Schedule of the Constitution.

INTEGRATION OF PRINCELY STATES

At the time of independence, India comprised two categories of political units, namely, the British provinces (under the direct rule of British government) and the princely states (under the rule of native princes but subject to the paramountcy of the British Crown). The Indian Independence Act (1947) created two independent and separate dominions of India and Pakistan and gave three options to the princely states viz., joining India, joining Pakistan or remaining independent. Of the 552 princely states situated within the geographical boundaries of India, 549 joined India and the remaining 3 (Hyderabad, Junagarh and Kashmir) refused to join India. However, in course of time, they were also integrated with India—Hyderabad by means of police action, Junagarh by means of referendum and Kashmir by the Instrument of Accession. In 1950, the Constitution contained a four-fold classification of the states of the Indian Union—Part A, Part B, Part C and Part D State. In all, they numbered 29. Part-A states comprised nine erstwhile governor's provinces of British India. Part-B states consisted of nine erstwhile princely states with legislatures. Part-C states consisted of erstwhile chief commissioner's provinces of British India and some of the erstwhile princely states. These Part-C states (in all 10 in number) were centrally administered. The Andaman and Nicobar Islands were kept as the solitary Part-D state.

STATES IN PART –A	STATES IN PART –B	STATES IN PART –C	STATES IN PART –D
ASSAM	HYDERABAD	AJMER	ANDAMAN AND NICOBAR ISLANDS
BIHAR	JAMMU & KASHMIR	BHOPAL	
BOMBAY	MADHYA BHARAT	BILASPUR	
MADHYA PRADESH	MYSORE	COOCH-BEHAR	
MADRAS	PATIALA AND EAST PUNJAB	COORG	
ORISSA	RAJASTHAN	DELHI	
PUNJAB	SAURASHTRA	HIMACHAL PRADESH	
UNITED PROVINCES	TRAVANCORE-CO-CHIN	KUTCH	
WEST BENGAL	VINDHYA PRADESH	MANIPUR	
		TRIPURA	

DHAR COMMISSION

The integration of princely states with the rest of India has purely an ad hoc arrangement. There has been a demand from different regions, particularly South India, for reorganisation of states on linguistic basis. Accordingly, in June 1948, the Government of India appointed the Linguistic Provinces Commission under the chairmanship of S K Dhar to examine the feasibility of this. The commission submitted its report in December 1948 and recommended the reorganisation of states on the basis of administrative convenience rather than linguistic factor.

JVP COMMITTEE

The report of the Dhar Commission created much resentment and led to the appointment of another Linguistic Provinces Committee by the Congress in December 1948 itself to examine the whole question afresh. It consisted of Jawaharlal Nehru, Vallabhbhai Patel and Pattabhi Sitaramayya and hence, was popularly known as JVP Committee. It submitted its report in April 1949 and formally rejected language as the basis for reorganisation of states.

However, in October 1953, the Government of India was forced to create the first linguistic state, known as Andhra state, by separating the Telugu speaking areas from the Madras state. This followed a prolonged popular agitation and the death of Potti Sriramulu, after a 56-day hunger strike for the cause.

STATES REORGANISATION COMMISSION

The creation of Andhra state intensified the demand from other regions for creation of states on linguistic basis. This forced the Government of India to appoint (in December 1953) a three-member **States Reorganisation Commission under the chairmanship of Fazl Ali to re-examine the whole question. Its other two members were K M Panikkar and H N Kunzru.** It submitted its report in September 1955 and broadly accepted language as the basis of reorganisation of states. But, it rejected the theory of 'one language–one state'. Its view was that the unity of India should be regarded as the primary consideration in any redrawing of the country's political units. It identified four major factors that can be taken into account in any scheme of reorganisation of states:

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.

The commission suggested the abolition of the four-fold classification of states under the original Constitution and creation of 16 states and 3 centrally administered territories. The Government of India accepted these recommendations with certain minor modifications.

STATE REORGANISATION ACT, 1956

The States Reorganisation Act, 1956 was a major reform of the boundaries of India's states and territories, organising them along linguistic lines. The States Reorganisation Act was enacted on 31 August 1956. Before it came into effect on 1 November, an important amendment was made to the Constitution of India. Under the Seventh Amendment, the existing distinction among Part A, Part B, Part C, and Part D states was abolished. The distinction between Part A and Part B states was removed, becoming known simply as "states". A new type of entity, the Union Territory, replaced the classification as a Part C or Part D state.

The States Reorganisation Act of 1956 established the new state of Kerala by merging the Travancore – Cochin State with the Malabar District of Madras state and Kasargode of South Canara (Dakshina Kannada). It merged the Telugu-speaking areas of Hyderabad state with the Andhra state to create the Andhra Pradesh state. Further, it merged the Madhya Bharat state, Vindya Pradesh state and Bhopal state into the Madhya Pradesh state. Similarly, it merged the Saurashtra state and Kutch state into that of the Bombay state, the Coorg state into that of Mysore state; the Patiala and East Punjab States Union (Pepsu) into that of Punjab state; and the Ajmer state into that of Rajastan state. Moreover, it created the new union territory of Laccadive, Minicoy and Amindivi Islands from the territory detached from the Madras state.

NEW STATES AND UNION TERRITORIES CREATED AFTER 1956

Maharashtra and Gujarat -In 1960, the bilingual state of Bombay was divided into two separate states—Maharashtra for Marathi-speaking people and Gujarat for Gujarati-speaking people. Gujarat was established as the 15th state of the Indian Union.

Dadra and Nagar Haveli -The Portuguese ruled this territory until its liberation in 1954. Subsequently, the administration was carried on till 1961 by an administrator chosen by the people themselves. It was converted into a union territory of India by the 10th Constitutional Amendment Act, 1961.

Goa, Daman and Diu -India acquired these three territories from the Portuguese by means of a police action in 1961. They were constituted as a union territory by the 12th Constitutional Amendment Act, 1962. Later, in 1987, Goa was conferred a statehood. Consequently, Daman and Diu was made a separate union territory.

Puducherry -The territory of Puducherry comprises the former French establishments in India known as Puducherry, Karaikal, Mahe and Yanam. The French handed over this territory to India in 1954. Subsequently, it was administered as an 'acquired territory', till 1962 when it was made a union territory by the 14th Constitutional Amendment Act.

Nagaland- In 1963, the State of Nagaland was formed by taking the Naga Hills and Tuensang area out of the state of Assam. This was done to satisfy the movement of the hostile Nagas. However, before giving Nagaland the status of the 16th state of the Indian Union, it was placed under the control of governor of Assam in 1961.

Haryana, Chandigarh and Himachal Pradesh -In 1966, the State of Punjab was bifurcated to create Haryana, the 17th state of the Indian Union, and the union territory of Chandigarh. This followed the demand for a separate 'Sikh Homeland' (Punjabi Subha) raised by the Akali Dal under the leadership of Master Tara Singh. On the recommendation of the Shah Commission (1966), the punjabi-speaking areas were constituted into the unilingual state of Punjab, the Hindi-speaking areas were constituted into the State of Haryana and the hill areas were merged with the adjoining union territory of Himachal Pradesh. In 1971, the union territory of Himachal Pradesh was elevated to the status of a state (18th state of the Indian Union).

Manipur, Tripura and Meghalaya In 1972, the political map of Northeast India underwent a major change. Thus, the two Union Territories of Manipur and Tripura and the Sub-State of Meghalaya got statehood and the two union territories of Mizoram and Arunachal Pradesh (originally known as North-East Frontier Agency—NEFA) came into being. With this, the number of states of the Indian Union increased to 21 (Manipur 19th, Tripura 20th and Meghalaya 21st). Initially, the 22nd Constitutional Amendment Act (1969) created Meghalaya as an 'autonomous state' or 'substate' within the state of Assam with its own legislature and council of ministers. However, this did not satisfy the aspirations of the people of Meghalaya. The union territories of Mizoram and Arunachal Pradesh were also formed out of the territories of Assam.

Sikkim -Till 1947, Sikkim was an Indian princely state ruled by Chogyal. In 1947, after the lapse of British paramountcy, Sikkim became a 'protectorate' of India, whereby the Indian Government assumed responsibility for the defence, external affairs and communications of Sikkim. In 1974, Sikkim expressed its desire for greater association with India. Accordingly, the 35th Constitutional Amendment Act (1974)

was enacted by the parliament. This amendment introduced a new class of statehood under the constitution by conferring on Sikkim the status of an 'associate state' of the Indian Union. For this purpose, a new Article 2A and a new schedule (Tenth Schedule containing the terms and conditions of association) were inserted in the Constitution. This experiment, however, did not last long as it could not fully satisfy the aspirations of the people of Sikkim. In a referendum held in 1975, they voted for the abolition of the institution of Chogyal and Sikkim becoming an integral part of India. Consequently, the 36th Constitutional Amendment Act (1975) was enacted to make Sikkim a full-fledged state of the Indian Union (the 22nd state). This amendment amended the First and the Fourth Schedules to the Constitution and added a new Article 371-F to provide for certain special provisions with respect to the administration of Sikkim. It also repealed Article 2A and the Tenth Schedule that were added by the 35th Amendment Act of 1974.

Mizoram, Arunachal Pradesh and Goa -In 1987, three new States of Mizoram, Arunachal Pradesh and Goa came into being as the 23rd, 24th and 25th states of the Indian Union respectively. The Union Territory of Mizoram was conferred the status of a full state as a sequel to the signing of a memorandum of settlement (Mizoram Peace Accord) in 1986 between the Central government and the Mizo National Front, ending the two-decade-old insurgency. Arunachal Pradesh had also been a union territory from 1972. The State of Goa was created by separating the territory of Goa from the Union Territory of Goa, Daman and Diu.

Chhattisgarh, Uttarakhand and Jharkhand- In 2000, three more new States of Chhattisgarh, Uttarakhand and Jharkhand were created out of the territories of Madhya Pradesh, Uttar Pradesh and Bihar respectively. These became the 26th, 27th and 28th states of the Indian Union respectively.

Telangana -In 2014, the new state of Telangana came into existence as the 29th state of the Indian Union. It was carved out of the territories of Andhra Pradesh. The Andhra state Act of 1953 formed the first linguistic state of India, known as the state of Andhra, by taking out the Telugu speaking areas from the State of Madras (now Tamil Nadu), Kurnool was the capital of Andhra state and the state high court was established at Guntur.

The States Reorganisation Act of 1956 merged the Telugu-speaking areas of Hyderabad state with the Andhra state to create the enlarged Andhra Pradesh state. The capital of the state was shifted to Hyderabad. Again, the Andhra Pradesh Reorganisation Act of 2014 bifurcated the Andhra Pradesh into two separate states, namely, the Andhra Pradesh (residuary) and the Telangana. Hyderabad is made the joint capital for both the states for a period of 10 years. During this period, the Andhra Pradesh should establish its own separate capital. Similarly, the Andhra Pradesh High Court is renamed as the Hyderabad High Court (High Court of Judicature at Hyderabad) and is made common for both the states till a separate High Court is set-up for the State of Andhra Pradesh. Thus, the number of states and union territories increased from 14 and 6 in 1956 to 29 and 7 respectively.

CHANGE OF NAMES

- The **United Provinces** was the first state to have a new name. It was renamed **'Uttar Pradesh'** in 1950.
- In 1969, **Madras** was renamed **'Tamil Nadu'**. Similarly, in 1973, **Mysore** was renamed **'Karnataka'**.
- In the same year, **Laccadive, Minicoy and Amindivi** Islands were renamed **'Lakshadweep'**.
- In 1992, the **Union Territory of Delhi** was redesignated as the **National Capital Territory of Delhi** (without being conferred the status of a full-fledged state) by the 69th Constitutional Amendment Act, 1991.
- In 2006, **Uttaranchal** was renamed as '**Uttarakhand**'. In the same year, **Pondicherry** was renamed as **'Puducherry'**.
- In 2011, **Orissa** was renamed as **'Odisha'**.

UNIT-V
[CITIZENSHIP]

MEANING AND SIGNIFICANCE

The population of a state can be divided into two classes-citizens and aliens. While citizens enjoy full civil and political rights, aliens do not enjoy all of them. Citizens are members of the political community to which they belong. They are the people who compose the state. Citizens are full members of the Indian State and owe allegiance to it. Aliens are of two categories-friendly aliens or enemy aliens. Friendly aliens are the subjects of those countries that have cordial relations with India. Enemy aliens, on the other hand, are the subjects of that country that is at war with India. An enemy alien includes not only subjects of a state at war with India but also Indian citizens who voluntarily reside in or trade with such a state. Enemy aliens enjoy lesser rights than the friendly aliens, eg, they do not enjoy protection against arrest and detention (Article 22).

The constitution of India confers certain rights and privileges upon citizens while they are denied to 'aliens'. In fact the aliens are often placed under certain disabilities.

- Some of the fundamental rights belong to citizens alone such as –Arts. 15, 16, 19, 29 and 30
- Only citizens are eligible for certain offices such as those of the- President [Art. 58(1) (a)]; Vice-President [Art. 66(3) (a)]; Judge of the Supreme Court [Art. 124(3)] or of a High Court [Art. 217(2)]; Attorney-General [Art. 76(2)]; Governor of a State [Art. 157]; Advocate-General [Art. 165]
- The right of suffrage for election to the House of the People (of the Union) and the Legislative Assembly of every state [Art. 326] and the right to become a Member of Parliament [Art. 84] and of the legislature of a state [Art. 191 (d)] are also confined to citizens.

> Along with the above rights, the citizens also owe certain duties towards the Indian State, as for example, paying taxes, respecting the national flag and national anthem, defending the country and so on. In India both a citizen by birth as well as a naturalised citizen are eligible for the office of President while in USA, only a citizen by birth and not a naturalised citizen is eligible for the office of President.

CONSTITUTIONAL AND STATUTORY BASIS OF CITIZENSHIP IN INDIA

The Constitution did not intend to lay down a permanent or comprehensive law relating to citizenship in India. It simply described the classes of persons who would be deemed to be Indian citizens at the **date of commencement of the constitution** and left the entire law of citizenship to be regulated by some future law made by the Parliament. In exercise of this power, Parliament has enacted the **Citizenship Act, 1955** making elaborate provisions for the acquisition and termination of citizenship subsequent to the commencement of the constitution. Hence **Part II of the constitution (the part dealing with citizenship, it contains articles 5-11)** must be read in conjunction with Citizenship Act to get a complete picture of the law on citizenship in India. **The Citizenship Act, 1955, has been amended a number of times in 1957, 1960, 1985, 1986, 1992, 2003, 2005, 2015 etc**.

According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on 26 January, 1950:

1. A person who had his domicile in India and also fulfilled any one of the three conditions, viz., if he was born in India; or if either of his parents was born in India; or if he has been ordinarily resident in India for

five years immediately before the commencement of the Constitution, became a citizen of India **(Article 5).**

2. A person who migrated to India from Pakistan became an Indian citizen if he or either of his parents or any of his grandparents was born in undivided India and also fulfilled any one of the two conditions viz., in case he migrated to India before July 19, 1948, he had been ordinarily resident in India since the date of his migration; or in case he migrated to India on or after July 19, 1948, he had been registered as a citizen of India. But, a person could be so registered only if he had been resident in India for six months preceding the date of his application for registration **(Article 6).**

3. A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become an Indian citizen. For this, he had to be resident in India for six months preceding the date of his application for registration **(Article 7).**

4. A person who, or any of whose parents or grandparents, was born in undivided India but who is ordinarily residing outside India shall become an Indian citizen if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his residence, whether before or after the commencement of the Constitution. Thus, this provision covers the overseas Indians who may want to acquire Indian citizenship **(Article 8).**

To sum up, these provisions deal with the citizenship of (a) persons domiciled in India; (b) persons migrated from Pakistan; (c) persons migrated to Pakistan but later returned; and (d) persons of Indian origin residing outside India. The other constitutional provisions with respect to the citizenship are as follows:

1. 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 9).**

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

3. 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 **(Article 11).**

Article 11 vests plenary powers on the Parliament to regulate all matters relating to acquisition and termination of citizenship and all other subsidiary matters therein by law.

CITIZENSHIP ACT, 1955

The Citizenship Act (1955) provides for acquisition and loss of citizenship after the commencement of the Constitution. Originally, the Citizenship Act (1955) also provided for the Commonwealth Citizenship. But, this provision was repealed by the Citizenship (Amendment) Act, 2003.

Acquisition of Citizenship

The Citizenship Act of 1955 prescribes **five ways of acquiring citizenship**, viz, **birth, descent, registration, naturalisation** and **incorporation of territory**:

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

gal migrant at the time of their birth. The children of foreign diplomats posted in India and enemy aliens cannot acquire Indian citizenship by birth.

By Descent- A person born outside India on or after 26th January 1950 but before 10th December 1992 is a citizen of India by descent, if his father was a citizen of India at the time of his birth. A person born outside India on or after 10th December 1992 is considered as a citizen of India if either of his parents is a citizen of India at the time of his birth.

From 3rd December 2004 onwards, a person born outside India shall not be a citizen of India by descent, unless his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period. An application, for registration of the birth of a minor child, to an Indian consulate shall be accompanied by an undertaking in writing from the parents of such minor child that he or she does not hold the passport of another country. Further, a minor who is a citizen of India by virtue of descent and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of his attaining full age.

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

(a) A person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

(b) A person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) A person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) Minor children of persons who are citizens of India;

(e) A person of full age and capacity whose parents are registered as citizens of India;

(f) A person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and is ordinarily resident in India for twelve months immediately before making an application for registration;

(g) A person of full age and capacity who has been registered as an overseas citizen of India cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration.

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

All the above categories of persons must take an oath of allegiance before they are registered as citizens of India. The form of the oath is as follows:

I, A/B…….. do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully observe the laws of India and fulfill my duties as a citizen of India.

By Naturalisation -The Central Government may, on an application, grant a certificate of naturalisation to any person (not being an illegal migrant) if he possesses the following qualifications:

(a) That he is not a subject or citizen of any country where citizens of India are prevented from becoming subjects or citizens of that country by naturalisation;

(b) That, if he is a citizen of any country, he undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted;

(c) That he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;

(d) That during the fourteen years immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven years;

(e) That he is of good character;

(f) That he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution, and

(g) That in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India.

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

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

Loss of Citizenship

The Citizenship Act, 1955, prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the Constitution, viz, **renunciation, termination and deprivation**:

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

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

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

a) The citizen has obtained the citizenship by fraud:

b) The citizen has shown disloyalty to the Constitution of India:

c) The citizen has unlawfully traded or communicated with the enemy during a war;

d) The citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years; and

e) The citizen has been ordinarily resident out of India for seven years continuously.

SINGLE CITIZENSHIP

The Constitution of India has established a single and uniform citizenship for the whole of the country. In a federal State like the United States of America there is dual citizenship.

A citizen in a federal State owes firstly allegiance to the Unit and secondly to the union there are two sets of Government in a federal polity and thus it follow dual citizenship. But in case of India though it is a Federal State there is single citizenship. The Indian Constitution does not recognize State citizenship and as such there is no distinction between the citizens of two or more States.

Further, there is an exception to this rule when applied to Kashmir. No one other than a permanent resident of Kashmir can acquire landed property in Kashmir; but it is a purely temporary provision to be abolished in due course when the parliament deems it fit. Single citizenship is a great step forward in the creation of a united and integrated India. According to **M. V. Pylee**,

"The provision of single citizenship is a great step forward in the creation of an integrated Indian society. As a result, the citizens of India are clothed with common civil and political rights all over the country..... A single citizenship for the entire country removes much of the artificial State barriers that prevailed in pre- independence days and facilitates the freedom of trade, commerce and intercourse throughout the territory of India".

OVERSEAS CITIZENSHIP OF INDIA

In September 2000, the Government of India (Ministry of External Affairs) had set-up a High Level Committee on the Indian Diaspora under the Chairmanship of L.M. Singhvi. The mandate of the Committee was to make a comprehensive study of the global Indian Diaspora and to recommend measures for a constructive relationship with them.

The committee submitted its report in January 2002. It recommended the amendment of the Citizenship Act, 1955, to provide for grant of dual citizenship to the Persons of Indian Origin (PIOs) belonging to certain specified countries. Accordingly, the citizenship (Amendment) Act, 2003, made provision for acquisition of Overseas Citizenship of India (OCI) by the PIOs of 16 specified countries other than Pakistan and Bangladesh. It also omitted all provisions recognizing, or relating to the Commonwealth Citizenship from the Principal Act.

Later, the Citizenship (Amendment) Act, 2005, expanded the scope of grant of OCI for PIOs of all countries except Pakistan and Bangladesh as long as their home countries all dual citizenship under their local laws. It must be noted here that the OCI is not actually a dual citizenships as the Indian Constitution forbids dual citizenship or dual nationality (Article 9).

Again, the Citizenship (Amendment) Act, 2015, has modified the provisions pertaining to the OCI in the Principal Act. It has introduced a new scheme called "Overseas Citizen of India Cardholder" by merging the PIO card scheme and the OCI card scheme.

The PIO card scheme was introduced on 19-08-2002 and thereafter the OCI card scheme was introduced w.e.f. 01-12-2005. Both the schemes were running in parallel even though the OCI card scheme had become more popular. This was causing unnecessary confusion in the minds of applicants. Keeping in view some problems being faced by applicants and to provide enhanced facilities to them, the Government of India decided to formulate one single scheme after merging the PIO and schemes, OCI containing positive attributes of both. Hence, for achieving this objective, the Citizenship (Amendment) Act, 2015, was enacted. The PIO scheme was rescinded w.e.f. 09-01-2015 and it was also notified that all existing PIO cardholders shall be deemed to be OCI cardholders w.e.f. 09-01-2015.

The Citizenship (Amendment) Act, 2015, replaced the nomenclature of "Overseas Citizen of India" with that of "Overseas Citizen of India Cardholder" and made the following provisions in the Principal Act:

I. Registration of Overseas Citizen of India Cardholder

(1) The Central Government may, on an application made in this behalf, register as an Overseas Citizen of India Cardholder—

(a) Any person of full age and capacity,—

(i) Who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or

(ii) Who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) Who is a citizen of another country, but belonged to a territory that became part of India after the 15th August, 1947; or

(iv) Who is a child or a grandchild or a great grandchild of such a citizen; or

(b) A person, who is a minor child of a person mentioned in clause (a); or

(c) A person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or

(d) Spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application.

No person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder.

(2) The Central Government may specify the date from which the existing persons of Indian Origin Card-holders shall be deemed to be Overseas Citizens of India Cardholders.

(3) Notwithstanding anything contained in point (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an Overseas Citizen of India Cardholder.

II. Conferment of Rights on Overseas Citizen of India Cardholder

(1) An Overseas Citizen of India Cardholder shall be entitled to such rights, as the Central Government may specify in this behalf.

(2) An Overseas Citizen of India Cardholder shall not be entitled to the following rights (which are conferred on a citizen of India)—

(a) He shall not be entitled to the right to equality of opportunity in matters of public employment.

(b) He shall not be eligible for election as President.

(c) He shall not be eligible for election as Vice-President.

(d) He shall not be eligible for appointment as a Judge of the Supreme Court.

(e) He shall not be eligible for appointment as a Judge of the High Court.

(f) He shall not be entitled for registration as a voter.

(g) He shall not be eligible for being a member of the House of the People or of the Council of States.

(h) He shall not be eligible for being a member of the State Legislative Assembly or the States Legislative Council.

(i) He shall not be eligible for appointment to public services and posts in connection with affairs of the Union or of any State except for appointment in such services and posts as the Central Government may specify.

III. Renunciation of Overseas Citizen of India Card

(1) If any Overseas Citizen of India Cardholder makes in prescribed manner a declaration renouncing the Card registering him as an Overseas Citizen of India Cardholder, the declaration shall be registered by the Central Government, and upon such registration, that person shall cease to be an Overseas Citizen of India Cardholder.

(2) Where a person ceases to be an Overseas Citizen of India Cardholder, the spouse of foreign origin of that person, who has obtained Overseas Citizen of India Card, and every minor child of that person registered as an Overseas Citizen of India Cardholder shall thereupon cease to be an Overseas Citizen of India Cardholder.

IV. Cancellation of Registration as Overseas Citizen of India Cardholder

The Central Government may cancel the registration of a person as an Overseas Citizen of India Cardholder, if it is satisfied that—

(a) the registration as an Overseas Citizen of India Cardholder was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) The Overseas Citizen of India Cardholder has shown disaffection towards the Constitution of India; or

(c) the Overseas Citizen of India Cardholder has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy; or

(d) the Overseas Citizen of India Cardholder has, within five years after registration, been sentenced to imprisonment for a term of not less than two years; or

(e) it is necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public; or

(f) The marriage of an Overseas Citizen of India Cardholder—

(i) Has been dissolved by a competent court of law or otherwise; or

(ii) Has not been dissolved but, during the subsistence of such marriage, he has solemnised marriage with any other person.

THE ASSAM ACCORD

History of the Accord

Influx of immigrants was a major concern for inhabitants of Assam. The state saw two major episodes of large-scale migrant influx around Partition and in run-up to Bangladesh war in 1971. Flow of illegal immigrants continued across porus borders and the issue took centre-stage when the voters' list in a 1978 by-poll to Mangaldoi Lok Sabha seat saw a surge. A student group called the All Assam Students Union (AASU), called for putting off the election till 'names of foreigners' were struck off the electoral rolls.

In 1979, **AASU and the All Asom Gana Sangram Parishad (AAGSP)** began a series of protests across the state. State educational institutes remained shut for long. Periodic strikes at times turned violent. According to official records, 860 people were killed in the agitation. This was the start of a six-year agitation that culminated in the Assam Accord.

In 1985, the Assam Accord was signed between the Centre, the Assam government, Aasu and AAGSP to end the agitation over the foreigners' issue. Under the Accord and subsequent amendment of the Citizenship Act, foreigners were to be divided into the following categories:

a) Those who came to Assam before 1.1.1966;

b) Those who came between 1.1.1966 and 24.3.1971;

c) Those who came to Assam on or after 25.3.1971.

Other Clauses of the accord included

- Restricting acquisition of immovable property by foreigners
- Registration of births and deaths
- Prevention of encroachment of government lands
- Promoting cultural, social, linguistic identity and heritage of Assamese
- Economic development, stress on education, science and technology
- Citizenship certificates to be issued only by central authorities
- Border security to be ensured

The Citizenship (Amendment) Act, 1985, added the following special provisions as to citizenship of persons covered by the Assam Accord (which related to the foreigners' issue):

(a) All persons of Indian origin who came to Assam before the 1st January, 1966 from Bangladesh and who have been ordinarily residents in Assam since the date of their entry into Assam shall be deemed to be citizens of India as from the 1st January, 1966.

(b) Every person of Indian origin who came to Assam on or after the 1st January, 1966 but before the 25th March, 1971 from Bangladesh and who has been ordinarily resident in Assam since the date of his entry into Assam and who has been detected to be a foreigner shall register himself. Such a registered person shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date of detection as a foreigner. But, in the intervening period of ten years, he shall have the same rights and obligations as a citizen of India, excepting the right to vote.

NATIONAL REGISTER OF CITIZENS (NRC)

The National Register of Citizens (NRC) is the register containing details of all Indian citizens. After conducting the Census of 1951, the National Register of Citizens (NRC) was prepared by recording particulars of all the persons enumerated during the 1951 Census.

After the conduct of the Census of 1951, a National Register of Citizens (NRC) was prepared in respect of each village showing the houses or holdings in a serial order and indicating against each house or holding the number and names of persons staying therein, and in respect of each individual, the father's name/ mother's name or husband's name, nationality, sex, age, marital status, educational qualification, means of livelihood or occupation and visible identification mark. This was done by copying out in registers the particulars recorded during the Census done in 1951. This NRC was prepared under a directive from the Ministry of Home affairs (MHA).

These registers covered each and every person enumerated during the Census of 1951 and were kept in the offices of Deputy Commissioners and Sub Divisional Officers according to instructions issued by the Government of India in 1951. Later these registers were transferred to the Police in the early 1960s.

NRC Updation

National Register of Citizens (NRC) means the register containing the names of Indian citizens. **NRC updation basically means the process of enlisting the names of citizens based on Electoral Rolls up to 1971 and 1951 NRC**. In other words National Register of Citizens (NRC) updation basically means the process of enlisting the names of those persons (or their descendants) whose names appear in any of the Electoral Rolls up to 1971, 1951 NRC or any of the admissible documents stipulated. The NRC will be updated as per the provisions of The **Citizenship Act, 1955 and The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003**. As such, eligibility for inclusion in updated NRC shall be determined based on the NRC, 1951, Electoral Rolls up to the midnight of 24th March, 1971 and in their absence the list of admissible documents issued up to midnight of 24th March, 1971.

WHO ARE ELIGIBLE FOR INCLUSION IN ASSAM?

a) Persons whose names appear in NRC, 1951

b) Persons whose names appear in any of the Electoral Rolls up to 24th March (midnight), 1971.

c) Descendants of the above person

d) Persons who came to Assam on or after 1st January 1966 but before 25th March 1971 and registered themselves in accordance with the rules made by the Central Government with the Foreigners Registration Regional Officer (FRRO) and who have not been declared as illegal migrants or foreigners by the competent authority.

e) 'D' voters can apply for inclusion of their names in the updated NRC. However, their names will. Be finally included only when the appropriate Foreigner Tribunal declares them as non-foreigners.

f) Persons who can provide any one of the documents issued up to midnight of 24th March, 1971 as mentioned in the list of documents admissible for citizenship.

> **D voter**, sometimes also referred to as dubious **voter** or Doubtful **voter** is a category of **voters in Assam** who are disenfranchised by the government on the account of their alleged lack of proper citizenship credentials.

As per the latest Order of the Hon'ble Supreme Court

- All Indian Citizens including their children and descendants who have moved to Assam post 24th March 1971 would be eligible for inclusion in the updated NRC on adducing satisfactory proof of residence in any part of the country (outside Assam) as on 24th March, 1971.
- All the members of the Tea Tribes shall be covered under 'Original inhabitants of Assam' category provided for under Clause 3(3) of the Schedule of The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.
- All such original inhabitants shall be included on the basis of proof to the satisfaction of the Registering Authority. On establishment of the citizenship of such persons beyond reasonable doubt, their names shall be in the updated NRC.

NRC is a positive step

Notwithstanding these criticisms, the updation of the NRC is a positive step in a number of ways.

Firstly, once the draft is finalised, it will provide a much needed perspective on the extent of illegal migration that has taken place into Assam in particular and the country in general. Since the days of the Assam agitation against illegal Bangladeshi immigrants, there have been wild speculations about their actual number. The uncertainty about the number of illegal migrants was compounded by the absence of official estimates. This allowed political parties to often exaggerate the numbers, polarise voters and exploit the issue for electoral gains. An updated NRC is likely to put an end to such speculations and provide a verified dataset to carry out meaningful debates and implement calibrated policy measures.

Secondly, the issue of illegal migrants has remained an emotive one in Assam since independence. It had even created a divergence of opinion between successive central and state leaderships as the former continued to be accommodative towards migrants describing the mass migration from East Pakistan as "homecoming". Much to the dismay of the people of Assam, some central leaders even went to the extent of denying that any illegal migration from Bangladesh has taken place into the state. The publication of an updated NRC will vindicate the long held argument of large sections of the people of Assam that unabated infiltration from Bangladesh has indeed taken place and that it has upset the demographic profile of the state's population, especially in the border districts. This, they note, has been causing intense competition and conflict between the indigenous people and migrants for access to resources.

Thirdly, the publication of an updated NRC is expected to deter future migrants from Bangladesh from entering Assam illegally. The publication of the draft NRC has already created a perception that staying in Assam without valid documentation will attract detention/jail term and deportation. More importantly, illegal migrants may find it even more difficult to procure Indian identity documents and avail all the rights and benefits due to all Indian citizens. Last but not least, the inclusion of their names in the NRC will provide respite to all those Bengali speaking people in Assam who have been, hitherto, suspected as being Bangladeshis.

UNIT-VI
[FUNDAMENTAL RIGHTS & DUTIES]

INDIVIDUAL RIGHTS AND FUNDAMENTAL RIGHTS

The constitution of England is unwritten. Hence there is, in England no code of fundamental rights as exists in the constitution of the United States or in other written constitutions of the world. This does not mean, however, that in England there is no recognition of those basic rights of the individual without which democracy becomes meaningless. The individual rights in England are drawn from ordinary law of the Parliament. The Judiciary is the guardian of individual rights in England as elsewhere; but there is a fundamental difference. While in England, the courts have the fullest power to protect the individual against executive tyranny, the courts are powerless as against legislative aggression upon individual rights. In short there are no fundamental rights binding upon the legislature in England.

The English parliament being theoretically 'omnipotent', there is no law which it cannot change. This is because as has been already mentioned that the individual rights of the English people flow from ordinary law which can be changed by the Parliament like other laws and nothing restricts the English Parliament from doing so (Parliamentary Supremacy). So there are no rights in England that can be called as fundamental in the strict sense of the term. Another consequence of parliamentary supremacy is that the English courts can declare no law passed by the English parliament as null or void on the ground of contravention of any supposed fundamental or individual rights.

In contrast to the English scenario, the American Bill of Rights is truly a set of fundamental rights. They are equally binding upon the legislature and the executive. The American Judiciary can declare a law of the congress null and void if it violates any of the rights promised under the American bill of rights. The fundamental difference in approach to the question of individual rights between England and USA is that while the English were anxious to protect individual rights from the abuses of executive power, the framers of the American constitution were apprehensive of tyranny not only from the executive but also from the legislature-i.e. a body of men who for the time being form the majority in the legislature. Hence we can conclude that only individual rights exist in England while fundamental rights exist in the USA.

DIFFERENCE BETWEEN FUNDAMENTAL RIGHTS AND HUMAN RIGHTS

In general, 'rights' refers to the moral or legal entitlement over something. As per law, rights are considered as the reasonable claim of the individuals which are accepted by the society and approved by statute. It can be fundamental rights or human rights. The rights which are fundamental to the life of the citizens of a country are known as fundamental rights. On the other hand, human rights imply the rights that belong to all the human beings irrespective of their nationality, race, caste, creed, gender, etc.

The main difference between fundamental rights and human rights is that the fundamental rights are specific to a particular country, whereas human rights has worldwide acceptance.

BASIS FOR COMPARISON	FUNDAMENTAL RIGHTS	HUMAN RIGHTS
Meaning	Fundamental Rights means the primary rights of the citizens which are justifiable and written in the constitution.	Human Rights are the basic rights that all the human beings can enjoy, no matter where they live, what they do, and how they behave, etc.
Includes	Basic Rights Only	Basic and Absolute Rights
Scope	It is country specific.	It is universal.
Basic Principle	Right of freedom	Right of life with dignity
Guarantee	Constitutionally guaranteed	Internationally guaranteed
Enforcement	Enforceable by the court of law.	Enforceable by United Nation Organization.
Origin	Originated from the views of democratic society.	Originated from the ideas of civilized nations.

CLASSIFICATION OF FUNDAMENTAL RIGHTS

Part-III of the Indian constitution is called corner stone of the constitution and together with Part-IV (Directive Principles of State Policy) constitutes the conscience of the Constitution. This chapter of the Constitution has been described as the Magna Carta of India. The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35. In this regard, the framers of the Constitution derived inspiration from the Constitution of USA (i.e., Bill of Rights). They are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.

- Fundamental Rights are individual rights enforced against the arbitrary invasion by the state except, in the case of Art. 15 (2), Article 17, Article 18(3-4), Article 23 and Article 24 where these can be enforced against private individuals also. When the rights that are available against the State's action only are violated by the private individuals, there are no constitutional remedies but only ordinary legal remedies.
- Fundamental Rights are not absolute rights and Parliament could put reasonable restriction. The grounds for the restriction may be the advancement of SCs, STs, OBCs, women, and children; general public order; decency, morality, sovereignty & integrity of India; security of the state, friendly relations with foreign states, etc. However, whether such restrictions are reasonable or not is to be decided by the courts. Thus, they strike a balance between the rights of the individual and those of the society as a whole, between individual liberty and social control.
- They are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgement of the high courts.
- They are not sacrosanct or permanent. The Parliament can curtail or repeal them but only by a constitutional amendment act and not by an ordinary act. Moreover, this can be done only without affecting the 'basic structure' of the Constitution.

- They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. Further, the six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression (i.e., external emergency) and not on the ground of armed rebellion (i.e., internal emergency).

- Their scope of operation is limited by Article 31A (saving of laws providing for acquisition of estates, etc.), Article 31B (validation of certain acts and regulations included in the 9th Schedule) and Article 31C (saving of laws giving effect to certain directive principles).

- Their application to the members of armed forces, paramilitary forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 33).

- Their application can be restricted while martial law is in force in any area. Martial law means 'military rule' imposed under abnormal circumstances to restore order (Article 34). It is different from the imposition of national emergency.

- Most of them are directly enforceable (self-executory) while a few of them can be enforced on the basis of a law made for giving effect to them. Such a law can be made only by the Parliament and not by state legislatures so that uniformity throughout the country is maintained (Article 35).

SEVEN FUNDAMENTAL RIGHTS UNDER THE 1949 CONSTITUTION

Originally, the Constitution provided for seven Fundamental Rights viz,

1) Right to equality (Articles 14–18)
2) Right to freedom (Articles 19–22)
3) Right against exploitation (Articles 23–24)
4) Right to freedom of religion (Articles 25–28)
5) Cultural and educational rights (Articles 29–30)
6) **Right to property (Article 31)**
7) Right to constitutional remedies (Article 32)

However, the **right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978.** It is made a **legal right** under **Article 300-A in Part XII** of the Constitution. **So at present, there are only six Fundamental Rights**.

Another classification which is obvious is from the point of view of persons to whom they are available. Thus - Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.

- Fundamental Rights that are granted only to citizens are—(a) Protection from discrimination on grounds of religion, race, caste, sex or place of birth (Article 15); (b) Equality of opportunity in matters of public employment (Article 16); (c) Freedom of speech, assembly, association, movement, residence and profession (Article 19) and (d) Cultural and educational rights of minorities (Article 29 and 30).

- Some Fundamental Rights are available to all people in India—citizens or foreigners (a) Equality before the law and equal protection of the people by law (Article 14); (b) Protection in respect of conviction against ex post facto laws, double punishment and self-incrimination (Article 20); (c) Protection of life and personal liberty against action without authority of law (Article 21); (d)

Right against exploitation (Article 23); (e) Freedom of religion (Article 25); (f) Freedom for the payment of taxes for promotion of any particular religion (Article 27); (g) Freedom to attend any religious program or worship and study in State educational institutions (Article 28).

Negative and Positive Rights

Some of the Fundamental Rights are negatively worded, as prohibitions to the State (e.g., Article 14 says "The State shall not deny to any person equality before the law…"). There are others, which positively confer some benefits upon the individual (e.g., the rights to religious freedom, and the cultural and educational rights).

Classification of Fundamental Rights based on Extent of Limitation:

A classification can also be made from the standpoint of the extent of limitation imposed by the different Fundamental Rights upon legislative power. On the one hand, we have some Fundamental Rights, such as under Article 21, which are addressed against the Executive but impose no limitation upon the Legislature at all (however this scenario has changed post Maneka Gandhi case when Supreme Court of India discovered "due process" in the constitution). On the other hand, some Rights are intended as absolute limitations upon the legislative power, such as Article 15, 17, 18, 20 and 24. In between are the rights given in Article 19 upon which reasonable restrictions may be imposed by the Legislature In public interest.

DEFINITION OF THE STATE

Part III of our constitution consists of a long list of fundamental rights, it starts right from article 12 to article 35. This chapter has been very well described as the Magna Carta of India, for magna carta was not merely a document signed by King John but a symbol of assertion of individual rights. It reflects the awakening of the people in face of oppressive systems like monarchy and tells us that individuals when fortified with rights and freedoms can bring about a great change.

The Definition of State is prescribed under Article 12. It reads as:

In this part unless the context otherwise requires, "the State" includes

1. **The Government and Parliament of India**
2. **The Government and Legislature of each of States**
3. **Local Authorities or**
4. **Other Authorities**

Within the territory of India or under the control of Government of India

The Government and Parliament of India

The term points to Union executive and legislature. This phrase can be understood by simple observation; whenever Parliament passes a bill and it gets the assent and is brought into force as an "act" it is a function of the central legislature. Whenever any "act" whether as a whole or in part infringes upon fundamental rights of an Individual, it is challenged before the Judiciary and then the same is left to judicial scrutiny. As we have seen in the celebrated case of **Shreya Singhal v. Union of India**, Section 66A was challenged before the Hon'ble Apex Court as being in violation of Article 19 and on the same basis was struck down and declared ultra vires. Now, Information Technology Act, 2000 is a Central Law passed by Union legislature and therefore being a "state" it could not be allowed to violate fundamental rights.

Government and Legislature of the States

This phrase indicates that acts of State legislature or Executive will also be covered under the definition of the state and any State act, order; rule etc. which contravenes the rights of an individual shall be null and void to the extent of contravention.

Local authorities

Authorities like Municipality, District Boards etc. all come under the scope of local authorities and remedy against them can be sought by an individual. The bye-laws that a Municipal committee makes are all under the definition of Law under Article 13 and can be challenged on basis of violation of a fundamental right. The reference to local authorities has been given in the General Clauses act, 1897 and it would be pertinent to analyse the same briefly.

A proper and careful scrutiny of Section 3(31) suggests that an authority in order to be a local authority, must be of like nature and character as a municipal committee, District Board or Body of Port commissioners, possessing therefore, many, if not all, of the distinctive attributes and characteristics of those bodies, but possessing one essential feature namely, that it is legally entitled to or entrusted by the government with the control and management of a local fund.

Other authorities

Now, coming to the most disputed and discussed phrase of all article 12 i.e. "other authorities". It is pertinent that the evolutionary process of this concept is discussed in order to understand it better.

1. Earlier, a **Restrictive interpretation** was given to this term and the principle of **ejusdem generis** or things of like nature was applied and this meant that authorities exercising governmental or sovereign function would only be covered under other authorities.(**University of Madras v. Santa bai**)

2. The **liberal interpretation** came when the Apex court in **Ujjambai v. State of U.P** rejected the interpretation on the basis of ejusdem generis and held that no restriction can be assigned to the interpretation of the term. In **Electricity Board v. Mohan lal**, it was opined that it is not necessary for an authority to be engaged in sovereign or governmental function to come under the definition and said that State Electricity Board of Rajasthan would come under definition of "State". **Sukhdev Singh v. Bhagatram** followed the same test and held that LIC, ONGC and IFC all come under "other authorities".

3. The breakthrough however, came with **R.D Shetty v. Airport Authority of India** which gave us the 5 Point test as propounded by Justice P.N Bhagwati. This is a test to determine whether a body is an agency or instrumentality of the state and goes as follows –

1) **Financial resources of the State are the Chief funding source i.e. the entire share capital is held by the government.**
2) **Deep and pervasive control of the State**
3) **Functional character being Governmental in its essence, meaning thereby that its functions have a public importance or are of a governmental character**
4) **A department of Government transferred to a corporation**
5) **Enjoys Monopoly status which is State conferred or protected by it**

This was elucidated with the statement that the test is only illustrative and not conclusive in its nature and is to be approached with great care and caution.

In **Ajay Hasia v. Khalid Mujib Sehravardi**, It has been held that whether a statutory body falling within the purview of the expression "other authorities" is to be considered differently. In the opinion of minority, the tests laid down in this case are relevant only for the purpose of determining whether an entity is an "instrumentality or agency of the State".

Whether BCCI is a State or not?

The relevant Judgement in this regard is **Zee Telefilms v. Union of India.** As BCCI is not created by a statute, not dominated by government either financially, functionally or administratively. Hence, it cannot be called as State as under Article 12 of The Constitution.

Law Commission urges government to bring BCCI under RTI Act

Rejecting the argument that Board of Control for Cricket in India (BCCI) is a private body, Law Commission recommended the centre that BCCI along with its constituent member cricketing associations should come under the purview of Right to Information (RTI) Act.

- Reflecting on Article 12 of the constitution, the commission stated that BCCI ought to be classified as 'state' within the meaning of Article 12 of the Constitution.
- Law Commission further added that BCCI exercises state like powers affecting the fundamental rights of the stakeholders, guaranteed under Part III of the Constitution.
- In July 2016, the Supreme Court had asked the commission to recommend whether the cricket board can be brought under the RTI Act.
- The Board of Control for Cricket in India (BCCI), the world's richest cricket body, operates as a private entity under the Tamil Nadu Societies Registration Act.

Whether Judiciary would be included in the definition of State or not?

The Judiciary is not expressly mentioned in the Article 12 and a great amount of dissenting opinions exist on the same matter. Bringing Judiciary entirely under Article 12 causes a great deal of confusion as it comes with an attached inference that the very guardian of our fundamental rights is itself capable of infringing them. Perhaps with the help of relevant judgments this can be better understood:

In **Rupa Ashok Hurra v. Ashok Hurra** the Apex Court reaffirmed and ruled that no judicial proceeding could be said to violate any of the Fundamental rights and that it is a settled position of law that superior courts of justice did not fall within the ambit of 'state' or 'other authorities' under Article 12.

This leaves with us with the rationale that a Superior Judicial body when acting "Judicially" would not fall under the definition of State but when it performs any administrative or similar functions e.g. conducting examination, it will fall under the definition of "state" and that remedy could be sought in that context only in case of violation of fundamental rights.

SCOPE OF ARTICLE 12

The definition of Article 12 is only for the purpose of application of the provisions contained in Part III. It cannot be used to interpret any provision outside Part III, e.g., Art. 311. Within the territory of India or under the control of the Government of India is limited in its application only to Part III and by virtue of Art. 36, to Part IV: it does not extend to other provisions of the Constitution and hence a juristic entity which may be a 'State' for the purpose of Part III and Part IV would not be so for the purpose of Part XIV or any other provisions of the Constitution.

Hence, even though a body of persons may not constitute 'State' within the instant definition, a writ under Art. 226 may lie against it on the non-constitutional grounds or on ground of contravention of some provisions of the Constitution outside Part III, e.g., where such body has a public duty to perform or where its acts are supported by the State or public officials.

LAWS INCONSISTENT WITH FUNDAMENTAL RIGHTS

Article 13 is a key provision as it gives the necessary teeth to the fundamental rights and makes them justiciable. The effect of Article 13 is that Fundamental Rights cannot be infringed by the government either by enacting a law or through administrative action. It reads as:

Article 13 [Laws inconsistent with or in derogation of the fundamental rights]

1. All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
2. The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.
3. In this article, unless the context otherwise required, -
    a. "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;
    b. "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.
4. Nothing in this article shall apply to any amendment of this Constitution made under article 368.

Existing laws inconsistent with the Constitution

This clause provides that all "laws in force" at the commencement of the Constitution which clash with the exercise of the Fundamental Rights, conferred by Part III of the Constitution shall, to that extent of contravention, be void. A pre constitution law, after the commencement of the Constitution, must conform to the provisions of Part III of the Constitution. However, infringement of a fundamental right cannot be founded on a remote or speculative ground.

But this does not make the existing laws which are inconsistent with the fundamental rights **void ab initio**. The entire Part III of the Constitution including Art. 13(1) is prospective. Hence, existing laws which

are inconsistent with any provision of Part III are rendered void only with effect from the commencement of the Constitution, which for the first time created the Fundamental Rights. The inconsistency referred to in Art. 13(1), therefore, does not affect transactions past and closed before the commencement of the Constitution or the enforcement of rights and liabilities that had accrued under the 'inconsistent laws' before the commencement of the Constitution.

On the other hand, it does not mean that an unconstitutional procedure laid down by a pre-Constitution Act is to be followed in respect of 'pending' proceedings or in respect of new proceedings instituted with regard to pre-Constitution rights or liabilities. Just as there is no vested right in any course of procedure, there is no vested liability in matter of procedure in the absence of any special provision to the contrary.

But if the proceedings had been completed or become final before the commencement of the Constitution, nothing in the Fundamental Rights Chapter of the Constitution can operate retrospectively so as to affect those proceedings. For the same reason, it is not possible to impeach the validity of that part of the proceedings which had taken place under the inconsistent law, prior to the commencement of the Constitution.

The effect of Art 13(1) is not to obliterate the inconsistent law from the statute book for all times or for all purposes or for all people. The effect is that the inconsistent law cannot, since the commencement of the Constitution stand in the way of exercise of fundamental rights by persons who are entitled to those rights under the Constitution, as regards persons who have not been given fundamental rights, e.g., aliens.

DOCTRINE OF ECLIPSE

The Doctrine of Eclipse says that any law inconsistent with Fundamental Rights is not invalid. It is not dead totally but overshadowed by the fundamental right. The inconsistency (conflict) can be removed by constitutional amendment to the relevant fundamental right so that eclipse vanishes and the entire law becomes valid.

When a Court strikes a part of law, it becomes unenforceable. Hence, an 'eclipse' is said to be cast on it. The law just becomes invalid but continues to exist. The eclipse is removed when another (probably a higher level court) makes the law valid again or an amendment is brought to it by way of legislation.

Doctrine of eclipse applied to Art. 13 (1)

- It follows, therefore, that if at any subsequent point of time, the inconsistent provision is amended so as to remove its inconsistency with the fundamental rights, the amended provision cannot be challenged on the ground that the provision has become dead at the commencement of the Constitution and cannot be revived by the amendment. All acts done under the law since the amendment will be valid notwithstanding the fact of inconsistency before the amendment.
- For the same reason, if the Constitution itself is amended subsequently, so as to remove the repugnancy, the impugned law becomes free from all blemishes from the date when the amendment of the Constitution takes place.

Although a pre-constitutional law is saved in terms of Art. 372 of the Constitution (Continuance in force of existing laws and their adaptation) challenge to its validity on the touchstone of Arts. 14, 15 and 19 of the Constitution is permissible in law. Validity of a statute may be subject to changes occurring in societal conditions in domestic as well as in international arena with time.

POST-CONSTITUTIONAL INCONSISTENT LAWS: VOID AB INITIO

Art. 13(2) provides that any law made by any legislature or other authority after the commencement of the Constitution, which contravenes any of the fundamental rights included in Part III of the Constitution shall, to the extent of the contravention, be void.

As distinguished from Cl. (1), Cl. (2) makes the inconsistent laws **void ab initio** and even convictions made under such unconstitutional laws shall have to be set aside. Anything done under the unconstitutional law, whether closed, completed or inchoate, will be wholly illegal and the relief in one shape or another has to be given to the person affected by such unconstitutional law. Nor it is revived by any subsequent event.

This does not mean that the offending law is wiped out from the statute book altogether. It remains in operation as regards to persons who are not entitled to the fundamental rights in question (e.g., a non-citizen in respect of a right guaranteed by Art. 19). Nor does Cl. (2) authorize the Courts to interfere with the passing of a bill on the ground that it would, when enacted, be void for contravention of the Constitution. The jurisdiction of the Court arises when the bill is enacted into law.

DOCTRINE OF SEVERABILITY

Doctrine of Severability or Separability states that when a part of the statute is declared unconstitutional, then the unconstitutional part is to be removed and the remaining valid portion will continue to valid. The idea is to retain the Act or legislation in force by discarding / deleting only the void portion and retaining the rest. It is not the whole Act which would be held invalid by being inconsistent with Part III of the Constitution but only such provisions of it which are violative of the fundamental rights, provided that the part which violates the fundamental rights is separable from that which does not isolate them. But if the valid portion is so closely mixed up with invalid portion that it cannot be separated without leaving an incomplete or more or less mingled remainder the court will declare the entire Act void. This process is known as doctrine of Severability or Separability.

The Supreme Court considered this doctrine in **A.K. Gopalan v. State of Madras** and held that the preventive detention minus Section 14 was valid as the omission of Section 14 from the Act will not change the nature and object of the Act and therefore the rest of the Act will remain valid and effective. The doctrine was applied in D.S. Nakara v. Union of India, where the Act remained valid while the invalid portion of it was declared invalid because it was severable from the rest of the Act. In State of Bombay v. F.N. Balsara it was held that the provisions of the Bombay Prohibition Act, 1949 which were declared as void did not affect the validity of the entire Act and therefore there was no necessity for declaring the entire statute as invalid.

The doctrine of severability has been elaborately considered by the Supreme Court and the following rules regarding the question of severability has been laid down:

(1) The intention of the legislature is the determining factor in determining whether the valid parts of a statute are severable from the invalid parts.

(2) If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from the other, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid what remains is itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest had become unenforceable.

(3) Even when the provisions which are valid, are distinct and separate from those which are invalid if they form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole.

(4) Likewise when the valid and invalid parts of a Statute are independent and do not form part of a Scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of legislature, then also it will be rejected in its entirety.

(5) The severability of the valid and invalid provisions of a Statute does not depend on whether provisions are enacted in same section or different section, it is not the form but the substance of the matter that is material and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein.

(6) If after the invalid portion is expunged from the Statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void as otherwise it will amount to judicial legislation.

(7) In determining the legislative intent on the question of severability, it will be legitimate to take into account the history of legislation, its object, the title and preamble of it.

Definition of Law

Art. 13(3) (a) defines 'law' very widely by an inclusive definition. It does not expressly include a law enacted by the legislature, for such an enactment is obviously law. The definition of law includes:

(i) An Ordinance, because it is made in the exercise of the legislative powers of the executive;

(ii) An order, bye-law, rule, regulation and notification having the force of law because ordinarily they fall in the category of subordinate delegated legislation and are not enacted by the legislature;

(iii) Custom or usage having the force of law because they are not enacted law at all. This extended definition appears to have been given to 'law' in order to forestall a possible contention that law can only mean law enacted by the legislature.

Clause (4) was inserted by the Constitution (24th Amendment) Act, 1971, with effect from 5-11-1971, to override the view taken by Subha Rao, C.J., for the majority, in Golak Nath v. State of Punjab, that a Constitution Amendment Act, passed according to Art. 368, is a 'law' within the meaning of Art. 13 and would, accordingly, be void if it contravenes a fundamental right. This amendment was declared void in Minerva Mill's Case

The provisions of Part III of the Constitution should not be treated as mere legal precepts. They form part of the conscience of the Constitution. It can safely be assumed that the framers intended the provisions to be instrumental in spreading a new constitutional culture. If we exclude the rapidly expanding private sector from the enforcement of these rights, this constitutional culture will have only a limited and truncated domain for its spread. After having argued for the enforcement of fundamental rights, it remains to sort out an incidental problem. It can be persuasively argued that the gist of the relevant fundamental rights can be enforced against the private sector by ordinary legislation instead of bringing the private sector directly within the purview of the Constitution. This argument can further be reinforced with the assertion that the suggestions made in the research paper would only result in further flooding the Supreme Court and high courts with writ petitions, thereby making the court system almost unworkable.

State through Constitution secures fundamental rights, help achieve ideals given in directive principles and expect citizens to perform certain fundamental duties. All these can only be done by the State, through the State and for the State respectively. Article 12 of the Constitution of India is of greatest importance as it defines what is State. Further, Article 13 of the Constitution of India specifies which acts of the State are regulated by the Constitution so that State does not abuse the powers given to it by the Constitution.

DOCTRINE OF COLOURABLE LEGISLATION

The doctrine of colourable legislation refers to the question of competency of the legislature while enacting a provision of law. According to this doctrine if a legislature is prohibited from doing something, it may not permitted to do this under the guide or pretence of doing something while acting within its lawful jurisdiction and this prohibition is an implied result of the maxim "what cannot be done directly, cannot be done indirectly".

The question whether the Legislature has kept itself within the jurisdiction assigned to it or has encroached upon a forbidden field is determined by finding out the true nature and character or pith and substance of the legislation. The main point is that the legislature having restrictive power cannot step over the field of competency. It is termed as the "fraud on the constitution"

The Supreme Court in the case of **K.C Gajapati vs state of Orissa** while explaining the doctrine held that "if the constitution of a state distributes the legislative spheres marked out by specific legislative entries or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case in respect to the subject matter of the statute or in the method of enacting it, transgressed the limits of the constitutional power or not. Such transgression may be patent, manifest and direct, but may also be disguised, covered and indirect and it is the latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements."

The Supreme court of India in different judicial pronouncements has laid down the certain tests in order to determine the true nature of the legislation impeached as colourable:-

- The court must look to the substance of the impugned law, as distinguished from its form or the label which the legislature has given it. For the purpose of determining the substance of an enactment, the court will examine two things: - a) effect of the legislation and the b) object and the purpose of the act.
- The doctrine of colourable legislation has nothing to do with the motive of the legislation; it is in the essence a question of vires or power of the legislature to enact the law in question.

The doctrine does not involve any question of bonafides or malafides intention on the part of the legislature. If the legislature is competent enough to enact a particular law, then whatever motive which impelled it to act are irrelevant. On the other hand, it was observed by the Apex court that "**the motive of the legislature in passing a statute is beyond the scrutiny of the courts"** so the court has no power to scrutinize the policy which led to an enactment of a law falling within the ambit of the legislature concerned.

There is hardly any instance where a law has been declared by the court as invalid on the ground of competency of the legislature. The only instance is in the case where a state law dealing with the abolition of landlord system, provided for payment of compensation on the basis of income accruing to the landlord by way of rent. Arrears of rent due to the landlord prior to the date of acquisition were to vest in the state and half of these arrears were to be given to the landlord as compensation. The provision was held to be a piece of colourable legislation and hence void on the basis of the following grounds:-

- That it was not within the competence of Bihar state legislature to enact the impugned act.
- That the acquisitions of the estates not being for public purpose, the act was unconstitutional
- That the legislative power in various sections of the act has been used in favour of the executive and such usage of power was unconstitutional.
- That the act was a fraud on the constitution and that certain parts of the act were unenforceable on account of vagueness and indefiniteness

There is always a presumption that the legislature that the legislature does not exceed its jurisdiction(**ut res magis, valet quam parret**) and the burden of establishing that an act is not within the competence of the legislature or that it has transgressed other constitutional mandates as is always on the person who challenges its vires.

So the ultimate analysis is that colorable legislation indicates that while making the law the legislature transgressed the limits of its power. But the question may be raised that whether or not parliament can do something indirectly, which it cannot do directly, may depend upon why it cannot do directly. There are so many examples in law as well as life where something can be done indirectly, although not directly. So the true principle of colourable legislation is "it is not permissible to do indirectly, what is prohibited directly."

EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAW

According to Article 14,

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

Prima facie, the terms 'equality before the law' and 'equal protection of the laws' may seem to be identical, but, in fact, they mean different things.

Equality before Law – This is borrowed from the English Common Law. Equality before the law is a somewhat negative concept in the sense that it denies the State to discriminate between individuals, on arbitrary basis. It implies the absence of any special privilege due to birth, creed or the like, in favour of any individual and the equal subjection of all classes to the ordinary law. It means no man is above the law and every person, whatever be his rank or status, is subject to the same ordinary jurisdiction of the courts. The concept of Equality before law is derived from the concept of 'Rule of Law', elaborated by Prof. Dicey.

Rule of Law

The Rule of Law is one of the most fundamental aspects of modern legal systems. Simply said, the rule says, 'howsoever high you may be; the Law is above you'. It specifies that the Law is supreme and that no human being is higher than the authority of Law.

Most constitutions, such as the English Constitution, the American Constitution and Constitution of India guarantee Rule of Law and hence authorities are bound to follow it strictly. Administrative Law is largely based on this Rule. The term 'Rule of Law' was derived from the French phrase **la principe de legalite** (the principle of legality)

The Rule of Law impacted the Administrative Law of England while the Doctrine of Separation of Powers impacted the Administrative Law of the United States.

The principle of Rule of Law is indispensable to any legal and political system. It imbibes the notions of fairness, equality and non-arbitrariness. The origin of the principle can be traced back to ancient Greece, where it was largely positive. It gradually developed in Rome to include negative traditions as well. An authoritative interpretation was given by A.V. Dicey. A V Dicey stated three principles to the term 'Rule of Law'. 1. Supremacy of Law 2. Equality before Law 3. Predominance of Legal spirit

A.V. DICEY's THREE PRINCIPLES OF 'RULE OF LAW'

A.V. Dicey elaborated the three principles as follows:

1) Absolute supremacy of law or Absence of arbitrary power — Dicey opines that justice must be done through the known principles of law, as opposed to arbitrariness or wide discretionary powers in the hands of the government.
2) Equality before law — no one is above law. Equal subjection of all persons to the ordinary law of the land as administered by the ordinary courts.
3) The rights of the people must flow from the customs and traditions (rights have Common Law origin). Constitution is not the source but the consequence of rights of individuals as individual rights are enjoyed even before the emergence of the Constitution and the Constitution only consolidates and codifies the same for legal protection.

Rule of Law is the basic feature of all democratic constitutions including Indian Constitution, as implied in Article 14,

Exceptions to rule of law:

Despite provisions of equality in our Constitution, there are some exceptions to the Rule of Law in public interests:

- The President or the Governor of a State shall not be answerable to any court for the exercise and performance of the powers and duties of his office.
- No criminal proceeding whatsoever shall be instituted or continued against the President or a Governor in any Court during his term of office.
- No civil proceeding in which relief is claimed against the President or the Governor of a State shall be instituted during his term of office in any court, until the expiration of two months after a notice is served on him. These immunities shall not bar impeachment of the President or suits or other proceedings against the Government of India or State governments.
- Exception in favour of foreign sovereign and ambassadors.

Judiciary and Rule of Law:

The Indian Judiciary has played an instrumental role in shaping Rule of Law in India. By adopting a positive approach and dynamically interpreting the constitutional provisions, the courts have ensured that the Rule of Law and respect for citizens' rights do not remain only on paper but are incorporated in spirit too.

In the case of ***A.D.M. Jabalpur*** v. ***Shiv Kant Shukla,*** KHANNA, J. observed:

"Rule of Law is the antithesis of arbitrariness.....Rule of Law is now the accepted norm of all civilized societies.....Everywhere it is identified with the liberty of the individual. It seeks to maintain a balance between the opposing notions of individual liberty and public order."

In ***Bachhan Singh*** v. ***State of Punjab***, it was held that the Rule of Law has three basic and fundamental assumptions. They are:-

- Law making must be essentially in the hands of a democratically elected legislature;
- Even in the hands of the democratically elected legislature, there should not be unfettered legislative power; and
- There must be independent judiciary to protect the citizens against excesses of executive and legislative power.

The first case which stirred a debate about Rule of Law was *Shankari Prasad* v. *Union of India* where the question of amendability of fundamental rights arose. The question lingered and after witnessing the game play between the government and the judiciary, the issue was finally settled in the case of ***Kesavananda Bharati*** v. ***State of Kerala.*** In this case, the Hon'ble Supreme Court held that the Rule of Law is the "**basic structure**" of the Constitution. The Hon'ble Supreme Court by majority overruled the decision given in Golak Nath's case and held that Parliament has wide powers of amending the Constitution and it extends to all the Articles, but the amending power is not unlimited and does not include the power to destroy or abrogate the basic feature or framework of the Constitution. There are implied limitations on the power of amendment under Art 368, which are imposed by Rule of Law. Within these limits Parliament can amend every Article of the Constitution. Justice H R Khanna played a vital role in preserving the Rule of law although he concurred with the majority decision.

In the case of ***Indira Nehru Gandhi*** v. ***Raj Narayan*** the Apex Court held that Rule of Law embodied in Article 14 of the Constitution is the "basic feature" of the Indian Constitution and hence it cannot be destroyed even by an amendment of the Constitution under Article 368 of the Constitution. Article 329-A was inserted in the Constitution under 39th amendment, which provided certain immunities to the election of office of Prime Minister from judicial review. The Supreme Court declared Article 329-A as invalid, since it was clearly applicable only to the then current prime minister and was an amendment to benefit only one individual. It was decided that the law of the land is supreme and must prevail over the will of one person.

In the case of ***Maneka Gandhi*** v. ***Union of India*** the Hon'ble Supreme Court established the Rule of Law that no person can be deprived of his life and personal liberty except procedure establish by law under Article 21 of the Constitution. Thus, Article 21 requires the following conditions to be fulfilled before a person is deprived to his life and liberty:

1. That there must be a valid law.
2. The law must provide procedure.
3. The procedure must be just, fair and reasonable.
4. The law must satisfy the requirement of Article 14 and 19.

The Supreme Court observed in ***Som Raj*** v. ***State of Haryana***, that the absence of arbitrary power is the primary postulate of Rule of Law upon which the whole constitutional edifice is dependant. Discretion being exercised without any rule is a concept which is antithesis of the concept.

Another facet of Rule of Law in India is the independence of judiciary and power to judicial review. The Supreme Court in the case ***Union of India*** v. ***Raghubir Singh*** that it is not a matter of doubt that a considerable degree of principles that govern the lives of the people and regulate the State functions flows from the decision of the superior courts. Rule of Law as has been discussed postulates control on power. Judicial review is an effective mechanism to ensure checks and balances in the system. Thus, any provision which takes away the right to judicial review is seen to go against the very fibre of Rule of Law. In the case of ***S.P. Sampath Kumar*** v. ***Union of India***, the courts have reiterated that judicial review is part of the basic structure of the Constitution.

In India, the meaning of rule of law has been expanded. It is regarded as a part of the basic structure of the Constitution and, therefore, it cannot be abrogated or destroyed even by Parliament. The ideals of the Constitution- liberty, equality and fraternity have been enshrined in the preamble. Constitution makes the supreme law of the land and every law enacted should be in conformity to it. Any violation makes the law ultra vires. Rule of Law is also reflected in the independence of the judiciary.

The Darker Side of Rule of Law

The case of ADM Jabalpur Vs Shiv Kant Shukla is one of the most important cases when it comes to rule of law. In this case, the question before the court was 'whether there was any rule of law in India apart from Article 21'. This was in the context of suspension of enforcement of Articles 14, 21 and 22 during the proclamation of an emergency. The answer of the majority of the bench was in negative for the question of law. However Justice H.R. Khanna dissented from the majority opinion and observed that "Even in absence of Article 21 in the Constitution, the state has got no power to deprive a person of his life and liberty without the authority of law. Without such sanctity of life and liberty, the distinction between a lawless society and one governed by laws would cease to have any meaning…" The majority judges could not take a firm stand and interpreted the supremacy of law to mean supremacy of the law of the land and not supremacy of the constitutional spirit which is rule of law.

The question of encroachment of the judiciary over the other organs of the government in the name of activism always persists. The extent to which the courts can limit the exercise of other organs is to be pondered upon. The principle of Rule of Law does not also allow the self- conferment of power by the judiciary. The court's interpretation and judgments are never solely adequate to ensure the observance of Rule of Law. Corruption, fake encounters, unfair policies all undermine rule of law.

The main characteristic of the concept of rule of law is 'equality'. This itself has been criticized widely. The government possesses the inherent authority to act purely on its own volition and without being subjected to any checks or limitations. Total equality is possible to prevail in general conditions, not only in India but in any country for that matter. For e.g.: no case can be filed against the bureaucrats and diplomats in India and the privileges enjoyed by the members of parliament with respect to legal actions against them.

The Hon'ble Supreme Court of India has expanded Article 21 to include in its broad interpretation right to bail, the right to a speedy trial, immunity against cruel and inhuman punishment, the right to dignified treatment in custodial institutions, the right to legal aid in criminal proceedings and above all the right to live with basic human dignity. It has also established new doctrines, such as, public trust doctrine, doctrine of promissory estoppel, doctrine of absolute liability, and host of principles such as polluter's pay principle, etc. and offered guidelines in cases where no there were no legislations, i.e., sexual harassment at work places, and most importantly laid down the foundation of Public Interest Litigation. The vast jurisprudence that has been developed by the courts is to ensure that state is bound by its welfare functions and the rights of none are abridged by a tyrant hand.

Any act, inaction or abuse of such powers by one organ calls for interference of the other organ. The judges are not to act upon the laws which are against humanity or based on unreasonable classification or are arbitrary in nature or are against the moral principles; even if such laws are passed by the Parliament. They are to bring in interpretations of laws that are in tune with the principles enshrined in the Constitution. However, there have been instances of the judiciary being marred by corruption and to tackle judicial corruption; it is needed to keep judiciary out of the influence and control of the Legislative or executive. There is also the need for a speedy justice delivery system.

Similarly, Parliament is to keep in mind that the laws made by it are not against the rule of law, or against the Constitution or public moral and humanity. It should also from time to time keep an eye on the social changes and scientific advancement so that the laws meet the demands of the time. Article 105(2) of the

Constitution must be amended because it promotes and protects the corruption or Horse trading in Parliament which is against the notion of democracy and Rule of Law. The Executive should also refrain from executing the laws which are against natural justice or in violation of the rights; liberties and freedom of common man or is against the state or constitution in particular. This is the doctrine of Self -Restraint, whereby, all the organs try to fulfil the aspirations of the nation and uphold the rule of law, without interfering into the domain of the other.

The Constitution must in all circumstances be considered supreme, and the laws made by the legislature should pass the test of reasonableness and the objectives of the Constitution. If any organ of the Government crosses its limits or encroaches upon the powers of the other organs or exceeds its jurisdiction, the act shall be considered as invalid and any abuse of law or any action shall be termed as void ab initio; and the principle of checks and balance will come into play to ensure the sustenance of the principle of Rule of Law.

Equal protection of the laws

Equal protection of the laws owes its origin to American Constitution. It is a more positive concept, implying the right to equality of treatment in equal circumstances. It means that among equals, the law should be equal and equally administered, that equals should be treated alike, both in the privileges conferred and liabilities imposed. Equal law should be applied to all persons who are similarly placed, and there should be no discrimination between one person and another. In other words, Article 14 ensures equality among equals. For example, a poor man cannot be expected to pay the same income tax as a rich man. But persons with the same income bracket, being in similar circumstances, will pay the same tax or all adults are equal and are punished equally but a child who commits murder cannot be punished like an adult who commits the same crime. Since the adult and the child are not equal and should be treated unequally.

LIKES SHOULD BE TREATED ALIKE

This provision allows categorization of people, provided there is 'reasonable' basis of classification. It allows differential treatment of people. For example, classification of people based on socio-economic status and educational backwardness. It allows for providing 'affirmative action' to weaker sections of society or creating differential tax rates for different income categories of peoples. When persons in similar circumstances/equals are treated equally, and those in different circumstances/unequals are treated in an unequal manner, we strive to attain EQUITY, which is an objective much higher than equality.

Classification and Class Legislation

Absolute equality where everyone is treated in an identical manner amounts to turning a blind eye to the social and educational inequalities that already exist in the society. Right to equality does not mean that everyone is treated in an equal manner having no regard to their situations. In fact, if everyone is treated in an identical manner, it violates the right to equality. So, to find out which two groups should be treated unequally, a classification can be made. Any classification made should be made on a reasonable basis.

For example, a classification between a classification between teachers who are trained and others who are not. This classification is made to make applicable any monetary benefits on trained teachers. A classification of physically challenged persons and persons who are not physically challenged which is made to confer certain rights on them.

Classification should not amount to class legislation. **Class legislation means a law that is applicable only to certain persons or class of persons**. For example, if a law makes the classification based only on a class of persons who belong to a particular religion or race or gender will be unreasonable and violate the right to equality.

Reasonable Classification

The legislature can treat two sets of persons differently if their classification is made on a reasonable basis. A reasonable classification must be founded on **intelligible differentia**. This means that persons or things that are grouped together make a well-defined, distinct class and can be distinguished from those that are left out of the group. Further, this basis of classification should have a rational nexus to the object sought to be achieved by the legislation in question.

For example, the maternity benefit law applies to working women on the way to maternity, not others. Because the object of the maternity benefit law is to give certain privileges only to women who become mothers at the time of their need. Hence, the classification of women and men is based on an intelligible differentia.

Another illustration is of tax laws. Classifications may be made for the purpose of taxing or not taxing certain classes of property. Charities, libraries are exempted from certain tax whereas other properties are not.

To conclude, let's sum up.

- Equality before law means absence of discrimination
- Equal protection of laws means equal treatment of persons in equal circumstances.
- To attain equity, reasonable classification is permitted.
- Reasonable classification should not amount to class legislation.

PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE Etc.

Article 15 of Constitution of India deals with Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. It reads as:

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

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

(a) Access to shops, public restaurants, hotels and places of public entertainment; or

(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

[(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

- Clause (1) specifies the prohibited grounds in any matter in which the State has exclusive control.
- Clause (2) specifies the prohibited grounds in any matter in which the State and even private individuals have exclusive control.
- Clause (3) enables the government to make special provisions for the protection of women and children.
- Discrimination 'only' on any of the above mentioned grounds is invalid. However, there can be a discrimination on any of the above mentioned grounds and also on other grounds not mentioned above is considered valid.
- 'Place of public resort' includes a public park, public road, public bus, ferry, public urinals, railways, hospital etc.
- In Clause (3), provisions 'for' the women could be made and not 'against' the women. Further, provisions in favor of women and against men are valid but provisions in favor of men and against women are invalid.
- Clause (4) is an enabling clause and confers discretion to the State on the use of these provisions. Hence these are not obligatory to the State to take action under it.

As it can be seen the article talks about 'Citizens', so this right is only available to the citizens of India not the foreigners.

Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. The two crucial words in this provision are 'discrimination' and 'only'. The word 'discrimination' means 'to make an adverse distinction with regard to' or 'to distinguish unfavourably from others'. The use of the word 'only' connotes that discrimination on other grounds is not prohibited.

The second provision of Article 15 says that no citizen shall be subjected to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex, or place of birth with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly by State funds or dedicated to the use of general public. This provision prohibits discrimination both by the State and private individuals, while the former provision prohibits discrimination only by the State.

There are three exceptions to this general rule of non-discrimination:

(a) The state is permitted to make any special provision for women and children. For example, reservation of seats for women in local bodies or provision of free education for children.

(b) The state is permitted to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes. For example, reservation of seats or fee concessions in public educational institutions

(c) The state is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions.

The last provision was added by the 93rd Amendment Act of 2005. In order to give effect to this provision, the Centre enacted the Central Educational Institutions (Reservation in Admission) Act, 2006, providing a quota of 27% for candidates belonging to the Other Backward Classes (OBCs) in all central higher educational institutions including the Indian Institutes of Technology (IITs) and the Indian Institutes of Management (IIMs). In April 2008, the Supreme Court upheld the validity of both, the Amendment Act and the OBC Quota Act. But, the Court directed the central government to exclude the 'creamy layer' (advanced sections) among the OBCs while implementing the law.

CREAMY LAYER

The children of the following different categories of people belong to 'creamy layer' among OBCs and thus will be deprived from the benefits:

1. Persons holding constitutional posts like President, Vice-President, Judges of SC and HCs, Chairman and Members of UPSC and SPSCs, CEC, CAG and so on.
2. Group 'A' / Class I and Group 'B' / Class II Officers of the All India, Central and State Services; and Employees holding equivalent posts in PSUs, Banks, Insurance Organisations, Universities etc., and also in private employment.
3. Persons who are in the rank of colonel and above in the Army and equivalent posts in the Navy, the Air Force and the Paramilitary Forces.
4. Professionals like doctors, lawyers, engineers, artists, authors, consultants and so on.
5. Persons engaged in trade, business and industry.
6. People holding agricultural land above a certain limit and vacant land or buildings in urban areas.
7. Persons having gross annual income of more than 6 lakh or possessing wealth above the exemption limit. In 1993, when the "creamy layer" ceiling was introduced, it was 1 lakh. It was subsequently revised to 2.5 lakh in 2004, 4.5 lakh in 2008 and 6 lakh in 2013.

EQUALITY OF OPPORTUNITY IN PUBLIC EMPLOYMENT

Article 16 deals with the equality of opportunity in matters of public employment. Equal opportunity is a term which has differing definitions and there is no consensus as to the precise meaning. The Constitution of India has given a wide interpretation of this article. Equal Employment Opportunity (EEO) principles apply to:

- Access to jobs
- Conditions of employment
- Relationships in the workplace
- The evaluation of performance and
- The opportunity for training and career development.

Article 16 in the Constitution of India reads as:

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

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

Article 16 provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State. No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

There are three exceptions to this general rule of equality of opportunity in public employment:

(a) Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority. As the Public Employment (Requirement as to Residence) Act of 1957 expired in 1974, there is no such provision for any state except Andhra Pradesh and Telangana.

(b) The State can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services.

(c) A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular religion or denomination.

Mandal Commission and Aftermath

In 1979, the Morarji Desai Government appointed the Second6 Backward Classes Commission under the chairmanship of B P Mandal, a Member of Parliament, in terms of Article 340 of the Constitution 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 identified as many as 3743 castes as socially and educationally backward classes. They constitute nearly 52% component of the population, excluding the scheduled castes (SCs) and the scheduled tribes (STs). The commission recommended for reservation of 27% government jobs for the Other Backward Classes (OBCs) so that the total reservation

for all ((SCs, STs and OBCs) amounts to 50%. It was after ten years in 1990 that the V P Singh Government declared reservation of 27% government jobs for the OBCs. Again in 1991, the Narasimha Rao Government introduced two changes:

(a) Preference to the poorer sections among the OBCs in the 27% quota, i.e., adoption of the economic criteria in granting reservation, and

(b) Reservation of another 10% of jobs for poorer (economically backward) sections of higher castes who are not covered by any existing schemes of reservation.

In the famous Mandal case (1992), the scope and extent of Article 16(4), which provides for reservation of jobs in favour of backward classes, has been examined thoroughly by the Supreme Court. Though the Court has rejected the additional reservation of 10% for poorer sections of higher castes, it upheld the constitutional validity of 27% reservation for the OBCs with certain conditions, viz,

(a) The advanced sections among the OBCs (the creamy layer) should be excluded from the list of beneficiaries of reservation.

(b) No reservation in promotions; reservation should be confined to initial appointments only. Any existing reservation in promotions can continue for five years only (i.e., upto 1997).

(c) The total reserved quota should not exceed 50% except in some extraordinary situations. This rule should be applied every year.

(d) The 'carry forward rule' in case of unfilled (backlog) vacancies is valid. But it should not violate 50% rule.

(e) A permanent statutory body should be established to examine complaints of over-inclusion and under-inclusion in the list of OBCs.

With regard to the above rulings of the Supreme Court, the government has taken the following actions:

(a) Ram Nandan Committee was appointed to identify the creamy layer among the OBCs. It submitted its report in 1993, which was accepted.

(b) National Commission for Backward Classes was established in 1993 by an act of Parliament. It considers inclusions in and exclusions from the lists of castes notified as backward for the purpose of job reservation.

(c) In order to nullify the ruling with regard to reservation in promotions, the 77th Amendment Act was enacted in 1995. It added a new provision in Article 16 that empowers the State to provide for reservation in promotions of any services under the State in favour of the SCs and STs that are not adequately represented in the state services. Again, the 85th Amendment Act of 2001 provides for 'consequential seniority' in the case of promotion by virtue of rule of reservation for the government servants belonging to the SCs and STs with retrospective effect from June 1995.

(d) The ruling with regard to backlog vacancies was nullified by the **81st Amendment Act of 2000**. It added another new provision in Article 16 that empowers the State to consider the unfilled reserved vacancies of a year as a separate class of vaccancies to be filled up in any succeeding year or years. Such class of vacancies are not to be combined with the vacancies of the year in which they are being filled up to determine the ceiling of **50%** reservation on total number of vacancies of that year. In brief, it ends the 50% ceiling on reservation in backlog vacancies.

(e) The 76th Amendment Act of 1994 has placed the Tamil Nadu Reservations Act of 1994 in the Ninth Schedule to protect it from judicial review as it provided for 69 per cent of reservation, far exceeding the 50 per cent ceiling.

When is the reservation allowed to the backward class?

Other Backward Class (OBC) is a collective term used by the Government of India to classify castes which are educationally and socially disadvantaged. It is one of several official classifications of the population of India, along with Scheduled Castes and Scheduled Tribes (SCs and STs). The more important question is to what extent the affirmative action programmes based on irrelevant criteria such as caste and religion should be allowed to override merit and efficiency criteria.

Aristotle writes, "Injustice arises when equals are treated unequally and also when unequals are treated equally". Choosing the proper basis of distribution for making preference is not free from problems. It has been suggested that individual need, status, merit or entitlement are all in appropriate circumstances, proper bases of distribution of benefits. In shedding light on the true content of equality of opportunity, Bernard Williams adds: "It requires not merely that there should be no exclusion from access on grounds other than those appropriate or rational for the good in question, but that the grounds considered appropriate for the good should themselves be such that people from all sections of society have an equal chance of satisfying them."

In defining a "section of society", we cannot include sections of the population identified just by the characteristics which figure in the grounds for allocating the good since it will further exclude some section of the population. Everyone will agree that for getting admissions in a medical college – where seats are limited – merit is an appropriate criterion. Now, exclusion of potential candidates on grounds other than merit is prima facie denial of equality of opportunity. In Achill Bharitaya Soshit Karamchari Sangh it has been emphasized that the categorization of scheduled caste and scheduled tribes as a class on the basis of which the classification could be justified as just and reasonable within the meaning of Articles 15(1) and 16(1) because these classes stand on a substantially different footing from the rest of the Indian community in our Constitution. Other weaker section in this context, in his opinion, would mean not other 'backward class' but dismally depressed categories comparable economically and educationally to Scheduled Castes and Scheduled Tribes. In other words, in his opinion, classification of Scheduled Castes and Scheduled Tribes as a special category could be justified within the meaning of Article 15(1) and Article 16(1), whereas classification on the basis of backward classes may have to be confirmed on the basis of Article 15(4) and 16(4).

