INFUSION NOTES

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UPSC-CSE

PRELIMS+MAINS

ENGLISH MEDIUM

General Study Paper–2

Part -1

POLITY, CONSTITUTION AND GOVERNANCE

प्रस्तावना

*प्रिय पाठकों, प्रस्तुत नोट्स "**UPSC-CSE (IAS/IPS/IFS) (हिंदी माध्यम)**" को एक विभिन्न अपने अपने विषयों में निपुण अध्यापकों एवं सहकर्मियों की टीम के द्वारा तैयार किया गया है। ये नोट्स पाठकों को **संघ लोक सेवा आयोग** द्वारा आयोजित करायी जाने वाली परीक्षा **"सिविल सेवा परीक्षा (प्रारंभिक एवं मुख्य)"** में पूर्ण संभव मदद करेंगें।*

अंततः सतर्क प्रयासों के बावजूद नोट्स में कुछ कमियों तथा त्रुटियों के रहने की संभावना हो सकती है। अतः आप सूचि पाठकों का सुझाव सादर आमंत्रित हैं।

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INDIAN POLITY

CHAPTER 1

COMPARISON SCHEME

Comparison of the Indian constitution scheme with that of other countries would centre around two main pivots:

1. Brief knowledge of the constitution of the various countries, deemed important owing to the current status of the Indian constitution draws implicitly or explicitly from them.
2. The comparison is drawn vis-a-vis features of the constitution (for example fundamental rights, DPSPs, Federalism etc.)

2. British Constitution

2.1 Salient features

2.1.1. Unwritten

One of the important features of the British constitution is its Unwritten character. There is no codified or structured document which may be called the British constitution unlike in India, which is codified into various parts and schedules. Nevertheless, many sources of the constitutional law are written and these together with conventions and political tradition form the British constitution. Indian constitution in comparison is the lengthiest written constitution in the world.

2.1.2 Evolutionary

The British constitution is a specimen of evolutionary development. It was never framed by any constituent assembly. It has an unbroken continuity of development over more than a thousand years. It is said that the British constitution is a product of wisdom and chance.

The Indian constitution has certain Similarities as well as differences in its particular aspect. It differs from the British Constitution to the extent that it is a written document and has well-defined provisions. However, it too is open to evolution, given that the provision of amendment is kept such. To allow for the constitution to evolve according to the need and sensibilities of the time.

Flexibility:

The British Constitution is a classic example of a flexible constitution. It can be passed, amended and repealed by a Simple Majority (50% of the members present and voting) of the Parliament, since no distinction is made between constitutional law and ordinary law. Both constitutional law and ordinary law are treated alike. The element of flexibility has provided the virtue of adaptability and adjustability to the British Constitution. This quality has enabled it to grow with the needs of time. The Indian Constitution, in contrast, is both flexible as well as rigid. This complements the basic ideology of the Indian Constitution quite well, wherein certain features like Sovereignty, Secularism, Republic etc. have been held sacrosanct, but otherwise the Constitution lends itself to amenability.

2.1.4. Unitary vs. Federal Features:

The British Constitution has a unitary character as opposed to a federal one. All powers of the government are vested in the British Parliament, which is a sovereign body. Executive organs of the state are subordinate to the Parliament, exercise delegated powers and are answerable to it. There is only one legislature. England, Scotland, Wales etc. are administrative units and not politically autonomous units.

The Indian constitution on the other hand is federal.

Unitary	Federal	Confederation
All power lies with the centre	Power is shared by the National and the State Government	Units come together and form the state. It is the opposite to the unitary system.
Center delegates power to the provincil government	Power for the provincial government comes from the constitution.	Real power with the units.
Example: Britain	Example: India	Example: EU , USA

2.1.5. Parliamentary Executive:

This is one important similarity between the British and the Indian Constitution.

Britain has a Parliamentary form of government. The King, who is sovereign, has been deprived of all his powers and authority. The real functionaries are Ministers, who belong to the majority party in the Parliament and remain in office as long as they retain its confidence. The Prime Minister and his Ministers are responsible to the legislature for their acts and policies. Parliamentary system is based on the principle of collaboration and cooperation between the executive and legislative organs. The executive in Britain has individual legal responsibility whereas in India there is no legal responsibility.

2.1.6. Sovereignty of Parliament

The term Sovereignty means Supreme Power. A very important feature of the British Constitution is sovereignty of the British Parliament (a written constitution being absent). The British Parliament is the only legislative body in the country with unfettered power of legislation. It can make, amend or repeal any law. Though in India's case, we have legislature at state level too, yet the law-making power of the Indian Parliament roughly corresponds to that of the British Parliament.

The courts have no power to question the validity of the laws passed by the British Parliament. The British Parliament may amend the constitution on its own authority, like an ordinary law of the land. It can make illegal what is legal and legalize what is illegal. Here, there is a marked difference, vis-à-vis the power of the Indian Judiciary to keep a tab on the legality of the law framed. Also, the 'Basic Structure doctrine, lends the Indian Judiciary further power to question the legality of the law (Judicial Review), in light of the fact that the Supreme Court of India is the highest interpreter of the Constitution of India.

2.1.7. Role of Conventions:

Conventions are known as unwritten maxims (rules) of the Constitution. They provide flexibility and avoid amendments. Most constitutions of the world have conventions. A necessary corollary to the unwritten character of the British constitution is that conventions play a very vital role in the British political system. For example, while the Queen has the prerogative to refuse assent to a measure passed by the British Parliament, but by convention, she doesn't do so and the same has become a principle of the constitution itself. However, the legal status of conventions is subordinate to the written law. Even in India conventions play a vital role in the functioning of Parliament. For instance: the position of Deputy Speaker is offered to opposition parties in India, etc.

2.1.8. Rule of Law:

Another important feature of the British Constitution is the Rule of Law. Constitutionalism or limited government is the essence of Rule of Law. This checks the arbitrary action on part of the Executive Acc,ording to Dicey, there are three principles of Rule of Law, found in Britain:

- Protection from arbitrary arrest and the opportunity to defend oneself.
- Equality before Law which means that all persons are equal before law, irrespective of their position or rank it is different from the concept of Administrative Law, which gives immunity of various types to public servants. In the absence of the Constitution and Fundamental Rights in Britain, the judiciary protects this law. So this system is called the Principle of Common Laws. In Maneka Gandhi vs Union of India case (1978) SC held that the procedure established by law within the meaning of Article 21 must be 'right and just and fair and not arbitrary, fanciful or 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.
- The rights of people in Britain are guaranteed by the judiciary. The Judiciary gives recognition to the common laws. Thus, the people in Britain enjoy rights, even in the absence of a Bill of Rights or Fundamental Rights. The Constitution is the result of rights of the individuals protected by the courts in the British Constitution whereas in India, the Constitution is the source of the individual rights.

2.1.9. Independence of Judiciary:

The Rule of Law in Britain is safeguarded by the provision that judges can only be removed from office for serious misbehavior and according to a procedure established according to which the consent of both the Houses of Parliament is required. So, the judges are able to give their judgments without any fear or favour.

The same has been adopted in India, where independence of the Judiciary is hailed as an unmistakable part of the Constitution (one of the features of the 'Basic Structure' doctrine).

2.2. Organs of the State

2.2.1. Executive

The Executive in Britain is called the Crown. Earlier, the Crown symbolized the King. Now, the King is part of the Crown

The Crown, as an institution, consists of the following:

- **King**
- **Prime minister**
- **Council of ministers**
- **Permanent executive, the civil servants**
- **Privy council**

Crown: "King is dead. Long live the King."

In Britain, initially all power lied with the King. Later on, power shifted out of the institution of the King to the institution of CoM headed by the Prime Minister, Permanent Executive and the Privy Council etc. Today, the Crown comprises all these institutions. Hence, the first part of the statement describes the King as a person, while the second part describes the king or crown as an institution.

Nature of Monarchy:

Britain has a constitutional monarchy which is not incompatible with democracy This is because essentially the powers of the monarch as head of the state currently Queen Elizabeth are ceremonial. The most important practical power is the choice of the Member of Parliament to form a government, but invariably the monarch follows the convention that this opportunity is granted to the leader of the political party or coalition, which has a majority in the House of Commons.

Despite its lack of real power, the monarchy still has several important roles to play in contemporary Britain. These include:

- Representing UK at home and abroad,
- Settings standards of citizenship and family life,
- Uniting people despite differences,
- Allegiance to the armed forces,
- Maintaining continuity of British traditions,
- Preserving a Christian morality etc.

In addition, consider the following:

Parliamentary system requires two heads:

- First head, is the head of the state. He represents the nation and provides continuity to the administration.
- The second head is the head of the government. He has real powers because the house has confidence in the Prime Minister. The PM is eader House. He repents the majority of the House. The institution of kingship is a source of psychological satisfaction. It is said that "with the King in Buckingham Palace, the Englishmen sleep peacefully in their houses". The King is of great help in critical times. He usually has a very long experience and can give valuable advice in the interest of the country. According to Bagehot, the King has three rights:
  - The right to warn,
  - the Right to encourage,
  - Right to be informed.

Abolishing the kingship will require an elected head. An elected head, with no real powers, will have its own set of problems. In contrast, no provision of Monarchy exists in the case of the Indian Constitution. Indeed, holding titles like King etc. is forbidden as per Article 18 of the Fundamental Rights, thus emphasizing equality of all Indian citizens.

British Prime Minister and the Council of Ministers:

Britain has a Cabinet form of government. A cabinet is a plural or collegiate form of government. The power doesn't lie in one person, but the entire Council of Ministers. The principle is, "all Ministers sink and swim together". It is based on collective responsibility towards the Lower House.

The Cabinet has its origins in the Privy Council set up to advise the King. The roles of cabinet include the following:

- Approving policy (major policy making body).
- Resolving disputes,
- Constraining the Prime Minister,
- Unifying government,
- Unifying the parliamentary party etc.

Moreover, the Cabinet is the ultimate body of law making in the Parliamentary system. It is formed out of the party/group, which enjoys a majority in the House. The cabinet meetings are held in private.