Are Articles 15(4) and 16(4) Exceptions?

On a plain reading of Articles 15 and 16 one is likely to form the impression that clause (4) of Article 15 is an exception to the rest of the provisions of that article and to clause (2) of Article 29 and that clause (4) of Article 16 is an exception to the rest of the provisions of that article. In other words, while clause (4) of Article 15 permits what the rest of that article or clause (2) of Article 29 prohibits, clause (4) of Article 16 permits what the rest of that article prohibits. This, indeed, was the initial impression of the Supreme Court also. This impression continued to rule until some of the judges in the **State of Kerala v. N.M. Thomas** opined that clause (4) of Article 16 was not an exception to clause (1) or (2) of that article. This view in Thomas was reiterated, much more emphatically by **Chinnappa Reddy, J**. in his concurring opinion in A.B.S.K. Sangh v. Union of India and it has finally been accepted by the Court in **Indra Sawhney v. Union of India (the Mandal case).**

Thus clause (4) of Article 16 is not an exception to the rest of that article, but rather it is a facet of equality of opportunity guaranteed in clause (1) of that article and an effective method of realising and implementing it. Clause (4) does not derogate from anything in clauses (1) and (2) of Article 16 but rather gives them positive support and content. It serves the same function, i.e. securing of equality of opportunity, as do clauses (1) and (2). Obviously, therefore, it is as much a fundamental right as clauses (1) and (2) or any other provision of that article.

THE 103rd CONSTITUTIONAL AMENDMENT ACT

The President has given the assent to the **124th constitutional Amendment Bill** (which is now Constitution 103rd amendment Act) providing 10 per cent reservation for economically weaker sections.

Key Facts about the 103rd Constitutional Amendment Act

- The Important components of the 103rd constitutional Amendment are:
- The amendment changed two fundamental rights, Article 15 and 16. The amendments provide for the advancement of the "economically weaker sections" of the society.
- The amendment aims to full the commitments of the directive principles of state policy under Article 46, i.e. to promote the educational and economic interests of the weaker sections of the society.

Criterion for Reservation

- People who have an annual income of less than Rs.8 lakhs, or
- People who own less than ve acres of farm land, or
- People who have a house lesser than 1,000 sq feet in a town (or 100 sq yard in a notified municipal area).
- The constitutional amendment is yet to pass the judicial scrutiny since the Supreme Court had set the cap of 50% on reservations.

The example of Tamil Nadu is been cited to propose that there are ways and means to protect the amendment from the Supreme Court declaring it unconstitutional. Gujarat has become the first state to implement the 10% quota reserved for people from economically weaker sections proposed under the 103rd constitutional amendment act.

The major hurdle for the implementation of the recent Act is the legal scrutiny. 'Youth for Equality' has questioned the constitutional validity of the 103rd constitutional amendment act which was passed by the both the Houses of Parliament after being presented as the Constitution (124th Amendment) Bill, 2019.

The Supreme Court has ruled multiple times against exceeding its **1992 formula of a maximum of 50% reservation (Indira Sawhney v. Union of India)**.However, there are states like Tamil Nadu that go beyond this limit and the Supreme Court has upheld the state's policy many a time. Presently, the state has a '69 per cent quota system'. **However what stance the court takes regarding this amendment is yet in the womb of time**.

ABOLITION OF UNTOUCHABILITY

Article 17 abolishes 'untouchability' and forbids its practice in any form. It reads as:

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

The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. 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 act defines civil right as any right accruing to a person by reason of the abolition of

untouchability by Article 17 of the Constitution. The term 'untouchability' has not been defined either in the Constitution or in the Act. However, the Mysore High Court held that the subject matter of Article 17 is not untouchability in its literal or grammatical sense but the 'practice as it had developed historically in the country'. It refers to the social disabilities imposed on certain classes of persons by reason of their birth in certain castes. Hence, it does not cover social boycott of a few individuals or their exclusion from religious services, etc. Under the **Protection of Civil Rights Act (1955),** the offences committed on the ground of untouchability are punishable either by imprisonment up to six months or by fine upto 500 or both. A person convicted of the offence of 'untouchability' is disqualified for election to the Parliament or state legislature. The act declares the following acts as offences:

- Preventing any person from entering any place of public worship or from worshipping therein;
- Justifying untouchability on traditional, religious, philosophical or other grounds;
- Denying access to any shop, hotel or places of public entertainment;
- Insulting a person belonging to scheduled caste on the ground of untouchability;
- Refusing to admit persons in hospitals, educational institutions or hostels established for public benefit;
- Preaching untouchability directly or indirectly; and
- Refusing to sell goods or render services to any person.

The Supreme Court held that the right under Article 17 is available against private individuals and it is the constitutional obligation of the State to take necessary action to ensure that this right is not violated.

ABOLITION OF TITLES

Article 18 abolishes titles to create a kind of equality it reads as:

1. **No title, not being a military or academic distinction, 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.**

Article 18 of the Indian Constitution i.e. - "Abolition of titles" prohibits the State to confer titles on anybody whether a citizen or a non citizen. Military and academic distinctions are however exempted from the prohibition for they are incentive to further efforts in the perfection of the military power of the State so necessary for its existence and for the scientific endeavors so necessary for its prosperity. From the above, it is clear that the hereditary titles of nobility like Maharaja, Raj Bahadur, Rai Bahadur, Rai Saheb, Dewan Bahadur, etc, which were conferred by colonial States are banned by Article 18 as these are against the principle of equal status of all. Clause (2) prohibits a citizen of India from accepting any title from any foreign State. Clause (3) provides that a foreigner holding any office of profit or trust under the State cannot accept any title from any foreign State without the consent of the President. This is to ensure loyalty to the Government he serves for the time being and to shut out all foreign influence in Government affairs

or administration. Clause (4) provides that no person holding any office or trait under the State shall accept, without the consent of the President any present, emolument or office of any kind from or under any foreign State. The conferring of the titles of "Bharat Ratna", "Padma Vibhushan", "Padma Shri" etc, are not prohibited under Article 18 as they merely denote State recognition of good work by citizens in the various fields of activity. These awards seem to fit within the category of "academic distinctions". These national awards are given on the Republic Day in recognition of exceptional and distinguished services of the high integrity in any field. These National Awards were formally instituted in January 1954 by two Presidential Notifications. These Presidential Notifications also provide that any person without distinction of race, occupation, position or sex, shall be eligible for these awards and also that the decorations may be awarded posthumously. It was also made very clear that these civilian awards cannot be used as titles and should not be attached as suffixes or prefixes to the names of the awards. In 1977 these awards were discontinued but were again revived finally in 1980. Since then, these National Awards are conferred annually on the Republic Day.

In **Balaji Raghavan v Union of India**, the petitioners challenged the validity of these National Awards and requested the Court to prevent the Government of India from conferring these Awards. It was contended that the National Awards are titles within the meaning of Article 18 of the Indian Constitution. It was also argued that these awards are being grossly misused and the purpose for which they were instituted has been diluted and they are granted to persons who are undeserving of them.

The Supreme Court held that the National Awards such as Bharat Ratna, Padma Bhushan and the Padma Shri are not violative of the principle of equality as guaranteed by the provisions of the Indian Constitution. These National Awards do not amount to "titles" within the meaning of Article 18 and, therefore, not violative of Article 18 of the Constitution. The theory of equality does not mandate that merit should not be recognised. Article 51-A of the Constitution speaks of the fundamental duties of every citizen of India. In view of clause (f) of Article 51-A it is necessary that there should be a system of award and decorations to recognise excellence in performance of the duties. However, the Court criticized the Government for its "failure" to exercise sufficient restraint in the conferment of these National Awards. The Court said that the guidelines contained in the communiqué from the Ministry of Home Affairs towards the selection of probable recipients are extremely, wide, imprecise, amenable to abuse and wholly unsatisfactory for the important objective that they seem to achieve. Justice Kuldip Singh in his separate but concurring judgement make a scathing attack in, what he called non-application of mind by successive governments in granting the "Padma Awards". It has already reached a point where political or narrow group interests are being rewarded by those in office for the time being. The Court suggested that a high-level committee may be appointed by the Prime Minister in consultation with the President of India to look into the matter. The Judges made it clear that the committee may keep in view Court's anxiety that the number of awards should not be so large as to dilute their value. It is also to be noted that there is absolutely no penalty for infringement of the above prohibition of titles. Article 18 is merely directory. However, it is upon the Parliament to make laws for dealing with such persons who accept a title in violation of the prohibition prescribed in the Article 18. No such law has been passed by the Parliament so far.

RIGHT TO FREEDOM

Article 19 forms the core of Part III of the constitution. It deals with different aspects of freedom. It reads as:

1. All citizens shall have the right -
    a. to freedom of speech and expression;
    b. to assemble peaceably and without arms;
    c. to form associations or unions; or **co-operative societies (inserted by the 97th Amendment act, 2011)**;
    d. to move freely throughout the territory of India;
    e. to reside and settle in any part of the territory of India; and
    f. to acquire, hold and dispose of property* (repealed by the 44th Amendment act, 1978)**
    g. to practice any profession, or to carry on any occupation, trade or business.
2. Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.
3. Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of the sovereignty and integrity of India or public order, reasonable restrictions on the right conferred by the said sub-clause.
4. Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
5. Nothing in sub-clause (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Schedule Tribe.
6. Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, -
    i. the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or
    ii. the carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Originally, Article 19 contained seven rights. But, the right to acquire, hold and dispose of property was deleted by the 44th Amendment Act of 1978. These six rights are protected against only state action and not private individuals. Moreover, these rights are available only to the citizens and to shareholders of a company but not to foreigners or legal persons like companies or corporations, etc. The State can impose 'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned in the Article 19 itself and not on any other grounds.

Freedom of Speech and Expression -It implies that every citizen has the right to express his views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner. The Supreme Court held that the freedom of speech and expression includes the following:

(a) Right to propagate one's views as well as views of others.

(b) Freedom of the press.

(c) Freedom of commercial advertisements.

(d) Right against tapping of telephonic conversation.

(e) Right to telecast, that is, government has no monopoly on electronic media.

(f) Right against bundh called by a political party or organisation.

(g) Right to know about government activities.

(h) Freedom of silence.

(i) Right against imposition of pre-censorship on a newspaper.

(j) Right to demonstration or picketing but not right to strike.

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

"Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties".

-John Milton

The essence of free speech is the ability to think and speak freely and to obtain information from others through publications and public discourse without fear of retribution, restriction, or repression by the government. It is through free speech, people could come together to achieve political influence, to strengthen their morality, and to help others to become moral and enlightened citizens.

The freedom of speech is regarded as the first condition of liberty. It occupies a preferred and important position in the hierarchy of the liberty, it is truly said about the freedom of speech that it is the mother of all other liberties.

Freedom of Speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. In modern time it is widely accepted that the right to freedom of speech is the essence of free society and it must be safeguarded at all time. The first principle of a free society is an untrammeled flow of words in an open forum. Liberty to express opinions and ideas without hindrance, and especially without fear of punishment plays significant role in the development of that particular society and ultimately for that state. It is one of the most important fundamental liberties guaranteed against state suppression or regulation.

Freedom of speech is guaranteed not only by the constitution or statutes of various states but also by various international conventions like U**niversal Declaration of Human Rights, European convention on Human Rights and fundamental freedoms, International Covenant on Civil and Political Rights** etc. These declarations expressly talk about protection of freedom of speech and expression.

Freedom of Speech and Expression- Meaning & Scope

Article 19(1)(a) of the Constitution of India guarantees to all its citizens the right to freedom of speech and expression. The law states that, "all citizens shall have the right to freedom of speech and expression". Under **Article 19(2)** "reasonable restrictions can be imposed on the exercise of this right for certain purposes. Any limitation on the exercise of the right under **Article 19(1)(a)** not falling within the four corners of **Article 19(2)** cannot be valid.

The freedom of speech under **Article 19(1) (a)** includes the right to express one's views and opinions at any issue through any medium, e.g. **by words of mouth, writing, printing, picture, film, movie etc.** It thus includes the freedom of communication and the right to propagate or publish opinion. But this right is subject to reasonable restrictions being imposed under **Article 19(2)**. Free expression cannot be equated or confused with a license to make unfounded and irresponsible allegations against the judiciary.

It is important to note that a restriction on the freedom of speech of any citizen may be placed as much by an action of the State as by its inaction. Thus, failure on the part of the State to guarantee to all its citizens irrespective of their circumstances and the class to which they belong, the fundamental right to freedom of speech and expression would constitute a violation of **Article 19(1)(a)**.

The fundamental right to freedom of speech and expression is regarded as **one of the most basic elements of a healthy democracy for it allows its citizens to participate fully and effectively in the social and political process of the country.** In fact, the freedom of speech and expression gives greater scope and meaning to the citizenship of a person extending the concept from the level of basic existence to giving the person a political and social life.

This right is available only to a citizen of India and not to foreign nationals. This right is, however, not absolute and it allows Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to an offence.

In the Preamble to the Constitution of India, the people of India declared their solemn resolve to secure to all its citizen liberty of thought and expression. The Constitution affirms the right to freedom of expression, which includes the right to voice one's opinion, the right to seek information and ideas, the right to receive information and the right to impart information. The Indian State is under an obligation to create conditions in which all the citizens can effectively and efficiently enjoy the aforesaid rights.

In ***Romesh Thappar v State of Madras*** **(AIR 1950 SC 124),** the Supreme Court of India held that the freedom of speech and expression includes freedom to propagate ideas which is ensured by freedom of circulation of a publication, as publication is of little value without circulation. **Patanjali Sastri, J.,** rightly observed that-

'Freedom of Speech and of Press lat at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of Government, is possible'

However **Article 19(2)** of the Constitution provides that this right is not absolute and 'reasonable restrictions' may be imposed on the exercise of this right for certain purposes. The right to freedom of expression includes the right to express ones views and opinions on any issue and through any medium whether it be in writing or by word of mouth.

The phrase "speech and expression" used in **Article 19(1) (a)** has a broad connotation. **This right includes the right to communicate, print and advertise the information.** In India, **freedom of the press** is implied from the freedom of speech and expression guaranteed by **Article 19(1)(a)**. The freedom of the press is regarded as a "**species of which freedom of expression is a genus**"[ii]. On the issue of whether 'advertising' would fall under the scope of the Article, the Supreme Court pointed out that the right of a citizen to exhibit films is a part of the fundamental right of speech and expression guaranteed by **Article 19(1)(a)** of the Constitution.[iii]

Indian law does not expressly refer to commercial and artistic speech. However, Indian Law is developing and the Supreme Court has ruled that 'commercial speech' cannot be denied the protection of **Article 19(1) (a**) of the Constitution. The Court has held that 'commercial speech' is a part of the 'right of freedom of speech and expression' as guaranteed by our Constitution.

The citizens of India have the right to receive 'commercial speech' and they also have the right to read and listen to the same. This protection is available to the speaker as well as the recipient.[iv] Freedom of Speech and Expression also includes artistic speech as it includes the right to paint, sign, dance, write poetry, literature and is covered by **Article 19(1)(a)** because the common basic characteristic of all these activities is freedom of speech and expression.

Under the provisions of the Constitution of India, an individual as well as a corporation can invoke freedom of speech arguments and other fundamental rights against the State by way of a Writ Petition under **Articles 32** and **226** of the Constitution of India subject to the State imposing some permissible restrictions in the interests of social control.

Under the provisions of Indian law, the right to invoke the freedom of speech arguments is not limited to individuals alone. Corporations are also entitled to invoke such arguments. The cases of ***Bennet and Coleman & Co. v. Union of India*** (1973) and I***ndian Express Newspapers (Bombay) P. Ltd v. Union of India*** are of great significance. In these cases, the corporations filed a writ petition challenging the constitutional validity of notifications issued by the Government. After much deliberation, the Courts held that the right to freedom of speech cannot be taken away with the object of placing restrictions on the business activities of citizens. However, the limitation on the exercise of the right under **Article 19(1) (a)** not falling within the four corners of **19(2)** is not valid.

Freedom of Assembly -Every citizen has the right to assemble peaceably and without arms. It includes the right to hold public meetings, demonstrations and take out processions. This freedom can be exercised only on public land and the assembly must be peaceful and unarmed. This provision does not protect violent, disorderly, riotous assemblies, or one that causes breach of public peace or one that involves arms. This right does not include the right to strike.

The State can impose reasonable restrictions on the exercise of right of assembly on two grounds, namely, sovereignty and integrity of India and public order including the maintenance of traffic in the area concerned. Under Section 144 of Criminal Procedure Code (1973), a magistrate can restrain an assembly, meeting or procession if there is a risk of obstruction, annoyance or danger to human life, health or safety or a disturbance of the public tranquillity or a riot or any affray.

Under Section 141 of the Indian Penal Code, as assembly of five or more persons becomes unlawful if the object is (a) to resist the execution of any law or legal process; (b) to forcibly occupy the property of some person; (c) to commit any mischief or criminal trespass; (d) to force some person to do an illegal act; and (e) to threaten the government or its officials on exercising lawful powers.

Freedom of Association- All citizens have the right to form associations or unions or co-operative societies. It includes the right to form political parties, companies, partnership firms, societies, clubs, organisations, trade unions or anybody of persons. It not only includes the right to start an association or union but also to continue with the association or union as such. Further, it covers the negative right of not to form or join an association or union.

Reasonable restrictions can be imposed on the exercise of this right by the State on the grounds of sovereignty and integrity of India, public order and morality. Subject to these restrictions, the citizens have complete liberty to form associations or unions for pursuing lawful objectives and purposes. However, the right to obtain recognition of the association is not a fundamental right.

The Supreme Court held that the trade unions have no guaranteed right to effective bargaining or right to strike or right to declare a lock-out. The right to strike can be controlled by an appropriate industrial law.

Freedom of Movement -This freedom entitles every citizen to move freely throughout the territory of the country. He can move freely from one state to another or from one place to another within a state. This right underlines the idea that India is one unit so far as the citizens are concerned. Thus, the purpose is to promote national feeling and not parochialism. The grounds of imposing reasonable restrictions on this freedom are two, namely, the interests of general public and the protection of interests of any scheduled tribe. The entry of outsiders in tribal areas is restricted to protect the distinctive culture, language, customs and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation. The Supreme Court held that the freedom of movement of prostitutes can be restricted on the ground of public health and in the interest of public morals. The Bombay High Court validated the restrictions on the movement of persons affected by AIDS. The freedom of movement has two dimensions, viz, internal (right to move inside the country) and external (right to move out of the country and right to come back to the country). Article 19 protects only the first dimension. The second dimension is dealt by Article 21 (right to life and personal liberty).

Freedom of Residence- Every citizen has the right to reside and settle in any part of the territory of the country. This right has two parts: (a) the right to reside in any part of the country, which means to stay at any place temporarily, and (b) the right to settle in any part of the country, which means to set up a home or domicile at any place permanently.

This right is intended to remove internal barriers within the country or between any of its parts. This promotes nationalism and avoids narrow mindedness.

The State can impose reasonable restrictions on the exercise of this right on two grounds, namely, the interest of general public and the protection of interests of any scheduled tribes. The right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture, language, customs and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation. In many parts of the country, the tribals have been permitted to regulate their property rights in accordance with their customary rules and laws.

The Supreme Court held that certain areas can be banned for certain kinds of persons like prostitutes and habitual offenders. From the above, it is clear that the right to residence and the right to movement are overlapping to some extent. Both are complementary to each other.

Freedom of Profession, etc. -All citizens are given the right to practise any profession or to carry on any occupation, trade or business. This right is very wide as it covers all the means of earning one's livelihood. The State can impose reasonable restrictions on the exercise of this right in the interest of the general public. Further, the State is empowered to:

(a) Prescribe professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business; and

(b) Carry on by itself any trade, business, industry or service whether to the exclusion (complete or partial) of citizens or otherwise.

Thus, no objection can be made when the State carries on a trade, business, industry or service either as a monopoly (complete or partial) to the exclusion of citizens (all or some only) or in competition with any citizen. The State is not required to justify its monopoly.

This right does not include the right to carry on a profession or business or trade or occupation that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc,). The State can absolutely prohibit these or regulate them through licencing.

PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

Article 20 of the Indian constitution offers protection in certain respects against conviction for offences. It reads as:

1. **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 charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.**
2. **No person shall be prosecuted and punished for the same offence more than once.**
3. **No person accused of any offence shall be compelled to be a witness against himself.**

Article 20 has taken care to safeguard the rights of persons accused of crimes. Persons here mean the citizens, non-citizens as well as corporations. Please note that this article cannot be suspended even during an emergency in operation under article 359. Article 20 also constitutes the limitation on the legislative powers of the Union and State legislatures.

Ex-Post facto Law

Article 20 (1) says that 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 charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. This is called Ex-Post facto Law. It means that legislature cannot make a law which provides for punishment of acts which were committed prior to the date when it came into force. This means that a new law cannot punish an old act.

Doctrine of Double Jeopardy

Article 20(2) says that no person shall be prosecuted and punished for the same offence more than once. This is called Doctrine of Double Jeopardy. The objective of this article is to avoid harassment, which must be caused for successive criminal proceedings, where the person has committed only one crime. There is a law maxim related to this – **nemo debet bis vexari.** This means that no man shall be put twice in peril for the same offence. There are two aspects of Doctrine of Jeopardy viz. **autrefois convict** and **autrefois acquit**. Autrefois convict means that the person has been previously convicted in respect of the same offence. The autrefois acquit means that the person has been acquitted on a same charge on which he is being prosecuted. Please note that Constitution bars double punishment for the same offence. The conviction for such offence does not bar for subsequent trial and conviction for another offence and it does not matter if some ingredients of these two offences are common.

Self Incrimination Law

Article 20(3) of the constitution says that no person accused of any offence shall be compelled to be a witness against himself. This is based upon a legal maxim which means that No man is bound to accuse himself. The accused is presumed to be innocent till his guilt is proved. It is the duty of the prosecution to establish his guilt.

RIGHT TO LIFE AND PERSONAL LIBERTY

According to Bhagwati, J., Article 21 "embodies a constitutional value of supreme importance in a democratic society." Iyer, J., has characterized Article 21 as "the procedural magna carta protective of life and liberty.

This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws. Article 21 reads as:

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

Article 21 can only be claimed when a person is deprived of his "life" or "personal liberty" by the "State" as defined in Article 12. Violation of the right by private individuals is not within the preview of Article 21.

Article 21 secures two rights:

- **Right to life, and**
- **Right to personal liberty.**

The Article prohibits the deprivation of the above rights except according to a procedure established by law. Article 21 corresponds to the *Magna Carta* of 1215, the Fifth Amendment to the American Constitution, **Article 40(4)** of the Constitution of Eire 1937, and Article XXXI of the Constitution of Japan, 1946.

Article 21 applies to natural persons. The right is available to every person, citizen or alien. Thus, even a foreigner can claim this right. It, however, does not entitle a foreigner the right to reside and settle in India, as mentioned in Article 19 (1) (e).

The meaning of the word life includes the right to live in fair and reasonable conditions, right to rehabilitation after release, right to live hood by legal means and decent environment. The expanded scope of Article 21 has been explained by the Apex Court in the case of **Unni Krishnan v. State of A.P**. and the Apex Court itself provided the list of some of the rights covered under Article 21 on the basis of earlier pronouncements and some of them are listed below:

- The right to go abroad.
- The right to privacy.
- The right against solitary confinement.
- The right against hand cuffing.
- The right against delayed execution.
- The right to shelter.
- The right against custodial death.
- The right against public hanging.
- Doctors assistance

MEANING AND CONCEPT OF 'RIGHT TO LIFE'

'Everyone has the right to life, liberty and the security of person.' The right to life is undoubtedly the most fundamental of all rights. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary, since none of the other rights would have any value or utility without it. There would have been no Fundamental Rights worth mentioning if Article 21 had been interpreted in its original sense. This Section will examine the right to life as interpreted and applied by the Supreme Court of India.

Article 21 of the Constitution of India, 1950 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." 'Life' in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc.

Right to life is fundamental to our very existence without which we cannot live as a human being and includes all those aspects of life, which go to make a man's life meaningful, complete, and worth living. It is the only article in the Constitution that has received the widest possible interpretation. Under the canopy of Article 21, so many rights have found shelter, growth, and nourishment. Thus, the bare necessities, minimum and basic requirements that are essential and unavoidable for a person is the core concept of the right to life.

In the case of ***Kharak Singh v. State of Uttar Pradesh***, the Supreme Court quoted and held that:

"By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an armored leg or the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world."

In ***Sunil Batra v. Delhi Administration***, the Supreme Court reiterated with the approval the above observations and held that the "right to life" included the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions. It would even include the right to protection of a person's tradition, culture, heritage and all that gives meaning to a man's life. It includes the right to live in peace, to sleep in peace and the right to repose and health.

Right to Live with Human Dignity

In ***Maneka Gandhi v. Union of India*****,** the Supreme Court gave a new dimension to Art. 21 and held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Elaborating the same view, the Court in ***Francis Coralie v. Union Territory of Delhi*****,** observed that:

"The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self."

Another broad formulation of the theme of life to dignity is to be found in ***Bandhua Mukti Morcha v. Union of India*****.** Characterizing Art. 21 as the heart of fundamental rights, the Court gave it an expanded interpretation. Bhagwati J. observed:

"It is the fundamental right of everyone in this country... to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

"These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials."

Following the above-stated cases, the Supreme Court in ***Peoples Union for Democratic Rights v. Union of India,*** held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and violative of Article 21 of the Constitution.

Bhagwati J. held that rights and benefits conferred on workmen employed by a contractor under various labor laws are clearly intended to ensure basic human dignity to workmen. He held that the non-implementation by the private contractors engaged for constructing a building for holding Asian Games in Delhi, and non-enforcement of these laws by the State Authorities of the provisions of these laws was held to be violative of the fundamental right of workers to live with human dignity contained in Art. 21.

In ***Chandra Raja Kumar v. Police Commissioner Hyderabad,*** it has been held that the right to life includes right to live with human dignity and decency and, therefore, holding of beauty contest is repugnant to dignity or decency of women and offends Article 21 of the Constitution only if the same is grossly indecent, scurrilous, obscene or intended for blackmailing. The government is empowered to prohibit the contest as objectionable performance under Section 3 of the Andhra Pradesh Objectionable Performances Prohibition Act, 1956.

In ***State of Maharashtra v. Chandrabhan,*** the Court struck down a provision of Bombay Civil Service Rules, 1959, which provided for payment of only a nominal subsistence allowance of Re. 1 per month to a suspended Government Servant upon his conviction during the pendency of his appeal as unconstitutional on the ground that it was violative of Article 21 of the Constitution.

Right to Work Not a Fundamental Right under Art.21

In ***Sodan Singh v. New Delhi Municipal Committee*** the five-judge bench of the Supreme Court distinguished the concept of life and liberty within Art.21 from the right to carry on any trade or business, a fundamental right conferred by Art. 19(1) (g) and held the right to carry on trade or business is not included in the concept of life and personal liberty. Article 21 is not attracted in the case of trade and business.

The petitioners, hawkers doing business off the paved roads in Delhi, had claimed that the refusal by the Municipal authorities to them to carry on the business of their livelihood amounted to the violation of their right under Article 21 of the Constitution. The court opined that while hawkers have a fundamental right under Article 19(1) (g) to carry on trade or business of their choice; they have no right to do so in a particular place. They cannot be permitted to carry on their trade on every road in the city. If the road is not wide enough to be conveniently accommodating the traffic on it, no hawking may be permitted at all or may be permitted once a week.

Footpaths, streets or roads are public property and are intended to several general public and are not meant for private use. However, the court said that the affected persons could apply for relocation and the

concerned authorities were to consider the representation and pass orders thereon. The two rights were too remote to be connected together.

The court distinguished the ruling in ***Olga Tellis v. Bombay Municipal Corporation*** and held that "in that case the petitioners were very poor persons who had made pavements their homes existing in the midst of filth and squalor and that they had to stay on the pavements so that they could get odd jobs in the city. It was not the case of a business of selling articles after investing some capital."

In ***Secretary, State of Karnataka v. Umadevi*****,** the Court rejected that right to employment at the present point of time can be included as a fundamental right under Right to Life under Art. 21.

PERSONAL LIBERTY

Liberty of the person is one of the oldest concepts to be protected by national courts. As long as 1215, the English Magna Carta provided that,

No freeman shall be taken or imprisoned… but… by the law of the land.

The smallest Article of eighteen words has the greatest significance for those who cherish the ideals of liberty. What can be more important than liberty? In India, the concept of 'liberty' has received a far more expansive interpretation. The Supreme Court of India has rejected the view that liberty denotes merely freedom from bodily restraint, and has held that it encompasses those rights and privileges that have long been recognized as being essential to the orderly pursuit of happiness by free men.

The meaning of the term 'personal liberty' was considered by the Supreme Court in the Kharak Singh's case, which arose out of the challenge to Constitutional validity of the U. P. Police Regulations that provided for surveillance by way of domiciliary visits and secret picketing. Oddly enough both the majority and minority on the bench relied on the meaning given to the term "personal liberty" by an American judgment (per Field, J.,) in Munn v Illinois, which held the term 'life' meant something more than mere animal existence. The prohibition against its deprivation extended to all those limits and faculties by which the life was enjoyed.

This provision equally prohibited the mutilation of the body or the amputation of an arm or leg or the putting of an eye or the destruction of any other organ of the body through which the soul communicated with the outer world. The majority held that the U. P. Police Regulations authorizing domiciliary visits [at night by police officers as a form of surveillance, constituted a deprivation of liberty and thus] unconstitutional. The Court observed that the right to personal liberty in the Indian Constitution is the right of an individual to be free from restrictions or encroachments on his person, whether they are directly imposed or indirectly brought about by calculated measures.

The Supreme Court has held that even lawful imprisonment does not spell farewell to all fundamental rights. A prisoner retains all the rights enjoyed by a free citizen except only those 'necessarily' lost as an incident of imprisonment

PROCEDURE ESTABLISHED BY LAW

The expression "procedure established by law" has been the subject matter of interpretation in a catena of cases. A survey of these cases reveals that courts in the process of judicial interpretation have enlarged the scope of the expression. The Supreme Court took the view that "procedure established by law" in Article 21 means procedure prescribed by law as enacted by the state and rejected to equate it with the American "due process of law."

But, in ***Maneka Gandhi v Union of India*** the Supreme Court observed that the procedure prescribed by law for depriving a person of his life and personal liberty must be "right, just and fair" and not "arbitrary, fanciful and oppressive," otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied. Thus, the "procedure established by law" has acquired the same significance in India as the "due process of law" clause in America.

Justice V. R. Krishna Iyer, speaking in ***Sunil Batra v Delhi Administration*** has said that though "our Constitution has no due process clause" but after Maneka Gandhi's case "the consequence is the same and as much as such Article 21 may be treated as counterpart of the due process clause in American Constitution."

Recently the Supreme Court has dealt with an increasing number of people sentenced to death for "bride-burning". In December 1985 the Rajasthan High Court sentenced a man, Jagdish Kumar, and a woman, Lichma Devi, to death for two separate cases of killing two young women by setting them on fire. In an unprecedented move, the court ordered both prisoners to be publicly executed.

In a response to a review petition by the Attorney General against this judgment, the Supreme Court in December 1985 stayed the public hangings, observing that "a barbaric crime does not have to be met with a barbaric penalty." The Court observed that the execution of death sentence by public hanging is a violation of Article 21, which mandates the observance of a just, fair and reasonable procedure.

Thus, an order passed by the High Court of Rajasthan for public hanging was set aside by the Supreme Court on the ground inter alia, that it was violative of article 21. In Sher Singh v State of Punjab, the Supreme Court held that unjustifiable delay in execution of death sentence violates art 21.

The Supreme Court has taken the view that this article read as a whole is concerned with the fullest development of an individual and ensuring his dignity through the rule of law. Every procedure must seem to be 'reasonable, fair and just.' The right to life and personal liberty has been interpreted widely to include the right to livelihood, health, education, environment and all those matters that contributed to life with dignity.

The test of procedural fairness has been deemed to be one that is commensurate to protecting such rights. Thus, where workers have been deemed to have the right to public employment and its concomitant right to livelihood, a hire-fire clause in favor of the State is not reasonable, fair and just even though the State cannot affirmatively provide a livelihood for all.

Under this doctrine, the Court will not just examine whether the procedure itself is reasonable, fair and just, but also whether it has been operated in a fair, just and reasonable manner. This has meant, for example, the right to speedy trial and legal aid is part of any reasonable, fair and just procedure. The process clause is comprehensive and applicable in all areas of State action covering civil, criminal and administrative action.

The Supreme Court of India in one of the landmark decision in the case of Murli S. Deora v. Union of India observed that the fundamental right guaranteed under Article 21 of the Constitution of India provides that none shall be deprived of his life without due process of law. The Court observed that smoking in public places is an indirect deprivation of life of non-smokers without any process of law. Taking into consideration the adverse effect of smoking on smokers and passive smokers, the Supreme Court directed the prohibition of smoking in public places.

It issued directions to the Union of India, State Governments and the Union Territories to take effective steps to ensure prohibition of smoking in public places such as auditoriums, hospital buildings, health institutions etc. In this manner, the Supreme Court gave a liberal interpretation to Article 21 of the Constitution and expanded its horizon to include the rights of non-smokers.

Further, when there is an inordinate delay in the investigation – it affects the right of the accused, as he is kept in tenterhooks and suspense about the outcome of the case. If the investigating authority pursues the investigation as per the provisions of the Code, there can be no cause of action. But, if the case is kept alive without any progress in any investigation, then the provisions of Article 21 are attracted and the right is not only against actual proceedings in court but also against police investigation.

The Supreme Court has widened the scope of 'procedure established by law' and held that merely a procedure has been established by law a person cannot be deprived of his life and liberty unless the procedure is just, fair and reasonable. It is thus now well established that the "procedure established by law" to deprive a person of his life and personal liberty, must be just, fair and reasonable and that it must not be arbitrary, fanciful or oppressive, that the procedure to be valid must comply with the principles of natural justice.

ARTICLE 21 AND THE EMERGENCY

In ***A.D.M. Jabalpur v. S. Shukla*,** Popularly known as habeas corpus case, the supreme court held that article 21 was the sole repository of the right to life and personal liberty and therefore, if the right to move any court for the enforcement of that right was suspended by the presidential order under **Article 359,** the detune would have no *locus standi* to a writ petition for challenging the legality of his detention.

Such a wider connotation given to article 359, resulted in the denial of the cherished right to personal liberty guaranteed to the citizens. Experience established that during the emergence of 1975, the fundamental freedom of the people had lost all meanings.

In order that it must not occur again, the constitution act, 1978, amended article 359 to the effect that during the operation of the proclamation of emergency, the remedy for the enforcement of the fundamental right guaranteed by article 21 would not be suspended under a presidential order.

In view of the 44th amendment, 1978, the observations made in the above-cited judgments are left merely of academic importance.

PROCEDURE ESTABLISHED BY LAW vs DUE PROCESS OF LAW

As we have seen, the term "procedure established by law" is used directly in the Indian constitution. Due Process of Law has much wider significance, but it is not explicitly mentioned in Indian Constitution. The due process doctrine is followed in United States of America, and Indian constitutional framers purposefully left that out. But in most of the recent judgments of the Supreme Court, the due process aspect is coming into picture again. Supreme Court discovered Due Process of Law in ***Maneka Gandhi Case***. Let's see the difference in detail.

Procedure Established by Law

Following this doctrine means that, a person can be deprived of his life or personal liberty according to the procedure established by law. So, if Parliament passes a law, then the life or personal liberty of a person can be taken off according to the provisions and procedures of that law. This doctrine has a major flaw. It does not seek whether the laws made by Parliament is fair, just and not arbitrary. "Procedure established by law" means a law duly enacted is valid even if it's contrary to principles of justice and equity. Strictly following procedure established by law may raise the risk of compromise to life and personal liberty of individuals due to unjust laws made by the law making authorities. It is to avoid this situation, SC stressed upon the importance of due process of law.

Due Process of Law

Due process of law doctrine not only checks if there is a law to deprive the life and personal liberty of a person, but also see if the law made is fair, just and not arbitrary. If SC finds that any law as not fair, it will declare it as null and void. This doctrine provides for more fair treatment of individual rights.

Under due process, it is the legal requirement that the state must respect all of the legal rights that are owed to a person and laws that states enact must confirm to the laws of the land like – fairness, fundamental rights, liberty etc. It also gives the judiciary the right to access the fundamental fairness, justice, and liberty of any legislation.

Due Process of Law = Procedure Established by Law + The procedure should be fair and just and not arbitrary.

In the early decades, the Supreme Court of India interpreted Article 21 faithfully to the intent of the framers of India's Constitution. However, beginning in the 1970s, an activist Supreme Court started incorporating the U.S. constitutional doctrines of "procedural due process" and "substantive due process" in India. Though Article 21 formally provides that a person's life and personal liberty can be deprived so long as there is merely a "procedure established by law" (that is, a validly enacted law), the doctrine of procedural due process mandates that this procedural law must be "fair, just and reasonable". The doctrine of substantive due process enables a court to question not merely procedural laws, but the substantive value choices of the legislative branch of government as well.

RIGHT TO DIE: PASSIVE EUTHANASIA IN INDIA

The word "euthanasia" literally means "good death" or "easy death". Euthanasia is the act of killing, for reasons of mercy, persons that are hopelessly sick or handicapped or injured. Consequently euthanasia is more commonly known as "mercy killing".

"Active" versus "Passive" Euthanasia distinction (APD)

- The SC expounded the basis of its 2011 ruling in **Aruna Shanbaug v. Union of India**, which **permitted "passive" euthanasia, including "involuntary" passive euthanasia** for **mentally incompetent patients, in certain terminal cases**.
- Ruling that **Article 21** of the Constitution guaranteed the **"right to die with dignity"**, the court also issued interim guidelines to enforce individuals' living wills in case of future incompetence
- Aruna and Common Cause have incorporated the judicial APD evolved primarily by U.K. courts.

The core philosophy underlying the Supreme Court's verdict allowing passive euthanasia and giving legal status to 'advance directives' is that the **right to a dignified life extends up to the point of having a dignified death**. In four concurring opinions, the **five-member Constitution Bench** grappled with a question that involved, in the words of **Justice D.Y. Chandrachud**, "**finding substance and balance in the relationship between life, morality and the experience of dying**". The outcome of the exercise is a progressive and humane verdict that lays down a broad legal framework for protecting the dignity of a terminally ill patient or one in a persistent vegetative state (PVS) with no hope of cure or recovery. For, in such circumstances, "accelerating the process of death for reducing the period of suffering constitutes a right to live with dignity".

The core message is that all adults with the capacity to give consent "**have the right of self determination and autonomy", and the right to refuse medical treatment is also encompassed in it**. Passive euthanasia was recognised by a two-judge Bench in Aruna Shanbaug in 2011; now the Constitution Bench has expanded the jurisprudence on the subject by adding to it the principle of a 'living will', or an advance

directive, a practice whereby a person, while in a competent state of mind, leaves written instructions on the sort of medical treatment that may or may not be administered in the event of her reaching a stage of terminal illness.

Passive euthanasia essentially involves withdrawal of life support or discontinuation of life-preserving medical treatment so that a person with a terminal illness is allowed to die in the natural course. The court's reasoning is unexceptionable when it says burdening a dying patient with life-prolonging treatment and equipment merely because medical technology has advanced would be destructive of her dignity.

In such a situation, "individual interest has to be given priority over the state interest". The court has invoked its inherent power under Article 142 of the Constitution to grant legal status to advance directives, and its directives will hold good until Parliament enacts legislation on the matter.

The government submitted that it was in the process of introducing a law to regulate passive euthanasia, but opposed the concept of advance directive on the ground that it was liable to be misused. The stringent conditions imposed by the court regarding advance directives are intended to serve as a set of robust safeguards and allay any apprehensions about misuse. The court is justified in concluding that advance directives will strengthen the will of the treating doctors by assuring them that they are acting lawfully in respecting the patient's wishes. An advance directive, after all, only reflects the patient's autonomy and does not amount to recognition of a wish to die.

Guidelines as pronounced by the court

- The judgment includes specific guidelines to test the validity of a living will, by whom it should be certified, when and how it should come into effect, etc
- The guidelines also cover a situation where there is no living will and how to approach a plea for passive euthanasia
- A person need not give any reasons nor is he answerable to any authority on why he should write an advanced directive

Supreme Court guidelines on passive euthanasia: Responsibility on Doctors

- Guidelines prescribed by the Supreme Court while upholding passive euthanasia and 'Living Will', place a huge burden on the treating physician and hospital
- The responsibility is on the treating doctor to ascertain the "genuineness and authenticity" of a Living Will of a terminally ill patient
- The living will would be placed in the custody of the Judicial Magistrate
- The court gives the treating doctor even a right to move the High Court, along with the dying person's relatives or guardian, in case the Medical Board revokes permission for passive euthanasia
- The court also gives an individual the right to withdraw or alter his Living Will, but only in writing

Australian state allows voluntary euthanasia in 2019

An Australian state parliament has legalised voluntary euthanasia 20 years after the country repealed the world's first mercy-killing law for the terminally ill. The final vote in the Victorian parliament on Wednesday means that doctor-assisted suicide will be allowed in Australia's second-most populous state from mid-2019.

Even the Supreme Court of Canada, whose unanimous ruling in February inspired the Seales case, has done no more than uphold a right to euthanasia in principle.

Conclusion

However If passive euthanasia is a guaranteed fundamental right, a rigid "active" versus passive" euthanasia distinction (APD) is analytically unsustainable.

There is no articulable reason why "withdrawal" (as opposed to "withholding") of current treatment isn't an illegal "active" decision that hastens death from the underlying cause. It is much like a lethal injection that also accelerates imminent death. More importantly, it may unjustly deny a recognised fundamental right to those who need assistance to access it.APD is an elaborate and flawed judicial construct arguably necessitated by overarching policy concerns, namely,

- Potential for abuse by unscrupulous individuals;
- The spectre of criminal prosecution of benign doctors and families, etc.

Whether couched as "dignified death" or "bodily autonomy", there is no reasonable basis for negating the right vis-à-vis a patient whose circumstances warrant assistance to exercise it. However there is no denying the fact that **–'Euthanasia is simply to be able to die with dignity at a moment when life is devoid of it!"**

RIGHT TO EDUCATION (RTE)

Article 21 A deals with Right to Education and reads as:

> **The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.**
>
> **(86th Amendment Act, 2002)**

Article 21 A declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may determine. Thus, this provision makes only elementary education a Fundamental Right and not higher or professional education.

This provision was added by the 86th Constitutional Amendment Act of 2002. This amendment is a major milestone in the country's aim to achieve 'Education for All'. The government described this step as 'the dawn of the second revolution in the chapter of citizens' rights'.

Even before this amendment, the Constitution contained a provision for free and compulsory education for children under Article 45 in Part IV. However, being a directive principle, it was not enforceable by the courts. Now, there is scope for judicial intervention in this regard.

This amendment changed the subject matter of Article 45 in directive principles. It now reads—'The state shall endeavour to provide early childhood care and education for all children until they complete the age

of six years.' It also added a new fundamental duty under Article 51A that reads —'It shall be the duty of every citizen of India to provide opportunities for education to his child or ward between the age of six and fourteen years'.

In 1993 itself, the Supreme Court recognised a Fundamental Right to primary education in the right to life under Article 21. It held that every child or citizen of this country has a right to free education until he completes the age of 14 years. Thereafter, his right to education is subject to the limits of economic capacity and development of the state. In this judgement, the Court overruled its earlier judgement (1992) which declared that there was a fundamental right to education up to any level including professional education like medicine and engineering. In pursuance of Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009. This Act seeks to provide that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. This legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all.

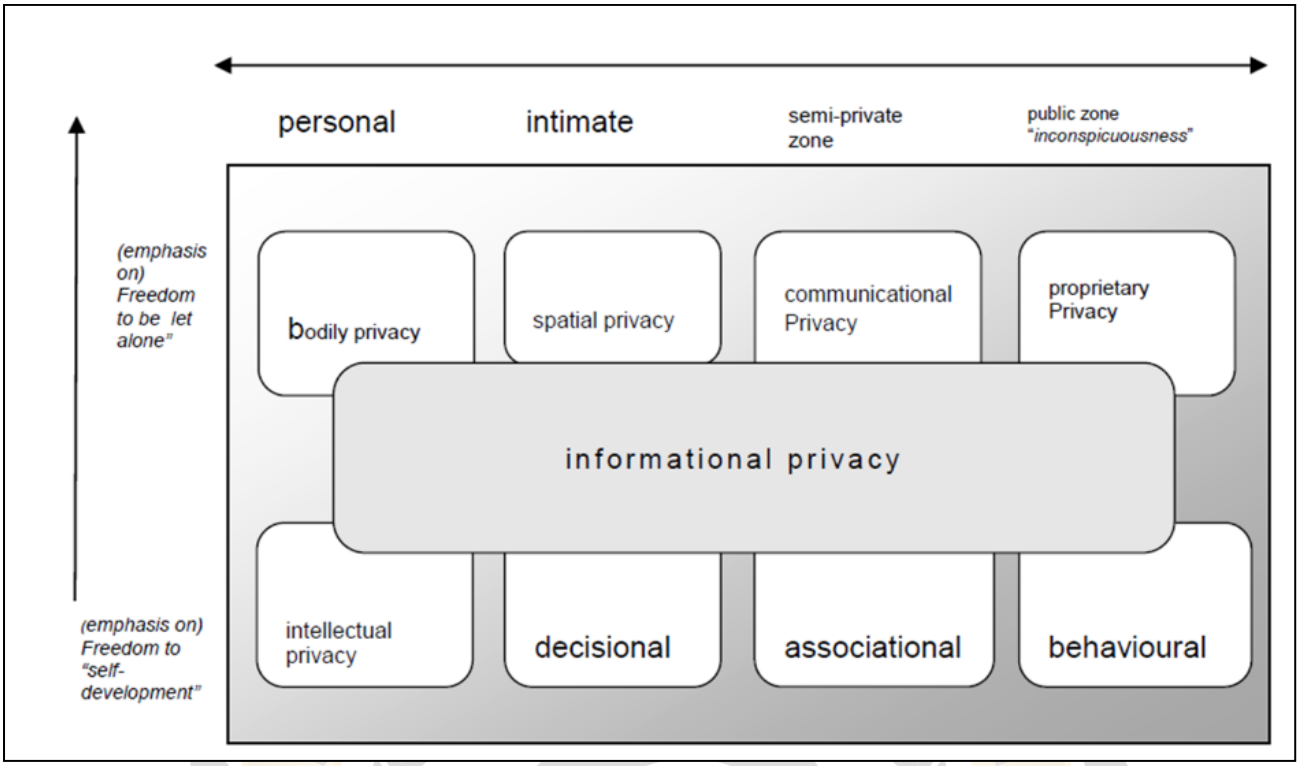
RIGHT TO PRIVACY

A nine-judge bench of the Supreme Court of India on August 24, 2017 ruled that right to privacy is a fundamental right and is 'intrinsic to life and liberty' which is protected under various fundamental rights enshrined under Part III of the Indian Constitution. In a judgment as elaborate and detailed expanding to 547 pages, the judges discussed the ambit of right to privacy at length, overruling the decision in MP Sharma (1954) and Kharak Singh (1963)

The Court overruled MP Sharma and Kharak Singh to the extent that it had observed that privacy is not a right guaranteed by the Indian Constitution. It was held in MP Sharma that in absence of a provision like the Fourth Amendment to the US Constitution, a right to privacy couldn't be read into the Indian Constitution. This position is misleading and contrary in present times. The Court in Puttaswamy decided that the absence of an express constitutional guarantee of privacy does not necessarily warrant that there is no protection of privacy under the framework of protected guarantees including those in Article 19 and 21. On similar grounds the Court in this case ruled that the Kharak Singh case suffered from an internal inconsistency as it had held that right to privacy is not guaranteed under the Constitution and hence Article 21 had no application.

Privacy is a right that enables a person to be left alone. However, this right is to been seen in light of the various relationships people have at large in society. The Puttaswamy judgment brings out a constitutional understanding of where liberty places an individual in the context of a social order. It analyses the debate on privacy in the context of a global, information-based society. While tracing the definition of privacy given by various philosophers, the judges draw an analogy with the current times and the basic need of every individual to live with dignity. It is essential to safeguard privacy rights given the rapid pace of development and technological change, which has made the public more vulnerable to personal data abuse.

The judgment, while deciding the contours of privacy, very interestingly refers to the fundamental notions of privacy depicted in an article on 'Typology of Privacy'. The diagram below, sourced from the judgment, gives a lucid categorization of privacy rights.



As explained in the judgment, informational privacy reflects an interest in preventing information about the self from being disseminated, and controlling the extent of access to information. The Court thus recognized information privacy as a facet of the right to privacy and recommended that the Government of India should examine and put in place a robust mechanism for data protection. This exercise is quite tricky because it would require a fair balance between the rights of citizens and state.

The Puttaswamy judgment has also established that privacy is a constitutionally protected right which emerges from Article 21 of the Indian Constitution (Right to life and personal liberty). Elements of privacy can be read into other rights of freedom and dignity, which are been guaranteed under Part III of the Indian Constitution.

The Court further reasoned that privacy is not an absolute right, like other fundamental freedoms under Part III. On page 264, Justice Chandrachud writes that a 'law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights.

Thus, in context of Article 21, an invasion of privacy must be fulfilled on the basis of a law which stipulates a procedure which is fair, just and reasonable.' He further said that an invasion of life or personal liberty must meet the following: (i) legality, which postulates the existence of law; (ii) need, defined in terms of legitimate state aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.

The present judgment has re-shaped the ambit of fundamental rights in Indian constitutional history. The Indian judiciary has acted as a true guardian of liberty. It has given the Indian government an opportunity to re-think its data protection mechanism, both in light of individual privacy and in the interests of the state.

PROTECTION AGAINST ARREST AND DETENTION

Article 22 gives protection against arrest and detention in certain cases. It reads as:

1. No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

2. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
3. Nothing in clauses (1) and (2) shall apply -
    a. to any person who for the time being is an enemy alien; or
    b. to any person who is arrested or detained under any law providing for preventive detention.
4. No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless -
    a. an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:
    Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause of clause (7); or
    b. such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).
5. When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.
6. Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.
7. Parliament may by law prescribe -
    a. the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
    b. the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
    c. the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

Article 22 grants protection to persons who are arrested or detained. Detention is of two types, namely, punitive and preventive. Punitive detention is to punish a person for an offense committed by him after a trial and conviction in a court. Preventive Detention means detention of a person without trial and conviction by a court. Its purpose is not to punish a person for a past offense but to prevent him from committing an offense in the near future. Thus, preventive detention is only a precautionary measure and based on suspicion. Article 22 has two parts— the first part deals with the cases of Ordinary Law and the second part deals with the cases of Preventive Detention.

PART -1 (Punitive Detentions or Rights against Ordinary Law)

Article 22 (1)

This clause gives every citizen of India the Right to be informed of the grounds of arrest and the Right to consult and be defended by a legal practitioner.

Article 22 (2)

This clause gives every citizen of India the Right to be produced before a magistrate within 24 hours, excluding the journey time. This article also gives the Right to be released after 24 hours unless the magistrate authorises further detention.

Article 22 (3)

This clause says that the above safeguards are not available to an alien or a person arrested or detained under a preventive detention law. The Supreme Court also ruled that the arrest and detention in the first part of Article 22 do not cover arrest under the orders of a court, civil arrest, arrest on failure to pay the income tax, and deportation of an alien. They apply only to an act of a criminal or quasi criminal nature or some activity prejudicial to the public interest.

PART – 2 (PREVENTIVE DETENTION)

The second part of Article 22 grants protection to persons who are arrested or detained under a preventive detention law. This protection is available to both citizens as well as aliens.

Article 22 (4)

This clause says that the detention of person cannot exceed three months unless an advisory board reports sufficient cause for extended detention. The board is to consist of judges of a high court.

Article 22 (5)

This clause says that the grounds of detention should be communicated to the detainee and the detainee should be afforded an opportunity to make a representation against the detention order.

Article 22 (6)

This clause says that the facts that are considered against the public interest need not be disclosed.

Article 22 (7)

It authorises the Parliament to prescribe:

1. The circumstances and the classes (types) of cases in which a person can be detained for more than three months under a preventive detention law without obtaining the opinion of the advisory board.

2. The maximum period for which a person can be detained in any classes (types) of cases under a preventive detention 3. The procedure to be followed by an advisory board in an inquiry

The Constitution divides the legislative power with regard to preventive detention between the Parliament and the state legislatures. The Parliament has exclusive authority to make a law of preventive detention for reasons connected with defense, foreign affairs and security of India. Both Parliament as well as the state legislature can concurrently make a law of preventive detention for reasons connected with the security of a state, the maintenance of public order and the maintenance of supplies and services essential to community.

It is unfortunate to know that no democratic country in the world has made preventive detention as an integral part of the Constitution as has been done in India. It is unknown in USA. It was resorted to in Britain only during First and Second World Wars. However in India it exists as a necessary evil. In India, preventive detention existed even during the British rule. For example, the Bengal State Prisoners Regulation of 1818 and the Defence of India Act of 1939 provided for preventive detention.

RIGHT AGAINST EXPLOITATION

Prohibition of Traffic in Human Beings and Forced Labour

Article 23 of Indian Constitution explains the Right against Exploitation. It reads as:

1. **Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.**
2. **Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.**

This right is available to both citizens and non-citizens. It protects the individual not only against the State but also against private persons.

The first clause prohibits **human trafficking of any kind**. Traffic in human beings means selling and buying men and women like goods for immoral and other purposes and generally involves traffic of women and children. Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. This provision is similar to the 13th amendment of the American Constitution which abolished slavery in USA. While, our Constitution does not explicitly forbid slavery, the scope of Article 23 has been made wider by using the term 'traffic in human beings' and 'forced labour'. Thus, it not only prohibits slavery but also any sort of traffic in women, children or crippled for immoral purposes. The expression 'traffic in human beings' include (a) selling and buying of men, women and children like goods; (b) immoral traffic in women and children, including prostitution; (c) devadasis; and (d) slavery. To punish these acts, the Parliament has made the **Immoral Traffic (Prevention) Act, 1956.**

The term '**begar**' has been used in this clause. It means forced labor with no compensation. When the British ruled our country, **begar** system was in effect. The British officials and Zamindars used people with poor backgrounds to carry their personal belonging from one place to another. The Zamindars with the help of the British laws tricked and deceived generations of a family into working on their farms for free. These activities come under forced labor and were rendered illegal through our constitution. The term 'begar' means compulsory work without remuneration.

In addition to begar, the Article 23 prohibits other 'similar forms of forced labour' like 'bonded labour'. The term 'forced labour' means compelling a person to work against his will. The word 'force' includes not only physical or legal force but also force arising from the compulsion of economic circumstances that is, working for less than the minimum wage. In this regard, the **Bonded Labour System (Abolition) Act, 1976; the Minimum Wages Act, 1948; the Contract Labour Act, 1970 and the Equal Remuneration Act, 1976** were made.

Article 23 also provides for an exception to this provision. It permits the State to impose compulsory service for public purposes, as 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.

Prohibition of Employment of Children in Factories, etc

Article 24 of Indian Constitution reads as:

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

Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities like construction work or railway. But it does not prohibit their employment in any harmless or innocent work.

The Child Labour (Prohibition and Regulation) Act, 1986, is the most important law in this direction. In addition, the Employment of Children Act, 1938; the Factories Act, 1948; the Mines Act, 1952; the Merchant Shipping Act, 1958; the Plantation Labour Act, 1951; the Motor Transport Workers Act, 1951; Apprentices Act, 1961; the Bidi and Cigar Workers Act, 1966; and other similar acts prohibit the employment of children below certain age.

In 1996, the Supreme Court directed the establishment of Child Labour Rehabilitation Welfare Fund in which the offending employer should deposit a fine of 20,000 for each child employed by him. It also issued directions for the improvement of education, health and nutrition of children.

The Commissions for Protection of Child Rights Act, 2005 was enacted to provide for the establishment of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights.

In 2006, the government banned the employment of children as domestic servants or workers in business establishments like hotels, dhabas, restaurants, shops, factories, resorts, spas, tea-shops and so on. It warned that anyone employing children below 14 years of age would be liable for prosecution and penal action.

Child Labour Amendment (2016)

The Child Labour (Prohibition and Regulation) Amendment Act, 2016, amended the Child Labour (Prohibition and Regulation) Act, 1986. It has renamed the Principal Act as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

The Amendment Act prohibits the employment of children below 14 years in all occupations and processes. Earlier, this prohibition was applicable to 18 occupations and 65 processes.

Further, the Amendment Act prohibits the employment of adolescents (14 to 18 years of age) in certain hazardous occupations and processes. The Amendment Act also introduces more stringent punishment for the offenders. It is an imprisonment of 6 months to 2 years, or a fine of 20,000 to 50,000, or both. In case of repeated offences, the imprisonment is of 1 year to 3 years.

FREEDOM OF CONSCIENCE, PROFESSION, PRACTICE & PROPAGATION

Article 25 of the Indian constitution confers freedom of conscience and free profession, practice and propagation of religion. It reads as:

> 25. Freedom of conscience and free profession, practice and propagation of religion
>
> (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion
> (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law
> (a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
> (b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus
>
> **Explanation I -**The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion
> **Explanation II-** In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

The term 'religion' has not been defined in the Constitution and it is hardly susceptible of any rigid definition. The Supreme Court has defined it in number of cases. A religion is certainly a matter of faith and is not necessarily theistic. Religion has its basis in "a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being", but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion and these forms and observances might extent even to matters of food and dress.

Subject to certain limitations, Article 25 confers a fundamental right on every person not merely to entertain such religious beliefs as may be approved by his judgment or conscience but also exhibit his beliefs and ideas by such overt acts and practices which are sanctioned by his religion. Now what practices are protected under the Article is to be decided by the courts with reference to the doctrine of a particular religion and include practices regarded by the community as part of its religion. The courts have gone into religious scriptures to ascertain the status of a practice in question.

Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. The implications of these are:

(a) Freedom of conscience: Inner freedom of an individual to mould his relation with God or Creatures in whatever way he desires.

(b) Right to profess: Declaration of one's religious beliefs and faith openly and freely.

(c) Right to practice: Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.

(d) Right to propagate: Transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion. But, it does not include a right to convert another person to one's own religion. Forcible conversions impinge on the 'freedom of conscience' guaranteed to all the persons alike.

From the above, it is clear that Article 25 covers not only religious beliefs (doctrines) but also religious practices (rituals). Moreover, these rights are available to all persons—citizens as well as non-citizens. However, these rights are subject to public order, morality, health and other provisions relating to fundamental rights.

Freedom of Conscience

Freedom of 'conscience' is absolute inter freedom of the citizen to mould his own relation with god in whatever manner he like. The Courts have defined freedom of conscience as the freedom of a person to entertain any belief or doctrine concerning matters, which are regarded by him or her to be conducive to his or her spiritual well being.

Freedom to Profess of Religion

To "profess" a religion means to declare freely and openly ones faith and belief. The constitutional right to profess religion means a right to exhibit one's religion in such overt acts as teaching, practicing and observing religious precepts and ideals in which there is no explicit intention of propagation involved. Taking out religious processions, worship in public places, putting on specific garments include within the ambit of profession of religion. The Constitution of India, for example, provides the wearing and carrying of kirpans as part of the profession of Sikh religion.

In the Quareshi case the appellants contended that sacrificing a cow on BakrId day amounted to profession and practice of Islam, which is protected by article 25 of the Constitution. Tracing the history of the custom of offering sacrifice of a cow on the Bakr-Id day, the Supreme Court ruled, "We have, however, no material on the record before us, which will enable us to say… that the sacrifice of a cow on that day is an obligatory overt act for a Mussalman to exhibit his religious belief and idea.

"The right to take out religious processions and to have religious gatherings in the public places fall under the right to profess religion as guaranteed in article 25 (1). The exercise of this right is, however, subject to public order and morality. The police authorities, for instance, have been empowered to regulate such overt acts of religious profession. Section 30 (1) of the police Act authorizes the police to regulate assemblies and processions and to prescribe the routes and timings for such purposes. Under section 144 of the Code of Criminal procedure, a magistrate can ban processions and meetings altogether where there is an apprehension of breach of peace. Such orders are done during the times of communal tension that is endemic in some parts of the country. On some occasions of communal and public disturbances, the prohibitive orders can also include banning of the use of loudspeaker and such electronic devices employed in religious profession and practice.

The protection given under article 25 (1), however, does not divest the citizens from their duty to co-operate with the State to maintain public order so that people may live their ordinary life in dignity.

Freedom to Practice of Religion

To 'practice' religion is to perform the prescribed religious duties, rights and rituals, and to exhibit his religious belief and ideas by such acts as prescribed by religious order in which he believes. The freedom to practice religion is protected under article 25 (1) of the Indian Constitution.

According to the criterion set by the Supreme Court an act is a religious practice, which deserves protection under clause (1) of article 25 of the Constitution of India, in so far as it is held by a particular religion as essential and integral part of its tenet. This criterion was proposed by the Court with the objective of saving true religious practices from non-religious accretions and even superstitions. The test is that a particular religious community must regard it as something essential of its religious tenet. In the case of counter claims by competing individuals or groups on this matter, the court is the proper forum to resolve it. This was brought out in the Tilkayat case.

The approach pursued by the Courts in India towards matters pertaining to the practice of religion has come under severe criticism from Constitutional experts like Dr. P.C. Jain who has suggested that in the matter of doubtful religious practices, the Courts in India should accept the contention of a believer who claims before the Court that certain practice has religious significance to the plaintiff instead of restoring to judicial prove into plaintiff's claim so as to see whether it is an essential and an integral part of a religion, and in some other instances to ascertain whether it is an obligatory overt act of a religious tenet.

Freedom to Propagate Religion

To 'propagate ' means to spread and publicize his religious view for the edification of others. But the word "propagation" only indicates persuasion and exposition without any element of coercion, allurement or inducement (post Stanislaus vs State of Madhya Pradesh). The right to propagate ones religion does not give a right to convert any person to one's own religion.

Violation of Article 25

The Article 25 is one of the most misinterpreted articles of the Indian Constitution. Although it guarantees the freedom to follow any religion and propagate it, yet this freedom comes with a responsibility to ensure that the public order, morality and health are not compromised in the process.

This constitutional provision does not give individuals the right to conduct animal sacrifice and perform religious rituals on a busy street or public place that causes inconvenience to others. Similarly, the use of loudspeakers in temples or mosques is not guaranteed in the Article 25. Bursting fire crackers for religious occasions and using loudspeakers during religious prayers had come under the scrutiny of the Supreme Court that restricted the time of bursting crackers and even in some cases banned the sale of crackers along with bursting of crackers completely during some days of the year.

FREEDOM TO MANAGE RELIGIOUS AFFAIRS

Article 26 confers rights relating to the freedom to manage religious affairs, it reads as:

Article 26 {Freedom to manage religious affairs}

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -

a. to establish and maintain institutions for religious and charitable purposes;
b. to manage its own affairs in matters of religion;
c. to own and acquire movable and immovable property; and
d. to administer such property in accordance with law.

Article 25 guarantees rights of individuals, while Article 26 guarantees rights of religious denominations or their sections. In other words, Article 26 protects collective freedom of religion. Like the rights under Article 25, the rights under Article 26 are also subject to public order, morality and health but not subject to other provisions relating to the Fundamental Rights.

The Supreme Court held that a religious denomination must satisfy three conditions:

(a) It should be a collection of individuals who have a system of beliefs (doctrines) which they regard as conducive to their spiritual well-being;

(b) It should have a common organisation; and

(c) It should be designated by a distinctive name.

Under the above criteria, the Supreme Court held that the 'Ramakrishna Mission' and 'Ananda Marga' are religious denominations within the Hindu religion. It also held that Aurobindo Society is not a religious denomination.

FREEDOM FROM TAXATION FOR PROMOTION OF A RELIGION

Article 27 confers freedom from taxation for promotion of a religion it reads as:

> **Article 27** {Freedom as to payment of taxes for promotion of any particular religion}
>
> No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Article 27 lays down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination. In other words, the State should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion. This provision prohibits the State from favouring, patronising and supporting one religion over the other. This means that the taxes can be used for the promotion or maintenance of all religions.

This provision prohibits only levy of a tax and not a fee. This is because the purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion. Thus, a fee can be levied on pilgrims to provide them some special service or safety measures. Similarly, a fee can be levied on religious endowments for meeting the regulation expenditure.

FREEDOM FROM ATTENDING RELIGIOUS INSTRUCTION

Article 28 reads as:

> Article 28 **{Freedom as to attendance at religious instruction or religious worship in certain educational institutions}**
>
> 1. No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
> 2. Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
> 3. No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is minor, his guardian has given his consent thereto.

Under Article 28, no religious instruction shall be provided in any educational institution wholly maintained out of State funds. However, this provision shall not apply to an educational institution administered by the State but established under any endowment or trust, requiring imparting of religious instruction in such institution.

Further, no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to attend any religious instruction or worship in that institution without his

consent. In case of a minor, the consent of his guardian is needed.

Thus, Article 28 distinguishes between four types of educational institutions:

(a) Institutions wholly maintained by the State.

(b) Institutions administered by the State but established under any endowment or trust.

(c) Institutions recognised by the State.

(d) Institutions receiving aid from the State.

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

Note: - Article 28 makes it possible for the State to administer an educational institution imparting religious instructions. This is what some constitutional experts find repugnant. Why does the government need to give aid to any such institution which promotes a certain religion? This can be any religion. And since the Constitution itself provides that there should be no discrimination on the basis of religion, language, etc, will the State be able to maintain equality in giving funds? Obviously, there will be, and there are grievances regarding distribution. For India, which is so diverse, and where there exist many conflicts of interests, it has become a cumbersome task to deal with issues like this. However there are constitutional experts who do not agree with this line of opinion.

CULTURAL AND EDUCATIONAL RIGHTS

Under Article 29 and 30, certain cultural and educational rights are guaranteed. Article 29 reads as:

Article 29 {Protection of interests of minorities}

1. Any section of the citizens residing in the territory of India or any part thereof 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, language or any of them.

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

The first provision protects the right of a group while the second provision guarantees the right of a citizen as an individual irrespective of the community to which he belongs.

Article 29 grants protection to both religious minorities as well as linguistic minorities. However, the **Supreme Court held that the scope of this article is not necessarily restricted to minorities only, as it is commonly assumed to be. This is because of the use of words 'section of citizens' in the Article that include minorities as well as majority.**

The Supreme Court also held that the right to conserve the language includes the right to agitate for the protection of the language. Hence, the political speeches or promises made for the conservation of the language of a section of the citizens does not amount to corrupt practice under the Representation of the People Act, 1951.

Article 30 gives the Right to Minorities to Establish and Administer Educational Institutions. It reads as:

Article 30 {Right of minorities to establish and administer educational institutions}

1. All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

1A. In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

2. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Article 30 is a charter of educational rights. It guarantees in absolute terms the right of linguistic and religious minorities to establish and administer educational institutions of their choice and, at the same time, claim grants-in-aid without any discrimination based upon religion or language. The fact that the Constitution does not impose any express restriction in the scope of the enjoyment of this right, unlike most of the rights included in the chapter on Fundamental Rights, shows that the framers intended to make its scope unfettered. This does not, however, mean that the State cannot impose reasonable restrictions of the regulatory character for maintaining standards of education. This point has been made abundantly clear in judicial pronouncements.

Article 30 grants the following rights to minorities, whether religious or linguistic:

(a) All minorities shall have the right to establish and administer educational institutions of their choice.

(b) The compensation amount fixed by the State for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them. This provision was added by the 44th Amendment Act of 1978 to protect the right of minorities in this regard. The Act deleted the right to property as a Fundamental Right (Article 31).

(c) In granting aid, the State shall not discriminate against any educational institution managed by a minority.

Thus, the protection under Article 30 is confined only to minorities (religious or linguistic) and does not extend to any section of citizens (as under Article 29). However, the term 'minority' has not been defined anywhere in the Constitution. The right under Article 30 also includes the right of a minority to impart education to its children in its own language.

Minority educational institutions are of three types:

1) Institutions that seek recognition as well as aid from the State;

2) Institutions that seek only recognition from the State and not aid; and

3) Institutions that neither seek recognition nor aid from the State.

The institutions of first and second type are subject to the regulatory power of the state with regard to syllabus prescription, academic standards, discipline, sanitation, employment of teaching staff and so on. The institutions of third type are free to administer their affairs but subject to operation of general laws like contract law, labour law, industrial law, tax law, economic regulations, and so on.

In a judgement delivered in the Secretary of Malankara Syrian Catholic College case (2007), the Supreme Court has summarized the general principles relating to establishment and administration of minority educational institutions in the following way:

1. The right of minorities to establish and administer educational institutions of their choice comprises the following rights:

- To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;
- To appoint teaching staff (teachers/lecturers and headmasters/ principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees;
- To admit eligible students of their choice and to set up a reasonable fee structure; and
- To use its properties and assets for the benefit of the institution.

2. The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc., applicable to all, will equally apply to minority institutions also.

3. The right to establish and administer educational institutions is not absolute. Nor does it include the right to mal-administer. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

4. Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/lecturers by adopting any rational procedure of selection.

5. Extension of aid by the State does not alter the nature and character of the minority educational institutions. The conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1).

RIGHT TO CONSTITUTIONAL REMEDIES

The best conferment of the Constitution is the Fundamental Rights. Somehow or another, they frame the rampart of our Constitution. Each one of these Rights is trivial if there exists no instrument to authorize them. Article 32 gives such a component. That is the reason it is the gem, the delegated wonder, the heart, and the spirit of the Constitution.

A right without a remedy is but a worthless declaration. A right becomes valuable when there is an effective means to implement it. Dr Ambedkar stated that:

"If I was asked to name any particular article in this Constitution as the most important- an article without which this Constitution would be a nullity— I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realized its importance."

The right to move the Supreme Court where a fundamental right has been infringed is itself a fundamental right. It is a constitutional remedy which has been guaranteed by the Constitution. Article 32 reads as:

Article 32 {Remedies for enforcement of rights conferred by this Part}

1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
2. The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
3. Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
4. The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

What is guaranteed is the right to move the Supreme Court by appropriate proceedings.

Appropriate proceedings

The Supreme Court has to be moved by appropriate proceedings. It means proceedings which may be appropriate having regard to the nature of order, direction or writ which the petitioner seeks to obtain from the court. The Court has been extremely liberal and favourable to the petitioner who approaches it. When it relates to the enforcement of fundamental rights of the poor, disabled or ignorant even a letter addressed by him to the Court can legitimately be regarded as an appropriate proceeding. The letter need not be in any particular form. It may not be addressed to the Court or the Chief Justice. Postcards addressed to any judge have been entertained as appropriate proceedings. It has come to be known as epistolatory proceedings. Appropriate proceedings may not be adversary proceedings which are aimed at or against a particular person. They may be inquisitorial where the court will make general inquiries to find out whether a fundamental right is being trammeled.

Effect of Guarantee

The effect of the use of the word guaranteed in Cl. (1) of Art. 32 is that the right to move the Supreme Court where a fundamental right has been infringed is itself a fundamental right. The following consequences flow from this guarantee: –

359. The right cannot be suspended except as provided in Art. 359.

360. Supreme Court is the guarantor of fundamental rights and it is the duty of the Supreme Court to grant relief under Art. 32 where a fundamental right has been violated.

An aggrieved person may approach the Supreme Court in the first instance. He need not move a High Court. Availability of alternate remedy is no bar to relief under Art. 32.

The right cannot be abridged or taken away by legislation.

Res Judicata

The principles of res judicata apply to a writ petition under Art. 32. But the rule of res judicata is not applicable to the writ of Habeas Corpus. Where a petitioner is refused a writ by a High Court he can file a petition in Supreme Court.

RES JUDICATA

Res Judicata is a phrase which has been evolved from a Latin maxim, which stand for 'the thing has been judged', meaning there by that the issue before the court has already been decided by another court, between the same parties. Therefore, the court will dismiss the case before it as being useless. Res Judicata as a concept is applicable both in case of Civil as well as Criminal legal system.

The term is also used to mean as to 'bar re-litigation' of such cases between the same parties, which is different between the two legal systems. Once a final judgment has been announced in a lawsuit, the subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one, they would apply the Res Judicata doctrine 'to preserve the effect of the first judgment'. This is to prevent injustice to the parties of a case supposedly finished, but perhaps mostly to avoid unnecessary waste of resources and time of the Judicial System.

And, therefore, the same case cannot be taken up again either in the same or in the different Court of India. This is just to prevent them from multiplying judgments, so a prevailing plaintiff may not recover damages from the defendant twice for the same injury.

The concept of Res Judicata finds its evolvement from the English Common Law system, being derived from the overriding concept of judicial economy, consistency, and finality. From the common law, it got included in the Code of Civil Procedure and which was later as a whole was adopted by the Indian legal system.

The doctrine of Res Judicata is based on three Roman maxims

(a) **Nemo debet lis vaxari pro eadem causa** which means that no man should be vexed (annoyed) twice for the same cause;
(b) **Interest republicae ut sit finis litium** meaning thereby that it is in the interest of the state that there should be an end to a litigation; and
(c) **Re judicata pro veritate occipitur** which bears the meaning as a judicial decision must be accepted as correct.

The pre-requisites which are necessary for Res Judicata are:

1) There must be a final judgment;
2) The judgment must be on the merits;
3) The claims must be the same in the first and second suits;
4) The parties in the second action must be the same as those in the first, or have been represented by a party to the prior action.

It may generally be said that any person whose fundamental rights have been infringed has the right to approach the Supreme Court. The power given to the Supreme Court by Art. 32 is only for the enforcement of fundamental rights. For violation of other rights the remedy is to be sought from appropriate courts. Hence the Supreme Court in right cases brought before it under article 32 shall restrict itself only with the enforcement of the fundamental rights.

Parliament can empower any other court to issue directions, orders and writs of all kinds. However, this can be done without prejudice to the above powers conferred on the Supreme Court. Any other court here does not include high courts because Article 226 has already conferred these powers on the high courts.

It is thus clear that the Supreme Court has been constituted as the defender and guarantor of the fundamental rights of the citizens. It has been vested with the 'original' and 'wide' powers for that purpose. Original, because an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. Wide, because its power is not restricted to issuing of orders or directions but also writs of all kinds

The purpose of Article 32 is to provide a guaranteed, effective, expeditious, inexpensive and summary remedy for the protection of the fundamental rights. Only the Fundamental Rights guaranteed by the Constitution can be enforced under Article 32 and not any other right like non-fundamental constitutional rights, statutory rights, customary rights and so on. The violation of a fundamental right is the sine qua non for the exercise of the right conferred by Article 32. In other words, the Supreme Court, under Article 32, cannot determine a question that does not involve Fundamental Rights. Article 32 cannot be invoked simply to determine the constitutionality of an executive order or a legislation unless it directly infringes any of the fundamental rights.

In case of the enforcement of Fundamental Rights, the jurisdiction of the Supreme Court is original but not exclusive. It is concurrent with the jurisdiction of the high court under Article 226. It vests original powers in the high court to issue directions, orders and writs of all kinds for the enforcement of the Fundamental Rights. It means when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

Since the right guaranteed by Article 32 (ie, the right to move the Supreme Court where a fundamental right is infringed) is in itself a fundamental right, the availability of alternate remedy is no bar to relief under Article 32. However, the Supreme Court has ruled that where relief through high court is available under Article 226, the aggrieved party should first move the high court.

PROTECTION OF FUNDAMENTAL RIGHTS AND WRITS

A writ is:

An order or mandatory process in writing issued in the name of the sovereign or court or judicial officer commanding the person to whom it is directed to perform or refrain from performing an act specified therein. Under common law, a formal written order issued by a body with administrative or judicial jurisdiction; in modern usage, this body is generally a court.

Writ was precisely a royal order, which was issued under the Royal Seal. "Writ," was originally a short written command issued by a person in authority, and "tested" or sealed by him in proof of its genuineness. In the days when writing was a rare art, the fact that a command was written was in itself a feature which distinguished a "writ" from a mere hasty spoken command

The origin of writs in India goes back to the Regulating Act 1773 under which a Supreme Court was established at Calcutta by a charter in 1774.

Constitutional Philosophy of Writ Jurisdiction

An individual whose privilege (Fundamental Right) is encroached by an arbitrary administrative action may approach the Court for a suitable remedy. Article 32(2) of the Constitution of India provides that: "The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of **habeas corpus, mandamus, prohibition, quo warranto** and **certiorari**, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part." Article 32 is a basic Right directly under Part – III of the Constitution. Under this Article, the Supreme Court is enabled to loosen up the customary standard of Locus Standi and permit general society to intrigue case in the name of public interest litigation (PIL).

Parliament (under Article 32) can empower any other court to issue these writs. Since no such provision has been made so far, only the Supreme Court and the high courts can issue the writs and not any other court. Before 1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs. Article 226 now empowers all the high courts to issue the writs.

WRIT JURISDICTION: SUPREME COURT vs HIGH COURT

The writ jurisdiction of the Supreme Court differs from that of a high court in three respects:

1. The Supreme Court can issue writs only for the enforcement of fundamental rights whereas a high court can issue writs not only for the enforcement of Fundamental Rights but also for any other purpose. The expression 'for any other purpose' refers to the enforcement of an ordinary legal right. **Thus, the writ jurisdiction of the Supreme Court, in this respect, is narrower than that of high court**.

2. The Supreme Court can issue writs against a person or government throughout the territory of India whereas a high court can issue writs against a person residing or against a government or authority located within its territorial jurisdiction only or outside its territorial jurisdiction only if the cause of action arises within its territorial jurisdiction. **Thus, the territorial jurisdiction of the Supreme Court for the purpose of issuing writs is wider than that of a high court**.

3. A remedy under Article 32 is in itself a Fundamental Right and hence, the Supreme Court may not refuse to exercise its writ jurisdiction. On the other hand, a **remedy under Article 226 is discretionary and hence, a high court may refuse to exercise its writ jurisdiction**. Article 32 does not merely confer power on the Supreme Court as Article 226 does on a high court to issue writs for the enforcement of fundamental rights or other rights as part of its general jurisdiction. **The Supreme Court is thus constituted as a defender and guarantor of the fundamental rights**.

There are five types of Writs as provided under Article 32 of the Constitution:

Habeas Corpus

Meaning

It is one of the important writs for personal liberty which says **'to have the body of'.** The main purpose of this writ is to seek relief from the unlawful detention of an individual. It is for the protection of the individual from being harmed by the administrative system and it is for safeguarding the freedom of the individual against arbitrary state action which violates fundamental rights under articles 19, 21 & 22 of the Constitution. This writ provides immediate relief in case of unlawful detention.

When Issued?

Writ of Habeas Corpus is issued if an individual is kept in jail or under a private care without any authority of law. A criminal who is convicted has the right to seek the assistance of the court by filing an application for "writ of Habeas Corpus" if he believes that he has been wrongfully imprisoned and the conditions in which he has been held falls below minimum legal standards for human treatment. The court issues an order against prison warden who is holding an individual in custody in order to deliver that prisoner to the court so that a judge can decide whether or not the prisoner is lawfully imprisoned and if not then whether he should be released from custody. Thus, this writ is a bulwark of individual liberty against arbitrary detention.

The writ of habeas corpus can be issued against both public authorities as well as private individuals. The writ, on the other hand, is not issued where the (a) detention is lawful, (b) the proceeding is for contempt of a legislature or a court, (c) detention is by a competent court, and (d) detention is outside the jurisdiction of the court.

Important judgments on Habeas Corpus

The first Habeas Corpus case of India was that in Kerala where it was filed by the victims' father as the victim P. Rajan who was a college student was arrested by the Kerala police and being unable to bear the torture he died in police custody. So, his father Mr. T.V. Eachara Warrier filed a writ of Habeas Corpus and it was proved that he died in police custody.

Then, in the case of ***ADM Jabalpur v. Shivakant Shukla*** which is also known as the **Habeas Corpus case,** it was held that the writ of Habeas Corpus cannot be suspended even during the emergency (Article 359).

While deciding whether Habeas Corpus writs are civil or criminal in nature, it was held in ***Narayan v. Ishwarlal*** that the court would rely on the way of the procedures in which the locale has been executed.

Mandamus

It literally means **'we command'**. It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform. It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

The writ of mandamus cannot be issued (a) against a private individual or body; (b) to enforce departmental instruction that does not possess statutory force; (c) when the duty is discretionary and not mandatory; (d) to enforce a contractual obligation; (e) against the president of India or the state governors; and (f) against the chief justice of a high court acting in judicial capacity.

Conditions for issue of Mandamus

1. There must rest a legal right of the applicant for the performance of the legal duty.
2. The nature of the duty must be public.

3. On the date of the petition, the right which is sought to be enforced must be subsisting.
4. The writ of Mandamus is not issued for anticipatory injury.

Limitations

The courts are unwilling to issue writ of mandamus against high dignitaries like the President and the Governors. In the case of ***S.P. Gupta v. Union of India***, judges were of the view that writ cannot be issued against the President of India for fixing the number of judges in High Courts and filling vacancies. But in ***Advocates on Records Association v. Gujarat***, the Supreme Court ruled that the judges' issue is a justiciable issue and appropriate measures can be taken for that purpose including the issuance of mandamus. But in ***C.G. Govindan v. State of Gujarat***, it was refused by the court to issue the writ of mandamus against the governor to approve the fixation of salaries of the court staff by the Chief Justice of High Court under Article 229. Hence, it is submitted that the Governor or the President means the state or the Union and therefore issuance of mandamus cannot take place.

Prohibition

What does Writ of Prohibition mean?

Literally, it means **'to forbid'**. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. Thus, unlike mandamus that directs activity, the prohibition directs inactivity.

Its main purpose is to prevent an inferior court from exceeding its jurisdiction or from acting contrary to the rules of Natural Justice.

When is the writ of Prohibition issued?

It is issued to a lower or a subordinate court by the superior courts in order to refrain it from doing something which it is not supposed to do as per law. It is usually issued when the lower courts act in excess of their jurisdiction. Also, it can be issued if the court acts outside its jurisdiction. And after the writ is issued, the lower court is bound to stop its proceedings. It should be issued before the lower court passes an order. Prohibition is a writ of preventive nature. The principle of this is **'Prevention is better than cure'.** The writ of prohibition can be issued only against judicial and quasi-judicial authorities. It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

Certiorari

In the literal sense, it means **'to be certified'** or **'to be informed'**. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case. It is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law. Thus, unlike prohibition, which is only preventive, certiorari is both preventive as well as curative.

When is a writ of Certiorari issued?

It is issued to quasi-judicial or subordinate courts if they act in the following ways:

- Either without any jurisdiction or in excess.
- In violation of the principles of Natural Justice.
- In opposition to the procedure established by law.
- If there is an error in judgement on the face of it.

Writ of certiorari is issued after the passing of the order.

Previously, the writ of certiorari could be issued only against judicial and quasi-judicial authorities and not against administrative authorities. However, in 1991, the Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting rights of individuals. Like prohibition, certiorari is also not available against legislative bodies and private individuals or bodies.

Natural Justice

Certiorari lies against an authority which is acting within its jurisdiction but has violated the principles of natural justice. Natural Justice comprises of several rules. They are—

1. The authority must give reasonable notice to the party likely to be affected to meet the case or allegation against him.
2. Such party must be afforded a reasonable opportunity of being heard. What is reasonable will depend on the circumstances of the case. Generally it is agreed that the affected party must be given full opportunity to adduce evidence on which it relies. The evidence of the other party must be recorded in its presence. No evidence should be taken behind the back of any party. Documents should not be withheld from any party. Opportunity must be given to cross examine witnesses of the opposite party.
3. The authority must give its decision on the material before it and on merits. It is against the principles of natural justice to decide according to the instructions of a superior officer or in conformity to a predetermined policy.
4. The person who hears must decide the case.
5. No person can be a judge in his own cause.

Difference between Prohibition and Certiorari

There are similarities between the two writs Prohibition and Certiorari. They are issued against judicial or quasi-judicial authorities. They are meant to confine the authorities within the limits of their jurisdiction. The grounds on which they are issued are similar. But there are material differences in the scope of these two writs. They are issued at different stages of proceedings. If an inferior court having no jurisdiction in a matter takes it up for hearing the aggrieved person can petition for Prohibition. If such a court hears the matters and gives a decision the proper remedy is Certiorari which quashes the decision on the ground of excess or want of jurisdiction. Prohibition lies where the matter is pending and there is something to be prevented. After decision the matter is disposed of so the proper remedy is Certiorari.

Quo-Warranto

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

The court issues the Writ of Quo Warranto in the following cases:

- When the public office is in question and it is of a substantive nature. A petition against a private corporation cannot be filed.
- The office is created by the State or the Constitution.

- The claim should be asserted on the office by the public servant i.e. respondent.

The writ of quo warranto is a common law process of great antiquity. An application for the issue of a writ of quo warranto is maintainable only in respect of offices of public nature which are the creation of statute and not against private institutions.

Various Writs Distinguished From Each Other

- Mandamus commands activity Prohibition orders inactivity. Prohibition stops an authority in the middle of a proceeding. It prevents usurpation of jurisdiction.
- Mandamus is generally addressed to administrative authorities. Certiorari and Prohibition generally control the courts and tribunals.
- Certiorari and Prohibition are instruments to control an inferior tribunal which has exceeded its jurisdiction or wrongly exercised its jurisdiction. Mandamus is issued against an inferior tribunal which has declined to exercise its jurisdiction.
- Mandamus may direct a tribunal to proceed according to law. Certiorari quashes the proceedings or removes the proceedings to itself on the ground of lack of jurisdiction or error apparent on the face of the record etc.
- The grounds for issue of Certiorari and Prohibition are the same Prohibition is issued at an earlier stage when the matter has not come to a close, to prevent the tribunal from going ahead. Certiorari lies where a tribunal after exercising jurisdiction where it had none or exceeding its jurisdiction where it had some, handed over a final decision.
- The object of Prohibition is prevention. **The object of Certiorari is prevention and cure both.**
- Mandamus commands a person to perform a function which it is under a legal duty to perform. Quo warranto is an enquiry to ascertain whether a person holding an office has legal authority to do so. When he is not able to support his claim he may be ordered to vacate.

ARMED FORCES AND FUNDAMENTAL RIGHTS

Article 33 empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces, intelligence agencies and analogous forces. The objective of this provision is to ensure the proper discharge of their duties and the maintenance of discipline among them. It reads as:

Article 33 {Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.}

Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to, -

a. the members of the Armed Forces; or
b. the members of the Forces charged with the maintenance of public order; or
c. persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
d. persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

The power to make laws under Article 33 is conferred only on Parliament and not on state legislatures. Any such law made by Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.

Accordingly, the Parliament has enacted the Army Act (1950), the Navy Act (1950), the Air Force Act (1950), the Police Forces (Restriction of Rights) Act, 1966, the Border Security Force Act and so on. These impose restrictions on their freedom of speech, right to form associations, right to be members of trade unions or political associations, right to communicate with the press, right to attend public meetings or demonstrations, etc.

The expression 'members of the armed forces' also covers such employees of the armed forces as barbers, carpenters, mechanics, cooks, chowkidars, bootmakers, tailors who are non-combatants. **A parliamentary law enacted under Article 33 can also exclude the court martials (tribunals established under the military law) from the writ jurisdiction of the Supreme Court and the high courts**, so far as the enforcement of Fundamental Rights is concerned.

MARTIAL LAW AND FUNDAMENTAL RIGHTS

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

> **Article 34 {Restriction on rights conferred by this Part while martial law is in force in any area}**
>
> Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any person in respect of any act done by him in connection with the maintenance or restoration or order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

It empowers the Parliament to indemnify any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force. The Parliament can also validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

The Act of Indemnity made by the Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights. The concept of martial law has been borrowed in India from the English common law. However, the expression 'martial law' has not been defined anywhere in the Constitution.

Literally, it means 'military rule'. It refers to a situation where civil administration is run by the military authorities according to their own rules and regulations framed outside the ordinary law. It thus implies the suspension of ordinary law and administration through military tribunals. It is different from the military law that is applicable to the armed forces.

There is also no specific or express provision in the Constitution that authorises the executive to declare martial law. However, it is implicit in Article 34 under which martial law can be declared in any area within the territory of India. The martial law is imposed under the extraordinary circumstances like war, invasion, insurrection, rebellion, riot or any violent resistance to law. Its justification is to repel force by force for maintaining or restoring order in the society.

During the operation of martial law, the military authorities are vested with abnormal powers to take all necessary steps. They impose restrictions and regulations on the rights of the civilians, can punish the civilians and even condemn them to death.

The Supreme Court held that the declaration of martial law does not ipso facto result in the suspension of the writ of habeas corpus. The declaration of a martial law under Article 34 is different from the declaration of a national emergency under Article 352.

EFFECTING CERTAIN FUNDAMENTAL RIGHTS

Article 35 lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures. This provision ensures that there is uniformity throughout India with regard to the nature of those fundamental rights and punishment for their infringement. In this direction, **Article 35 contains the following provisions:**

1. **The Parliament shall have (and the legislature of a state shall not have) power to make laws with respect to the following matters:**
    a. **Prescribing residence as a condition for certain employment's or appointments in a state or union territory or local authority or other authority (Article 16).**
    b. **Empowering courts other than the Supreme Court and the high courts to issue directions, orders and writs of all kinds for the enforcement of fundamental rights (Article 32).**
    c. **Restricting or abrogating the application of Fundamental Rights to members of armed forces, police forces, etc. (Article 33).**
    d. **Indemnifying any government servant or any other person for any act done during the operation of martial law in any area (Article 34).**
2. **Parliament shall have (and the legislature of a state shall not have) powers to make laws for prescribing punishment for those acts that are declared to be offences under the fundamental rights. These include the Untouchability (Article 17) and Traffic in human beings and forced labour (Article 23). Further, the Parliament shall, after the commencement of the Constitution, make laws for prescribing punishment for the above acts, thus making it obligatory on the part of the Parliament to enact such laws.**
3. **Any law in force at the commencement of the Constitution with respect to any of the matters specified above is to continue in force until altered or repealed or amended by the Parliament.**

It should be noted that Article 35 extends the competence of the Parliament to make a law on the matters specified above, even though some of those matters may fall within the sphere of the state legislatures (i.e., State List).

RIGHT TO PROPERTY: NO LONGER A FUNDAMENTAL RIGHT

The Indian Constitution does not recognize property right as a fundamental right. In the year 1977, the 44th amendment eliminated the right to acquire, hold and dispose of property as a fundamental right. However, in another part of the Constitution, Article 300 (A) was inserted to affirm that no person shall be deprived of his property save by authority of law. The result is that the right to property as a fundamental right is now substituted as a statutory right. The amendment expanded the power of the state to appropriate property for social welfare purposes.

Originally, the right to property was one of the seven fundamental rights under Part III of the Constitution. It was dealt by Article 19(1)(f) and Article 31. Article 19(1)(f) guaranteed to every citizen the right to acquire, hold and dispose of property. Article 31, on the other hand, guaranteed to every person, whether citizen or non-citizen, right against deprivation of his property. It provided that no person shall be deprived of his property except by authority of law. It empowered the State to acquire or requisition the property of a person on two conditions: (a) it should be for public purpose, and (b) it should provide for payment of compensation (amount) to the owner.

Since the commencement of the Constitution, the Fundamental Right to Property has been the most controversial. It has caused confrontations between the Supreme Court and the Parliament. It has led to a number of Constitutional amendments, that is, 1st, 4th, 7th, 25th, 39th, 40th and 42nd Amendments. Through these amendments, Articles 31A, 31B and 31C have been added and modified from time to time to nullify the effect of Supreme Court judgements and to protect certain laws from being challenged on the grounds of contravention of Fundamental Rights. Most of the litigation centred around the obligation of the state to pay compensation for acquisition or requisition of private property.

Therefore, the 44th Amendment Act of 1978 abolished the right to property as a Fundamental Right by repealing Article 19(1) (f) and Article 31 from Part III. Instead, the Act inserted a new Article 300A in Part XII under the heading 'Right to Property'. It provides that no person shall be deprived of his property except by authority of law. Thus, the right to property still remains a legal right or a constitutional right, though no longer a fundamental right. It is not a part of the basic structure of the Constitution.

The right to property as a legal right (as distinct from the Fundamental Rights) has the following implications:

- It can be regulated ie, curtailed, abridged or modified without constitutional amendment by an ordinary law of the Parliament.
- It protects private property against executive action but not against legislative action.
- In case of violation, the aggrieved person cannot directly move the Supreme Court under Article 32 (right to constitutional remedies including writs) for its enforcement. He can move the High Court under Article 226.
- No guaranteed right to compensation in case of acquisition or requisition of the private property by the state.

Though the Fundamental Right to Property under Part III has been abolished, the Part III still carries two provisions which provide for the guaranteed right to compensation in case of acquisition or requisition of the private property by the state. These two cases where compensation has to be paid are:

- When the State acquires the property of a minority educational institution (Article 30); and
- When the State acquires the land held by a person under his personal cultivation and the land is within the statutory ceiling limits (Article 31 A).

The first provision was added by the 44th Amendment Act (1978), while the second provision was added by the 17th Amendment Act (1964). Further, Articles 31A, 31B and 31C have been retained as exceptions to the fundamental rights.

EXCEPTIONS TO FUNDAMENTAL RIGHTS

1. Saving of Laws Providing for Acquisition of Estates, etc.

Article 31A saves five categories of laws from being challenged and invalidated on the ground of Contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) and Article 19 (protection of six rights in respect of speech, assembly, movement, etc.). They are related to agricultural land reforms, industry and commerce and include the following:

(a) Acquisition of estates and related rights by the State;

(b) Taking over the management of properties by the State;

(c) Amalgamation of corporations;

(d) Extinguishment or modification of rights of directors or shareholders of corporations; and

(e) Extinguishment or modification of mining leases.

This Article also provides for the payment of compensation at market value when the state acquires the land held by a person under his personal cultivation and the land is within the statutory ceiling limit.

2. Validation of Certain Acts and Regulations

Article 31B saves the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the fundamental rights. Thus, the scope of Article 31B is wider than Article 31A. Article 31B immunises any law included in the Ninth Schedule from all the fundamental rights whether or not the law falls under any of the five categories specified in Article 31A.

However, in the Kesavananda Bharati case 19 (1973), the Supreme Court ruled that the acts and regulations that are included in the Ninth Schedule are open to challenge on the grounds of being violative of the basic structure of the Constitution.

3. Saving of Laws Giving Effect to Certain Directive Principles

Article 31 C, as inserted by the 25th Amendment Act of 1971, contained the following two provisions:

(a) No law that seeks to implement the socialistic directive principles specified in Article **39(b) or (c)** shall be void on the ground of contravention of the fundamental rights conferred by **Article 14** (equality before law and equal protection of laws) or **Article 19** (protection of six rights in respect of speech, assembly, movement, etc.)

(b) No law containing a declaration that it is for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

In the Kesavananda Bharati case (1973), the Supreme Court declared the above second provision of Article 31 C as unconstitutional and invalid on the ground that judicial review is a basic feature of the Constitution and hence, cannot be taken away. However, the above first provision of Article 31C was held to be constitutional and valid.

The 42nd Amendment Act (1976) extended the scope of the above first provision of Article 31 C by including within its protection any law to implement any of the directive principles specified in Part IV of the Constitution and not merely in Article 39 (b) or (c). However, this extension was declared as unconstitutional and invalid by the Supreme Court in the Minerva Mills case 24 (1980).

AMENDABILITY OF FUNDAMENTAL RIGHTS

Until the case of Golak Nath the Supreme Court had been holding that no part of the constitution was unamendable and that Parliament can amend any part of the constitution including Fundamental Rights. But the Supreme Court cried halt to the process of amending the fundamental rights through the amending procedure by its much debated **Golak Nath Vs State of Punjab Case**. In this case overruling its earlier decisions the Supreme Court held that **Fundamental Rights, embodied in Part III, had been given a transcendental position** by the Constitution so no authority functioning under the constitution including the Parliament was competent to amend the Fundamental Rights.

But **by the 24th Amendment Act, 1971, Arts 13 and 368 were amended** to make it clear that Fundamental Rights were amendable under the Procedure laid down in Art. 368, thus overriding the majority decision in Golak Nath Case. The majority decision in **Keshavananda Bharti Case upheld the validity of these amendments and also overruled Golak Nath's Case**, holding that it was competent for the parliament to amend fundamental rights under Art. 368, which does not make any exception in favour of fundamental rights nor does Art 13 comprehend Acts amending the constitution itself. At the same time **Keshavananda Case also laid down that there were implied limitations on the power to 'amend'** and that power cannot be used to alter the **'basic features'** of the constitution.

Hence the position today is that fundamental rights can be amended like any other part of the constitution but only without altering the **Basic Structure**.

BASIC STRUCTURE

The question whether fundamental rights can be amended under article 368 came for consideration in the Supreme Court in Shankari Prasad case. In this case validity of constitution (1st amendment) act, 1951 which inserted inter alia, articles 31-A and 31-B of the constitution was challenged. The amendment was challenged on the ground that it abridges the rights conferred by part III and hence was void. The Supreme Court however rejected the above argument and held that power to amend including the fundamental rights is contained in Article 368and the same view was taken by court in Sajjan Singh case.

In Golak Nath case, the validity of 17th Amendment which inserted certain acts in Ninth Schedule was again challenged. The Supreme Court ruled the parliament had no power to amend Part III of the constitution and overruled its earlier decision in Shankari Prasad and Sajjan Singh case. In order to remove difficulties created by the decision of SC in Golak Nath case parliament enacted the 24th Amendment act.

The Supreme Court recognized BASIC STRUCTURE concept for the first time in the historic Kesavananda Bharati case in 1973. Ever since the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by parliament. In this case validity of the 25th Amendment act was challenged along with the Twenty-fourth and Twenty-ninth Amendments. The court by majority overruled the Golak Nath case which denied parliament the power to amend fundamental rights of the citizens. The majority held that article 368 even before the 24th Amendment contained the power as well as the procedure of amendment. The Supreme Court declared that Article 368 did not enable Parliament to alter the basic structure or framework of the Constitution and parliament could not use its amending powers under Article368 to **'damage', 'emasculate', 'destroy', 'abrogate', 'change' or 'alter' the 'basic structure'** or **framework of the constitution**. This decision is not just a landmark in the evolution of constitutional law, but a turning point in constitutional history.

Sardar Swaran Singh Committee and the Forty-second amendment

Soon after the declaration of National Emergency, the Congress party constituted a committee under the Chairmanship of Sardar Swaran Singh to study the question of amending the Constitution in the light of

past experiences. Based on its recommendations, the government incorporated several changes to the Constitution including the **Preamble**, through the **Forty-second amendment** (passed in 1976 and came into effect on January 3, 1977). Among other things the amendment:

a) gave the **Directive Principles of State Policy** precedence over the **Fundamental Rights** contained in **Article 14** (**right to equality before the law and equal protection of the laws**), **Article 19** (various freedoms like **freedom of speech and expression, right to assemble peacefully, right to form associations and unions, right to move about and reside freely in any part of the country and the right to pursue any trade or profession**) and **Article 21** (**right to life and personal liberty**). **Article 31C** was amended to prohibit any challenge to laws made under any of the **Directive Principles of State Policy**

b) Laid down that amendments to the Constitution made in the past or those likely to be made in future could not be questioned in any court on any ground;

c) Removed all amendments to fundamental rights from the scope of judicial review and

d) Removed all limits on Parliament's power to amend the Constitution under Article 368.

Basic structure doctrine reaffirmed- the Minerva Mills and Waman Rao cases

Within less than two years of the restoration of Parliament's amending powers to near absolute terms, the **Forty-second amendment** was challenged before the Supreme Court by the owners of Minerva Mills (Bangalore) a sick industrial firm which was nationalised by the government in 1974.

Mr. N.A. Palkhivala, renowned constitutional lawyer and counsel for the petitioners, chose not to challenge the government's action merely in terms of an infringement of the fundamental right to property. Instead, he framed the challenge in terms of Parliament's power to amend the Constitution.

Mr. Palkhivala argued that Section 55 of the amendment had placed unlimited amending power in the hands of Parliament. The attempt to immunise constitutional amendments against judicial review violated the doctrine of basic structure which had been recognised by the Supreme Court in the Kesavananda Bharati and Indira Gandhi Election Cases. He further contended that the amended **Article 31C** was constitutionally bad as it violated the Preamble of the Constitution and the fundamental rights of citizens. It also took away the power of judicial review.

Chief Justice Y.V. Chandrachud, delivering the majority judgement (4:1), upheld both contentions. The majority view upheld the power of judicial review of constitutional amendments. They maintained that clauses (4) and (5) of **Article 368** conferred unlimited power on Parliament to amend the Constitution. They said that this deprived courts of the ability to question the amendment even if it damaged or destroyed the Constitution's basic structure.

The judges, who concurred with Chandrachud, C.J. ruled that a limited amending power itself is a basic feature of the Constitution.

Bhagwati, J. the dissenting judge also agreed with this view stating that no authority howsoever lofty could claim to be the sole judge of its power and actions under the Constitution.

The majority held the amendment to **Article 31C** unconstitutional as it destroyed the **harmony and balance between fundamental rights and directive principles which is an essential or basic feature of the Constitution**. The amendment to **Article 31C** remains a dead letter as it has not been repealed or deleted by Parliament. Nevertheless cases under it are decided as it existed prior to the **Forty-second amendment**.

In another case relating to a similar dispute involving agricultural property the apex court, held that all constitutional amendments made after the date of the Kesavananda Bharati judgement were open to judicial review. All laws placed in the **Ninth Schedule** after the date of the Kesavananda Bharati judgement were also open to review in the courts. They can be challenged on the ground that they are beyond Parliament's constituent power or that they have damaged the basic structure of the Constitution. In essence, the Supreme Court struck a balance between its authority to interpret the Constitution and Parliament's power to amend it.

ELEMENTS OF THE BASIC STRUCTURE

From the various judgements, the following have emerged as 'basic features' of the Constitution or elements / components / ingredients of the 'basic structure' of the constitution:

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

SUSPENSION OF FUNDAMENTAL RIGHTS DURING EMERGENCY

Article 358

Article 358 states that as soon as proclamation of National Emergency is made, each of the six Fundamental Rights (FRs) under Article 19 (such as freedom of speech or expression) are automatically suspended and no separate order is required.

Article 19 restricts power of state to make any law or take any executive action. But any such law or executive action ceases to have effect as soon as the proclamation cease to operate, except if provisions which are in conflict with Fundamental Rights under Article 19 are either modified or omitted before law cease to have effect.

It means that legislative or executive action taken at the time of an Emergency cannot be challenged even after the Emergency has ceased to operate. The constraints imposed by the 44th Amendment, 1978 on Article 358 say that, firstly, all of the six Fundamental Rights under Article 19 can be suspended only when National Emergency is declared on grounds of war or external aggression and not on grounds of armed rebellion. Only laws related to emergency are in protection from being challenged and not other laws. Also, any executive action related to only those laws are protected.

Article 359

During a National Emergency, the President by order can suspend the right to move court for enforcement of such Fundamental Rights as mentioned in the order. This means that the mentioned Fundamental Rights are alive but their enforcement is suspended. The Fundamental Rights can be suspended for the whole of a National Emergency or for a shorter duration, and the suspension can be applied to the whole or any part of India as mentioned in the order.

But any such order must be laid before each house of Parliament for approval as soon as may be after it is made. When the suspension order is in force, the States are empowered to make any law or take any action either in violation of the mentioned Fundamental Rights. But any such law or action ceases to have effect as soon as proclamation of the National Emergency ceases to operate.

Any such law made by parliament or any executive action taken by the Government, while suspension order is in action, cannot be challenged in any court on grounds of violation of any Fundamental Rights as mentioned in the order, even after the order ceases to have effect.

Unlike Article 358, the President order in Article 359 can be issued after proclamation of a National Emergency on any grounds (war or external aggression or armed rebellion).The constraints imposed by the 44th Amendment, 1978 on Article 359 are as follows:-

“The Fundamental Rights under Article 20 and 21 (Right to life or Right against arbitrary detention) can’t be taken away i.e. even at time of National Emergency, the enforcement of Fundamental Rights under Article 20 and 21 by court of law can’t be suspended. Only laws related to emergency are in protection from being challenged and not other laws. Also, any executive action related to only those laws, is protected.”

Declarations Made so Far

The National Emergency has been proclaimed three times so far in 1962, 1971 and 1975.

In 1962, due to war or external aggression by China in Arunachal Pradesh, National Emergency remained in force till 1968 due to war with Pakistan in 1965 as there was no provision of renewal in the constitution till 44th amendment, 1978. In 1971, a National Emergency was declared on grounds of war with Pakistan. And in 1975, a fresh proclamation of National Emergency was made on grounds of internal disturbance even when the previous one was in operation.

Difference between Articles 358 and 359

Article 358 is confined to Fundamental Rights guaranteed under Article 19 only, whereas Article 359 extends to all those Fundamental Rights whose enforcement is suspended by the Presidential order. Article 358 automatically suspends rights under Article 19. Whereas, Article 359 does not suspend the rights, (except Article 20 and Article 21) but only their enforceability

In the case of **Makhan Singh v. State of Punjab**, Hon'ble Supreme Court distinguished between Articles 358 and 359 as below:

Article 358	Article 359
Freedoms given by Article 19 are suspended automatically under this Article as soon as the emergency is proclaimed.	Fundamental rights are not suspended automatically it has to be done by a presidential order. Only the courts cannot be moved to enforce fundamental rights.
Article 19 is suspended for the whole period of emergency.	Right to move courts is suspended for the period of emergency or until the proclamation of the president to remove suspension of fundamental right.
Effective all over the country.	May be confined to an area.
It operates only in case of emergency on the ground of threat to the security of the country because of war or external aggression.	It operates in any emergency proclaimed under Article 352

FUNDAMENTAL DUTIES

Though the rights and duties of the citizens are correlative and inseparable, the original constitution contained only the fundamental rights and not the fundamental duties. In other words, the framers of the Constitution did not feel it necessary to incorporate the fundamental duties of the citizens in the Constitution. However, they incorporated the duties of the State in the Constitution in the form of Directive Principles of State Polity.

Later in 1976, the fundamental duties of citizens were added in the Constitution. In 2002, one more Fundamental Duty was added. The Fundamental Duties in the Indian Constitution are inspired by the Constitution of erstwhile USSR. Notably, none of the Constitutions of major democratic countries like USA, Canada, France, Germany, Australia and so on specifically contain a list of duties of citizens. Japanese Constitution is, perhaps, the only democratic Constitution in world which contains a list of duties of citizens. The socialist countries, on the contrary, gave equal importance to the fundamental rights and duties of their citizens. Hence, the Constitution of erstwhile USSR declared that the citizen's exercise of their rights and freedoms was inseparable from the performance of their duties and obligations.

- The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the **Swaran Singh Committee** that was constituted by the government earlier that year.
- Fundamental duties are applicable only to citizens and not to the aliens.
- India borrowed the concept of Fundamental Duties from the USSR.
- The inclusion of Fundamental Duties brought our Constitution in line with article 29 (1) of the Uni-

versal Declaration of Human Rights and with provisions in several modern Constitutions of other countries.

- Out of the ten clauses in article 51A, six are positive duties and the other five are negative duties. Clauses (b), (d), (f), (h), (j) and (k) require the citizens to perform these Fundamental Duties actively.
- It is suggested that a few more Fundamental Duties, namely, duty to vote in an election, duty to pay taxes and duty to resist injustice may be added in due course to article 51A in Part IVA of the Constitution.
- It is no longer correct to say that Fundamental Duties enshrined in article 51A are not enforceable to ensure their implementation and are a mere reminder. Fundamental Duties have the element of compulsion regarding compliance.
- A number of judicial decisions are available towards the enforcement of certain clauses under Article 51A.
- Comprehensive legislation is needed for clauses (a), (c), (e), (g) and (i). The remaining 5 clauses, which are exhortation of basic human values, have to be developed amongst citizens through the education system by creating proper and graded curricular input from primary level of education to the higher and professional levels.
- Available Legal Provisions: Justice Verma Committee was constituted in 1998 "to work out a strategy as well as the methodology of operationalizing a countrywide programme for teaching fundamental Duties in every educational institution as a measure of in-service training". The Verma Committee was conscious of the fact that any non-operationalization of Fundamental Duties might not necessarily be the lack of concern or non-availability of legal and other enforceable provisions, but it was more a case of lacuna in the strategy of implementation. It, therefore, thought it appropriate to list in brief some of the legal provisions already available in regard to enforcement of Fundamental Duties. A summary of such legal provisions is given below:
    - In order to ensure that no disrespect is shown to the National Flag, Constitution of India and the National anthem, the Prevention of Insults to National Honour Act, 1971 was enacted.
    - The Emblems and Names (Prevention of Improper Use) Act 1950 was enacted soon after independence, *inter alia*, to prevent improper use of the National Flag and the National Anthem.
    - In order to ensure that the correct usage regarding the display of the National Flag is well understood, the instructions issued from time to time on the subject have been embodied in Flag Code of India, which has been made available to all the State Governments, and Union territory Administration (UTs).
    - There are a number of provisions in the existing criminal laws to ensure that the activities which encourage enmity between different groups of people on grounds of religion, race, place of birth, residence, language, etc. are adequately punished. Writings, speeches, gestures, activities, exercise, drills, etc. aimed at creating a feeling of insecurity or ill-will among the members of other communities, etc. have been prohibited under Section 153A of the Indian Penal Code (IPC).
    - Imputations and assertions prejudicial to the national integration constitute a punishable offence under Section 153 B of the IPC.
    - A Communal organization can be declared unlawful association under the provisions of Unlawful Activities (Prevention) Act 1967.

- Offences related to religion are covered in Sections 295-298 of the IPC (Chapter XV).
- Provisions of the Protection of Civil Rights Act, 1955 (earlier the Untouchability (Offences) Act 1955).
- Sections 123(3) and 123(3A) of the Representation of People Act, 1951 declares that soliciting of vote on the ground of religion and the promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India on the grounds of religion, race, caste, community or language is a corrupt practice. A person indulging in a corrupt practice can be disqualified for being a Member of Parliament or a State Legislature under Section 8A of the Representation of People Act, 1951.

LIST OF FUNDAMENTAL DUTIES

According to Article 51 A, it shall be the duty of every citizen of India:

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals that inspired the national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of the country's composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;

(h) to develop scientific temper, humanism and the spirit of inquiry and reform;

(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; and

(k) to provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

Of course there is no provision in the constitution for direct enforcement of any of these duties nor for any sanction to prevent their violation. But it may be expected that in determining the constitutionality of any law, if a court finds that it seeks to give effect to any of these duties, it may consider such law to be 'reasonable' in relation to Art. 14 or 19, and thus save such law from unconstitutionality. It would also serve as a warning to reckless citizens against anti-social activities such as burning the constitution, destroying public property and the like.

UNIT-VII

[DIRECTIVE PRINCIPLES OF STATE POLICY]

SIGNIFICANCE OF DIRECTIVE PRINCIPLES

Part IV, Articles 36-51 of the Indian constitution constitutes the Directive Principles of State Policy which contain the broad directives or guidelines to be followed by the State while establishing policies and laws. The legislative and executive powers of the state are to be exercised under the purview of the Directive Principles of the Indian Constitution.

The Indian Constitution was written immediately after India obtained freedom, and the contributors to the Constitution were well aware of the ruined state of the Indian economy as well as the fragile state of the nation's unity. Thus they created a set of guidelines under the heading Directive Principles for an inclusive development of the society.

Inspired by the Constitution of Ireland, the Directive Principles contain the very basic philosophy of the Constitution of India, and that is the overall development of the nation through guidelines related to social justice, economic welfare, foreign policy, and legal and administrative matters. The Directive Principles are codified versions of democratic socialist order as conceived by Nehru with an admixture of Gandhian thought.

However, the Directive Principles cannot be enforced in a court of law and the State cannot be sued for non-compliance of the same. This indeed makes the Directive Principles a very interesting and enchanting part of the Constitution because while it does stand for the ideals of the nation, these ideals have not been made mandatory.

CLASSIFICATION OF DIRECTIVE PRINCIPLES

The Constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz, socialistic, Gandhian and liberal–intellectual.

Socialistic Principles

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state. They direct the state:

1. To promote the welfare of the people by securing a social order permeated by justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities (**Article 38**).

2. 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 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 39).

3. To promote equal justice and to provide free legal aid to the poor (**Article 39 A**).

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

5. To make provision for just and humane conditions of work and maternity relief (**Article 42**).

6. To secure a living wage, a decent standard of life and social and cultural opportunities for all workers (**Article 43**).

7. To take steps to secure the participation of workers in the management of industries (**Article 43 A**).

8. To raise the level of nutrition and the standard of living of people and to improve public health (**Article 47**).

Gandhian Principles

These principles are based on Gandhian ideology. They represent the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfil the dreams of Gandhi, some of his ideas were included as Directive Principles. They require the State:

1. To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (**Article 40**).

2. To promote cottage industries on an individual or co-operation basis in rural areas (**Article 43**).

3. To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (**Article 43B**).

4. 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 46**).

5. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (**Article 47**).

6. To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (**Article 48**).

Liberal–Intellectual Principles

The principles included in this category represent the ideology of liberalism. They direct the state:

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

2. To provide early childhood care and education for all children until they complete the age of six years (**Article 45**).

3. To organise agriculture and animal husbandry on modern and scientific lines (**Article 48**).

4. To protect and improve the environment and to safeguard forests and wild life (**Article 48 A**).

5. To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance (**Article 49**).

6. To separate the judiciary from the executive in the public services of the State (**Article 50**).

7. To promote international peace and security and 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 (**Article 51**).

NEW DIRECTIVE PRINCIPLES

The **42nd Amendment Act of 1976** added four new **Directive Principles** to the original list. They require the State:

1. To secure opportunities for healthy development of children (**Article 39**).

2. To promote equal justice and to provide free legal aid to the poor (**Article 39 A**).

3. To take steps to secure the participation of workers in the management of industries (**Article 43 A**).

4. To protect and improve the environment and to safeguard forests and wild life (**Article 48 A**).

The 44th Amendment Act of 1978 added one more Directive Principle, which requires the State to minimise inequalities in income, status, facilities and opportunities (**Article 38**).

The 86th Amendment Act of 2002 changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.

The 97th Amendment Act of 2011 added a new Directive Principle relating to co-operative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).

IMPLEMENTATION OF THE DIRECTIVE PRINCIPLES

As mentioned earlier, unlike the fundamental rights which are guaranteed by the Constitution of India, the Directive Principles do not have a legal sanction and cannot be enforced in a court of law. However, the State is making every effort to implement the Directive Principles in as many sectors as possible. The noteworthy implementation is the 86th constitutional amendment of 2002 which inserted a new article, Article 21-A, making free education for children below the age of 14 compulsory. Prevention of Atrocities Act safeguarding the interests of SC and ST, several Land Reform Acts, Minimum Wage Act (1948), are a few other examples of the implementation of the Directive Principles. Based on the guidelines of the Directive Principles, the Indian Army has participated in several UN peace-keeping operations.

There is no doubt about the fact that the Directive Principles of the Indian Constitution are the moral precepts with an educative value and stand for the ideals of this great nation. Ambedkar considered them as powerful instruments for the transformation of India from a political democracy into an economic democracy. The directives will help find the perfect way to a bright future through balanced inclusion of both individual liberty as well as public good. This instrument of instruction should be adopted with open arms to help transform India into a progressive and just nation.

CONFLICT BETWEEN FUNDAMENTAL RIGHTS & DIRECTIVE PRINCIPLES

The justiciability of Fundamental Rights and non-justiciability of Directive Principles on the one hand and the moral obligation of State to implement Directive Principles (Article 37) on the other hand have led to a conflict between the two since the commencement of the Constitution. In the Champakam Dorairajan case (1951), the Supreme Court ruled that in case of any conflict between the Fundamental Rights and the Directive Principles, the former would prevail. It declared that the Directive Principles have to conform to and run as subsidiary to the Fundamental Rights. But, it also held that the Fundamental Rights could be amended by the Parliament by enacting constitutional amendment acts. As a result, the Parliament made the First Amendment Act (1951), the Fourth Amendment Act (1955) and the Seventeenth Amendment Act (1964) to implement some of the Directives.

The above situation underwent a major change in 1967 following the Supreme Court's judgement in the Golaknath case (1967). In that case, the Supreme Court ruled that the Parliament cannot take away or abridge any of the Fundamental Rights, which are 'sacrosanct' in nature. In other words, the Court held that the Fundamental Rights cannot be amended for the implementation of the Directive Principles.

The Parliament reacted to the Supreme Court's judgement in the Golaknath Case (1967) by enacting the 24th Amendment Act (1971) and the 25th Amendment Act (1971). The 24th Amendment Act declared that the Parliament has the power to abridge or take away any of the Fundamental Rights by enacting Constitutional Amendment Acts. The 25th Amendment Act inserted a new Article 31C which contained the following two provisions:

1. No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b) and (c) shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14 (equality

before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc) or Article 31 (right to property).

2. No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

In the Kesavananda Bharati case (1973), the Supreme Court declared the above second provision of Article 31C as unconstitutional and invalid on the ground that judicial review is a basic feature of the Constitution and hence, cannot be taken away. However, the above first provision of Article 31C was held to be constitutional and valid. Later, the 42nd Amendment Act (1976) extended the scope of the above first provision of Article 31C by including within its protection any law to implement any of the Directive Principles and not merely those specified in Article 39 (b) and (c). In other words, the 42nd Amendment Act accorded the position of legal primacy and supremacy to the Directive Principles over the Fundamental Rights conferred by Articles 14, 19 and 31.

However, this extension was declared as unconstitutional and invalid by the Supreme Court in the **Minerva Mills case** (1980). It means that the **Directive Principles were once again made subordinate to the Fundamental Rights**. But the **Fundamental Rights conferred by Article 14 and Article 19 were accepted as subordinate to the Directive Principles specified in Article 39 (b) and (c).** Further, Article 31 (right to property) was abolished by the 44th Amendment Act (1978).

In the Minerva Mills case (1980), the Supreme Court also held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles. They together constitute the core of commitment to social revolution. They are like two wheels of a chariot, one no less than the other. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between the two is an essential feature of the basic structure of the Constitution. The goals set out by the Directive Principles have to be achieved without the abrogation of the means provided by the Fundamental Rights'.

Therefore, the present position is that the Fundamental Rights enjoy supremacy over the Directive Principles. Yet, this does not mean that the Directive Principles cannot be implemented. The Parliament can amend the Fundamental Rights for implementing the Directive Principles, so long as the amendment does not damage or destroy the basic structure of the Constitution.

DIRECTIVES OUTSIDE PART IV

Apart from the Directives included in Part IV, there are some other Directives contained in other Parts of the Constitution. They are:

1. Claims of SCs and STs to Services: The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or a State (Article 335 in Part XVI).

2. Instruction in mother tongue: It shall be the endeavour of every state and every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups (Article 350-A in Part XVII).

3. Development of the Hindi Language: It shall be the duty of the Union to promote the spread of the Hindi language and to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India (Article 351 in Part XVII).

The above Directives are also non-justiciable in nature. However, they are also given equal importance and attention by the judiciary on the ground that all parts of the constitution must be read together.

UNIT-VIII

[UNION EXECUTIVE]

PRESIDENT

Part V of the Constitution (The Union) under Chapter I (The Executive) lists out the qualification, election and impeachment of the President of India. Articles 52 to 78 in Part V of the Constitution deal with the Union executive. The Union executive consists of the President, the Vice-President, the Prime Minister, the council of ministers and the Attorney general of India. The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

ELECTION OF THE PRESIDENT

The President is elected not directly by the people but by members of Electoral College consisting of:

1) The elected members of both the Houses of Parliament;
2) The elected members of the legislative assemblies of the states; and
3) The elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry

Thus, the nominated members of both of Houses of Parliament, the nominated members of the state legislative assemblies, the members (both elected and nominated) of the state legislative councils (in case of the bicameral legislature) and the nominated members of the Legislative Assemblies of Delhi and Puducherry do not participate in the election of the President. Where an assembly is dissolved, the members cease to be qualified to vote in presidential election, even if fresh elections to the dissolved assembly are not held before the presidential election. The Constitution provides that there shall be uniformity in the scale of representation of different states as well as parity between the states as a whole and the Union at the election of the President. To achieve this, the number of votes which each elected member of the legislative assembly of each state and the Parliament is entitled to cast at such election shall be determined in the following manner

1. Every elected member of the legislative assembly of a state shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the state by the total number of the elected members of the assembly. This can be expressed as:

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

2. Every elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to members of the legislative assemblies of the states by the total number of the elected members of both the Houses of Parliament. This can be expressed as:

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

The President's election is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot. This system ensures that the successful candidate is returned by the absolute majority of votes. A candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes. The quota of votes is determined by dividing the total number of valid votes polled by the number of candidates to be elected (here only one candidate is to be elected as President) plus one and adding one to the quotient. The formula can be expressed as:

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

Each member of the Electoral College is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1, 2, 3, 4, etc. against the names of candidates. This means that the voter can indicate as many preferences as there are candidates in the fray. In the first phase, the first preference votes are counted. In case a candidate secures the required quota in this phase, he is declared elected. Otherwise, the process of transfer of votes is set in motion. The ballots of the candidate securing the least number of first preference votes are cancelled and his second preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota.

Further, the nomination of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers and 50 electors as seconders. Every candidate has to make a security deposit of Rs 15,000 in the Reserve Bank of India. The security deposit is liable to be forfeited in case the candidate fails to secure one-sixth of the votes polled.

Before 1997, number of proposers and seconders was ten each and the amount of security deposit was Rs 2,500. In 1997, they were increased to discourage the non-serious candidates

CONSTITUTIONAL ASSEMBLY DEBATES –PRESIDENTIAL ELECTION

Some members of the Constituent Assembly criticised the system of indirect election for the President as undemocratic and proposed the idea of direct election. However, the Constitution makers chose the indirect election due to the following reasons:

1. The indirect election of the President is in harmony with the parliamentary system of government envisaged in the Constitution. Under this system, the President is only a nominal executive and the real powers are vested in the council of ministers headed by the prime minister. It would have been anomalous to have the President elected directly by the people and not give him any real power.

2. The direct election of the President would have been very costly and time and energy-consuming due to the vast size of the electorate. This is unwarranted keeping in view that he is only a symbolic head.

Some members of the Constituent Assembly suggested that the President should be elected by the members of the two Houses of Parliament alone. The makers of the Constitution did not prefer this as the Parliament, dominated by one political party, would have invariably chosen a candidate from that party and such a President could not represent the states of the Indian Union. The present system makes the President a representative of the Union and the states equally.

Further, it was pointed out in the Constituent Assembly that the expression 'proportional representation' in the case of presidential election is a misnomer. Proportional representation takes place where two or more seats are to be filled. In case of the President, the vacancy is only one. It could better be called a preferential or alternative vote system. Similarly, the expression 'single transferable vote' was also objected on the ground that no voter has a single vote; every voter has plural votes.

Qualifications for Election as President

A person to be eligible for election as President should fulfil the following qualifications:

1. He should be a citizen of India.

2. He should have completed 35 years of age.

3. He should be qualified for election as a member of the Lok Sabha.

4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

Note: A sitting President or Vice-President of the Union, the Governor of any state and a minister of the Union or any state is not deemed to hold any office of profit and hence qualified as a presidential candidate.

Term of Office of President

The President holds office for a term of **five years** from the date on which he enters upon his office; but he is eligible for re-election. He may be elected for any number of terms. However, in USA, a person cannot be elected to the office of the President more than twice. The President's office may terminate within the term of five years in either of the two ways:

i) By resignation in writing under his hand addressed to the Vice-President of India

ii) By removal for violation of the constitution, by the process of impeachment. The only ground for impeachment specified in Article 61(1) is **'violation of the constitution'**

Procedure for impeachment of the President

The President can be removed from office by a process of impeachment for 'violation of the Constitution'. However, the Constitution does not define the meaning of the phrase 'violation of the Constitution'.

An impeachment is a quasi-judicial procedure in Parliament. Either house may prefer the charges of violation of the constitution before the other house which shall then either investigate the charge itself or cause the charge to be investigated. But the charge cannot be preferred by a house unless-

(a) A resolution containing the proposal is moved after a 14 days' notice in writing signed by not less than $1/4^{th}$ of the total number of members of that house: and

(b) The resolution is then passed by a majority of not less than $2/3^{rd}$ of the total membership of the house.

The President shall have a right to appear and to be represented at such investigation. If, as a result of the investigation, a resolution is passed by not less than $2/3^{rd}$ of the total membership of the house before which the charge has been preferred declaring that the charge has been sustained, such resolution shall have the effect of removing the President from his office with effect from the date on which such resolution is passed. [Art 61]

In this context, two things should be noted:

(a) The nominated members of either House of Parliament can participate in the impeachment of the President though they do not participate in his election;

(b) The elected members of the legislative assemblies of states and the Union Territories of Delhi and Puducherry do not participate in the impeachment of the President though they participate in his election.

Doubts and Disputes relating to Election of the President

All doubts and disputes in connection with election of the President are inquired into and decided by the Supreme Court whose decision is final.

- The election of a person as President cannot be challenged on the ground that the Electoral College was incomplete (ie, existence of any vacancy among the members of Electoral College).
- If the election of a person as President is declared void by the Supreme Court, acts done by him before the date of such declaration of the Supreme Court are not invalidated and continue to remain in force.

Conditions of President's Office

The Constitution lays down the following conditions of the President's office:

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

2. He should not hold any other office of profit.

3. He is entitled, without payment of rent, to the use of his official residence (the Rastrapathi Bhavan).

4. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.

5. His emoluments and allowances cannot be diminished during his term of office.

In 2008, the Parliament increased the salary of the President from Rs.50, 000 to Rs.1.50 lakh per month and the pension to 50% of his salary per month. In addition, the former Presidents are entitled to furnished residence, phone facilities, car, medical treatment, travel facility, secretarial staff and office expenses upto Rs. 60,000 per annum. The spouse of a deceased President is also entitled to a family pension at the rate of 50% of pension of a retired President, furnished residence, phone facility, car, medical treatment, travel facility, secretarial staff and office expenses upto Rs.12,000 per annum.

The President is entitled to a number of privileges and immunities. He enjoys personal immunity from legal liability for his official acts. During his term of office, he is immune from any criminal proceedings, even in respect of his personal acts. He cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can be instituted against him during his term of office in respect of his personal acts.

Vacancy in the President's Office

A vacancy in the President's office can occur in any of the following ways:

1. on the expiry of his tenure of five years.

2. by his resignation.

3. on his removal by the process of impeachment.

4. by his death.

5. Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

When the vacancy is going to be caused by the expiration of the term of the sitting President, an election

to fill the vacancy must be held before the expiration of the term. In case of any delay in conducting the election of new President by any reason, the outgoing President continues to hold office (beyond his term of five years) until his successor assumes charge. This is provided by the Constitution in order to prevent an 'interregnum'. In this situation, the Vice-President does not get the opportunity to act as President or to discharge the functions of the President.

If the office falls vacant by resignation, removal, death or otherwise, then election to fill the vacancy should be held within six months from the date of the occurrence of such a vacancy. The newly-elected President remains in office for a full term of five years from the date he assumes charge of his office.

When a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise, the Vice-President acts as the President until a new President is elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice- President discharges his functions until the President resumes his office.

In case the office of Vice-President is vacant, the Chief Justice of India (or if his office is also vacant, the seniormost judge of the Supreme Court available) acts as the President or discharges the functions of the President.

When any person, ie, Vice-President, chief justice of India, or the seniormost judge of the Supreme Court is acting as the President or discharging the functions of the President, he enjoys all the powers and immunities of the President and is entitled to such emoluments, allowances and privileges as are determined by the Parliament.

Apart from a permanent vacancy, the President may be temporarily unable to discharge his functions owing to his absence from India, illness or any other cause, in which case the Vice-President shall discharge his functions until the date on which the President resumes his duties. The Power to determine when the President is unable to discharge his duties or when he should resume his duties has been understood to belong to the President himself.

VICE-PRESIDENT

The Vice-President occupies the second highest office in the country. He is accorded a rank next to the President in the official warrant of precedence. This office is modelled on the lines of the American Vice-President.

ELECTION OF THE VICE-PRESIDENT

The Vice-President, like the president, is elected not directly by the people but by the method of indirect election. He is elected by the members of an electoral college consisting of the members of both Houses of Parliament. Thus, this Electoral College is different from the Electoral College for the election of the President in the following two respects:

1. It consists of both elected and nominated members of the Parliament

2. It does not include the members of the state legislative assemblies

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

Qualifications for Election as Vice-President

To be eligible for election as Vice-President, a person should fulfil the following qualifications:

1. He should be a citizen of India.

2. He should have completed 35 years of age.

3. He should be qualified for election as a member of the Rajya Sabha.

4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

But, a sitting President or Vice-President of the Union, the governor of any state and a minister for the Union or any state is not deemed to hold any office of profit and hence qualified for being a candidate for Vice-President.

Further, 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 seconders. Every candidate has to make a security deposit of 15,000 in the Reserve Bank of India

TERM OF OFFICE

The Vice-President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the President. He can also be removed from the office before completion of his term. A formal impeachment is not required for his removal. He can be removed by a resolution of the Rajya Sabha passed by an absolute majority (ie, a majority of the total members of the House) and agreed to by the Lok Sabha. But, no such resolution can be moved unless at least 14 days' advance notice has been given. Notably, no ground has been mentioned in the Constitution for his removal.

The Vice-President can hold office beyond his term of five years until his successor assumes charge. He is also eligible for re-election to that office. He may be elected for any number of terms

CONDITIONS OF OFFICE

The Constitution lays down the following two conditions of the Vice-President's office:

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 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.

Emoluments

The Constitution has not fixed any emoluments for the Vice-President in that capacity. He draws his regular salary in his capacity as the ex-officio Chairman of the Rajya Sabha. In 2008, the Parliament increased the salary of the Chairman of the Rajya Sabha from 40,000 to 1.25 lakh per month. In addition, he is entitled to daily allowance, free furnished residence, medical, travel and other facilities.

During any period when the Vice-President acts as President or discharges the functions of the President, he is not entitled to the salary or allowance payable to the Chairman of Rajya Sabha, but the salary and allowance of the President.

VACANCY IN OFFICE

A vacancy in the Vice-President's office can occur in any of the following ways:

1. on the expiry of his tenure of five years.

2. by his resignation.

3. on his removal.

4. by his death.

5. Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

When the vacancy is going to be caused by the expiration of the term of the sitting vice-president, an election to fill the vacancy must be held before the expiration of the term. If the office falls vacant by resignation, removal, death or otherwise, then election to fill the vacancy should be held as soon as possible after the occurrence of the vacancy. The newly-elected vice-president remains in office for a full term of five years from the date he assumes charge of his office.

ELECTION DISPUTES

All doubts and disputes in connection with election of the Vice-President are inquired into and decided by the Supreme Court whose decision is final. The election of a person as Vice-President cannot be challenged on the ground that the Electoral College was incomplete (i.e., existence of any vacancy among the members of Electoral College). If the election of a person as Vice- President is declared void by the Supreme Court, acts done by him before the date of such declaration of the Supreme Court are not invalidated (i.e., they continue to remain in force).

POWERS AND FUNCTIONS OF VICE-PRESIDENT

The functions of Vice-President are two-fold:

1. He acts as the ex-officio Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American vice-president who also acts as the Chairman of the Senate—the Upper House of the American legislature.

2. He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise. He can act as President only for a maximum period of six months within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

While acting as President or discharging the functions of President, the Vice-President does not perform the duties of the office of the chairman of Rajya Sabha. During this period, those duties are performed by the Deputy Chairman of Rajya Sabha.

Though the office of the Indian Vice-President is modelled on the lines of the American Vice-President, there is a difference. The American Vice-President succeeds to the presidency when it falls vacant, and remains President for the unexpired term of his predecessor. The Indian Vice-President, on the other hand, does not assume the office of the President when it falls vacant for the unexpired term. He merely serves as an acting President until the new President assumes charge.

From the above it is clear that the Constitution has not assigned any significant function to the Vice-President in that capacity. Hence, some scholars call him **'His Superfluous Highness'**. This office was created with a view to maintain the political continuity of the Indian State.

POWERS AND DUTIES OF THE PRESIDENT

The constitution says that the "executive powers of the Union" shall be vested in the President. The various powers of the President can be studied as under

Executive Powers

The executive powers and functions of the President are:

- All executive actions of the Government of India are formally taken in his name.
- He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.
- He can make rules for more convenient transaction of business of the Union government, and for allocation of the said business among the ministers.
- He appoints the prime minister and the other ministers. They hold office during his pleasure.
- He appoints the attorney general of India and determines his remuneration. The attorney general holds office during the pleasure of the President.
- He appoints the comptroller and auditor general of India, the chief election commissioner and other election commissioners, the chairman and members of the Union Public Service Commission, the governors of states, the chairman and members of finance commission, and so on.
- He can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the prime minister.
- He can require the Prime Minister to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council.
- He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.
- He can appoint an inter-state council to promote Centre–state and interstate cooperation.
- He directly administers the union territories through administrators appointed by him.
- He can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.

Legislative Powers

The President is an integral part of the Parliament of India, and enjoys the following legislative powers.

- He can summon or prorogue the Parliament and dissolve the Lok Sabha. He can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.
- He can address the Parliament at the commencement of the first session after each general election and the first session of each year.
- He can send messages to the Houses of Parliament, whether with respect to a bill pending in the Parliament or otherwise.
- He can appoint any member of the Lok Sabha to preside over its proceedings when the offices of

both the Speaker and the Deputy Speaker fall vacant. Similarly, he can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.

- He nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.
- He can nominate two members to the Lok Sabha from the Anglo-Indian Community.
- He decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission.
- His prior recommendation or permission is needed to introduce certain types of bills in the Parliament. For example, a bill involving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.
- When a bill is sent to the President after it has been passed by the Parliament, he can:
  - Give his assent to the bill, or
  - Withhold his assent to the bill, or
  - Return the bill (if it is not a money bill) for reconsideration of the Parliament.

However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his assent to the bill.

When a bill passed by a state legislature is reserved by the governor for consideration of the President, the President can:

- Give his assent to the bill, or
- Withhold his assent to the bill, or
- Direct the governor to return the bill (if it is not a money bill) for reconsideration of the state legislature.

It should be noted here that it is not obligatory for the President to give his assent even if the bill is again passed by the state legislature and sent again to him for his consideration.

He can promulgate ordinances when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. He can also withdraw an ordinance at any time.

- He lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.
- He can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu. In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved.

Financial Powers

The financial powers and functions of the President are:

- Money bills can be introduced in the Parliament only with his prior recommendation.
- He causes to be laid before the Parliament the annual financial statement (ie, the Union Budget).

- No demand for a grant can be made except on his recommendation.
- He can make advances out of the contingency fund of India to meet any unforeseen expenditure.
- He constitutes a finance commission after every five years to recommend the distribution of revenues between the Centre and the states.

Judicial Powers

The judicial powers and functions of the President are:

- He appoints the Chief Justice and the judges of Supreme Court and high courts.
- He can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.
- He can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence:
    - In all cases where the punishment or sentence is by a court martial;
    - In all cases where the punishment or sentence is for an offence against a Union law; and
    - In all cases where the sentence is a sentence of death.

Diplomatic Powers

The international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to the approval of the Parliament. He represents India in international forums and affairs and sends and receives diplomats like ambassadors, high commissioners, and so on.

Military Powers

He is the supreme commander of the defence forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force. He can declare war or conclude peace, subject to the approval of the Parliament.

Emergency Powers

In addition to the normal powers mentioned above, the Constitution confers extraordinary powers on the President to deal with the following three types of emergencies:

- National Emergency (Article 352);
- President's Rule (Article 356 & 365); and
- Financial Emergency (Article 360)

VETO POWER OF THE PRESIDENT

A bill passed by the Parliament can become an act only if it receives the assent of the President. When such a bill is presented to the President for his assent, he has three alternatives (under Article 111 of the Constitution):

1. He may give his assent to the bill, or

2. He may withhold his assent to the bill, or

3. He may return the bill (if it is not a Money bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, the President must give his assent to the bill.

Thus, the President has the veto power over the bills passed by the Parliament, that is, he can withhold his assent to the bills. The object of conferring this power on the President is two-fold—(a) to prevent hasty and ill-considered legislation by the Parliament; and (b) to prevent a legislation which may be unconstitutional.

The veto power enjoyed by the executive in modern states can be classified into the following four types:

1. Absolute veto that is, withholding of assent to the bill passed by the legislature.

2. Qualified veto, which can be overridden by the legislature with a higher majority.

3. Suspensive veto, which can be over ridden by the legislature with an ordinary majority.

4. Pocket veto that is, taking no action on the bill passed by the legislature.

Of the above four, the President of India is vested with three—absolute veto, suspensive veto and pocket veto. There is no qualified veto in the case of Indian President; it is possessed by the American President.

Absolute Veto

It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The bill then ends and does not become an act. Usually, this veto is exercised in the following two cases:

(a) With respect to private members' bills (ie, bills introduced by any member of Parliament who is not a minister); and

(b) With respect to the government bills when the cabinet resigns (after the passage of the bills but before the assent by the President) and the new cabinet advises the President not to give his assent to such bills.

Suspensive Veto

The President exercises this veto when he returns a bill for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, it is obligatory for the President to give his assent to the bill. This means that the presidential veto is overridden by a re-passage of the bill by the same ordinary majority. The President does not possess this veto in the case of money bills. The President can either give his assent to a money bill or withhold his assent to a money bill but cannot return it for the reconsideration of the Parliament. Normally, the President gives his assent to money bill as it is introduced in the Parliament with his previous permission.

Pocket Veto

In this case, the President neither ratifies nor rejects nor returns the bill, but simply keeps the bill pending for an indefinite period. This power of the President not to take any action on the bill is known as the pocket veto. The President can exercise this veto power as the Constitution does not prescribe any time-limit within which he has to take the decision with respect to a bill presented to him for his assent

It should be noted here that the President has no veto power in respect of a constitutional amendment bill. The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to give his assent to a constitutional amendment bill.

DISALLOWANCE OF STATE LEGISLATION BY UNION EXECUTIVE

The President has veto power with respect to state legislation also. A bill passed by a state legislature can become an act only if it receives the assent of the governor or the President (in case the bill is reserved for the consideration of the President).

When a bill, passed by a state legislature, is presented to the governor for his assent, he has four alternatives (under Article 200 of the Constitution):

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or
3. He may return the bill (if it is not a money bill) for reconsideration of the state legislature, or
4. He may reserve the bill for the consideration of the President.

When a bill is reserved by the governor for the consideration of the President, the President has three alternatives (Under Article 201 of the Constitution):

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or
3. He may direct the governor to return the bill (if it is not a money bill) for the reconsideration of the state legislature. If the bill is passed again by the state legislature with or without amendments and presented again to the President for his assent, the President is not bound to give his assent to the bill. This means that the state legislature cannot override the veto power of the President. Further, the Constitution has not prescribed any time limit within which the President has to take decision with regard to a bill reserved by the governor for his consideration. Hence, the President can exercise pocket veto with respect of state legislation too.

ORDINANCE MAKING POWER OF THE PRESIDENT

Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament. These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws.

The ordinance-making power is the most important legislative power of the President. It has been vested in him to deal with unforeseen or urgent matters. But, the exercises of this power is subject to the following four limitations:

1. He 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. Thus, the power of the President to legislate by ordinance is not a parallel power of legislation.

2. He can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action. In Cooper case, (1970), the Supreme Court held that the President's satisfaction can be questioned in a court on the ground of malafide.

3. His ordinance-making power is coextensive as regards all matters except duration, with the law-making powers of the Parliament. This has two implications:

- An ordinance can be issued only on those subjects on which the Parliament can make laws.
- An ordinance is subject to the same constitutional limitation as an act of Parliament. Hence, an ordinance cannot abridge or take away any of the fundamental rights

4. Every ordinance issued by the President during the recess of parliament must be laid before both the Houses of Parliament when it reassembles. If the ordinance is approved by both the Houses, it becomes an act. If Parliament takes no action at all, the ordinance ceases to operate on the expiry of six weeks from the reassembly of Parliament. The ordinance may also cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament pass resolutions disapproving it. If the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks is calculated from the later of those dates. This means that the maximum life of an ordinance can be six months and six weeks, in case of non-approval by the Parliament (six months being the maximum gap between the two sessions of Parliament). If an ordinance is allowed to lapse without being placed before Parliament, then the acts done and completed under it, before it ceases to operate, remain fully valid and effective.

The President can also withdraw an ordinance at any time. However, his power of ordinance-making is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the prime minister.

An ordinance like any other legislation, can be retrospective, that is, it may come into force from a back date. It may modify or repeal any act of Parliament or another ordinance. It can alter or amend a tax law also. However, it cannot be issued to amend the Constitution.

PARDONING POWER OF THE PRESIDENT

Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:

1. Punishment or sentence is for an offence against a Union Law;

2. Punishment or sentence is by a court martial (military court); and

3. Sentence is a sentence of death.

The pardoning power of the President is independent of the Judiciary; it is an executive power. But, the President while exercising this power does not sit as a court of appeal. The object of conferring this power on the President is two-fold:

- To keep the door open for correcting any judicial errors in the operation of law; and
- To afford relief from a sentence, which the President regards as unduly harsh.

The pardoning power of the President includes the following:

1. **Pardon-** It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.

2. **Commutation-** It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.

3. **Remission-** It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.

4. **Respite-** It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.

5. **Reprieve-** It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

Under Article 161 of the Constitution, the governor of a state also possesses the pardoning power. Hence, the governor can also grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against a state law. But, the pardoning power of the governor differs from that of the President in following two respects:

1. The President can pardon sentences inflicted by court martial (military courts) while the governor cannot.

2. The President can pardon death sentence while governor cannot. Even if a state law prescribes death sentence, the power to grant pardon lies with the President and not the governor. However, the governor can suspend, remit or commute a death sentence. In other words, both the governor and the President have concurrent power in respect of suspension, remission and commutation of death sentence.

The Supreme Court examined the pardoning power of the President under different cases and laid down the following principles:

- The petitioner for mercy has no right to an oral hearing by the President.
- The President can examine the evidence afresh and take a view different from the view taken by the court.
- The power is to be exercised by the President on the advice of the union cabinet.
- The President is not bound to give reasons for his order.
- The President can afford relief not only from a sentence that he regards as unduly harsh but also from an evident mistake.
- There is no need for the Supreme Court to lay down specific guidelines for the exercise of power by the President.
- The exercise of power by the President is not subject to judicial review except where the presidential decision is arbitrary, irrational, malafide or discriminatory.
- Where the earlier petition for mercy has been rejected by the President, stay cannot be obtained by filing another petition.

SITUATIONAL DISCRETION OF THE INDIAN PRESIDENT

Though the President has no constitutional discretion, he has some situational discretion. In other words, the President can act on his discretion (that is, without the advice of the ministers) under the following situations:

(i) Appointment of Prime Minister when no party has a clear majority in the Lok Sabha or when the Prime Minister in office dies suddenly and there is no obvious successor.
(ii) Dismissal of the council of ministers when it cannot prove the confidence of the Lok Sabha.
(iii) Dissolution of the Lok Sabha if the council of ministers has lost its majority.

THE PRIME MINISTER

In the scheme of parliamentary system of government provided by the constitution, the President is the nominal executive authority (de jure executive) and Prime Minister is the real executive authority (de facto executive). In other words, president is the head of the State while Prime Minister is the head of the government.

APPOINTMENT OF THE PRIME MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. Article 75 says only that the Prime Minister shall be appointed by the president. However, this does not imply that the president is free to appoint any one as the Prime Minister. In accordance with the conventions of the parliamentary system of government, the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party has a clear majority in the Lok Sabha, then the President may exercise his personal discretion in the selection and appointment of the Prime Minister. In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month.

There is also one more situation when the president may have to exercise his individual judgement in the selection and appointment of the Prime Minister, that is, when the Prime Minister in office dies suddenly and there is no obvious successor. This is what happened when Indira Gandhi was assassinated in 1984. The then President Zail Singh appointed Rajiv Gandhi as the Prime Minister by ignoring the precedent of appointing a caretaker Prime Minister. Later on, the Congress parliamentary party unanimously elected him as its leader. However, if, on the death of an incumbent Prime Minister, the ruling party elects a new leader, the President has no choice but to appoint him as Prime Minister.

In 1997, the Supreme Court held that a person who is not a member of either House of Parliament can be appointed as Prime Minister for six months, within which, he should become a member of either House of Parliament; otherwise, he ceases to be the Prime Minister. Constitutionally, the Prime Minister may be a member of any of the two Houses of parliament. In Britain, on the other hand, the Prime Minister should definitely be a member of the Lower House (House of Commons).

TERM AND SALARY

The term of the Prime Minister is not fixed and he holds office during the pleasure of the president. However, this does not mean that the president can dismiss the Prime Minister at any time. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign or the President can dismiss him.

The salary and allowances of the Prime Minister are determined by the Parliament from time to time. He gets the salary and allowances that are payable to a Member of Parliament. Additionally, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

POWERS AND FUNCTIONS OF THE PRIME MINISTER

The Prime Minister enjoys the following powers as head of the Union council of ministers:

- He recommends persons who can be appointed as ministers by the president. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
- He allocates and reshuffles various portfolios among the ministers.
- He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.

- He presides over the meeting of council of ministers and influences its decisions.
- He guides, directs, controls, and coordinates the activities of all the ministers.
- He can bring about the collapse of the council of ministers by resigning from office.

Since the Prime Minister stands at the head of the council of ministers, the other ministers cannot function when the Prime Minister resigns or dies. In other words, the resignation or death of an incumbent Prime Minister automatically dissolves the council of ministers and thereby generates a vacuum. The resignation or death of any other minister, on the other hand, merely creates a vacancy which the Prime Minister may or may not like to fill.

The Prime Minister enjoys the following powers in relation to the President:

1. He is the principal channel of communication between the President and the council of ministers. It is the duty of the prime minister:

- to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;
- to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

2. He advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.

The Prime Minister is the leader of the Lower House. In this capacity, he enjoys the following powers:

- He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
- He can recommend dissolution of the Lok Sabha to President at any time.
- He announces government policies on the floor of the House.

In addition to the above-mentioned three major roles, the Prime Minister has various other roles. These are:

- He is the chairman of the Planning Commission (now NITI Aayog), National Development Council, National Integration Council, Inter-State Council and National Water Resources Council.
- He plays a significant role in shaping the foreign policy of the country.
- He is the chief spokesman of the Union government.
- He is the crisis manager-in-chief at the political level during emergencies.
- As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.
- He is leader of the party in power.
- He is political head of the services.

Thus, the Prime Minister plays a very significant and highly crucial role in the politico-administrative system of the country. Dr B R Ambedkar stated, 'If any functionary under our constitution is to be compared with the US president, he is the Prime Minister and not the president of the Union'.

UNION COUNCIL OF MINISTERS

Article 74 provides for a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The 42nd and 44th Constitutional Amendment Acts have made the advice binding on the President. Further, the nature of advice tendered by ministers to the President cannot be enquired by any court. This provision emphasises the intimate and the confidential relationship between the President and the ministers.

In 1971, the Supreme Court held that 'even after the dissolution of the Lok Sabha, the council of ministers does not cease to hold office. Article 74 is mandatory and, therefore, the president cannot exercise the executive power without the aid and advise of the council of ministers. Any exercise of executive power without the aid and advice will be unconstitutional as being violative of Article 74'. Again in 1974, the court held that 'wherever the Constitution requires the satisfaction of the President, the satisfaction is not the personal satisfaction of the President but it is the satisfaction of the council of ministers with whose aid and on whose advice the President exercises his powers and functions'.

APPOINTMENT OF MINISTERS

The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister. This means that the President can appoint only those persons as ministers who are recommended by the Prime minister.

Usually, the members of Parliament, either Lok Sabha or Rajya Sabha, are appointed as ministers. A person who is not a member of either House of Parliament can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of Parliament; otherwise, he ceases 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 the other House also, but he can vote only in the House of which he is a member.

SALARY OF MINISTERS

The salaries and allowances of ministers are determined by Parliament from time to time. A minister gets the salary and allowances that are payable to a Member of Parliament. Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, travelling allowance, medical facilities, etc.

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha. This means that all the ministers own joint responsibility to the Lok Sabha for all their acts of omission and commission. They work as a team and swim or sink together. When the Lok Sabha passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the Rajya Sabha.

Alternatively, the council of ministers can advise the president to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The President may not oblige the council of ministers that has lost the confidence of the Lok Sabha.

The principle of collective responsibility also means that the Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting. It is the duty of every minister to stand by cabinet decisions and support them both within and outside the Parliament. If any minister disagrees

with a cabinet decision and is not prepared to defend it, he must resign. Several ministers have resigned in the past owing to their differences with the cabinet.

Individual Responsibility

Article 75 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the president, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha. However, the President removes a minister only on the advice of the Prime Minister. In case of a difference of opinion or dissatisfaction with the performance of a minister, the Prime Minister can ask him to resign or advice the President to dismiss him. By exercising this power, the Prime Minister can ensure the realisation of the rule of collective responsibility. In this context, Dr B R Ambedkar observed:

"*Collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, unless and until we create that office and endow that office with statutory authority to nominate and dismiss ministers, there can be no collective responsibility.*"

No Legal Responsibility

In Britain, every order of the King for any public act is countersigned by a minister. If the order is in violation of any law, the minister would be held responsible and would be liable in the court. The legally accepted phrase in Britain is, "The king can do no wrong." Hence, he cannot be sued in any court.

In India, on the other hand, there is no provision in the Constitution for the system of legal responsibility of a minister. It is not required that an order of the President for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the president.

COMPOSITION OF THE COUNCIL OF MINISTERS

The council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the Prime Minister—the supreme governing authority of the country.

The cabinet ministers head the important ministries of the Central government like home, defence, finance, external affairs and so forth. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of Central government.

The ministers of state can either be given independent charge of ministries/departments or can be attached to cabinet ministers. In case of attachment, they may either be given the charge of departments of the ministries headed by the cabinet ministers or allotted specific items of work related to the ministries headed by cabinet ministers. In both the cases, they work under the supervision and guidance as well as under the overall charge and responsibility of the cabinet ministers. In case of independent charge, they perform the same functions and exercise the same powers in relation to their ministries/departments as cabinet ministers do. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their ministries/departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of ministries/departments. They are attached to the cabinet ministers or ministers of state and assist them in their administrative, political, and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.

It must also be mentioned here that there is one more category of ministers, called parliamentary secretaries. They are the members of the last category of the council of ministers (which is also known as

the 'ministry'). They have no department under their control. They are attached to the senior ministers and assist them in the discharge of their parliamentary duties. However, since 1967, no parliamentary secretaries have been appointed except during the first phase of Rajiv Gandhi Government. At times, the council of ministers may also include a deputy prime minister. The deputy prime ministers are appointed mostly for political reasons.

COUNCIL OF MINISTERS VS CABINET

The words 'council of ministers' and 'cabinet' are often used interchangeably though there is a definite distinction between them. They differ from each other in respects of composition, functions, and role.

COUNCIL OF MINISTERS	CABINET
It is a wider body consisting of 60 to 70 ministers.	It is a smaller body consisting of 15 to 20 ministers.
It includes all the three categories of ministers, that is, cabinet ministers, ministers of state, and deputy ministers.	It includes the cabinet ministers only. Thus, it is a part of the council of ministers.
It does not meet, as a body, to transact government business. It has no collective functions.	It meets, as a body, frequently and usually once in a week to deliberate and take decisions regarding the transaction of government business. Thus, it has collective functions.
It is vested with all powers but in theory.	It exercises, in practice, the powers of the council of ministers and thus, acts for the latter.
Its functions are determined by the cabinet.	It directs the council of ministers by taking policy decisions which are binding on all ministers.
It implements the decisions taken by the cabinet.	It supervises the implementation of its decisions by the council of ministers.
It is a constitutional body, dealt in detail by the Articles 74 and 75 of the Constitution. Its size and classification are, however, not mentioned in the Constitution. Its size is determined by the prime minister according to the exigencies of the time and requirements of the situation. Its classification into a three-tier body is based on the conventions of parliamentary government as developed in Britain. It has, however, got a legislative sanction. Thus, the Salaries and Allowances Act of 1952 defines a 'minister' as a 'member of the council of ministers, by whatever name called, and includes a deputy minister'.	It was inserted in Article 352 of the Constitution in 1978 by the 44th Constitutional Amendment Act. Thus, it did not find a place in the original text of the Constitution. Now also, Article 352 only defines the cabinet saying that it is 'the council consisting of the prime minister and other ministers of cabinet rank appointed under Article 75' and does not describe its powers and functions. In other words, its role in our politico-administrative system is based on the conventions of parliamentary government as developed in Britain.
It is collectively responsible to the Lower House of the Parliament.	It enforces the collective responsibility of the council of ministers to the Lower House of Parliament.

ROLE OF CABINET

1. It is the highest decision-making authority in our politico-administrative system.

2. It is the chief policy formulating body of the Central government.

3. It is the supreme executive authority of the Central government.

4. It is chief coordinator of Central administration.

5. It is an advisory body to the president and its advice is binding on him.

6. It is the chief crisis manager and thus deals with all emergency situations.

7. It deals with all major legislative and financial matters.

8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

9. It deals with all foreign policies and foreign affairs.

KITCHEN CABINET

The cabinet, a small body consisting of the prime minister as its head and some 15 to 20 most important ministers, is the highest decision-making body in the formal sense. However, a still smaller body called the 'Inner Cabinet' or 'Kitchen Cabinet' has become the real centre of power. This informal body consists of the Prime Minister and two to four influential colleagues in whom he has faith and with whom he can discuss every problem. It advises the prime minister on important political and administrative issues and assists him in making crucial decisions. It is composed of not only cabinet ministers but also outsiders like friends and family members of the prime minister. Every prime minister in India has had his 'Inner Cabinet'—a circle within a circle. During the era of Indira Gandhi, the 'Inner Cabinet' which came to be called the 'Kitchen Cabinet' was particularly powerful.

SHADOW CABINET

A shadow cabinet is a group of politicians who hold a political post with their party, but whose party is not in government (that is, an opposition party). A member of the shadow cabinet is a shadow minister. The leader of a shadow cabinet is called the Leader of the Opposition.

Each minister of a Cabinet has a corresponding shadow minister. The Shadow minister provides an alternative to the minister in the government. The two of them will debate with each other on issues relating to their own area of jurisdiction.

UNIT-IX

[STATE EXECUTIVE]

GOVERNOR

Articles 153 to 167 in Part VI of the Constitution deal with the state executive. The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state.

The governor is the chief executive head of the state. But, like the president, he is a nominal executive head (titular or constitutional head). The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role.

Usually, there is a governor for each state, but the 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states.

APPOINTMENT OF GOVERNOR

The American model, where the Governor of a state is directly elected, was dropped and the Canadian model, where the governor of a province (state) is appointed by the Governor-General (Centre), was accepted in the Constituent Assembly.

He is appointed by the president by warrant under his hand and seal. In a way, he is a nominee of the Central government. The Constitution lays down only two qualifications for the appointment of a person as a governor. These are:

- He should be a citizen of India.
- He should have completed the age of 35 years.

Additionally, two conventions have also developed in this regard over the years. First, he should be an outsider, that is, he should not belong to the state where he is appointed, so that he is free from the local politics. Second, while appointing the governor, the president is required to consult the chief minister of the state concerned, so that the smooth functioning of the constitutional machinery in the state is ensured. However, both the conventions have been violated in some of the cases.

TERM OF GOVERNOR'S OFFICE

A governor holds office for a term of five years from the date on which he enters upon his office. However, this term of five years is subject to the pleasure of the President. Further, he can resign at any time by addressing a resignation letter to the President.

The Supreme Court held that the pleasure of the President is not justifiable. The governor has no security of tenure and no fixed term of office. He may be removed by the President at any time.

The Constitution does not lay down any grounds upon which a governor may be removed by the President. The President may transfer a Governor appointed to one state to another state for the rest of the term. Further, a Governor whose term has expired may be reappointed in the same state or any other state. A governor can hold office beyond his term of five years until his successor assumes charge. The underlying idea is that there must be a governor in the state and there cannot be an interregnum.

The President can make such provision as he thinks fit for the discharge of the functions of the governor in any contingency not provided for in the Constitution,

for example, the death of a sitting governor. Thus, the chief justice of the concerned state high court may be appointed temporarily to discharge the functions of the governor of that state.

POWERS AND DUTIES OF THE GOVERNOR

A governor possesses executive, legislative, financial and judicial powers more or less analogous to the President of India. However, he has no diplomatic, military or emergency powers like the president.

The executive powers and functions of the Governor are:

- All executive actions of the government of a state are formally taken in his name.
- He can make rules specifying the manner in which the Orders and other instruments made and executed in his name shall be authenticated.
- He can make rules for more convenient transaction of the business of a state government and for the allocation among the ministers of the said business.
- He appoints the chief minister and other ministers. They also hold office during his pleasure. There should be a Tribal Welfare minister in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha appointed by him. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.
- He appoints the advocate general of a state and determines his remuneration. The advocate general holds office during the pleasure of the governor.
- He appoints the state election commissioner and determines his conditions of service and tenure of office. However, the state election commissioner can be removed only in like manner and on the like grounds as a judge of a high court.
- He appoints the chairman and members of the state public service commission. However, they can be removed only by the president and not by a governor.
- He can seek any information relating to the administration of the affairs of the state and proposals for legislation from the chief minister.
- He can require the chief minister to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
- He can recommend the imposition of constitutional emergency in a state to the president. During the period of President's rule in a state, the governor enjoys extensive executive powers as an agent of the President.
- He acts as the chancellor of universities in the state. He also appoints the vice-chancellors of universities in the state.

A governor is an integral part of the state legislature. In that capacity, he has the following legislative powers and functions:

- He can summon or prorogue the state legislature and dissolve the state legislative assembly.
- He can address the state legislature at the commencement of the first session after each general election and the first session of each year.
- He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.
- He can appoint any member of the State legislative assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he can appoint any member of the state legislature council to preside over its proceedings when the offices of both Chairman and Deputy Chairman fall vacant.

- He nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.
- He can nominate one member to the state legislature assembly from the Anglo-Indian Community.
- He decides on the question of disqualification of members of the state legislature in consultation with the Election Commission.
- When a bill is sent to the governor after it is passed by state legislature, he can:
    a) Give his assent to the bill, or
    b) Withhold his assent to the bill, or
    c) Return the bill (if it is not a money bill) for reconsideration of the state legislature. However, if the bill is passed again by the state legislature with or without amendments, the governor has to give his assent to the bill, or
    d) Reserve the bill for the consideration of the president. In one case such reservation is obligatory, that is, where the bill passed by the state legislature endangers the position of the state high court.

In addition, the governor can also reserve the bill if it is of the following nature

1) **Ultra-vires, that is, against the provisions of the Constitution.**
2) **Opposed to the Directive Principles of State Policy.**
3) **Against the larger interest of the country.**
4) **Of grave national importance.**
5) **Dealing with compulsory acquisition of property under Article 31A of the Constitution.**

- He can promulgate ordinances when the state legislature is not in session. These ordinances must be approved by the state legislature within six weeks from its reassembly. He can also withdraw an ordinance anytime. This is the most important legislative power of the governor.
- He lays the reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.

The financial powers and functions of the governor are:

- He sees that the Annual Financial Statement (state budget) is laid before the state legislature.
- Money bills can be introduced in the state legislature only with his prior recommendation.
- No demand for a grant can be made except on his recommendation.
- He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.
- He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

The judicial powers and functions of the governor are:

- He can grant pardons, reprives, respites and remissions of punishment or suspend, remit and com-

mute 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.

- He is consulted by the president while appointing the judges of the concerned state high court.
- He makes appointments, postings and promotions of the district judges in consultation with the state high court.
- He also appoints persons to the judicial service of the state (other than district judges) in consultation with the state high court and the State Public Service Commission.

CONSTITUTIONAL POSITION OF THE GOVERNOR

The Constitution of India provides for a parliamentary form of government in the states as in the Centre. Consequently, the governor has been made only a nominal executive, the real executive constitutes the council of ministers headed by the chief minister. In other words, the governor has to exercise his powers and functions with the aid and advise of the council of ministers headed by the chief minister, except in matters in which he is required to act in his discretion (i.e., without the advice of ministers).

In estimating the constitutional position of the governor, particular reference has to be made to the provisions of Articles 154, 163 and 164. These are:

- The executive power of the state shall be vested in the governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution (Article 154).
- 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 (Article 163).
- The council of ministers shall be collectively responsible to the legislative assembly of the state (Article 164). This provision is the foundation of the parliamentary system of government in the state.

From the above, it is clear that constitutional position of the governor differs from that of the president in the following two respects:

1. While the Constitution envisages the possibility of the governor acting at times in his discretion, no such possibility has been envisaged for the President.

2. After the 42nd Constitutional Amendment (1976), ministerial advice has been made binding on the President, but no such provision has been made with respect to the governor.