British Prime Minister:

1. Position of the Prime Minister

- The PM is the captain of the ship of the state.
- The PM is the head of the cabinet.
- The party of the PM enjoys a majority in the House.
- He/She is the connecting link between the King and the Cabinet as well as the King and the parliament.
- The life of the House depends on the PM as he/she may advise the dissolution of the House.
- The other Ministers are appointed on the advice of the PM.
- The term of the other Ministers also depends on the PM.

2. The P.M. As first among equals this is also called Primus Inter Pares or inter Stella Luna Minores. This explains the PM's position w.r.t. other ministers. In the cabinet system, there is a principle of collective responsibility; hence other ministers are also important but the PM remains a "key stone of the cabinet arch'. The relative position of the PM and other ministers in a Parliamentary system can be compared to the relative position of the President and his/her secretaries in the Presidential system. In the Presidential system, members of the Cabinet are chosen by the President. In the USA,a spoils system exists. The Secretaries are not members of the Congress, in the Parliamentary system, ministers are also the members of either House. The PM cannot treat them as his/her subordinates. Theoretically, the PM should consider him/herself as only first among equals, must give due respect to other members of the Cabinet and should take decisions in consultation with them.

However, the PM. is first because:

- He/she Is the one who is appointed first, since he/she is the leader of the House of Commons.
- Other ministers are appointed on his/her advice.
- Other ministers can be removed on his/her advice.

PM as moon among stars:

This statement gives a more realistic view of the position of PM. In practice, the PM gains prominence and he is not simply the first among equals.Both formal and informal factors are responsible for this.

- **Formal Factors:** He/She is the link between the Parliament and the King, and ministers are appointed/removed on his/her advice etc.
- **Informal Factors:** Personality factors, position of his/her party, external/internal emergency like situation.

Difference between the British and Indian PM:

Constitutional position of the Indian PM Is modeled on the British PM, with one difference. In India, the PM can be a member of either house of Parliament, i.e Lok Sabha or Rajya Sabha. However, this is not so in Britain ft Ba tonvenion in Britain that the PM will always be a member of the tower House (House of Commons) only.

Privy Council:

The Privy Council is descended from the Curia Regis, which was made up of the king's tenants in chief, household officials, and other advisers. This group performed all the functions of government in either small groups, which became the king's council, or large groups, which grew into the great council and Parliament.

Permanent Civil Servants/British Bureaucrats

Indian bureaucracy is modeled on the British bureaucracy.

Some features:

- Bureaucracy in Britain is generalist.
- They are expected to be politically neutral
- They are recruited through the competitive exams.
- They enjoy a lot of immunities

a responsible government answerable to the legislature and people.

- The development of the portfolio system and budget points to the separation of power.
- Lord Mayo's resolution on financial decentralization visualized the development of local self-government institutions in India (1870).
- 1882: Lord Ripon's resolution was hailed as the 'Magna Carta' of local self-government. He is regarded as the 'Father of local self-government in India'.
- 1924: Railway Budget was separated from the General Budget based on the Acworth Committee report (1921).
- From 1773 to 1858, the British tried for the centralization of power. It was from the 1861 Councils act they shifted towards devolution of power with provinces.
- The 1833 Charter act was the most important act before the act of 1909.
- Till 1947, the Government of India functioned under the provisions of the 1919 Act only. The provisions of the 1935 Act relating to Federation and Dyarchy were never implemented.
- The Executive Council provided by the 1919 Act continued to advise the Viceroy till 1947. The modern executive (Council of Ministers) owes its legacy to the executive council.
- The Legislative Council and Assembly developed into Rajyasabha and Loksabha after independence.

CHAPTER - 2

WHAT IS A CONSTITUTION

The Constitution of India contains 395 articles in 22 parts. Additional articles and parts are inserted later through various amendments. There are also 12 schedules in the Indian Constitution.

Each society consists of some set of rules or ideals that make it what it is and differentiate it from other kinds of societies. In large societies, these rules are formulated through consensus, and in modern countries, this consensus is usually available in written form.

On similar lines, a Constitution is a body or a document which consists of certain fundamental rules and principles that all persons in a country can agree upon as the basis of the way in which they want the country to be governed.

Who can decide which rules are the best to suit a society?

- The constitution specifies the basic allocation of power in a society.
- It decides who gets to decide what the laws will be.
- In the Indian Constitution, it is specified that in most instances, Parliament gets to decide laws and policies and that Parliament itself be organized in a particular manner.

Purpose and functions of a Constitution:

- Lays out certain ideals that form the basis of the kind of country that we as citizens aspire to live in.
- Defines the nature of a country's political system; plays a crucial role in laying out certain important guidelines that govern decision-making within these societies.
- Provides a set of basic rules that allow for minimal coordination amongst members of society.
- Provides safeguards against the leaders who might misuse their authority—sets some limits on what a government can impose on its citizens. These limits are fundamental in the sense that the government may never trespass them. (Ex – Aseem Trivedi, Shreya **Singal Case, Section 66A of IT Act)**

- Protects minorities from the tyranny of the majority (i.e. from inter-community and intra-community domination (Ex – Apartheid Movement in South Africa)
- The Constitution saves us from ourselves (This may sound strange but what is meant by this is that we might at times feel strongly about an issue that might go against our larger interests and the Constitution helps us guard against this.)
- It helps to protect us against certain decisions that we might take that could have an adverse effect on the larger principles that the country believes in. Therefore, the constitution sets authoritative constraints upon what one may or may not do. (Ex– Cow slaughter, Ghar Wapsi issue)
- Enables the government to fulfill the aspirations of a society and create conditions for a just society. (Directive Principles of State Policy, DPSP, and various acts)
- The Constitution expresses the fundamental identity of a people.

In many Countries, Constitutions remain defunct. Why?

- Because they are crafted by military leaders or leaders who are not popular. (Ex. Junta rule of Myanmar, Nepal's Constitution)
- Crafted by leaders who do not have the ability to carry the people with them.

Why is the Constitution of countries like India, South Africa, and the United States the most successful?

- The Constitutions were created in the aftermath of popular national movements and were crafted by popular leaders who had the ability to take forward the citizens with them and were highly credible—drawing upon a long history of the nationalist movement that had a remarkable ability to take along different sections of society together. **(Ex – Nehru, B.R.Ambedkar, etc.)**
- The Constitution drew enormous legitimacy from the fact that it was drawn up by people who enjoyed immense public credibility, who had the capacity to negotiate and command the respect of a wide cross-section of society, and who were able to convince the people that the constitution was not an instrument for the aggrandizement of their personal power.
- In some countries (not India) the Constitution was framed on the basis of a full-fledged referendum, where all the people vote on the desirability of a constitution.

Therefore, the authority of people who enact the Constitution helps determine in part its prospects for success.

The Hallmark of a successful constitution/an effective constitution is one which –

- Gives everyone in society some reason to go along with its provisions.
- Does not allow permanent majorities to oppress minority groups within society.
- Does not systematically privilege some members at the expense of others or that systematically entrenched the power of small groups in society.
- Does not stifle the identity of any group.
- Has to convince people that it provides the framework for pursuing basic justice.
- Preserves the freedom and equality of all its members.
- Fragments power in society intelligently so that no single group can subvert the constitution
- Ensures that no single institution acquires a monopoly of power
- Provides for balanced institutional design – i.e., an intelligent system of checks and balances
- Strikes the right balance between certain values, norms, and procedures as authoritative, and at the same time allow enough flexibility in its operations to adapt to changing needs and circumstances
- Is not too rigid or too flexible Such a Constitution can ensure that it will survive as a document respected by people.

How was the Indian Constitution made?

- The Constitution was made by the Constituent Assembly which had been elected for undivided India.
- First sitting on **9 December 1946** and re-assembled as Constituent Assembly for divided India on 14 August 1947.
- Much before the Constituent Assembly finally came into being, the demand for such a constituent assembly was first echoed by Dr. Rajendra Prasad (in 1946).

- (Rajendra Prasad quoted Mahatma Gandhi that "**swaraj would mean wishes of the people as expressed through their freely chosen representatives**").
- However, the idea of a constituent assembly to frame a constitution for India was first mooted by **M. N. Roy in 1934.**
- Members were elected by indirect election by the members of the Provisional Legislative Assemblies that had been established in 1935.
- The Constituent Assembly was composed roughly along the lines suggested by the plan proposed by the committee of the British cabinet, known as the Cabinet Mission.

Cabinet Mission Plan:

According to this plan –

- Each Province and each Princely State or group of States were allotted seats proportional to their respective population roughly in the ratio of 1:10,00,000.
- The seats in each Province were distributed among the three main communities, Muslims, Sikhs, and General, in proportion to their respective populations.
- Members of each community in the Provisional Legislative Assembly elected their own representatives by the method of proportional representation with a single transferable vote.
- The method of selection in the case of representatives of Princely States was to be determined by consultation.

What is a Constituent Assembly?

- A body of representatives is composed of drafting a constitution.
- In our times, we have recently seen how Nepal's constituent assembly has drafted its constitution recently. We note that drafting the constitution is the only function of a constituent assembly.
- Once the constitution is ready and adopted; the assembly is dissolved.
- Further, since members of the constituent assembly are representatives (elected or unelected); it's a form of representative democracy.

About Objective Resolutions:

- Moved by Nehru in 1946; defined the aims of the Constituent Assembly.
- This resolution encapsulated the aspirations and values behind the Constitution.
- Based on this resolution, our Constitution gave institutional expression to these fundamental commitments: equality, liberty, democracy, sovereignty, and cosmopolitan identity.

Main points of the Objectives Resolution :

- India is an independent, sovereign, republic:
- India shall be a Union of erstwhile British Indian territories, Indian States, and other parts outside British India and Indian States as are willing to be a part of the Union:
- Territories forming the Union shall be autonomous units and exercise all powers and functions of the Government and administration, except those assigned to or vested in the Union:
- All powers and authority of sovereign and independent India and its constitution shall flow from the people;
- All people of India shall be guaranteed and secured social, economic and political justice; equality of status and opportunities and equality before law; and fundamental freedoms - of speech, expression, belief, faith, worship, vocation, association and action - subject to law and public morality;
- The minorities, backward and tribal areas, depressed and other backward classes shall be provided adequate safeguards;
- The territorial integrity of the Republic and its sovereign rights on land, sea and air shall be maintained according to justice and law of civilized nations;
- The land would make a full and willing contribution to the promotion of world peace and welfare of mankind.

Constitution of India: Drawn From Various Sources:

- **1.Australia–**
  (a) Concurrent list
  (b) Freedom of trade, commerce, and intercourse
  (c) Joint-sitting of the two Houses of Parliament.
- **2.Canada–**
  (a) Federation with a strong Centre

(b) Vesting of residuary powers in the Centre
(c) Appointment of state governors by the Centre
(d) Advisory jurisdiction of the Supreme Court.

- **3.Ireland**–
  (a) Directive Principles of State Policy
  (b) The nomination of members to Rajya Sabha
  (c) Method of election of the president.
- **4.Japan**–Procedure Established by law.
- **5.Soviet Union (USSR) (now, Russia)**–
  (a)Fundamental duties
  (b) Ideals of justice (social, economic, and political) in the Preamble.
- **6.UK**–
  (a) Parliamentary government
  (b) Rule of Law
  (c) Legislative procedure
  (d) Single Citizenship
  (e) Cabinet system
  (f) Prerogative writs
  (g) Parliamentary privileges
  (h) Bicameralism
- **7.US**–
  (a) Fundamental rights
  (b) Independence of judiciary
  (c) Judicial review
  (d) Impeachment of the president
  (e) Removal of Supreme Court and High Court judges
  (f) Post of vice-president.
- **8.Germany (Weimar)**–Suspension of Fundamental Rights during an emergency.
- **9.South Africa**–
  (a) Procedure for amendment in the Indian Constitution
  (b) Election of members of Rajya Sabha.
- **10.France**–
  (a) Republic
  (b) Ideals of liberty, equality, and fraternity in the Preamble.

Government of India Act of 1935

- Federal Scheme
- Office of governor
- Judiciary
- Public Service Commissions
- Emergency provisions
- Administrative details

Parts of Indian Constitution:

The parts of the Indian Constitution along with Subject and Articles they cover are given below.

Part	Subject	Articles
Part I	The Union and its territory	Art. 1 to 4
Part II	Citizenship	Art. 5 to 11
Part III	Fundamental Rights	Art. 12 to 35
Part IV	Directive Principles	Art. 36 to 51
Part IVA	Fundamental Duties	Art. 51A
Part V	The Union	Art. 52 to 151
Part VI	The States	Art. 152 to 237
Part VII	Repealed by Const. (7th Amendment) Act, 1956	
Part VIII	The Union Territories	Art. 239 to 242
Part IX	The Panchayats	Art. 243 to 243O
Part IXA	The Municipalities	Art. 243P to 243ZG
Part IXB	Co-operative Societies	Art. 243ZH to 243ZT
Part X	The Scheduled and Tribal Areas	Art. 244 to 244A
Part XI	Relations between the Union and the States	Art. 245 to 263

Identification of foreigners as needed by Section 6A was to be done under the Illegal Migrants (Determination by Tribunal) Act, (IMDT Act), 1983, which was applicable only in Assam while the Foreigners Act, 1946 was applicable in the rest of the country.

- The provisions of the IMDT Act made it difficult to deport illegal immigrants.
- On the petition of Sarbananda Sonowal (now the Chief Minister of Assam), the Act was held unconstitutional and struck down by the Supreme Court in 2005.
- This was eventually replaced with the Foreigners (Tribunals for Assam) Order, 2006, which again was struck down in 2007.
- In the IMDT case, the court considered classification based on geographical considerations to be a violation of the right to equality under Article 14.

Conclusion:

Giving concession of six years for residence based only on religion is against the tenets of secularism. This should be dropped to stand the test of 'basic structure doctrine'.

India, as a country which follows the ideology of **'Vasudhaiva Kutumbakam'**, should not be hasty in taking decisions that can disenfranchise her citizens – contradicting its centuries-followed values.

The need of the hour is that the Union Government should clearly chart out the course of action regarding the fate of excluded people from the final NRC of Assam and political parties should refrain from colouring the entire NRC process through electoral prospects that may snowball into communal violence.

An overly legal approach will only produce more tension, insecurity and anxiety.

CHAPTER – 5

FUNDAMENTAL RIGHTS: PART III

(ARTICLES 12-35)

Articles 12-35 (Part III) of the Indian Constitution deal with Fundamental Rights. Fundamental Rights are largely inspired by the Bill of Rights in the American Constitution.

Part 3 and Part 4 together form the conscience of the Constitution or intellectual component of the State. Fundamental Rights are essential for the healthy functioning of democracy therefore called a cornerstone of Indian Democracy.

These rights are the most indispensable assets of an individual to achieve his fullest physical, intellectual, and spiritual stretcher. They are also fundamental because the State can not take away these rights and any law which infringes upon them will be declared null and void. It is to prevent the state from becoming arbitrary or authoritarian, they are fundamental for having the civilized society in place.

Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed or owed to people, according to some legal system, social convention, or ethical theory. Rights are of essential importance in such disciplines as law and ethics, especially theories of justice and deontology.

Natural rights are rights that are "natural" in the sense of "not artificial, not man-made", as in rights deriving from human nature or from the edicts of a god. They are universal; that is, they apply to all people and do not derive from the laws of any specific society. They exist necessarily, inhere in every individual, and can't be taken away.

For example, it has been argued that humans have a natural right to life. These are sometimes called **moral rights or inalienable rights.**

Legal rights, in contrast, are based on a society's customs, laws, statutes or actions by legislatures. An example of a legal right is the right to vote of citizens. Citizenship, itself, is often considered as the basis for having legal rights and has been defined as the **"right to have rights". Legal**

rights are sometimes called civil rights or statutory rights *and are culturally and politically relative since they depend on a specific societal context to have meaning.*

Fundamental Rights:

Fundamental Rights are protected and guaranteed by the Constitution and they cannot be taken away by an ordinary law enacted by the legislature. ***If a legal right of a person is violated, he can move to an ordinary court, but if a fundamental right is violated the Constitution provides that the affected person may move to High court or Supreme Court.***

Universal Declaration of Human Rights

The General Assembly, Proclaims the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

In 1925 the Indian National Congress finalized the draft of the CommonWealth of India Bill adopting a ***'Declaration of Rights'.*** *The Madras Session of the Congress held in the year 1927 – demanded incorporation of a 'Declaration of Fundamental Rights' in any future constitutional framework.*

The Karachi Session of the Congress in 1931 adopted a detailed program of fundamental rights. The Government of India Act, 1935 was passed without any bill of rights much to the disappointment of the Indian leaders.

It was the ***'Sapru Committee' of 1945*** *that subsequently stressed the need for a written code of fundamental rights and the Constituent Assembly raised a forceful demand for the inclusion of human rights in the Constitution.*

The framers of the Constitution derived inspiration from the Constitution of the ***USA (i.e., Bill of Rights)*** *and adopted Fundamental Rights in Part III of the Constitution from Articles 12 to 35.*

Part III of the Constitution (which contains FRs) is rightly described as the 'Magna Carta of India'.

Fundamental Rights are justiciable – allows persons to move the courts for their enforcement*, if and when they are violated. The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land.*

Fundamental Rights are guaranteed by the Constitution to all persons and legal entities without any discrimination. They uphold the equality of all individuals, the dignity of the individual, the larger public interest, and unity of the nation.

Establishing 'A Government of Laws and Not Of Men' –

The Constitution listed the rights that would be specially protected and called them 'fundamental rights'.

These rights are so important that the Constitution has separately listed them and made special provisions for their protection. The Constitution itself ensures that they are not violated by the government.

They promote the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country and protect the liberties and freedoms of the people against the invasion by the State.

They check and balance the tyrannical power of the executive and arbitrary law of legislature. In short, they aim at establishing a government of laws and not of men.

Ordinary Rights and Fundamental Rights:

- *Rights may be either statutory or constitutional. When a right is enacted in an ordinary law of the land it is a statutory right. And when the Constitution guarantees any right it assumes the status of a constitutional right.*
- *Ordinary legal rights are protected and enforced by ordinary law, Fundamental Rights are protected and guaranteed by the Constitution of the country.*
- *Ordinary rights may be changed by the legislature by the ordinary process of law-making, but a fundamental right may only be changed by amending the Constitution itself.*

- Judiciary has the powers and responsibility to protect fundamental rights from violations by actions of the government. Executive, as well as legislative actions, can be declared illegal by the judiciary if these violate the Fundamental rights or restrict them in an unreasonable manner.

Originally, the Constitution provided for seven Fundamental Rights viz,

- Right to equality (Articles 14–18)
- Right to freedom (Articles 19–22)
- Right against exploitation (Articles 23–24)
- Right to freedom of religion (Articles 25–28)
- Cultural and educational rights (Articles 29–30)
- Right to property (Article 31)
- Right to constitutional remedies (Article 32)

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

Features of Fundamental Rights:

- Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners, or legal persons like corporations or companies.
- The state can impose restrictions on Fundamental rights. (They are not absolute but qualified).
- Except Fundamental rights guaranteed under Articles 20 and 21 remaining Fundamental rights can be suspended during the operation of a National Emergency.
- Article 19 can be suspended only when an emergency is declared on the grounds of war or external aggression and not on the grounds of armed rebellion.
- **Most of the FRs are available against the arbitrary action of the State.**
- Some of FRs are negative in character, they place limitations on the authority of the State
- Some other FRs are positive in nature, as they confer certain privileges on the persons.
- FRs 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 judgment of the high courts.
- FRs are not sacrosanct or permanent –> Meaning, the Parliament can curtail or repeal them. But only by a constitutional amendment act and not by an ordinary act. Moreover, **this can be done without affecting the 'basic structure' of the Constitution.**
- Their scope of operation is limited by Article 31A (saving of laws providing for the 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).
- **Article 33** enables the parliament to restrict the application of FR to the members of armed forces, paramilitary forces, police forces, intelligence agencies, and analogous services.
- 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).

Article 12 provides the 'Definition of the State'. The "State" includes –

- the Government and Parliament of India
- the government and the state legislature
- all local authorities (municipalities, Panchayati Raj, District boards, etc)
- Other statutory and non-statutory authorities (LIC, ONGC, etc.).

The actions of the state (all the above said) can be challenged in the courts as a violation of Fundamental Rights.

According to the Supreme Court, even a private body or an agency working as an instrument of the State falls within the meaning of the 'State' under Article 12.