The Constitution makes it clear that if any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him cannot be called in question on the ground that he ought or ought not to have acted in his discretion. The governor has constitutional discretion in the following cases:

- Reservation of a bill for the consideration of the President.
- Recommendation for the imposition of the President's Rule in the state.
- While exercising his functions as the administrator of an adjoining union territory (in case of additional charge).
- Determining the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration.

- Seeking information from the chief minister with regard to the administrative and legislative matters of the state.

In addition to the above constitutional discretion (i.e., the express discretion mentioned in the Constitution), the governor, like the president, also has situational discretion (i.e., the hidden discretion derived from the exigencies of a prevailing political situation) in the following cases:

- Appointment of chief minister when no party has a clear-cut majority in the state legislative assembly or when the chief minister in office dies suddenly and there is no obvious successor.
- Dismissal of the council of ministers when it cannot prove the confidence of the state legislative assembly.
- Dissolution of the state legislative assembly if the council of ministers has lost its majority.

Moreover, the governor has certain special responsibilities to discharge according to the directions issued by the President. In this regard, the governor though has to consult the council of ministers led by the chief minister, acts finally on his discretion. They are as follows:

- Maharashtra—Establishment of separate development boards for Vidarbha and Marathwada.
- Gujarat—Establishment of separate development boards for Saurashtra and Kutch.
- Nagaland—With respect to law and order in the state for so long as the internal disturbance in the Naga Hills–Tuensang Area continues.
- Assam—With respect to the administration of tribal areas.
- Manipur—Regarding the administration of the hill areas in the state.
- Sikkim—For peace and for ensuring social and economic advancement of the different sections of the population.
- Arunachal Pradesh—With respect to law and order in the state.
- Karnataka – Establishment of a separate development board for Hyderabad-Karnataka region.

Thus, the Constitution has assigned a dual role to the office of a governor in the Indian federal system. He is the constitutional head of the state as well as the representative of the Centre (i.e., President).

CHIEF MINISTER

The position of the Chief Minister at the state level is analogous to the position of prime minister at the Centre.

APPOINTMENT OF THE CHIEF MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. Article 164 only says that the Chief Minister shall be appointed by the governor. However, this does not imply that the governor is free to appoint any one as the Chief Minister. In accordance with the convections of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state legislative assembly as the Chief Minister. But, when no party has a clear majority in the assembly, then the governor may exercise his personal discretion in the selection and appointment of the Chief Minister. In such a situation, the governor usually appoints the leader of the largest party or coalition in the assembly as the Chief Minister and ask him to seek a vote of confidence in the House within a month.

The governor may have to exercise his individual judgement in the selection and appointed of the Chief Minister when the Chief Minister in office dies suddenly and there is no obvious successor. However, on the death of a Chief Minister, the ruling party usually elects a new leader and the governor has no choice but to appoint him as Chief Minister.

The Constitution does not require that a person must prove his majority in the legislative assembly before he is appointed as the Chief Minister. The governor may first appoint him as the Chief Minister and then ask him to prove his majority in the legislative assembly within a reasonable period. This is what has been done in a number of cases

A person who is not a member of the state legislature can be appointed as Chief Minister for six months, within which time, he should be elected to the state legislature, failing which he ceases to be the Chief Minister.

According to the Constitution, the Chief Minister may be a member of any of the two Houses of a state legislature. Usually Chief Ministers have been selected from the Lower House (legislative assembly), but, on a number of occasions, a member of the Upper House (legislative council) has also been appointed as Chief Minister

TERM AND SALARY

The term of the Chief Minister is not fixed and he holds office during the pleasure of the governor. However, this does not mean that the governor can dismiss him at any time. He cannot be dismissed by the governor as long as he enjoys the majority support in the legislative assembly. But, if he loses the confidence of the assembly, he must resign or the governor can dismiss him.

The salary and allowances of the Chief Minister are determined by the state legislature. In addition to the salary and allowances, which are payable to a member of the state legislature, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

POWERS AND FUNCTIONS OF CHIEF MINISTER

The Chief Minister enjoys the following powers as head of the state council of ministers:

- The governor appoints only those persons as ministers who are recommended by the Chief Minister.
- He allocates and reshuffles the portfolios among ministers.
- He can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.
- He presides over the meetings of the council of ministers and influences its decisions.
- He guides, directs, controls and coordinates the activities of all the ministers.
- He can bring about the collapse of the council of ministers by resigning from office. Since the Chief Minister is the head of the council of ministers, his resignation or death automatically dissolves the council of ministers. The resignation or death of any other minister, on the other hand, merely creates a vacancy, which the Chief Minister may or may not like to fill.

The Chief Minister enjoys the following powers in relation to the governor:

- He is the principal channel of communication between the governor and the council of ministers. It is the duty of the Chief Minister:

- to communicate to the Governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation;
- to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for; and
- if the governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
- He advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election commissioner, and so on.

The Chief Minister enjoys the following powers as the leader of the house:

- He advises the governor with regard to the summoning and proroguing of the sessions of the state legislature.
- He can recommend the dissolution of the legislative assembly to the governor at any time.
- He announces the government policies on the floor of the house.

In addition, the Chief Minister also performs the following functions:

- He is the chairman of the State Planning Board.
- He acts as a vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.
- He is a member of the Inter-State Council and the National Development Council, both headed by the prime minister.
- He is the chief spokesman of the state government.
- He is the crisis manager-in-chief at the political level during emergencies.
- As a leader of the state, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.
- He is the political head of the services.

Thus, he plays a very significant and highly crucial role in the state administration. However, the discretionary powers enjoyed by the governor reduces to some extent the power, authority, influence, prestige and role of the Chief Minister in the state administration.

STATE COUNCIL OF MINISTERS

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. If any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. The advice tendered by Ministers to the Governor shall not be inquired into in any court.

- The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. However, in the states of Chhattisgarh,

Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and backward classes or any other work. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.

- 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. This provision was added by the 91st Amendment Act of 2003.
- A member of either House of 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. This provision was also added by the 91st Amendment Act of 2003.
- The ministers shall hold office during the pleasure of the Governor.
- The council of ministers shall be collectively responsible to the state Legislative Assembly.
- The Governor shall administer the oaths of office and secrecy to a minister.
- A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be a minister.
- The salaries and allowances of ministers shall be determined by the state legislature.

SALARY OF MINISTERS

The salaries and allowances of ministers are determined by the state legislature from time to time. A minister gets the salary and allowances which are payable to a member of the state legislature. Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, travelling allowance, medical facilities, etc.

Collective Responsibility

Article 164 clearly states that the council of ministers is collectively responsible to the legislative assembly of the state. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission. They work as a team and swim or sink together. When the legislative assembly passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the legislative council. Alternatively, the council of ministers can advice the governor to dissolve the legislative assembly on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The governor may not oblige the council of ministers which has lost the confidence of the legislative assembly.

The principle of collective responsibility also mean that the cabinet decisions bind all cabinet ministers (and other ministers) even if they deferred in the cabinet meeting. It is the duty of every minister to stand by the cabinet decisions and support them both within and outside the state legislature. If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign. Several ministers have resigned in the past owing to their differences with the cabinet.

Individual Responsibility

Article 164 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the governor. This means that the governor can remove a minister at a time when the council of ministers enjoys the confidence of the legislative assembly. But, the governor can remove a minister only on the advice of the chief minister. In case of difference of opinion or dissatisfaction with the performance of a minister, the chief minister can ask him to resign or advice the governor to dismiss him. By exercising this power, the chief minister can ensure the realisation of the rule of collective responsibility.

No Legal Responsibility

As at the Centre, there is no provision in the Constitution for the system of legal responsibility of the minister in the states. It is not required that an order of the governor for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the governor.

COMPOSITION OF THE STATE COUNCIL OF MINISTERS

The Constitution does not specify the size of the state council of ministers or the ranking of ministers. They are determined by the chief minister according to the exigencies of the time and requirements of the situation. Like at the Centre, in the states too, the council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the chief minister—supreme governing authority in the state.

The cabinet ministers head the important departments of the state government like home, education, finance, agriculture and so forth. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of state government.

The ministers of state can either be given independent charge of departments or can be attached to cabinet ministers. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of departments. They are attached to the cabinet ministers and assist them in their administrative, political and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings. At times, the council of ministers may also include a deputy chief minister. The deputy chief ministers are appointed mostly for local political reasons.

UNIT-X

[UNION LEGISLATURE]

FUNCTIONS OF THE PARLIAMENT

As has been explained at the outset, our constitution has adopted the Parliamentary system of the government which effects a harmonious blending of the legislative and executive organs of the state inasmuch as the executive power is wielded by a group of members of the legislature who command a majority in the popular chamber of the legislature and remain in power so long as they retain that majority. Some of the major functions of the parliament are as follows:

1. Legislative Functions:

The Parliament makes laws on all subjects listed in the Union List. It can also make laws on subjects listed under the Concurrent List. In case there is any conflict or overlapping in the provisions existing in the Union and State enactment, the Union law prevails. In cases when an emergency has been declared, the Union Parliament can also make laws on subjects that fall within the State List.

2. Financial Control:

Union Parliament has exclusive powers to provide ways and means through which revenue has to be raised for public services. To that end it imposes taxes and also ensures that the money sanctioned for expenditure to various departments of the government has been spent for the authorized purposes.

3. Providing and exercising control over Cabinet:

Our Parliamentary system blends the legislative and the executive organs of the State in as much as the executive power is wielded by a group of Members of the Legislature who command majority in the Lok Sabha. To be more specific the government functions through various Ministries under the charge of different Ministers. The Parliament provides the Ministers and holds them responsible to the elected representatives of the people. The Ministers could be Member of either of the two Houses of the Parliament. The actual execution of government policies as decided by the Parliament is carried out by the bureaucracy headed by a Secretary of the Department.

4. Critical Assessment of the Work of the Cabinet:

The Parliament provides the forum through which is ensured that the Cabinet remains in power only as long as it commands majority support in the Lok Sabha which comprises elected representatives of the people. It is one of the most important functions of the Parliament to bring about discussions and critical assessments of the performance of the government departments. The debates ensure that the weaknesses in terms of performance are brought to light and the Ministers and through them the entire executive machinery is kept on toes.

5. Role of opposition:

The existence of opposition also ensures that the nation gets to know about the alternative points of view.

6. An organ of information:

Parliament is the most powerful organ so far information about the functioning of the government is concerned. The information provided in the Houses is authoritative and Ministers are bound to provide information on matters of government when so desired by the members.

7. Constitutional Functions:

The power to amend the Constitution vests with the Parliament. Constitutional amendments have to be passed by each house by a majority of total membership as well as by two-third majority of members present in voting. In some cases amendments need ratification from half of the Legislative assemblies of the States.

8. Judicial Functions:

Parliament has the exclusive powers to impeach the President and remove judges of the Supreme Court and the High Court's through a prescribed procedure. Parliament can also punish a person for contempt or defamation of the House.

9. Elective functions:

Elected members of the Rajya Sabha and the Lok Sabha Constitute the Electoral College for the election of the Vice-President. Along with elected members of the State Legislatures they form the Electoral College for election to the office of the President.

The Parliament can also by legislation create new States or make changes in the existing boundaries of the States.

COMPOSITION OF THE PARLIAMENT

Under the Constitution, the Parliament of India consists of three parts viz, the President, the Council of States and the House of the People. In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively. The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House). The former represents the states and union territories of the Indian Union, while the latter represents the people of India as a whole.

Though the President of India is not a member of either House of Parliament and does not sit in the Parliament to attend its meetings, he is an integral part of the Parliament. This is because a bill passed by both the Houses of Parliament cannot become law without the President's assent. He also performs certain functions relating to the proceedings of the Parliament, for example, he summons and prorogues both the Houses, dissolves the Lok Sabha, addresses both the Houses, issues ordinances when they are not in session, and so on.

The parliamentary form of government emphasises on the interdependence between the legislative and executive organs. Hence, we have the 'President in-Parliament' like the 'Crown-in-Parliament' in Britain. The presidential form of government, on the other hand, lays stress on the separation of legislative and executive organs. Hence, the American president is not regarded as a constituent part of the Congress.

COMPOSITION OF THE TWO HOUSES

Composition of Rajya Sabha

The maximum strength of the Rajya Sabha is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president. At present, the Rajya Sabha has 245 members. Of these, 229 members represent the states, 4 members represent the union territories and 12 members are nominated by the president. The Fourth Schedule of the Constitution deals with the allocation of seats in the Rajya Sabha to the states and union territories.

Representation of States: The representatives of states in the Rajya Sabha are elected by the elected members of state legislative assemblies. The election is held in accordance with the system of proportion-

al representation by means of the single transferable vote. The seats are allotted to the states in the Rajya Sabha on the basis of population. Hence, the number of representatives varies from state to state. For example, Uttar Pradesh has 31 members while Tripura has 1 member only. However, in USA, all states are given equal representation in the Senate irrespective of their population. USA has 50 states and the Senate has 100 members—2 from each state.

Representation of Union Territories: The representatives of each union territory in the Rajya Sabha are indirectly elected by members of an electoral college specially constituted for the purpose. This election is also held in accordance with the system of proportional representation by means of the single transferable vote. Out of the seven union territories, only two (Delhi and Puducherry) have representation in Rajya Sabha. The populations of other five union territories are too small to have any representative in the Rajya Sabha.

Nominated Members: The president nominates **12 members** to the **Rajya Sabha** from people who have **special knowledge** or **practical experience** in **art, literature, science** and **social service**. The rationale behind this principle of nomination is to provide eminent persons a place in the Rajya Sabha without going through the process of election. It should be noted here that the American Senate has no nominated members.

Composition of Lok Sabha

The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and 2 members are to be nominated by the president from the Anglo-Indian community. At present, the Lok Sabha has 545 members. Of these, 530 members represent the states, 13 members represent the union territories and 2 Anglo-Indian members are nominated by the President.

Representation of States: The representatives of states in the Lok Sabha are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. Every Indian citizen who is above 18 years of age and who is not disqualified under the provisions of the Constitution or any law is eligible to vote at such election. **The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.**

Representation of Union Territories: The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Sabha. Accordingly, 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.

Nominated Members: The president can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Sabha. Originally, this provision was to operate till 1960 but has been extended till 2020 by the 95th Amendment Act, 2009.

QUALIFICATION AND DISQUALIFICATION OF MEMBERS OF PARLIAMENT

The Constitution lays down the following qualifications for a person to be chosen a member of the Parliament:

1. He must be a citizen of India.

2. He must make and subscribe to an oath or affirmation before the person authorised by the election commission for this purpose. In his oath or affirmation, he swears

- To bear true faith and allegiance to the Constitution of India
- To uphold the sovereignty and integrity of India

3. He must be not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years of age in the case of the Lok Sabha.

4. He must possess other qualifications prescribed by Parliament.

The Parliament has laid down the following additional qualifications in the Representation of People Act (1951).

1. He must be registered as an elector for a parliamentary constituency. This is same in the case of both, the Rajya Sabha and the Lok Sabha. The requirement that a candidate contesting an election to the Rajya Sabha from a particular state should be an elector in that particular state was dispensed with in 2003. In 2006, the Supreme Court upheld the constitutional validity of this change.

2. He must be a member of a scheduled caste or scheduled tribe in any state or union territory, if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

Under the Constitution, a person shall be disqualified for being elected as a Member of Parliament:

1. If he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by Parliament).

2. If he is of unsound mind and stands so declared by a court.

3. If he is an undischarged insolvent.

4. 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 to a foreign state; and

5. If he is so disqualified under any law made by Parliament.

The Parliament has laid down the following additional disqualifications in the Representation of People Act (1951):

- He must not have been found guilty of certain election offences or corrupt practices in the elections.
- He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
- He must not have failed to lodge an account of his election expenses within the time.
- He must not have any interest in government contracts, works or services.
- He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
- He must not have been dismissed from government service for corruption or disloyalty to the State.
- He must not have been convicted for promoting enmity between different groups or for the offence of bribery.
- He must not have been punished for preaching and practising social crimes such as untouchability, dowry and sati.

On the question whether a member is subject to any of the above disqualifications, the president's decision is final. However, he should obtain the opinion of the election commission and act accordingly.

Disqualification due to Defection

The Constitution also lays down that a person shall be disqualified from being a Member of Parliament if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule. A member incurs disqualification under the defection law:

1. If he voluntary gives up the membership of the political party on whose ticket he is elected to the House;

2. If he votes or abstains from voting in the House contrary to any direction given by his political party;

3. If any independently elected member joins any political party; and

4. If any nominated member joins any political party after the expiry of six months.

The question of disqualification under the Tenth Schedule is decided by the Chairman in the case of Rajya Sabha and Speaker in the case of Lok Sabha (and not by the president of India). In 1992, the Supreme Court ruled that the decision of the Chairman/Speaker in this regard is subject to judicial review.

VACATION OF SEATS BY MEMBERS

In the following cases, a Member of Parliament vacates his seat.

1. Dual Membership: A person cannot be a member of both Houses of Parliament at the same time. Thus, the Representation of People Act (1951) provides for the following:

(a) If a person is elected to both the Houses of Parliament, he must intimate within 10 days in which House he desires to serve. In default of such intimation, his seat in the Rajya Sabha becomes vacant.

(b) If a sitting member of one House is also elected to the other House, his seat in the first House becomes vacant.

(c) If a person is elected to two seats in a House, he should exercise his option for one. Otherwise, both seats become vacant.

Similarly, a person cannot be a member of both the Parliament and the state legislature at the same time. If a person is so elected, his seat in Parliament becomes vacant if he does not resign his seat in the state legislature within 14 days.

2. Disqualification: If a Member of Parliament becomes subject to any of the disqualifications specified in the Constitution, his seat becomes vacant. Here, the list of disqualifications also includes the disqualification on the grounds of defection under the provisions of the Tenth Schedule of the Constitution.

3. Resignation: A member may resign his seat by writing to the Chairman of Rajya Sabha or Speaker of Lok Sabha, as the case may be. The seat falls vacant when the resignation is accepted. However, the Chairman/Speaker may not accept the resignation if he is satisfied that it is not voluntary or genuine.

4. Absence: A House can declare the seat of a member vacant if he is absent from all its meetings for a period of sixty days without its permission. In computing the period of sixty days, no account shall be taken of any period during which the House is prorogued or adjourned for more than four consecutive days.

5. Other cases: A member has to vacate his seat in the Parliament:

(a) If his election is declared void by the court;

(b) If he is expelled by the House;

(c) If he is elected to the office of President or Vice-President; and

(d) If he is appointed to the office of governor of a state.

If a disqualified person is elected to the Parliament, the Constitution lays down no procedure to declare the election void. This matter is dealt by the Representation of the People Act (1951), which enables the high court to declare an election void if a disqualified candidate is elected. The aggrieved party can appeal to the Supreme Court against the order of the high court in this regard.

TERRITORIAL CONSTITUENCIES AND THEIR RE-ADJUSTMENT

For the purpose of holding direct elections to the Lok Sabha, each state is divided into territorial constituencies. In this respect, the Constitution makes the following two provisions:

- Each state is allotted a number of seats in the Lok Sabha in such a manner that the ratio between that number and its population is the same for all states. This provision does not apply to a state having a population of less than six millions.
- Each state is divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state.

In brief, the Constitution ensures that there is uniformity of representation in two respects: (a) between the different states, and (b) between the different constituencies in the same state. The expression 'population' means the population as ascertained at the preceding census of which the relevant figures have been published.

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

The 42nd Amendment Act of 1976 froze the allocation of seats in the Lok Sabha to the states and the division of each state into territorial constituencies till the year 2000 at the 1971 level. This ban on readjustment was extended for another 25 years (ie, upto year 2026) by the 84th Amendment Act of 2001, with the same objective of encouraging population limiting measures.

The 84th Amendment Act of 2001 also empowered the government to undertake readjustment and rationalization of territorial constituencies in the states on the basis of the population figures of 1991 census. Later, the 87th Amendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census. However, this can be done without altering the number of seats allotted to each state in the Lok Sabha.

RESERVATION OF SEATS IN THE PARLIAMENT

Though the Constitution has abandoned the system of communal representation, it provides for the reservation of seats for scheduled castes and scheduled tribes in the Lok Sabha on the basis of population ratios. Originally, this reservation was to operate for ten years (ie, up to 1960), but it has been extended continuously since then by 10 years each time. Now, under the 95th Amendment Act of 2009, this reservation is to last until 2020.

Though seats are reserved for scheduled castes and scheduled tribes, they are elected by all the voters in a constituency, without any separate electorate. A member of scheduled castes and scheduled tribes is also not debarred from contesting a general (non-reserved) seat.

The 84th Amendment Act of 2001 provided for re-fixing of the reserved seats on the basis of the population figures of 1991 census as applied to rationalization of the general seats. Later, the 87thAmendment Act of 2003 provided for the re-fixing of the reserved seats on the basis of 2001 census and not 1991 census.

PROPORTIONAL REPRESENTATION REJECTED FOR POPULAR CHAMBER

Though the Constitution has adopted the system of proportional representation in the case of Rajya Sabha, it has not preferred the same system in the case of Lok Sabha. Instead, it has adopted the system of territorial representation for the election of members to the Lok Sabha. Under territorial representation, every member of the legislature represents a geographical area known as a constituency. From each constituency, only one representative is elected. Hence such a constituency is known as single member constituency. In this system, a candidate who secures majority of votes is declared elected. In other words, it does not secure due representation to minorities (small groups).

The system of proportional representation aims at removing the defects of territorial representation. Under this system, all sections of the people get representation in proportion to their number. Even the smallest section of the population gets its due share of representation in the legislature.

There are two kinds of proportional representation, namely, single transferable vote system and list system. In India, the first kind is adopted for the election of members to the Rajya Sabha and state legislative council and for electing the President and the Vice-President. Though some members of the Constituent Assembly had advocated the system of proportional representation for the election of members to the Lok Sabha, the Constitution has not adopted the system due to two reasons

- Difficulty for the voters to understand the system (which is complicated) due to low literacy scale in the country.
- Unsuitability to the parliamentary government due to the tendency of the system to multiply political parties leading to instability in government.

Additionally, the system of proportional representation has the following demerits:

- It is highly expensive.
- It does not give any scope for organising by-elections.
- It eliminates intimate contacts between voters and representatives.
- It promotes minority thinking and group interests.
- It increases the significance of party system and decreases that of voter.

DURATION OF TWO HOUSES

Duration of Rajya Sabha

The Rajya Sabha (first constituted in 1952) is a continuing chamber, that is, it is a permanent body and not subject to dissolution. However, one-third of its members retire every second year. Their seats are filled up by fresh elections and presidential nominations at the beginning of every third year. The retiring members are eligible for re-election and renomination any number of times.

The Constitution has not fixed the term of office of members of the Rajya Sabha and left it to the Parliament. Accordingly, the Parliament in the Representation of the People Act (1951) provided that the term of office of a member of the Rajya Sabha shall be six years. The act also empowered the president of India to curtail the term of members chosen in the first Rajya Sabha. In the first batch, it was decided by lottery

as to who should retire. Further, the act also authorised the President to make provisions to govern the order of retirement of the members of the Rajya Sabha.

Duration of Lok Sabha

Unlike the Rajya Sabha, the Lok Sabha is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections, after which it automatically dissolves. However, the President is authorised to dissolve the Lok Sabha at any time even before the completion of five years and this cannot be challenged in a court of law. Further, the term of the Lok Sabha can be extended during the period of national emergency be a law of Parliament for one year at a time for any length of time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.

OFFICERS OF THE PARLIAMENT

Each House of Parliament has its own presiding officer. There is a Speaker and a Deputy Speaker for the Lok Sabha and a Chairman and a Deputy Chairman for the Rajya Sabha. A panel of chairpersons for the Lok Sabha and a panel of vice-chairpersons for the Rajya Sabha is also appointed.

Speaker of Lok Sabha

Election and Tenure: The Speaker is elected by the Lok Sabha from amongst its members (as soon as may be, after its first sitting). Whenever the office of the Speaker falls vacant, the Lok Sabha elects another member to fill the vacancy. The date of election of the Speaker is fixed by the President. Usually, the Speaker remains in office during the life of the Lok Sabha. However, he has to vacate his office earlier in any of the following three cases:

- if he ceases to be a member of the Lok Sabha;
- if he resigns by writing to the Deputy Speaker; and
- if he is removed by a resolution passed by a majority of all the members of the Lok Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

When a resolution for the removal of the Speaker is under consideration of the House, he cannot preside at the sitting of the House, though he may be present. However, he can speak and take part in the proceedings of the House at such a time and vote in the first instance, though not in the case of an equality of votes. It should be noted here that, whenever the Lok Sabha is dissolved, the Speaker does not vacate his office and continues till the newly-elected Lok Sabha meets.

Role, Powers and Functions: The Speaker is the head of the Lok Sabha, and its representative. He is the guardian of powers and privileges of the members, the House as a whole and its committees. He is the principal spokesman of the House, and his decision in all Parliamentary matters is final. He is thus much more than merely the presiding officer of the Lok Sabha. In these capacities, he is vested with vast, varied and vital responsibilities and enjoys great honour, high dignity and supreme authority within the House.

The Speaker of the Lok Sabha derives his powers and duties from three sources, that is, the Constitution of India, the Rules of Procedure and Conduct of Business of Lok Sabha, and Parliamentary Conventions (residuary powers that are unwritten or unspecified in the Rules). Altogether, he has the following powers and duties:

- He maintains order and decorum in the House for conducting its business and regulating its proceedings. This is his primary responsibility and he has final power in this regard.
- He is the final interpreter of the provisions of (a) the Constitution of India, (b) the Rules of Procedure and Conduct of Business of Lok Sabha, and (c) the parliamentary precedents, within the House.

- He adjourns the House or suspends the meeting in absence of a quorum. The quorum to constitute a meeting of the House is one-tenth of the total strength of the House.
- He does not vote in the first instance. But he can exercise a casting vote in the case of a tie. In other words, only when the House is divided equally on any question, the Speaker is entitled to vote. Such vote is called casting vote, and its purpose is to resolve a deadlock.
- He presides over a joint setting of the two Houses of Parliament. Such a sitting is summoned by the President to settle a deadlock between the two Houses on a bill.
- He can allow a 'secret' sitting of the House at the request of the Leader of the House. When the House sits in secret, no stranger can be present in the chamber, lobby or galleries except with the permission of the Speaker.
- He decides whether a bill is a money bill or not and his decision on this question is final. When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the President for assent, the Speaker endorses on the bill his certificate that it is a money bill.
- He decides the questions of disqualification of a member of the Lok Sabha, arising on the ground of defection under the provisions of the Tenth Schedule. In 1992, the Supreme Court ruled that the decision of the Speaker in this regard is subject to judicial review.
- He acts as the ex-officio chairman of the Indian Parliamentary Group which acts as a link between the Parliament of India and the various parliaments of the world. He also acts as the ex-officio chairman of the conference of presiding officers of legislative bodies in the country.
- He appoints the chairman of all the parliamentary committees of the Lok Sabha and supervises their functioning. He himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

Independence and Impartiality: As the office of the Speaker is vested with great prestige, position and authority, independence and impartiality becomes its sine qua non. The following provisions ensure the independence and impartiality of the office of the Speaker:

- He is provided with a security of tenure. He can be removed only by a resolution passed by the Lok Sabha by an absolute majority (ie, a majority of the total members of the House) and not by an ordinary majority (ie, a majority of the members present and voting in the House). This motion of removal can be considered and discussed only when it has the support of at least 50 members.
- His salaries and allowances are fixed by Parliament. They are charged on the Consolidated Fund of India and thus are not subject to the annual vote of Parliament.
- His work and conduct cannot be discussed and criticised in the Lok Sabha except on a substantive motion.
- His powers of regulating procedure or conducting business or maintaining order in the House are not subject to the jurisdiction of any Court.
- He cannot vote in the first instance. He can only exercise a casting vote in the event of a tie. This makes the position of Speaker impartial.
- He is given a very high position in the order of precedence. He is placed at seventh rank, along with the Chief Justice of India. This means, he has a higher rank than all cabinet ministers, except the Prime Minister or Deputy Prime Minister.

In Britain, the Speaker is strictly a non-party man. There is a convention that the Speaker has to resign from his party and remain politically neutral. This healthy convention is not fully established in India where the Speaker does not resign from the membership of his party on his election to the exalted office.

Deputy Speaker of Lok Sabha

Like the Speaker, the Deputy Speaker is also elected by the Lok Sabha itself from amongst its members. He is elected after the election of the Speaker has taken place. The date of election of the Deputy Speaker is fixed by the Speaker. Whenever the office of the Deputy Speaker falls vacant, the Lok Sabha elects another member to fill the vacancy.

Like the Speaker, the Deputy Speaker remains in office usually during the life of the Lok Sabha. However, he may vacate his office earlier in any of the following three cases:

- If he ceases to be a member of the Lok Sabha;
- If he resigns by writing to the Speaker; and
- If he is removed by a resolution passed by a majority of all the members of the Lok Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

The Deputy Speaker performs the duties of the Speaker's office when it is vacant. He also acts as the Speaker when the latter is absent from the sitting of the House. In both the cases, he assumes all the powers of the Speaker. He also presides over the joint sitting of both the Houses of Parliament, in case the Speaker is absent from such a sitting.

It should be noted here that the Deputy Speaker is not subordinate to the Speaker. He is directly responsible to the House. The Deputy Speaker has one special privilege, that is, whenever he is appointed as a member of a parliamentary committee, he automatically becomes its chairman.

Like the Speaker, the Deputy Speaker, while presiding over the House, cannot vote in the first instance; he can only exercise a casting vote in the case of a tie. Further, when a resolution for the removal of the Deputy Speaker is under consideration of the House, he cannot preside at the sitting of the House, though he may be present.

When the Speaker presides over the House, the Deputy Speaker is like any other ordinary member of the House. He can speak in the House, participate in its proceedings and vote on any question before the House. The Deputy Speaker is entitled to a regular salary and allowance fixed by Parliament, and charged on the Consolidated Fund of India.

Upto the 10th Lok Sabha, both the Speaker and the Deputy Speaker were usually from the ruling party. Since the 11th Lok Sabha, there has been a consensus that the Speaker comes from the ruling party (or ruling alliance) and the post of Deputy Speaker goes to the main opposition party. The Speaker and the Deputy Speaker, while assuming their offices, do not make and subscribe any separate oath or affirmation

Panel of Chairpersons of Lok Sabha

Under the Rules of Lok Sabha, the Speaker nominates from amongst the members a panel of not more than ten chairpersons. Any of them can preside over the House in the absence of the Speaker or the Deputy Speaker. He has the same powers as the Speaker when so presiding. He holds office until a new panel of chairpersons is nominated. When a member of the panel of chairpersons is also not present, any other person as determined by House acts as the Speaker.

It must be emphasised here that a member of the panel of chairpersons cannot preside over the House, when the office of the Speaker or the Deputy Speaker is vacant. During such time, the Speaker's duties are to be performed by such member of the House as the President may appoint for the purpose. The elections are held, as soon as possible, to fill the vacant posts.

Speaker Pro Tem

As provided by the Constitution, the Speaker of the last Lok Sabha vacates his office immediately before the first meeting of the newly-elected Lok Sabha. Therefore, the President appoints a member of the Lok Sabha as the Speaker Pro Tem. Usually, the seniormost member is selected for this. The President himself administers oath to the Speaker Pro Tem. The Speaker Pro Tem has all the powers of the Speaker. He presides over the first sitting of the newly-elected Lok Sabha. His main duty is to administer oath to the new members. He also enables the House to elect the new Speaker. When the new Speaker is elected by the House, the office of the Speaker Pro Tem ceases to exist. Hence, this office is a temporary office, existing for a few days.

Chairman of Rajya Sabha

The presiding officer of the Rajya Sabha is known as the Chairman. The vice-president of India is the ex-officio Chairman of the Rajya Sabha. During any period when the Vice-President acts as President or discharges the functions of the President, he does not perform the duties of the office of the Chairman of Rajya Sabha.

The Chairman of the Rajya Sabha can be removed from his office only if he is removed from the office of the Vice-President. As a presiding officer, the powers and functions of the Chairman in the Rajya Sabha are similar to those of the Speaker in the Lok Sabha. However, the Speaker has two special powers which are not enjoyed by the Chairman:

- The Speaker decides whether a bill is a money bill or not and his decision on this question is final.
- The Speaker presides over a joint sitting of two Houses of Parliament.

Unlike the Speaker (who is a member of the House), the Chairman is not a member of the House. But like the Speaker, the Chairman also cannot vote in the first instance. He too can cast a vote in the case of an equality of votes. The Vice-President cannot preside over a sitting of the Rajya Sabha as its Chairman when a resolution for his removal is under consideration. However, he can be present and speak in the House and can take part in its proceedings, without voting, even at such a time (while the Speaker can vote in the first instance when a resolution for his removal is under consideration of the Lok Sabha).

As in case of the Speaker, the salaries and allowances of the Chairman are also fixed by the Parliament. They are charged on the Consolidated Fund of India and thus are not subject to the annual vote of Parliament. During any period when the Vice-President acts as President or discharges the functions of the President, he is not entitled to any salary or allowance payable to the Chairman of the Rajya Sabha. But he is paid the salary and allowance of the President during such a time.

Deputy Chairman of Rajya Sabha

The Deputy Chairman is elected by the Rajya Sabha itself from amongst its members. Whenever the office of the Deputy Chairman falls vacant, the Rajya Sabha elects another member to fill the vacancy. The Deputy Chairman vacates his office in any of the following three cases:

- If he ceases to be a member of the Rajya Sabha;
- If he resigns by writing to the Chairman; and
- If he is removed by a resolution passed by a majority of all the members of the Rajya Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

The Deputy Chairman performs the duties of the Chairman's office when it is vacant or when the

Vice-President acts as President or discharges the functions of the President. He also acts as the Chairman when the latter is absent from the sitting of the House. In both the cases, he has all the powers of the Chairman.

It should be emphasised here that the Deputy Chairman is not subordinate to the Chair-man. He is directly responsible to the Rajya Sabha. Like the Chairman, the Deputy Chairman, while presiding over the House, cannot vote in the first instance; he can only exercise a casting vote in the case of a tie. Further, when a resolution for the removal of the Deputy Chairman is under consideration of the House, he cannot preside over a sitting of the House, though he may be present.

When the Chairman presides over the House, the Deputy Chairman is like any other ordinary member of the House. He can speak in the House, participate in its proceedings and vote on any question before the House. Like the Chairman, the Deputy Chairman is also entitled to a regular salary and allowance. They are fixed by Parliament and are charged on the Consolidated Fund of India.

Panel of Vice-Chairpersons of Rajya Sabha

Under the Rules of Rajya Sabha, the Chairman nominates from amongst the members a panel of vice-chairpersons. Any one of them can preside over the House in the absence of the Chairman or the Deputy Chairman. He has the same powers as the Chairman when so presiding. He holds office until a new panel of vice-chairpersons is nominated.

When a member of the panel of vice-chairpersons is also not present, any other person as determined by the House acts as the Chairman. It must be emphasised here that a member of the panel of vice chairpersons cannot preside over the House, when the office of the Chairman or the Deputy Chairman is vacant. During such time, the Chairman's duties are to be performed by such member of the House as the president may appoint for the purpose. The elections are held, as soon as possible, to fill the vacant posts.

Secretariat of Parliament

Each House of Parliament has separate secretarial staff of its own, though there can be some posts common to both the Houses. Their recruitment and service conditions are regulated by Parliament. The secretariat of each House is headed by a secretary-general. He is a permanent officer and is appointed by the presiding officer of the House.

LEADERS IN PARLIAMENT

Leader of the House

Under the Rules of Lok Sabha, the 'Leader of the House' means the prime minister, if he is a member of the Lok Sabha, or a minister who is a member of the Lok Sabha and is nominated by the prime minister to function as the Leader of the House. There is also a 'Leader of the House' in the Rajya Sabha. He is a minister and a member of the Rajya Sabha and is nominated by the prime minister to function as such. The leader of the house in either House is an important functionary and exercises direct influence on the conduct of business. He can also nominate a deputy leader of the House. The same functionary in USA is known as the 'majority leader'.

Leader of the Opposition

In each House of Parliament, there is the 'Leader of the Opposition'. The leader of the largest Opposition party having not less than one-tenth seats of the total strength of the House is recognised as the leader of the Opposition in that House. In a parliamentary system of government, the leader of the opposition has a significant role to play. His main functions are to provide a constructive criticism of the policies of the government and to provide an alternative government. Therefore, the leader of Opposition in the Lok Sabha

and the Rajya Sabha were accorded statutory recognition in 1977. They are also entitled to the salary, allowances and other facilities equivalent to that of a cabinet minister. It was in 1969 that an official leader of the opposition was recognised for the first time. The same functionary in USA is known as the 'minority leader'.

The British political system has an unique institution called the 'Shadow Cabinet'. It is formed by the Opposition party to balance the ruling cabinet and to prepare its members for future ministerial offices. In this shadow cabinet, almost every member in the ruling cabinet is 'shadowed' by a corresponding member in the opposition cabinet. This shadow cabinet serves as the 'alternate cabinet' if there is change of government. That is why Ivor Jennings described the leader of Opposition as the 'alternative Prime Minister'. He enjoys the status of a minister and is paid by the government.

Whip

Though the offices of the leader of the House and the leader of the Opposition are not mentioned in the Constitution of India, they are mentioned in the Rules of the House and Parliamentary Statute respectively. The office of 'whip', on the other hand, is mentioned neither in the Constitution of India nor in the Rules of the House nor in a Parliamentary Statute. It is based on the conventions of the parliamentary government. Every political party, whether ruling or Opposition has its own whip in the Parliament. He is appointed by the political party to serve as an assistant floor leader. He is charged with the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favour of or against a particular issue. He regulates and monitors their behaviour in the Parliament. The members are supposed to follow the directives given by the whip. Otherwise, disciplinary action can be taken.

SESSIONS OF THE PARLIAMENT

Summoning

The president from time to time summons each House of Parliament to meet. But, the maximum gap between two sessions of Parliament cannot be more than six months. In other words, the Parliament should meet at least twice a year. There are usually three sessions in a year, viz,

- The Budget Session (February to May);
- The Monsoon Session (July to September); and
- The Winter Session (November to December).

A 'session' of Parliament is the period spanning between the first sitting of a House and its prorogation (or dissolution in the case of the Lok Sabha). During a session, the House meets every day to transact business. The period spanning between the prorogation of a House and its reassembly in a new session is called 'recess'.

Adjournment

A session of Parliament consists of many meetings. Each meeting of a day consists of two sittings, that is, a morning sitting from 11 am to 1 pm and post-lunch sitting from 2 pm to 6 pm. A sitting of Parliament can be terminated by adjournment or adjournment sine die or prorogation or dissolution (in the case of the Lok Sabha). An adjournment suspends the work in a sitting for a specified time, which may be hours, days or weeks.

Adjournment Sine Die

Adjournment sine die means terminating a sitting of Parliament for an indefinite period. In other words, when the House is adjourned without naming a day for reassembly, it is called adjournment sine die. The

power of adjournment as well as adjournment sine die lies with the presiding officer of the House. He can also call a sitting of the House before the date or time to which it has been adjourned or at any time after the House has been adjourned sine die.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned sine die, when the business of a session is completed. Within the next few days, the President issues a notification for prorogation of the session. However, the President can also prorogue the House while in session.

Adjournment	Prorogation
It only terminates a sitting and not a session of the House.	It not only terminates a sitting but also a session of the House.
It is done by presiding officer of the House.	It is done by the president of India.
It does not affect the bills or any other business pending before the House and the same can be resumed when the House meets again.	It also does not affect the bills or any other business pending before the House. However, all pending notices (other than those for introducing bills) lapse on prorogation and fresh notices have to be given for the next session. In Britain, prorogation brings to an end all bills or any other business pending before the House.

Dissolution

Rajya Sabha, being a permanent House, is not subject to dissolution. Only the Lok Sabha is subject to dissolution. Unlike a prorogation, dissolution ends the very life of the existing House, and a new House is constituted after general elections are held. The dissolution of the Lok Sabha may take place in either of two ways:

- Automatic dissolution, that is, on the expiry of its tenure of five years or the terms as extended during a national emergency; or
- Whenever the President decides to dissolve the House, which he is authorised to do. Once the Lok Sabha is dissolved before the completion of its normal tenure, the dissolution is irrevocable.

When the Lok Sabha is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committees lapse. They (to be pursued further) must be reintroduced in the newly constituted Lok Sabha. However, some pending bills and all pending assurances that are to be examined by the Committee on Government Assurances do not lapse on the dissolution of the Lok Sabha. The position with respect to lapsing of bills is as follows:

- A bill pending in the Lok Sabha lapses (whether originating in the Lok Sabha or transmitted to it by the Rajya Sabha).
- A bill passed by the Lok Sabha but pending in the Rajya Sabha lapses.
- A bill not passed by the two Houses due to disagreement and if the president has notified the holding of a joint sitting before the dissolution of Lok Sabha, does not lapse.
- A bill pending in the Rajya Sabha but not passed by the Lok Sabha does not lapse.
- A bill passed by both Houses but pending assent of the president does not lapse.
- A bill passed by both Houses but returned by the president for reconsideration of Houses does not lapse.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is one-tenth of the total number of members in each House including the presiding officer. It means that there must be at least 55 members present in the Lok Sabha and 25 members present in the Rajya Sabha, if any business is to be conducted. If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Language in Parliament

The Constitution has declared Hindi and English to be the languages for transacting business in the Parliament. However, the presiding officer can permit a member to address the House in his mother-tongue. In both the Houses, arrangements are made for simultaneous translation. Though English was to be discontinued as a floor language after the expiration of fifteen years from the commencement of the Constitution (that is, in 1965), the Official Languages Act (1963) allowed English to be continued along with Hindi.

Rights of Ministers and Attorney General

In addition to the members of a House, every minister and the attorney general of India have the right to speak and take part in the proceedings of either House, any joint sitting of both the Houses and any committee of Parliament of which he is a member, without being entitled to vote. There are two reasons underlying this constitutional provision:

- A minister can participate in the proceedings of a House, of which he is not a member. In other words, a minister belonging to the Lok Sabha can participate in the proceedings of the Rajya Sabha and vice-versa.
- A minister, who is not a member of either House, can participate in the proceedings of both the Houses. It should be noted here that a person can remain a minister for six months, without being a member of either House of Parliament.

Lame-duck Session

It refers to the last session of the existing Lok Sabha, after a new Lok Sabha has been elected. Those members of the existing Lok Sabha who could not get re-elected to the new Lok Sabha are called lame-ducks.

DEVICES OF PARLIAMENTARY PROCEEDINGS

Question Hour

The first hour of every parliamentary sitting is slotted for this. During this time, the members ask questions and the ministers usually give answers. The questions are of three kinds, namely, starred, unstarred and short notice. A starred question (distinguished by an asterisk) requires an oral answer and hence supplementary questions can follow.

An unstarred question, on the other hand, requires a written answer and hence, supplementary questions cannot follow. A short notice question is one that is asked by giving a notice of less than ten days. It is answered orally.

In addition to the ministers, the questions can also be asked to the private members. Thus, a question may be addressed to a private member if the subject matter of the question relates to some Bill, resolution or other matter connected with the business of the House for which that member is responsible. The procedure in regard to such question is the same as that followed in the case of questions addressed to a minister. The list of starred, unstarred, short notice questions and questions to private members are printed in green, white, light pink and yellow colour, respectively, to distinguish them from one another.

Zero Hour

Unlike the question hour, the zero hour is not mentioned in the Rules of Procedure. Thus it is an informal device available to the members of the Parliament to raise matters without any prior notice. The zero hour starts immediately after the question hour and lasts until the agenda for the day (ie, regular business of the House) is taken up. In other words, the time gap between the question hour and the agenda is known as zero hour. It is an Indian innovation in the field of parliamentary procedures and has been in existence since 1962.

Motions

No discussion on a matter of general public importance can take place except on a motion made with the consent of the presiding officer. The House expresses its decisions or opinions on various issues through the adoption or rejection of motions moved by either ministers or private members. The motions moved by the members to raise discussions on various matters fall into three principal categories

1. Substantive Motion: It is a self-contained independent proposal dealing with a very important matter like impeachment of the President or removal of Chief Election Commissioner.

2. Substitute Motion: It is a motion that is moved in substitution of an original motion and proposes an alternative to it. If adopted by the House, it supersedes the original motion.

3. Subsidiary Motion: It is a motion that, by itself, has no meaning and cannot state the decision of the House without reference to the original motion or proceedings of the House. It is divided into three subcategories:

- Ancillary Motion: It is used as the regular way of proceeding with various kinds of business.
- Superseding Motion: It is moved in the course of debate on another issue and seeks to supersede that issue.
- Amendment: It seeks to modify or substitute only a part of the original motion.

Closure Motion

It is a motion moved by a member to cut short the debate on a matter before the House. If the motion is approved by the House, debate is stopped forthwith and the matter is put to vote. There are four kinds of closure motions:

(a) **Simple Closure**: It is one when a member moves that the 'matter having been sufficiently discussed be now put to vote'.

(b) **Closure by Compartments**: In this case, the clauses of a bill or a lengthy resolution are grouped into parts before the commencement of the debate. The debate covers the part as a whole and the entire part is put to vote.

(c) **Kangaroo Closure**: Under this type, only important clauses are taken up for debate and voting and the intervening clauses are skipped over and taken as passed.

(d) **Guillotine Closure**: It is one when the undiscussed clauses of a bill or a resolution are also put to vote along with the discussed ones due to want of time (as the time allotted for the discussion is over).

Privilege Motion

It is concerned with the breach of parliamentary privileges by a minister. It is moved by a member when he feels that a minister has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts. Its purpose is to censure the concerned minister.

Calling Attention Motion

It is introduced in the Parliament by a member to call the attention of a minister to a matter of urgent public importance, and to seek an authoritative statement from him on that matter. Like the zero hour, it is also an Indian innovation in the parliamentary procedure and has been in existence since 1954. However, unlike the zero hour, it is mentioned in the Rules of Procedure.

Adjournment Motion

It is introduced in the Parliament to draw attention of the House to a definite matter of urgent public importance, and needs the support of 50 members to be admitted. As it interrupts the normal business of the House, it is regarded as an extraordinary device. It involves an element of censure against the government and hence Rajya Sabha is not permitted to make use of this device. The discussion on an adjournment motion should last for not less than two hours and thirty minutes.

The right to move a motion for an adjournment of the business of the House is subject to the following restrictions:

- It should raise a matter which is definite, factual, urgent and of public importance;
- It should not cover more than one matter;
- It should be restricted to a specific matter of recent occurrence and should not be framed in general terms;
- It should not raise a question of privilege;
- It should not revive discussion on a matter that has been discussed in the same session;
- It should not deal with any matter that is under adjudication by court; and
- It should not raise any question that can be raised on a distinct motion.

No-Confidence Motion

Article 75 of the Constitution says that the council of ministers shall be collectively responsible to the Lok Sabha. It means that the ministry stays in office so long as it enjoys confidence of the majority of the members of the Lok Sabha. In other words, the Lok Sabha can remove the ministry from office by passing a no-confidence motion. The motion needs the support of 50 members to be admitted.

Censure Motion	No-Confidence Motion
It should state the reasons for its adoption in the Lok Sabha.	It need not state the reasons for its adoption in the Lok Sabha.
It can be moved against an individual minister or a group of ministers or the entire council of ministers.	It can be moved against the entire council of ministers only.
It is moved for censuring the council of ministers for specific policies and actions.	It is moved for ascertaining the confidence of Lok Sabha in the council of ministers.
If it is passed in the Lok Sabha, the council of ministers need not resign from the office.	If it is passed in the Lok Sabha, the council of ministers must resign from office.

Motion of Thanks

The first session after each general election and the first session of every fiscal year is addressed by the president. In this address, the president outlines the policies and programmes of the government in the preceding year and ensuing year. This address of the president, which corresponds to the 'speech from the Throne in Britain', is discussed in both the Houses of Parliament on a motion called the 'Motion of Thanks'. At the end of the discussion, the motion is put to vote. This motion must be passed in the House. Otherwise, it amounts to the defeat of the government. This inaugural speech of the president is an occasion available to the members of Parliament to raise discussions and debates to examine and criticise the government and administration for its lapses and failures.

No-Day-Yet-Named Motion

It is a motion that has been admitted by the Speaker but no date has been fixed for its discussion. The Speaker, after considering the state of business in the House and in consultation with the leader of the House or on the recommendation of the Business Advisory Committee, allots a day or days or part of a day for the discussion of such a motion.

Point of Order

A member can raise a point of order when the proceedings of the House do not follow the normal rules of procedure. A point of order should relate to the interpretation or enforcement of the Rules of the House or such articles of the Constitution that regulate the business of the House and should raise a question that is within the cognizance of the Speaker. It is usually raised by an opposition member in order to control the government. It is an extraordinary device as it suspends the proceedings before the House. No debate is allowed on a point of order.

Half-an-Hour Discussion

It is meant for discussing a matter of sufficient public importance, which has been subjected to a lot of debate and the answer to which needs elucidation on a matter of fact. The Speaker can allot three days in a week for such discussions. There is no formal motion or voting before the House.

Short Duration Discussion

It is also known as two-hour discussion as the time allotted for such a discussion should not exceed two hours. The members of the Parliament can raise such discussions on a matter of urgent public importance. The Speaker can allot two days in a week for such discussions. There is neither a formal motion before the house nor voting. This device has been in existence since 1953.

Special Mention

A matter which is not a point of order or which cannot be raised during question hour, half-an hour discussion, short duration discussion or under adjournment motion, calling attention notice or under any rule of the House can be raised under the special mention in the Rajya Sabha. Its equivalent procedural device in the Lok Sabha is known as 'Notice (Mention) Under Rule 377'.

Resolutions

The members can move resolutions to draw the attention of the House or the government to matters of general public interest. The discussion on a resolution is strictly relevant to and within the scope of the resolution. A member who has moved a resolution or amendment to a resolution cannot withdraw the same except by leave of the House. Resolutions are classified into three categories:

1. Private Member's Resolution: It is one that is moved by a private member (other than a minister). It is discussed only on alternate Fridays and in the afternoon sitting.

2. Government Resolution: It is one that is moved by a minister. It can be taken up any day from Monday to Thursday.

3. Statutory Resolution: It can be moved either by a private member or a minister. It is so called because it is always tabled in pursuance of a provision in the Constitution or an Act of Parliament.

"All resolutions come in the category of substantive motions, that is to say, every resolution is a particular type of motion. All motions need not necessarily be substantive. Further, all motions are not necessarily put to vote of the House, whereas all the resolutions are required to be voted upon."

LEGISLATIVE PROCEDURE IN PARLIAMENT

Bills introduced in the Parliament are of two kinds: public bills and private bills (also known as government bills and private members' bills respectively). The bills introduced in the Parliament can also be classified into four categories:

1. Ordinary bills, which are concerned with any matter other than financial subjects.

2. Money bills, which are concerned with the financial matters like taxation public expenditure, etc.

3. Financial bills, which are also concerned with financial matters (but are different from money bills).

4. Constitution amendment bills, which are concerned with the amendment of the provisions of the Constitution.

Though both are governed by the same general procedure and pass through the same stages in the House, they differ in various respects:

Public Bill	Private Bill
It is introduced in the Parliament by a minister.	It is introduced by any member of Parliament other than a minister.
It reflects of the policies of the government (ruling party).	It reflects the stand of opposition party on public matter.
It has greater chance to be approved by the Parliament.	It has lesser chance to be approved by the Parliament.
Its rejection by the House amounts to the expression of want of parliamentary confidence in the government and may lead to its resignation.	Its rejection by the House has no implication on the parliamentary confidence in the government or its resignation.
Its introduction in the House requires seven days' notice.	Its introduction in the House requires one month's notice.
It is drafted by the concerned department in consultation with the law department.	Its drafting is the responsibility of the member concerned.

Ordinary Bills

Every ordinary bill has to pass through the following five stages in the Parliament before it finds a place on the Statute Book:

1. First Reading: An ordinary bill can be introduced in either House of Parliament. Such a bill can be introduced either by a minister or by any other member. The member who wants to introduce the bill has to ask for the leave of the House. When the House grants leave to introduce the bill, the mover of the bill introduces it by reading its title and objectives. No discussion on the bill takes place at this stage. Later,

the bill is published in the Gazette of India. If a bill is published in the Gazette before its introduction, leave of the House to introduce the bill is not necessary. The introduction of the bill and its publication in the Gazette constitute the first reading of the bill.

2. Second Reading: During this stage, the bill receives not only the general but also the detailed scrutiny and assumes its final shape. Hence, it forms the most important stage in the enactment of a bill. In fact, this stage involves three more sub-stages, namely, stage of general discussion, committee stage and consideration stage.

(a) Stage of General Discussion: The printed copies of the bill are distributed to all the members. The principles of the bill and its provisions are discussed generally, but the details of the bill are not discussed.

At this stage, the House can take any one of the following four actions:

(i) It may take the bill into consideration immediately or on some other fixed date;

(ii) It may refer the bill to a select committee of the House;

(iii) It may refer the bill to a joint committee of the two Houses; and

(iv) It may circulate the bill to elicit public opinion.

A Select Committee consists of members of the House where the bill has originated and a joint committee consists of members of both the Houses of Parliament.

(b) Committee Stage: The usual practice is to refer the bill to a select committee of the House. This committee examines the bill thoroughly and in detail, clause by clause. It can also amend its provisions, but without altering the principles underlying it. After completing the scrutiny and discussion, the committee reports the bill back to the House.

(c) Consideration Stage: The House, after receiving the bill from the select committee, considers the provisions of the bill clause by clause. Each clause is discussed and voted upon separately. The members can also move amendments and if accepted, they become part of the bill.

3. Third Reading: At this stage, the debate is confined to the acceptance or rejection of the bill as a whole and no amendments are allowed, as the general principles underlying the bill have already been scrutinised during the stage of second reading. If the majority of members present and voting accept the bill, the bill is regarded as passed by the House. Thereafter, the bill is authenticated by the presiding officer of the House and transmitted to the second House for consideration and approval. A bill is deemed to have been passed by the Parliament only when both the Houses have agreed to it, either with or without amendments.

4. Bill in the Second House: In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading. There are four alternatives before this House:

(a) it may pass the bill as sent by the first house (ie, without amendments);

(b) it may pass the bill with amendments and return it to the first House for reconsideration;

(c) it may reject the bill altogether; and

(d) it may not take any action and thus keep the bill pending.

If the second House passes the bill without any amendments or the first House accepts the amendments suggested by the second House, the bill is deemed to have been passed by both the Houses and the same is sent to the president for his assent. On the other hand, if the first House rejects the amendments suggested by the second House or the second House rejects the bill altogether or the second House does not

take any action for six months, a deadlock is deemed to have taken place. To resolve such a deadlock, the president can summon a joint sitting of the two Houses. If the majority of members present and voting in the joint sitting approves the bill, the bill is deemed to have been passed by both the Houses.

5. Assent of the President: Every bill after being passed by both Houses of Parliament either singly or at a joint sitting, is presented to the president for his assent. There are three alternatives before the president:

- He may give his assent to the bill; or
- He may withhold his assent to the bill; or
- He may return the bill for reconsideration of the Houses.

If the president gives his assent to the bill, the bill becomes an act and is placed on the Statute Book. If the President withholds his assent to the bill, it ends and does not become an act. If the President returns the bill for reconsideration and if it is passed by both the Houses again with or without amendments and presented to the President for his assent, the president must give his assent to the bill. Thus, the President enjoys only a "suspensive veto.

Money Bills

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

- The imposition, abolition, remission, alteration or regulation of any tax;
- The regulation of the borrowing of money by the Union government;
- The custody of the Consolidated Fund of India or the contingency fund of India, the payment of moneys into or the withdrawal of money from any such fund;
- The appropriation of money out of the Consolidated Fund of India;
- Declaration of any expenditure charged on the Consolidated Fund of India or increasing the amount of any such expenditure;
- The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money, or the audit of the accounts of the Union or of a state; or
- Any matter incidental to any of the matters specified above.

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

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

Or any of the above

If any question arises whether a bill is a money bill or not, the decision of the Speaker of the Lok Sabha is final. His decision in this regard cannot be questioned in any court of law or in the either House of Parliament or even the president. When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the president for assent, the Speaker endorses it as a money bill.

The Constitution lays down a special procedure for the passing of money bills in the Parliament. A money bill can only be introduced in the Lok Sabha and that too on the recommendation of the president. Every such bill is considered to be a government bill and can be introduced only by a minister. After a money bill is passed by the Lok Sabha, it is transmitted to the Rajya Sabha for its consideration. The Rajya Sabha has restricted powers with regard to a money bill. It cannot reject or amend a money bill. It can only make the recommendations. It must return the bill to the Lok Sabha within 14 days, wither with or without recommendations. The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha. If the Lok Sabha accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form. If the Lok Sabha does not accept any recommendation, the bill is then deemed to have passed by both the Houses in the form originally passed by the Lok Sabha without any change.

If the Rajya Sabha does not return the bill to the Lok Sabha within 14 days, the bill is deemed to have been passed by both the Houses in the form originally passed by the Lok Sabha. Thus, the Lok Sabha has more powers than Rajya Sabha with regard to a money bill. On the other hand, both the Houses have equal powers with regard to an ordinary bill.

Finally, when a money bill is presented to the president, he may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the Houses. Normally, the president gives his assent to a money bill as it is introduced in the Parliament with his prior permission.

Financial Bills

Financial bills are those bills that deal with fiscal matters, that is, revenue or expenditure. However, the Constitution uses the term 'financial bill' in a technical sense. Financial bills are of three kinds:

1. Money bills—Article 110

2. Financial bills (I)—Article 117 (1)

3. Financial bills (II)—Article 117 (3)

This classification implies that money bills are simply a species of financial bills. Hence, all money bills are financial bills but all financial bills are not money bills. Only those financial bills are money bills which contain exclusively those matters which are mentioned in Article 110 of the Constitution. These are also certified by the Speaker of Lok Sabha as money bills. The financial bills (I) and (II), on the other hand, have been dealt with in Article 117 of the Constitution.

Financial Bills (I): A financial bill (I) is a bill that contains not only any or all the matters mentioned in Article 110, but also other matters of general legislation. For instance, a bill that contains a borrowing clause, but does not exclusively deal with borrowing. In two respects, a financial bill (I) is similar to a money bill—(a) both of them can be introduced only in the Lok Sabha and not in the Rajya Sabha, and (b) both of them can be introduced only on the recommendation of the president. In all other respects, a financial bill (I) is governed by the same legislative procedure applicable to an ordinary bill. Hence, it can be either rejected or amended by the Rajya Sabha (except that an amendment other than for reduction or abolition of a tax cannot be moved in either House without the recommendation of the president). In case of a disagreement between the two Houses over such a bill, the president can summon a joint sitting of the two Houses to resolve the deadlock. When the bill is presented to the President, he can either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the Houses.

Financial Bills (II): A financial bill (II) contains provisions involving expenditure from the Consolidated Fund of India, but does not include any of the matters mentioned in Article 110. It is treated as an ordinary bill and in all respects, it is governed by the same legislative procedure which is applicable to an ordinary bill. The only special feature of this bill is that it cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the bill. Hence, financial bill (II)

can be introduced in either House of Parliament and recommendation of the President is not necessary for its introduction. It can be either rejected or amended by either House of Parliament. In case of a disagreement between the two Houses over such a bill, the President can summon a joint sitting of the two Houses to resolve the deadlock. When the bill is presented to the President, he can either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the Houses.

JOINT SITTING OF BOTH THE HOUSES

Joint sitting is an extraordinary machinery provided by the Constitution to resolve a deadlock between the two Houses over the passage of a bill. A deadlock is deemed to have taken place under any one of the following three situations after a bill has been passed by one House and transmitted to the other House:

- If the bill is rejected by the other House;
- If the Houses have finally disagreed as to the amendments to be made in the bill; or
- If more than six months have elapsed from the date of the receipt of the bill by the other House without the bill being passed by it.

In the above three situations, the president can summon both the Houses to meet in a joint sitting for the purpose of deliberating and voting on the bill. It must be noted here that the provision of joint sitting is applicable to ordinary bills or financial bills only and not to money bills or Constitutional amendment bills. In the case of a money bill, the Lok Sabha has overriding powers, while a Constitutional amendment bill must be passed by each House separately.

In reckoning the period of six months, no account can be taken of any period during which the other House (to which the bill has been sent) is prorogued or adjourned for more than four consecutive days. If the bill (under dispute) has already lapsed due to the dissolution of the Lok Sabha, no joint sitting can be summoned. But, the joint sitting can be held if the Lok Sabha is dissolved after the President has notified his intention to summon such a sitting (as the bill does not lapse in this case).

After the President notifies his intention to summon a joint sitting of the two Houses, none of the Houses can proceed further with the bill. The Speaker of Lok Sabha presides over a joint sitting of the two Houses and the Deputy Speaker, in his absence. If the Deputy Speaker is also absent from a joint sitting, the Deputy Chairman of Rajya Sabha presides. If he is also absent, such other person as may be determined by the members present at the joint sitting, presides over the meeting. It is clear that the Chairman of Rajya Sabha does not preside over a joint sitting as he is not a member of either House of Parliament.

The quorum to constitute a joint sitting is one-tenth of the total number of members of the two Houses. The joint sitting is governed by the Rules of Procedure of Lok Sabha and not of Rajya Sabha. If the bill in dispute is passed by a majority of the total number of members of both the Houses present and voting in the joint sitting, the bill is deemed to have been passed by both the Houses. Normally, the Lok Sabha with greater number wins the battle in a joint sitting.

The Constitution has specified that at a joint sitting, new amendments to the bill cannot be proposed except in two cases:

- **Those amendments that have caused final disagreement between the Houses; and**
- **Those amendments that might have become necessary due to the delay in the passage of the bill**.

Since 1950, the provision regarding the joint sitting of the two Houses has been invoked only thrice. The bills that have been passed at joint sittings are:

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

FINANCIAL LEGISLATION AND ANNUAL FINANCIAL STATEMENT

The Constitution refers to the budget as the 'annual financial statement'. In other words, the term 'budget' has nowhere been used in the Constitution. It is the popular name for the 'annual financial statement' that has been dealt with in Article 112 of the Constitution.

The budget is a statement of the estimated receipts and expenditure of the Government of India in a financial year, which begins on 1 April and ends on 31 March of the following year.

In addition to the estimates of receipts and expenditure, the budget contains certain other elements. Overall, the budget contains the following:

- Estimates of revenue and capital receipts;
- Ways and means to raise the revenue;
- Estimates of expenditure;
- Details of the actual receipts and expenditure of the closing financial year and the reasons for any deficit or surplus in that year; and
- Economic and financial policy of the coming year, that is, taxation proposals, prospects of revenue, spending programme and introduction of new schemes/projects.

The Government of India has two budgets, namely, the Railway Budget and the General Budget. While the former consists of the estimates of receipts and expenditures of only the Ministry of Railways, the latter consists of the estimates of receipts and expenditure of all the ministries of the Government of India (except the railways).

The Railway Budget was separated from the General Budget in 1921 on the recommendations of the Acworth Committee. The reasons or objectives of this separation are as follows:

- To introduce flexibility in railway finance.
- To facilitate a business approach to the railway policy.
- To secure stability of the general revenues by providing an assured annual contribution from railway revenues.
- To enable the railways to keep their profits for their own development (after paying a fixed annual contribution to the general revenues).

In August 2016, the Central Government decided to merge the railway budget into the general budget. For this purpose, the Finance Ministry has constituted a five-member committee comprising the officials of both the Finance Ministry and the Railway Ministry to work out the modalities for the merger. This move to discard the age-old practice of a separate railway budget is part of Modi government's reform agenda.

The Constitution of India contains the following provisions with regard to the enactment of budget:

1. The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of estimated receipts and expenditure of the Government of India for that year.

2. No demand for a grant shall be made except on the recommendation of the President.

3. No money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law.

4. No money bill imposing tax shall be introduced in the Parliament except on the recommendation of the President, and such a bill shall not be introduced in the Rajya Sabha.

5. No tax shall be levied or collected except by authority of law.

6. Parliament can reduce or abolish a tax but cannot increase it.

7. The Constitution has also defined the relative roles or position of both the Houses of Parliament with regard to the enactment of the budget in the following way:

- A money bill or finance bill dealing with taxation cannot be introduced in the Rajya Sabha—it must be introduced only in the Lok Sabha.
- The Rajya Sabha has no power to vote on the demand for grants; it is the exclusive privilege of the Lok Sabha.
- The Rajya Sabha should return the Money bill (or Finance bill) to the Lok Sabha within fourteen days. The Lok Sabha can either accept or reject the recommendations made by Rajya Sabha in this regard.

8. The estimates of expenditure embodied in the budget shall show separately the expenditure charged on the Consolidated Fund of India and the expenditure made from the Consolidated Fund of India.

9. The budget shall distinguish expenditure on revenue account from other expenditure.

10. The expenditure charged on the Consolidated Fund of India shall not be submitted to the vote of Parliament. However, it can be discussed by the Parliament.

Charged Expenditure

The budget consists of two types of expenditure—the expenditure 'charged' upon the Consolidated Fund of India and the expenditure 'made' from the Consolidated Fund of India. The charged expenditure is non-votable by the Parliament, that is, it can only be discussed by the Parliament, while the other type has to be voted by the Parliament. The list of the charged expenditure is as follows:

- Emoluments and allowances of the President and other expenditure relating to his office.
- Salaries and allowances of the Chairman and the Deputy Chairman of the Rajya Sabha and the Speaker and the Deputy Speaker of the Lok Sabha.
- Salaries, allowances and pensions of the judges of the Supreme Court.
- Pensions of the judges of high courts.
- Salary, allowances and pension of the Comptroller and Auditor General of India.
- Salaries, allowances and pension of the chairman and members of the Union Public Service Commission.
- Administrative expenses of the Supreme Court, the office of the Comptroller and Auditor General of India and the Union Public Service Commission including the salaries, allowances and pensions of the persons serving in these offices.

- The debt charges for which the Government of India is liable, including interest, sinking fund charges and redemption charges and other expenditure relating to the raising of loans and the service and redemption of debt.
- Any sum required to satisfy any judgement, decree or award of any court or arbitral tribunal.
- Any other expenditure declared by the Parliament to be so charged.

Stages in the Enactment of the Budget

Presentation of Budget

The budget is presented in two parts—Railway Budget and General Budget. Both are governed by the same procedure. The introduction of Railway Budget precedes that of the General Budget. While the former is presented to the Lok Sabha by the railway minister in the third week of February, the latter is presented to the Lok Sabha by the finance minister on the last working day of February.

The Finance Minister presents the General Budget with a speech known as the 'budget speech'. At the end of the speech in the Lok Sabha, the budget is laid before the Rajya Sabha, which can only discuss it and has no power to vote on the demands for grants.

2. General Discussion The general discussion on budget begins a few days after its presentation. It takes place in both the Houses of Parliament and lasts usually for three to four days. During this stage, the Lok Sabha can discuss the budget as a whole or on any question of principle involved therein but no cut motion can be moved nor can the budget be submitted to the vote of the House. The finance minister has a general right of reply at the end of the discussion.

3. Scrutiny by Departmental Committees After the general discussion on the budget is over the Houses are adjourned for about three to four weeks. During this gap period, the 24 departmental standing committees of Parliament examine and discuss in detail the demands for grants of the concerned ministers and prepare reports on them. These reports are submitted to both the Houses of Parliament for consideration.

The standing committee system established in 1993 (and expanded in 2004) makes parliamentary financial control over ministries much more detailed, close, in-depth and comprehensive.

4. Voting on Demands for Grants In the light of the reports of the departmental standing committees, the Lok Sabha takes up voting of demands for grants. The demands are presented ministry wise. A demand becomes a grant after it has been duly voted.

Two points should be noted in this context. One, the voting of demands for grants is the exclusive privilege of the Lok Sabha, that is, the Rajya Sabha has no power of voting the demands. Second, the voting is confined to the votable part of the budget—the expenditure charged on the Consolidated Fund of India is not submitted to the vote (it can only be discussed). While the General Budget has a total of 109 demands (103 for civil expenditure and 6 for defence expenditure), the Railway Budget has 32 demands. Each demand is voted separately by the Lok Sabha. During this stage, the members of Parliament can discuss the details of the budget. They can also move motions to reduce any demand for grant. Such motions are called as 'cut motion', which are of three kinds:

(a) **Policy Cut Motion**: It represents the disapproval of the policy underlying the demand. It states that the amount of the demand be reduced to Re 1. The members can also advocate an alternative policy.

(b) **Economy Cut Motion**: It represents the economy that can be affected in the proposed expenditure. It states that the amount of the demand be reduced by a specified amount (which may be either a lumpsum reduction in the demand or omission or reduction of an item in the demand).

(c) **Token Cut Motion**: It ventilates a specific grievance that is within the sphere of responsibility of the Government of India. It states that the amount of the demand be reduced by Rs 100.

A cut motion, to be admissible, must satisfy the following conditions:

- It should relate to one demand only.
- It should be clearly expressed and should not contain arguments or defamatory statements.
- It should be confined to one specific matter.
- It should not make suggestions for the amendment or repeal of existing laws.
- It should not refer to a matter that is not primarily the concern of Union government.
- It should not relate to the expenditure charged on the Consolidated Fund of India.
- It should not relate to a matter that is under adjudication by a court.
- It should not raise a question of privilege.
- It should not revive discussion on a matter on which a decision has been taken in the same session.
- It should not relate to a trivial matter.

The significance of a cut motion lies in: (a) facilitating the initiation of concentrated discussion on a specific demand for grant; and (b) upholding the principle of responsible government by probing the activities of the government. However, the cut motion do not have much utility in practice. They are only moved and discussed in the House but not passed as the government enjoys majority support. Their passage by the Lok Sabha amounts to the expressions of want of parliamentary confidence in the government and may lead to its resignation. In total, 26 days are allotted for the voting of demands. On the last day the Speaker puts all the remaining demands to vote and disposes them whether they have been discussed by the members or not. This is known as 'guillotine'.

Passing of Appropriation Bill

The Constitution states that 'no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law'. Accordingly, an appropriation bill is introduced to provide for the appropriation, out of the Consolidated Fund of India, all money required to meet:

- The grants voted by the Lok Sabha.
- The expenditure charged on the Consolidated Fund of India.

No such amendment can be proposed to the appropriation bill in either house of the Parliament that will have the effect of varying the amount or altering the destination of any grant voted, or of varying the amount of any expenditure charged on the Consolidated Fund of India.

The Appropriation Bill becomes the Appropriation Act after it is assented to by the President. This act authorises (or legalises) the payments from the Consolidated Fund of India. This means that the government cannot withdraw money from the Consolidated Fund of India till the enactment of the appropriation bill. This takes time and usually goes on till the end of April. But the government needs money to carry on its normal activities after 31 March (the end of the financial year). To overcome this functional difficulty, the Constitution has authorised the Lok Sabha to make any grant in advance in respect to the estimated expenditure for a part of the financial year, pending the completion of the voting of the demands for grants and the enactment of the appropriation bill. This provision is known as the 'vote on account'. It is passed (or granted) after the general discussion on budget is over. It is generally granted for two months for an amount equivalent to one-sixth of the total estimation.

Passing of Finance Bill

The Finance Bill is introduced to give effect to the financial proposals of the Government of India for the following year. It is subjected to all the conditions applicable to a Money Bill. Unlike the Appropriation Bill, the amendments (seeking to reject or reduce a tax) can be moved in the case of finance bill.

According to the Provisional Collection of Taxes Act of 1931, the Finance Bill must be enacted (i.e., passed by the Parliament and assented to by the president) within 75 days. The Finance Act legalises the income side of the budget and completes the process of the enactment of the budget.

Other Grants

In addition to the budget that contains the ordinary estimates of income and expenditure for one financial year; various other grants are made by the Parliament under extraordinary or special circumstances:

Supplementary Grant: It is granted when the amount authorised by the Parliament through the appropriation act for a particular service for the current financial year is found to be insufficient for that year. Additional Grant It is granted when a need has arisen during the current financial year for additional expenditure upon some new service not contemplated in the budget for that year.

Excess Grant: It is granted when money has been spent on any service during a financial year in excess of the amount granted for that service in the budget for that year. It is voted by the Lok Sabha after the financial year. Before the demands for excess grants are submitted to the Lok Sabha for voting, they must be approved by the Public Accounts Committee of Parliament.

Vote of Credit: It is granted for meeting an unexpected demand upon the resources of India, when on account of the magnitude or the indefinite character of the service, the demand cannot be stated with the details ordinarily given in a budget. Hence, it is like a blank cheque given to the Executive by the Lok Sabha.

Exceptional Grant: It is granted for a special purpose and forms no part of the current service of any financial year.

Token Grant: It is granted when funds to meet the proposed expenditure on a new service can be made available by re-appropriation. A demand for the grant of a token sum (of Re 1) is submitted to the vote of the Lok Sabha and if assented, funds are made available. Re-appropriation involves transfer of funds from one head to another. It does not involve any additional expenditure.

Supplementary, additional, excess and exceptional grants and vote of credit are regulated by the same procedure which is applicable in the case of a regular budget.

FUNDS

The Constitution of India provides for the following three kinds of funds for the Central government:

1. Consolidated Fund of India (Article 266)

2. Public Account of India (Article 266)

3. Contingency Fund of India (Article 267)

Consolidated Fund of India: It is a fund to which all receipts are credited and all payments are debited. In other words, (a) all revenues received by the Government of India; (b) all loans raised by the Government by the issue of treasury bills, loans or ways and means of advances; and (c) all money received by the government in repayment of loans forms the Consolidated Fund of India. All the legally authorised payments on behalf of the Government of India are made out of this fund. No money out of this fund can be appropriated (issued or drawn) except in accordance with a parliamentary law.

Public Account of India: All other public money (other than those which are credited to the Consolidated Fund of India) received by or on behalf of the Government of India shall be credited to the Public Account of India. This includes provident fund deposits, judicial deposits, savings bank deposits, departmental deposits, remittances and so on. This account is operated by executive action, that is, the payments from this account can by made without parliamentary appropriation. Such payments are mostly in the nature of banking transactions.

Contingency Fund of India: The Constitution authorised the Parliament to establish a 'Contingency Fund of India', into which amounts determined by law are paid from time to time. Accordingly, the Parliament enacted the contingency fund of India Act in 1950. This fund is placed at the disposal of the president, and he can make advances out of it to meet unforeseen expenditure pending its authorisation by the Parliament. The fund is held by the finance secretary on behalf of the president. Like the public account of India, it is also operated by executive action.

POWERS, PRIVILEGES AND IMMUNITIES

Parliamentary privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their parliamentary responsibilities. The Constitution has also extended the parliamentary privileges to those persons who are entitled to speak and take part in the proceedings of a House of Parliament or any of its committees. These include the attorney general of India and Union ministers.

It must be clarified here that the parliamentary privileges do not extend to the president who is also an integral part of the Parliament. Parliamentary privileges can be classified into two broad categories:

1. Those that are enjoyed by each House of Parliament collectively, and

2. Those that are enjoyed by the members individually.

Collective Privileges

The privileges belonging to each House of Parliament collectively are:

- Each house has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same. The 44th Amendment Act of 1978 restored the freedom of the press to publish true reports of parliamentary proceedings without prior permission of the House. But this is not applicable in the case of a secret sitting of the House.
- It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
- It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
- It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
- It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
- It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.
- The courts are prohibited to inquire into the proceedings of a House or its committees.
- No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precints of the House without the permission of the presiding officer.

Individual Privileges

The privileges belonging to the members individually are:

- They cannot be arrested during the session of Parliament and 40 days before the beginning and 40 days after the end of a session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
- They have freedom of speech in Parliament. No member is liable to any proceedings in any court for anything said or any vote given by him in Parliament or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament.
- They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when Parliament is in session.

Breach of Privilege and Contempt of the House

"When any individual or authority disregards or attacks any of the privileges, rights and immunities, either of the member individually or of the House in its collective capacity, the offence is termed as breach of privilege and is punishable by the House."

Any act or omission which obstructs a House of Parliament, its member or its officer in the performance of their functions or which has a tendency, directly or indirectly to produce results against the dignity, authority and honour of the House is treated as a contempt of the House Though the two phrases, 'breach of privilege' and 'contempt of the House' are used interchangeably, they have different implications. 'Normally, a breach of privilege may amount to contempt of the House. Likewise, contempt of the House may include a breach of privilege also. Contempt of the House, however, has wider implications. There may be a contempt of the House without specifically committing a breach of privilege'. Similarly, 'actions which are not breaches of any specific privilege but are offences against the dignity and authority of the House amount to contempt of the House'.30 For example, disobedience to a legitimate order of the House is not a breach of privilege, but can be punished as contempt of the House.

Sources of Privileges

Originally, the Constitution (Article 105) expressedly mentioned two privileges, that is, freedom of speech in Parliament and right of publication of its proceedings. With regard to other privileges, it provided that they were to be the same as those of the British House of Commons, its committees and its members on the date of its commencement (ie, 26 January, 1950), until defined by Parliament. The 44th Amendment Act of 1978 provided that the other privileges of each House of Parliament, its committees and its members are to be those which they had on the date of its commencement (ie, 20 June, 1979), until defined by Parliament. This means that the position with regard to other privileges remains same. In other words, the amendment has made only verbal changes by dropping a direct reference to the British House of Commons, without making any change in the implication of the provision.

It should be noted here that the Parliament, till now, has not made any special law to exhaustively codify all the privileges. They are based on five sources, namely,

- Constitutional provisions,
- Various laws made by Parliament,
- Rules of both the Houses,
- Parliamentary conventions, and
- Judicial interpretations.

CLASSIFICATION OF PARLIAMENTARY COMMITTEEES

The functions of the Parliament are varied, complex and voluminous. Moreover, it has neither the adequate time nor necessary expertise to make a detailed scrutiny of all legislative measures and other matters. Therefore, it is assisted by a number of committees in the discharge of its duties.

The Constitution of India makes a mention of these committees at different places, but without making any specific provisions regarding their composition, tenure, functions, etc. All these matters are dealt by the rules of two Houses. Accordingly, a parliamentary committee means a committee that:

1. Is appointed or elected by the House or nominated by the Speaker / Chairman

2. Works under the direction of the Speaker / Chairman

3. Presents its report to the House or to the Speaker / Chairman

4. Has a secretariat provided by the Lok Sabha / Rajya Sabha

The consultative committees, which also consist of members of Parliament, are not parliamentary committees as they do not fulfill above four conditions. Broadly, parliamentary committees are of two kinds—Standing Committees and Ad Hoc Committees. The former are permanent (constituted every year or periodically) and work on a continuous basis, while the latter are temporary and cease to exist on completion of the task assigned to them.

Standing Committees

On the basis of the nature of functions performed by them, standing committees can be classified into the following six categories:

1. Financial Committees

(a) Public Accounts Committee

(b) Estimates Committee

(c) Committee on Public Undertakings

2. Departmental Standing Committees (24)

3. Committees to Inquire

(a) Committee on Petitions

(b) Committee of Privileges

(c) Ethics Committee

4. Committees to Scrutinise and Control

(a) Committee on Government Assurances

(b) Committee on Subordinate Legislation

(c) Committee on Papers Laid on the Table

(d) Committee on Welfare of SCs and STs

(e) Committee on Empowerment of Women

(f) Joint Committee3 on Offices of Profit

5. Committees Relating to the Day-to-Day Business of the House

(a) Business Advisory Committee

(b) Committee on Private Members' Bills and Resolutions

(c) Rules Committee

(d) Committee on Absence of Members from Sittings of the House

6. House-Keeping Committees or Service Committees (i.e., Committees concerned with the Provision of Facilities and Services to Members):

(a) General Purposes Committee

(b) House Committee

(c) Library Committee

(d) Joint Committee on Salaries and Allowances of Members

Ad hoc committees can be divided into two categories, that is, Inquiry Committees and Advisory Committees. Inquiry Committees are constituted from time to time, either by the two Houses on a motion adopted in that behalf, or by the Speaker / Chairman, to inquire into and report on specific subjects. For eg Joint Committee on Stock Market Scam etc. Advisory Committees include select or joint committees on bills, which are appointed to consider and report on particular bills. These committees are distinguishable from the other ad hoc committees in as much as they are concerned with bills and the procedure to be followed by them is laid down in the Rules of Procedure and the Directions by the Speaker /Chairman.

When a Bill comes up before a House for general discussion, it is open to that House to refer it to a Select Committee of the House or a Joint Committee of the two Houses. A motion to this effect has to be moved and adopted in the House in which the Bill comes up for consideration. In case the motion adopted is for reference of the Bill to a Joint Committee, the decision is conveyed to the other House, requesting the members to nominate members of the other House to serve on the Committee.

The Select or Joint Committee considers the Bill clause by clause just as the two Houses do. Amendments to various clauses can be moved by members of the Committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the Bill. After the Bill has thus been considered, the Committee submits its report to the House. Members who do not agree with the majority report may append their minutes of dissent to the report.