Article 12 does not explicitly mention the judiciary. However, as the judiciary is the guardian of fundamental rights, an obvious question that can arise is 'Can Courts be defined as 'State' under Article 12 of the Indian Constitution?'

The High Court of Bombay recently answered this question in the case of The National Federation of the Blind, Maharashtra & Anr v. The High Court of Judicature of Bombay, wherein **it**

held that 'Courts are included within the definition of "State" only on the administrative side while dealing with employees or while taking decisions in an administrative capacity and not on the judicial side'.

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

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.

***It provides for the "doctrine of judicial review". The Supreme Court (according to Article 32) and the high courts (according to Article 226)** can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.*

The term 'law' in Article 13 has been given a wide connotation so as to include the following:

- *Permanent laws enacted by the Parliament or the state legislatures;*
- *Temporary laws like ordinances issued by the president or the state governors;*
- *Statutory instruments in the nature of delegated legislation (executive legislation) like order, bye-law, rule, regulation, or notification; and*
- *Non-legislative sources of law, that is, custom or usage having the force of law.*

*Article 13 declares that a constitutional amendment is not a law and hence cannot be challenged **(24th amendment act).***

*However, the Supreme Court held in the **Kesavananda Bharati case (1973)** that a Constitutional amendment can be challenged on the ground that it violates a fundamental right that forms a part of the **'basic structure' of the Constitution** and hence, can be declared as void.*

***Please note:** The word **"Judicial Review"** is nowhere mentioned in the Constitution.*

ARTICLE 14-18 RIGHT TO EQUALITY (14-18):

Article 14: Equality before law and equal protection of laws:

Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

*Article 14 aims to establish the **"Equality of Status and Opportunity"** as embodied in the Preamble of the Constitution.*

Equality before law – no one is above the law of the land.

***Equality before law:** The absence of any special privileges in favor of any person. This concept ensures the following,*

- *The absence of any special privileges in favor of any person,*
- *The equal subjection of all persons to the ordinary law of the land administered by ordinary law courts, and*
- *No person (whether rich or poor, high or low, official or non-official) is above the law.*

Note: Equality before law is taken from the British Constitution.

***Equal Protection of Laws:** The equality of treatment under equal circumstances.*

- *The equality of treatment under equal circumstances, both in the privileges conferred and liabilities imposed by the laws,*
- *The similar application of the same laws to all persons who are similarly situated, and*
- *The like should be treated alike without any discrimination.*

Note: Equal Protection of Laws is taken from the American Constitution.

The concept of 'equal protection of the laws' requires the State to give special treatment to persons in different situations in order to establish equality amongst all. It is positive in character.

Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally.

*These provisions confer rights on all persons **whether citizens or foreigners.***

The word 'person' includes legal persons, viz, statutory corporations, companies, registered societies or any other type of legal person.

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

Rule of Law:

The guarantee of equality before the law is an aspect of what Dicey calls the Rule of Law in England. It means that no man is above the law and that every person whatever be his rank or condition is subject to the jurisdiction of ordinary courts.

Rule of law requires that no person shall be subjected to harsh, uncivilized, or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.

Professor Dicey gave three meanings of the Rule of Law –

1. Absence of arbitrary power or supremacy of the law:

It means the absolute supremacy of law as opposed to the arbitrary power of the Government. In other words – a man may be punished for a breach of the law, but he can't be punished for anything else.

2. Equality before the law:

It means subjection of all classes to the ordinary law of land administered by ordinary law courts. This means that no one is above the law all are equal in eyes of the law

3. Absence of individual liberty:

There are various constitutions that provide individual liberty but do not provide methods. It means that the source of the right of individuals is not the written constitution. The U.K. doesn't have provisions for individual liberty.

Rule of Law in India

1. Supremacy of Law:

The First meaning of the Rule of Law is that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. It implies that a man may be punished for a breach of law but cannot be punished for anything else. No man can be punished except for a breach of law. An alleged offense is required to be proved before the ordinary courts in accordance with the ordinary procedure.

2. Equality before Law:

The Second meaning of the Rule of Law is that no man is above law. Every man whatever be his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. Everybody under Article 14 is equal before the law and has equal protection.

3. Individual Liberty:

A lot of individual liberty is mentioned like fundamental rights in Article 21- protection of life and personal liberty, Article 19- Right to freedom, etc. and courts are there to protect individual liberty. The first and second aspect applies to the Indian system but the third aspect of the Dicey's rule of law does not apply to the Indian system as the source of right of individuals is the constitution of India. The constitution is the supreme law of the land and all laws passed by the legislature must be consistent with provisions of the constitution.

The rule of law imposes a duty upon the state to take special measures to prevent and punish brutality by police methodology. The rule of law embodied in article 14 is the basic feature of the Indian constitution and hence it can't be destroyed even by an amendment of the constitution under article 368 of the constitution.

Exceptions to Equality:

The rule of equality before the law is not absolute and there are constitutional and other exceptions to it. These are mentioned below:

- The President or Governor of the state is not answerable to a court of law for exercising their executive powers.
- No criminal proceeding against the President or Governor of state can be instituted or continued during their tenure in office.
- No civil proceeding in which there is a claim of compensation can be instituted against the President or Governor of the state except after the expiry of a 2-month notice issued against them.
- Under international law, foreign diplomats who are on a visit to India or posted here, and leaders or heads of state on their official visit are not answerable in the local courts.

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

Article 15 prohibits the state from discriminating against any citizen on the ground of any religion, race, caste, sex, and place of birth, or any of them. It provides that there shall

be no restriction on any person on any of the above bases to access and use the public places.

Exceptions:

- However, this Article does not prevent the State from making any special provisions for women or children.
- **For example**, reservation of seats for women in local bodies or the provision of free education for children.
- It also allows the State to extend special provisions for socially and educationally backward classes for their advancement. It applies to the Scheduled Castes (SC) and Scheduled Tribes (ST) as well.
- **For example**, reservation of seats or fee concessions in public educational institutions.
- 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 **(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).

Think! about Creamy layer,

In order to bring about real equality, preference given to the socially and educationally disadvantaged group is justified.

Article 16: Equality of opportunity in the matter of public employment:

Article 16 provides the guarantee of equality of opportunity in matters of public employment.

Article 16(1) and 16(2) have laid down a general rule that there shall be equal opportunity for all citizens and thus emphasizes on the universality of Indian Citizenship. No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth, or residence.

Exceptions:

As per Article 16(3), residence qualifications may be made necessary in the case of appointments under the state for particular positions, thus making the domicile provisions stronger, however, the power is not vested in the states but in Parliament to prescribe the requirement as to residence in the state.

Article 16(4) empowers the state to make special provisions for the reservation of appointments or posts in favor of any "backward class of citizens" which in the opinion of the state are not adequately represented in the services of the state.

Equality, as guaranteed in our Constitution, not only conceives of providing formal equality but also to **provide for real and absolute equality**. Articles 14 and 15(1) enable and contemplate classification to achieve the Constitutional Objective of real equality. Articles 15(4) and 16(4) flows out of Articles 15(1) and 16(1) respectively and can never be considered as exceptions to Article 15(1) and Article 16(1).

103rd Constitutional Amendment Act: Changes in Article 15 and 16

The Constitutional (103rd Amendment) Act got the assent of the President of India on 13th January 2018. It provides reservation of jobs in central government jobs as well as government educational institutions. It is also applicable to admissions to private higher educational institutions. It applies to citizens belonging to the economically weaker sections from the upper castes.

This reservation is "**in addition to the existing reservations and subject to a maximum of ten percent of the total seats in each category**".

The Statement of Objects and Reasons of the Bill states that people from economically weaker sections of the society have largely remained excluded from attending higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged.

The bill states that it is drafted with a will to mandate Article 46 of the Constitution of India, a

- The Legislative Assembly may make laws for the whole or any part of the Union Territory of Jammu and Kashmir with respect to any of the matters enumerated in the state list **except on subjects "public order" and "police"** which will remain in the domain of the Centre vis-a-vis the LG.
- In case of inconsistencies between laws made by Parliament and laws made by the Legislative Assembly, earlier law shall prevail and law made by the Legislative Assembly shall be void.

Role and powers of the Lieutenant Governor:

- The Governor of the existing State of Jammu and Kashmir shall be the Lieutenant Governor for the Union territory of Jammu and Kashmir, and the Union Territory of Ladakh for such period as may be determined by the President.
- Appointment of L-G in Ladakh: The **President shall appoint the L-G under article 239.**
- The L-G will be assisted by advisors appointed by the Centre since the Union Territory will not have a Legislative Assembly.
- In the case of Union Territory of Jammu and Kashmir, the **L-G shall "act in his discretion" on issues which fall outside the purview of powers conferred on the Legislative Assembly,** in which he is required to exercise any judicial functions, and/or matters related to All India services and the Anti-Corruption Bureau.

CHAPTER - 6

DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP)

Directive Principles of State Policy (DPSP):

Directive Principle of State Policy provides guidelines to Central and State governments in India, to be kept in mind while framing laws and policies and are mentioned in **part 4 of the constitution.**

Articles 36-51 under Part-IV of Indian Constitution deal with Directive Principles of State Policy (DPSP).

The provisions contained in this Part cannot be enforced by any court, but 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.

The framers of the Constitution borrowed this idea from the **Irish Constitution of 1937,** which had **copied it from the Spanish Constitution.** The American constitution did not have DPSP. While most of the Fundamental Rights are negative obligations on the state, DPSPs are positive obligations on the state, though not enforceable in a court of law. Dr B R Ambedkar described these principles as **'novel features'** of the Indian Constitution.

DPSP + FR = Conscience of Indian Constitution.

Features of Directive Principle:

- The basic aim of DPSPs is to set up social and economic goals before the lawmakers
- To bring socio-economic change in the country
- To fulfill the basic needs of the common man
- To reshape the structure of Indian society in the direction of greater socio-economic equality.

DPSPs are fundamentals in the governance of the country and shall be considered dutifully by the state while making laws, but DPSPs are not enforceable in a court of law.

- If a state fails to fulfill these obligations, one cannot go to a court of law
- DPSPs only provide a yardstick for measuring the success or failure of the government.