FINANCIAL COMMITTEES

Public Accounts Committee (PAC)

It consists of 22 members (15 from the Lok Sabha and 7 from the Rajya Sabha). The members are elected by the Parliament every year from amongst its members according to the principle of proportional representation by means of the single transferable vote. Thus, all parties get due representation in it. 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 from amongst its members by the Speaker. Until 1966 – '67, the chairman of the committee belonged to the ruling party. However, since 1967 a convention has developed whereby the chairman of the committee is selected invariably from the Opposition.

The function of the committee is to examine the annual audit reports of the Comptroller and Auditor General of India (CAG), which are laid before the Parliament by the President. The CAG submits three audit reports to the President, namely, audit report on appropriation accounts, audit report on finance accounts

and audit report on public undertakings. The committee examines public expenditure not only from legal and formal point of view to discover technical irregularities but also from the point of view of economy, prudence, wisdom and propriety to bring out the cases of waste, loss, corruption, extravagance, inefficiency and nugatory expenses.

The functions of the committee are:

1. To examine the appropriation accounts and the finance accounts of the Union government and any other accounts laid before the Lok Sabha. The appropriation accounts compare the actual expenditure with the expenditure sanctioned by the Parliament through the Appropriation Act, while the finance accounts shows the annual receipts and disbursements of the Union Government.

2. In scrutinising the appropriation accounts and the audit report of CAG on it, the committee has to satisfy itself that

- The money that has been disbursed was legally available for the applied service or purpose
- The expenditure conforms to the authority that governs it
- Every re-appropriation has been made in accordance with the related rules

3. To examine the accounts of state corporations, trading concerns and manufacturing projects and the audit report of CAG on them (except those public undertakings which are allotted to the Committee on Public Undertakings)

4. To examine the accounts of autonomous and semi-autonomous bodies, the audit of which is conducted by the CAG

5. To consider the report of the CAG relating to the audit of any receipt or to examine the accounts of stores and stocks

6. To examine the money spent on any service during a financial year in excess of the amount granted by the Lok Sabha for that purpose

In the fulfillment of the above functions, the committee is assisted by the CAG. In fact, the CAG acts as a guide, friend and philosopher of the committee.

However, the effectiveness of the role of the committee is limited by the following:

- It is not concerned with the questions of policy in broader sense.
- It conducts a post-mortem examination of accounts (showing the expenditure already incurred).
- It cannot intervene in the matters of day-to-day administration.
- Its recommendations are advisory and not binding on the ministries.
- It is not vested with the power of disallowance of expenditures by the departments.
- It is not an executive body and hence, cannot issue an order. Only the Parliament can take a final decision on its findings.

Estimates Committee

Originally, it had 25 members but in 1956 its membership was raised to 30. All the thirty members are from Lok Sabha only. The Rajya Sabha has no representation in this committee. These members are elected by the Lok Sabha every year from amongst its own members, according to the principles of proportional representation by means of a single transferable vote. Thus, all parties get due representation in it. The term of office 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 its members and he is invariably from the

ruling party. The function of the committee is to examine the estimates included in the budget and suggest 'economies' in public expenditure. Hence, it has been described as a 'continuous economy committee'.

The functions of the committee are:

- To report what economies, improvements in organisation, efficiency and administrative reform consistent with the policy underlying the estimates, can be affected
- To suggest alternative policies in order to bring about efficiency and economy in administration
- To examine whether the money is well laid out within the limits of the policy implied in the estimates
- To suggest the forth in which the estimates are to be presented to Parliament

The Committee shall not exercise its functions in relation to such public undertakings as are allotted to the Committee on Public Undertakings. The Committee may continue the examination of the estimates from time to time, throughout the financial year and report to the House as its examination proceeds. It shall not be incumbent on the Committee to examine the entire estimates of any one year. The demands for grants may be finally voted despite the fact that the Committee has made no report. However, the effectiveness of the role of the committee is limited by the following:

- It examines the budget estimates only alter they have been voted by the Parliament, and not before that.
- It cannot question the policy laid down by the Parliament.
- Its recommendations are advisory and not binding on the ministries.
- It examines every year only certain selected ministries and departments.
- Thus, by rotation, it would cover all of them over a number of years.
- It lacks the expert assistance of the CAG which is available to the Public Accounts Committee.
- Its work is in the nature of a post-mortem.

Committee on Public Undertakings

Originally, it had 15 members (10 from the Lok Sabha and 5 from the Rajya Sabha). However, in 1974, its membership was raised to 22 (15 from the Lok Sabha and 7 from the Rajya Sabha). The members of this committee are elected by the Parliament every year from amongst its own members according to the principle of proportional representation by means of a single transferable vote. Thus, all parties get due representation in it. 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 its members who are drawn from the Lok Sabha only. Thus, the members of the committee who are from the Rajya Sabha cannot be appointed as the chairman.

The functions of the committee are:

- To examine the reports and accounts of public undertakings
- To examine the reports of the Comptroller and Auditor General on public undertakings
- To examine (in the context of autonomy and efficiency of public undertakings) whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices
- To exercise such other functions vested in the public accounts committee and the estimates committee in relation to public undertakings which are allotted to it by the Speaker from time to time

The committee is not to examine and investigate any of the following:

(i) Matters of major government policy as distinct from business or commercial functions of the public undertakings

(ii) Matters of day-to-day administration

(iii) Matters for the consideration of which machinery is established by any special statute under which a particular public undertaking is established Further, the effectiveness of the role of the committee is limited by the following:

- It cannot take up the examination of more than ten to twelve public undertakings in a year.
- Its work is in the nature of a post-mortem.
- It does not look into technical matters as its members are not technical experts.
- Its recommendations are advisory and not binding on the ministries.

STANDING COMMITTEES

On the recommendation of the Rules Committee of the Lok Sabha, 17 Departmentally-Related Standing Committees (DRSCs) were set up in the Parliament in 1993. In 2004, seven more such committees were setup, thus increasing their number from 17 to 24.

The main objective of the standing committees is to secure more accountability of the Executive (i.e., the Council of Ministers) to the Parliament, particularly financial accountability. They also assist the Parliament in debating the budget more effectively.

The 24 standing committees cover under their jurisdiction all the ministries / departments of the Central Government. Each standing committee consists of 31 members (21 from Lok Sabha and 10 from Rajya Sabha). The members of the Lok Sabha are nominated by the Speaker from amongst its own members, just as the members of the Rajya Sabha are nominated by the Chairman from amongst its members.

A minister is not eligible to be nominated as a member of any of the standing committees. In case a member, after his nomination to any of the standing committees, is appointed a minister, he then ceases to be a member of the committee. The term of office of each standing committee is one year from the date of its constitution. Out of the 24 standing committees, 8 work under the Rajya Sabha and 16 under the Lok Sabha.

The functions of each of the standing committees are:

- To consider the demands for grants of the concerned ministries / departments before they are discussed and voted in the Lok Sabha. Its report should not suggest anything of the nature of cut motions.
- To examine bills pertaining to the concerned ministries / departments
- To consider annual reports of ministries / departments
- To consider national basic long-term policy documents presented to the Houses

The following limitations are imposed on the functioning of these standing committees:

- They should not consider the matters of day-to-day administration of the concerned ministries / departments.

- They should not generally consider the matters which are considered by other parliamentary committees.

It should be noted here that the recommendations of these committees are advisory in nature and hence not binding on the Parliament.

The following procedure shall be followed by each of the standing committees in their consideration of the demands for grants, and making a report thereon to the Houses.

- After general discussion on the budget in the Houses is over, the Houses shall be adjourned for a fixed period.
- The committees shall consider the demands for grants of the concerned ministries during the aforesaid period.
- The committees shall make their report within the period and shall not ask for more time.
- The demands for grants shall be considered by the House in the light of the reports of the committees.
- There shall be a separate report on the demands for grants of each ministry.

The following procedure shall be followed by each of the standing committees in examining the bills and making report thereon.

- The committee shall consider the general principles and clauses of bills referred to it.
- The Committee shall consider only such bills as introduced in either of the Houses and referred to it.
- The Committee shall make report on bills in a given time.

The merits of the standing committee system in the Parliament are:

- Their proceedings are devoid of any party bias.
- The procedure adopted by them is more flexible than in the Lok Sabha.
- The system makes parliamentary control over executive much more detailed, close, continuous, in-depth and comprehensive.
- The system ensures economy and efficiency in public expenditure as the ministries / departments would now be more careful in formulating their demands.
- They facilitate opportunities to all the members of Parliament to participate and understand the functioning of the government and contribute to it.
- They can avail of expert opinion or public opinion to make the reports. They are authorised to invite experts and eminent persons to testify before them and incorporate their opinions in their reports.
- The opposition parties and the Rajya Sabha can now play a greater role in exercising financial control over the executive.

COMMITTEES TO INQUIRE

Committee on Petitions

This committee examines petitions on bills and on matters of general public importance. It also entertains representations from individuals and associations on matters pertaining to Union subjects. The Lok Sabha committee consists of 15 members, while the Rajya Sabha committee consists of 10 members.

Committee of Privileges

The functions of this committee are semi-judicial in nature. It examines the cases of breach of privileges of the House and its members and recommends appropriate action. The Lok Sabha committee has 15 members, while the Rajya Sabha committee has 10 members.

Ethics Committee

This committee was constituted in Rajya Sabha in 1997 and in Lok Sabha in 2000. It enforces the code of conduct of members of Parliament. It examines the cases of misconduct and recommends appropriate action. Thus, it is engaged in maintaining discipline and decorum in Parliament.

COMMITTEES TO SCRUTINISE AND CONTROL

Committee on Government Assurances

This committee examines the assurances, promises and undertakings given by ministers from time to time on the floor of the House and reports on the extent to which they have been carried through. In the Lok Sabha, it consists of 15 members and in the Rajya Sabha, it consists of 10 members. It was constituted in 1953.

Committee on Subordinate Legislation

This committee examines and reports to the House whether the powers to make regulations, rules, sub-rules and bye-laws delegated by the Parliament or conferred by the Constitution to the Executive are being properly exercised by it. In both the Houses, the committee consists of 15 members. It was constituted in 1953.

Committee on Papers Laid on the Table

This committee was constituted in 1975. The Lok Sabha Committee has 15 members, while the Rajya Sabha Committee has 10 members. It examines all papers laid on the table of the House by ministers to see whether they comply with provisions of the Constitution, or the related Act or Rule. It does not examine statutory notifications and orders that fall under the jurisdiction of the Committee on Subordinate Legislation.

Committee on Welfare of SCs and STs

This committee consists of 30 members (20 from Lok Sabha and 10 from Rajya Sabha). Its functions are: (i) to consider the reports of the National Commission for the SCs and the National Commission for the STs; (ii) to examine all matters relating to the welfare of SCs and STs, like implementation of constitutional and statutory safeguards, working of welfare programmes, etc.

Committee on Empowerment of Women

This committee was constituted in 1997 and consists of 30 members (20 from Lok Sabha and 10 from Rajya Sabha). It considers the reports of the National Commission for Women and examines the measures taken by the Union Government to secure status, dignity and equality for women in all fields.

Joint Committee on Offices of Profit

This committee examines the composition and character of committees and other bodies appointed by the Central, state and union territory governments and recommends whether persons holding these offices should be disqualified from being elected as members of Parliament or not. It consists of 15 members (10 from Lok Sabha and 5 from Rajya Sabha).

COMMITTEES RELATED TO DAY-TO-DAY BUSINESS

Business Advisory Committee

This committee regulates the programme and time table of the House. It allocates time for the transaction of legislative and other business brought before the House by the government. The Lok Sabha committee consists of 15 members including the Speaker as its chairman. In the Rajya Sabha, it has 11 members including the Chairman as its ex-officio chairman.

Committee on Private Members' Bills and Resolutions

This committee classifies bills and allocates time for the discussion on bills and resolutions introduced by private members (other than ministers). This is a special committee of the Lok Sabha and consists of 15 members including the Deputy Speaker as its chairman. The Rajya Sabha does not have any such committee. The same function in the Rajya Sabha is performed by the Business Advisory Committee of that House.

Rules Committee

This committee considers the matters of procedure and conduct of business in the House and recommends necessary amendments or additions to the rules of the House. The Lok Sabha committee consists of 15 members including the Speaker as its ex-officio chairman. In the Rajya Sabha, it consists of 16 members including the Chairman as its ex-officio chairman.

Committee on Absence of Members

This committee considers all applications from members for leave of absence from the sittings of the House, and examines the cases of members who have been absent for a period of 60 days or more without permission. It is a special committee of the Lok Sabha and consists of 15 members. There is no such committee in the Rajya Sabha and all such matters are dealt by the House itself.

HOUSE-KEEPING COMMITTEES

General Purposes Committee

This committee considers and advises on matters concerning affairs of the House, which do not fall within the jurisdiction of any other parliamentary committee. In each House, this committee consists of the presiding officer (Speaker / Chairman) as its ex-officio chairman, Deputy Speaker (Deputy Chairman in the case of Rajya Sabha), members of panel of chairpersons (panel of vice-chairpersons in the case of Rajya Sabha), chairpersons of all the departmental standing committees of the House, leaders of recognised parties and groups in the House and such other members as nominated by the presiding officer.

House Committee

This committee deals with residential accommodation of members and other amenities like food, medical aid, etc., accorded to them in their houses and hostels in Delhi. Both the Houses have their respective House Committees. In the Lok Sabha, it consists of 12 members.

Library Committee

This committee considers all matters relating to library of the Parliament and assists the members in utilising the library's services. It consists of nine members (six from Lok Sabha and three from Rajya Sabha).

Joint Committee on Salaries and Allowances of Members

This committee was constituted under the Salary, Allowances and Pension of Members of Parliament Act, 1954. It consists of 15 members (10 from Lok Sabha and 5 from Rajya Sabha). It frames rules for regulating payment of salary, allowances and pension to members of Parliament.

CONSULATATIVE COMMITTEES

Consultative committees are attached to various ministries / departments of the Central Government. They consist of members of both the Houses of Parliament. The Minister / Minister of State in charge of the Ministry concerned acts as the chairman of the consultative committee of that ministry.

These committees provide a forum for informal discussions between the ministers and the members of Parliament on policies and programmes of the government and the manner of their implementation.

These committees are constituted by the Ministry of Parliamentary Affairs. The guidelines regarding the composition, functions and procedures of these committees are formulated by this Ministry. The Ministry also makes arrangements for holding their meetings both during the session and the intersession period of Parliament.

The membership of these committees is voluntary and is left to the choice of the members and the leaders of their parties. The maximum membership of a committee is 30 and the minimum is 10.

These committees are normally constituted after the new Lok Sabha is constituted, after General Elections for the Lok Sabha. In other words, these committees shall stand dissolved upon dissolution of every Lok Sabha and shall be reconstituted upon constitution of each Lok Sabha.

In addition, separate Informal Consultative Committees of the members of Parliament are also constituted for all the Railway Zones. Members of Parliament belonging to the area falling under a particular Railway Zone are nominated on the Informal Consultative Committee of that Railway Zone.

Unlike the Consultative Committees attached to various ministries / departments, the meetings of the Informal Consultative Committees are to be arranged during the session periods only.

UNIT-XI

[STATE LEGISLATURE]

COMPOSITION OF THE STATE LEGISLATURE

There is no uniformity in the organisation of state legislatures. Most of the states have an unicameral system, while others have a bicameral system. At present only seven states have two Houses (bicameral). These are Andhra Pradesh, Telangana, Uttar Pradesh, Bihar, Maharashtra, Karnataka and Jammu and Kashmir.

The Tamil Nadu Legislative Council Act, 2010 has not come into force. The Legislative Council in Andhra Pradesh was revived by the Andhra Pradesh Legislative Council Act, 2005. The 7th Amendment Act of 1956 provided for a Legislative Council in Madhya Pradesh. However, a notification to this effect has to be made by the President. So far, no such notification has been made. Hence, Madhya Pradesh continues to have one House only.

In the states having unicameral legislature, the state legislature consists of the governor and the legislative assembly. In the states having bicameral system, the state legislature consists of the governor, the legislative council and the legislative assembly. The legislative council (Vidhan Parishad) is the upper house (second chamber or house of elders), while the legislative assembly (Vidhan Sabha) is the lower house (first chamber or popular house).

The Constitution provides for the abolition or creation of legislative councils in states. Accordingly, the Parliament can abolish a legislative council (where it already exists) or create it (where it does not exist), if the legislative assembly of the concerned state passes a resolution to that effect.

Such a specific resolution must be passed by the state assembly by a special majority, that is, a majority of the total membership of the assembly and a majority of not less than two-thirds of the members of the assembly present and voting. This Act of Parliament is not to be deemed as an amendment of the Constitution for the purposes of Article 368 and is passed like an ordinary piece of legislation (ie, by simple majority).

"The idea of having a second chamber in the states was criticised in the Constituent Assembly on the ground that it was not representative of the people, that it delayed legislative process and that it was an expensive institution." Consequently the provision was made for the abolition or creation of a legislative council to enable a state to have a second chamber or not according to its own willingness and financial strength. For example, Andhra Pradesh got the legislative council created in 1957 and got the same abolished in 1985. The Legislative Council in Andhra Pradesh was again revived in 2007, after the enactment of the Andhra Pradesh Legislative Council Act, 2005. The legislative council of Tamil Nadu had been abolished in 1986 and that of Punjab and West Bengal in 1969.

In 2010, the Legislative Assembly of Tamil Nadu passed a resolution for the revival of the Legislative Council in the state. Accordingly, the Parliament enacted the Tamil Nadu Legislative Council Act, 2010 which provided for the creation of Legislative Council in the state. However, before this Act was enforced, the Legislative Assembly of Tamil Nadu passed another resolution in 2011 seeking the abolition of the proposed Legislative Council.

COMPOSITION OF TWO HOUSES

Composition of Assembly

The legislative assembly consists of representatives directly elected by the people on the basis of universal adult franchise. Its maximum strength is fixed at 500 and minimum strength at 60. It means that its strength varies from 60 to 500 depending on the population size of the state. However, in case of Arunachal Pradesh, Sikkim and Goa, the minimum number is fixed at 30 and in case of Mizoram and Nagaland, it is 40 and 46 respectively. Further, some members of the legislative assemblies in Sikkim and Nagaland are also elected indirectly. The governor can nominate one member from the Anglo-Indian community, if the community is not adequately represented in the assembly. Originally, this provision was to operate for ten years (ie, upto 1960). But this duration has been extended continuously since then by 10 years each time. Now, under the 95th Amendment Act of 2009, this is to last until 2020.

For the purpose of holding direct elections to the assembly, each state is divided into territorial constituencies. The demarcation of these constituencies is done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state. In other words, the Constitution ensures that there is uniformity of representation between different constituencies in the state. The expression 'population' means, the population as ascertained at the last preceding census of which the relevant figures have been published.

After each census, a readjustment is to be made in the

- Total number of seats in the assembly of each state and
- The division of each state into territorial constituencies. The Parliament is empowered to determine the authority and the manner in which it is to be made. Accordingly, Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose.

The 42nd Amendment Act of 1976 had frozen total number of seats in the assembly of each state and the division of such state into territorial constituencies till the year 2000 at the 1971 level. This ban on readjustment has been extended upto year 2026 by the 84th Amendment Act of 2001 with the same objective of encouraging population limiting measures.

The 84th Amendment Act of 2001 also empowered the government to undertake readjustment and rationalisation of territorial constituencies in a state on the basis of the population figures of 1991 census. Later, the 87thAmendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census. However, this can be done without altering the total number of seats in the assembly of each state.

The Constitution provided for the reservation of seats for scheduled castes and scheduled tribes in the assembly of each state on the basis of population ratios. Originally, this reservation was to operate for ten years (i.e., up to 1960). But this duration has been extended continuously since then by 10 years each time. Now, under the 95th Amendment Act of 2009, this reservation is to last until 2020.

Composition of Council

Unlike the members of the legislative assembly, the members of the legislative council are indirectly elected. The maximum strength of the council is fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 40. It means that the size of the council depends on the size of the assembly of the concerned state. This is done to ensure the predominance of the directly elected House (assembly) in the legislative affairs of the state. Though the Constitution has fixed the maximum and the minimum limits, the actual strength of a Council is fixed by Parliament.

Manner of Election

Of the total number of members of a legislative council:

- 1/3 are elected by the members of local bodies in the state like municipalities, district boards, etc.,
- 1/12 are elected by graduates of three years standing and residing within the state,
- 1/12 are elected by teachers of three years standing in the state, not lower in standard than secondary school,
- 1/3 are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and
- The remainder are nominated by the governor from amongst persons who have a special knowledge or practical experience of literature, science, art, cooperative movement and social service.

Thus, 5/6 of the total number of members of a legislative council are indirectly elected and 1/6 are nominated by the governor. The members are elected in accordance with the system of proportional representation by means of a single transferable vote. The bonafides or propriety of the governor's nomination in any case cannot be challenged in the courts.

This scheme of composition of a legislative council as laid down in the Constitution is tentative and not final. The Parliament is authorised to modify or replace the same. However, it has not enacted any such law so far.

DURATION OF TWO HOUSES

Like the Lok Sabha, the legislative assembly is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections. The expiration of the period of five years operates as automatic dissolution of the assembly. However, the governor is authorised to dissolve the assembly at any time (i.e., even before the completion of five years) to pave the way for fresh elections.

Further, the term of the assembly can be extended during the period of national emergency by a law of Parliament for one year at a time (for any length of time). However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate. This means that the assembly should be re-elected within six months after the revocation of emergency.

Like the Rajya Sabha, the legislative council is a continuing chamber, that is, it is a permanent body and is not subject to dissolution. But, one-third of its members retire on the expiration of every second year. So, a member continues as such for six years. The vacant seats are filled up by fresh elections and nominations (by governor) at the beginning of every third year. The retiring members are also eligible for re-election and re-nomination any number of times.

QUALIFICATIONS / DISQUALIFICATIONS OF MEMEBERS OF STATE LEGISLATURE

The Constitution lays down the following qualifications for a person to be chosen a member of the state legislature.

(a) He must be a citizen of India.

(b) He must make and subscribe to an oath or affirmation before the person authorised by the Election Commission for this purpose. In his oath or affirmation, he swears

- To bear true faith and allegiance to the Constitution of India
- To uphold the sovereignty and integrity of India

(c) He must be not less than 30 years of age in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly.

(d) He must possess other qualifications prescribed by Parliament.

Accordingly, the Parliament has laid down the following additional qualifications in the Representation of People Act (1951):

(a) A person to be elected to the legislative council must be an elector for an assembly constituency in the concerned state and to be qualified for the governor's nomination, he must be a resident in the concerned state.

(b) A person to be elected to the legislative assembly must be an elector for an assembly constituency in the concerned state.

(c) He must be a member of a scheduled caste or scheduled tribe if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

Disqualifications

Under the Constitution, a person shall be disqualified for being chosen as and for being a member of the legislative assembly or legislative council of a state:

- If he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by state legislature),
- If he is of unsound mind and stands so declared by a court,
- If he is an undischarged insolvent,
- 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 to a foreign state, and
- If he is so disqualified under any law made by Parliament.
- Accordingly, the Parliament has prescribed a number of additional disqualifications in the Representation of People Act (1951). These are similar to those for Parliament. These are mentioned here:
- He must not have been found guilty of certain election offences or corrupt practices in the elections.
- He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
- He must not have failed to lodge an account of his election expenses within the time.
- He must not have any interest in government contracts, works or services.
- He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
- He must not have been dismissed from government service for corruption or disloyalty to the state.
- He must not have been convicted for promoting enmity between different groups or for the offence of bribery.
- He must not have been punished for preaching and practicing social crimes such as untouchability, dowry and sati.

On the question whether a member has become subject to any of the above disqualifications, the governor's decision is final. However, he should obtain the opinion of the Election Commission and act accordingly.

Disqualification on Ground of Defection

The Constitution also lays down that a person shall be disqualified for being a member of either House of state legislature if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule. The question of disqualification under the Tenth Schedule is decided by the Chairman, in the case of legislative council and, Speaker, in the case of legislative assembly (and not by the governor). In 1992, the Supreme Court ruled that the decision of Chairman/Speaker in this regard is subject to judicial review

VACATION OF SEATS

In the following cases, a member of the state legislature vacates his seat:

(a) Double Membership: A person cannot be a member of both Houses of state legislature at one and the same time. If a person is elected to both the Houses, his seat in one of the Houses falls vacant as per the provisions of a law made by the state legislature.

(b) Disqualification: If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.

(c) Resignation: A member may resign his seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls vacant when the resignation is accepted.

(d) Absence: A House of the state legislature can declare the seat of a member vacant if he absents himself from all its meeting for a period of sixty days without its permission.

(e) Other Cases: A member has to vacate his seat in the either House of state legislature,

- if his election is declared void by the court,
- if he is expelled by the House,
- if he is elected to the office of president or office of vice-president, and
- if he is appointed to the office of governor of a state.

OFFICERS OF THE STATE LEGISLATURE

Each House of state legislature has its own presiding officer. There is a Speaker and a Deputy Speaker for the legislative assembly and Chairman and a Deputy Chairman for the legislative council. A panel of chairmen for the assembly and a panel of vice-chairmen for the council is also appointed.

Speaker of Assembly

The Speaker is elected by the assembly itself from amongst its members. Usually, the Speaker remains in office during the life of the assembly. However, he vacates his office earlier in any of the following three cases:

- If he ceases to be a member of the assembly;
- If he resigns by writing to the deputy speaker; and

- If he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days advance notice.

The Speaker has the following powers and duties:

- He maintains order and decorum in the assembly for conducting its business and regulating its proceedings. This is his primary responsibility and he has final power in this regard.
- He is the final interpreter of the provisions of (a) the Constitution of India, (b) the rules of procedure and conduct of business of assembly, and (c) the legislative precedents, within the assembly.
- He adjourns the assembly or suspends the meeting in the absence of a quorum.
- He does not vote in the first instance. But, he can exercise a casting vote in the case of a tie.
- He can allow a 'secret' sitting of the House at the request of the leader of the House.
- He decides whether a bill is a Money Bill or not and his decision on this question is final.
- He decides the questions of disqualification of a member of the assembly, arising on the ground of defection under the provisions of the Tenth Schedule.
- He appoints the chairmen of all the committees of the assembly and supervises their functioning. He himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

Deputy Speaker of Assembly

Like the Speaker, the Deputy Speaker is also elected by the assembly itself from amongst its members. He is elected after the election of the Speaker has taken place. Like the Speaker, the Deputy Speaker remains in office usually during the life of the assembly. However, he also vacates his office earlier in any of the following three cases:

- If he ceases to be a member of the assembly;
- If he resigns by writing to the speaker; and
- If he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days' advance notice.

The Deputy Speaker performs the duties of the Speaker's office when it is vacant. He also acts as the Speaker when the latter is absent from the sitting of assembly. In both the cases, he has all the powers of the Speaker.

The Speaker nominates from amongst the members a panel of chairmen. Any one of them can preside over the assembly in the absence of the Speaker or the Deputy Speaker. He has the same powers as the speaker when so presiding. He holds office until a new panel of chairmen is nominated.

Chairman of Council

The Chairman is elected by the council itself from amongst its members. The Chairman vacates his office in any of the following three cases:

- if he ceases to be a member of the council;
- if he resigns by writing to the deputy chairman; and
- if he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.

As a presiding officer, the powers and functions of the Chairman in the council are similar to those of the Speaker in the assembly. However, the Speaker has one special power which is not enjoyed by the Chairman. The Speaker decides whether a bill is a Money Bill or not and his decision on this question is final.

As in the case of the Speaker, the salaries and allowances of the Chairman are also fixed by the state legislature. They are charged on the Consolidated Fund of the State and thus are not subject to the annual vote of the state legislature.

Deputy Chairman of Council

Like the Chairman, the Deputy Chairman is also elected by the council itself from amongst its members. The deputy chairman vacates his office in any of the following three cases:

- if he ceases to be a member of the council;
- if he resigns by writing to the Chairman; and
- if he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.

The Deputy Chairman performs the duties of the Chairman's office when it is vacant. He also acts as the Chairman when the latter is absent from the sitting of the council. In both the cases, he has all the powers of the Chairman.

The Chairman nominates from amongst the members a panel of vice-chairmen. Any one of them can preside over the council in the absence of the Chairman or the Deputy Chairman. He has the same powers as the chairman when so presiding. He holds office until a new panel of vice-chairmen is nominated.

SESSIONS OF THE STATE LEGISLATURE

Summoning

The governor from time to time summons each House of state legislature to meet. The maximum gap between the two sessions of state legislature cannot be more than six months, ie, the state legislature should meet at least twice a year. A session of the state legislature consists of many sittings.

Adjournment

An adjournment suspends the work in a sitting for a specified time which may be hours, days or weeks. Adjournment sine die means terminating a sitting of the state legislature for an indefinite period. The power of the adjournment as well as adjournment sine die lies with the presiding officer of the House.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned sine die, when the business of the session is completed. Within the next few days, the governor issues a notification for prorogation of the session. However, the governor can also prorogue the House which is in session. Unlike an adjournment, a prorogation terminates a session of the House.

Dissolution

The legislative council, being a permanent house, is not subject to dissolution. Only the legislative assembly is subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after the general elections are held.

The position with respect to lapsing of bills on the dissolution of the assembly is mentioned below:

- A Bill pending in the assembly lapses (whether originating in the assembly or transmitted to it by the council).
- A Bill passed by the assembly but pending in the council lapses.
- A Bill pending in the council but not passed by the assembly does not lapse.
- A Bill passed by the assembly (in a unicameral state) or passed by both the houses (in a bicameral state) but pending assent of the governor or the President does not lapse.
- A Bill passed by the assembly (in a unicameral state) or passed by both the Houses (in a bicameral state) but returned by the president for reconsideration of House (s) does not lapse.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is ten members or one-tenth of the total number of members of the House (including the presiding officer), whichever is greater. If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Voting in House

All matters at any sitting of either House are decided by a majority of votes of the members present and voting excluding the presiding officer. Only a few matters which are specifically mentioned in the Constitution like removal of the speaker of the assembly, removal of the Chairman of the council and so on require special majority, not ordinary majority. The presiding officer (i.e., Speaker in the case of assembly or chairman in the case of council or the person acting as such) does not vote in the first instance, but exercises a casting vote in the case of an equality of votes.

Language in State Legislature

The Constitution has declared the official language(s) of the state or Hindi or English, to be the languages for transacting business in the state legislature. However, the presiding officer can permit a member to address the House in his mother-tongue. The state legislature is authorised to decide whether to continue or discontinue English as a floor language after the completion of fifteen years from the commencement of the Constitution (i.e., from 1965). In case of Himachal Pradesh, Manipur, Meghalaya and Tripura, this time limit is twenty-five years and that of Arunachal Pradesh, Goa and Mizoram, it is forty years.

Rights of Ministers and Advocate General

In addition to the members of a House, every minister and the advocate general of the state have the right to speak and take part in the proceedings of either House or any of its committees of which he is named a member, without being entitled to vote. There are two reasons underlying this constitutional provision:

- A minister can participate in the proceedings of a House, of which he is not a member.
- A minister, who is not a member of either House, can participate in the proceedings of both the Houses

LEGISLATIVE PROCEDURE IN STATE LEGISLATURE

Ordinary Bills

An ordinary bill can originate in either House of the state legislature (in case of a bicameral legislature). Such a bill can be introduced either by a minister or by any other member. The bill passes through three stages in the originating House, viz,

- First reading,
- Second reading, and
- Third reading.

After the bill is passed by the originating House, it is transmitted to the second House for consideration and passage. A bill is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments. In case of a unicameral legislature, a bill passed by the legislative assembly is sent directly to the governor for his assent.

In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading. When a bill is passed by the legislative assembly and transmitted to the legislative council, the latter has four alternatives before it:

- It may pass the bill as sent by the assembly (i.e., without amendments);
- It may pass the bill with amendments and return it to the assembly for reconsideration;
- It may reject the bill altogether; and
- It may not take any action and thus keep the bill pending.

If the council passes the bill without amendments or the assembly accepts the amendments suggested by the council, the bill is deemed to have been passed by both the Houses and the same is sent to the governor for his assent. On the other hand, if the assembly rejects the amendments suggested by the council or the council rejects the bill altogether or the council does not take any action for three months, then the assembly may pass the bill again and transmit the same to the council. If the council rejects the bill again or passes the bill with amendments not acceptable to the assembly or does not pass the bill within one month, 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.

Therefore, the ultimate power of passing an ordinary bill is vested in the assembly. At the most, the council can detain or delay the bill for a period of four months—three months in the first instance and one month in the second instance. The Constitution does not provide for the mechanism of joint sitting of both the Houses to resolve the disagreement between the two Houses over a bill. On the other hand, there is a provision for joint sitting of the Lok Sabha and the Rajya Sabha to resolve a disagreement between the two over an ordinary bill. Moreover, when a bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead. Thus, the council has been given much lesser significance, position and authority than that of the Rajya Sabha at the Centre.

Assent of the Governor

Every bill, after it is passed by the assembly or by both the Houses in case of a bicameral legislature, is presented to the governor for his assent. There are four alternatives before the governor:

- He may give his assent to the bill;
- He may withhold his assent to the bill;
- He may return the bill for reconsideration of the House or Houses; and
- He may reserve the bill for the consideration of the President.

If the governor gives his assent to the bill, the bill becomes an Act and is placed on the Statute Book. If the governor withholds his assent to the bill, the bill ends and does not become an Act. If the governor returns the bill for reconsideration and if the bill is passed by the House or both the Houses again, with or

without amendments, and presented to the governor for his assent, the governor must give his assent to the bill. Thus, the governor enjoys only a suspensive veto. The position is same at the Central level also.

Assent of the President

When a bill is reserved by the governor for the consideration of the President, the President may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the House or Houses of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within a period of six months. The bill is presented again to the presidential assent after it is passed by the House or Houses with or without amendments. It is not mentioned in the Constitution whether it is obligatory on the part of the president to give his assent to such a bill or not.

Money Bills

The Constitution lays down a special procedure for the passing of Money Bills in the state legislature. This is as follows:

A Money Bill cannot be introduced in the legislative council. It can be introduced in the legislative assembly only and that too on the recommendation of the governor. Every such bill is considered to be a government bill and can be introduced only by a minister.

After a Money Bill is passed by the legislative assembly, it is transmitted to the legislative council for its consideration. The legislative council has restricted powers with regard to a Money Bill. It cannot reject or amend a Money Bill. It can only make recommendations and must return the bill to the legislative assembly within 14 days. The legislative assembly can either accept or reject all or any of the recommendations of the legislative council.

If the legislative assembly accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form. If the legislative assembly does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the legislative assembly without any change.

If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both Houses at the expiry of the said period in the form originally passed by the legislative assembly. Thus, the legislative assembly has more powers than legislative council with regard to a money bill. At the most, the legislative council can detain or delay a money bill for a period of 14 days.

Finally, when a Money Bill is presented to the governor, he may either give his assent, withhold his assent or reserve the bill for presidential assent but cannot return the bill for reconsideration of the state legislature. Normally, the governor gives his assent to a money bill as it is introduced in the state legislature with his prior permission. When a money bill is reserved for consideration of the President, the president may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the state legislature.

POSITION OF LEGISLATIVE COUNCIL

The constitutional position of the council (as compared with the assembly) can be studied from two angles:

- Spheres where council is equal to assembly.
- Spheres where council is unequal to assembly.

In the following matters, the powers and status of the council are broadly equal to that of the assembly:

- Introduction and passage of ordinary bills. However, in case of disagreement between the two Houses, the will of the assembly prevails over that of the council.
- Approval of ordinances issued by the governor.
- Selection of ministers including the chief minister. Under the Constitution the, ministers including the chief minister can be members of either House of the state legislature. However, irrespective of their membership, they are responsible only to the assembly.
- Consideration of the reports of the constitutional bodies like State Finance Commission, state public service commission and Comptroller and Auditor General of India.
- Enlargement of the jurisdiction of the state public service commission.

In the following matters, the powers and status of the council are unequal to that of the assembly:

- A Money Bill can be introduced only in the assembly and not in the council.
- The council cannot amend or reject a money bill. It should return the bill to the assembly within 14 days, either with recommendations or without recommendations.
- The assembly can either accept or reject all or any of the recommendation of the council. In both the cases, the money bill is deemed to have been passed by the two Houses.
- The final power to decide whether a particular bill is a money bill or not is vested in the Speaker of the assembly.
- The final power of passing an ordinary bill also lies with the assembly. At the most, the council can detain or delay the bill for the period of four months—three months in the first instance and one month in the second instance. In other words, the council is not even a revising body like the Rajya Sabha; it is only a dilatory chamber or an advisory body.
- The council can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the assembly).
- The council cannot remove the council of ministers by passing a no-confidence motion. This is because; the council of ministers is collectively responsible only to the assembly. But, the council can discus and criticise the policies and activities of the Government.
- When an ordinary bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead.
- The council does not participate in the election of the president of India and representatives of the state in the Rajya Sabha.
- The council has no effective say in the ratification of a constitutional amendment bill. In this respect also, the will of the assembly prevails over that of the council.
- Finally, the very existence of the council depends on the will of the assembly. The council can be abolished by the Parliament on the recommendation of the assembly.

From the above, it is clear that the position of the council vis-a-vis the assembly is much weaker than the position of the Rajya Sabha vis-a-vis the Lok Sabha.

POWERS, PRIVILEGES AND IMMUNITIES

Privileges of a state legislature are a sum of special rights, immunities and exemptions enjoyed by the Houses of state legislature, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their legislative responsibilities.

The Constitution has also extended the privileges of the state legislature to those persons who are entitled to speak and take part in the proceedings of a House of the state legislature or any of its committees. These include advocate-general of the state and state ministers.

It must be clarified here that the privileges of the state legislature do not extend to the governor who is also an integral part of the state legislature. The privileges of a state legislature can be classified into two broad categories—those that are enjoyed by each House of the state legislature collectively, and those that are enjoyed by the members individually.

Collective Privileges

The privileges belonging to each House of the state legislature collectively are:

- It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same
- It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
- It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
- It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
- It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
- It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.
- The courts are prohibited to inquire into the proceedings of a House or its Committees.
- No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

Individual Privileges

The privileges belonging to the members individually are:

- They cannot be arrested during the session of the state legislature and 40 days before the beginning and 40 days after the end of such session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
- They have freedom of speech in the state legislature. No member is liable to any proceedings in any court for anything said or any vote given by him in the state legislature or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the state legislature.
- They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when the state legislature is in session.

UNIT-XII

[THE JUDICATURE]

SUPREME COURT OF INDIA

The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the high courts below it. Under a high court (and below the state level), there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts, adopted from the Government of India Act of 1935, enforces both Central laws as well as the state laws. In USA, on the other hand, the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary. There is thus a double system of courts in USA—one for the centre and the other for the states. India, although a federal country like the USA, has a unified judiciary and one system of fundamental law and justice. The Supreme Court of India was inaugurated on January 28, 1950. It succeeded the Federal Court of India, established under the Government of India Act of 1935. However, the jurisdiction of the Supreme Court is greater than that of its predecessor. This is because the Supreme Court has replaced the British Privy Council as the highest court of appeal.

Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court. The Parliament is also authorised to regulate them.

At present, the Supreme Court consists of thirty-one judges (one chief justice and thirty other judges). In February 2009, the centre notified an increase in the number of Supreme Court judges from twenty-six to thirty-one, including the Chief Justice of India. This followed the enactment of the Supreme Court (Number of Judges) Amendment Act, 2008. Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges). The Parliament has increased this number of other judges progressively to ten in 1956, to thirteen in 1960, to seventeen in 1977 and to twenty-five in 1986.

The Constitution declares Delhi as the seat of the Supreme Court. But, it also authorises the chief justice of India to appoint other place or places as seat of the Supreme Court. He can take decision in this regard only with the approval of the President. This provision is only optional and not compulsory. This means that no court can give any direction either to the President or to the Chief Justice to appoint any other place as a seat of the Supreme Court.

The Supreme Court can, with the approval of the president, make rules for regulating generally the practice and procedure of the Court. The Constitutional cases or references made by the President under Article 143 are decided by a Bench consisting of at least five judges. All other cases are usually decided by a bench consisting of not less than three judges. The judgements are delivered by the open court. All judgements are by majority vote but if differing, then judges can give dissenting judgements or opinions.

APPOINTMENT OF JUDGES OF THE SUPREME COURT

The judges of the Supreme Court are appointed by the president. The chief justice is appointed by the president after consultation with such judges of the Supreme Court and high courts as he deems necessary. **The other judges are appointed by president after consultation with the chief justice and such other judges of the Supreme Court and the high courts as he deems necessary**. The consultation with the chief justice is obligatory in the case of appointment of a judge other than Chief justice.

CONTROVERSY OVER CONSULTATION

The Supreme Court has given different interpretation of the word 'consultation' in the above provision. In the **First Judges case (1982**), the Court held that consultation does not mean concurrence and it only implies exchange of views. But, in the **Second Judges case (1993),** the Court reversed its earlier ruling and changed the meaning of the word consultation to concurrence. Hence, it ruled that the advice tendered by the Chief Justice of India is binding on the President in the matters of appointment of the judges of the Supreme Court. But, the Chief Justice would tender his advice on the matter after consulting two of his seniormost colleagues.

Similarly, in the **Third Judges case (1998),** the Court opined that the consultation process to be adopted by the Chief justice of India requires 'consultation of plurality judges'. The sole opinion of the chief justice of India does not constitute the consultation process. He should consult a collegium of four seniormost judges of the Supreme Court and even if two judges give an adverse opinion, he should not send the recommendation to the government. The court held that the recommendation made by the chief justice of India without complying with the norms and requirements of the consultation process are not binding on the government.

The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014 have replaced the collegium system of appointing judges to the Supreme Court and High Courts with a new body called the National Judicial Appointments Commission (NJAC). However, in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void. Consequently, the earlier collegium system became operative again. This verdict was delivered by the Supreme Court in the **Fourth Judges case (2015).** The court opined that the new system (i.e., NJAC) would affect the independence of the judiciary.

Appointment of the Chief Justice

From 1950 to 1973, the practice has been to appoint the seniormost judge of the Supreme Court as the chief justice of India. This established convention was violated in 1973 when A N Ray was appointed as the Chief Justice of India by superseding three senior judges. Again in 1977, M U Beg was appointed as the chief justice of India by superseding the then senior-most judge. This discretion of the government was curtailed by the Supreme Court in the Second Judges Case (1993), in which the Supreme Court ruled that the seniormost judge of the Supreme Court should alone be appointed to the office of the chief justice of India.

Acting Chief Justice

The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:

- The office of Chief Justice of India is vacant; or
- The Chief Justice of India is temporarily absent; or
- The Chief Justice of India is unable to perform the duties of his office.

Ad hoc Judge

When there is a lack of quorum of the permanent judges to hold or continue any session of the Supreme Court, the Chief Justice of India can appoint a judge of a High Court as an ad hoc judge of the Supreme Court for a temporary period. He can do so only after consultation with the chief justice of the High Court concerned and with the previous consent of the president. The judge so appointed should be qualified for appointment as a judge of the Supreme Court. It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his office. While so attending, he enjoys all the jurisdiction, powers and privileges (and discharges the duties) of a judge of the Supreme Court.

Retired Judges

At any time, the chief justice of India can request a retired judge of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period. He can do so only with the previous consent of the president and also of the person to be so appointed. Such a judge is entitled to such allowances as the president may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of Supreme Court. But, he will not otherwise be deemed to be a judge of the Supreme Court.

Tenure of Judges

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

- He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.
- He can resign his office by writing to the president.
- He can be removed from his office by the President on the recommendation of the Parliament.

The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency. They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc. The retired chief justice and judges are entitled to 50 per cent of their last drawn salary as monthly pension.

REMOVAL OF JUDGES OF THE SUPREME COURT

A judge of the Supreme Court can be removed from his Office by an order of the president. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal. The address must be supported by a special majority of each House of Parliament (ie, a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two—proved misbehaviour or incapacity. The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:

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

- If the committee finds the judge to be guilty of misbehaviour or suffering from incapacity, the House can take up the consideration of the motion.
- After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
- Finally, the president passes an order removing the judge.

It is interesting to know that no judge of the Supreme Court has been impeached so far. The first and the only case of impeachment is that of Justice V Ramaswami of the Supreme Court (1991–1993). Though the enquiry Committee found him guilty of misbehaviour, he could not be removed as the impeachment motion was defeated in the Lok Sabha. The Congress Party abstained from voting.

QUALIFICATIONS OF JUDGES OF THE SUPREME COURT

A person to be appointed as a judge of the Supreme Court should have the following qualifications:

1. He should be a citizen of India.

2. (a) He should have been a judge of a High Court (or high courts in succession) for five years; or (b) He should have been an advocate of a High Court (or High Courts in succession) for ten years; or (c) He should be a distinguished jurist in the opinion of the president.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.

INDEPENDENCE OF THE SUPREME COURT

The Supreme Court has been assigned a very significant role in the Indian democratic political system. It is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution. Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament). It should be allowed to do justice without fear or favour.

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

- **Mode of Appointment:** The judges of the Supreme Court are appointed by the President (which means the cabinet) in consultation with the members of the judiciary itself (ie, judges of the Supreme Court and the high courts). This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.
- **Security of Tenure**: The judges of the Supreme Court are provided with the Security of Tenure. They can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the President, though they are appointed by him. This is obvious from the fact that no judge of the Supreme Court has been removed (or impeached) so far.
- **Fixed Service Conditions:** The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be changed to their disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of the Supreme Court remain same during their term of Office.

- **Expenses Charged on Consolidated Fund** The salaries, allowances and pensions of the judges and the staff as well as all the administrative expenses of the Supreme Court are charged on the Consolidated Fund of India. Thus, they are non-votable by the Parliament (though they can be discussed by it).

- **Conduct of Judges cannot be Discussed:** The Constitution prohibits any discussion in Parliament or in a State Legislature with respect to the conduct of the judges of the Supreme Court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

- **Ban on Practice after Retirement**: The retired judges of the Supreme Court are prohibited from pleading or acting in any Court or before any authority within the territory of India. This ensures that they do not favour any one in the hope of future favour.

- **Power to Punish for its Contempt**: The Supreme Court can punish any person for its contempt. Thus, its actions and decisions cannot be criticised and opposed by anybody. This power is vested in the Supreme Court to maintain its authority, dignity and honour.

- **Freedom to appoint its Staff:** The Chief Justice of India can appoint officers and servants of the Supreme Court without any interference from the executive. He can also prescribe their conditions of service.

- **Its Jurisdiction cannot be Curtailed**: The Parliament is not authorised to curtail the jurisdiction and powers of the Supreme Court. The Constitution has guaranteed to the Supreme Court, jurisdiction of various kinds. However, the Parliament can extend the same.

- **Separation from Executive**: The Constitution directs the State to take steps to separate the Judiciary from the Executive in the public services. This means that the executive authorities should not possess the judicial powers. Consequently, upon its implementation, the role of executive authorities in judicial administration came to an end.

POWERS AND JURISDICTION OF SUPREME COURT

The Constitution has conferred a very extensive jurisdiction and vast powers on the Supreme Court. It is not only a Federal Court like the American Supreme Court but also a final court of appeal like the British House of Lords (the Upper House of the British Parliament). It is also the final interpreter and guardian of the Constitution and guarantor of the fundamental rights of the citizens. Further, it has advisory and supervisory powers

Original Jurisdiction

As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation. More elaborately, any dispute between:

- the Centre and one or more states; or

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

- between two or more states.

In the above federal disputes, the Supreme Court has exclusive original jurisdiction. Exclusive means, no other court can decide such disputes and original means, the power to hear such disputes in the first instance, not by way of appeal.

With regard to the exclusive original jurisdiction of the Supreme Court, two points should be noted. One, the dispute must involve a question (whether of law or fact) on which the existence or extent of a legal

right depends. Thus, the questions of political nature are excluded from it. Two, any suit brought before the Supreme Court by a private citizen against the Centre or a state cannot be entertained under this.

Further, this jurisdiction of the Supreme Court does not extend to the following:

- A dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement, sanad or other similar instrument.
- A dispute arising out of any treaty, agreement, etc., which specifically provides that the said jurisdiction does not extent to such a dispute.
- Inter-state water disputes.
- Matters referred to the Finance Commission.
- Adjustment of certain expenses and pensions between the Centre and the states.
- Ordinary dispute of Commercial nature between the Centre and the states.
- Recovery of damages by a state against the Centre.

In 1961, the first suit, under the original jurisdiction of the Supreme Court, was brought by West Bengal against the Centre. The State Government challenged the Constitutional validity of the Coal Bearing Areas (Acquisition and Development) Act, 1957, passed by the Parliament. However, the Supreme Court dismissed the suit by upholding the validity of the Act.

Writ Jurisdiction

The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens. The Supreme Court is empowered to issue writs including habeas corpus, mandamus, prohibition, quo-warranto and certiorari for the enforcement of the fundamental rights of an aggrieved citizen. In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive. The high courts are also empowered to issue writs for the enforcement of the Fundamental Rights. It means, when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

Therefore, the original jurisdiction of the Supreme Court with regard to federal disputes is different from its original jurisdiction with regard to disputes relating to fundamental rights. In the first case, it is exclusive and in the second case, it is concurrent with high courts jurisdiction. Moreover, the parties involved in the first case are units of the federation (Centre and states) while the dispute in the second case is between a citizen and the Government (Central or state).

There is also a difference between the writ jurisdiction of the Supreme Court and that of the high court. The Supreme Court can issue writs only for the enforcement of the Fundamental Rights and not for other purposes. The high court, on the other hand, can issue writs not only for the enforcement of the fundamental rights but also for other purposes. It means that the writ jurisdiction of the high court is wider than that of the Supreme Court. But, the Parliament can confer on the Supreme Court, the power to issue writs for other purposes also.

Appellate Jurisdiction

As mentioned earlier, the Supreme Court has not only succeeded the Federal Court of India but also replaced the British Privy Council as the highest court of appeal. The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:

(a) Appeals in constitutional matters.

(b) Appeals in civil matters.

(c) Appeals in criminal matters.

(d) Appeals by special leave.

Constitutional Matters: In the constitutional cases, an appeal can be made to the Supreme Court against the judgement of a high court if the high court certifies that the case involves a substantial question of law that requires the interpretation of the Constitution. Based on the certificate, the party in the case can appeal to the Supreme Court on the ground that the question has been wrongly decided.

Civil Matters: In civil cases, an appeal lies to the Supreme Court from any judgement of a high court if the high court certifies—

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

Originally, only those civil cases that involved a sum of 20,000 could be appealed before the Supreme Court. But this monetary limit was removed by the 30th Constitutional Amendment Act of 1972.

Criminal Matters: The Supreme Court hears appeals against the judgement in a criminal proceeding of a high court if the high court—

- has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
- has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to death; or
- certifies that the case is a fit one for appeal to the Supreme Court.

In the first two cases, an appeal lies to the Supreme Court as a matter of right (ie, without any certificate of the high court). But if the high court has reversed the order of conviction and has ordered the acquittal of the accused, there is no right to appeal to the Supreme Court.

In 1970, the Parliament had enlarged the Criminal Appellate Jurisdiction of the Supreme Court. Accordingly, an appeal lies to the Supreme Court from the judgement of a high court if the high court:

- has on appeal, reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or for ten years; or
- has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to imprisonment for life or for ten years.

Further, the appellate jurisdiction of the Supreme Court extends to all civil and criminal cases in which the Federal Court of India had jurisdiction to hear appeals from the high court but which are not covered under the civil and criminal appellate jurisdiction of the Supreme Court mentioned above.

Appeal by Special Leave: The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court martial). This provision contains the four aspects as under:

- It is a discretionary power and hence, cannot be claimed as a matter of right.
- It can be granted in any judgement whether final or interlocutory.

- It may be related to any matter—constitutional, civil, criminal, income tax, labour, revenue, advocates, etc.
- It can be granted against any court or tribunal and not necessarily against a high court (of course, except a military court).

Thus, the scope of this provision is very wide and it vests the Supreme Court with a plenary jurisdiction to hear appeals. On the exercise of this power, the Supreme Court itself held that 'being an exceptional and overriding power, it has to be exercised sparingly and with caution and only in special extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule'.

Advisory Jurisdiction

The Constitution (Article 143) authorises the president to seek the opinion of the Supreme Court in the two categories of matters:

a) On any question of law or fact of public importance which has arisen or which is likely to arise.

b) On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, sanad or other similar instruments.

In the first case, the Supreme Court may tender or may refuse to tender its opinion to the president. But, in the second case, the Supreme Court 'must' tender its opinion to the president. In both the cases, the opinion expressed by the Supreme Court is only advisory and not a judicial pronouncement. Hence, it is not binding on the president; he may follow or may not follow the opinion. However, it facilitates the government to have an authoritative legal opinion on a matter to be decided by it.

A Court of Record

As a Court of Record, the Supreme Court has two powers:

(a) The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court. They are recognised as legal precedents and legal references.

(b) It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine or with both.

In 1991, the Supreme Court has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country.

Contempt of court may be civil or criminal. Civil contempt means willful disobedience to any judgement, order, writ or other process of a court or wilful breach of an undertaking given to a court. Criminal contempt means the publication of any matter or doing an act which—(i) scandalises or lowers the authority of a court; or (ii) prejudices or interferes with the due course of a judicial proceeding; or (iii) interferes or obstructs the administration of justice in any other manner.

However, innocent publication and distribution of some matter, fair and accurate report of judicial proceedings, fair and reasonable criticism of judicial acts and comment on the administrative side of the judiciary do not amount to contempt of court.

Power of Judicial Review

Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (ultra-vires), they can be declared as illegal, unconstitutional and invalid (null and void) by the Supreme Court. Consequently, they cannot be enforced by the Government.

Other Powers

Besides the above, the Supreme Court has numerous other powers:

- It decides the disputes regarding the election of the president and the vice president. In this regard, it has the original, exclusive and final authority.
- It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. If it finds them guilty of misbehaviour, it can recommend to the president for their removal. The advice tendered by the Supreme Court in this regard is binding on the President.
- It has power to review its own judgement or order. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare. In brief, the Supreme Court is a self-correcting agency. For example, in the Kesavananda Bharati case (1973), the Supreme Court departed from its previous judgement in the Golak Nath case (1967).
- It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court.
- Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the Supreme Court.
- It is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the Constitution and the verbiage used in the Constitution.
- It has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country.

The Supreme Court's jurisdiction and powers with respect to matters in the Union list can be enlarged by the Parliament. Further, its jurisdiction and powers with respect to other matters can be enlarged by a special agreement of the Centre and the states.

SUPREME COURT ADVOCATES

Three categories of Advocates are entitled to practice law before the Supreme Court. They are:

Senior Advocates: These are Advocates who are designated as Senior Advocates by the Supreme Court of India or by any High Court. The Court can designate any Advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction. A Senior Advocate is not entitled to appear without an Advocate-on-Record in the Supreme Court or without a junior in any other court or tribunal in India. He is also not entitled to accept instructions to draw pleadings or affidavits, advise on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.

Advocates-on-Record: Only these advocates are entitled to file any matter or document before the Supreme Court. They can also file an appearance or act for a party in the Supreme Court.

Other Advocates: These are advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 and they can appear and argue any matter on behalf of a party in the Supreme Court but they are not entitled to file any document or matter before the Court.

JUDICIAL REVIEW AND NINTH SCHEDULE

Article 31B saves the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the Fundamental Rights. Article 31B along with the Ninth Schedule was added by the 1st Constitutional Amendment Act of 1951.

However, in a significant judgement delivered in I.R. Coelho case (2007), the Supreme Court ruled that there could not be any blanket immunity from judicial review of laws included in the Ninth Schedule. The court held that judicial review is a 'basic feature' of the constitution and it could not be taken away by putting a law under the Ninth Schedule. It said that the laws placed under the Ninth Schedule after April 24, 1973, are open to challenge in court if they violated Fundamental Rights guaranteed under the Articles 14, 15, 19 and 21 or the 'basic structure' of the Constitution. It was on April 24, 1973, that the Supreme Court first propounded the doctrine of 'basic structure' or 'basic features' of the constitution in its landmark verdict in the Kesavananda Bharati case

JUDICIAL ACTIVISM vs JUDICIAL RESTRAINT

Judicial activism denotes the proactive role played by the judiciary in the protection of the rights of citizens and in the promotion of justice in the society. In other words, it implies the assertive role played by the judiciary to force the other two organs of the government (legislature and executive) to discharge their constitutional duties.

Judicial activism is also known as "judicial dynamism". It is the antithesis of "judicial restraint", which means the self-control exercised by the judiciary. Judicial activism is a way of exercising judicial power that motivates judges to depart from normally practised strict adherence to judicial precedent in favour of progressive and new social policies. It is commonly marked by decision calling for social engineering, and occasionally these decisions represent intrusion in the legislative and executive matters. Judicial activism is the practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent, or are independent of, or in opposition to supposed constitutional or legislation intent.

The concept of judicial activism is closely related to the concept of Public Interest Litigation (PIL). It is the judicial activism of the Supreme Court which is the major factor for the rise of PIL. In other words, PIL is an outcome of judicial activism. In fact, PIL is the most popular form (or manifestation) of judicial activism.

Those who subscribe to judicial restraint contend that the role of judges should be scrupulously limited; their job is merely to say what the law is, leaving the business of law-making where it properly belongs, that is, with the legislators and the executives. Under no circumstances, moreover, should judges allow their personal political values and policy agendas to colour their judicial opinions. This view holds that the 'original intent' of the authors of the constitution and its amendments is knowable, and must guide the courts.

In the USA, the doctrine of judicial restraint is based on the following six assumptions

1) The Court is basically undemocratic because it is non-elective and presumably non-responsive to the popular will. Because of its alleged oligarchic composition the court should defer wherever possible to the 'more' democratic branches of government.
2) The questionable origins of the great power of judicial review, a power not specifically granted by the Constitution.
3) The doctrine of separation of powers.
4) The concept of federalism, dividing powers between the nation and the states requires of the Court deference toward the action of state governments and officials.

5) The non-ideological but pragmatic assumption that since the Court is dependent on the Congress for its jurisdiction and resources, and dependent on public acceptance for its effectiveness, it ought not to overstep its boundaries without consideration of the risks involved.

6) The aristocratic notion that, being a court of law, and inheritor and custodian of the Anglo–American legal tradition, it ought not to go too far to the level of politics—law being the process of reason and judgment and politics being concerned only with power and influence.

From the above, it is clear that all the assumptions (except the second dealing with the judicial review) hold good in the Indian context too.

JUDICIAL OVERREACH

The line between judicial activism and Judicial Overreach is very narrow. In simple terms, when Judicial activism crosses its limits and becomes Judicial adventurism it is known as Judicial Overreach. When the judiciary oversteps the powers given to it, it may interfere with the proper functioning of the legislative or executive organs of government. Judicial Overreach destroys the spirit of separation of powers.

PUBLIC INTEREST LITIGATION (PIL)

PIL is also known variously as **Social Action Litigation (SAL), Social Interest Litigation (SIL)** and **Class Action Litigation (CAL).**The concept of Public Interest Litigation (PIL) originated and developed in the USA in the 1960s. In the USA, it was designed to provide legal representation to previously unrepresented groups and interests. In India, the PIL is a product of the judicial activism role of the Supreme Court. It was introduced in the early 1980s. **Justice V.R. Krishna Iyer** and **Justice P.N. Bhagwati** were the pioneers of the concept of PIL.

The introduction of PIL in India was facilitated by the relaxation of the traditional rule of 'locus standi'. According to this rule, only that person whose rights are infringed alone can move the court for the remedies, whereas, the PIL is an exception to this traditional rule. Under the PIL, any public-spirited citizen or a social organisation can move the court for the enforcement of the rights of any person or group of persons who because of their poverty or ignorance or socially or economically disadvantaged position are themselves unable to approach the court for the remedies. Thus, in a PIL, any member of the public having 'sufficient interest' can approach the court for enforcing the rights of other persons and redressal of a common grievance.

The Supreme Court has defined the PIL as "a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

PIL is absolutely necessary for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objectives. In other words, the real purposes of PIL are:

- vindication of the rule of law,
- facilitating effective access to justice to the socially and economically weaker sections of the society, and
- meaningful realisation of the fundamental rights.

HIGH COURTS

The judiciary in a state consists of a high court and a hierarchy of subordinate courts. The high court occupies the top position in the judicial administration of a state. The institution of high court originated in India in 1862 when the high courts were set up at Calcutta, Bombay and Madras. In 1866, a fourth high

court was established at Allahabad. In the course of time, each province in British India came to have its own high court. After 1950, a high court existing in a province became the high court for the corresponding state.

The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory. The territorial jurisdiction of a high court is co-terminus with the territory of a state. Similarly, the territorial jurisdiction of a common high court is co-terminus with the territories of the concerned states and union territory.

At present, there are 24 high courts in the country2. Out of them, four are common high courts. Delhi is the only union territory that has a high court of its own (since 1966). The other union territories fall under the jurisdiction of different state high courts. The Parliament can extend the jurisdiction of a high court to any union territory or exclude the jurisdiction of a high court from any union territory.

Articles 214 to 231 in Part VI of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the high courts.

Every high court (whether exclusive or common) consists of a chief justice and such other judges as the president may from time to time deem necessary to appoint. Thus, the Constitution does not specify the strength of a high court and leaves it to the discretion of the president. Accordingly, the President determines the strength of a high court from time to time depending upon its workload.

APPOINTMENT OF JUDGES OF THE HIGH COURT

The judges of a high court are appointed by the President. The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned. For appointment of other judges, the chief justice of the concerned high court is also consulted. In case of a common high court for two or more states, the governors of all the states concerned are consulted by the president.

In the Second Judges case (1993) the Supreme Court ruled that no appointment of a judge of the high court can be made, unless it is in conformity with the opinion of the chief justice of India. In the Third Judges case (1998), the Supreme Court opined that in case of the appointment of high court judges, the chief justice of India should consult a collegium of two senior-most judges of the Supreme Court. Thus, the sole opinion of the chief justice of India alone does not constitute the 'consultation' process.

The 99th Constitutional Amendment Act of 2014 and the National Judicial Appointments Commission Act of 2014 have replaced the Collegium System of appointing judges to the Supreme Court and High Courts with a new body called the National Judicial Appointments Commission (NJAC). However, in 2015, the Supreme Court has declared both the 99th Constitutional Amendment as well as the NJAC Act as unconstitutional and void.

Consequently, the earlier collegium system became operative again. This verdict was delivered by the Supreme Court in the Fourth Judges case (2015). The Court opined that the new system (i.e., NJAC) would affect the independence of the judiciary.

Tenure of Judges

The Constitution has not fixed the tenure of a judge of a high court. However, it makes the following four provisions in this regard:

- He holds office until he attains the age of 62 years. Any questions regarding his age is to be decided by the president after consultation with the chief justice of India and the decision of the president is final.
- He can resign his office by writing to the president.

- He can be removed from his office by the President on the recommendation of the Parliament.
- He vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.

Salaries and Allowances

The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency. They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc. The retired chief justice and judges are entitled to 50% of their last drawn salary as monthly pension.

Transfer of Judges

The President can transfer a judge from one high court to another after consulting the Chief Justice of India. On transfer, he is entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament.

In 1977, the Supreme Court ruled that the transfer of high court judges could be resorted to only as an exceptional measure and only in public interest and not by way of punishment. Again in 1994, the Supreme Court held that judicial review is necessary to check arbitrariness in transfer of judges. But, only the judge who is transferred can challenge it.

In the Third Judges case (1998), the Supreme Court opined that in case of the transfer of high court judges, the Chief Justice of India should consult, in addition to the collegium of four seniormost judges of the Supreme Court, the chief justice of the two high courts (one from which the judge is being transferred and the other receiving him). Thus, the sole opinion of the chief justice of India does not constitute the 'consultation' process.

Acting Chief Justice

The President can appoint a judge of a high court as an acting chief justice of the high court when:

- the office of chief justice of the high court is vacant; or
- the chief justice of the high court is temporarily absent; or
- the chief justice of the high court is unable to perform the duties of his office.

Additional and Acting Judges

The President can appoint duly qualified persons as additional judges of a high court for a temporary period not exceeding two years when:

- There is a temporary increase in the business of the high court; or
- There are arrears of work in the high court.

The President can also appoint a duly qualified person as an acting judge of a high court when a judge of that high court (other than the chief justice) is:

- Unable to perform the duties of his office due to absence or any other reason; or
- Appointed to act temporarily as chief justice of that high court.

An acting judge holds office until the permanent judge resumes his office. However, both the additional or acting judge cannot hold office after attaining the age of 62 years.

Retired Judges

At any time, the chief justice of a high court of a state can request a retired judge of that high court or any other high court to act as a judge of the high court of that state for a temporary period. He can do so only with the previous consent of the President and also of the person to be so appointed. Such a judge is entitled to such allowances as the President may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of that high court. But, he will not otherwise be deemed to be a judge of that high court.

REMOVAL OF JUDGES OF THE HIGH COURT

A judge of a high court can be removed from his office by an order of the President. The President can issue the removal order only after an address by the Parliament has been presented to him in the same session for such removal. The address must be supported by a special majority of each House of Parliament (i.e., a majority of the total membership of that House and majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two—proved misbehaviour or incapacity. Thus, a judge of a high court can be removed in the same manner and on the same grounds as a judge of the Supreme Court.

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of a high court by the process of impeachment:

- A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
- The Speaker/Chairman may admit the motion or refuse to admit it.
- If it is admitted, then the Speaker/Chairman is to constitute a three member committee to investigate into the charges.
- The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.
- If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.
- After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
- Finally, the president passes an order removing the judge.

From the above, it is clear that the procedure for the impeachment of a judge of a high court is the same as that for a judge of the Supreme Court. It is interesting to know that no judge of a high court has been impeached so far.

QUALIFICATION OF JUDGES OF THE HIGH COURT

A person to be appointed as a judge of a high court should have the following qualifications:

1. He should be a citizen of India.

2. (a) He should have held a judicial office in the territory of India for ten years; or (b) He should have been an advocate of a high court (or high courts in succession) for ten years.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of a high court. Moreover, unlike in the case of the Supreme Court, the Constitution makes no provision for appointment of a distinguished jurist as a judge of a high court.

INDEPENDENCE OF THE HIGH COURT

The independence of a high court is very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the legislature. It should be allowed to do justice without fear or favour.

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a high court.

- **Mode of Appointment**: The judges of a high court are appointed by the president (which means the cabinet) in consultation with the members of the judiciary itself (i.e., chief justice of India and the chief justice of the high court). This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.
- **Security of Tenure**: The judges of a high court are provided with the security of tenure. They can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the president, though they are appointed by him. This is obvious from the fact that no judge of a high court has been removed (or impeached) so far.
- **Fixed Service Conditions**: The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament. But, they cannot be changed to their disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of a high court remain same during their term of office.
- **Expenses Charged on Consolidated Fund**: The salaries and allowances of the judges, the salaries, allowances and pensions of the staff as well as the administrative expenses of a high court are charged on the consolidated fund of the state. Thus, they are non-votable by the state legislature (though they can be discussed by it). It should be noted here that the pension of a high court judge is charged on the Consolidated Fund of India and not the state.
- **Conduct of Judges cannot be Discussed**: The Constitution prohibits any discussion in Parliament or in a state legislature with respect to the conduct of the judges of a high court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.
- **Ban on Practice after Retirement**: The retired permanent judges of a high court are prohibited from pleading or acting in any court or before any authority in India except the Supreme Court and the other high courts. This ensures that they do not favour any one in the hope of future favour.
- **Power to punish for its Contempt**: A high court can punish any person for its contempt. Thus, its actions and decisions cannot be ciriticised and opposed by anybody. This power is vested in a high court to maintain its authority, dignity and honour.
- **Freedom to appoint its Staff**: The chief justice of a high court can appoint officers and servants of the high court without any interference from the executive. He can also prescribe their conditions of service.
- **Its Jurisdiction cannot be curtailed**: The jurisdiction and powers of a high court in so far as they are specified in the Constitution cannot be curtailed both by the Parliament and the state legislature. But, in other respects, the jurisdiction and powers of a high court can be changed both by the parliament and the state legislature.
- **Separation from Executive**: The Constitution directs the state to take steps to separate the judiciary from the executive in public services. This means that the executive authorities should not possess the judicial powers. Consequent upon its implementation, the role of executive authorities in judicial administration came to an end

POWERS AND JURISDICTION OF HIGH COURT

The present jurisdiction and powers of a high court are governed by (a) the constitutional provisions, (b) the Letters Patent, (c) the Acts of Parliament, (d) the Acts of State Legislature, (e) Indian Penal Code, 1860, (f) Criminal Procedure Code, 1973, and (g) Civil Procedure Code, 1908.

Original Jurisdiction

It means the power of a high court to hear disputes in the first instance, not by way of appeal. It extends to the following:

- Matters of admirality, will, marriage, divorce, company laws and contempt of court.
- Disputes relating to the election of members of Parliament and state legislatures.
- Regarding revenue matter or an act ordered or done in revenue collection.
- Enforcement of fundamental rights of citizens.
- Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.
- The four high courts (i.e., Calcutta, Bombay, Madras and Delhi High Courts) have original civil jurisdiction in cases of higher value.

Before 1973, the Calcutta, Bombay and Madras High Courts also had original criminal jurisdiction. This was fully abolished by the Criminal Procedure Code, 1973.

Writ Jurisdiction

Article 226 of the Constitution empowers a high court to issue writs including habeas corpus, mandamus, certiorari, prohibition and quo warranto for the enforcement of the fundamental rights of the citizens and for any other purpose. The phrase 'for any other purpose' refers to the enforcement of an ordinary legal right. The high court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction.

The writ jurisdiction of the high court (under Article 226) is not exclusive but concurrent with the writ jurisdiction of the Supreme Court (under Article 32). It means, when the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly. However, the writ jurisdiction of the high court is wider than that of the Supreme Court. This is because, the Supreme Court can issue writs only for the enforcement of fundamental rights and not for any other purpose, that is, it does not extend to a case where the breach of an ordinary legal right is alleged.

In the Chandra Kumar case (1997), the Supreme Court ruled that the writ jurisdiction of both the high court and the Supreme Court constitute a part of the basic structure of the Constitution. Hence, it cannot be ousted or excluded even by way of an amendment to the Constitution.

Appellate Jurisdiction

A high court is primarily a court of appeal. It hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters. Hence, the appellate jurisdiction of a high court is wider than its original jurisdiction.

(a) Civil Matters: The civil appellate jurisdiction of a high court is as follows:

- First appeals from the orders and judgements of the district courts, additional district courts and other subordinate courts lie directly to the high court, on both questions of law and fact, if the amount exceeds the stipulated limit.
- Second appeals from the orders and judgements of the district court or other subordinate courts lie to the high court in the cases involving questions of law only (and not questions of fact).
- The Calcutta, Bombay and Madras High Courts have provision for intra-court appeals. When a single judge of the high court has decided a case (either under the original or appellate jurisdiction of the high court), an appeal from such a decision lies to the division bench of the same high court.
- Appeals from the decisions of the administrative and other tribunals lie to the division bench of the state high court. In 1997, the Supreme Court ruled that the tribunals are subject to the writ jurisdiction of the high courts. Consequently, it is not possible for an aggrieved person to approach the Supreme Court directly against the decisions of the tribunals, without first going to the high courts.

(b) Criminal Matters: The criminal appellate jurisdiction of a high court is as follows:

- Appeals from the judgements of sessions court and additional sessions court lie to the high court if the sentence is one of imprisonment for more than seven years. It should also be noted here that a death sentence (popularly known as capital punishment) awarded by a sessions court or an additional sessions court should be confirmed by the high court before it can be executed, whether there is an appeal by the convicted person or not.
- In some cases specified in various provisions of the Criminal Procedure Code (1973), the appeals from the judgements of the assistant sessions judge, metropolitan magistrate or other magistrates (judicial) lie to the high court.

Supervisory Jurisdiction

A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals). Thus, it may—

- Call for returns from them;
- Make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;
- Prescribe forms in which books, entries and accounts are to be kept by them; and
- Settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

This power of superintendence of a high court is very broad because, (i) it extends to all courts and tribunals whether they are subject to the appellate jurisdiction of the high court or not; (ii) it covers not only administrative superintendence but also judicial superintendence; (iii) it is a Revisional jurisdiction; and (iv) it can be suo-motu (on its own) and not necessarily on the application of a party.

However, this power does not vest the high court with any unlimited authority over the subordinate courts and tribunals. It is an extraordinary power and hence has to be used most sparingly and only in appropriate cases. Usually, it is limited to, (i) excess of jurisdiction, (ii) gross violation of natural justice, (iii) error of law, (iv) disregard to the law of superior courts, (v) perverse findings, and (vi) manifest injustice

Control over Subordinate Courts

In addition to its appellate jurisdiction and supervisory jurisdiction over the subordinate courts as mentioned above, a high court has an administrative control and other powers over them. These include the following:

- It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state (other than district judges).
- It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state (other than district judges).
- It can withdraw a case pending in a subordinate court if it involves a substantial question of law that require the interpretation of the Constitution. It can then either dispose of the case itself or determine the question of law and return the case to the subordinate court with its judgement.
- Its law is binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.

A Court of Record

As a court of record, a high court has two powers:

(a) The judgements, proceedings and acts of the high courts are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any subordinate court. They are recognised as legal precedents and legal references.

(b) It has power to punish for contempt of court, either with simple imprisonment or with fine or with both. The expression 'contempt of court' has not been defined by the Constitution. However, the expression has been defined by the Contempt of Court Act of 1971. Under this, contempt of court may be civil or criminal.

Civil contempt means wilful disobedience to any judgement, order, writ or other process of a court or wilful breach of an undertaking given to a court. Criminal contempt means the publication of any matter or doing an act which —(i) scandalises or lowers the authority of a court; or (ii) prejudices or interferes with the due course of a judicial proceeding; or (iii) interferes or obstructs the administration of justice in any other manner.

However, innocent publication and distribution of some matter, fair and accurate report of judicial proceedings, fair and reasonable criticism of judicial acts and comment on the administrative side of the judiciary do not amount to contempt of court.

As a court of record, a high court also has the power to review and correct its own judgement or order or decision, even though no specific power of review is conferred on it by the Constitution. The Supreme Court, on the other hand, has been specifically conferred with the power of review by the Constitution.

Power of Judicial Review

Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (ultra-vires), they can be declared as illegal, unconstitutional and invalid (null and viod) by the high court. Consequently, they cannot be enforced by the government.

Though the phrase 'judicial review' has no where been used in the Constitution, the provisions of Articles 13 and 226 explicitly confer the power of judicial review on a high court. The constitutional validity

of a legislative enactment or an executive order can be challenged in a high court on the following three grounds:

- it infringes the fundamental rights (Part III),
- it is outside the competence of the authority which has framed it, and
- it is repugnant to the constitutional provisions.

The 42nd Amendment Act of 1976 curtailed the judicial review power of high court. It debarred the high courts from considering the constitutional validity of any central law. However, the 43rd Amendment Act of 1977 restored the original position.

SUBORDINATE COURTS

T he state judiciary consists of a high court and a hierarchy of subordinate courts, also known as lower courts. The subordinate courts are so called because of their subordination to the state high court. They function below and under the high court at district and lower levels.

Articles 233 to 237 in Part VI of the Constitution make the following provisions to regulate the organization of subordinate courts and to ensure their independence from the executive.

Appointment of District Judges

The appointment, posting and promotion of district judges in a state are made by the governor of the state in consultation with the high court. A person to be appointed as district judge should have the following qualifications:

- He should not already be in the service of the Central or the state government.
- He should have been an advocate or a pleader for seven years.
- He should be recommended by the high court for appointment

Appointment of other Judges

Appointment of persons (other than district judges) to the judicial service of a state is made by the governor of the state after consultation with the State Public Service Commission and the high court.

Control over Subordinate Courts

The control over district courts and other subordinate courts including the posting, promotion and leave of persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the high court.

Interpretation

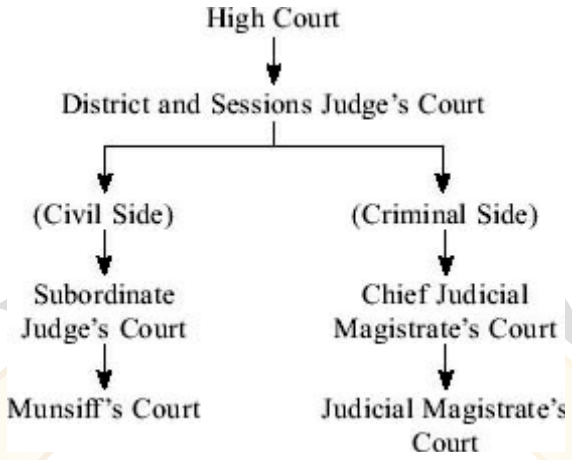
The expression 'district judge' includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge. The expression 'judicial service' means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

Application of the above Provisions to Certain Magistrates

The Governor may direct that the above mentioned provisions relating to persons in the state judicial service would apply to any class or classes of magistrates in the state.

Structure and Jurisdiction

The organisational structure, jurisdiction and nomenclature of the subordinate judiciary are laid down by the states. Hence, they differ slightly from state to state. Broadly speaking, there are three tiers of civil and criminal courts below the High Court. This is shown as follows:



The district judge is the highest judicial authority in the district. He possesses original and appellate jurisdiction in both civil as well as criminal matters. In other words, the district judge is also the sessions judge. When he deals with civil cases, he is known as the district judge and when he hears the criminal cases, he is called as the sessions judge. The district judge exercises both judicial and administrative powers. He also has supervisory powers over all the subordinate courts in the district. Appeals against his orders and judgements lie to the High Court. The sessions judge has the power to impose any sentence including life imprisonment and capital punishment (death sentence). However, a capital punishment passed by him is subject to confirmation by the High Court, whether there is an appeal or not. Below the District and Sessions Court stands the Court of Subordinate Judge on the civil side and the Court of Chief Judicial Magistrate on the criminal side. The subordinate judge exercises unlimited pecuniary jurisdiction over civil suits3. The chief judicial magistrate decides criminal cases which are punishable with imprisonment for a term up to seven years. At the lowest level, on the civil side, is the Court of Munsiff and on the criminal side, is the Court of Judicial Magistrate. The munsiff possesses limited jurisdiction and decides civil cases of small pecuniary stake. The judicial magistrate tries criminal cases which are punishable with imprisonment for a term up to three years.

In some metropolitan cities, there are city civil courts (chief judges) on the civil side and the courts of metropolitan magistrates on the criminal side. Some of the States and Presidency towns have established small causes courts. These courts decide the civil cases of small value in a summary manner. Their decisions are final, but the High Court possesses a power of revision.

In some states, Panchayat Courts try petty civil and criminal cases. They are variously known as Nyaya Panchayat, Gram Kutchery, Adalati Panchayat, Panchayat Adalat and so on.

NATIONAL LEGAL SERVICES AUTHORITY

Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. Articles 14 and 22(1) of the Constitution also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all. In the year 1987, the Legal Services Authorities Act was enacted by the Parliament which came into force on 9th November, 1995 to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to monitor and evaluate implementation of legal aid programmes and to lay down policies and principles for making legal services available under the Act.

In every State, a State Legal Services Authority and in every High Court, a High Court Legal Services Committee have been constituted. District Legal Services Authorities, Taluk Legal Services Committees have been constituted in the Districts and most of the Taluks to give effect to the policies and directions of the NALSA and to provide free legal services to the people and conduct Lok Adalats in the State.

Supreme Court Legal Services Committee has been constituted to administer and implement the legal services programme insofar as it relates to the Supreme Court of India. NALSA lays down policies, principles, guidelines and frames effective and economical schemes for the State Legal Services Authorities to implement the Legal Services Programmes throughout the country.

Primarily, the State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, etc. have been asked to discharge the following main functions on regular basis:

- To provide free and competent legal services to the eligible persons.
- To organize Lok Adalats for amicable settlement of disputes.
- To organize legal awareness camps in the rural areas.

The free legal services include:-

- Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings.
- Providing service of lawyers in legal proceedings.
- Obtaining and supply of certified copies of orders and other documents in legal proceedings.
- Preparation of appeal, paper book including printing and translation of documents in legal proceedings.

The persons eligible for getting free legal services include:-

- Women and children
- Members of SC/ST
- Industrial workmen
- Victims of mass disaster, violence, flood, drought, earthquake, industrial disaster
- Disabled persons
- Persons in custody
- Persons whose annual income does not exceed Rs. 1 lakh (in the Supreme Court Legal Services Committee the limit is Rs. 1, 25,000/-).
- Victims of trafficking in human beings or begar.

LOK ADALATS

Lok Adalat is a forum where the cases (or disputes) which are pending in a court or which are at pre-litigation stage (not yet brought before a court) are compromised or settled in an amicable manner.