Articles 36 to 51 deal with the provisions of the Directive Principles and are broadly classified into:

- ***Socialist principles***
- ***Gandhian principles***
- ***Liberal intellectual principles***
- ***Socialist Principles***

Socialist Principles:

- *To secure a social order for the promotion of the welfare of the people.*
- *To strive to minimize inequalities of income i.e. operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;*
- *ownership and control of the material resources of the community are so distributed as best to subserve the common good;*
- *Equal justice and free legal aid.*
- *Ownership and control of material resources of the community shall be so distributed so as to subserve the common good.*
- *Equal pay for equal work.*
- *The Health and strength of workers and the tender age of children must not be abused.*
- *Right to work, to education, and to public assistance in certain cases.*
- *Provision of just and humane conditions for work and maternity relief.*
- *Participation of workers in the management of the industries.*
- *Duty of the State to raise the level of nutrition and the standard of living and to improve public health.*
- *Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.*

Liberal Principles:

- *Uniform Civil Code for the citizens.*
- *Provide free and compulsory education for children below 14 years.*
- *Separation of Judiciary from Executive.*
- *To promote international peace and amity.*
- *Protection of monuments and places and objects of national importance*
- *Protection and improvement of the environment and safeguarding of forests and wildlife.*

The Gandhian Principles:

- *Organization of* ***Village Panchayats (Article -40)*** *and to promote the cottage industry.* ***(Article - 43)***
- *Promotion of educational and economic interests of the SCs, the STs, and the other weaker sections of the society.* ***(Article -46)***
- *To bring about the prohibition of intoxicating drinks and drugs that are injurious to health.*
- *Organization of agriculture and animal husbandry on modern and scientific lines to prohibit the* ***slaughter of cows, calves, and other milch and draught animals.***

Article 36: Definition

In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III.

Article 37: Application of the principles contained in this Part:

The provisions contained in this Part shall not be enforced by any court, *but the principles therein laid down are nevertheless fundamental in the governance of the country, and it shall be the duty of the* ***State to apply these principles in making laws.***

Article 38: State to secure a social order for the promotion of welfare of the people;

1) *The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic, and political, shall inform all the institutions of the national life.*
2) *The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities, and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.*

Article 39: Certain principles of policy to be followed by the State;

- *The State shall, in particular, direct its policy towards securing –*
- *that the citizen, men, and women equally, have the right to an adequate means of livelihood;*

- *that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;*
- *that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;*
- *that there is equal pay for equal work for both men and women;*
- *that the health and strength of workers, men, and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;*
- *that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.*

Article 39A: Equal justice and free legal aid;

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

Article 40: Organisation of village panchayats;

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

Article 41: Right to work, to education and to public assistance in certain cases;

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

Article 42: Provision for just and humane conditions of work and maternity relief;

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

Article 43: Living wage, etc., for workers;

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

Article 43A: Participation of workers in the management of industries;

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

Article 44: Uniform civil code for the citizen;

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

Article 45: Provision for free and compulsory education for children;

Substitution of new article for article 45.- For article 45 of the Constitution, the following article shall be substituted, namely: -.

Provision for early childhood care and education to children below the age of six years. *The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years."*

Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections;

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

Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health;

The State shall regard the raising of the level of nutrition and the standard of living of its people

and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for the medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

Article 48: Organization of agriculture and animal husbandry;

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

Article 48A: Protection and improvement of environment and safeguarding of forests and wildlife;

The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 49: Protection of monuments and places and objects of national importance;

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

Article 50: Separation of judiciary from the executive;

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

Article 51: Promotion of international peace and security;

- *The State shall endeavor to –*
- *promote international peace and security;*
- *maintain just and honorable relations between nations;*
- *foster respect for international law and treaty obligations in the dealings of organized people with one another; and*
- *encourage settlement of international disputes by arbitration.*

The 44th Amendment Act of 1978 *added one more Directive Principle, which requires the State to minimize 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 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).***

Directives in other parts of the Constitution (Except part IV):

Article 350 A: *It enjoins every State and every local authority within the State to provide adequate facilities for the instructions in the mother tongue at the primary stage to children of linguistic minority areas.*

Article 351: *It enjoins the Union to promote the spread of the Hindi language so that it may serve as a medium of expression of all the elements of the composite culture of India.*

Article 335: *It says that the claims of SC/ST 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 affairs of the Union or of a State.*

Under the implementation of DPSP, Zamindari, Jagirdari, and Inamdar systems were abolished and actual tillers of the soil were made the owner of the land.

Criticism to DPSP:

Many critics have been very vocal in criticizing the existence of unenforceable pious declarations (Directive Principles) in the Constitution of India. K.T. Shah compares DPSP to a cheque payable by the bank at its convenience.

Main Points of Criticism:

Lack of Legal Force:

The critics hold that as unenforceable directives, these principles do not carry any weight. Their

However, Fundamental Duties are not enforceable through courts.

The Courts while interpreting Fundamental Rights or any restrictions imposed on such rights may take into account the Fundamental Duties and also the Directive Principles of the State policy enshrined in Part IV of the Constitution.

In State of Gujarat v. Mirzapur (2005),

while considering provisions of Articles 48, 48-A and also Article 51-A(g), the Supreme Court held:

". It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the directive principles of State policy and fundamental duties as enshrined in Article 51-A of the Constitution play a significant role."

In Ramlila Maidan Incident, In Re, (2012) it was held:

"There has to be a balance and proportionality between the right and restriction on the one hand, and the right and duty, on the other. It will create an imbalance if the undue or disproportionate emphasis is placed upon the right of a citizen without considering the significance of the duty. The true source of right is a duty. When the courts are called upon to examine the reasonableness of a legislative restriction on the exercise of freedom, the fundamental duties enunciated under Article 51-A are of relevant consideration. Article 51-A requires an individual to abide by the law, to safeguard public property, and to abjure violence. It also requires the individual to uphold and protect the sovereignty, unity, and integrity of the country. All these duties are not insignificant."

Fundamental Rights guaranteed under Part III of the Constitution are important natural rights necessary for the development of human beings. They are enforceable through a court of law. No law can be made which takes away or abridges any fundamental rights. On the **other hand, Fundamental Duties though not enforceable, are always taken into account while interpreting any fundamental rights.**

CHAPTER - 8

THE PRESIDENT OF INDIA

(ARTICLES 52-62)

Part V of the Constitution (The Union) under Chapter I (The Executive) lists out the qualification, election and impeachment of the President of India. The President of India is the head of state of the Republic of India. The President is the formal head of the executive, legislature and judiciary of India and is also the commander-in-chief of the Indian Armed Forces.

Although Article 53 of the Constitution of India states that the President can exercise his or her powers directly or by subordinate authority, with few exceptions, all of the executive authority vested in the President are, in practice, exercised by the Council of Ministers (CoM).

ARTICLE 52 : THE PRESIDENT OF INDIA

There shall be a President of India.

ARTICLE 53 : EXECUTIVE POWER OF THE UNION

1. The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
2. Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union Shall be vested in the President and the exercise thereof shall be regulated by law.
3. Nothing in this article shall –

   (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

   (b) prevent Parliament from conferring by law functions on authorities other than the President.

ARTICLE 54 : ELECTION OF PRESIDENT

The President shall be elected by the members of an electoral college consisting of –

(a) the elected members of both Houses of Parliament; and

(b) the elected members of the Legislative Assemblies of the States. Explanation: In this article and in article 55, "State" includes the National Capital Territory of Delhi and the Union territory of Pondicherry.

ARTICLE 55 : MANNER OF ELECTION OF PRESIDENT

1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.
2) For the purpose of securing such uniformity among the States inter se as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the legislative Assembly of each state is entitled to cast at such election shall be determined in the following manner; –

(a) 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;

(b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;

(c) each 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 the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation: In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.

ARTICLE 56 : TERM OF OFFICE OF PRESIDENT

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

Provided that –

(a) the President may, by writing under his hand addressed to the Vice-President, resign his office;

(b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61.

(c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

ARTICLE 57 : ELIGIBILITY FOR RE-ELECTION

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

ARTICLE 58 : QUALIFICATIONS FOR ELECTION AS PRESIDENT

(1) No person shall be eligible for election as President unless he –

(a) is a citizen of India;

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any

State or under any local or other authority subject to the control of any of the said Governments.

Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

ARTICLE 59 : CONDITIONS OF PRESIDENT'S OFFICE

1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.
2) The President shall not hold any other office of profit.
3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedul The emoluments and allowances of the President shall not be diminished during his term of office.

ARTICLE 60 : OATH OR AFFIRMATION BY THE PRESIDENT

Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior most Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say – "I, A.B., do swear in the name of God / solemnly affirm that I will faithfully execute the office of President (or discharge the function of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

ARTICLE 61 : PROCEDURE FOR IMPEACHMENT OF THE PRESIDENT

(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless –

(a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

ARTICLE 62 : TIME OF HOLDING ELECTION TO FILL VACANCY IN THE OFFICE OF PRESIDENT AND THE TERM OF OFFICE OR PERSON ELECTED TO FILL CASUAL VACANCY

1. An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.
2. An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held

as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

Info-Bits Related to the President of India



- Salary of an Indian President is Rs.5 lakh. Until 2017, the President used to get Rs 1.50 lakh per month. In Budget 2018, it was increased to Rs 5 lakh per month.
- In addition to the salary, the President receives many other allowances and free facilities which include free medical, housing, and treatment facilities (whole life).
- The Government of India spends around Rs.2.25 crore rupees annually on other expenses like the President's housing, staff, food and hosting of guests.
- Indian President's salary is 7000$*12=84,000$, which is much lower when compared to the US President's salary of 4,00,000$.
- The president of the United States of America is also indirectly elected by the people through the Electoral College, but to a four-year term. He is one of only two nationally elected federal officers, the other being the Vice President of the United States. (In total, there are 538 electors, corresponding to the 435 members of the House of Representatives, 100 senators, and the three additional electors from the District of Columbia.)
- Under The Presidential and Vice-Presidential Elections Act, 1952, a candidate, to be nominated for the office of president of India needs 50 electors as proposers and 50 electors as seconders for his or her name to appear on the ballot.
- The general principle in Indian Presidential elections is that the total number of votes cast by Members of Parliament equals the total number of votes cast by State Legislators.
- There are a total of 776 voters in both the Houses of Parliament. The Electoral College also consisted of 4120 MLAs in the states.
- The formula to determine the value of the vote of an MLA = Population of the state ÷ (No. of M.L.A.s in the state X 1000).
- The formula to determine the value of the vote of an MP = Total value votes assigned to all the M.L.A.s ÷ Total number of MPs.
- Each MP had a vote value of 708 in the Presidential Election 2012.
- Legislators from larger states cast more votes than those from smaller states.
- If a state has few legislators, then each legislator has more votes; if a state has many legislators, then each legislator has fewer votes.
- JFYI: The President of India moves around in a custom built heavily armoured Mercedes Benz S600 Pullman Guard (which costs around Rs. 12 Crore).
- Nominated members cannot vote in the Presidential election. But they can participate in the President's impeachment.
- PS: Nominated members can participate in Vice-President's election and removal.
- MLAs are involved in the Presidential election, but they have no role in the President's impeachment. The President's impeachment resolution requires a special majority of both houses of the parliament to pass.