The Supreme Court has explained the meaning of the institution of Lok Adalat in the following way:

The 'Lok Adalat' is an old form of adjudicating system prevailed in ancient India and its validity has not

been taken away even in the modern days too. The word 'Lok Adalat' means 'People's Court'. This system is based on Gandhian principles. It is one of the components of ADR (Alternative Dispute Resolution) system. As the Indian courts are overburdened with the backlog of cases and the regular courts are to decide the cases involving a lengthy, expensive and tedious procedure. The court takes years together to settle even petty cases. Lok Adalat, therefore, provides alternative resolution or devise for expedious and inexpensive justice.

In Lok Adalat proceedings, there are no victors and vanquished and, thus, no rancour. The experiment of 'Lok Adalat' as an alternate mode of dispute settlement has come to be accepted in India, as a viable, economic, efficient and informal one.

The Lok Adalat is another alternative in judicial justice. This is a recent strategy for delivering informal, cheap and expeditious justice to the common man by way of settling disputes, which are pending in courts and also those, which have not yet reached courts by negotiation, conciliation and by adopting persuasive, common sense and human approach to the problems of the disputants, with the assistance of specially trained and experienced members of a team of conciliators.

Statutory Status

The first Lok Adalat camp in the post-independence era was organized in Gujarat in 1982. This initiative proved very successful in the settlement of disputes. Consequently, the institution of Lok Adalat started spreading to other parts of the country. At that time, this institution was functioning as a voluntary and conciliatory agency without any statutory backing for its decisions. In view of its growing popularity, there arose a demand for providing a statutory backing to this institution and the awards given by Lok Adalats. Hence, the institution of Lok Adalat has been given statutory status under the Legal Services Authorities Act, 1987. The Act makes the following provisions relating to the organization and functioning of the Lok Adalats:

1. The State Legal Services Authority or the District Legal Services Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee or the Taluk Legal Services Committee may organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

2. Every Lok Adalat organized for an area shall consist of such number of serving or retired judicial officers and other persons of the area as may be specified by the agency organizing such Lok Adalat. Generally, a Lok Adalat consists of a judicial officer as the chairman and a lawyer (advocate) and a social worker as members.

3. A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of:

- Any case pending before any court; or
- Any matter which is falling within the jurisdiction of any court and is not brought before such court.

Thus, the Lok Adalat can deal with not only the cases pending before a court but also with the disputes at pre-litigation stage. Matters such as Matrimonial / Family Disputes, Criminal (Compoundable Offences) cases, Land Acquisition cases, Labour disputes, Workmen's compensation cases, Bank Recovery cases, Pension cases, Housing Board and Slum Clearance cases, Housing Finance cases, Consumer Grievance cases, Electricity matters, Disputes relating to Telephone Bills, Municipal matters including House Tax cases, Disputes with Cellular Companies etc. are being taken up in Lok Adalats.

But, the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law. In other words, the offences which are non-compoundable under any law fall outside the purview of the Lok Adalat.

4. Any case pending before the court can be referred to the Lok Adalat for settlement if:

- The parties thereof agree to settle the dispute in the Lok Adalat; or
- One of the parties thereof makes an application to the court, for referring the case to the Lok Adalat; or
- The court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat.

In the case of a pre-litigation dispute, the matter can be referred to the Lok Adalat for settlement by the agency organizing the Lok Adalat, on receipt of an application from any one of the parties to the dispute.

5. The Lok Adalat shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure (1908), while trying a suit in respect of the following matters:

- The summoning and enforcing the attendance of any witness examining him on oath;
- The discovery and production of any document;
- The reception of evidence on affidavits;
- The requisitioning of any public record or document from any court or office; and
- Such other matters as may be prescribed.

Further, a Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it. Also, all proceedings before a Lok Adalat shall be deemed to be judicial proceedings within the meaning of the Indian Penal Code (1860) and every Lok Adalat shall be deemed to be a Civil Court for the purpose of the Code of Criminal Procedure (1973).

6. An award of a Lok Adalat shall be deemed to be a decree of a Civil Court or an order of any other court. Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute. No appeal shall lie to any court against the award of the Lok Adalat.

According to the Supreme Court, the benefits under Lok Adalat are as follows

- There is no court fee and if court fee is already paid the amount will be refunded if the dispute is settled at Lok Adalat.
- The basic features of Lok Adalat are the procedural flexibility and speedy trial of the disputes. There is no strict application of procedural laws like the Civil Procedure Code and the Evidence Act while assessing the claim by Lok Adalat.
- The parties to the dispute can directly interact with the judge through their counsel which is not possible in regular courts of law.
- The award by the Lok Adalat is binding on the parties and it has the status of a decree of a civil court and it is non-appealable, which does not cause the delay in the settlement of disputes finally.

In view of above facilities provided by the Act, Lok Adalats are boon to the litigating public as they can get their disputes settled fast and free of cost amicably. The Law Commission of India summarized the advantages of ADR (Alternative Dispute Resolution) in the following way:

- It is less expensive.
- It is less time-consuming.
- It is free from technicalities vis-à-vis conducting of cases in law courts.

- Parties are free to discuss their differences of opinion without any fear of disclosure before any law courts.
- Parties have the feeling that there is no losing or winning side between them but at the same time their grievance is redressed and their relationship is restored.

FAMILY COURTS

The Family Courts Act, 1984 was enacted to provide for the establishment of Family Courts with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs.

The reasons for the establishment of separate Family Courts are as follows:

1. Several associations of women, other organizations and individuals have urged, from time to time, that Family Courts, be set up for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated.

2. The Law Commission in its 59th report (1974) had also stressed that in dealing with disputes concerning the family the Court ought to adopt an approach radically different from the adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family.

3. However, not much use has been made by the Courts in adopting this conciliatory procedure and the Courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes.

Therefore, the main objectives and reasons for setting up of Family Courts are:

- To create a Specialized Court which will exclusively deal with family matters so that such a court may have the necessary expertise to deal with these cases expeditiously. Thus expertise and expeditious disposal are two main factors for establishing such a court;
- To institute a mechanism for conciliation of the disputes relating to family;
- To provide an inexpensive remedy; and
- To have flexibility and an informal atmosphere in the conduct of proceedings.

The salient features of the Family Courts Act, 1984 are as follows:

1. It provides for the establishment of Family Courts by the State Governments in consultation with the High Courts.

2. It makes it obligatory on the State Governments to set up a Family Court in every city or town with a population exceeding one million.

3. It enables the State Governments to set up Family Courts in other areas also, if they deem it necessary.

4. It exclusively provides within the jurisdiction of the Family Courts the matters relating to:-

- Matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of marriage or as to the matrimonial status of any person;
- The property of the spouses or of either of them;

- Declaration as to the legitimacy of any person;
- Guardianship of a person or the custody of any minor; and
- Maintenance of wife, children and parents.

5. It makes it obligatory on the part of the Family Court to endeavour, in the first instance to effect a reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings will be informal and rigid rules of procedure shall not apply.

6. It provides for the association of social welfare agencies, counsellors, etc., during conciliation stage and also to secure the service of medical and welfare experts.

7. It provides that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by legal practitioner. However, the Court may, in the interest of justice, seek assistance of a legal expert as amicus curiae.

8. It simplifies the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute.

9. It provides for only one right of appeal which shall lie to the High Court.

GRAM NYAYALAYAS

The Gram Nyayalayas Act, 2008 has been enacted to provide for the establishment of the Gram Nyayalayas at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen due to social, economic or other disabilities.

The reasons for the establishment of Gram Nyayalayas are as follows:

1. Access to justice by the poor and disadvantaged remains a worldwide problem despite diverse approaches and strategies that have been formulated and implemented to address it. In our country, Article 39A of the Constitution directs the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

2. In the recent past, the Government has taken various measures to strengthen judicial system, inter alia, by simplifying the procedural laws; incorporating various alternative dispute resolution mechanisms such as arbitration, conciliation and mediation; conducting of Lok Adalats, etc. These measures are required to be strengthened further.

3. The Law Commission of India in its 114th Report on Gram Nyayalaya suggested establishment of Gram Nyayalayas so that speedy, inexpensive and substantial justice could be provided to the common man. The Gram Nyayalayas Act, 2008 is broadly based on the recommendations of the Law Commission.

4. Justice to the poor at their door step is a dream of the poor. Setting up of Gram Nyayalayas in the rural areas would bring to the people of rural areas speedy, affordable and substantial justice.

The salient features of the Gram Nyayalayas Act are as follows:

- The Gram Nyayalaya shall be court of Judicial Magistrate of the first class and its presiding officer (Nyayadhikari) shall be appointed by the State Government in consultation with the High Court.
- The Gram Nyayalaya shall be established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State, for a group of contiguous Panchayats.

- The Nyayadhikaris who will preside over these Gram Nyayalayas are strictly judicial officers and will be drawing the same salary, deriving the same powers as First Class Magistrates working under High Courts.
- The Gram Nyayalaya shall be a mobile court and shall exercise the powers of both Criminal and Civil Courts.
- The seat of the Gram Nyayalaya will be located at the headquarters of the intermediate Panchayat, they will go to villages, work there and dispose of the cases.
- The Gram Nyayalaya shall try criminal cases, civil suits, claims or disputes which are specified in the First Schedule and the Second Schedule to the Act.
- The Central as well as the State Governments have been given power to amend the First Schedule and the Second Schedule of the Act, as per their respective legislative competence.
- The Gram Nyayalaya shall follow summary procedure in criminal trial.
- The Gram Nyayalaya shall exercise the powers of a Civil Court with certain modifications and shall follow the special procedure as provided in the Act.
- The Gram Nyayalaya shall try to settle the disputes as far as possible by bringing about conciliation between the parties and for this purpose, it shall make use of the conciliators to be appointed for this purpose.
- The judgment and order passed by the Gram Nyayalaya shall be deemed to be a decree and to avoid delay in its execution, the Gram Nyayalaya shall follow summary procedure for its execution.
- The Gram Nyayalaya shall not be bound by the rules of evidence provided in the Indian Evidence Act, 1872 but shall be guided by the principles of natural justice and subject to any rule made by the High Court.
- Appeal in criminal cases shall lie to the Court of Session, which shall be heard and disposed of within a period of six months from the date of filing of such appeal.
- Appeal in civil cases shall lie to the District Court, which shall be heard and disposed of within a period of six months from the date of filing of the appeal.
- A person accused of an offence may file an application for plea bargaining.

UNIT-XIII

[LOCAL GOVERNMENT]

PANCHAYATI RAJ SYSTEM

The term Panchayati Raj in India signifies the system of rural local self-government. In January 1957, the Government of India appointed a committee to examine the working of the Community Development Programme (1952) and the National Extension Service (1953) and to suggest measures for their better working. The chairman of this committee was Balwant Rai G Mehta. The committee submitted its report in November 1957 and recommended the establishment of the scheme of 'democratic decentralisation', which ultimately came to be known as Panchayati Raj.

Balwant Rai Mehta Committee

The committee recommended for the establishment of the three-tier Panchayati Raj system in India. These three-tires are:

1. The Gram-Panchayats at the village level or at the bottom,
2. The Panchayat Samiti at the block level or in the middle and
3. The Zila Parishad at the district level.

It was recommended that these three-tires would have to be related with each other. The committee also discussed about the philosophical basis of the Panchayati-Raj-system.

The Panchayati Raj system acts as a link between the local leadership and the government. The local leadership always enjoys the trust of the local people and it is this local leadership which translates the governmental policies and decisions into action. That is why the Gram-Panchayat is considered as the lowest unit of the government. Its aim is to use the panchayat as the means or medium for proper implementation of the governmental policies and programmes.

It may be mentioned in this regard that the basic idea of Mahatma Gandhi was to establish the Panchayati Raj as an independent self-government system or as independent republic. However, in course of time, the Panchayati Raj system lost much of its popularity and popular participation in it also became insignificant.

First state to launch Panchayati Raj

The implementation of Panchayat Samiti and Zila Parishad Act of September 2, 1959 came into effect from October 2 when the Panchayati Raj was formally launched from Nagaur, Rajasthan. Andhra Pradesh launched the scheme soon after, on October 11, while Assam, Karnataka and Madras launched it in 1960. One by one all the other States followed the suit later.

Ashok Mehta Committee

In December 1977, the Janta Government appointed a committee on Panchayati Raj institutions under the chairmanship of Ashok Mehta. It submitted its report in August 1978 and made 132 recommendations to revive and strengthen the declining Panchayati Raj System in the country. Its main recommendations are:

- The three-tier system of Panchayati Raj should be replaced by the two-tier system, that is, Zila Parishad at the district level, and below it, the Mandal Panchayat consisting of a group of villages covering a population of the 15000 to 20000.
- A district should be the first point for decentralization under popular supervision below the state level.

- Zila Parishads should be the executive body and made responsible for planning at the district level.
- There should be an official participation of political parties at all levels of Panchayat elections.
- The Panchayati Raj institutions should have compulsory powers of taxation to mobilize their own financial resources.
- There should be a regular social audit by a district level agency and by a committee of legislators to check whether the funds allotted for the vulnerable social and economic groups are actually spent on them.
- The state government should not supersede the Panchayati Raj institutions. In case of an imperative supersession, election should be held within six months from the date of supersession.
- The Chief Electoral Officer of state in consultation with Chief Election Commissioner should organise and conduct the Panchayati Raj elections.
- Development functions should be transferred to the Zila Parishad and all development staff should work under its control and supervision.
- A minister for Panchayati Raj should be appointed in the state council of ministers to look after the affairs of the Panchayati Raj institutions.
- Seats for SC and ST should be reserved on the basis of their population.
- **G.V.K. Rao Committee**

The G.V.K. Rao Committee- was set up by the Planning Commission in 1985. It recommended for the revival of Panchayati Raj institutions and highlighted the need to transfer powers to democratic bodies at the local level. The two important suggestions that this committee made were:

- That the 'district' should be the basic unit of planning and programme implementation.
- Zila Parishads should become the principal body for the management of all development programmes which can be handled at that level.
- Zila Parishads should to be given prime importance and all developmental programs at that level to be handed to it.
- Post of DDC (District Development Commissioner) to be created acting as the chief executive officer of the Zila Parishad.
- Regular elections to be held.

L.M. Singhvi Committee

The Government of India set up in 1986 L.M. Singhvi Committee to prepare a concept paper on the revitalisation of the Panchayati Raj institutions. It recommended that the Panchayati Raj should be constitutionally recognised, protected and preserved, by the inclusion of a new chapter in the Constitution. Its recommendations were:

1. Constitutional recognition for PRI institutions.
2. Nyaya Panchayats to be established for clusters of villages

Though the 64th Constitutional Amendment bill was introduced in the Lok Sabha in 1989 itself, the Rajya Sabha opposed it.

Thungon Committee

In 1988, a sub-committee of the Consultative Committee of Parliament was constituted under the chairmanship of P.K. Thungon to examine the political and administrative structure in the district for the purpose of district planning. This committee suggested for the strengthening of the Panchayati Raj system. It made the following recommendations:

- The Panchayati Raj bodies should be constitutionally recognized.
- A three-tier system of Panchayati Raj with panchayats at the village, block and district levels.
- Zila Parishad should be the pivot of the Panchayati Raj system. It should act as the planning and development agency in the district.
- The Panchayati Raj bodies should have a fixed tenure of five years.
- The maximum period of super session of a body should be six months.
- A planning and co-ordination committee should be set-up at the state level under the chairmanship of the minister for planning. The presidents of Zila Parishads should be its members.
- A detailed list of subjects for Panchayati Raj should be prepared and incorporated in the Constitution.
- Reservation of seats in all the three-tiers should be on the basis of population. There should also be reservation for women.
- A state finance commission should be set-up in each state. It would lay down the criteria and guidelines for the devolution of finances to the Panchayati Raj institutions.
- The district collector should be the chief executive officer of the Zila Parishad.

Gadgil Committee

The Committee on Policy and Programmes was constituted in 1988 by the Congress party under the chairmanship of V.N. Gadgil. This committee was asked to consider the question of "how best Panchayati Raj institutions could be made effective". In this context, the committee made the following recommendations:

- A constitutional status should be bestowed on the Panchayati Raj institutions.
- A three-tier system of Panchayati Raj with panchayats at the village, block and district levels.
- The term of Panchayati Raj institutions should be fixed at five years.
- The members of the Panchayats at all the three levels should be directly elected.
- Reservation for SCs, STs and women.
- The Panchayati Raj bodies should have the responsibility of preparation and implementation of plans for socio-economic development. For this purpose, a list of subjects should be specified in the constitution.
- The Panchayat Raj bodies should be empowered to levy, collect and appropriate taxes and duties.
- Establishment of a State Finance Commission for the allocation of finances to the Panchayats.
- Establishment of a State Election Commission for the conduction of elections to the panchayats.

The above recommendations of the Gadgil Committee became the basis for drafting an amendment bill aimed at conferring the constitutional status and protection to the Panchayati Raj institutions.

73rd CONSTITUTIONAL AMENDMENT

The Rajiv Gandhi Government introduced the 64th Constitutional Amendment Bill in the Lok Sabha in July 1989 to constitutionalise Panchayati raj institutions and make them more powerful and broad based. Although, the Lok Sabha passed the bill in August 1989, it was not approved by the Rajya Sabha. The bill was vehemently opposed by the Opposition on the ground that it sought to strengthen centralisation in the federal system.

The National Front Government, soon after assuming office in November 1989 under the Prime Ministership of V P Singh, announced that it would take steps to strengthen the Panchayati raj institutions. In June 1990, a two-day conference of the state chief ministers under the chairmanship of V P Singh was held to discuss the issues relating to the strengthening of the Panchayati raj bodies. The conference approved the proposals for the introduction of a fresh constitutional amendment bill. Consequently, a constitutional amendment bill was introduced in the Lok Sabha in September 1990. However, the fall of the government resulted in the lapse of the bill.

The Congress Government under the prime ministership of P V Narasimha Rao once again considered the matter of the constitutionalisation of Panchayati raj bodies. It drastically modified the proposals in this regard to delete the controversial aspects and introduced a constitutional amendment bill in the Lok Sabha in September, 1991. This bill finally emerged as the 73rd Constitutional Amendment Act, 1992 and came into force on 24 April, 1993

73RD AMENDMENT ACT OF 1992

This has added a new Part-IX to the Constitution of India. This part is entitled as 'The Panchayats' and consists of provisions from Articles 243 to 243 O. In addition, the act has also added a new Eleventh Schedule to the Constitution. This schedule contains 29 functional items of the panchayats. It deals with Article 243-G.

The act has given a practical shape to Article 40 of the Constitution which says that, "The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government." This article forms a part of the Directive Principles of State Policy. **The act gives a constitutional status to the Panchayati raj institutions**.

The salient features of the act are:

The act provides for a Gram Sabha as the foundation of the Panchayati raj system. It is a body consisting of persons registered in the electoral rolls of a village comprised within the area of Panchayat at the village level. Thus, it is a village assembly consisting of all the registered voters in the area of a panchayat. It may exercise such powers and perform such functions at the village level as the legislature of a state determines.

The act provides for a three-tier system of Panchayati raj in every state, that is, panchayats at the village, intermediate, and district levels3. Thus, the act brings about uniformity in the structure of Panchayati raj throughout the country. However, a state having a population not exceeding 20 lakh may not constitute panchayats at the intermediate level.

All the members of panchayats at the village, intermediate and district levels shall be elected directly by the people. Further, the chairperson of panchayats at the intermediate and district levels shall be elected indirectly—by and from amongst the elected members thereof. However, the chairperson of a panchayat at the village level shall be elected in such manner as the state legislature determines.

The act provides for the reservation of seats for scheduled castes and scheduled tribes in every panchayat (i.e., at all the three levels) in proportion of their population to the total population in the panchayat area. Further, the state legislature shall provide for the reservation of offices of chairperson in the panchayat at the village or any other level for the SCs and STs.

The act 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 women belonging the SCs and STs). Further, not less than one-third of the total number of offices of chairpersons in the panchayats at each level shall be reserved for women.

The act also authorises the legislature of a state to make any provision for reservation of seats in any panchayat or offices of chairperson in the panchayat at any level in favour of backward classes.

The act provides for a five-year term of office to the panchayat at every level. However, it can be dissolved before the completion of its term. Further, fresh elections to constitute a panchayat shall be completed (a) before the expiry of its duration of five years; or (b) in case of dissolution, before the expiry of a period of six months from the date of its dissolution.

But, where the remainder of the period (for which the dissolved panchayat would have continued) is less than six months, it shall not be necessary to hold any election for constituting the new panchayat for such period. Moreover, a panchayat constituted upon the dissolution of a panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved panchayat would have continued had it not been so dissolved. In other words, 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.

A person shall be disqualified for being chosen as or for being a member of panchayat if he is so disqualified, (a) under any law for the time being in force for the purpose of elections to the legislature of the state concerned, or (b) under any law made by the state legislature. However, no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years. Further, all questions of disqualifications shall be referred to such authority as the state legislature determines.

The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the panchayats shall be vested in the state election commission. It consists of a state election commissioner to be appointed by the governor. His conditions of service and tenure of office shall also be determined by the governor. He shall not be removed from the office except in the manner and on the grounds prescribed for the removal of a judge of the state high court.

His conditions of service shall not be varied to his disadvantage after his appointment. The state legislature may make provision with respect to all matters relating to elections to the panchayats.

The state legislature may endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such a scheme may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level with respect to (a) the preparation of plans for economic development and social justice; (b) the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the 29 matters listed in the Eleventh Schedule.

The state legislature may (a) authorise a panchayat to levy, collect and appropriate taxes, duties, tolls and fees; (b) assign to a panchayat taxes, duties, tolls and fees levied and collected by the state government; (c) provide for making grants-in-aid to the panchayats from the consolidated fund of the state; and (d) provide for constitution of funds for crediting all moneys of the panchayats.

The governor of a state shall, after every five years, constitute a finance commission to review the financial position of the panchayats. It shall make the following recommendations to the Governor:

1. The principles that should govern:

- The distribution between the state and the panchayats of the net proceeds of the taxes, duties, tolls and fees levied by the state.
- The determination of taxes, duties, tolls and fees that may be assigned to the panchayats.
- The grants-in-aid to the panchayats from the consolidated fund of the state.

2. The measures needed to improve the financial position of the panchayats.

3. Any other matter referred to it by the governor in the interests of sound finance of the panchayats.

The state legislature may provide for the composition of the commission, the required qualifications of its members and the manner of their selection. The governor shall place the recommendations of the commission along with the action taken report before the state legislature. The Central Finance Commission shall also suggest the measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats in the states (on the basis of the recommendations made by the finance commission of the state).

Audit of Accounts

The state legislature may make provisions with respect to the maintenance of accounts by the panchayats and the auditing of such accounts.

Application to Union Territories

The president of India may direct that the provisions of this act shall apply to any union territory subject to such exceptions and modifications as he may specify.

Exempted States and Areas

The act does not apply to the states of Jammu and Kashmir, Nagaland, Meghalaya and Mizoram and certain other areas. These areas include, (a) the scheduled areas and the tribal areas in the states; (b) the hill area of Manipur for which a district council exists; and (c) Darjeeling district of West Bengal for which Darjeeling Gorkha Hill Council exists.

However, the Parliament may extend the provisions of this Part to the scheduled areas and tribal areas subject to such exceptions and modifications as it may specify.

Continuance of Existing Laws and Panchayats

All the state laws relating to panchayats shall continue to be in force until the expiry of one year from the commencement of this act. In other words, the states have to adopt the new Panchayati raj system based on this act within the maximum period of one year from 24 April, 1993, which was the date of the commencement of this act. However, all the panchayats existing immediately before the commencement of act shall continue till the expiry of their term, unless dissolved by the state legislature sooner. Consequently, majority of states passed the Panchayati raj acts in 1993 and 1994 to adopt the new system in accordance with the 73rd Constitutional Amendment Act of 1992.

Bar to Interference by Courts in Electoral Matters

The act bars the interference by courts in the electoral matters of panchayats. It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court. It further lays down that no election to any panchayat is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

Eleventh Schedule

It contains the following 29 functional items placed within the purview of panchayats:

- Agriculture, including agricultural extension
- Land improvement, implementation of land reforms, land consolidation and soil conservation
- Minor irrigation, water management and watershed development
- Animal husbandry, dairying and poultry
- Fisheries
- Social forestry and farm forestry
- Minor forest produce
- Small-scale industries, including food processing industries
- Khadi, village and cottage industries
- Rural housing
- Drinking water
- Fuel and fodder
- Roads, culverts, bridges, ferries, waterways and other means of communication
- Rural electrification, including distribution of electricity
- Non-conventional energy sources
- Poverty alleviation programme
- Education, including primary and secondary schools
- Technical training and vocational education
- Adult and non-formal education
- Libraries
- Cultural activities
- Markets and fairs
- Health and sanitation including hospitals, primary health centres and dispensaries
- Family welfare
- Women and child development
- Social welfare, including welfare of the handicapped and mentally retarded
- Welfare of the weaker sections, and in particular, of the scheduled castes and the scheduled tribes
- Public distribution system
- Maintenance of community assets.

COMPULSORY AND VOLUNTARY PROVISIONS

Now, we will identify separately the compulsory (obligatory or mandatory) and voluntary (discretionary or optional) provisions (features) of the 73rd Constitutional Amendment Act (1992) or the Part IX of the Constitution:

A. Compulsory Provisions

- Organisation of Gram Sabha in a village or group of villages.
- Establishment of panchayats at the village, intermediate and district levels.
- Direct elections to all seats in panchayats at the village, intermediate and district levels.
- Indirect elections to the post of chairperson of panchayats at the intermediate and district levels.
- 21 years to be the minimum age for contesting elections to panchayats.
- Reservation of seats (both members and chairpersons) for SCs and STs in panchayats at all the three levels.
- Reservation of one-third seats (both members and chairpersons) for women in panchayats at all the three levels.
- 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.
- Establishment of a State Election Commission for conducting elections to the panchayats.
- Constitution of a State Finance Commission after every five years to review the financial position of the panchayats.

B. Voluntary Provisions

- Giving representation to members of the Parliament (both the Houses) and the state legislature (both the Houses) in the panchayats at different levels falling within their constituencies.
- Providing reservation of seats (both members and chairpersons) for backward classes in panchayats at any level.
- Granting powers and authority to the panchayats to enable them to function as institutions of self-government (in brief, making them autonomous bodies).
- Devolution of powers and responsibilities upon panchayats to prepare plans for economic development and social justice; and to perform some or all of the 29 functions listed in the Eleventh Schedule of the Constitution.
- Granting financial powers to the panchayats, that is, authorizing them to levy, collect and appropriate taxes, duties, tolls and fees.

PESA Act

The provisions of Part IX of the constitution relating to the Panchayats are not applicable to the Fifth Schedule areas. However, the Parliament may extend these provisions to such areas, subject to such exceptions and modifications as it may specify. Under this provision, the Parliament has enacted the "Provisions of the Panchayats (Extension to the Scheduled Areas) Act", 1996, popularly known as the PESA Act or the Extension Act.

At present ten states have Fifth Schedule Areas. These are: Andhra Pradesh, Telangana, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan. All the ten states have enacted requisite compliance legislations by amending the respective Panchayati Raj Acts.

The objectives of the PESA Act are as follows

- To extend the provisions of Part IX of the Constitution relating to the panchayats to the scheduled areas with certain modifications
- To provide self-rule for the bulk of the tribal population
- To have village governance with participatory democracy and to make the gram sabha a nucleus of all activities
- To evolve a suitable administrative framework consistent with traditional practices
- To safeguard and to preserve the traditions and customs of tribal communities
- To empower panchayats at the appropriate levels with specific powers conducive to tribal requirements
- To prevent panchayats at the higher level from assuming the powers and authority of panchayats at the lower level of the gram sabha

The features (or the provisions) of the PESA Act are as follows:

1. A state legislation on the Panchayats in the Scheduled Areas shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.

2. A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.

3. Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.

4. Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.

5. Every Gram Sabha shall—

- approve of the plans, programmes and projects for social and economic development before they are taken up for implementation by the Panchayat at the village level; and
- be responsible for the identification of beneficiaries under the poverty alleviation and other programmes.

6. Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds for the above plans, programmes and projects.

7. The reservation of seats in the Scheduled Areas in every Panchayat shall be in proportion to the population of the communities for whom reservation is sought to be given under Part IX of the Constitution. However, the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats. Further, all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes.

8. The state government may nominate such Scheduled Tribes which have no representation in the Panchayat at the intermediate level or the Panchayat at the district level. But such nomination shall not exceed one tenth of the total members to be elected in that Panchayat.

9. The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas. However, the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the state level.

10. Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level.

11. The recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be mandatory for grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas.

12. The prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be mandatory for grant of concession for the exploitation of minor minerals by auction.

13. While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with –

- The power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant
- The ownership of minor forest produce
- The power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe
- The power to manage village markets
- The power to exercise control over money lending to the Scheduled Tribes
- The power to exercise control over institutions and functionaries in all social sectors
- The power to control local plans and resources for such plans including tribal sub-plans

14. The State Legislations shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha.

15. The State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.

16. Any provision of any law (relating to Panchayats in the Scheduled Areas) which is inconsistent with the provisions of this Act shall cease to be in force at the expiry of one year from the date on which this Act receives the assent of the President. However, all the Panchayats existing immediately before such date shall continue till the expiry of their term, unless dissolved by the State Legislature sooner.

FINANCES OF PANCHAYATI RAJ

The Second Administrative Reforms Commission of India (2005-2009) has summarized the sources of revenue of the Panchayati Raj Institutions (PRIs) and their financial problems in the following way

1. A major portion of Part IX of the Constitution deals with structural empowerment of the PRIs but the real strength in terms of both autonomy and efficiency of these institutions is dependent on their financial position (including their capacity to generate own resources). In general, Panchayats in our country receive funds in the following ways:

- Grants from the Union Government based on the recommendations of the Central Finance Commission as per Article 280 of the Constitution.

- Devolution from the State Government based on the recommendations of the State Finance Commission as per Article 243-I.
- Loans / grants from the State Government.
- Programme-specific allocation under Centrally Sponsored Schemes and Additional Central Assistance.
- Internal Resource Generation (tax and non-tax).

2. Across the country, States have not given adequate attention to fiscal empowerment of the Panchayats. The Panchayats own resources are meager. Kerala, Karnataka and Tamil Nadu are the states which are considered to be progressive in PRIs empowerment but even there, the Panchayats are heavily dependent on government grants. One can draw the following broad conclusions:

- Internal resource generation at the Panchayat level is weak. This is partly due to a thin tax domain and partly due to Panchayats own reluctance in collecting revenue.
- Panchayats are heavily dependent on grants from Union and State Governments.
- A major portion of the grants both from Union as well as the State Governments is scheme specific. Panchayats have limited discretion and flexibility in incurring expenditure.
- In view of their own tight fiscal position, State Governments are not keen to devolve funds to Panchayats.
- In most of the critical Eleventh Schedule matters like primary education, healthcare, water supply, sanitation and minor irrigation even now, it is the State Government which is directly responsible for implementation of these programmes and hence expenditure.
- Overall, a situation has been created where Panchayats have responsibility but grossly inadequate resources.

3. Though, in absolute terms, the quantum of funds the Union/State Government transfers to a Panchayat forms the major component of its receipt, the PRI's own resource generation is the soul behind its financial standing. It is not only a question of resources; it is the existence of a local taxation system which ensures people's involvement in the affairs of an elected body. It also makes the institution accountable to its citizens.

4. In terms of own resource collection, the Gram Panchayats are comparatively in a better position because they have a tax domain of their own, while the other two tiers are dependent only on tolls, fees and nontax revenue for generating internal resources.

5. State Panchayati Raj Acts have given most of the taxation powers to Village Panchayats. The revenue domain of the intermediate and District Panchayats (both tax as well as non-tax) has been kept much smaller and remains confined to secondary areas like ferry services, markets, water and conservancy services, registration of vehicles, cess on stamp duty and a few others.

6. A study of various State Legislations indicates that a number of taxes, duties, tolls and fees come under the jurisdiction of the Village Panchayats. These interalia include octroi, property/house tax, profession tax, land tax/cess, taxes/tolls on vehicles, entertainment tax/fees, license fees, tax on non-agriculture land, fee on registration of cattle, sanitation/drainage/conservancy tax, water rate/ tax, lighting rate/tax, education cess and tax on fairs and festivals.

REASONS FOR INEFFICIENCY

Even after conferring the constitutional status and protection through the 73rd Amendment Act (1992), the performance of the Panchayati Raj Institutions (PRIs) has not been satisfactory and not upto the expected level. The various reasons for this sub-optimal performance are as follows

- Lack of adequate devolution: Many States have not taken adequate steps to devolve 3Fs (i.e., functions, funds and functionaries) to the PRIs to enable them to discharge their constitutionally stipulated function. Further, it is imperative that the PRIs have resources to match the responsibilities entrusted to them. While SFCs (state finance commissions) have submitted their recommendations, not many few States have implemented these or taken steps to ensure the fiscal viability of the PRIs.

- Excessive control by bureaucracy: In some States, the Gram Panchayats have been placed in a position of subordination. Hence, the Gram Panchayat Sarpanches have to spend extraordinary amount of time visiting Block Offices for funds and/or technical approval. These interactions with the Block staff office distort the role of Sarpanches as elected representatives.

- Tied nature of funds: This has two implications. The activities stated under a certain scheme are not always appropriate for all parts of the district. This results in unsuitable activities being promoted or an under spending of the funds

- Overwhelming dependency on government funding: A review of money received and own source funds shows the overwhelming dependence of Panchayats on government funding. When Panchayats do not raise resources and instead receive funds from outside, people are less likely to request a social audit.

- Reluctance to use fiscal powers: An important power devolved to GP (Gram Panchayat) is the right to levy tax on property, business, markets, fairs and also for services provided, like street lighting or public toilets, etc. Very few Panchayats use their fiscal power to levy and collect taxes. The argument pushed by Panchayat heads is that it is difficult to levy tax on your own constituency, especially when you live in the community.

- Status of the Gram Sabha: Empowering the Gram Sabhas could have been a powerful weapon for transparency, accountability and for involvement of the marginalized sections. However, a number of the State Acts have not spelt the powers of Gram Sabhas nor have any procedures been laid down for the functioning of these bodies or penalties for the officials.

- Creation of Parallel Bodies: Often, Parallel Bodies (PBs) are created for supposedly speedy implementation and greater accountability. However, there is little evidence to show that such PBs have avoided the evils including that of partisan politics, sharing of spoils, corruption and elite capture. Missions (in particular) often bypassing mainstream programmes, create disconnect, duality, and alienation between the existing and the new structures and functions. PBs usurp the legitimate space of PRIs and demoralize the PRIs by virtue of their superior resource endowments.

- Poor Infrastructure: A large number of Gram Panchayats in the country do not have even full time Secretary. Around 25 percent of the Gram Panchayats do not have basic office buildings. The database for planning, monitoring etc., are lacking in most of the cases.

A large number of elected representatives of PRIs are semi-literate or literate and know little about their roles & responsibilities, programmes, procedures, systems. Often for want of good, relevant and periodic training, they are not able to perform their functions properly. Although all the District and Intermediate Panchayats are connected with computers, only around 20% Gram Panchayats reported to be having computing facility. In some States, Village Panchayats do not have any computing facility.

MUNICIPALITIES

The system of urban government was constitutionalised through the 74th Constitutional Amendment Act of 1992. At the Central level, the subject of 'urban local government' is dealt with by the following three ministries:

- Ministry of Urban Development, created as a separate ministry in 1985
- Ministry of Defence in the case of cantonment boards
- Ministry of Home Affairs in the case of Union Territories

In August 1989, the Rajiv Gandhi government introduced the 65th Constitutional Amendment Bill (i.e., Nagarpalika Bill) in the Lok Sabha. The bill aimed at strengthening and revamping the municipal bodies by conferring a constitutional status on them. Although the bill was passed in the Lok Sabha, it was defeated in the Rajya Sabha in October 1989 and hence, lapsed. The National Front Government under V P Singh introduced the revised Nagarpalika Bill in the Lok Sabha again in September 1990. However, the bill was not passed and finally lapsed due to the dissolution of the Lok Sabha. P V Narasimha Rao's Government also introduced the modified Municipalities Bill in the Lok Sabha in September 1991. It finally emerged as the 74th Constitutional Amendment Act of 1992 and came into force on 1 June 1993

74th CONSTITUTIONAL AMENDMENT

This Act has added a new Part IX-A to the Constitution of India. This part is entitled as 'The Municipalities' and consists of provisions from Articles 243-P to 243-ZG. In addition, the act has also added a new Twelfth Schedule to the Constitution. This schedule contains eighteen functional items of municipalities. It deals with Article 243-W.

The act gave constitutional status to the municipalities. It has brought them under the purview of justiciable part of the Constitution. In other words, state governments are under constitutional obligation to adopt the new system of municipalities in accordance with the provisions of the act. The act aims at revitalising and strengthening the urban governments so that they function effectively as units of local government.

The act provides for the constitution of the following three types of municipalities in every state.

1. A **nagar panchayat** (by whatever name called) for a transitional area, that is, an area in transition from a rural area to an urban area.
2. A **municipal council** for a smaller urban area.
3. A **municipal corporation** for a larger urban area

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. The state legislature may provide the manner of election of the chairperson of a municipality. It may also provide for the representation of the following persons in a municipality.

- Persons having special knowledge or experience in municipal administration without the right to vote in the meetings of municipality.
- The members of the Lok Sabha and the state legislative assembly representing constituencies that comprise wholly or partly the municipal area.
- The members of the Rajya Sabha and the state legislative council registered as electors within the municipal area.
- The chairpersons of committees (other than wards committees).

Ward Committees

There shall be constituted a wards committee, consisting of one or more wards, within the territorial area of a municipality having population of three lakh or more. The state legislature may make provision with respect to the composition and the territorial area of a wards committee and the manner in which the seats in a wards committee shall be filled. It may also make any provision for the constitution of committees in addition to the wards committees.

Reservation of Seats

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. Further, 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).

The state legislature may provide for the manner of reservation of offices of chairpersons in the municipalities for SCs, STs and women. It may also make any provision for the reservation of seats in any municipality or offices of chairpersons in municipalities in favour of backward classes.

Duration of Municipalities

The act provides for a five-year term of office for every municipality. However, it can be dissolved before the completion of its term. Further, the fresh elections to constitute a municipality shall be completed (a) before the expiry of its duration of five years; or (b) in case of dissolution, before the expiry of a period of six months from the date of its dissolution. But, where the remainder of the period (for which the dissolved municipality would have continued) is less than six months, it shall not be necessary to hold any election for constituting the new municipality for such period.

Moreover, a municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued had it not been so dissolved. In other words, 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.

Disqualifications

A person shall be disqualified for being chosen as or for being a member of a municipality if he is so disqualified (a) under any law for the time being in force for the purposes of elections to the legislature of the state concerned; or (b) under any law made by the state legislature. However, no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years. Further, all questions of disqualifications shall be referred to such authority as the state legislature determines.

State Election Commission

The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the municipalities shall be vested in the state election commission. The state legislature may make provision with respect to all matters relating to elections to the municipalities.

Powers and Functions

The state legislature may endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such a scheme may contain provisions for the devolution of powers and responsibilities upon municipalities at the appropriate level with respect to (a) the preparation of plans for economic development and social justice; (b) the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the eighteen matters listed in the Twelfth Schedule.

Finances

The state legislature may (a) authorise a municipality to levy, collect and appropriate taxes, duties, tolls and fees; (b) assign to a municipality taxes, duties, tolls and fees levied and collected by state government; (c) provide for making grants-in-aid to the municipalities from the consolidated fund of the state; and (d) provide for constitution of funds for crediting all moneys of the municipalities.

Finance Commission

The finance commission (which is constituted for the panchayats) shall also, for every five years, review the financial position of municipalities and make recommendation to the governor as to:

1. The principles that should govern:

- The distribution between the state and the municipalities, the net proceeds of the taxes, duties, tolls and fees levied by the state.
- The determination of the taxes, duties, tolls and fees that may be assigned to the municipalities.
- The grants-in-aid to the municipalities from the consolidated fund of the state.

2. The measures needed to improve the financial position of the municipalities.

3. Any other matter referred to it by the governor in the interests of sound finance of municipalities.

The governor shall place the recommendations of the commission along with the action taken report before the state legislature. The central finance commission shall also suggest the measures needed to augment the consolidated fund of a state to supplement the resources of the municipalities in the state (on the basis of the recommendations made by the finance commission of the state).

Audit of Accounts

The state legislature may make provisions with respect to the maintenance of accounts by municipalities and the auditing of such accounts.

Application to Union Territories

The president of India may direct that the provisions of this act shall apply to any union territory subject to such exceptions and modifications as he may specify.

Exempted Areas

The act does not apply to the scheduled areas and tribal areas in the states4. It shall also not affect the functions and powers of the Darjeeling Gorkha Hill Council of the West Bengal.

District Planning Committee

Every state shall constitute at the district level, a district planning committee to consolidate the plans prepared by panchayats and municipalities in the district, and to prepare a draft development plan for the district as a whole. The state legislature may make provisions with respect to the following:

- The composition of such committees;
- The manner of election of members of such committees;
- The functions of such committees in relation to district planning; and
- The manner of the election of the chairpersons of such committees.

The act lays down that four-fifths of the members of a district planning committee should be elected by the elected members of the district panchayat and municipalities in the district from amongst themselves. The representation of these members in the committee should be in proportion to the ratio between the rural and urban populations in the district. The chairperson of such committee shall forward the development plan to the state government. In preparing the draft development plan, a district planning committee shall

(a) Have regard to—

- matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;
- the extent and type of available resources whether financial or otherwise; and

(b) Consult such institutions and organisations as the Governor may specify.

Metropolitan Planning Committee

Every metropolitan area shall have a metropolitan planning committee to prepare a draft development plan. The state legislature may make provisions with respect to the following:

1. The composition of such committees;

2. The manner of election of members of such committees;

3. The representation in such committees of the Central government, state government and other organisations;

4. The functions of such committees in relation to planning and coordination for the metropolitan area; and

5. The manner of election of chairpersons of such committees.

The act lays down that two-thirds of the members of a metropolitan planning committee should be elected by the elected members of the municipalities and chairpersons of the panchayats in the metropolitan area from amongst themselves. The representation of these members in the committee should be in proportion to the ratio between the population of the municipalities and the panchayats in that metropolitan area.

The chairpersons of such committees shall forward the development plan to the state government. In preparing the draft development plan, a metropolitan planning committee shall

(a) Have regard to—

- the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;
- matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;
- the overall objectives and priorities set by the Government of India and the government of the state;
- the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise; and

(b) Consult such institutions and organisations as the Governor may specify.

Continuance of Existing Laws and Municipalities

All the state laws relating to municipalities shall continue to be in force until the expiry of one year from the commencement of this act. In other words, the states have to adopt the new system of municipalities based on this act within the maximum period of one year from 1 June, 1993, which is the date of commencement of this act. However, all municipalities existing immediately before the commencement of this act shall continue till the expiry of their term, unless dissolved by the state legislature sooner.

Bar to Interference by Courts in Electoral Matters

The act bars the interference by courts in the electoral matters of municipalities. It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court. It further lays down that no election to any municipality is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

Twelfth Schedule

It contains the following 18 functional items placed within the purview of municipalities:

- Urban planning including town planning;
- Regulation of land use and construction of buildings;
- Planning for economic and social development;
- Roads and bridges;
- Water supply for domestic, industrial and commercial purposes;
- Public health, sanitation, conservancy and solid waste management;
- Fire services;
- Urban forestry, protection of the environment and promotion of ecological aspects;
- Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded;
- Slum improvement and upgradation;
- Urban poverty alleviation;
- Provision of urban amenities and facilities such as parks, gardens, playgrounds;
- Promotion of cultural, educational and aesthetic aspects;
- Burials and burial grounds, cremations and cremation grounds and electric crematoriums;
- Cattle ponds, prevention of cruelty to animals;
- Vital statistics including registration of births and deaths;
- Public amenities including street lighting, parking lots, bus stops and public conveniences; and
- Regulation of slaughter houses and tanneries.

TYPES OF URBAN GOVERNMENTS

The following eight types of urban local bodies are created in India for the administration of urban areas:

Municipal Corporation

Municipal corporations are created for the administration of big cities like Delhi, Mumbai, Kolkata, Hyderabad, Bangalore and others. They are established in the states by the acts of the concerned state legislatures, and in the union territories by the acts of the Parliament of India. There may be one common act for all the municipal corporations in a state or a separate act for each municipal corporation. A municipal corporation has three authorities, namely, the council, the standing committees and the commissioner.

The Council is the deliberative and legislative wing of the corporation. It consists of the Councillors directly elected by the people, as well as a few nominated persons having knowledge or experience of municipal administration. In brief, the composition of the Council including the reservation of seats for SCs, STs and women is governed by the 74th Constitutional Amendment Act.

The Council is headed by a Mayor. He is assisted by a Deputy Mayor. He is elected in a majority of the states for a one-year renewable term. He is basically an ornamental figure and a formal head of the corporation. His main function is to preside over the meetings of the Council. The standing committees are created to facilitate the working of the council, which is too large in size. They deal with public works, education, health, taxation, finance and so on. They take decisions in their fields. The municipal commissioner is responsible for the implementation of the decisions taken by the council and its standing committees. Thus, he is the chief executive authority of the corporation. He is appointed by the state government and is generally a member of the IAS.

Municipality

The municipalities are established for the administration of towns and smaller cities. Like the corporations, they are also set up in the states by the acts of the concerned state legislatures and in the union territory by the acts of the Parliament of India. They are also known by various other names like municipal council, municipal committee, municipal board, borough municipality, city municipality and others.

Like a municipal corporation, a municipality also has three authorities, namely, the council, the standing committees and the chief executive officer. The council is the deliberative and legislative wing of the municipality. It consists of the councillors directly elected by the people.

The council is headed by a president/chairman. He is assisted by a vice president/vice-chairman. He presides over the meetings of the council. Unlike the Mayor of a municipal corporation, he plays a significant role and is the pivot of the municipal administration. Apart from presiding over the meetings of the Council, he enjoys executive powers.

The standing committees are created to facilitate the working of the council. They deal with public works, taxation, health, finance and so on. The chief executive officer/chief municipal officer is responsible for day-to-day general administration of the municipality. He is appointed by the state government.

Notified Area Committee

A notified area committee is created for the administration of two types of areas—a fast developing town due to industrialisation and a town which does not yet fulfil all the conditions necessary for the constitution of a municipality, but which otherwise is considered important by the state government. Since it is established by a notification in the government gazette, it is called as notified area committee. Though it functions within the framework of the State Municipal Act, only those provisions of the act apply to it which are notified in the government gazette by which it is created. It may also be entrusted to exercise powers under any other act. Its powers are almost equivalent to those of a municipality. But unlike the

municipality, it is an entirely nominated body, that is, all the members of a notified area committee including the chairman are nominated by the state government. Thus, it is neither an elected body nor a statutory body.

Town Area Committee

A town area committee is set up for the administration of a small town. It is a semi-municipal authority and is entrusted with a limited number of civic functions like drainage, roads, street lighting, and conservancy. It is created by a separate act of a state legislature. Its composition, functions and other matters are governed by the act. It may be wholly elected or wholly nominated by the state government or partly elected and partly nominated.

Cantonment Board

A cantonment board is established for municipal administration for civilian population in the cantonment area. It is set up under the provisions of the Cantonments Act of 2006—a legislation enacted by the Central government. It works under the administrative control of the defence ministry of the Central government. Thus, unlike the above four types of urban local bodies, which are created and administered by the state government, a cantonment board is created as well as administered by the Central government. The Cantonments Act of 2006 was enacted to consolidate and amend the law relating to the administration of cantonments with a view to impart greater democratisation, improvement of their financial base to make provisions for developmental activities and for matters connected with them. This Act has repealed the Cantonments Act of 1924.

A cantonment board consists of partly elected and partly nominated members. The elected members hold office for a term of five years while the nominated members (i.e., ex-officio members) continue so long as they hold the office in that station. The military officer commanding the station is the ex-officio president of the board and presides over its meetings. The vice president of the board is elected by the elected members from amongst themselves for a term of five years. The Category I cantonment board consists of the following members:

- A military officer commanding the station
- An executive engineer in the cantonment
- A health officer in the cantonment
- A first class magistrate nominated by the district magistrate
- Three military officers nominated by the officer commanding the station
- Eight members elected by the people of the cantonment area
- Chief Executive Officer of the cantonment board

The functions performed by a cantonment board are similar to those of a municipality. These are statutorily categorised into obligatory functions and discretionary functions. The sources of income includes both, tax revenue and non-tax revenue.

The executive officer of the cantonment board is appointed by the president of India. He implements all the resolutions and decisions of the board and its committees. He belongs to the central cadre established for the purpose.

Township

This type of urban government is established by the large public enterprises to provide civic amenities to its staff and workers who live in the housing colonies built near the plant. The enterprise appoints a town administrator to look after the administration of the township. He is assisted by some engineers and other technical and non-technical staff. Thus, the township form of urban government has no elected members. In fact, it is an extension of the bureaucratic structure of the enterprises.

Port Trust

The port trusts are established in the port areas like Mumbai, Kolkata, Chennai and so on for two purposes: (a) to manage and protect the ports; and (b) to provide civic amenities. A port trust is created by an Act of Parliament. It consists of both elected and nominated members. Its chairman is an official. Its civic functions are more or less similar to those of a municipality.

Special Purpose Agency

In addition to these seven area-based urban bodies (or multipurpose agencies), the states have set up certain agencies to undertake designated activities or specific functions that 'legitimately' belong to the domain of municipal corporations or municipalities or other local urban governments. In other words, these are function-based and not area-based. They are known as 'single purpose', 'uni-purpose' or 'special purpose' agencies or 'functional local bodies'. Some such bodies are:

- Town improvement trusts.
- Urban development authorities.
- Water supply and sewerage boards.
- Housing boards.
- Pollution control boards.
- Electricity supply boards.
- City transport boards.

These functional local bodies are established as statutory bodies by an act of state legislature or as departments by an executive resolution. They function as autonomous bodies and deal with the functions allotted to them independently of the local urban governments, that is, municipal corporations or municipalities and so forth. Thus, they are not subordinate agencies of the local municipal bodies.

UNIT-XIV

[UNION TERRITORIES AND SPECIAL AREAS]

UNION TERRITORIES

Under Article 1 of the Constitution, the territory of India comprises three categories of territories: (a) territories of the states; (b) union territories; and (c) territories that may be acquired by the Government of India at any time. At present, there are twenty-nine states, seven union territories and no acquired territories.

The states are the members of the federal system in India and share a distribution of power with the Centre. The union territories, on the other hand, are those areas which are under the direct control and administration of the Central government. Hence, they are also known as 'centrally administered territories'. 'In this way, existence of these territories constitutes a conspicuous departure from federalism in India; the Government of India is plainly unitary in so far as the relationship between New Delhi and these Central enclaves is concerned'

CREATION OF UNION TERRITORIES

During the British Rule, certain areas were constituted as 'scheduled districts' in 1874. Later, they came to be known as **'chief commissioner's provinces'**. After independence, they were placed in the category of Part 'C' and Part 'D' states. In 1956, they were constituted as the 'union territories' by the 7th Constitutional Amendment Act (1956) and the States Reorganisation Act (1956). Gradually, some of these union territories have been elevated to statehood. Thus, Himachal Pradesh, Manipur, Tripura, Mizoram, Arunachal

Pradesh and Goa, which are states today, were formerly union territories. On the other hand, the territories that were acquired from the Portuguese (Goa, Daman and Diu, and Dadra and Nagar Haveli) and the French (Puducherry) were constituted as the union territories.

At present, there are seven Union Territories. They are (along with the year of creation): (1) Andaman and Nicobar Islands—1956, (2) Delhi—1956, (3) Lakshadweep—1956, (4) Dadra and Nagar Haveli—1961, (5) Daman and Diu—1962, (6) Puducherry—1962, and (7) Chandigarh—1966. Till 1973, Lakshadweep was known by the name of Laccadive, Minicoy and Amindivi Islands. In 1992, Delhi was redesignated as the National Capital Territory of Delhi. Till 2006, Puducherry was known as Pondicherry. The union territories have been created for a variety of reasons. These are mentioned below

- Political and administrative consideration—Delhi and Chandigarh.
- Cultural distinctiveness—Puducherry, Dadra and Nagar Haveli, and Daman and Diu.
- Strategic importance—Andaman and Nicobar Islands and Lakshadweep.
- Special treatment and care of the backward and tribal people—Mizoram, Manipur, Tripura and Arunachal Pradesh which later became states.

ADMINISTRATION OF UTs

Articles 239 to 241 in Part VIII of the Constitution deal with the union territories. Even though all the union territories belong to one category, there is no uniformity in their administrative system.

Every union territory is administered by the President acting through an administrator appointed by him. An administrator of a union territory is an agent of the President and not head of state like a governor. The President can specify the designation of an administrator; it may be Lieutenant Governor or Chief

Commissioner or Administrator. At present, it is Lieutenant Governor in the case of Delhi, Puducherry and Andaman and Nicobar Islands and Administrator in the case of Chandigarh, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep. The President can also appoint the governor of a state as the administrator of an adjoining union territory. In that capacity, the governor is to act independently of his council of ministers.

The Union Territories of Puducherry (in 1963) and Delhi (in 1992) are provided with a legislative assembly and a council of ministers headed by a chief minister. The remaining five union territories do not have such popular political institutions. But, the establishment of such institutions in the union territories does not diminish the supreme control of the president and Parliament over them.

The Parliament can make laws on any subject of the three lists (including the State List) for the union territories. This power of Parliament also extends to Puducherry and Delhi, which have their own local legislatures. This means that, the legislative power of Parliament for the union territories on subjects of the State List remain unaffected even after establishing a local legislature for them. But, the legislative assembly of Puducherry can also make laws on any subject of the State List and the Concurrent List. Similarly, the legislative assembly of Delhi can make laws on any subject of the State List (except public order, police and land) and the Concurrent List.

The President can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, and Daman and Diu. In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved. A regulation made by the President has the same force and effect as an act of Parliament and can also repeal or amend any act of Parliament in relation to these union territories.

The Parliament can establish a high court for a union territory or put it under the jurisdiction of the high court of adjacent state. Delhi is the only union territory that has a high court of its own (since 1966). The Bombay High Court has got jurisdiction over two union territories—Dadra and Nagar Haveli, and Daman and Diu. Andaman and Nicobar Islands, Chandigarh, Lakshadweep and Puducherry are placed under the Calcutta, Punjab and Haryana, Kerala, and Madras High Courts respectively.

The Constitution does not contain any separate provisions for the administration of acquired territories. But, the constitutional provisions for the administration of union territories also apply to the acquired territories.

The Governor of Punjab is concurrently the Administrator of Chandigarh. The Administrator of Dadra and Nagar Haveli is concurrently the Administrator of Daman and Diu. Lakshadweep has a separate Administrator

SPECIAL PROVISIONS FOR DELHI

The 69th Constitutional Amendment Act of 1991 provided a special status to the Union Territory of Delhi, and redesignated it the National Capital Territory of Delhi and designated the administrator of Delhi as the lieutenant (lt.) governor. It created a legislative assembly and a council of ministers for Delhi. Previously, Delhi had a metropolitan council and an executive council.

The strength of the assembly is fixed at 70 members, directly elected by the people. The elections are conducted by the election commission of India. The assembly can make laws on all the matters of the State List and the Concurrent List except the three matters of the State List, that is, public order, police and land. But, the laws of Parliament prevail over those made by the Assembly.

The strength of the council of ministers is fixed at ten per cent of the total strength of the assembly, that is, seven—one chief minister and six other ministers. The chief minister is appointed by the President (not by the lt. governor). The other ministers are appointed by the president on the advice of the chief minister. The ministers hold office during the pleasure of the president. The council of ministers is collectively responsible to the assembly.

The council of ministers headed by the chief minister aid and advise the lt. governor in the exercise of his functions except in so far as he is required to act in his discretion. In the case of difference of opinion between the lt. governor and his ministers, the lt. governor is to refer the matter to the president for decision and act accordingly.

When a situation arises in which the administration of the territory cannot be carried on in accordance with the above provisions, the president can suspend their (above provisions) operation and make the necessary incidental or consequential provisions for administering the territory. In brief, in case of failure of constitutional machinery, the president can impose his rule in the territory. This can be done on the report of the lt. governor or otherwise. This provision resembles Article 356 which deals with the imposition of President's Rule in the states. The lt. governor is empowered to promulgate ordinances during recess of the assembly. An ordinance has the same force as an act of the assembly.

Every such ordinance must be approved by the assembly within six weeks from its reassembly. He can also withdraw an ordinance at any time. But, he cannot promulgate an ordinance when the assembly is dissolved or suspended. Further, no such ordinance can be promulgated or withdrawn without the prior permission of the President.

SCHEDULED AND TRIBAL AREAS

Article 244 in Part X of the Constitution envisages a special system of administration for certain areas designated as 'scheduled areas' and 'tribal areas'. The Fifth Schedule of the Constitution deals with the administration and control of scheduled areas and scheduled tribes in any state except the four states of Assam, Meghalaya, Tripura and Mizoram. The Sixth Schedule of the Constitution, on the other hand, deals with the administration of the tribal areas in the four northeastern states of Assam, Meghalaya, Tripura and Mizoram.

'The scheduled areas are treated differently from the other areas in the country because they are inhabited by 'aboriginals' who are socially and economically rather backward, and special efforts need to be made to improve their condition. Therefore, the whole of the normal administrative machinery operating in a state is not extended to the scheduled areas and the Central government has somewhat greater responsibility for these areas'. The various features of administration contained in the Fifth Schedule are as follows:

- **Declaration of Scheduled Areas**: The president is empowered to declare an area to be a scheduled area. He can also increase or decrease its area, such redesignation on an area in consultation with the governor of the state concerned.
- **Executive Power of State and Centre**: The executive power of a state extends to the scheduled areas therein. But the governor has a special responsibility regarding such areas. He has to submit a report to the president regarding the administration of such areas, annually or whenever so required by the president. The executive power of the Centre extends to giving directions to the states regarding the administration of such areas.
- **Tribes Advisory Council**: Each state having scheduled areas has to establish a tribes advisory council to advise on welfare and advancement of the scheduled tribes. It is to consist of 20 members, three-fourths of whom are to be the representatives of the scheduled tribes in the state legislative assembly. A similar council can also be established in a state having scheduled tribes but not scheduled areas therein, if the president so directs.
- **Law applicable to Scheduled Areas**: The governor is empowered to direct that any particular act of Parliament or the state legislature does not apply to a scheduled area or apply with specified modifications and exceptions. He can also make regulations for the peace and good government of a scheduled area after consulting the tribes advisory council. Such regulations may prohibit or restrict the transfer of land by or among members of the scheduled tribes, regulate the allotment of land to members of the scheduled tribes and regulate the business of money lending in relation to the scheduled tribes. Also, a regulation may repeal or amend any act of Parliament or the state legislature, which is applicable to a scheduled area. But, all such regulations require the assent of the president.

The Constitution requires the president to appoint a commission to report on the administration of the scheduled areas and the welfare of the scheduled tribes in the states. He can appoint such a commission at any time but compulsorily after ten years of the commencement of the Constitution. Hence, a commission was appointed in 1960. It was headed by U N Dhebar and submitted its report in 1961. After four decades, the second commission was appointed in 2002 under the chairmanship of Dilip Singh Bhuria. It submitted its report in 2004.

The Constitution, under Sixth Schedule, contains special provisions for the administration of tribal areas in the four north-eastern states of Assam, Meghalaya, Tripura and Mizoram. The rationality behind the special arrangements in respect of only these four states lies in the following: "The tribes in Assam, Meghalaya, Tripura and Mizoram have not assimilated much the life and ways of the other people in these states.

These areas have hitherto been anthropological specimens. The tribal people in other parts of India have more or less adopted the culture of the majority of the people in whose midst they live. The tribes in Assam, Meghalaya, Tripura and Mizoram, on the other hand, still have their roots in their own culture, customs and civilization. These areas are, therefore, treated differently by the Constitution and sizeable amount of autonomy has been given to these people for self-government.

The various features of administration contained in the Sixth Schedule are as follows:

- The tribal areas in the four states of Assam, Meghalaya, Tripura and Mizoram have been constituted as autonomous districts. But, they do not fall outside the executive authority of the state concerned.
- The governor is empowered to organise and re-organise the autonomous districts. Thus, he can increase or decrease their areas or change their names or define their boundaries and so on.
- If there are different tribes in an autonomous district, the governor can divide the district into several autonomous regions.
- Each autonomous district has a district council consisting of 30 members, of whom four are nominated by the governor and the remaining 26 are elected on the basis of adult franchise. The elected members hold office for a term of five years (unless the council is dissolved earlier) and nominated members hold office during the pleasure of the governor. Each autonomous region also has a separate regional council.
- The district and regional councils administer the areas under their jurisdiction. They can make laws on certain specified matters like land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs and so on. But all such laws require the assent of the governor.
- The district and regional councils within their territorial jurisdictions can constitute village councils or courts for trial of suits and cases between the tribes. They hear appeals from them. The jurisdiction of high court over these suits and cases is specified by the governor.
- The district council can establish, construct or manage primary schools, dispensaries, markets, ferries, fisheries, roads and so on in the district. It can also make regulations for the control of money lending and trading by non-tribals. But, such regulations require the assent of the governor.
- The district and regional councils are empowered to assess and collect land revenue and to impose certain specified taxes.
- The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions.
- The governor can appoint a commission to examine and report on any matter relating to the administration of the autonomous districts or regions. He may dissolve a district or regional council on the recommendation of the commission.

UNIT-XV

[INTER-STATE RELATIONS]

INTER-STATE WATER DISPUTES

Article 262 of the Constitution provides for the adjudication of inter-state water disputes. It makes two provisions:

- Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and river valley.
- Parliament may also provide that neither the Supreme Court nor any other court is to exercise jurisdiction in respect of any such dispute or complaint.

Under this provision, the Parliament has enacted two laws [the River Boards Act (1956) and the Inter-State Water Disputes Act (1956)]. The River Boards Act provides for the establishment of river boards for the regulation and development of Inter-state River and river valleys. A river board is established by the Central government on the request of the state governments concerned to advise them.

The Inter-State Water Disputes Act empowers the Central government to set up an ad hoc tribunal for the adjudication of a dispute between two or more states in relation to the waters of an inter-state river or river valley. The decision of the tribunal would be final and binding on the parties to the dispute. Neither the Supreme Court nor any other court is to have jurisdiction in respect of any water dispute which may be referred to such a tribunal under this Act.

INTER-STATE COUNCILS

Article 263 contemplates the establishment of an Inter-State Council to effect coordination between the states and between Centre and states. Thus, the President can establish such a council if at any time it appears to him that the public interest would be served by its establishment. He can define the nature of duties to be performed by such a council and its organisation and procedure.

Even though the president is empowered to define the duties of an interstate council, Article 263 specifies the duties that can be assigned to it in the following manner:

- Enquiring into and advising upon disputes which may arise between states;
- Investigating and discussing subjects in which the states or the Centre and the states have a common interest; and
- Making recommendations upon any such subject and particularly for the better co-ordination of policy and action on it.

"The council's function to enquire and advice upon inter-state disputes is complementary to the Supreme Court's jurisdiction under Article 131 to decide a legal controversy between the governments. The Council can deal with any controversy whether legal or non-legal, but its function is advisory unlike that of the court which gives a binding decision."

Under the above provisions of Article 263, the president has established the following councils to make recommendations for the better coordination of policy and action in the related subjects:

- Central Council of Health.
- Central Council of Local Government and Urban Development.
- Four Regional Councils for Sales Tax for the Northern, Eastern, Western and Southern Zones.

The Central Council of Indian Medicine and the Central Council of Homoeopathy were set up under the Acts of Parliament. The Sarkaria Commission on Centre-State Relations (1983–87) made a strong case for the establishment of a permanent Inter-State Council under Article 263 of the Constitution. It recommended that in order to differentiate the Inter-State Council from other bodies established under the same Article 263, it must be called as the Inter-Governmental Council. The Commission recommended that the Council should be charged with the duties laid down in clauses (b) and (c) of Article 263.

In pursuance of the above recommendations of the Sarkaria Commission, the Janata Dal Government headed by V. P. Singh established the Inter- State Council in 1990. It consists of the following members:

- Prime minister as the Chairman
- Chief ministers of all the states
- Chief ministers of union territories having legislative assemblies
- Administrators of union territories not having legislative assemblies
- Governors of States under President's rule
- Six Central cabinet ministers, including the home minister, to be nominated by the Prime Minister.

Five Ministers of Cabinet rank / Minister of State (independent charge) nominated by the Chairman of the Council (i.e., Prime Minister) are permanent invitees to the Council. The council is a recommendatory body on issues relating to inter-state, Centre–state and Centre–union territories relations. It aims at promoting coordination between them by examining, discussing and deliberating on such issues. Its duties, in detail, are as follows:

- investigating and discussing such subjects in which the states or the centre have a common interest;
- making recommendations upon any such subject for the better coordination of policy and action on it; and
- deliberating upon such other matters of general interest to the states as may be referred to it by the chairman.

The Council may meet at least thrice in a year. Its meetings are held in camera and all questions are decided by consensus. There is also a Standing Committee of the Council. It was set up in 1996 for continuous consultation and processing of matters for the consideration of the Council. It consists of the following members:

- Union Home Minister as the Chairman
- Five Union Cabinet Ministers
- Nine Chief Ministers

The Council is assisted by a secretariat called the Inter-State Council Secretariat. This secretariat was set-up in 1991 and is headed by a secretary to the Government of India. Since 2011, it is also functioning as the secretariat of the Zonal Councils.

INTER-STATE TRADE AND COMMERCE

Articles 301 to 307 in Part XIII of the Constitution deal with the trade, commerce and intercourse within the territory of India

Article 301 declares that trade, commerce and intercourse throughout the territory of India shall be free. The object of this provision is to break down the border barriers between the states and to create one unit with a view to encourage the free flow of trade, commerce and intercourse in the country. The freedom under this provision is not confined to inter-state trade, commerce and intercourse but also extends to intra-state trade, commerce and intercourse. Thus, Article 301 will be violated whether restrictions are imposed at the frontier of any state or at any prior or subsequent stage.

The freedom guaranteed by Article 301 is a freedom from all restrictions, except those which are provided for in the other provisions (Articles 302 to 305) of Part XIII of the Constitution itself. These are explained below:

- Parliament can impose restrictions on the freedom of trade, commerce and intercourse between the states or within a state in public interest. But, the Parliament cannot give preference to one state over another or discriminate between the states except in the case of scarcity of goods in any part of India.
- The legislature of a state can impose reasonable restrictions on the freedom of trade, commerce and intercourse with that state or within that state in public interest. But, a bill for this purpose can be introduced in the legislature only with the previous sanction of the president. Further, the state legislature cannot give preference to one state over another or discriminate between the states.
- The legislature of a state can impose on goods imported from other states or the union territories any tax to which similar goods manufactured in that state are subject. This provision prohibits the imposition of discriminatory taxes by the state.
- The freedom (under Article 301) is subject to the nationalisation laws (i.e., laws providing for monopolies in favour of the Centre or the states)

Thus, the Parliament or the state legislature can make laws for the carrying on by the respective government of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

The Parliament can appoint an appropriate authority for carrying out the purposes of the above provisions relating to the freedom of trade, commerce and intercourse and restrictions on it. The Parliament can also confer on that authority the necessary powers and duties. But, no such authority has been appointed so far.

UNIT-XVI

[EMERGENCY PROVISIONS]

The Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360. These provisions enable the Central government to meet any abnormal situation effectively. The rationality behind the incorporation of these provisions in the Constitution is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution.

During an Emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal during normal times to unitary during Emergency is a unique feature of the Indian Constitution.

Dr. B.R Ambedkar claimed that the Indian Federation was unique as during the times of emergency it could convert itself into an entirely unitary system. In India, the emergency provisions are such that the constitution itself enables the federal government acquire the strength of unitary government whenever the situation demands.

There are three types of emergencies under the Indian Constitution namely-

- An emergency due to war, external aggression or armed rebellion (Article 352). This is popularly known as **'National Emergency'**. However, the Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.
- An Emergency due to the failure of the constitutional machinery in the states (Article 356). This is popularly known as **'President's Rule'**. It is also known by two other names—'State Emergency' or 'constitutional Emergency'. However, the Constitution does not use the word 'emergency' for this situation.
- **Financial Emergency** due to a threat to the financial stability or credit of India (Article 360).

NATIONAL EMERGENCY

Under 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. It may be noted that the president can declare a national emergency even before the actual occurrence of war or external aggression or armed rebellion, if he is satisfied that there is an imminent danger.

The President can also issue different proclamations on grounds of war, external aggression, armed rebellion, or imminent danger thereof, whether or not there is a proclamation already issued by him and such proclamation is in operation. This provision was added by the 38th Amendment Act of 1975.

When a national emergency is declared on the ground of 'war' or 'external aggression', it is known as 'External Emergency'. On the other hand, when it is declared on the ground of 'armed rebellion', it is known as 'Internal Emergency'.

A proclamation of national emergency may be applicable to the entire country or only a part of it. The 42nd Amendment Act of 1976 enabled the president to limit the operation of a National Emergency to a specified part of India.

Originally, the Constitution mentioned 'internal disturbance' as the third ground for the proclamation of a National Emergency, but the expression was too vague and had a wider connotation. Hence, the 44th Amendment Act of 1978 substituted the words 'armed rebellion' for 'internal disturbance'. Thus, it is no longer possible to declare a National Emergency on the ground of 'internal disturbance' as was done in 1975 by the Congress government headed by Indira Gandhi.

The President, however, can proclaim a national emergency only after receiving a written recommendation from the cabinet. This means that the emergency can be declared only on the concurrence of the cabinet and not merely on the advice of the prime minister. In 1975, the then Prime Minister, Indira Gandhi advised the president to proclaim emergency without consulting her cabinet. The cabinet was informed of the proclamation after it was made, as a fait accompli. The 44th Amendment Act of 1978 introduced this safeguard to eliminate any possibility of the prime minister alone taking a decision in this regard.

The 38th Amendment Act of 1975 made the declaration of a National Emergency immune from the judicial review. But, this provision was subsequently deleted by the 44th Amendment Act of 1978. Further, in the Minerva Mills case, (1980), the Supreme Court held that the proclamation of a national emergency can be challenged in a court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts or is absurd or perverse.

The proclamation of Emergency must be approved by both the Houses of Parliament within one month from the date of its issue. Originally, the period allowed for approval by the Parliament was two months, but was reduced by the 44th Amendment Act of 1978. However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

If approved by both the Houses of Parliament, the emergency continues for six months, and can be extended to an indefinite period with an approval of the Parliament for every six months. This provision for periodical parliamentary approval was also added by the 44th Amendment Act of 1978.

Before that, the emergency, once approved by the Parliament, could remain in operation as long as the Executive (cabinet) desired. However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuance of Emergency, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the mean-time approved its continuation.

Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority that is, (a) a majority of the total membership of that house, and (b) a majority of not less than two-thirds of the members of that house present and voting. **This special majority provision was introduced by the 44th Amendment Act of 1978. Previously, such resolution could be passed by a simple majority of the Parliament**.

A proclamation of emergency may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval. Further, the President must revoke a proclamation if the Lok Sabha passes a resolution disapproving its continuation. Again, this safeguard was introduced by the 44th Amendment Act of 1978. Before the amendment, a proclamation could be revoked by the president on his own and the Lok Sabha had no control in this regard.

The 44th Amendment Act of 1978 also provided that, where one-tenth of the total number of members of the Lok Sabha give a written notice to the Speaker (or to the president if the House is not in session), a special sitting of the House should be held within 14 days for the purpose of considering a resolution disapproving the continuation of the proclamation.

A resolution of disapproval is different from a resolution approving the continuation of a proclamation in the following two respects:

- The first one is required to be passed by the Lok Sabha only, while the second one needs to be passed by the both Houses of Parliament.
- The first one is to be adopted by a simple majority only, while the second one needs to be adopted by a special majority.

EFFECTS OF NATIONAL EMERGENCY

A proclamation of Emergency has drastic and wide ranging effects on the political system. These consequences can be grouped into three categories:

Effect on the Centre–State Relations

While a proclamation of Emergency is in force, the normal fabric of the Centre–state relations undergoes a basic change. This can be studied under three heads, namely, executive, legislative and financial.

a) **Executive**: During a national emergency, the executive power of the Centre extends to directing any state regarding the manner in which its executive power is to be exercised. In normal times, the Centre can give executive directions to a state only on certain specified matters. However, during a national emergency, the Centre becomes entitled to give executive directions to a state on 'any' matter. Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.

b) **Legislative**: During a national emergency, the Parliament becomes empowered to make laws on any subject mentioned in the State List. Although the legislative power of a state legislature is not suspended, it becomes subject to the overriding power of the Parliament. Thus, the normal distribution of the legislative powers between the Centre and states is suspended, though the state legislatures are not suspended. In brief, the Constitution becomes unitary rather than federal. The laws made by Parliament on the state subjects during a National Emergency become inoperative six months after the emergency has ceased to operate. Notably, while a proclamation of national emergency is in operation, the President can issue ordinances on the state subjects also, if the Parliament is not in session. Further, the Parliament can confer powers and impose duties upon the Centre or its officers and authorities in respect of matters outside the Union List, in order to carry out the laws made by it under its extended jurisdiction as a result of the proclamation of a National Emergency. The 42nd Amendment Act of 1976 provided that the two consequences mentioned above (executive and legislative) extends not only to a state where the Emergency is in operation but also to any other state.

c) **Financial:** While a proclamation of national emergency is in operation, the President can modify the constitutional distribution of revenues between the centre and the states. This means that the president can either reduce or cancel the transfer of finances from Centre to the states. Such modification continues till the end of the financial year in which the Emergency ceases to operate. Also, every such order of the President has to be laid before both the Houses of Parliament.

Effect on the Life of the Lok Sabha and State Assembly

While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond its normal term (five years) by a law of Parliament for one year at a time (for any length of time). However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.

Similarly, the Parliament may extend the normal tenure of a state legislative assembly (five years) by one year each time (for any length of time) during a national emergency, subject to a maximum period of six months after the Emergency has ceased to operate.

Effect on the Fundamental Rights

Articles 358 and 359 describe the effect of a National Emergency on the Fundamental Rights. Article 358 deals with the suspension of the Fundamental Rights guaranteed by Article 19, while Article 359 deals with the suspension of other Fundamental Rights (except those guaranteed by Articles 20 and 21). These two provisions are explained below:

(a) Suspension of Fundamental Rights under Article 19: According to Article 358, when a proclamation of national emergency is made, the six Fundamental Rights under Article 19 are automatically suspended. No separate order for their suspension is required. While a proclamation of national emergency is in operation, the state is freed from the restrictions imposed by Article 19. In other words, the state can make any law or can take any executive action abridging or taking away the six Fundamental Rights guaranteed by Article 19. Any such law or executive action cannot be challenged on the ground that they are inconsistent with the six Fundamental Rights guaranteed by Article 19. When the National Emergency ceases to operate, Article 19 automatically revives and comes into force. Any law made during Emergency, to the extent of inconsistency with Article 19, ceases to have effect. However, no remedy lies for anything done during the Emergency even after the Emergency expires. This means that the legislative and executive actions taken during the emergency cannot be challenged even after the Emergency ceases to operate. The 44th Amendment Act of 1978 restricted the scope of Article 358 in two ways. Firstly, the six Fundamental Rights under Article 19 can be suspended only when the National Emergency is declared on the ground of war or external aggression and not on the ground of armed rebellion. Secondly, only those laws which are related with the Emergency are protected from being challenged and not other laws. Also, the executive action taken only under such a law is protected.

(b) Suspension of other Fundamental Rights: Article 359 authorises the president to suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency. This means that under Article 359, the Fundamental Rights as such are not suspended, but only their enforcement. The said rights are theoretically alive but the right to seek remedy is suspended. The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order. Further, the suspension could be for the period during the operation of emergency or for a shorter period as mentioned in the order, and the suspension order may extend to the whole or any part of the country. It should be laid before each House of Parliament for approval. While a Presidential Order is in force, the State can make any law or can take any executive action abridging or taking away the specified Fundamental Rights. Any such law or executive action cannot be challenged on the ground that they are inconsistent with the specified Fundamental Rights. When the Order ceases to operate, any law so made, to the extent of inconsistency with the specified Fundamental Rights, ceases to have effect. But no remedy lies for anything done during the operation of the order even after the order ceases to operate. This means that the legislative and executive actions taken during the operation of the Order cannot be challenged even after the Order expires. The 44th Amendment Act of 1978 restricted the scope of Article 359 in two ways. Firstly, the President cannot suspend the right to move the Court for the enforcement of fundamental rights guaranteed by Articles 20 to 21. In other words, the right to protection in respect of conviction for offences (Article 20) and the right to life and personal liberty (Article 21) remain enforceable even during emergency. Secondly, only those laws which are related with the emergency are protected from being challenged and not other laws and the executive action taken only under such a law, is protected.

Distinction between Articles 358 and 359

The differences between Articles 358 and 359 can be summarised as follows:

- Article 358 is confined to Fundamental Rights under Article 19 only whereas Article 359 extends to all those Fundamental Rights whose enforcement is suspended by the Presidential Order.
- Article 358 automatically suspends the fundamental rights under Article 19 as soon as the emergency is declared. On the other hand, Article 359 does not automatically suspend any Fundamental Right. It only empowers the president to suspend the enforcement of the specified Fundamental Rights.
- Article 358 operates only in case of External Emergency (that is, when the emergency is declared on the grounds of war or external aggression) and not in the case of Internal Emergency (ie, when the Emergency is declared on the ground of armed rebellion). Article 359, on the other hand, operates in case of both External Emergency as well as Internal Emergency.

- Article 358 suspends Fundamental Rights under Article 19 for the entire duration of Emergency while Article 359 suspends the enforcement of Fundamental Rights for a period specified by the president which may either be the entire duration of Emergency or a shorter period.
- Article 358 extends to the entire country whereas Article 359 may extend to the entire country or a part of it.
- Article 358 suspends Article 19 completely while Article 359 does not empower the suspension of the enforcement of Articles 20 and 21.
- Article 358 enables the State to make any law or take any executive action inconsistent with Fundamental Rights under Article 19 while Article 359 enables the State to make any law or take any executive action inconsistent with those Fundamental Rights whose enforcement is suspended by the Presidential Order.

There is also a similarity between Article 358 and Article 359. Both provide immunity from challenge to only those laws which are related with the Emergency and not other laws. Also, the executive action taken only under such a law is protected by both.

Declarations Made So Far

This type of Emergency has been proclaimed three times so far—in 1962, 1971 and 1975.

The first proclamation of National Emergency was issued in October 1962 on account of Chinese aggression in the NEFA (North-East Frontier Agency —now Arunachal Pradesh), and was in force till January 1968. Hence, a fresh proclamation was not needed at the time of war against Pakistan in 1965. The second proclamation of national emergency was made in December 1971 in the wake of attack by Pakistan. Even when this Emergency was in operation, a third proclamation of National Emergency was made in June 1975. Both the second and third proclamations were revoked in March 1977. The first two proclamations (1962 and 1971) were made on the ground of 'external aggression', while the third proclamation (1975) was made on the ground of 'internal disturbance', that is, certain persons have been inciting the police and the armed forces against the discharge of their duties and their normal functioning.

The Emergency declared in 1975 (internal emergency) proved to be the most controversial. There was widespread criticism of the misuse of Emergency powers. In the elections held to the Lok Sabha in 1977 after the Emergency, the Congress Party led by Indira Gandhi lost and the Janta Party came to power. This government appointed the Shah Commission to investigate the circumstances that warranted the declaration of an Emergency in 1975. The commission did not justify the declaration of the Emergency. Hence, the 44th Amendment Act was enacted in 1978 to introduce a number of safeguards against the misuse of Emergency provisions.

CONSTITUTIONAL EMERGENCY

Article 355 imposes a duty on the Centre to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. It is this duty in the performance of which the Centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in state. This is popularly known as 'President's Rule'. It is also known as 'State Emergency' or 'Constitutional Emergency'.

The President's Rule can be proclaimed under Article 356 on two grounds —one mentioned in Article 356 itself and another in Article 365:

- **Article 356** empowers the President to issue a proclamation, if he is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the Constitution. Notably, the president can act either on a report of the governor of the state or otherwise too (ie, even without the governor's report).

- **Article 365** says that whenever a state fails to comply with or to give effect to any direction from the Centre, it will 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 the provisions of the Constitution.

Parliamentary Approval and Duration

A proclamation imposing President's Rule must be approved by both the Houses of Parliament within two months from the date of its issue. However, if the proclamation of President's Rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha approves it in the mean time.

If approved by both the Houses of Parliament, the President's Rule continues for six months. It can be extended for a maximum period of three years with the approval of the Parliament, every six months. However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuation of the President's Rule, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved its continuance.

Every resolution approving the proclamation of President's Rule or its continuation can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that House present and voting. The 44th Amendment Act of 1978 introduced a new provision to put restraint on the power of Parliament to extend a proclamation of President's Rule beyond one year. Thus, it provided that, beyond one year, the President's Rule can be extended by six months at a time only when the following two conditions are fulfilled:

- A proclamation of National Emergency should be in operation in the whole of India, or in the whole or any part of the state; and
- The Election Commission must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.

A proclamation of President's Rule may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Consequences of President's Rule

The President acquires the following extraordinary powers when the President's Rule is imposed in a state:

1. He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.

2. He can declare that the powers of the state legislature are to be exercised by the Parliament.

3. He can take all other necessary steps including the suspension of the constitutional provisions relating to anybody or authority in the state.

Therefore, when the President's Rule is imposed in a state, the President dismisses the state council of ministers headed by the chief minister. The state governor, on behalf of the President, carries on the state administration with the help of the chief secretary of the state or the advisors appointed by the President. This is the reason why a proclamation under Article 356 is popularly known as the imposition of 'President's Rule' in a state. Further, the President either suspends or dissolves the state legislative assembly. The Parliament passes the state legislative bills and the state budget.

When the state legislature is thus suspended or dissolved:

- The Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him in this regard,
- The Parliament or in case of delegation, the President or any other specified authority can make laws conferring powers and imposing duties on the Centre or its officers and authorities,
- The President can authorise, when the Lok Sabha is not in session, expenditure from the state consolidated fund pending its sanction by the Parliament, and
- The President can promulgate, when the Parliament is not in session, ordinances for the governance of the state.

A law made by the Parliament or president or any other specified authority continues to be operative even after the President's Rule. This means that the period for which such a law remains in force is not co-terminous with the duration of the proclamation. But it can be repealed or altered or re-enacted by the state legislature.

It should be noted here that the President cannot assume to himself the powers vested in the concerned state high court or suspend the provisions of the Constitution relating to it. In other words, the constitutional position, status, powers and functions of the concerned state high court remain same even during the President's Rule.

Use of Article 356

Since 1950, the President's Rule has been imposed on more than 100 occasions, that is, on an average twice a year. Further, on a number of occasions, the President's Rule has been imposed in an arbitrary manner for political or personal reasons. Hence, Article 356 has become one of the most controversial and most criticised provision of the Constitution.

Scope of Judicial Review

The 38th Amendment Act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which could not be challenged in any court on any ground. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.

In Bommai case (1994), the following propositions have been laid down by the Supreme Court on imposition of President's Rule in a state under Article 356:

- The presidential proclamation imposing President's Rule is subject to judicial review.
- The satisfaction of the President must be based on relevant material. The action of the president can be struck down by the court if it is based on irrelevant or extraneous grounds or if it was found to be malafide or perverse.
- Burden lies on the Centre to prove that relevant material exist to justify the imposition of the President's Rule.
- The court cannot go into the correctness of the material or its adequacy but it can see whether it is relevant to the action.
- If the court holds the presidential proclamation to be unconstitutional and invalid, it has power to restore the dismissed state government and revive the state legislative assembly if it was suspended or dissolved.
- The state legislative assembly should be dissolved only after the Parliament has approved the presidential proclamation. Until such approval is given, the president can only suspend the assembly. In case the Parliament fails to approve the proclamation, the assembly would get reactivated.

- Secularism is one of the 'basic features' of the Constitution. Hence, a state government pursuing anti-secular politics is liable to action under Article 356.
- The question of the state government losing the confidence of the legislative assembly should be decided on the floor of the House and until that is done the ministry should not be unseated.
- Where a new political party assumes power at the Centre, it will not have the authority to dismiss ministries formed by other parties in the states.
- The power under Article 356 is an exceptional power and should be used only occasionally to meet the requirements of special situations.

Cases of Proper and Improper Use

Based on the report of the Sarkaria Commission on Centre–state Relations (1988), the Supreme Court in Bommai case (1994) enlisted the situations where the exercise of power under Article 356 could be proper or improper.

Imposition of President's Rule in a state would be proper in the following situations:

- Where after general elections to the assembly, no party secures a majority, that is, 'Hung Assembly'.
- Where the party having a majority in the assembly declines to form a ministry and the governor cannot find a coalition ministry commanding a majority in the assembly.
- Where a ministry resigns after its defeat in the assembly and no other party is willing or able to form a ministry commanding a majority in the assembly.
- Where a constitutional direction of the Central government is disregarded by the state government.
- Internal subversion where, for example, a government is deliberately acting against the Constitution and the law or is fomenting a violent revolt.
- Physical breakdown where the government wilfully refuses to discharge its constitutional obligations endangering the security of the state.

The imposition of President's Rule in a state would be improper under the following situations:

- Where a ministry resigns or is dismissed on losing majority support in the assembly and the governor recommends imposition of President's Rule without probing the possibility of forming an alternative ministry.
- Where the governor makes his own assessment of the support of a ministry in the assembly and recommends imposition of President's Rule without allowing the ministry to prove its majority on the floor of the Assembly.
- Where the ruling party enjoying majority support in the assembly has suffered a massive defeat in the general elections to the Lok Sabha such as in 1977 and 1980.
- Internal disturbances not amounting to internal subversion or physical breakdown.
- Maladministration in the state or allegations of corruption against the ministry or stringent financial exigencies of the state.
- Where the state government is not given prior warning to rectify itself except in case of extreme urgency leading to disastrous consequences.
- Where the power is used to sort out intra-party problems of the ruling party, or for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution.

FINANCIAL EMERGENCY

Article 360 empowers the president to 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.

The 38th Amendment Act of 1975 made the satisfaction of the president in declaring a Financial Emergency final and conclusive and not questionable in any court on any ground. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the president is not beyond judicial review.

A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue. However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

Once approved by both the Houses of Parliament, the Financial Emergency continues indefinitely till it is revoked. This implies two things:

- There is no maximum period prescribed for its operation; and
- Repeated parliamentary approval is not required for its continuation.

A resolution approving the proclamation of financial emergency can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that house present and voting. A proclamation of Financial Emergency may be revoked by the president at anytime by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Effects of Financial Emergency

The consequences of the proclamation of a Financial Emergency are as follows:

1. The executive authority of the Centre extends (a) to directing any state to observe such canons of financial propriety as are specified by it; and (b) to directions as the President may deem necessary and adequate for the purpose.

2. Any such direction may include a provision requiring (a) the reduction of salaries and allowances of all or any class of persons serving in the state; and (b) the reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the state.

3. The President may issue directions for the reduction of salaries and allowances of (a) all or any class of persons serving the Union; and (b) the judges of the Supreme Court and the high court.

Thus, during the operation of a financial emergency, the Centre acquires full control over the states in financial matters. H N Kunzru, a member of the Constituent Assembly, stated that the financial emergency provisions pose a serious threat to the financial autonomy of the states. Explaining the reasons for their inclusion in the Constitution, Dr BR Ambedkar observed in the Constituent Assembly:

"This Article more or less follows the pattern of what is called the National Recovery Act of the United States passed in 1933, which gave the president power to make similar provisions in order to remove the difficulties, both economical and financial, that had overtaken the American people, as a result of the Great Depression."

No Financial Emergency has been declared so far, though there was a financial crisis in 1991.

UNIT-XVII

[SPECIAL PROVISIONS]

SPECIAL STATUS OF JAMMU AND KASHMIR

With the end of the British paramountcy, the State of Jammu and Kashmir (J&K) became independent on 15 August 1947. Initially its ruler, Maharaja Hari Singh, decided not to join India or Pakistan and thereby remain independent. On 20 October 1947, the Azad Kashmir Forces supported by the Pakistan army attacked the frontiers of the state. Under this unusual and extraordinary political circumstance, the ruler of the state decided to accede the state to India. Accordingly, the 'Instrument of Accession of Jammu and Kashmir to India' was signed by Pandit Jawaharlal Nehru and Maharaja Hari Singh on 26 October 1947.

Under this, the state surrendered only three subjects (defence, external affairs and communications) to the Dominion of India. At that time, the Government of India made a commitment that 'the people of this state, through their own Constituent Assembly, would determine the internal Constitution of this state and the nature and extent of the jurisdiction of the Union of India over the state, and until the decision of the Constituent Assembly of the State, the Constitution of India could only provide an interim arrangement regarding the state.' In pursuance of this commitment, Article 370 was incorporated in the Constitution of India. It clearly states that the provisions with respect to the State of J&K are only temporary and not permanent. It became operative on 17 November 1952, with the following provisions:

- The provisions of Article 238 (dealing with the administration of Part B states) is not applicable to the state of J&K. The state of J&K was specified in the category of Part B states in the original Constitution (1950). This Article in Part VII was subsequently omitted from the Constitution by the 7th Constitutional Amendment Act (1956) in the wake of the reorganisation of states.
- The power of Parliament to make laws for the state is limited to: (a) Those matters in the Union List and the Concurrent List which correspond to matters specified in the state's Instrument of Accession. These matters are to be declared by the president in consultation with the state government. The Instrument of Accession contained matters classified under four heads, namely, external affairs, defence, communications and ancillary matters. (b) Such other matters in the Union List and the Concurrent List which are specified by the president with the concurrence of the state government. This means that laws can be made on these matters only with the consent of the State of J&K.
- The provisions of Article 1 (declaring India as a Union of states and its territory) and this Article (that is, Article 370) are applicable to the State of J&K.
- Besides above, the other provisions of the Constitution can be applied to the state with such exceptions and modifications as specified by the President in consultation with the state government or with the concurrence of the state government.
- The President can declare that Article 370 ceases to be operative or operates with exceptions and modifications. However, this can be done by the President only on the recommendation of Constituent Assembly of the state.

Therefore, Article 370 makes Article 1 and Article 370 itself applicable to the State of J&K at once and authorises the president to extend other Articles to the state.

PRESENT RELATIONSHIP BETWEEN J&K AND INDIA

In pursuance of the provisions of Article 370, the President issued an order called the Constitution (Application to Jammu and Kashmir) Order, 1950, to specify the Union's jurisdiction over the state. In 1952, the

Government of India and the State of J&K entered into an agreement at Delhi regarding their future relationship. In 1954, the Constituent Assembly of J&K approved the state's accession to India as well as the Delhi Agreement. Then, the President issued another order with the same title, that is, the Constitution (Application to Jammu and Kashmir), Order, 1954. This order superseded the earlier order of 1950 and extended the Union's jurisdiction over the state. This is the basic order that, as amended and modified from time to time, regulates the constitutional position of the state and its relationship with the Union. At present, this is as follows:

- Jammu and Kashmir is a constituent state of the Indian Union and has its place in Part I and Schedule I of the Constitution of India (dealing with the Union and its Territory). But its name, area or boundary cannot be changed by the Union without the consent of its legislature.
- The State of J & K has its own Constitution and is administered according to that Constitution. Hence, Part VI of the Constitution of India (dealing with state governments) is not applicable to this state. The very definition of 'state' under this part does not include the State of J&K.
- Parliament can make laws in relation to the state on most of the subjects enumerated in the Union List and on a good number of subjects enumerated in the Concurrent List. But, the residuary power belongs to the state legislature except in few matters like prevention of activities involving terrorist acts, questioning or disrupting the sovereignty and territorial integrity of India and causing insult to the National Flag, National Anthem and the Constitution of India. Further, the power to make laws of preventive detention in the state belongs to the state legislature. This means that the preventive detention laws made by the Parliament are not applicable to the state.
- Part III (dealing with Fundamental Rights) is applicable to the state with some exceptions and conditions. The Fundamental Right to Property is still guaranteed in the state. Also, certain special rights are granted to the permanent residents of the state with regard to public employment, acquisition of immovable property, settlement and government scholarships.
- Part IV (dealing with Directive Principles of State Policy) and Part IVA (dealing with Fundamental Duties) are not applicable to the state.
- A National Emergency declared on the ground of internal disturbance will not have effect in the state except with the concurrence of the state government.
- The President has no power to declare a financial emergency in relation to the state.
- The President has no power to suspend the Constitution of the state on the ground of failure to comply with the directions given by him.
- The State Emergency (President's Rule) is applicable to the state. However, this emergency can be imposed in the state on the ground of failure of the constitutional machinery under the provisions of state Constitution and not Indian Constitution. In fact, two types of Emergencies can be declared in the state, namely, President's Rule under the Indian Constitution and Governor's Rule under the state Constitution. In 1986, the President's Rule was imposed in the state for the first time. International treaty or agreement affecting the disposition of any part of the territory of the state can be made by the Centre only with the consent of the state legislature.
- An amendment made to the Constitution of India does not apply to the state unless it is extended by a presidential order.
- Official language provisions are applicable to the state only in so far as they relate to the official language of the Union, the official language of inter-state and Centre–state communications and the language of the Supreme Court proceedings.

- The Fifth Schedule (dealing with administration and control of schedule areas and scheduled tribes) and the Sixth Schedule (dealing with administration of tribal areas) do not apply to the state.
- The special leave jurisdiction of the Supreme Court and the jurisdictions of the Election Commission and the comptroller and auditor general are applicable to the state.
- The High Court of J&K can issue writs only for the enforcement of the fundamental rights and not for any other purpose.
- The provisions of Part II regarding the denial of citizenship rights of migrants to Pakistan are not applicable to the permanent residents of J&K, who after having so migrated to Pakistan return to the state for resettlement. Every such person is deemed to be a citizen of India.

Therefore, the two characteristic features of the special relationship between the State of J&K and the Union of India are: (a) the state has a much greater measure of autonomy and power than enjoyed by the other states; and (b) Centre's jurisdiction within the state is more limited than what it has with respect to other states

FEATURES OF J&K CONSTITUTION

In September–October 1951, the Constituent Assembly of J&K was elected by the people of the state on the basis of adult franchise to prepare the future Constitution of the state and to determine its relationship with the Union of India. This sovereign body met for the first time on 31 October 1951, and took about five years to complete its task.

The Constitution of J&K was adopted on 17 November 1956, and came into force on 26 January 1957. Its salient features (as amended from time to time) are as follows:

- It declares the State of J&K to be an integral part of India.
- It secures justice, liberty, equality and fraternity to the people of the state.
- It says that the State of J&K comprises all the territory that was under the ruler of the state on 15 August 1947. This means that the territory of the state also includes the area which is under the occupation of Pakistan.
- It lays down that a citizen of India is treated as a 'permanent resident' of the state if on 14 May 1954 (a) he was a state subject of Class I or Class II, or (b) having lawfully acquired immovable property in the state, he has been ordinarily resident in the state for 10 years prior to that date, or (c) any person who before 14 May, 1954 was a state subject of Class I or Class II and who, having migrated to Pakistan after 1 March 1947, returns to the state for resettlement.
- It clarifies that the permanent residents of the state are entitled to all rights guaranteed under the Constitution of India. But, any change in the definition of 'permanent' can be made by the state legislature only.
- It contains a list of directive principles that are to be treated as fundamental in the governance of the state. However, they are not judicially enforceable.
- It provides for a bicameral legislature consisting of the legislative assembly and the legislative council. The assembly consists of 111members directly elected by the people. Out of this, 24 seats are to remain vacant as they are allotted for the area that is under the occupation of Pakistan. Hence, as an interim measure, the total strength of the Assembly is to be taken as 87 for all practical purposes. The council consists of 36 members, most of them are elected in an indirect manner and some of them are nominated by the Governor, who is also an integral part of the state legislature.

- It vests the executive powers of the state in the governor appointed by the president for a term of five years. It provides for a council of ministers headed by the chief minister to aid and advise the governor in the exercise of his functions. The council of ministers is collectively responsible to the assembly. Under the original Constitution of J&K (1957), the head of the state and head of the government were designated as Sadar-i-Riyasat (President) and Wazir-i-Azam (Prime Minister) respectively. In 1965, they were redesignated as governor and chief Minister respectively. Also, the head of the state was to be elected by the state assembly.
- It establishes a high court consisting of a chief justice and two or more other judges. They are appointed by the president in consultation with the Chief Justice of India and the Governor of the state. The High Court of J&K is a court of record and enjoys original, appellate and writ jurisdictions. However, it can issue writs only for the enforcement of fundamental rights and not for any other purpose.
- It provides for Governor's Rule. Hence, the governor, with the concurrence of the President of India, can assume to himself all the powers of the state government, except those of the high court. He can dissolve the assembly and dismiss the council of ministers. The Governor's Rule can be imposed when the state administration cannot be carried on in accordance with the provisions of the J&K Constitution. It was imposed for the first time in 1977. Notably, in 1964, Article 356 of the Indian Constitution (dealing with the imposition of President's Rule in a state) was extended to the state of J&K.
- It declares Urdu as the official language of the state. It also permits the use of English for official purposes unless the state legislature provides otherwise.
- It lays down the procedure for its amendment. It can be amended by a bill passed in each house of the state legislature by a majority of two-thirds of the total membership of that house. Such a bill must be introduced in the assembly only. However, no bill of constitutional amendment can be moved in either House if it seeks to change the relationship of the state with the Union of India.

SPECIAL PROVISIONS FOR OTHER STATES

Articles 371 to 371-J in Part XXI of the constitution contain special provisions for twelve states1 viz., Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Telangana, Sikkim, Mizoram, Arunachal Pradesh, Goa and Karnataka. The intention behind them is to meet the aspirations of the people of backward regions of the states or to protect the cultural and economic interests of the tribal people of the states or to deal with the disturbed law and order condition in some parts of the states or to protect the interests of the local people of the states. Originally, the constitution did not make any special provisions for these states. They have been incorporated by the various subsequent amendments made in the context of reorganisation of the states or conferment of statehood on the Union Territories.

PROVISIONS FOR MAHARASHTRA AND GUJARAT

Under Article 371, the President is authorised to provide that the Governor of Maharashtra and that of Gujarat would have special responsibility for:

- The establishment of separate development boards for (i) Vidarbha, Marathwada and the rest of Maharashtra, (ii) Saurashtra, Kutch and the rest of Gujarat;
- Making a provision that a report on the working of these boards would be placed every year before the State Legislative Assembly;
- The equitable allocation of funds for developmental expenditure over the above-mentioned areas; and
- An equitable arrangement providing adequate facilities for technical education and vocational

training, and adequate employment opportunities in the state services in respect of the above-mentioned areas.

PROVISIONS FOR NAGALAND

Article 371-A makes the following special provisions for Nagaland:

1. The Acts of Parliament relating to the following matters would not apply to Nagaland unless the State Legislative Assembly so decides:

- religious or social practices of the Nagas;
- Naga customary law and procedure;
- administration of civil and criminal justice involving decisions according to Naga customary law; and
- ownership and transfer of land and its resources.

2. The Governor of Nagaland shall have special responsibility for law and order in the state so long as internal disturbances caused by the hostile Nagas continue. In the discharge of this responsibility, the Governor, after consulting the Council of Ministers, exercises his individual judgement and his decision is final. This special responsibility of the Governor shall cease when the President so directs.

3. The Governor has to ensure that the money provided by the Central Government for any specific purpose is included in the demand for a grant relating to that purpose and not in any other demand moved in the State Legislative Assembly.

4. A regional council consisting of 35 members should be established for the Tuensang district of the state. The Governor should make rules for the composition of the council, manner of choosing its members, their qualifications, term, salaries and allowances; the procedure and conduct of business of the council; the appointment of officers and staff of the council and their service conditions; and any other matter relating to the constitution and proper functioning of the council.

5. For a period of ten years from the formation of Nagaland or for such further period as the Governor may specify on the recommendation of the regional council, the following provisions would be operative for the Tuensang district:

- The administration of the Tuensang district shall be carried on by the Governor.
- The Governor shall in his discretion arrange for equitable distribution of money provided by the Centre between Tuensang district and the rest of Nagaland.
- Any Act of Nagaland Legislature shall not apply to Tuensang district unless the Governor so directs on the recommendation of the regional council.
- The Governor can make Regulations for the peace, progress and good government of the Tuensang district. Any such Regulation may repeal or amend an Act of Parliament or any other law applicable to that district.
- There shall be a Minister for Tuensang affairs in the State Council of Ministers. He is to be appointed from amongst the members representing Tuensang district in the Nagaland Legislative Assembly.
- The final decision on all matters relating to Tuensang district shall be made by the Governor in his discretion.
- Members in the Nagaland Legislative Assembly from the Tuensang district are not elected directly by the people but by the regional council.

PROVISIONS FOR ASSAM AND MANIPUR

Assam

Under Article 371-B, the President is empowered to provide for the creation of a committee of the Assam Legislative Assembly consisting of the members elected from the Tribal Areas of the state and such other members as he may specify

Manipur

Article 371-C makes the following special provisions for Manipur:

- The President is authorized to provide for the creation of a committee of the Manipur Legislative Assembly consisting of the members elected from the Hill Areas of the state.
- The President can also direct that the Governor shall have special responsibility to secure the proper functioning of that committee.
- The Governor should submit an annual report to the President regarding the administration of the Hill Areas.
- The Central Government can give directions to the State Government as to the administration of the Hill Areas.

PROVISIONS FOR ANDHRA PRADESH OR TELANGANA

Articles 371-D and 371-E contain the special provisions for Andhra Pradesh. In 2014, Article 371-D has been extended to the state of Telangana by the Andhra Pradesh Re-organisation Act of 2014. Under Article 371-D, the following are mentioned:

1. The President is empowered to provide for equitable opportunities and facilities for the people belonging to different parts of the state in the matter of public employment and education and different provisions can be made for various parts of the state.

2. For the above purpose, the President may require the State Government to organise civil posts in local cadres for different parts of the state and provide for direct recruitment to posts in any local cadre. He may specify parts of the state which shall be regarded as the local area for admission to any educational institution. He may also specify the extent and manner of preference or reservation given in the matter of direct recruitment to posts in any such cadre or admission to any such educational institution.

3. The President may provide for the establishment of an Administrative Tribunal in the state to deal with certain disputes and grievances relating to appointment, allotment or promotion to civil posts in the state. The tribunal is to function outside the purview of the state High Court. No court (other than the Supreme Court) is to exercise any jurisdiction in respect of any matter subject to the jurisdiction of the tribunal. The President may abolish the tribunal when he is satisfied that its continued existence is not necessary. Article 371-E empowers the Parliament to provide for the establishment of a Central University in the state of Andhra Pradesh.

PROVISIONS FOR SIKKIM

The 36th Constitutional Amendment Act of 1975 made Sikkim a full-fledged state of the Indian Union. It included a new Article 371-F containing special provisions with respect to Sikkim. These are as follows:

1. The Sikkim Legislative Assembly is to consist of not less than 30 members.

2. One seat is allotted to Sikkim in the Lok Sabha and Sikkim forms one Parliamentary constituency.

3. For the purpose of protecting the rights and interests of the different sections of the Sikkim population, the Parliament is empowered to provide for the:

- number of seats in the Sikkim Legislative Assembly which may be filled by candidates belonging to such sections; and
- delimitation of the Assembly constituencies from which candidates belonging to such sections alone may stand for election to the Assembly.

4. The Governor shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of the different sections of the Sikkim population. In the discharge of this responsibility, the Governor shall act in his discretion, subject to the directions issued by the President.

5. The President can extend (with restrictions or modifications) to Sikkim any law which is in force in a state of the Indian Union.

PROVISIONS FOR MIZORAM

Article 371-G specifies the following special provisions for Mizoram:

1. The Acts of Parliament relating to the following matters would not apply to Mizoram unless the State Legislative Assembly so decides:

- Religious or social practices of the Mizos;
- Mizo customary law and procedure;
- Administration of civil and criminal justice involving decisions according to Mizo customary law; and
- Ownership and transfer of land.

2. The Mizoram Legislative Assembly is to consist of not less than 40 members.

PROVISIONS FOR ARUNACHAL PRADESH AND GOA

Arunachal Pradesh

Under Article 371-H, the following special provisions are made for Arunachal Pradesh:

1. The Governor of Arunachal Pradesh shall have special responsibility for law and order in the state. In the discharge of this responsibility, the Governor, after consulting the Council of Ministers, exercises his individual judgement and his decision is final. This special responsibility of the Governor shall cease when the President so directs.

2. The Arunachal Pradesh Legislative Assembly is to consist of not less than 30 members.

Goa

Article 371-I provides that the Goa Legislative Assembly is to consist of not less than 30 members

PROVISIONS FOR KARNATAKA

Under Article 371-J, the President is empowered to provide that the Governor of Karnataka would have special responsibility for

- The establishment of a separate development board for Hyderabad- Karnataka region

- Making a provision that a report on the working of the board would be placed every year before the State Legislative Assembly
- The equitable allocation of funds for developmental expenditure over the region
- The reservation of seats in educational and vocational training institutions in the region for students who belong to the region
- The reservation in state government posts in the region for persons who belong to the region

Article 371-J (which provided for special provisions for the Hyderabad- Karnataka region of the state of Karnataka) was inserted in the Constitution by the 98thConstitutional Amendment Act of 2012. The special provisions aim to establish an institutional mechanism for equitable allocation of funds to meet the development needs over the region, as well as to enhance human resources and promote employment from the region by providing for local cadres in service and reservation in educational and vocational training institutions.

In 2010, the Legislative Assembly as well as the Legislative Council of Karnataka passed separate resolutions seeking special provisions for the Hyderabad-Karnataka region of the state of Karnataka. The government of Karnataka also endorsed the need for special provisions for the region. The resolutions sought to accelerate development of the most backward region of the state and promote inclusive growth with a view to reducing inter-district and inter-regional disparities in the state.

UNIT-XVIII

[CONSTITUTIONAL BODIES]

ELECTION COMMISSION

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

- The Election Commission shall consist of the chief election commissioner and such number of other election commissioners, if any, as the president may from time to time fix.
- The appointment of the chief election commissioner and other election commissioners shall be made by the president.
- When any other election commissioner is so appointed, the chief election commissioner shall act as the chairman of the election commission.
- The president may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.
- The conditions of service and tenure of office of the election commissioners and the regional commissioners shall be determined by the president.

Since its inception in 1950 and till 15 October 1989, the election commission functioned as a single member body consisting of the Chief Election Commissioner. On 16 October 1989, the president appointed two more election commissioners to cope with the increased work of the election commission on account of lowering of the voting age from 21 to 18 years.

Thereafter, the Election Commission functioned as a multimember body consisting of three election commissioners. However, the two posts of election commissioners were abolished in January 1990 and the Election Commission was reverted to the earlier position. Again in October 1993, the president appointed two more election commissioners. Since then and till today, the Election Commission has been functioning as a multi-member body consisting of three election commissioners.

The chief election commissioner and the two other election commissioners have equal powers and receive equal salary, allowances and other perquisites, 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 hold office for a term of six years or until they attain the age of 65 years, whichever is earlier**. They can resign at any time or can also be removed before the expiry of their term.

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

1. The chief election commissioner is provided with the security of tenure. He cannot be removed from his office except in same manner and on the same grounds as a judge of the Supreme Court. In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehaviour or incapacity. Thus, he does not hold his office till the pleasure of the president, though he is appointed by him.

2. The service conditions of the chief election commissioner cannot be varied to his disadvantage after his appointment.

3. Any other election commissioner or a regional commissioner cannot be removed from office except on the recommendation of the chief election commissioner. Though the constitution has sought to safeguard and ensure the independence and impartiality of the Election Commission, some flaws can be noted, viz.,

- The Constitution has not prescribed the qualifications (legal, educational, administrative or judicial) of the members of the Election Commission.
- The Constitution has not specified the term of the members of the Election Commission.
- The Constitution has not debarred the retiring election commissioners from any further appointment by the government.

POWERS AND FUNCTIONS OF THE ELECTION COMMISSION

- To determine the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.
- To prepare and periodically revise electoral rolls and to register all eligible voters.
- To notify the dates and schedules of elections and to scrutinise nomination papers.
- To grant recognition to political parties and allot election symbols to them.
- To act as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.
- To appoint officers for inquiring into disputes relating to electoral arrangements.
- To determine the code of conduct to be observed by the parties and the candidates at the time of elections.
- To prepare a roster for publicity of the policies of the political parties on radio and TV in times of elections.
- To advise the president on matters relating to the disqualifications of the members of Parliament.
- To advise the governor on matters relating to the disqualifications of the members of state legislature.
- To cancel polls in the event of rigging, booth capturing, violence and other irregularities.
- To request the president or the governor for requisitioning the staff necessary for conducting elections.
- To supervise the machinery of elections throughout the country to ensure free and fair elections.
- To advise the president whether elections can be held in a state under president's rule in order to extend the period of emergency after one year.
- To register political parties for the purpose of elections and grant them the status of national or state parties on the basis of their poll performance.

The Election Commission is assisted by deputy election commissioners. They are drawn from the civil service and appointed by the commission with tenure system. They are assisted, in turn, by the secretaries, joint secretaries, deputy secretaries and under secretaries posted in the secretariat of the commission.

At the state level, the Election Commission is assisted by the chief electoral officer who is appointed by the chief election commissioner in consultation with the state government. Below this, at the district level, the collector acts as the district returning officer. He appoints a returning officer for every constituency in the district and presiding officer for every polling booth in the constituency.

UNION PUBLIC SERVICE COMMISSION (UPSC)

Articles 315 to 323 in Part XIV of the Constitution contain elaborate provisions regarding the composition, appointment and removal of members along with the independence, powers and functions of the UPSC.

The UPSC consists of a chairman and other members appointed by the president of India. The Constitution, without specifying the strength of the Commission has left the matter to the discretion of the president, who determines its composition. Usually, the Commission consists of nine to eleven members including the chairman. Further, no qualifications are prescribed for the Commission's membership except that one-half of the members of the Commission should be such persons who have held office for at least ten years either under the Government of India or under the government of a state. The Constitution also authorises the president to determine the conditions of service of the chairman and other members of the Commission.

The chairman and members of the Commission hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. However, they can relinquish their offices at any time by addressing their resignation to the president. They can also be removed before the expiry of their term by the president in the manner as provided in the Constitution. The President can appoint one of the members of the UPSC as an acting chairman in the following two circumstances:

- When the office of the chairman falls vacant; or
- When the chairman is unable to perform his functions due to absence or some other reason.

The acting chairman functions till a person appointed as chairman enters on the duties of the office or till the chairman is able to resume his duties.

The President can remove the chairman or any other member of UPSC from the office under the following circumstances:

- If he is adjudged an insolvent (that is, has gone bankrupt);
- If he engages, during his term of office, in any paid employment outside the duties of his office; or
- If he is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body.

In addition to these, the president can also remove the chairman or any other member of UPSC for misbehaviour. However, in this case, the president has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, the president can remove the chairman or a member. Under the provisions of the Constitution, the advise tendered by the Supreme Court in this regard is binding on the president. During the course of enquiry by the Supreme Court, the president can suspend the chairman or the member of UPSC.

Defining the term 'misbehaviour' in this context, the Constitution states that the chairman or any other member of the UPSC is deemed to be guilty of misbehaviour if he (a) is concerned or interested in any contract or agreement made by the Government of India or the government of a state, or (b) participates in any way in the profit of such contract or agreement or in any benefit therefrom otherwise than as a member and in common with other members of an incorporated company.

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

- The chairman or a member of the UPSC can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy security of tenure.

- The conditions of service of the chairman or a member, though determined by the president, cannot be varied to his disadvantage after his appointment.
- The entire expenses including the salaries, allowances and pensions of the chairman and members of the UPSC are charged on the Consolidated Fund of India. Thus, they are not subject to vote of Parliament.
- The chairman of UPSC (on ceasing to hold office) is not eligible for further employment in the Government of India or a state.
- A member of UPSC (on ceasing to hold office) is eligible for appointment as the chairman of UPSC or a State Public Service Commission (SPSC), but not for any other employment in the Government of India or a state.
- The chairman or a member of UPSC is (after having completed his first term) not eligible for reappointment to that office (i.e., not eligible for second term).

FUNCTIONS OF THE UPSC

- It conducts examinations for appointments to the all-India services, Central services and public services of the centrally administered territories.
- It assists the states (if requested by two or more states to do so) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
- It serves all or any of the needs of a state on the request of the state governor and with the approval of the president of India.

It is consulted on the following matters related to personnel management:

- All matters relating to methods of recruitment to civil services and for civil posts.
- The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another.
- The suitability of candidates for appointments to civil services and posts; for promotions and transfers from one service to another; and appointments by transfer or deputation. The concerned departments make recommendations for promotions and request the UPSC to ratify them.
- All disciplinary matters affecting a person serving under the Government of India in a civil capacity including memorials or petitions relating to such matters. These include:
    - Censure (Severe disapproval)
    - Withholding of increments
    - Withholding of promotions
    - Recovery of pecuniary loss
    - Reduction to lower service or rank (Demotion)
    - Compulsory retirement
    - Removal from service
    - Dismissal from service

- Any claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his official duties.
- Any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India and any question as to the amount of any such award.
- Matters of temporary appointments for period exceeding one year and on regularisation of appointments.
- Matters related to grant of extension of service and re-employment of certain retired civil servants.
- Any other matter related to personnel management.

The Supreme Court has held that if the government fails to consult UPSC in the matters (mentioned above), the aggrieved public servant has no remedy in a court. In other words, the court held that any irregularity in consultation with the UPSC or acting without consultation does not invalidate the decision of the government. Thus, the provision is directory and not mandatory. Similarly, the court held that a selection by the UPSC does not confer any right to the post upon the candidate. However, the government is to act fairly and without arbitrariness or malafides.

The additional functions relating to the services of the Union can be conferred on UPSC by the Parliament. It can also place the personnel system of any authority, corporate body or public institution within the jurisdiction of the UPSC. Hence the jurisdiction of UPSC can be extended by an act made by the Parliament.

The UPSC presents, annually, to the president a report on its performance. The President places this report before both the Houses of Parliament, along with a memorandum explaining the cases where the advice of the Commission was not accepted and the reasons for such non-acceptance. All such cases of non-acceptance must be approved by the Appointments Committee of the Union cabinet. An individual ministry or department has no power to reject the advice of the UPSC.

The following matters are kept outside the functional jurisdiction of the UPSC. In other words, the UPSC is not consulted on the following matters:

- While making reservations of appointments or posts in favour of any backward class of citizens.
- While taking into consideration the claims of scheduled castes and scheduled tribes in making appointments to services and posts.
- With regard to the selections for chairmanship or membership of commissions or tribunals, posts of the highest diplomatic nature and a bulk of group C and group D services.
- With regard to the selection for temporary or officiating appointment to a post if the person appointed is not likely to hold the post for more than a year.

The president can exclude posts, services and matters from the purview of the UPSC. The Constitution states that the president, in respect to the all- India services and Central services and posts may make regulations specifying the matters in which, it shall not be necessary for UPSC to be consulted. But all such regulations made by the president shall be laid before each House of Parliament for at least 14 days. The Parliament can amend or repeal them.

STATE PUBLIC SERVICE COMMISSION

The same set of Articles (i.e., 315 to 323 in Part XIV) of the Constitution also deals with the composition, appointment and removal of members, power and functions and independence of a State Public Service Commission (SPSC).

A State Public Service Commission consists of a chairman and other members appointed by the governor of the state. The Constitution does not specify the strength of the Commission but has left the matter to the discretion of the Governor. Further, no qualifications are prescribed for the commission's membership except that one-half of the members of the commission should be such persons who have held office for at least ten years either under the government of India or under the Government of a state. The Constitution also authorises the governor to determine the conditions of service of the chairman and members of the Commission. The chairman and members of the Commission hold office for a term of six years or until they attain the age of 62 years, whichever is earlier (in the case of UPSC, the age limit is 65 years). However, they can relinquish their offices at any time by addressing their resignation to the governor. The governor can appoint one of the members of the SPSC as an acting chairman in the following two circumstances:

- When the office of the chairman falls vacant; or
- When the chairman is unable to perform his functions due to absence or some other reason.

The acting chairman functions till the person appointed as chairman enters on the duties of the office or till the chairman is able to resume his duties.

Although the chairman and members of a SPSC are appointed by the governor, they can be removed only by the president (and not by the governor). The president can remove them on the same grounds and in the same manner as he can remove a chairman or a member of the UPSC. Thus, he can remove him under the following circumstances:

- If he is adjudged an insolvent (i.e., has gone bankrupt); or
- If he engages, during his term of office, in any paid employment outside the duties of his office; or
- If he is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body.

In addition to these, the president can also remove the chairman or any other member of SPSC for misbehaviour. However, in this case, the president has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, the president can remove the chairman or a member. Under the provisions of the Constitution, the advise tendered by the Supreme Court in this regard is binding on the president. However, during the course of enquiry by the Supreme Court, the governor can suspend the concerned chairman or member, pending the final removal order of the president on receipt of the report of the Supreme Court.

Further, the Constitution has also defined the term 'misbehaviour' in this context. The Constitution states that the chairman or any other member of a SPSC is deemed to be guilty of misbehaviour, if he (a) is concerned or interested in any contract or agreement made by the Government of India or the government of a state, or (b) participates in any way in the profit of such contract or agreement or in any benefit therefrom otherwise than as a member and in common with other members of an incorporated company.

As in the case of UPSC, the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a SPSC:

- The chairman or a member of a SPSC can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy the security of tenure.
- The conditions of service of the chairman or a member, though determined by the governor, cannot be varied to his disadvantage after his appointment.
- The entire expense including the salaries, allowances and pensions of the chairman and members of a SPSC are charged on the consolidated fund of the state. Thus, they are not subject to vote of the state legislature.

- The chairman of a SPSC (on ceasing to hold office) is eligible for appointment as the chairman or a member of the UPSC or as the chairman of any other SPSC, but not for any other employment under the Government of India or a state.
- A member of a SPSC (on ceasing to hold office) is eligible for appointment as the chairman or a member of the UPSC, or as the chairman of that SPSC or any other SPSC, but not for any other employment under the Government of India or a state.
- The chairman or a member of a SPSC is (after having completed his first term) not eligible for reappointment to that office (that is, not eligible for second term).

FUNCTIONS OF THE SPSC

A SPSC performs all those functions in respect of the state services as the UPSC does in relation to the Central services:

(a) It conducts examinations for appointments to the services of the state.

(b) It is consulted on the following matters related to personnel management:

- All matters relating to methods of recruitment to civil services and for civil posts.
- The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another.
- The suitability of candidates for appointments to civil services and posts; for promotions and transfers from one service to another; and appointments by transfer or deputation. The concerned departments make recommendations for promotions and request the SPSC to ratify them.
- All disciplinary matters affecting a person serving under the government of the state in a civil capacity including memorials or petitions relating to such matters. These include:
  - Censure (severe disapproval)
  - Withholding of increments
  - Withholding of promotions
  - Recovery of pecuniary loss
  - Reduction to lower service or rank (demotion)
  - Compulsory retirement
  - Removal from service
  - Dismissal from service
- Any claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his official duties.
- Any claim for the award of a pension in respect of injuries sustained by a person while serving under the government of the state and any question as to the amount of any such award.
- Any other matter related to the personnel management.

The Supreme Court has held that if the government fails to consult the SPSC in these matters, the aggrieved public servant has no remedy in a court. In other words, the court held that any irregularity in

consultation with the SPSC or acting without consultation does not invalidate the decision of the government. Thus, the provision is directory and not mandatory. Similarly, the court held that a selection by the SPSC does not confer any right to the post upon the candidate. However, the government is to act fairly and without arbitrariness or malafides.

The additional functions relating to the services of the state can be conferred on SPSC by the state legislature. It can also place the personnel system of any local authority, corporate body or public institution within the jurisdiction of the SPSC. Hence the jurisdiction of SPSC can be extended by an Act made by the state legislature.

The SPSC presents, annually, to the governor a report on its performance. The governor places this report before both the Houses of the state legislature, along with a memorandum explaining the cases where the advice of the Commission was not accepted and the reasons for such non-acceptance.

The following matters are kept outside the functional jurisdiction of the SPSC. In other words, the SPSC is not consulted on the following matters:

- While making reservations of appointments or posts in favour of any backward class of citizens.
- While taking into consideration the claims of scheduled castes and scheduled tribes in making appointments to services and posts.

The governor can exclude posts, services and matters from the purview of the SPSC. The Constitution states that the governor, in respect to the state services and posts may make regulations specifying the matters in which, it shall not be necessary for SPSC to be consulted. But all such regulations made by the governor shall be laid before each House of the state legislature for at least 14 days. The state legislature can amend or repeal them.

JOINT STATE PUBLIC SERVICE COMMISSION

The Constitution makes a provision for the establishment of a Joint State Public Service Commission (JSPSC) for two or more states. While the UPSC and the SPSC are created directly by the Constitution, a JSPSC can be created by an act of Parliament on the request of the state legislatures concerned. Thus, a JSPSC is a statutory and not a constitutional body. The two states of Punjab and Haryana had a JSPSC for a short period, after the creation of Haryana out of Punjab in 1966.

The chairman and members of a JSPSC are appointed by the president. They hold office for a term of six years or until they attain the age of 62 years, whichever is earlier. They can be suspended or removed by the president. They can also resign from their offices at any time by submitting their resignation letters to the president. The number of members of a JSPSC and their conditions of service are determined by the president. A JSPSC presents its annual performance report to each of the concerned state governors. Each governor places the report before the state legislature.

The UPSC can also serve the needs of a state on the request of the state governor and with the approval of the president.

FINANCE COMMISSION

Article 280 of the Constitution of India provides for a Finance Commission as a quasi judicial body. It is constituted by the president of India every fifth year or at such earlier time as he considers necessary.

The Finance Commission consists of a chairman and four other members to be appointed by the president. They hold office for such period as specified by the president in his order. They are eligible for reappointment.

The Constitution authorises the Parliament to determine the qualifications of members of the commission and the manner in which they should be selected. Accordingly, the Parliament has specified the qualifications of the chairman and members of the commission. The chairman should be a person having experience in public affairs and the four other members should be selected from amongst the following:

- A judge of high court or one qualified to be appointed as one.
- A person who has specialised knowledge of finance and accounts of the government.
- A person who has wide experience in financial matters and in administration.
- A person who has special knowledge of economics.

FUNCTIONS OF THE FINANCE COMMISSION

The Finance Commission is required to make recommendations to the president of India on the following matters:

1. The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states of the respective shares of such proceeds.

2. The principles that should govern the grants-in-aid to the states by the Centre (i.e., out of the consolidated fund of India).

3. The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the state finance commission.

4. Any other matter referred to it by the president in the interests of sound finance.

Till 1960, the commission also suggested the grants given to the States of Assam, Bihar, Odisha and West Bengal in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products. These grants were to be given for a temporary period of ten years from the commencement of the Constitution.

The commission submits its report to the president. He lays it before both the Houses of Parliament along with an explanatory memorandum as to the action taken on its recommendations.

It must be clarified here that the recommendations made by the Finance Commission are only of advisory nature and hence, not binding on the government. It is up to the Union government to implement its recommendations on granting money to the states.

NATIONAL COMMISSION FOR SCs

Originally, Article 338 of the Constitution provided for the appointment of a Special Officer for Scheduled Castes (SCs) and Scheduled Tribes (STs) to investigate all matters relating to the constitutional safeguards for the SCs and STs and to report to the President on their working. He was designated as the Commissioner for SCs and STs and assigned the said duty.

In 1978, the Government (through a Resolution) set up a non-statutory multi-member Commission for SCs and STs; the Office of Commissioner for SCs and STs also continued to exist. In 1987, the Government (through another Resolution) modified the functions of the Commission and renamed it as the National Commission for SCs and STs.

Later, the 65th Constitutional Amendment Act of 19905 provided for the establishment of a high level multi-member National Commission for SCs and STs in the place of a single Special Officer for SCs and STs. This constitutional body replaced the Commissioner for SCs and STs as well as the Commission set up under the Resolution of 1987.

Again, the 89th Constitutional Amendment Act of 20036 bifurcated the combined National Commission for SCs and STs into two separate bodies, namely, National Commission for Scheduled Castes (under Article 338) and National Commission for Scheduled Tribes (under Article 338-A).

The separate National Commission for SCs came into existence in 2004. It consists of a chairperson, a vice-chairperson and three other members. They are appointed by the President by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the President.

FUNCTIONS OF THE COMMISSION

- To investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working;
- To inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs;
- To participate and advise on the planning process of socio-economic development of the SCs and to evaluate the progress of their development under the Union or a state;
- To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards;
- To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the SCs; and
- To discharge such other functions in relation to the protection, welfare and development and advancement of the SCs as the president may specify.

REPORT OF THE COMMISSION

The commission presents an annual report to the president. It can also submit a report as and when it thinks necessary. The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations. The President also forwards any report of the Commission pertaining to a state government to the state governor. The governor places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

POWERS OF THE COMMISSION

The Commission is vested with the power to regulate its own procedure. The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:

- Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- Requiring the discovery and production of any document;
- Receiving evidence on affidavits;
- Requisitioning any public record from any court or office;
- Issuing summons for the examination of witnesses and documents; and
- Any other matter which the President may determine.

The Central government and the state governments are required to consult the Commission on all major policy matters affecting the SCs.

NATIONAL COMMISSION FOR STs

The separate National Commission for STs came into existence in 2004. It consists of a chairperson, a vice-chairperson and three other members. They are appointed by the President by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the President.

FUNCTIONS OF THE COMMISSION

- To investigate and monitor all matters relating to the constitutional and other legal safeguards for the STs and to evaluate their working;
- To inquire into specific complaints with respect to the deprivation of rights and safeguards of the STs;
- To participate and advise on the planning process of socio-economic development of the STs and to evaluate the progress of their development under the Union or a state;
- To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards;
- To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the STs; and
- To discharge such other functions in relation to the protection, welfare and development and advancement of the STs as the President may specify.

OTHER FUNCTIONS OF THE COMMISSION

In 2005, the President specified the following other functions of the Commission in relation to the protection, welfare and development and advancement of the STs:

- Measures to be taken over conferring ownership rights in respect of minor forest produce to STs living in forest areas (ii) Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc., as per law
- Measures to be taken for the development of tribals and to work for more viable livelihood strategies
- Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects
- Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place
- Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation
- Measures to be taken to ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996
- Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribals that lead to their continuous disempowerment and degradation of land and the environment

REPORT OF THE COMMISSION

The Commission presents an annual report to the President. It can also submit a report as and when it thinks necessary. The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

The President also forwards any report of the Commission pertaining to a state government to the state governor. The governor places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

POWERS OF THE COMMISSION

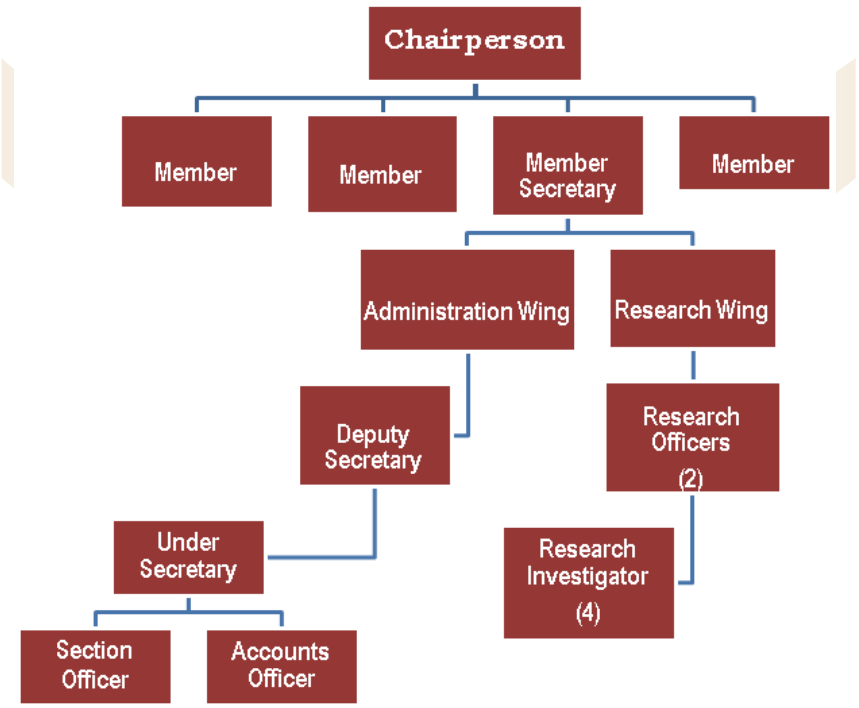
The Commission is vested with the power to regulate its own procedure. The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:

- summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- requiring the discovery and production of any document;
- receiving evidence on affidavits;
- requisitioning any public record from any court or office;
- issuing summons for the examination of witnesses and documents; and
- any other matter which the President may determine.

The Central government and the state governments are required to consult the Commission on all major policy matters affecting the STs.

NATIONAL COMMISSION FOR BACKWARD CLASSES

National Commission for Backward Classes is a Constitutional body set up through the 123rd constitutional amendment bill 2018 and 102nd amendment act under the provisions of Article 338B of Indian Constitution. The commission consists of one chairman and five Members with the term of three years. The Commission consists of five members including a Chairperson, Vice-Chairperson and three other Members appointed by the President by warrant under his hand and seal. The conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members is determined by President.



Constitutional Provisions

- Article 340 deals with the need to, inter alia, identify those "socially and educationally backward classes", understand the conditions of their backwardness, and make recommendations to remove the difficulties they face.
- 102nd Constitution Amendment Act inserted new Articles 338 B and 342 A.
- The amendment also brings about changes in Article 366.
- Article 338B provides authority to NCBC to examine complaints and welfare measures regarding socially and educationally backward classes.
- Article 342 A empowers President to specify socially and educationally backward classes in various states and union territories. He can do this in consultation with Governor of concerned State. However, law enacted by Parliament will be required if list of backward classes is to be amended.

Powers and Functions

- The commission investigates and monitors all matters relating to the safeguards provided for the socially and educationally backward classes under the Constitution or under any other law to evaluate the working of such safeguards.
- It participates and advises on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State.
- It presents to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards. The President laid such reports before each House of Parliament.
- Where any such report or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the State Government.
- NCBC has to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.
- It has all the powers of a civil court while trying a suit.

How Does The New Commission Be Different From Its Earlier Version?

- The new act has recognized that BCs also need development in addition to reservations. There are provision in the act for development of Socially and Educationally Backward Classes (SEdBCs) and the new NCBC's role in the development process.
- The new NCBC is entrusted with the additional function of grievance redress of backward classes.
- Article 342(A) introduces greater transparency as its made mandatory to take the concurrence of Parliament for adding or deleting any community in the backward list.
- Apart from list-inclusion and reservation, it requires comprehensive and holistic development and advancement of each community towards equality in all parameters of development and welfare.

Issues

- It is apprehended that the new version of the National Commission for Backward Classes is unlikely to provide credible and effective social justice architecture.

- The recommendation of new NCBC is not binding on the government.
- Since it has no responsibility to define backwardness, it cannot address the current challenge of demands of various castes to be included as BCs.
- By retaining the old generic name of NCBC and delinking the body from its soul (Article 340), the government set the stage for the whole scheme of special protections under the Constitution in danger.
- Features of expert body, as directed by the Supreme Court, are not provided in the composition of the new NCBC.
- Mere constitutional status and more acts will not solve the problem at grass root level as recent data revealed skewed representation of SC/ST and OBC categories.
- Article 338B (5) is silent on the SC mandate on periodic revision of the backward class list in consultation with the NCBC.

Suggestions

- The composition should reflect the feature of an expert body as mandated by the SC.
- The government must put information in public domain regarding the findings of the caste census and recommendations of commission.
- Composition of commission should reflect the gender sensitivity and representation of stakeholders.
- Vote bank politics should give way to value based politics so that only truly backward sections of society will get the benefit of reservation.

SPECIAL OFFICER FOR LINGUISTIC MINORITIES

Originally, the Constitution of India did not make any provision with respect to the Special Officer for Linguistic Minorities. Later, the States Reorganisation Commission (1953-55) made a recommendation in this regard. Accordingly, the Seventh Constitutional Amendment Act of 1956 inserted a new Article 350-B in Part XVII of the Constitution. This article contains the following provisions:

1. There should be a Special Officer for Linguistic Minorities. He is to be appointed by the President of India.

2. It would be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution. He would report to the President upon those matters at such intervals as the President may direct. The President should place all such reports before each House of Parliament and send to the governments of the states concerned.

It must be noted here that the Constitution does not specify the qualifications, tenure, salaries and allowances, service conditions and procedure for removal of the Special Officer for Linguistic Minorities.

COMMISSIONER FOR LINGUISTIC MINORITIES

In pursuance of the provision of Article 350-B of the Constitution, the office of the Special Officer for Linguistic Minorities was created in 1957. He is designated as the Commissioner for Linguistic Minorities. The Commissioner has his headquarters at Allahabad (Uttar Pradesh). He has three regional offices at Belgaum (Karnataka), Chennai (Tamil Nadu) and Kolkata (West Bengal). Each is headed by an Assistant Commissioner.

The Commissioner is assisted at headquarters by Deputy Commissioner and an Assistant Commissioner. He maintains liaison with the State Governments and Union Territories through nodal officers appointed by them.

At the Central level, the Commissioner falls under the Ministry of Minority Affairs. Hence, he submits the annual reports or other reports to the President through the Union Minority Affairs Minister.

ROLE OF THE COMMISSIONER

The Commissioner takes up all the matters pertaining to the grievances arising out of the non-implementation of the Constitutional and Nationally Agreed Scheme of Safeguards provided to linguistic minorities that come to its notice or are brought to its knowledge by the linguistic minority individuals, groups, associations or organisations at the highest political and administrative levels of the state governments and UT administrations and recommends remedial actions to be taken.

To promote and preserve linguistic minority groups, the Ministry of Minority Affairs has requested the State Governments / Union Territories to give wide publicity to the constitutional safeguards provided to linguistic minorities and to take necessary administrative measures. The state governments and UT Administrations were urged to accord priority to the implementation of the scheme of safeguards for linguistic minorities. The Commissioner launched a 10 point programme to lend fresh impetus to Governmental efforts towards the preservation of the language and culture of linguistic minorities.

FUNCTIONS AND OBJECTIVES

Functions

- To investigate all matters related to safeguards provided to the linguistic minorities
- To submit to the President of India, the reports on the status of implementation of the Constitutional and the nationally agreed safeguards for the linguistic minorities
- To monitor the implementation of safeguards through questionnaires, visits, conferences, seminars, meetings, review mechanism, etc

Objectives

- To provide equal opportunities to the linguistic minorities for inclusive development and national integration.
- To spread awareness amongst the linguistic minorities about the safeguards available to them
- To ensure effective implementation of the safeguards provided for the linguistic minorities in the Constitution and other safeguards, which are agreed to by the states / U.T.s
- To handle the representations for redress of grievances related to the safeguards for linguistic minorities.

COMPTROLLER AND AUDITOR GENERAL OF INDIA

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

"CAG shall be the most important Officer under the Constitution of India. He is one of the bulwarks of the democratic system of government in India; the others being the Supreme Court, the Election Commission and the Union Public Service Commission."

APPOINTMENT AND TERM

The CAG is appointed by the president of India by a warrant under his hand and seal. The CAG, before taking over his office, makes and subscribes before the president an oath or affirmation:

- to bear true faith and allegiance to the Constitution of India;
- to uphold the sovereignty and integrity of India;
- to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of his office without fear or favour, affection or ill-will; and
- to uphold the Constitution and the laws.

He holds office for a period of six years or upto the age of 65 years, whichever is earlier. He can resign any time from his office by addressing the resignation letter to the president. He can also be removed by the president on same grounds and in the same manner as a judge of the Supreme Court. In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehaviour or incapacity.

INDEPENDENCE OF THE OFFICE OF CAG

The Constitution has made the following provisions to safeguard and ensure the independence of CAG:

- He is provided with the security of tenure. He can be removed by the president only in accordance with the procedure mentioned in the Constitution. Thus, he does not hold his office till the pleasure of the president, though he is appointed by him.
- He is not eligible for further office, either under the Government of India or of any state, after he ceases to hold his office.
- His salary and other service conditions are determined by the Parliament. His salary is equal to that of a judge of the Supreme Court.
- Neither his salary nor his rights in respect of leave of absence, pension or age of retirement can be altered to his disadvantage after his appointment.
- The conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the CAG are prescribed by the president after consultation with the CAG.
- The administrative expenses of the office of the CAG, including all salaries, allowances and pensions of persons serving in that office are charged upon the Consolidated Fund of India. Thus, they are not subject to the vote of Parliament.

Further, no minister can represent the CAG in Parliament (both Houses) and no minister can be called upon to take any responsibility for any actions done by him.

DUTIES AND POWERS

The Constitution (Article 149) authorises the Parliament to prescribe the duties and powers of the CAG in relation to the accounts of the Union and of the states and of any other authority or body. Accordingly, the Parliament enacted the CAG's (Duties, Powers and Conditions of Service) act, 1971. This Act was amended in 1976 to separate accounts from audit in the Central government. The duties and functions of the CAG as laid down by the Parliament and the Constitution are:

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.

4. He audits the receipts and expenditure of the Centre and each state to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue.

5. He audits the receipts and expenditure of the following:

- All bodies and authorities substantially financed from the Central or state revenues;
- Government companies; and
- Other corporations and bodies, when so required by related laws.

6. He audits all transactions of the Central and state governments related to debt, sinking funds, deposits, advances, suspense accounts and remittance business. He also audits receipts, stock accounts and others, with approval of the President, or when required by the President.

7. He audits the accounts of any other authority when requested by the President or Governor. For example, the audit of local bodies.

8. He advises the President with regard to prescription of the form in which the accounts of the Centre and the states shall be kept (Article 150).

9. He submits his audit reports relating to the accounts of the Centre to President, who shall, in turn, place them before both the Houses of Parliament (Article 151).

10. He submits his audit reports relating to the accounts of a state to governor, who shall, in turn, place them before the state legislature (Article 151).

11. He ascertains and certifies the net proceeds of any tax or duty (Article 279). His certificate is final. The 'net proceeds' means the proceeds of a tax or a duty minus the cost of collection.

12. He acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament.

13. He compiles and maintains the accounts of state governments. In 1976, he was relieved of his responsibilities with regard to the compilation and maintenance of accounts of the Central Government due to the separation of accounts from audit, that is, departmentalisation of accounts.

The CAG submits three audit reports to the President—audit report on appropriation accounts, audit report on finance accounts, and audit report on public undertakings. The President lays these reports before both the Houses of Parliament. After this, the Public Accounts Committee examines them and reports its findings to the Parliament. The appropriation accounts compare the actual expenditure with the expenditure sanctioned by the Parliament through the Appropriation Act, while the finance accounts show the annual receipts and disbursements of the Union government.

The role of CAG is to uphold the Constitution of India and the laws of Parliament in the field of financial administration. The accountability of the executive (i.e., council of ministers) to the Parliament in the sphere of financial administration is secured through audit reports of the CAG. The CAG is an agent of the Parliament and conducts audit of expenditure on behalf of the Parliament. Therefore, he is responsible only to the Parliament. The CAG has more freedom with regard to audit of expenditure than with regard to audit of receipts, stores and stock. "Whereas in relation to expenditure he decides the scope of audit and frames his own audit codes and manuals, he has to proceed with the approval of the executive government in relation to rules for the conduct of the other audits."

The CAG has 'to ascertain whether money shown in the accounts as having been disbursed was legally available for and applicable to the service or the purpose to which they have been applied or charged and whether the expenditure conforms to the authority that governs it'. In addition to this legal and regulatory audit, the CAG can also conduct the propriety audit, that is, he can look into the 'wisdom, faithfulness and economy' of government expenditure and comment on the wastefulness and extravagance of such expenditure. However, unlike the legal and regulatory audit, which is obligatory on the part of the CAG, the propriety audit is discretionary.

The secret service expenditure is a limitation on the auditing role of the CAG. In this regard, the CAG cannot call for particulars of expenditure incurred by the executive agencies, but has to accept a certificate from the competent administrative authority that the expenditure has been so incurred under his authority.

The Constitution of India visualises the CAG to be Comptroller as well as Auditor General. However, in practice, the CAG is fulfilling the role of an Auditor-General only and not that of a Comptroller. In other words, 'the CAG has no control over the issue of money from the consolidated fund and many departments are authorised to draw money by issuing cheques without specific authority from the CAG, who is concerned only at the audit stage when the expenditure has already taken place'

In this respect, the CAG of India differs totally from the CAG of Britain who has powers of both Comptroller as well as Auditor General. In other words, in Britain, the executive can draw money from the public exchequer only with the approval of the CAG.

CAG AND CORPORATIONS

The role of CAG in the auditing of public corporations is limited. Broadly speaking, his relationship with the public corporations falls into the following three categories:

- Some corporations are audited totally and directly by the CAG, for example, Damodar Valley Corporation, Oil and Natural Gas Commission, Air India, Indian Airlines Corporation, and others.
- Some other corporations are audited by private professional auditors who are appointed by the Central Government in consultation with the CAG. If necessary, the CAG can conduct supplementary audit. The examples are, Central Warehousing Corporation, Industrial Finance Corporation, and others.
- Some other corporations are totally subjected to private audit. In other words, their audit is done exclusively by private professional auditors and the CAG does not come into the picture at all. They submit their annual reports and accounts directly to the Parliament. Examples of such corporations are Life Insurance Corporation of India, Reserve Bank of India, State Bank of India, Food Corporation of India, and others.

The role of the CAG in the auditing of Government companies is also limited. They are audited by private auditors who are appointed by the Government on the advise of the CAG. The CAG can also undertake supplementary audit or test audit of such companies.

In 1968, an Audit Board was established as a part of the office of CAG to associate outside specialists and experts to handle the technical aspects of audit of specialised enterprises like engineering, iron and steel, chemicals and so on. This board was established on the recommendations of the Administrative Reforms Commission of India. It consists of a Chairman and two members appointed by the CAG.

ATTORNEY GENERAL OF INDIA

Article 76 of the Indian Constitution provides for the office of the Attorney General for India. He is the highest law officer in the country. The Attorney General (AG) is appointed by the president. He must be a person who is qualified to be appointed a judge of the Supreme Court. In other words, he must be a citizen of India and he must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist, in the opinion of the president.

The term of office of the AG is not fixed by the Constitution. Further, the Constitution does not contain the procedure and grounds for his removal. He holds office during the pleasure of the president. This means that he may be removed by the president at any time. He may also quit his office by submitting his resignation to the president. Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice. The remuneration of the AG is not fixed by the Constitution. He receives such remuneration as the president may determine.

DUTIES AND FUNCTIONS

As the chief law officer of the Government of India, the duties of the AG include the following:

- To give advice to the Government of India upon such legal matters, which are referred to him by the president.
- To perform such other duties of a legal character that are assigned to him by the president.
- To discharge the functions conferred on him by the Constitution or any other law.

The president has assigned the following duties to the AG:

- To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
- To represent the Government of India in any reference made by the president to the Supreme Court under Article 143 of the Constitution.
- To appear (when required by the Government of India) in any high court in any case in which the Government of India is concerned.

RIGHTS AND LIMITATIONS

In the performance of his official duties, the Attorney General has the right of audience in all courts in the territory of India. Further, he has the right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting and any committee of the Parliament of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that are available to a Member of Parliament. Following limitations are placed on the Attorney General in order to avoid any complication and conflict of duty:

- He should not advise or hold a brief against the Government of India.
- He should not advise or hold a brief in cases in which he is called upon to advise or appear for the Government of India.
- He should not defend accused persons in criminal prosecutions without the permission of the Government of India.
- He should not accept appointment as a director in any company or corporation without the permission of the Government of India.

However, the Attorney General is not a full-time counsel for the Government. He does not fall in the category of government servants. Further, he is not debarred from private legal practice.

SOLICITOR GENERAL OF INDIA

In addition to the AG, there are other law officers of the Government of India. They are the solicitor general of India and additional solicitor general of India. They assist the AG in the fulfilment of his official responsibilities. It should be noted here that only the office of the AG is created by the Constitution. In other

words, Article 76 does not mention about the solicitor general and additional solicitor general. The AG is not a member of the Central cabinet. There is a separate law minister in the Central cabinet to look after legal matters at the government level

ADVOCATE GENERAL OF THE STATE

Article 165 provides for the office of the advocate general for the states. He is the highest law officer in the state. Thus he corresponds to the Attorney General of India.

The advocate general is appointed by the governor. He must be a person who is qualified to be appointed a judge of a high court. In other words, he must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years.

The term of office of the advocate general is not fixed by the Constitution. Further, the Constitution does not contain the procedure and grounds for his removal. He holds office during the pleasure of the governor. This means that he may be removed by the governor at any time. He may also quit his office by submitting his resignation to the governor. Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.

The remuneration of the advocate general is not fixed by the Constitution. He receives such remuneration as the governor may determine.

DUTIES AND FUNCTIONS

As the chief law officer of the government in the state, the duties of the advocate general include the following:

- To give advice to the government of the state upon such legal matters which are referred to him by the governor.
- To perform such other duties of a legal character that are assigned to him by the governor.
- To discharge the functions conferred on him by the Constitution or any other law.

In the performance of his official duties, the advocate general is entitled to appear before any court of law within the state. Further, he has the right to speak and to take part in the proceedings of both the Houses of the state legislature or any committee of the state legislature of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that are available to a member of the state legislature.

Note: -The Inter-state council is also a constitutional body. For details see under Unit XV

UNIT-XIX

[NON-CONSTITUTIONAL BODIES]

NATIONAL HUMAN RIGHTS COMMISSION

The National Human Rights Commission is a statutory (and not a constitutional) body. It was established in 1993 under a legislation enacted by the Parliament, namely, the Protection of Human Rights Act, 1993. This Act was amended in 2006.

The commission is the watchdog of human rights in the country, that is, the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India.

The specific objectives of the establishment of the commission are:

- To strengthen the institutional arrangements through which human rights issues could be addressed in their entirety in a more focussed manner;
- To look into allegations of excesses, independently of the government, in a manner that would underline the government's commitment to protect human rights; and
- To complement and strengthen the efforts that have already been made in this direction.

COMPOSITION OF THE COMMISSION

The commission is a multi-member body consisting of a chairman and four members. The chairman should be a retired chief justice of India, and members should be serving or retired judges of the Supreme Court, a serving or retired chief justice of a high court and two persons having knowledge or practical experience with respect to human rights. In addition to these fulltime members, the commission also has four ex-officio members—the chairmen of the National Commission for Minorities, the National Commission for SCs, the National Commission for STs and the National Commission for Women.

The chairman and members are appointed by the president on the recommendations of a six-member committee consisting of the prime minister as its head, the Speaker of the Lok Sabha, the Deputy Chairman of the Rajya Sabha, leaders of the Opposition in both the Houses of Parliament and the Central home minister. Further, a sitting judge of the Supreme Court or a sitting chief justice of a high court can be appointed only after consultation with the chief justice of India.

The chairman and members hold office for a term of five years or until they attain the age of 70 years, whichever is earlier. After their tenure, the chairman and members are not eligible for further employment under the Central or a state government.

The president can remove the chairman or any member from the office under the following circumstances:

- If he is adjudged an insolvent; or
- If he engages, during his term of office, in any paid employment outside the duties of his office; or
- If he is unfit to continue in office by reason of infirmity of mind or body; or
- If he is of unsound mind and stand so declared by a competent court; or
- If he is convicted and sentenced to imprisonment for an offence.

In addition to these, the president can also remove the chairman or any member on the ground of proved misbehaviour or incapacity. However, in these cases, the president has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the president can remove the chairman or a member. The salaries, allowances and other conditions of service of the chairman or a member are determined by the Central government. But, they cannot be varied to his disadvantage after his appointment. All the above provisions are aimed at securing autonomy, independence and impartiality in the functioning of the Commission.

FUNCTIONS OF THE COMMISSION

- To inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either suo motu or on a petition presented to it or on an order of a court.
- To intervene in any proceeding involving allegation of violation of human rights pending before a court.
- To visit jails and detention places to study the living conditions of inmates and make recommendation thereon.
- To review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
- To review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.
- To study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- To undertake and promote research in the field of human rights.
- To spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.
- To encourage the efforts of non-governmental organisations (NGOs) working in the field of human rights.
- To undertake such other functions as it may consider necessary for the promotion of human rights.

HUMAN RIGHTS (AMENDMENT) ACT, 2006

The Parliament has passed the Protection of Human Rights (Amendment) Act, 2006. The main amendments carried out in the Protection of Human Rights Act, 1993, relate to the following issues:

- Reducing the number of members of State Human Rights Commissions (SHRCs) from five to three
- Changing the eligibility condition for appointment of member of SHRCs
- Strengthening the investigative machinery available with Human Rights Commissions
- Empowering the Commissions to recommend award of compensation, etc. even during the course of enquiry
- Empowering the NHRC to undertake visits to jails even without intimation to the state governments
- Strengthening the procedure for recording of evidence of witnesses
- Clarifying that the Chairpersons of NHRC and SHRCs are distinct from the Members of the respective Commission

- Enabling the NHRC to transfer complaints received by it to the concerned SHRC
- Enabling the Chairperson and members of the NHRC to address their resignations in writing to the President and the Chairperson and members of the SHRCs to the Governor of the state concerned
- Clarifying that the absence of any member in the Selection Committee for selection of the Chairperson and member of the NHRC or the SHRCs will not vitiate the decisions taken by such Committees
- Providing that the Chairperson of the National Commission for the Scheduled Castes and the Chairperson of the National Commission for the Scheduled Tribes shall be deemed to be members of the NHRC
- Enabling the Central Government to notify future international covenants and conventions to which the Act would be applicable.

STATE HUMAN RIGHTS COMMISSION

Protection of Human Rights Act of 1993 provides for the creation of not only the National Human Rights Commission but also a State Human Rights Commission at the state level.

A State Human Rights Commission can inquire into violation of human rights only in respect of subjects mentioned in the State List (List-II) and the Concurrent List (List-III) of the Seventh Schedule of the Constitution. However, if any such case is already being inquired into by the National Human Rights Commission or any other Statutory Commission, then the State Human Rights Commission does not inquire into that case.

The State Human Rights Commission is a multi-member body consisting of a chairperson and two members. The chairperson should be a retired Chief Justice of a High Court and members should be a serving or retired judge of a High Court or a District Judge in the state with a minimum of seven years experience as District Judge and a person having knowledge or practical experience with respect to human rights.

The chairperson and members are appointed by the Governor on the recommendations of a committee consisting of the chief minister as its head, the speaker of the Legislative Assembly, the state home minister and the leader of the opposition in the Legislative Assembly. In the case of a state having Legislative Council, the chairman of the Council and the leader of the opposition in the Council would also be the members of the committee.

Further, a sitting judge of a High Court or a sitting District Judge can be appointed only after consultation with the Chief Justice of the High Court of the concerned state.

The chairperson and members hold office for a term of five years or until they attain the age of 70 years, whichever is earlier. After their tenure, the chairperson and members are not eligible for further employment under a state government or the Central government.

Although the chairperson and members of a State Human Rights Commission are appointed by the governor, they can be removed only by the President (and not by the governor). The President can remove them on the same grounds and in the same manner as he can remove the chairperson or a member of the National Human Rights Commission. Thus, he can remove the chairperson or a member under the following circumstances:

- If he is adjudged an insolvent; or
- If he engages, during his term of office, in any paid employment outside the duties of his office; or
- If he is unfit to continue in office by reason of infirmity of mind or body; or

- If he is of unsound mind and stands so declared by a competent court; or
- If he is convicted and sentenced to imprisonment for an offence.

In addition to these, the president can also remove the chairperson or a member on the ground of proved misbehaviour or incapacity. However, in these cases, the President has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the President can remove the chairperson or a member. The salaries, allowances and other conditions of service of the chairman or a member are determined by the state government. But, they cannot be varied to his disadvantage after his appointment.

All the above provisions are aimed at securing autonomy, independence and impartiality in the functioning of the Commission.

FUNCTIONS OF THE COMMISSION

- To inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either suo motu or on a petition presented to it or on an order of a court.
- To intervene in any proceeding involving allegation of violation of human rights pending before a court.
- To visit jails and detention places to study the living conditions of inmates and make recommendation thereon.
- To review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
- To review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.
- To undertake and promote research in the field of human rights.
- To spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.
- To encourage the efforts of non-governmental organizations (NGOs) working in the field of human rights.
- To undertake such other functions as it may consider necessary for the promotion of human rights.

HUMAN RIGHTS COURTS

The Protection of Human Rights Act (1993) also provides for the establishment of Human Rights Court in every district for the speedy trial of violation of human rights. These courts can be set up by the state government only with the concurrence of the Chief Justice of the High Court of that state. For every Human Rights Court, the state government specifies a public prosecutor or appoints an advocate (who has practiced for seven years) as a special public prosecutor.

CENTRAL INFORMATION COMMISSION

The Central Information Commission was established by the Central Government in 2005. It was constituted through an Official Gazette Notification under the provisions of the Right to Information Act (2005). Hence, it is not a constitutional body. The Central Information Commission is a high-powered independent body which inter alia looks into the complaints made to it and decide the appeals. It entertains complaints and appeals pertaining to offices, financial institutions, public sector undertakings, etc., under the Central Government and the Union Territories.

The Commission consists of a Chief Information Commissioner and not more than ten Information Commissioners. They are appointed by the President on the recommendation of a committee consisting of the Prime Minister as Chairperson, the Leader of Opposition in the Lok Sabha and a Union Cabinet Minister nominated by the Prime Minister. They should be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. They should not be a Member of Parliament or Member of the Legislature of any State or Union Territory. They should not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

TENURE AND SERVICE CONDITIONS

The Chief Information Commissioner and an Information Commissioner hold office for a term of 5 years or until they attain the age of 65 years, whichever is earlier. They are not eligible for reappointment.

The President can remove the Chief Information Commissioner or any Information Commissioner from the office under the following circumstances:

- if he is adjudged an insolvent; or
- if he has been convicted of an offence which (in the opinion of the President) involves a moral turpitude; or
- if he engages during his term of office in any paid employment outside the duties of his office; or
- if he is (in the opinion of the President) unfit to continue in office due to infirmity of mind or body; or
- if he has acquired such financial or other interest as is likely to affect prejudicially his official functions.

In addition to these, the President can also remove the Chief Information Commissioner or any Information Commissioner on the ground of proved misbehaviour or incapacity4. However, in these cases, the President has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, then the President can remove him. The salary, allowances and other service conditions of the Chief Information Commissioner are similar to those of the Chief Election Commissioner and that of the Information Commissioner are similar to those of an Election Commissioner. But, they cannot be varied to his disadvantage during service.

POWERS AND FUNCTIONS

1. It is the duty of the Commission to receive and inquire into a complaint from any person:
    - who has not been able to submit an information request because of non-appointment of a Public Information Officer;
    - who has been refused information that was requested;
    - who has not received response to his information request within the specified time limits;
    - who thinks the fees charged are unreasonable;
    - who thinks information given is incomplete, misleading or false; and
    - any other matter relating to obtaining information.

2. The Commission can order inquiry into any matter if there are reasonable grounds (suo-moto power).

3. While inquiring, the Commission has the powers of a civil court in respect of the following matters:

- summoning and enforcing attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things;
- requiring the discovery and inspection of documents;
- receiving evidence on affidavit;
- requisitioning any public record from any court or office;
- issuing summons for examination of witnesses or documents; and
- any other matter which may be prescribed.

4. During the inquiry of a complaint, the Commission may examine any record which is under the control of the public authority and no such record may be withheld from it on any grounds. In other words, all public records must be given to the Commission during inquiry for examination.

5. The Commission has the power to secure compliance of its decisions from the public authority. This includes:

- providing access to information in a particular form;
- directing the public authority to appoint a Public Information Officer where none exists;
- publishing information or categories of information;
- making necessary changes to the practices relating to management, maintenance and destruction of records;
- enhancing training provision for officials on the right to information;
- seeking an annual report from the public authority on compliance with this Act;
- requiring the public authority to compensate for any loss or other detriment suffered by the applicant;
- imposing penalties under this Act; and
- rejecting the application.

6. The Commission submits an annual report to the Central Government on the implementation of the provisions of this Act. The Central Government places this report before each House of Parliament.

7. When a public authority does not conform to the provisions of this Act, the Commission may recommend (to the authority) steps which ought to be taken for promoting such conformity.

STATE INFORMATION COMMISSION

The Right to Information Act of 2005 provides for the creation of not only the Central Information Commission but also a State Information Commission at the state level.

The Commission consists of a State Chief Information Commissioner and not more than ten State Information Commissioners1. They are appointed by the Governor on the recommendation of a committee consisting of the Chief Minister as Chairperson, the Leader of Opposition in the Legislative Assembly and a State Cabinet Minister nominated by the Chief Minister. They should be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. They should not be a Member of Parliament or Member of the Legislature of any State or Union Territory. They should not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

TENURE AND SERVICE CONDITIONS

The State Chief Information Commissioner and a State Information Commissioner hold office for a term of 5 years or until they attain the age of 65 years, whichever is earlier. They are not eligible for reappointment.

The Governor can remove the State Chief Information Commissioner or any State Information Commissioner from the office under the following circumstances:

- if he is adjudged an insolvent; or
- if he has been convicted of an offence which (in the opinion of the Governor) involves a moral turpitude; or
- if he engages during his term of office in any paid employment outside the duties of his office; or
- if he is (in the opinion of the Governor) unfit to continue in office due to infirmity of mind or body; or
- if he has acquired such financial or other interest as is likely to affect prejudicially his official functions.

In addition to these, the Governor can also remove the State Chief Information Commissioner or any State Information Commissioner on the ground of proved misbehaviour or incapacity. However, in these cases, the Governor has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, then the Governor can remove him.

The salary, allowances and other service conditions of the State Chief Information Commissioner are similar to those of an Election Commissioner and that of the State Information Commissioner are similar to those of the Chief Secretary of the state government. But, they cannot be varied to his disadvantage during service.

POWERS AND FUNCTIONS

1. It is the duty of the Commission to receive and inquire into a complaint from any person:

- who has not been able to submit an information request because of non-appointment of a Public Information Officer;
- who has been refused information that was requested;
- who has not received response to his information request within the specified time limits;
- who thinks the fees charged are unreasonable;
- who thinks information given is incomplete, misleading or false; and
- any other matter relating to obtaining information.

2. The Commission can order inquiry into any matter if there are reasonable grounds (suo-moto power).

3. While inquiring, the Commission has the powers of a civil court in respect of the following matters:

- summoning and enforcing attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things;
- requiring the discovery and inspection of documents;
- receiving evidence on affidavit;

- requisitioning any public record from any court or office;
- issuing summons for examination of witnesses or documents; and
- any other matter which may be prescribed.

4. During the inquiry of a complaint, the Commission may examine any record which is under the control of the public authority and no such record may be withheld from it on any grounds. In other words, all public records must be given to the Commission during inquiry for examination.

5. The Commission has the power to secure compliance of its decisions from the public authority. This includes:

- providing access to information in a particular form;
- directing the public authority to appoint a Public Information Officer where none exists;
- publishing information or categories of information;
- making necessary changes to the practices relating to management, maintenance and destruction of records;
- enhancing training provision for officials on the right to information;
- seeking an annual report from the public authority on compliance with this Act;
- requiring the public authority to compensate for any loss or other detriment suffered by the applicant;
- imposing penalties under this Act; and rejecting the application.

6. The Commission submits an annual report to the State Government on the implementation of the provisions of this Act. The State Government places this report before the State Legislature.

7. When a public authority does not conform to the provisions of this Act, the Commission may recommend (to the authority) steps which ought to be taken for promoting such conformity.

CENTRAL VIGILANCE COMMISSION

The CVC is a multi-member body consisting of a Central Vigilance Commissioner (chairperson) and not more than two vigilance commissioners. They are appointed by the president by warrant under his hand and seal on the recommendation of a three-member committee consisting of the prime minister as its head, the Union minister of home affairs and the Leader of the Opposition in the Lok Sabha. They hold office for a term of four years or until they attain the age of sixty five years, whichever is earlier. After their tenure, they are not eligible for further employment under the Central or a state government.

The president can remove the Central Vigilance Commissioner or any vigilance commissioner from the office under the following circumstances:

- If he is adjudged an insolvent; or
- If he has been convicted of an offence which (in the opinion of the Central government) involves a moral turpitude; or
- If he engages, during his term of office, in any paid employment outside the duties of his office; or
- If he is (in the opinion of the president), unfit to continue in office by reason of infirmity of mind or body; or
- If he has acquired such financial or other interest as is likely to affect prejudicially his official functions.

In addition to these, the president can also remove the Central Vigilance Commissioner or any vigilance commissioner on the ground of proved misbehaviour or incapacity. However, in these cases, the president has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, then the president can remove him. He is deemed to be guilty of misbehaviour, if he

(a) is concerned or interested in any contract or agreement made by the Central government, or (b) participates in any way in the profit of such contract or agreement or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company.

The salary, allowances and other conditions of service of the Central Vigilance Commissioner are similar to those of the Chairman of UPSC and that of the vigilance commissioner are similar to those of a member of UPSC. But they cannot be varied to his disadvantage after his appointment.

ORGANISATION

The CVC has its own Secretariat, Chief Technical Examiners' Wing (CTE) and a wing of Commissioners for Departmental Inquiries (CDIs).

Secretariat: The Secretariat consists of a Secretary, Joint Secretaries, Deputy Secretaries, Under Secretaries and office staff.