Powers of Indian President

- Powers of the Indian President can be broadly classified under 8 headings. They are:
- Legislative
- Executive or Appointment powers
- Judicial powers
- Financial powers
- Diplomatic powers

CHAPTER – II

PARLIAMENT OF INDIA: LOK SABHA & RAJYA SABHA

Though **Article 79-122** deals with Chapter II **(Parliament) of Part V (Union)**, we shall break the topic into sub-sections. In this post, we are covering only articles 79-88, which deals with the General provisions regarding the Parliament. Parliament consists of the President of India, Lok Sabha and Rajya Sabha. Normally, three Sessions of Parliament are held in a year: **(i) Budget Session (February-May); (ii) Monsoon Session (July-August); and (iii) Winter Session (November-December).**

ARTICLE 79 : CONSTITUTION OF PARLIAMENT

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

ARTICLE 80 : COMPOSITION OF THE COUNCIL OF STATES –

(1) The Council of States shall consists of –

(a) twelve members to be nominated by the President in accordance with the provisions of clause **(3)**; and

(b) not more than two hundred and thirty-eight representatives of the States and of the Union territories.

(2) The allocation of seats in the Council of States to be filled by representatives of the States and of the Union territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clause **(a)** and clause **(1)** shall consists of persons having special knowledge or practical experience in respect of such matters as the following, namely: –

Literature, science, art and social service.

(4) The representatives of each State in the Council of States shall be elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(5) The representatives of the Union territories in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

ARTICLE 81 : COMPOSITION OF THE HOUSE OF THE PEOPLE:

(1) Subject to the provisions of article 331, the House of the People shall consists of – (a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States, and

(b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1), –

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ration between that number and the population of the State is, so far as practicable, the same for all States; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State:

Provided that the provisions of sub-clause **(a)** of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions.

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.

ARTICLE 82 : READJUSTMENT AFTER EACH CENSUS

Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each state into territorial constituencies shall be readjusted by such authority

and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House:

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under this article.

ARTICLE 83 : DURATION OF HOUSES OF PARLIAMENT

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

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of 5 years shall operate as a dissolution of the House:

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

ARTICLE 84 : QUALIFICATION FOR MEMBERSHIP OF PARLIAMENT

A person shall not be qualified to be chosen to fill a seat in Parliament unless he –

(a) is a citizen of India, and makes and subscribed before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

ARTICLE 85 : SESSIONS OF PARLIAMENT, PROROGATION AND DISSOLUTION

(1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its lasting sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time –

(a) prorogue the Houses or either House;

(b) dissolve the House of the People.

ARTICLE 86 : RIGHT OF PRESIDENT TO ADDRESS AND SEND MESSAGES TO HOUSES

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

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration.

ARTICLE 87 : SPECIAL ADDRESS BY THE PRESIDENT

(1) At the commencement of the first session after each general election to the House of the People and at the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address.

ARTICLE 88 : RIGHTS OF MINISTERS AND ATTORNEY-GENERAL AS RESPECTS HOUSES:

Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any

joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

Info- Bits related with Parliament:

- The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States.
- The Council of States is designed to maintain the federal character of the country. The number of members from a state depends on the population of the state (e.g. 31 from Uttar Pradesh and one from Nagaland).
- The Supreme Court can strike down certain provisions/amendments of the Indian Constitution, if it feels that the provisions are unconstitutional or alter the basic structure of the constitution. But striking down does not take away the provisions from the Constitution. To take away the provisions, Parliament has to present a Constitution Amendment bill to repeal the provisions.

India has a parliamentary system of government. The Parliament of India is considered as a bicameral structure. Parliament of India consists of three parts:

- **President**
- **Rajya Sabha** (Council of States) – Upper House (Second Chamber or House of Elders)
- **Lok Sabha** (House of the People) – Lower House (First Chamber or Popular House).

Parliament of India:



Article 79 to 122 – Part V – deals with the organization, composition, duration, officers, procedures, powers, and so on of the Parliament.

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

Parliament is the legislative organ of the Union government or supreme legislative body in India.

President as part of Parliament:

- India's parliament is constituted on the basis of the principle of "**Bicameralism**", so it has two chambers. The two houses are Lok Sabha (LS) and Rajya Sabha (RS).
- In India, the Parliament comprises the President, Lok Sabha, and Rajya Sabha but the **President is NOT a part of the legislature.**
- This is in line with the British parliamentary system where the Parliament is composed of Monarch, House of Lords, and House of Commons.
- 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.
- **Note:** In American pattern, the President is not an integral part of the Legislature.

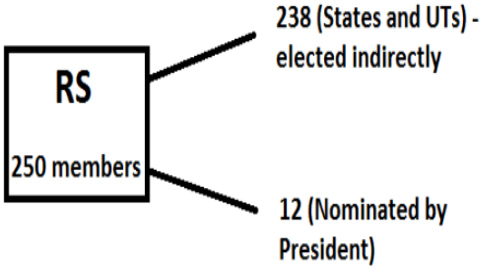
RAJYA SABHA: Composition of Rajya Sabha

Article 80 gives the details of the composition of the Rajya Sabha.

Rajya Sabha or Council of States is the Upper House of our parliament. The other term that is used is **"House of Elders".**

The Fourth Schedule of the Constitution deals with the allocation of seats in the Rajya Sabha to the states and union territories.

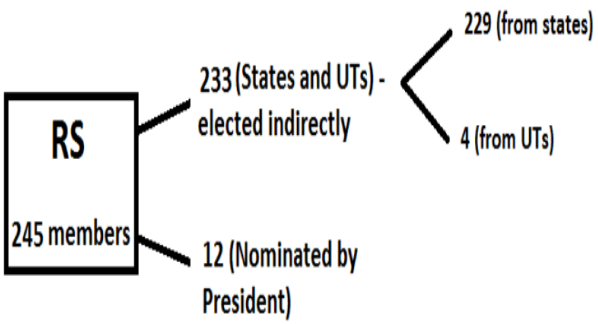
The maximum membership to Rajya Sabha is **limited to 250**. The 250 members are as follows:



- A maximum of **238 Members** elected by representatives of the States & Union Territories.

The Original Constitution mentioned only states. UTs added by the 7th amendment.

- **A maximum of 12 members nominated by the President of India who excel in Literature, Science, Art, and Social Service.**
- Representatives of the states are elected by the elected members of the Legislative Assembly of the state in accordance with the System of Proportional Representation by means of Single Transferable Vote. **(Indirect Election)**
- **The present strength of the Rajya Sabha is 245, of whom 233 are representatives of the States/Union Territories and 12 are nominated by the President.**



Election of the Rajya Sabha Members:

- **233 members of the Present Rajya Sabha are elected by the various State Legislative Assemblies so the Council of States is an "Indirectly Elected Body".**
- For this election, each State is allotted a certain number of seats in the council.
- As per **article 80(5),** the representatives of the Union Territories are chosen as Parliament prescribed by law. As prescribed by the parliament, the representatives of the Union Territories are indirectly elected by the members of the Electoral College for that territory.
- The elected members of the States' Legislative Assemblies elect the members of the Rajya Sabha on the basis **of proportional representation through the single transferable vote system.**

Allocation of Seats – Rajya Sabha:

- This allocation is mainly on the basis of Population but this is NOT the sole consideration. Some smaller states have been given due weightage in representation in Rajya Sabha.
- **Please note:** Not all Union Territories are represented in Rajya Sabha.
- **Out of the 7 UTs, only two (Delhi and Puducherry) have representation in RS.**
- **The populations of the other five UTs are too small to have any representative in the RS.**

LOK SABHA: Composition of Lok Sabha:

Article 81 deals with the Composition of the Lok Sabha. This article provides that the maximum number should be as follows:

- Not more than 530 representatives of the States.
- Not more than **20 representatives from the Union Territories**
- Not more than **2 members of the Anglo Indian Community as nominated by the President**, only if he/she is of opinion that the Anglo Indian Community is not adequately represented in the parliament.
- This makes the total strength of the Lok Sabha i.e. **530+20+2= 552**.

Representation of Anglo-Indian Community:

- Representation of the Anglo-Indian Community is provided by the Constitution as per article 331 and not by article 81.
- **Article 331 says that:** Notwithstanding anything in article **81**, the President may if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

Change in number of Lok Sabha Seats:

- The limit on the maximum number of members chosen directly from territorial constituencies in States may be exceeded if such an increase is incidental to the reorganization of States by an Act of Parliament.
- However, the strength of the Lok Sabha may NOT change now or in the near future until the relevant figures are published of the first census taken after the year 2026.
- As of now, the Constitution limits the **Lok Sabha to a maximum of 552 members,** including no more than **20 members representing people from the Union Territories, and two appointed non-partisan members to represent the Anglo Indian**

community (if the President feels that the community is not adequately represented).

At present, the LS has 545 members.