Chief Technical Examiners' Wing: The Chief Technical Examiners' Organisation constitutes the technical wing of the CVC. It consists of Chief Engineers (designated as Chief Technical Examiners) and supporting engineering staff. The main functions assigned to this organisation are as follows:

- Technical audit of construction works of Government organisations from a vigilance angle
- Investigation of specific cases of complaints relating to construction works
- Extension of assistance to CBI in their investigations involving technical matters and for evaluation of properties in Delhi
- Tendering of advice / assistance to the CVC and Chief Vigilance Officers in vigilance cases involving technical matters

Commissioners for Departmental Inquiries: The CDIs function as Inquiry Officers to conduct oral inquiries in departmental proceedings initiated against public servants.

FUNCTIONS

1. To inquire or cause an inquiry or investigation to be conducted on a reference made by the Central government wherein it is alleged that a public servant being an employee of the Central government or its authorities has committed an offence under the Prevention of Corruption Act, 1988.

2. To inquire or cause an inquiry or investigation to be conducted into any complaint against any official belonging to the below mentioned category of officials wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988:

- Members of all-India services serving in the Union and Group 'A' officers of the Central government; and
- Specified level of officers of the authorities of the Central government.

3. To exercise superintendence over the functioning of the Delhi Special Police Establishment (CBI) insofar as it relates to the investigation of offences under the Prevention of Corruption Act, 1988.

4. To give directions to the Delhi Special Police Establishment (CBI) for superintendence insofar as it relates to the investigation of offences under the Prevention of Corruption Act, 1988.

5. To review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the prevention of Corruption Act, 1988.

6. To review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988.

7. To tender advise to the Central government and its authorities on such matters as are referred to it by them.

8. To exercise superintendence over the vigilance administration in the ministries of the Central government or its authorities.

9. To undertake or cause an inquiry into complaints received under the Public Interest Disclosure and Protection of Informers' Resolution and recommend appropriate action.

10. The Central Government is required to consult the CVC in making rules and regulations governing the vigilance and disciplinary matters relating to the members of Central Services and All-India Services.

11. The Central Vigilance Commissioner (CVC) is the Chairperson and the two Vigilance Commissioners along with Secretaries of M/o Home Affairs, D/o Personnel and Training and the D/o Revenue in M/o Finance are the Members of the Selection Committees, on whose recommendation the Central Government appoints the Director of Enforcement. Further, this Committee, in consultation with the Director of Enforcement, recommends officers for appointments to the posts above the level of Deputy Director of Enforcement.

12. The Central Vigilance Commission has been notified as a specific authority to receive information relating to suspicious transactions under the Prevention of Money Laundering Act, 2002. The Lokpal and Lokayuktas Act (2013) amended both the CVC Act 2003) and the Delhi Special Police Establishment Act 1946) and made the following changes with respect to the functions of the CVC.

13. The Director of Prosecution under the Directorate of Prosecution in CBI shall be appointed by the Central Government on the recommendation of the Central Vigilance Commission.

14. The Central Vigilance Commissioner (CVC) is the Chairperson and the two Vigilance Commissioners along with Secretaries of M/o Home Affairs and D/o Personnel and Training are the Members of the Selection Committees, on whose recommendation the Central Government appoints officers to the posts of the level of SP and above in the CBI except Director of CBI.

15. The Commission has been empowered to conduct preliminary inquiry into complaints referred by Lokpal in respect of officers and officials of Groups A, B, C & D, for which a Directorate of Inquiry for making preliminary inquiry is to be set up in the Commission. The preliminary inquiry reports in such matters referred by Lokpal in respect of Group A and B officers are required to be sent to the Lokpal by the Commission. Further, as per mandate, the Commission is to cause further investigation into such Lokpal references in respect of Group C and D officials and decide on further course of action against them.

JURISDICTION

- Members of All India Services serving in connection with the affairs of the Union and Group A officers of the Central Government.
- Officers of the rank of Scale V and above in the Public Sector Banks.
- Officers in Grade D and above in Reserve Bank of India, NABARD and SIDBI.

- Chief Executives and Executives on the Board and other officers of E-8 and above in Schedule 'A' and 'B' Public Sector Undertakings.
- Chief Executives and Executives on the Board and other officers of E-7 and above in Schedule 'C' and 'D' Public Sector Undertakings.
- Managers and above in General Insurance Companies.
- Senior Divisional Managers and above in Life Insurance Corporation.
- Officers drawing salary of `8700/- per month (pre-revised) and above on Central Government D.A. pattern, as may be revised from time to time, in societies and local authorities owned or controlled by the Central Government.

CENTRAL BUREAU OF INVESTIGATION

Central Bureau of Investigation (CBI) was set up in 1963 by a resolution of the Ministry of Home Affairs. Later, it was transferred to the Ministry of Personnel and now it enjoys the status of an attached office The Special Police Establishment (which looked into vigilance cases) setup in 1941 was also merged with the CBI.

The establishment of the CBI was recommended by the Santhanam Committee on Prevention of Corruption (1962-1964). The CBI is not a statutory body. It derives its powers from the Delhi Special Police Establishment Act, 1946. The CBI is the main investigating agency of the Central Government. It plays an important role in the prevention of corruption and maintaining integrity in administration. It also provides assistance to the Central Vigilance Commission and Lokpal.

MOTTO, MISSION AND VISION OF CBI

Motto: Industry, Impartiality and Integrity

Mission: To uphold the Constitution of India and law of the land through in- depth investigation and successful prosecution of offences; to provide leadership and direction to police forces and to act as the nodal agency for enhancing inter-state and international cooperation in law enforcement

Vision: Based on its motto, mission and the need to develop professionalism, transparency, adaptability to change and use of science and technology in its working, the CBI will focus on

- Combating corruption in public life, curbing economic and violent crimes through meticulous investigation and prosecution
- Evolving effective systems and procedures for successful investigation and prosecution of cases in various law courts
- Helping fight cyber and high technology crime
- Creating a healthy work environment that encourages team-building, free communication and mutual trust
- Supporting state police organisations and law enforcement agencies in national and international cooperation, particularly relating to enquiries and investigation of cases
- Playing a lead role in the war against national and transnational organised crime
- Upholding human rights, protecting the environment, arts, antiques and heritage of our civilisation
- Developing a scientific temper, humanism and the spirit of inquiry and reform

- Striving for excellence and professionalism in all spheres of functioning so that the organisation rises to high levels of endeavor and achievement.

ORGANISATION OF CBI

At present, the CBI has the following divisions:

- Anti-Corruption Division
- Economic Offences Division
- Special Crimes Division
- Policy and International Police Cooperation Division
- Administration Division
- Directorate of Prosecution
- Central Forensic Science Laboratory

COMPOSITION OF CBI

The CBI is headed by a Director. He is assisted by a special director or an additional director. Additionally, it has a number of joint directors, deputy inspector generals, superintendents of police and all other usual ranks of police personnel. In total, it has about 5000 staff members, about 125 forensic scientists and about 250 law officers.

The Director of CBI as Inspector-General of Police, Delhi Special Police Establishment, is responsible for the administration of the organisation. With the enactment of CVC Act, 2003, the superintendence of Delhi Special Police Establishment vests with the Central Government save investigations of offences under the Prevention of Corruption Act, 1988, in which, the superintendence vests with the Central Vigilance Commission. The Director of CBI has been provided security of two-year tenure in office by the CVC Act, 2003.

The Lokpal and Lokayuktas Act (2013) amended the Delhi Special Police Establishment Act (1946) and made the following changes with respect to the composition of the CBI:

1. The Central Government shall appoint the Director of CBI on the recommendation of a three-member committee consisting of the Prime Minister as Chairperson, the Leader of Opposition in the Lok Sabha and the Chief Justice of India or Judge of the Supreme Court nominated by him.

2. There shall be a Directorate of prosecution headed by a Director for conducting the prosecution of cases under the Lokpal and Lokayuktas Act, 2013. The Director of Prosecution shall be an officer not below the rank of Joint Secretary to the Government of India. He shall function under the overall supervision and control of the Director of CBI. He shall be appointed by the Central Government on the recommendation of the Central Vigilance Commission. He shall hold office for a period of two years.

3. The Central Government shall appoint officers of the rank of SP and above in the CBI on the recommendation of a committee consisting of the Central Vigilance Commissioner as Chairperson, the Vigilance Commissioners, the Secretary of the Home Ministry and the Secretary of the Department of Personnel.

Later, the Delhi Special Police Establishment (Amendment) Act, 2014 made a change in the composition of the committee related to the appointment of the Director of C.B.I. It states that where there is no recognized leader of opposition in the Lok Sabha, then the leader of the single largest opposition party in the Lok Sabha would be a member of that committee.

FUNCTIONS OF CBI

- Investigating cases of corruption, bribery and misconduct of Central government employees.
- Investigating cases relating to infringement of fiscal and economic laws, that is, breach of laws concerning export and import control, customs and central excise, income tax, foreign exchange regulations and so on. However, such cases are taken up either in consultation with or at the request of the department concerned.
- Investigating serious crimes, having national and international ramifications, committed by organised gangs of professional criminals.
- Coordinating the activities of the anti-corruption agencies and the various state police forces
- Taking up, on the request of a state government, any case of public importance for investigation.
- Maintaining crime statistics and disseminating criminal information.

The CBI is a multidisciplinary investigation agency of the Government of India and undertakes investigation of corruption-related cases, economic offences and cases of conventional crime. It normally confines its activities in the anti-corruption field to offences committed by the employees of the Central Government and Union Territories and their public sector undertakings. It takes up investigation of conventional crimes like murder, kidnapping, rape etc., on reference from the state governments or when directed by the Supreme Court/High Courts. The CBI acts as the "National Central Bureau" of Interpol in India. The Interpol Wing of the CBI coordinates requests for investigation-related activities originating from Indian law enforcement agencies and the member countries of the Interpol.

LOKPAL AND LOKAYUKTAS

The Administrative Reforms Commission (ARC) of India (1966–1970) recommended the setting up of two special authorities designated as 'Lokpal' and 'lokayukta' for the redressal of citizens' grievances. These institutions were to be set up on the pattern of the institution of Ombudsman in Scandinavian countries and the parliamentary commissioner for investigation in New Zealand. The Lokpal would deal with complaints against ministers and secretaries at Central and state levels, and the lokayukta (one at the Centre and one in every state) would deal with complaints against other specified higher officials. The ARC kept the judiciary outside the purview of Lokpal and lokayukta as in New Zealand. But, in Sweden the judiciary is within the purview of Ombudsman.

According to the ARC, the Lokpal would be appointed by the president after consultation with the chief justice of India, the Speaker of Lok Sabha and the Chairman of the Rajya Sabha.

The ARC also recommended that the institutions of Lokpal and lokayukta should have the following features:

- They should be demonstratively independent and impartial.
- Their investigations and proceedings should be conducted in private and should be informal in character.
- Their appointment should be, as far as possible, non-political.
- Their status should compare with the highest judicial functionaries in the country.
- They should deal with matters in the discretionary field involving acts of injustice, corruption or favouritism.
- Their proceedings should not be subject to judicial interference.

- They should have the maximum latitude and powers in obtaining information relevant to their duties.
- They should not look forward to any benefit or pecuniary advantage from the executive government.

The Government of India accepted the recommendations of ARC in this regard. So far, ten official attempts have been made to bring about legislation on this subject. Bills were introduced in the Parliament in the following years:

- In May 1968, by the Congress Government headed by Indira Gandhi.
- In April 1971, again by the Congress Government headed by Indira Gandhi.
- In July 1977, by the Janata Government headed by Morarji Desai.
- In August 1985, by the Congress Government headed by Rajiv Gandhi.
- In December 1989, by the National Front Government headed by VP Singh.
- In September 1996, by the United Front Government headed by Deve Gowda.
- In August 1998, by the BJP-led coalition Government headed by AB Vajpayee.
- In August 2001, by the NDA government headed by A B Vajpayee.
- In August 2011, by the UPA government headed by Manmohan Singh.
- In December 2011, by the UPA government headed by Manmohan Singh.

The first four bills lapsed due to the dissolution of Lok Sabha, while the fifth one was withdrawn by the government. The sixth and seventh bills also lapsed due to the dissolution of the 11th and 12th Lok Sabha. Again, the eighth bill (2001) lapsed due to the dissolution of the 13th Lok Sabha in 2004. The ninth bill (2011) was withdrawn by the government.

Lokpal and Lokayuktas Act (2013)

The salient features of the Lokpal and Lokayuktas Act (2013) are as follows:

- It seeks to establish the institution of the Lokpal at the Centre and the Lokayukta at the level of the State and thus seeks to provide a uniform vigilance and anti-corruption road map for the nation both at the Centre and at the States. The jurisdiction of Lokpal includes the Prime Minister, Ministers, Members of Parliament and Groups A, B, C and D officers and officials of the Central Government.
- The Lokpal to consist of a Chairperson with a maximum of 8 members of which 50% shall be judicial members.
- 50% of the members of the Lokpal shall come from amongst the SCs, the STs, the OBCs, minorities and women.
- The selection of the Chairperson and the members of Lokpal shall be through a Selection Committee consisting of the Prime Minister, the Speaker of the Lok Sabha, the Leader of the Opposition in the Lok Sabha, the Chief Justice of India or a sitting Supreme Court Judge nominated by the Chief Justice of India and an eminent jurist to be nominated by the President of India on the basis of recommendations of the first four members of the selection committee.
- A Search Committee will assist the Selection Committee in the process of selection. 50% of the members of the Search Committee shall also be from amongst the SCs, the STs, the OBCs, minorities and women.

- The Prime Minister has been brought under the purview of the Lokpal with subject matter exclusions and specific process for handling complaints against the Prime Minister.
- Lokpal's jurisdiction will cover all categories of public servants, including Group A, Group B, Group C, and Group D officers and employees of Government. On complaints referred to the CVC by the Lokpal, the CVC will send its report of preliminary enquiry in respect of Group A and Group B Officers back to the Lokpal for further decision. With respect to categories of employees from Group C and Group D, the CVC will proceed further in exercise of its own powers under the CVC Act subject to reporting and review by the Lokpal.
- The Lokpal will have the power of superintendence and direction over any investigating agency, including the CBI, for cases referred to them by the Lokpal.
- A High-Powered Committee chaired by the Prime Minister will recommend the selection of the Director of CBI.
- It incorporates provisions for attachment and confiscation of property of public servants acquired by corrupt means, even while the prosecution is pending.
- It lays down clear timelines. For preliminary enquiry, it is three months extendable by three months. For investigation, it is six months which may be extended by six months at a time. For trial, it is one year extendable by one year and to achieve this, special courts to be set up.
- It enhances maximum punishment under the Prevention of Corruption Act from seven years to ten years. The minimum punishment under sections 7, 8, 9 and 12 of the Prevention of Corruption Act will now be three years, and the minimum punishment under section 15 (punishment for attempt) will now be two years.
- Institutions which are financed fully or partly by Government are under the jurisdiction of Lokpal, but institutions aided by Government are excluded.
- It provides adequate protection for honest and upright public servants.
- Lokpal conferred with power to grant sanction for prosecution of public servants in place of the Government or competent authority.

It contains a number of provisions aimed at strengthening the CBI such as:

- setting up of a Directorate of Prosecution headed by a Director of Prosecution under the overall control of the Director of CBI;
- appointment of the Director of Prosecution on the recommendation of the CVC;
- maintenance of a panel of advocates by CBI other than Government advocates with the consent of the Lokpal for handling Lokpal-referred cases;
- transfer of officers of CBI investigating cases referred by Lokpal with the approval of Lokpal;
- Provision of adequate funds to CBI for investigating cases referred by Lokpal.

All entities receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs.10 lakhs per year are brought under the jurisdiction of Lokpal. 18. It contains a mandate for setting up of the institution of Lokayukta through enactment of a law by the State Legislature within a period of 365 days from the date of commencement of this Act. Thus, the Act provides freedom to the states to decide upon the contours of the Lokayukta mechanism in their respective states.

The following are the drawbacks (shortcomings) of the Lokpal and Lokayuktas Act, 2013

- Lokpal cannot suo motu proceed against any public servant.
- Emphasis on form of complaint rather than substance.
- Heavy punishment for false and frivolous complaints against public servants may deter complaints being filed to Lokpal.
- Anonymous complaints not allowed – Can't just make a complaint on plain paper and drop it in a box with supporting documents.
- Legal assistance to public servant against whom complaint is filed.
- Limitation period of 7 years to file complaints.
- Very non-transparent procedure for dealing with complaints against the PM.

LOKAYUKTAS

Even much before the enactment of the Lokpal and Lokayuktas Act (2013) itself, many states had already set up the institution of Lokayuktas. It must be noted here that the institution of lokayukta was established first in Maharashtra in 1971. Although Odisha had passed the Act in this regard in 1970, it came into force only in 1983. Till 2013, 21 states and 1 Union Territory (Delhi) have established the institution of Lokayuktas.

Structural Variations

The structure of the lokayukta is not same in all the states. Some States like Rajasthan, Karnataka, Andhra Pradesh and Maharashtra have created the lokayukta as well as upalokayukta, while some others like Bihar, Uttar Pradesh and Himachal Pradesh have created only the lokayukta. There are still other states like Punjab and Orissa that have designated officials as Lokpal. This pattern was not suggested by the ARC in the states.

Appointment

The lokayukta and upalokayukta are appointed by the governor of the state. While appointing, the governor in most of the states consults (a) the chief justice of the state high court, and (b) the leader of Opposition in the state legislative assembly

Qualifications

Judicial qualifications are prescribed for the lokayukta in the States of Uttar Pradesh, Himachal Pradesh, Andhra Pradesh, Gujarat, Orissa, Karnataka and Assam. But no specific qualifications are prescribed in the states of Bihar, Maharashtra and Rajasthan

Tenure

In most of the states, the term of office fixed for lokayukta is of 5 years duration or 65 years of age, whichever is earlier. He is not eligible for reappointment for a second term.

Jurisdiction

There is no uniformity regarding the jurisdiction of lokayukta in all the states. The following points can be noted in this regard:

- The chief minister is included within the jurisdiction of lokayukta in the states of Himachal Pradesh, Andhra Pradesh, Madhya Pradesh and Gujarat, while he is excluded from the purview of lokayukta in the states of Maharashtra, Uttar Pradesh, Rajasthan, Bihar and Orissa.

- Ministers and higher civil servants are included in the purview of lokayukta in almost all the states. Maharashtra has also included former ministers and civil servants.
- Members of state legislatures are included in the purview of lokayukta in the States of Andhra Pradesh, Himachal Pradesh, Gujarat, Uttar Pradesh and Assam.
- The authorities of the local bodies, corporations, companies and societies are included in the jurisdiction of the lokayukta in most of the states.

Investigations

In most of the states, the lokayukta can initiate investigations either on the basis of a complaint received from the citizen against unfair administrative action or *suo moto*. But he does not enjoy the power to start investigations on his own initiative (*suo moto*) in the States of Uttar Pradesh, Himachal Pradesh and Assam.

Scope of Cases Covered

The lokayukta can consider the cases of 'grievances' as well as 'allegations' in the States of Maharashtra, Uttar Pradesh, Assam, Bihar and Karnataka. But, in Himachal Pradesh, Andhra Pradesh, Rajasthan and Gujarat, the job of lokayuktas is confined to investigating allegations (corruption) and not grievances (maladministration).

Other Features

- The lokayukta presents, annually, to the governor of the state a consolidated report on his performance. The governor places this report along with an explanatory memorandum before the state legislature. The lokayukta is responsible to the state legislature.
- He takes the help of the state investigating agencies for conducting inquiries.
- He can call for relevant files and documents from the state government departments.
- The recommendations made by the lokayukta are only advisory and not binding on the state government.

ZONAL COUNCILS

The Zonal Councils are the statutory (and not the constitutional) bodies. They are established by an Act of the Parliament, that is, States Reorganisation Act of 1956. The act divided the country into five zones (Northern, Central, Eastern, Western and Southern) and provided a zonal council for each zone.

While forming these zones, several factors have been taken into account which include: the natural divisions of the country, the river systems and means of communication, the cultural and linguistic affinity and the requirements of economic development, security and law and order. Each zonal council consists of the following members: (a) home minister of Central government. (b) Chief Ministers of all the States in the zone. (c) Two other ministers from each state in the zone. (d) Administrator of each union territory in the zone. Besides, the following persons can be associated with the zonal council as advisors (i.e., without the right to vote in the meetings):

(i) A person nominated by the Planning Commission; (ii) Chief secretary of the government of each state in the zone; and (iii) Development commissioner of each state in the zone.

The home minister of Central government is the common chairman of the five zonal councils. Each chief minister acts as a vice-chairman of the council by rotation, holding office for a period of one year at a time.

The zonal councils aim at promoting cooperation and coordination between states, union territories and the Centre. They discuss and make recommendations regarding matters like economic and social planning, linguistic minorities, border disputes, inter-state transport, and so on. They are only deliberative and advisory bodies.

The objectives (or the functions) of the zonal councils, in detail, are as follows:

- To achieve an emotional integration of the country.
- To help in arresting the growth of acute state-consciousness, regionalism, linguism and particularistic trends.
- To help in removing the after-effects of separation in some cases so that the process of reorganisation, integration and economic advancement may synchronise.
- To enable the Centre and states to cooperate with each other in social and economic matters and exchange ideas and experience in order to evolve uniform policies.
- To cooperate with each other in the successful and speedy execution of major development projects.
- To secure some kind of political equilibrium between different regions of the country.

North-Eastern Council

In addition to the above Zonal Councils, a North-Eastern Council was created by a separate Act of Parliament—the North-Eastern Council Act of 1971. Its members include Assam, Manipur, Mizoram, Arunachal Pradesh, Nagaland, Meghalaya, Tripura and Sikkim. Its functions are similar to those of the zonal councils, but with few additions. It has to formulate a unified and coordinated regional plan covering matters of common importance. It has to review from time to time the measures taken by the member states for the maintenance of security and public order in the region.

NITI AAYOG

On the 13th of August, 2014, the Modi Government scrapped the 65-year-old Planning Commission and announced that it would be replaced by a new body. Accordingly, on January 1, 2015, the NITI Aayog (National Institution for Transforming India) was established as the successor to the planning commission.

However, it must be noted here that the NITI Aayog, like that of the Planning Commission, was also created by an executive resolution of the Government of India (i.e., Union Cabinet). Hence, it is also neither a constitutional body nor a statutory body. In other words, it is a non-constitutional or extra-constitutional body (i.e., not created by the Constitution) and a non-statutory body (not created by an Act of the Parliament).

NITI Aayog is the premier policy 'Think Tank' of the Government of India, providing both directional and policy inputs. While designing strategic and long-term policies and programmes for the Government of India, NITI Aayog also provides relevant technical advice to the Centre and States. The centre-to-state one-way flow of policy, that was the hallmark of the Planning Commission era, is now sought to be replaced by a genuine and continuing partnership of states.

In a paradigmatic shift from the command and control approach of the past, NITI Aayog accommodates diverse points of view in a collaborative, rather than confrontationist, setting. In the spirit of federalism, NITI's own policy thinking too is shaped by a 'bottom-up' approach rather than a 'top-down' model.

The composition of the NITI Aayog is as follows:

(a) **Chairperson**: The Prime Minister of India

(b) **Governing Council**: It comprises the Chief Ministers of all the States, Chief Ministers of Union Territories with Legislatures (i.e., Delhi and Puducherry) and Lt. Governors of other Union Territories.

(c) **Regional Councils**: These are formed to address specific issues and contingencies impacting more than one state or a region. These are formed for a specified tenure. These are convened by the Prime Minister and comprises of the Chief Ministers of States and Lt. Governors of Union Territories in the region. These are chaired by the Chairperson of the NITI Aayog or his nominee.

(d) **Special Invitees**: Experts, specialists and practitioners with relevant domain knowledge as special invitees nominated by the Prime Minister.

(e) **Full-time Organisational Framework**: It comprises, in addition to the Prime Minister as the Chairperson:

- **Vice-Chairperson**: He is appointed by the Prime Minister. He enjoys the rank of a Cabinet Minister.
- **Members:** Full-time. They enjoy the rank of a Minister of State.
- **Part-time Members**: Maximum of 2, from leading universities, research organisations and other relevant institutions in an ex-officio capacity. Part-time members would be on a rotation.
- **Ex-Officio Members**: Maximum of members of the Union Council of Ministers to be nominated by the Prime Minister.
- **Chief Executive Officer**: He is appointed by the Prime Minister for a fixed tenure, in the rank of Secretary to the Government of India.
- **Secretariat**: As deemed necessary.

NITI Aayog houses a number of specialised wings, including:

1. Research Wing: It develops in-house sectoral expertise as a dedicated think tank of top notch domain experts, specialists and scholars.

2. Consultancy Wing: It provides a market-place of whetted panels of expertise and funding, for the Central and State Governments to tap into matching their requirements with solution providers, public and private, national and international. By playing match-maker instead of providing the entire service itself, NITI Aayog is able to focus its resources on priority matters, providing guidance and an overall quality check to the rest.

3. Team India Wing: It comprises of the representatives from every State and Ministry and serves as a permanent platform for national collaboration. Each representative:

- Ensures that every State/Ministry has a continuous voice and stake in the NITI Aayog.
- Establishes a direct communication channel between the State/Ministry and NITI Aayog for all development related matters, as the dedicated liaison interface.

NITI Aayog functions in close cooperation, consultation and coordination with the Ministries of the Central Government, and State Governments. While it makes recommendations to the Central and State Governments, the responsibility for taking and implementing decisions rests with them.

The objectives of the NITI Aayog are mentioned below:

- To evolve a shared vision of national development priorities, sectors and strategies with the active involvement of States in the light of national objectives. The vision of the NITI Aayog will then provide a framework 'national agenda' for the Prime Minister and the Chief Ministers to provide impetus to.
- To foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognising that strong States make a strong nation.
- To develop mechanisms to formulate credible plans at the village level and aggregate these progressively at higher levels of government.
- To ensure, on areas that are specifically referred to it, that the interests of national security are incorporated in economic strategy and policy.
- To pay special attention to the sections of our society that may be at risk of not benefitting adequately from economic progress.
- To design strategic and long-term policy and programme frameworks and initiatives, and monitor their progress and their efficacy. The lessons learnt through monitoring and feedback will be used for making innovative improvements, including necessary mid-course corrections.
- To provide advice and encourage partnerships between key stakeholders and national and international like-minded think tanks, as well as educational and policy research institutions.
- To create a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and other partners.
- To offer a platform for resolution of inter-sectoral and inter-departmental issues in order to accelerate the implementation of the development agenda.
- To maintain a state-of-the-art Resource Centre, be a repository of research on good governance and best practices in sustainable and equitable development as well as help their dissemination to stake-holders.
- To actively monitor and evaluate the implementation of programmes and initiatives, including the identification of the needed resources so as to strengthen the probability of success and scope of delivery.
- To focus on technology upgradation and capacity building for implementation of programmes and initiatives.
- To undertake other activities as may be necessary in order to further the execution of the national development agenda, and the objectives mentioned above.

Through the above, the NITI Aayog aims to accomplish the following:

- An administration paradigm in which the Government is an "enabler" rather than a "provider of first and last resort."
- Progress from "food security" to focus on a mix of agricultural production, as well as actual returns that farmers get from their produce.
- Ensure that India is an active player in the debates and deliberations on the global commons.
- Ensure that the economically vibrant middle-class remains engaged, and its potential is fully realised.

- Leverage India's pool of entrepreneurial, scientific and intellectual human capital.
- Incorporate the significant geo-economic and geo-political strength of the Non-Resident Indian Community.
- Use urbanisation as an opportunity to create a wholesome and secure habitat through the use of modern technology.
- Use technology to reduce opacity and potential for misadventures in governance.

The NITI Aayog aims to enable India to better face complex challenges, through the following

- Leveraging of India's demographic dividend, and realisation of the potential of youth, men and women, through education, skill development, elimination of gender bias, and employment
- Elimination of poverty, and the chance for every Indian to live a life of dignity and self-respect
- Redressal of inequalities based on gender bias, caste and economic disparities
- Integrate villages institutionally into the development process
- Policy support to more than 50 million small businesses, which are a major source of employment creation
- Safeguarding our environmental and ecological assets

In carrying out the above functions, the NITI Aayog is guided by the following principles

- **Antyodaya**: Prioritise service and uplift of the poor, marginalised and downtrodden, as enunciated in Pandit Deendayal Upadhyay's idea of 'Antyodaya'.
- **Inclusion**: Empower vulnerable and marginalised sections, redressing identity-based inequalities of all kinds—gender, region, religion, caste or class.
- **Village:** Integrate our villages into the development process, to draw on the vitality and energy of the bedrock of our ethos, culture and sustenance.
- **Demographic dividend**: Harness our greatest asset, the people of India; by focusing on their development, through education and skilling, and their empowerment, through productive livelihood opportunities.
- **People's Participation**: Transform the developmental process into a people-driven one, making an awakened and participative citizenry—the driver of good governance.
- **Governance**: Nurture an open, transparent, accountable, pro-active and purposeful style of governance, transitioning focus from Outlay to Output to Outcome.
- **Sustainability**: Maintain sustainability at the core of our planning and developmental process, building on our ancient tradition of respect for the environment.

Therefore, the NITI Aayog is based on the following seven pillars of effective governance:

- Pro-people agenda that fulfils the aspirations of the society as well as individuals.
- Pro-active in anticipating and responding to citizen needs.
- Participative, by involvement of citizens.
- Empowering women in all aspects.

- Inclusion of all groups with special attention to the SCs, STs, OBCs and minorities.
- Equality of opportunity for the youth.
- Transparency through the use of technology to make government visible and responsive.

Through its commitment to a cooperative federalism, promotion of citizen engagement, egalitarian access to opportunity, participative and adaptive governance and increasing use of technology, the NITI Aayog seeks to provide a critical directional and strategic input into the development process. This, along with being the incubator of ideas for development, is the core mission of NITI Aayog.

SUBORDINATE OFFICE

The National Institute of Labour Economics Research and Development (formerly Institute of Applied Manpower Research) is a subordinate office of the NITI Aayog. The Institute of Applied Manpower Research (IAMR) was established in 1962 under the Societies Registration Act of 1860 as an institution that would function as a clearing-house of ideas and undertake policy research on human capital development to inform perspective planning and promote policy integration. The main object of the Institute is to advance knowledge about the nature, characteristics and utilisation of human resources through research, education and training, consultancy, etc. IAMR has been renamed as National Institute of Labour Economics Research and Development (NILERD) on the 9th of June, 2014.

NILERD is mainly funded by grants-in-aid from the NITI Aayog (formerly Planning Commission), and supplemented by its own revenue from contracted research projects, and education and training activities. The prime objective of NILERD has been to develop an institutional framework capable of sustaining and steering a systematic applied human resource planning research process. Since its inception, the Institute has carved out its own trajectory to achieve academic heights, and in the process, developed a range of academic activities not only in the field of human resource planning and development, but also in monitoring and evaluation of public policies and programmes. During the past few years, the Institute has exhibited remarkable dynamism in addressing the issues of national priorities. The Institute has emerged as a pioneering institute in providing academic training on human resource planning and development for both international and national participants. The Institute moved to its own campus at Narela in 2002. Narela is a developing urban and institutional hub declared as a special economic zone for knowledge in the National Capital Region.

UNIT-XX
[MISCELLANEOUS]

CLASSIFICATION OF POLITICAL PARTIES

Political parties are voluntary associations or organised groups of individuals who share the same political views and who try to gain political power through constitutional means and who desire to work for promoting the national interest. There are four types of political parties in the modern democratic states, viz. (i) reactionary parties which cling to the old socio-economic and political institutions; (ii) conservative parties which believe in the status-quo; (iii) liberal parties which aim at reforming the existing institutions; and (iv) radical parties which aim at establishing a new order by overthrowing the existing institutions. In their classification of political parties on the basis of ideologies, the political scientists have placed the radical parties on the left and the liberal parties in the centre and reactionary and conservative parties on the right. In other words, they are described as the leftist parties, centrist parties and the rightist parties.

In India, the CPI and CPM are the examples of leftist parties, the Congress of centrist parties and the BJP is an example of rightist parties. There are three kinds of party systems in the world, viz., (i) one party system in which only one ruling party exists and no opposition is permitted, as for example, in the former communist countries like the USSR and other East European countries; (ii) two-party system in which two major parties exists, as for example, in USA and Britain; and (iii) multi-party system in which there are a number of political parties leading to the formation of coalition governments, as for example, in France, Switzerland and Italy.

RECOGNITION OF NATIONAL AND STATE PARTIES

The Election Commission registers political parties for the purpose of elections and grants them recognition as national or state parties on the basis of their poll performance. The other parties are simply declared as registered unrecognised parties.

The recognition granted by the Commission to the parties determines their right to certain privileges like allocation of the party symbols, provision of time for political broadcasts on the state-owned television and radio stations and access to electoral rolls.

Further, the recognized parties need only one proposer for filing the nomination. Also, these parties are allowed to have forty "star campaigners" during the time of elections and the registered–unrecognized parties are allowed to have twenty "star campaigners". The travel expenses of these star campaigners are not included in the election expenditure of the candidates of their parties. Every national party is allotted a symbol exclusively reserved for its use throughout the country. Similarly, every state party is allotted a symbol exclusively reserved for its use in the state or states in which it is so recognised. A registered-unrecognised party, on the other hand, can select a symbol from a list of free symbols. In other words, the Commission specifies certain symbols as 'reserved symbols' which are meant for the candidates set up by the recognised parties and others as 'free symbols' which are meant for other candidates.

Conditions for Recognition as a National Party

At present, a party is recognised as a national party if any of the following conditions is fulfilled:

- If it secures six per cent of valid votes polled in any four or more states at a general election to the Lok Sabha or to the legislative assembly; and, in addition, it wins four seats in the Lok Sabha from any state or states; or

- If it wins two per cent of seats in the Lok Sabha at a general election; and these candidates are elected from three states; or
- If it is recognised as a state party in four states.

Conditions for Recognition as a State Party

At present, a party is recognised as a state party in a state if any of the following conditions is fulfilled:

- If it secures six per cent of the valid votes polled in the state at a general election to the legislative assembly of the state concerned; and, in addition, it wins 2 seats in the assembly of the state concerned; or
- If it secures six per cent of the valid votes polled in the state at a general election to the Lok Sabha from the state concerned; and, in addition, it wins 1 seat in the Lok Sabha from the state concerned; or
- If it wins three per cent of seats in the legislative assembly at a general election to the legislative assembly of the state concerned or 3 seats in the assembly, whichever is more; or
- If it wins 1 seat in the Lok Sabha for every 25 seats or any fraction thereof allotted to the state at a general election to the Lok Sabha from the state concerned; or
- If it secures eight per cent of the total valid votes polled in the state at a General Election to the Lok Sabha from the state or to the legislative assembly of the state. This condition was added in 2011.

The number of recognised parties keeps on changing on the basis of their performance in the general elections. On the eve of the sixteenth Lok Sabha general elections (2019), there were 6 national parties, 47 state parties and 1593 registered-unrecognised parties in the country. The national parties and state parties are also known as all-India parties and regional parties respectively.

PRESSURE GROUPS

Pressure group is generally a group of persons who are structured and enthusiastic to promote or shield their common interest. The phrase 'pressure group' is used as the group which tries to transform the public policy by exerting pressure on the government.

Pressure Groups are also called Interest Groups or Vested Groups. There is huge number of formal /informal groups that influence the institution of any nation, from the foundation of government itself to day-to-day governance matters. Superficially, all the formal and informal associations jointly called 'Interest Groups' because all groups have conferred interests related to the general governance of the country. Interest groups are plentiful and of many kinds but whenever they become active in order to accomplish their interests by their attempts of persuading the public affairs at administrative or legislative level they are termed Pressure groups.

It is also documented in reports that pressure groups are demoted as 'Anonymous Empire' & 'legislation behind legislature' due to their strong existence and influence in the polity. Main attribute of any pressure group is that they try to influence governmental affairs without any personal interest to have any direct control over it. Pressure groups are different from political parties. Political parties seek to create change by being elected to public office, while pressure groups attempt to influence political parties. Pressure groups may be better able to focus on specialized issues, whereas political parties tend to address a wide range of issues.

The pressure groups dissimilar to the political parties are formed to solve their immediate problems. They are comparatively more temporary than political parties. A pressure group may appear for a short time if it does not present any long-range program. However, where the interests of the group are of long-range, the

pressure group may also last longer. In such cases it may even project the sectarian interests as general or universal interests. It depends on the imagination of their leadership.

The study of pressure groups within a theoretical framework establishes an interesting as well as major subject of Indian politics that has been chosen by well-known writers in various phrases. It highpoints those fundamental forces and processes through which political power is organised and applied in organized societies, preferably in democracies. It does not infer their total non-existence in a society having an authoritarian system for the simple reason that even in a totalitarian order such groups exist though they are highly restricted and thereby "serve only as instruments of the state for securing ends which are state-determined, or they may become part of the frontage of government for legitimizing decisions.

A pluralistic society, with a democratic order, identifies their existence and ensures broadest possible contribution to the extent of making them the principal opportunities of activity out of the 'official administration'. A totalitarian order encourages and permits them to work in a particular direction affable to its own interest. However, important fact is that in every society, whether democratic or totalitarian, interest groups seek to influence public policy in a desired direction without being ready to accept the responsibility of public office as well as by declining to hold direct responsibility for ruling the country.

It is established in studies that pressure groups find favourable policy decisions and administrative natures. They tend to regulate the form of their activities not so much to the formal constitutional structure of governments as to the distribution of effective power within a governmental machine. Thus, the form of group politics is determined by the interaction of governmental structures, activities and attitudes vis-a-vis the scope or intensity of their interest. In other words, the form and nature of group polices is conditioned by the structure and administrative agencies, activities of the political organization and attitudes of governmental agencies towards them. A pressure group may undertake a very important, powerful and well-organised post even at the national level if the work of policy-making and its implementation is assigned to the central branch of administration.

It is said that the outlooks of administrative organisations towards pressure groups also play a vital part. If popular ministers and elected representatives occupying legislative seats are very receptive to the demands of these groups, they feel a sense of preferred access to the government. Contrariwise, when the management is of an authoritarian or of a traditional or conservative type working to the disadvantage of a particular group in a single dominant political party or a military regime, the groups may develop a feeling of displeasure and start operating through more inconspicuous channels.

Types of pressure groups:

Pressure groups are categorized in following way:

1. Cause or 'promotional' groups
2. Interest or 'sectional' groups
3. Insider groups
4. Outsider groups

1. **Cause or 'promotional' groups:** These have open membership from the public. They promote a cause, such as Friends of the Earth, which is concerned with protecting the environment.
2. **Interest or 'sectional' groups:** These groups are open only to certain persons, like the members of a trade union, e.g. the National Union of Journalists.
3. **Insider groups:** Such groups have strong links with the government. They will give advice and will be consulted prior to legislation which may affect that group, such as the British Medical Association will be consulted on matters relating to health.

4. **Outsider groups:** These groups often take action of which the government disapproves. Organisations like Greenpeace often involve in civil disobedience or direct action in order to reinforce their point. Some outsider groups are also wealthy and use a great deal of publicity to attract people to promote their cause.

Nature of the pressure group:

Pressure groups differ vastly in size, composition, knowledge and status:

1. Size - in general, the bigger and more representative the group, the more influence it is likely to have.
2. Social composition - those groups with membership drawn from those with public school and Oxbridge backgrounds are likely to have very good contacts within the decision making elite.
3. Knowledge - those groups with a great deal of information who can advise and inform decision makers are more likely to attain insider status.
4. Status: the more important a group is in society - for example, those with high professional standing - the more likely the government is to take notice of its opinions.

Functions of Pressure groups:

Promote discussion and debate and mobilise public opinion on key issues

1. Perform a role in educating citizens about specific issues.
2. Groups can enhance democratic participation, pluralism and diversity.
3. Groups raise and articulate issues that political parties perhaps won't touch because of their sensitivity.
4. They offer an important access point for those seeking redress of grievance.
5. They represent minorities who cannot represent themselves.
6. Groups can be an important source of specialist information / expertise for an overloaded legislature and civil service.
7. Many groups play vital role in implementing changes to public policy.
8. Pressure groups encourage a decentralisation of power within the political system.
9. They act as a check and balance to the power of executive government.

Procedures Used by Pressure Groups:

1. Electioneering: Placing in public office persons who favour their interests.
2. Lobbying: Persuading public officers to adopt and enforce policies of their interest.
3. Propagandizing: Influencing the public opinion.

Pressure groups may take help of media to transmit their views in public and win support. They may publish statistics in favour of their claims. However, sometimes they may even resort to unlawful and illegal methods like strikes, violence or even bribes.

When elaborating techniques of Pressure groups in India, it can be said that they make use of conventional procedures like invoking caste, region or religion based loyalties in key persons keeping in view their background based on these parameters. Modern techniques of pressure groups include lobbying, funding political parties and supporting favourable person in legislature in addition to key administrative posts.

Since independence, there was supremacy of single political party over government for long time and role of pressure groups was restricted. These groups are visualized negatively but presently their role are taken to be constructive and self-governing.

Conventional Pressure Groups are based on caste, community, religion-based. Regional groupings play pivotal role in Indian polity.

It is observed that in present scenario, majority of political parties do not have any clear nationalist philosophy & they remain supported by certain groups especially religious and minority communities.

It is also heard that there is presence of foreign lobbies in parliament (e.g. lobbying by US companies in case of FDI). Institutional pressure groups such as FICCI, CII also influence policy judgements.

Pressure groups are more concerned on administration instead of policy decisions. They attempt to influence general administration.

Pressure groups make use of party policy to propose their matters but they do not align with any specific political party for long.

There are some groups which are sponsored by political parties themselves such as Youth Congress, ABVP, and SFI etc.

There are some groups that continually developing and dissolving according to situations or for specific purpose. For example, anti-dowry, anti-sati.

Pressure groups in India are more dependent on means of direct action like hunger strike, demonstrations, chakka jaams.

Pressure groups use several ways to promote their cause. Demonstrations are an example of direct action, which may or may not have an effect on a government. Petitions are another way to raise awareness among politicians of public feeling about a specific issue. Media advertising may also be used to attract public sympathy and this may help the pressure group in its efforts to influence the government.

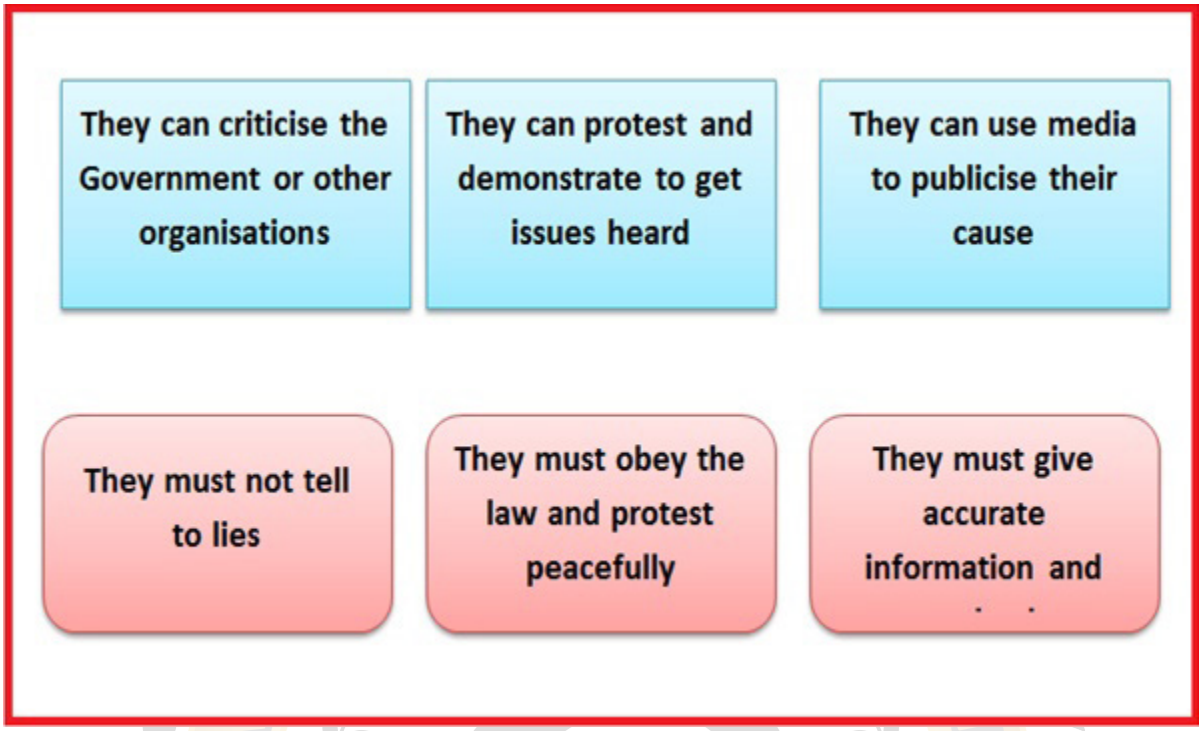
They influence government through Direct Mailing. Pressure groups can send mail to thousands of people to gain finance and support and raise awareness of their concerns.

Letter writing encourages people to write to government to discourage sectarianism. Pressure groups use mass media to transmit their views. When Trade Unions protest the media often reports on the events which often have thousands of people in attendance.

Pressure Groups in India: There are several pressure group in India.

1. Business Groups – FICCI, CII, ASSOCHAM, AIMO, FAIFDA etc. (Institutional groups).
2. Trade Unions – AITUC, INTUC, HMS, CITU, BMS etc.
3. Agrarian Groups- All India Kisan Sabha, Bharatiya Kisan Union etc.
4. Student's Organisations- ABVP, AISF, NSUI etc.
5. Religious Groups – RSS, VHP, Bajrang Dal, Jamaat-e-Islami etc.
6. Caste Groups – Harijan Sevak Sangh, Nadar Caste Association etc
7. Linguistic Groups – Tamil Sangh, Andhra Maha Sabha etc
8. Tribal Groups – NSCN, TNU, United Mizo federal org, Tribal League of Assam etc.
9. Professional Groups – IMA, BCI, IFWJ, AIFUCT etc
10. Ideology based Groups – Narmada Bachao Andolan, Chipko Movement, Women Rights Organisation, India against Corruption etc.
11. Anomic Groups – ULFA, Maoists, JKLF, All-India Sikh Student's Federation etc.

Rights and responsibilities of Pressure Groups:



Merits and demerits of pressure groups: There are some merits of forming pressure groups. It is realized that to get success in democratic system, there is a need to generate a public opinion, so that policy in question may be supported or condemned. Pressure groups support to train people, compile data and provide specific information to policy creators. In this way, they work as an informal source of information. Active constructive participation of numerous groups in polity helps to reunite general interest with individual group interests.

Besides, benefits, there are some negative aspect of pressure groups. Sometimes, these groups have biased interests limited to few members. Most pressure groups except business groups and big community groups do not have independent existence. They are unsteady and lack promise, their devotions swing with political situations which intimidates general welfare. In some situation, these groups resort to un-constitutional means such as violence; Naxalite movement started in 1967 in West Bengal. Since pressure groups are not elected, it is not good that they decide crucial policy decisions in egalitarianism.

It is observed in social scenario that some pressure groups are more successful than others. Success factor in pressure groups is appraised by the group's capability to affect government policy, raise an issue in the political agenda and the ability to change people's values, perceptions and behaviour. To accomplish these powers, it is considered that a pressure group needs wealth, size, organization and good leadership.

Another factor that give success to pressure group is money. Wealth provides pressure groups huge financial and economic power. This means that the government must seek their cooperation, regardless of their philosophical beliefs. Business groups are the most powerful of all of these as they are the main source of employment and investment. Because the governments listen to them, they have effectively achieved the ability to affect government policy.

Other success factor is group strength. Large pressure groups can claim to represent public opinion. Huge groups also have philosophical power as large memberships allow groups to organize political movements and protests. From this they can rally support, raise mindfulness and eventually, change people's ideologies to lean towards their causes or interests.

It can be reviewed that Pressure groups are associations which fight for changes in the law or new legisla-

tion in specific areas. As such, they can have great influence on public opinion and voting behaviour. Pressure groups allow populace the opportunity to partake in democracy by being involved in social change without necessarily joining a political party. Pressure groups may be regarded as indispensable to fairness because they allow the free expression of opinion and the opportunity to influence governments. Because of this, pressure groups are not accepted in non-democratic nations.

Pressure groups increase the accountability of decision makers to electorates if enough influence is made. Although it is irrefutable that pressure groups have significant role in politics particularly in today's less differential society, perhaps it is not the suggested one of the pluralist model. It is also visualized that pressure groups improve participation but in an uneven way, benefiting the powerful and organised and disadvantaging the weak and unorganised. The groups themselves may not be representative of their members as many members' views are ignored if they do not obey with the ideologies of the leaders or decision makers of that group. The methods of influence by some groups use are to increase social dissatisfaction and political unpredictability by increasing social frustration and injustice felt by certain sections of the population. This can ignore the good of the whole of the community and this kind of civil disobedience cannot be defensible in democratic system.

In brief, pressure groups can detract to strengthen democracy to a certain extent. Pressure groups are an important dimension of any democracy, yet they can imperil it if sectional groups weaken the public interest or if the methods they use are immoral or threatening.

ANTI-DEFECTION LAW

The 52nd Amendment Act of 1985 provided for the disqualification of the members of Parliament and the state legislatures on the ground of defection from one political party to another. For this purpose, it made changes in four Articles of the Constitution and added a new Schedule (the Tenth Schedule) to the Constitution. This act is often referred to as the 'anti-defection law'.

Later, the 91st Amendment Act of 2003 made one change in the provisions of the Tenth Schedule. It omitted an exception provision i.e., disqualification on ground of defection not to apply in case of split.

The Tenth Schedule contains the following provisions with respect to the disqualification of members of Parliament and the state legislatures on the ground of defection:

Disqualification

Members of Political Parties: A member of a House belonging to any political party becomes disqualified for being a member of the House, (a) if he voluntarily gives up his membership of such political party; or (b) if he votes or abstains from voting in such House contrary to any direction issued by his political party without obtaining prior permission of such party and such act has not been condoned by the party within 15 days. From the above provision it is clear that a member elected on a party ticket should continue in the party and obey the party directions.

Independent Members: An independent member of a House (elected without being set up as a candidate by any political party) becomes disqualified to remain a member of the House if he joins any political party after such election.

Nominated Members: A nominated member of a House becomes disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat in the House. This means that he may join any political party within six months of taking his seat in the House without inviting this disqualification.

Exceptions

The above disqualification on the ground of defection does not apply in the following two cases:

- If a member goes out of his party as a result of a merger of the party with another party. A merger takes place when two-thirds of the members of the party have agreed to such merger.
- If a member, after being elected as the presiding officer of the House, voluntarily gives up the membership of his party or rejoins it after he ceases to hold that office. This exemption has been provided in view of the dignity and impartiality of this office.

It must be noted here that the provision of the Tenth Schedule pertaining to exemption from disqualification in case of split by one-third members of legislature party has been deleted by the 91st Amendment Act of 2003. It means that the defectors have no more protection on grounds of splits.

Deciding Authority

Any question regarding disqualification arising out of defection is to be decided by the presiding officer of the House. Originally, the act provided that the decision of the presiding officer is final and cannot be questioned in any court. However, in Kihoto Hollohan case (1993), the Supreme Court declared this provision as unconstitutional on the ground that it seeks to take away the jurisdiction of the Supreme Court and the high courts. It held that the presiding officer, while deciding a question under the Tenth Schedule, function as a tribunal. Hence, his decision like that of any other tribunal is subject to judicial review on the grounds of mala fides, perversity, etc. But, the court rejected the contention that the vesting of adjudicatory powers in the presiding officer is by itself invalid on the ground of political bias.

Rule-Making Power

The presiding officer of a House is empowered to make rules to give effect to the provisions of the Tenth Schedule. All such rules must be placed before the House for 30 days. The House may approve or modify or disapprove them. Further, he may direct that any willful contravention by any member of such rules may be dealt with in the same manner as a breach of privilege of the House.

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

EVALUATION OF THE ACT

The Tenth Schedule of the Constitution (which embodies the anti-defection law) is designed to prevent the evil or mischief of political defections motivated by the lure of office or material benefits or other similar considerations. It is intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections. Rajiv Gandhi, the then Prime Minister, described it as the 'first step towards cleaning-up public life'. The then Central law minister stated that the passing of the 52nd Amendment Bill (anti-defection bill) by a unanimous vote by both the Houses of Parliament was 'a proof, if any, of the maturity and stability of Indian democracy'.

The following can be cited as the advantages of the anti-defection law:

- It provides for greater stability in the body politic by checking the propensity of legislators to change parties.
- It facilitates democratic realignment of parties in the legislature by way of merger of parties.
- It reduces corruption at the political level as well as non-developmental expenditure incurred on irregular elections.

- It gives, for the first time, a clear-cut constitutional recognition to the existence of political parties.

Though the anti-defection law been hailed as a bold step towards cleansing our political life and started as new epoch in the political life of the country, it has revealed may lacunae in its operation and failed to prevent defections in toto. It came to be criticised on the following grounds:

- It does not make a differentiation between dissent and defection. It curbs the legislator's right to dissent and freedom of conscience. Thus, 'it clearly puts party bossism on a pedestral and sanctions tyranny of the party in the name of the party discipline'.
- Its distinction between individual defection and group defection is irrational. In other words, 'it banned only retail defections and legalised wholesale defections'.
- It does not provide for the expulsion of a legislator from his party for his activities outside the legislature.
- Its discrimination between an independent member and a nominated member is illogical. If the former joins a party, he is disqualified while the latter is allowed to do the same.
- Its vesting of decision-making authority in the presiding officer is criticised on two grounds. Firstly, he may not exercise this authority in an impartial and objective manner due to political exigencies. Secondly, he lacks the legal knowledge and experience to adjudicate upon the cases. In fact, two Speakers of the Lok Sabha (Rabi Ray—1991 and Shivraj Patil —1993) have themselves expressed doubts on their suitability to adjudicate upon the cases related to defections

91ST AMENDMENT ACT (2003)

The reasons for enacting the 91st Amendment Act (2003) are as follows:

1. Demands have been made from time to time in certain quarters for strengthening and amending the Anti-defection Law as contained in the Tenth Schedule, on the ground that these provisions have not been able to achieve the desired goal of checking defections. The Tenth Schedule has also been criticised on the ground that it allows bulk defections while declaring individual defections as illegal. The provision for exemption from disqualification in case of splits as provided in the Tenth Schedule has, in particular, come under severe criticism on account of its destabilising effect on the Government.

2. The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of 1990, the Law Commission of India in its 170th Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of 2002 have, inter alia, recommended omission of the provision of the Tenth Schedule pertaining to exemption from disqualification in case of splits.

3. The NCRWC was also of the view that a defector should be penalised for his action by debarring him from holding any public office as a minister or any other remunerative political post for at least the duration of the remaining term of the existing Legislature or until, the next fresh elections whichever is earlier.

4. The NCRWC has also observed that abnormally large Councils of Ministers were being constituted by various Governments at Centre and states and this practice had to be prohibited by law and that a ceiling on the number of ministers in a state or the Union Government be fixed at the maximum of 10% of the total strength of the popular House of the Legislature.

The 91st Amendment Act of 2003 has made the following provisions to limit the size of Council of Ministers, to debar defectors from holding public offices, and to strengthen the anti-defection law:

- The total number of ministers, including the Prime Minister, in the Central Council of Ministers shall not exceed 15 per cent of the total strength of the Lok Sabha (Article 75).

- A member of either House of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister (Article 75).
- The total number of ministers, including the Chief Minister, in the Council of Ministers in a state shall not exceed 15 per cent of the total strength of the Legislative Assembly of that state. But, the number of ministers, including the Chief Minister, in a state shall not be less than 12 (Article 164).
- A member of either House of a state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister (Article 164).
- A member of either House of Parliament or either House of a State Legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to hold any remunerative political post. The expression "remunerative political post" means (i) any office under the Central Government or a state government where the salary or remuneration for such office is paid out of the public revenue of the concerned government; or (ii) any office under a body, whether incorporated or not, which is wholly or partially owned by the Central Government or a state government and the salary or remuneration for such office is paid by such body, except where such salary or remuneration paid is compensatory in nature (Article 361-B).
- The provision of the Tenth Schedule (anti-defection law) pertaining to exemption from disqualification in case of split by one-third members of legislature party has been deleted. It means that the defectors have no more protection on grounds of splits.

NATIONAL INTEGRATION COUNCIL

National integration implies avoidance of divisive movements that would balkanise the nation and presence of attitudes throughout the society that give preference to national and public interest as distinct from parochial interests

The National Integration Council (NIC) was constituted in 1961, following a decision taken at a national conference on 'unity in diversity', convened by the Central government, at New Delhi. It consisted of the prime minister as chairman, central home minister, chief ministers of states, seven leaders of political parties, the chairman of the UGC, two educationists, the commissioner for SCs and STs and seven other persons nominated by the prime minister. The council was directed to examine the problem of national integration in all its aspects and make necessary recommendations to deal with it. The council made various recommendations for national integration.

However, these recommendations remained only on paper and no effort was made either by the Centre or by the states to implement them. In 1968, the Central government revived the National Integration Council. Its size was increased from 39 to 55 members. The representatives of industry, business and trade unions were also included in it. The council met at Srinagar and adopted a resolution condemning all tendencies that struck at the root of national solidarity. It appealed to the political parties, organisations and the press to mobilise the constructive forces of society in the cause of national unity and solidarity. It also set up three committees to report on regionalism, communalism and linguism respectively. However, nothing tangible was achieved.

In 1980, the Central government again revived the National Integration Council which had become defunct. Its membership was made more broad based. It had three items on the agenda for discussion viz., the problem of communal harmony, unrest in the north-eastern region and need for a new education system. The council set up a standing committee to keep a constant watch on the activities of communal and other divisive forces posing a threat to the national unity.

In 1986, the NIC was reconstituted and its membership was further increased. It recognised terrorism in Punjab as an attack on the unity, integrity and secular ideals of the country. Accordingly, it passed a

resolution to fight terrorism in Punjab. The council also set up a 21-member committee to function on a continuing basis. The committee was asked to formulate both short-term as well as long-term proposals for maintaining communal harmony and preserving national integrity.

In 1990, the National Front Government headed by VP Singh reconstituted the National Integration Council. Its strength was increased to 101. It included prime minister as chairman, some Central ministers, state chief ministers, leaders of national and regional parties, representatives of women, trade and industry, academicians, journalists and public figures. It had various items on the agenda for discussion, viz., Punjab problem, Kashmir problem, violence by secessionists, communal harmony and Ram Janmabhomi-Babri Masjid problem at Ayodhya. But, there was no concrete result.

In 2005, the United Progressive Alliance (UPA) Government reconstituted the National Integration Council under the chairmanship of the Prime Minister, Manmohan Singh. The 103-member NIC was constituted after a gap of 12 years having held its meeting in 1992. Besides some central ministers, state and UT chief ministers and leaders of national and regional parties, the NIC included chairpersons of National Commissions, eminent public figures and representatives from business, media, labour and women.

The NIC was to function as a forum for effective initiative and interaction on issues of national concern, review issues relating to national integration and make recommendations.

The 14th meeting of the NIC was held in 2008 in the backdrop of communal violence in various states like Orissa, Karnataka, Maharashtra, Jammu and Kashmir and Assam and so on. Promotion of education among minorities, scheduled castes and scheduled tribes; elements contributing to national integration; removal of regional imbalances, caste and identity divisions; prevention of extremism; promotion of communal harmony and security among minorities; and equitable development were some of the important items on the agenda of the meeting.

In April 2010, the United Progressive Alliance (UPA) Government again reconstituted the National Integration Council (NIC) under the chairmanship of the Prime Minister, Manmohan Singh. The NIC has 147 members, including Union Ministers, Leaders of the Opposition in the Lok Sabha and the Rajya Sabha, the Chief Ministers of all states and union territories with Legislatures. It also includes leaders of national and regional political parties, chairpersons of national commissions, eminent journalists, public figures, and representatives of business and women's organisations. It is chiefly aimed at suggesting means and ways to combat the menace of communalism, casteism and regionalism.

In October 2010, the Government also constituted a Standing Committee of the NIC. It consists of Union Home Minister as Chairman, four Union Ministers, nine Chief Ministers of various states and five co-opted members from NIC. It would finalise the agenda items for NIC meetings. The 15th meeting of the NIC was held in September, 2011. The agenda for the meeting included measures to curb communalism and communal violence; approach to the Communal Violence Bill; measures to promote communal harmony; measures to eliminate discrimination, especially against minorities and scheduled tribes; how the state and the police should handle civil disturbances; and how to curb radicalisation of youth in the name of religion and caste. The 16th meeting of the NIC was held on 23-09-2013. A Resolution was passed in the meeting to condemn violence, take all measures to strengthen harmonious relationship between all communities, to resolve differences and disputes among the people within the framework of law, to condemn atrocities on Scheduled Castes and Scheduled Tribes, to condemn sexual abuse and to ensure that all women enjoy the fruits of freedom to pursue their social and economic development with equal opportunities, and to safeguard their right of movement in the public space at any time of the day or night.

OFFICIAL LANGUAGE

Part XVII of the Constitution deals with the official language in Articles 343 to 351. Its provisions are divided into four heads—Language of the Union, Regional languages, Language of the judiciary and texts of laws and Special directives.

LANGUAGE OF THE UNION

The Constitution contains the following provisions in respect of the official language of the Union.

- Hindi written in Devanagari script is to be the official language of the Union. But, the form of numerals to be used for the official purposes of the Union has to be the international form of Indian numerals and not the Devanagari form of numerals.
- However, for a period of fifteen years from the commencement of the Constitution (i.e., from 1950 to 1965), the English language would continue to be used for all the official purposes of the Union for which it was being used before 1950.
- Even after fifteen years, the Parliament may provide for the continued use of English language for the specified purposes.
- At the end of five years, and again at the end of ten years, from the commencement of the Constitution, the president should appoint a commission to make recommendations with regard to the progressive use of the Hindi language, restrictions on the use of the English language and other related issues.
- A committee of Parliament is to be constituted to examine the recommendations of the commission and to report its views on them to the president.

Accordingly, in 1955, the president appointed an Official Language Commission under the chairmanship of B G Kher. The commission submitted its report to the President in 1956. The report was examined by a committee of Parliament constituted in 1957 under the chairmanship of Gobind Ballabh Pant. However, another Official Language Commission (as envisaged by the Constitution) was not appointed in 1960.

Subsequently, the Parliament enacted the Official Language Act in 1963. The act provides for the continued use of English (even after 1965), in addition to Hindi, for all official purposes of the Union and also for the transaction of business in Parliament. Notably, this act enables the use of English indefinitely (without any time-limit). Further, this act was amended in 1967 to make the use of English, in addition to Hindi, compulsory in certain cases.

REGIONAL LANGUAGES

The Constitution does not specify the official language of different states. In this regard, it makes the following provisions:

1. The legislature of a state may adopt any one or more of the languages in use in the state or Hindi as the official language of that state. Until that is done, English is to continue as official language of that state. Under this provision, most of the states have adopted the major regional language as their official language. For example, Andhra Pradesh has adopted Telugu, Kerala—Malayalam, Assam—Assamese, West Bengal—Bengali, Odisha—Odia. The nine northern states of Himachal Pradesh, Uttar Pradesh, Uttarakhand, Madhya Pradesh, Chhattisgarh, Bihar, Jharkhand, Haryana and Rajasthan have adopted Hindi. Gujarat has adopted Hindi in addition to Gujarati. Similarly, Goa has adopted Marathi in addition to Konkani. Jammu and Kashmir has adopted Urdu (and not Kashmiri). On the other hand, certain north-eastern States like Meghalaya, Arunachal Pradesh and Nagaland have adopted English. Notably, the choice of the state is not limited to the languages enumerated in the Eighth Schedule of the Constitution.

2. For the time being, the official language of the Union (i.e., English) would remain the link language for communications between the Union and the states or between various states. But, two or more states are free to agree to use Hindi (instead of English) for communication between themselves. Rajasthan, Uttar Pradesh, Madhya Pradesh and Bihar are some of the states that have entered into such agreements.

The Official Language Act (1963) lays down that English should be used for purposes of communication between the Union and the non- Hindi states (that is, the states that have not adopted Hindi as their official language). Further, where Hindi is used for communication between a Hindi and a non-Hindi state, such communication in Hindi should be accompanied by an English translation.

3. When the President (on a demand being made) is satisfied that a substantial proportion of the population of a state desire the use of any language spoken by them to be recognised by that state, then he may direct that such language shall also be officially recognised in that state. This provision aims at protecting the linguistic interests of minorities in the states.

LANGUAGE OF THE JUDICIARY AND TEXTS OF LAWS

The constitutional provisions dealing with the language of the courts and legislation are as follows:

1. Until Parliament provides otherwise, the following are to be in the English language only:

- All proceedings in the Supreme Court and in every high court.
- The authoritative texts of all bills, acts, ordinances, orders, rules, regulations and bye-laws at the Central and state levels.

2. However, the governor of a state, with the previous consent of the president, can authorise the use of Hindi or any other official language of the state, in the proceedings in the high court of the state, but not with respect to the judgements, decrees and orders passed by it. In other words, the judgements, decrees and orders of the high court must continue to be in English only (until Parliament otherwise provides).

3. Similarly, a state legislature can prescribe the use of any language (other than English) with respect to bills, acts, ordinances, orders, rules, regulations or bye-laws, but a translation of the same in the English language is to be published.

The Official Language Act of 1963 lays down that Hindi translation of acts, ordinances, orders, regulations and bye-laws published under the authority of the president are deemed to be authoritative texts. Further, every bill introduced in the Parliament is to be accompanied by a Hindi translation. Similarly, there is to be a Hindi translation of state acts or ordinances in certain cases.

The act also enables the governor of a state, with the previous consent of the president, to authorise the use of Hindi or any other official language of the state for judgements, decrees and orders passed by the high court of the state but they should be accompanied by an English translation. For example, Hindi is used in Uttar Pradesh, Madhya Pradesh, Bihar and Rajasthan for this purpose.

However, the Parliament has not made any provision for the use of Hindi in the Supreme Court. Hence, the Supreme Court hears only those who petition or appeal in English. In 1971, a petitioner insisted on arguing in Hindi a habeas corpus petition in the Supreme Court. But, the Court cancelled his petition on the ground that the language of the Court was English and allowing Hindi would be unconstitutional.

SPECIAL DIRECTIVES

The Constitution contains certain special directives to protect the interests of linguistic minorities and to promote the development of Hindi language. These are:

Protection of Linguistic Minorities

- Every aggrieved person has the right to submit a representation for the redress of any grievance to any officer or authority of the Union or a state in any of the languages used in the Union or in the state, as the case may be. This means that a representation cannot be rejected on the ground that it is not in the official language.

- Every state and a local authority in the state should provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups. The president can issue necessary directions for this purpose.
- The president should appoint a special officer for linguistic minorities to investigate all matters relating to the constitutional safeguards for linguistic minorities and to report to him. The president should place all such reports before the Parliament and send to the state government concerned.

Development of Hindi Language

The Constitution imposes a duty upon the Centre to promote the spread and development of the Hindi language so that it may become the lingua franca of the composite culture of India.

Further, the Centre is directed to secure the enrichment of Hindi by assimilating the forms, style and expressions used in Hindustani and in other languages specified in the Eighth Schedule and by drawing its vocabulary, primarily on Sanskrit and secondarily on other languages.

At present the Eighth Schedule of the Constitution specifies 22 languages (originally 14 languages). These are Assamese, Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Mathili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Odia8, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21st Amendment Act of 1967; Konkani, Manipuri and Nepali were added by the 71st Amendment Act of 1992; and Bodo, Dongri, Maithili and Santhali were added by the 92nd Amendment Act of 2003.

In terms of the Constitution provisions, there are two objectives behind the specification of the above regional languages in the Eighth Schedule:

- the members of these languages are to be given representation in the Official Language Commission; and
- the forms, style and expression of these languages are to be used for the enrichment of the Hindi language.

COMMITTEE OF PARLIAMENT ON OFFICIAL LANGUAGE

The Official Language Act (1963) provided for the setting up of a Committee of Parliament on Official Language to review the progress made in the use of Hindi for the official purpose of the Union. Under the Act, this Committee was to be constituted after ten years of the promulgation of the Act (i.e., 26th January, 1965). Accordingly, this Committee was set up in 1976. This Committee comprises of 30 members of Parliament, 20 from Lok Sabha and 10 from Rajya Sabha.

The Act contains the following provisions relating to the composition and functions of the committee:

- After the expiration of ten years from the date on which the Act comes into force, there shall be constituted a Committee on Official Language, on a resolution to that effect being moved in either House of Parliament with the previous sanction of the President and passed by both Houses.
- The Committee shall consist of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.
- It shall be the duty of the Committee to review the progress made in the use of Hindi for the official purposes of the Union and submit a report to the President making recommendations thereon and the President shall cause the report to be laid before each House of Parliament and sent it to all the State Governments.

- The President may, after consideration of the report, and the views, expressed by the State Governments thereon, issue directions in accordance with the whole or any part of the report.

The Chairman of the Committee is elected by the members of the Committee. As a convention, the Union Home Minister has been elected as Chairman of the Committee from time to time.

The Committee is required to submit its report along with its recommendations to the President after reviewing the position regarding the use of Hindi in Central Government Offices on the basis of its observations. Apart from adopting other methods for assessing the factual position, the Committee decided to inspect certain Central Government offices representing various fields of activities to motivate the Central Government offices to adopt maximum usage of Hindi so that the objectives of the Constitution and Official Language Act provisions could be achieved. With this end in view, the Committee set up three sub-Committees and for the purpose of inspection by the three sub-Committees, the various Ministries/ Departments etc. were divided into three different groups.

Further, in order to assess the use of Official Language for various purposes and other matters connected therewith, it was also decided to invite eminent persons from various fields such as from education, judiciary, voluntary organizations and the Secretaries of the Ministries/Departments etc., for oral evidence.

The progressive use of Hindi in the Central Government offices is being reviewed by the Committee in the background of the provisions relating to Official Language as provided by the Constitution; the Official Language Act, 1963 and the Rules framed thereunder. The Committee also takes note of the circulars/ instructions etc. issued by the Government in this regard from time to time. The terms of reference of the Committee being comprehensive, it has also been examining other relevant aspects like the medium of instructions in schools, colleges and the universities; mode of recruitment to Central Government services and medium of departmental examination etc.

Taking into consideration the magnitude of various aspects of the Official Language policy and keeping in view the present circumstances, the Committee in its meeting held in June, 1985 and August, 1986 decided to present its report to the President in parts; each part relating to a particular aspect of the Official Language policy. The Secretariat of the Committee is headed by the Secretary of the Committee. The Secretary is assisted by the officers of the level of Under Secretary and other officials. They extend all required assistance in performing the various activities of the Committee. For administrative purposes, this office is subordinate office of Department of Official Language, Ministry of Home Affairs.

CLASSICAL LANGUAGE STATUS

In 2004, the Government of India decided to create new category of languages called as “classical languages”. In 2006, it laid down the criteria for conferring the classical language status. So far six languages are granted the classical language status

Languages	Year of Declaration
TAMIL	2004
SANSKRIT	2005
TELEGU	2008
KANNADA	2008

MALAYALAM	2013
ODIA	2014

Once a language is declared classical, it gets financial assistance for setting up a centre of excellence for the study of that language and also opens up an avenue for two major awards for scholars of eminence. Besides, the University Grants Commission can be requested to create – to begin with at least in Central Universities – a certain number of professional chairs for classical languages for scholars of eminence in the language.

The criteria for declaring a language as classical mandates high antiquity of its early texts/recorded history over a period of 1,500–2,000 years, a body of ancient literature/texts which is considered a valuable heritage by generations of speakers and a literary tradition that is original and not borrowed from another speech community. Also since the classical language and literature is distinct from the modern, there can also be a discontinuity between the classical language and its later forms or its offshoots.

TRIBUNALS

The 42nd Amendment Act of 1976 added a new Part XIV-A to the Constitution. This part is entitled as 'Tribunals' and consists of only two Articles—Article 323 A dealing with administrative tribunals and Article 323 B dealing with tribunals for other matters.

ADMINISTRATIVE TRIBUNALS

Article 323 A empowers the Parliament to provide for the establishment of administrative tribunals for the adjudication of disputes relating to recruitment and conditions of service of persons appointed to public services of the Centre, the states, local bodies, public corporations and other public authorities. In other words, Article 323 A enables the Parliament to take out the adjudication of disputes relating to service matters from the civil courts and the high courts and place it before the administrative tribunals.

In pursuance of Article 323 A, the Parliament has passed the Administrative Tribunals Act in 1985. The act authorises the Central government to establish one Central administrative tribunal and the state administrative tribunals. This act opened a new chapter in the sphere of providing speedy and inexpensive justice to the aggrieved public servants.

Central Administrative Tribunal (CAT)

The Central Administrative Tribunal (CAT) was set up in 1985 with the principal bench at Delhi and additional benches in different states. At present, it has 17 regular benches, 15 of which operate at the principal seats of high courts and the remaining two at Jaipur and Lucknow. These benches also hold circuit sittings at other seats of high courts.

The CAT exercises original jurisdiction in relation to recruitment and all service matters of public servants covered by it. Its jurisdiction extends to the all-India services, the Central civil services, civil posts under the Centre and civilian employees of defence services. However, the members of the defence forces, officers and servants of the Supreme Court and the secretarial staff of the Parliament are not covered by it.

The CAT is a multi-member body consisting of a chairman and members. Earlier, the CAT consisted of a Chairman, Vice-Chairmen and members. With the amendment in Administrative Tribunals Act, 1985 in 2006, the members have been given the status of judges of High Courts. At present, the sanctioned

strength of the Chairman is one and sanctioned strength of the Members is 65. They are drawn from both judicial and administrative streams and are appointed by the president. They hold office for a term of five years or until they attain the age of 65 years, in case of chairman and 62 years in case of members, whichever is earlier.

The appointment of Members in CAT is made on the basis of recommendations of a high powered selection committee chaired by a Sitting Judge of Supreme Court who is nominated by the Chief Justice of India. After obtaining the concurrence of Chief Justice of India, appointments are made with the approval of Appointments Committee of the Cabinet (ACC).

The CAT is not bound by the procedure laid down in the Civil Procedure Code of 1908. It is guided by the principles of natural justice. These principles keep the CAT flexible in approach. Only a nominal fee of 50 is to be paid by the applicant. The applicant may appear either in person or through a lawyer.

Originally, appeals against the orders of the CAT could be made only in the Supreme Court and not in the high courts. However, in the Chandra Kumar case (1997), the Supreme Court declared this restriction on the jurisdiction of the high courts as unconstitutional, holding that judicial review is a part of the basic structure of the Constitution. It laid down that appeals against the orders of the CAT shall lie before the division bench of the concerned high court. Consequently, now it is not possible for an aggrieved public servant to approach the Supreme Court directly against an order of the CAT, without first going to the concerned high court.

State Administrative Tribunals

The Administrative Tribunals Act of 1985 empowers the Central government to establish the State Administrative Tribunals (SATs) on specific request of the concerned state governments. So far (2016), the SATs have been set up in the nine states of Andhra Pradesh, Himachal Pradesh, Odisha, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu, West Bengal and Kerala. However, the Madhya Pradesh, Tamil Nadu and Himachal Pradesh Tribunals have since been abolished. The Kerala Administrative Tribunal was set up with effect from 26th August, 2010.

But subsequently Himachal Pradesh re-established the SAT and the state of Tamil Nadu has also requested now to re-establish the same. Like the CAT, the SATs exercise original jurisdiction in relation to recruitment and all service matters of state government employees.

The chairman and members of the SATs are appointed by the president after consultation with the governor of the state concerned. The act also makes a provision for setting up of joint administrative tribunal (JAT) for two or more states. A JAT exercises all the jurisdiction and powers exercisable by the administrative tribunals for such states. The chairman and members of a JAT are appointed by the president after consultation with the governors of the concerned states.

TRIBUNALS FOR OTHER MATTERS

Under Article 323 B, the Parliament and the state legislatures are authorised to provide for the establishment of tribunals for the adjudication of disputes relating to the following matters:

- Taxation
- Foreign exchange, import and export
- Industrial and labour
- Land reforms
- Ceiling on urban property

- Elections to Parliament and state legislatures
- Food stuffs
- Rent and tenancy rights

Articles 323 A and 323 B differ in the following three aspects:

- While Article 323 A contemplates establishment of tribunals for public service matters only, Article 323 B contemplates establishment of tribunals for certain other matters (mentioned above).
- While tribunals under Article 323 A can be established only by Parliament, tribunals under Article 323 B can be established both by Parliament and state legislatures with respect to matters falling within their legislative competence.
- Under Article 323 A, only one tribunal for the Centre and one for each state or two or more states may be established. There is no question of hierarchy of tribunals, whereas under Article 323 B a hierarchy of tribunals may be created.

In Chandra Kumar case (1997), the Supreme Court declared those provisions of these two articles which excluded the jurisdiction of the high courts and the Supreme Court as unconstitutional. Hence, the judicial remedies are now available against the orders of these tribunals.

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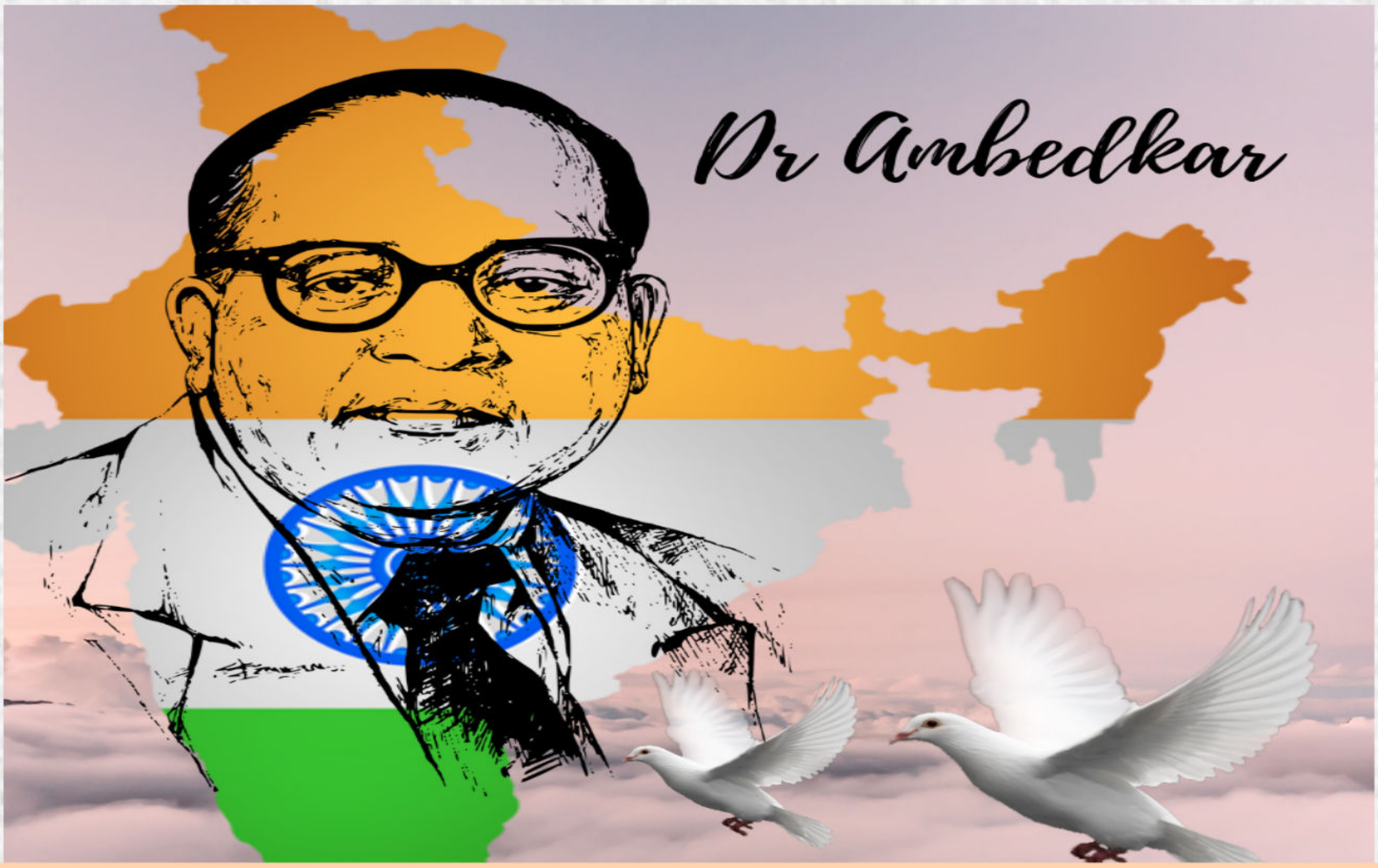

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