Anglo-Indian Reserved Seats:

104th Constitutional Amendment Act:

Between 1952 and 2020, two seats were reserved in the Lok Sabha, *the lower house of the Parliament of India, for members of the Anglo-Indian community. These two members were nominated by the President of India on the advice of the Government of India.* ***In January 2020, the Anglo-Indian reserved seats in the Parliament and State Legislatures of India were discontinued by the 126th Constitutional Amendment Bill of 2019,*** *when enacted as 104th Constitutional Amendment Act, 2019.*

Allocation of Lok Sabha Seats to States:

- *The seats of Lok Sabha are allocated to the states in such a manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States.*
- *Further, 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, so far as practicable, the same throughout the State.*

Election of Lok Sabha Members:

- *The electors of the Constituencies elect the members directly on the basis of* ***Adult Suffrage as per Article 326 Constitution of India.***
- *The age for being eligible to vote, prior to the* ***61st amendment act, was 21 years. The Constitution 61st Amendment Act 1988 reduced the age to be eligible to vote for 18 years.***
- *Please note that the Constitution provides that the members of the Union territories are to be chosen in such a manner as Parliament by law may decide, and using this power the parliament made the law that members from the Union Territories should be chosen by direct election.*
- *The first General elections were held in 1951-52. The strength of the Lok Sabha at that time was 489.*
- *Each Constituency chooses 1 member. But this was not like it since the beginning. Prior to 1962, there were both single-member and multi-member constituencies. These multi-member constituencies used to elect more than one member. The* ***multi member constituencies were abolished in 1962.***

Duration:

- *Lok Sabha has a* ***fixed term of 5 years and can be dissolved by the President at any time.*** *The original Constitution had a term of Lok Sabha as 5 years. It was changed to 6 years by the Constitution 42nd Amendment Act and later reverted to 5 years by the 44th Amendment Act.*
- ***Rajya Sabha has an indefinite term and is not subject to dissolution (Article 83.1).***
- *The term of an individual Rajya Sabha member is* ***6 years and one-third of its members retire every two years, in accordance with the rules as prescribed by the parliament of India.***
- *While a Proclamation of Emergency is in operation,* ***a 5 year period for Lok Sabha may be extended by Parliament by law for a period not exceeding one year at a time and not exceeding in any case beyond a period of six months after the Proclamation has ceased to operate.***

Qualification:

Article 84 of the Constitution lays *down the qualifications for membership of Parliament. A person to be qualified to be an MP is required that he/she:*

- *Must be a citizen of India*
- *Must be not less than 30 years of age in the case of Rajya Sabha and 25 years in the case of Lok Sabha.*
- *He must make and subscribe to an oath or affirmation before the person authorized 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*
- *Must possess such other qualifications as may be prescribed on that behalf by or under any law made by Parliament.*

  The Parliament has laid down the following additional qualifications in the ***Representation of People Act (1951).***
- *He must be registered as an elector for a parliamentary constituency. This is the same in the case of both, the Rajya Sabha and the Lok Sabha.*

CHAPTER – 17

IMPORTANT AMENDMENTS IN INDIAN CONSTITUTION

Important amendments in Indian constitution:

The Constitution provides for its amendment in order to adjust itself to the changing conditions and needs.

The Indian Constitution is neither flexible nor rigid but a synthesis of both.

Article 368 in Part XX *– deals with the powers of the Parliament to amend the Constitution and its procedure.*

Article 368 states that *"the Parliament may amend by way of addition, variation or repeal any provision of the Constitution in accordance with the procedure laid down for the purpose".*

However, the Parliament cannot amend those provisions which form the 'basic structure' of the Constitution – ruled by the ***Supreme Court in the Kesavananda Bharati v. State of Kerala (1973) case.***

Procedure for Amendment as Laid Down in Article 368 Part XX:

- *Amendment of the Constitution can be initiated only by the introduction of a bill in either of the House and not in the state legislatures.*
- *The Bill can be introduced either by a minister or by a private member and doesn't require prior permission of the President.*
- *The bill must be passed in each House by a Special Majority***
- *Each House must pass the bill separately. In case of a disagreement between the 2 Houses, there is no provision for holding a joint sitting of the 2 Houses.*
- *If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the state legislatures of half of the states by a simple majority#*
- *After duly passed by both Houses and ratified by the state legislatures, the Bill is presented to the President for assent.*
- *The President must give his assent; he can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament.*
- *After the President's assent, the Bill becomes an Act (CAA).*

Types of Majority

Simple Majority:

Simple majority or working majority refers to the majority of ***more than 50% of the members present and voting.***

Example:

- ***The total strength of Lok Sabha: 545***
- ***Vacant Seats: 45***
- ***Members present: 500***
- ***Members present, but decide to abstain / not to vote: 50***
- ***Members present and voting: 500-50=450***
- ***The simple Majority, in this case, would be: 226***
- ***Most of the normal motions and bills in the house such as No-confidence Motion, Motion of Confidence, Motion of Thanks, Censure Motion, Adjournment Motion, Money Bills, Ordinary Bills, etc.***

Absolute Majority:

The absolute majority refers to the majority of ***more than 50% of the total strength of the house.***

Example:

- *The total strength of Lok Sabha: 545*
- *Absolute Majority: 273*
- *Such a majority is not required in isolation in the Indian Parliament. There are instances when such a majority is needed with another majority which would be thus called a special majority.*

Effective Majority:

Effective Majority of the house means ***more than 50% of the effective strength of the house****. This implies that out of the total strength, we deduct the absent and vacant seats.*

- *The total strength of Lok Sabha: 545*
- *Vacant Seats: 5*
- *Effective Strength: 545-5=540*
- *Members present, but decide to abstain / not to vote: 50*
- *Members present and voting: 540-50=490*

- Effective Majority: 490/2+1=245+1
- In the constitution of India, the "all the then members" present indicates an effective
- majority. In the Constitution, effective majorities are needed for removal of VicePresident, Deputy Chairman of Rajya Sabha, Lok Sabha Speaker, and Deputy Speaker.

Special Majority:

Any Majority other than a simple, absolute, and effective majority is called a special majority. These include

- Majority by two-third strength of the house {example impeachment of the president under article 61}
- The majority by two-third of present and voting members {Example Power of Parliament to legislate with respect to a matter in the State List in the national interest, under article 249}; certain constitution amendment bills, etc.
- **Absolute majority + the majority of two-third present and voting** {Example: Removal of Supreme Court Judge, CAG, etc.

Examples of Majorities in the Constitution:

- **Impeachment of President: Special Majority**
- **According to Article 61**, When a President is to be impeached for violation of the Constitution; the charge shall be preferred by either House of Parliament. A 14 days' notice to move a resolution is given. Then, the resolution has to be passed by a majority of not less than two-thirds of the total membership of the House. This is an example of a Special Majority.

Removal of the Vice-President: Effective Majority

- Vice-President may be removed from his office by a resolution of Rajya Sabha passed by a majority of all the then members of the Rajya Sabha and agreed to Lok Sabha. This is an example of an effective majority in Rajya Sabha.

Removal of Deputy chairman Rajya Sabha: Effective Majority

- A member holding office as Deputy Chairman of Rajya Sabha may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council. (Simple Majority in Rajya Sabha)

Removal of Speaker and Lok Sabha Speaker: Effective Majority

- Members holding office as Speaker or Deputy Speaker of the House of the People may be removed from their office by a resolution of the House of the People passed by a majority of all the then members of the House.

Removal of Supreme Court Judge: Absolute + Special Majority

- A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House (Absolute Majority) and by a majority of not less than two-thirds of the members of that House present and voting (Special Majority) voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity. (**Article 124**).

Abolition of Council of States: Absolute + Special Majority

- Parliament may by law provide for the abolition of the Legislative Council of a State having such a Counselor for the creation of such a Council in a State having no such Council if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly (Absolute Majority) and by a majority of not less than two-thirds of the members of the Assembly present and voting. (Special Majority) Article 169 (1).

Removal of Speaker or Deputy Speaker of Assembly: (Effective Majority)

- The Speaker or Deputy Speaker of Assembly may be removed from his office by a resolution of the Assembly passed by a majority of all the members of the Assembly (Effective Majority). Article 179 (C) Removal of Chairman or Deputy Chairman of a Legislative Council: (Effective Majority)
- Chairman or Deputy Chairman of a Legislative Council may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council. (Simple Majority) Article 183 (C)

Emergency Proclamation (Absolute + Special Majority)

- Parliament may by law provide for the abolition of the Legislative Council of a State having such a Counselor for the creation of such a Council in a State having no such Council if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly (Absolute Majority) and by a majority of not less than two-thirds of the members of the Assembly present and voting. (Special Majority) Article 169 (1).

Removal of Speaker or Deputy Speaker of Assembly: (Effective Majority)

- The Speaker or Deputy Speaker of Assembly may be removed from his office by a resolution of the Assembly passed by a majority of all the members of the Assembly (Effective Majority). Article 179 (C)

Removal of Chairman or Deputy Chairman of a Legislative Council: (Effective Majority)

- Chairman or Deputy Chairman of a Legislative Council may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council. (Simple Majority) Article 183 (C)

Emergency Proclamation (Absolute + Special Majority)

- According to article 352 (4) an emergency proclamation is laid before each House of Parliament and shall cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. Once approved it shall cease to be in force if again not approved within six months. For both of these purposes, the resolution should be passed by either House of Parliament only by a majority of the total membership of that House (Absolute Majority) and by a majority of not less than two-thirds of the Members of that House present and voting. **(Special Majority)**.

Amendment of the Constitution via article 368: (Absolute + Special Majority)

- According to Article 368(2), the amendment to Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House (Absolute Majority) and by a majority of not less than two-thirds of the members of that House present and voting, (special Majority).
- Further, if the amendment of the constitution also requires the assent of the state assemblies, they can pass the constitutional Amendment Bill with a simple majority.

1. <u>By Simple Majority of the Parliament – outside the scope of Article 368:</u>

- Admission or establishment of new states.
- Formation of new states or alteration of areas, boundaries, or names of existing states.
- Abolition or creation of legislative councils in states.
- 2nd Schedule – emoluments, allowances, privileges, etc. of the President/Governor/Speakers/Judges.
- Quorum in Parliament.
- Salaries and allowances of MPs.
- 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 SC.
- Conferment of more jurisdictions on the SC.
- Use of official language.
- Citizenship – acquisition, and termination.
- Election to the Parliament and State legislatures.
- Delimitation of constituencies.
- Union Territories.
- 5th Schedule – administration of scheduled areas and scheduled tribes.
- 6th Schedule – administration of tribal areas.

2. <u>By Special Majority of the Parliament:</u>

- FRs
- DPSPs
- All other provisions which are not covered under (1) and (3).

3. <u>By Special Majority of the Parliament and the ratification of half of state legislatures:</u>

- Election of the President and its manner.

- Extent of the executive power of the Union and the states.
- SCs and HCs.
- Distribution of legislative powers between the Union and the states.
- Any of the lists in the 7th Schedule.
- Representation of states in Parliament.
- Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

Amendability of Fundamental Rights

The question of whether FRs can be amended by the Parliament under Article 368 came for consideration of the SC:

Shankari Prasad vs. Union of India (1951) Case – the constitutional validity of the 1st Amendment Act (1951) which curtailed the Right to Property was challenged.

SC ruled that – "the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend FRs"

Golak Nath vs. State of Punjab (1967) Case – the constitutional validity of the 7th Amendment Act which inserted certain state acts in the 9th Schedule was challenged.

SC ruled that –"FRs are given a transcendental and immutable position and hence the Parliament cannot abridge or take away any of the FRs".

The Parliament in response to the Golak Nath Case enacted the 24th CAA (1971) – declared that "the Parliament can abridge or take away any of the FRs under Article 368".

Kesavananda Bharati vs. State of Kerala (1973) case – SC overruled its judgment in the Golak Nath Case(1971) and laid down a new doctrine of 'basic structure'.

SC upheld the validity of 24th CAA (1971) and stated that — "the Parliament is empowered to abridge or take away any of the FRs under Article 368 but does not enable the Parliament to alter the 'basic structure' of the Constitution". i.e. Parliament cannot abridge or take away an FR that forms a part of the 'basic structure' of the Constitution

The Parliament in response to this judicially innovated doctrine of 'basic structure', enacted the 42nd CAA (1976) – amended Article 368 and declared that "there is no limitation on the constituent power of Parliament and no amendment can be questioned in any court on any ground including the contravention of any FRs"

Minerva Mills v. Union of India (1980) – invalidated this provision as it excludes Judicial Review which is a **'basic feature' of the Constitution.**

Waman Rao v. Union of India (1981) – SC adhered to the doctrine of 'basic structure' and further clarified that it would apply to constitutional amendments enacted after April 24, 1973 (i.e., the Date of judgment in the Kesavananda Bharathi case).

The present position is that the Parliament under Article 368 can amend any part of the Constitution including the FRs but without affecting the 'basic structure' of the Constitution.

The following have emerged as 'basic structures' from various judgments –

- Supremacy of the Constitution.
- Sovereign, democratic and republican nature of the Indian Polity.
- Secular character of the Constitution.
- Separation of powers between the L, E, and J.
- Federal character of the Constitution.
- Unity and integrity of the Nation.
- Welfare State (socio-economic justice)
- Judicial Review
- Harmony and balance between FRs and DPs
- Parliamentary System
- Rule of Law
- Freedom and dignity of the individual
- The principle of Free and fair elections
- Principle of Equality, not every feature of equality, but the quintessence of equal justice
- Independence of Judiciary
- Effective access to justice
- Limitations upon the amending power conferred by Article 368
- Articles 32 and 226
- Powers of the Supreme Court under Articles 32, 136, 141, 142.

Criticism of the Amendment procedure:

- No provision of the special body like Constitutional Convention (as in the USA) or Constituent Assembly for amending the Constitution.
- The constituent power is vested in the Parliament and only in a few cases in the state legislatures (that too a very minimal role).
- The power to initiate an amendment lies with Parliament (unlike in the USA); the state legislatures cannot initiate amendment bills except in 1 case.
- SL can pass a resolution requesting the Parliament to create or abolish legislative councils in the states– here also; the Parliament can either approve or disapprove such a resolution.
- A major part of the Constitution can be amended by the Parliament itself and only in a few cases it needs the ratification of states.
- The Constitution does not prescribe the time frame within which the state legislatures should ratify or reject an amendment submitted to them.
- Also, it is silent on the issue of whether the states can withdraw their approval after the same.
- No provision of holding Joint Sitting of the Houses.
- The process of amendment is similar to that of a legislative process. Except for the special majority, the amendment bills are to be passed by the Parliament in the same way as ordinary bills.
- The provisions relating to the amendment procedures are too sketchy. They leave a wide scope for taking the matters to the judiciary.

Important Amendments:

First Amendment Act, 1951:

Reasons:

- To remove certain practical difficulties created by the court's decision in several cases such as the Kameshwar Singh Case, Romesh Thapar Case, etc.
- Issues involved in the cases included freedom of speech, acquisition of the Zamindari land, State monopoly of trade, etc.

Amendments:

- Empowered the state to make special provisions for the advancement of socially and economically backward classes.
- Provided for the saving of laws providing for acquisition of estates, etc.
- Added Ninth Schedule to protect the land reforms and other laws included in it from the judicial review. After Article 31, Articles 31A and 31B were inserted.
- Added three more grounds of restrictions on freedom of speech and expression: public order, friendly relations with foreign states and incitement to an offence. Also, it made the restrictions 'reasonable' and thus, justiciable in nature.
- Provided that state trading and nationalisation of any trade or business by the state is not to be invalid on the ground of violation of the right to trade or business.

Fourth Amendment Act, 1955:

Amendments:

- Made the scale of compensation given in lieu of compulsory acquisition of private property beyond the scrutiny of courts.
- Authorised the state to nationalise any trade.
- Included some more Acts in the Ninth Schedule.
- Extended the scope of Article 31 A (savings of laws).

Seventh Amendment Act, 1956:

Reasons:

- To implement the recommendations of the State Reorganization Committee and to implement the State Reorganization Act, 1956.

Amendments:

- Second and Seventh Schedules were amended
- Abolished the existing classification of states into four categories i.e., Part A, Part B, Part C, and Part D states, and reorganised them into 14 states and 6 union territories.
- Extended the jurisdiction of high courts to union territories.
- Provided for the establishment of a common high court for two or more states.
- Provided for the appointment of additional and acting judges of the high court.

Ninth Amendment Act, 1960:

Reasons:

- After the Nehru-Noon agreement was signed between India and Pakistan to divide the territory of Berubari Union, the Government of West Bengal

opposed it. After this Union referred the matter to SC which 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.

Amendments:

- Facilitated the cession of the Indian territory of Berubari Union (located in West Bengal) to Pakistan as provided in the Indo-Pakistan Agreement (1958).

Tenth Amendment Act, 1961:

Amendments:

- Incorporation of Dadra, Nagar and Haveli as a Union Territory, consequent to acquisition from Portugal.

Eleventh Amendment Act, 1961:

Amendments:

- Changed the procedure of election of the vice president by providing for an electoral college instead of a joint meeting of the two Houses of the Parliament.
- Provided that the election of the President or vice president cannot be challenged on the ground of any vacancy in the appropriate electoral college.

Twelfth Amendment Act, 1962:

Amendments:

- Incorporated Goa, Daman and Diu in the Indian Union.

Thirteenth Amendment Act, 1962:

Amendments:

- Gave the status of a state to Nagaland and made special provisions for it.

Fourteenth Amendment Act, 1962:

Amendments:

- Incorporated Puducherry in the Indian Union.
- Provided for the creation of legislatures and council of ministers for the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, and Puducherry.

Seventeenth Amendment Act, 1964:

Amendments:

- Prohibited the acquisition of land under personal cultivation unless the market value of the land is paid as compensation.
- Included 44 more Acts in the Ninth Schedule

Eighteenth Amendment Act, 1966:

Amendments:

- Made it clear that the power of Parliament to form a new state also includes a power to form a new state or union territory by uniting a part of a state or a union territory to another state or union territory.
- It created new states namely, Punjab and Haryana.

Twenty First Amendment Act, 1967:

Amendments:

- Included Sindhi as the 15th language in the Eighth Schedule.

Twenty Fourth Amendment Act, 1971

Reasons:

- Twenty Fourth Constitutional Amendment Act was brought in response to the Golaknath ruling (1967) of the Supreme Court which held that the Parliament does not have the power to take away any fundamental rights through amendment to the Constitution.

Amendments:

- Affirmed the power of Parliament to amend any part of the Constitution including fundamental rights by amending Article 13 and 368.
- Made it compulsory for the President to give his assent to a Constitutional Amendment Bill.

Twenty-Fifth Amendment Act, 1971

Amendments:

- Curtailed the fundamental right to property.
- Provided that any law made to give effect to the Directive Principles contained in Article 39 (b) or (c) cannot be challenged on the ground of violation of the rights guaranteed by Articles 14, 19 and 31.

Twenty-Sixth Amendment Act, 1971

Amendments:

- Abolished the privy purses and privileges of the former rulers of princely states.

CHAPTER - 32

CONSTITUTIONAL BODIES IN INDIA

What is a Constitutional Body

Those bodies whose formation is prescribed by the Indian Constitution itself are known as Constitutional Bodies. They derive their powers and authority from the Indian Constitution. A constitutional amendment is often required to change any powers or functions related to such bodies. The powers, functions, and responsibilities of various Constitutional Bodies in India:

1. ATTORNEY GENERAL OF INDIA:

- Article 76 of the Constitution provides for the Attorney General of India.
- He is considered the highest law officer in the country.
- He is appointed by the president and holds office during his pleasure.
- A person who is qualified to be appointed as the judge of the Supreme Court is eligible for the office of Attorney General of India.

Duties of AG:

- To advise the government on the legal matters referred to him by the president.
- To appear on behalf of the GOI in SC in all the cases concerning the government.
- To represent GOI in the references made by the president to the SC under Article 143.
- To appear in HC in the cases concerning GOI when required.

Rights of AG:

- AG has the right to an audience in all the courts in the territory of India.
- He has the right to speak and take part in the parliamentary proceedings. However, he doesn't enjoy the right to vote.
- All the privileges and immunities available to a member of parliament are granted to the AG.

2. COMPTROLLER AND AUDITOR GENERAL OF INDIA:

- Article 148 of the Constitution provides for an independent office of Comptroller and Auditor General of India.
- CAG is considered as the guardian of the public purse.
- Along with the Supreme Court, the Election Commission, and the Union Public Service Commission, the office of CAG is treated as one of the bulwarks of the democratic system.

Appointment:

- The President of India appoints CAG by a warrant under his hand and seal.
- He holds office for a period of six years or up to the age of 65 years, whichever is earlier.
- CAG can be removed from his office in the same manner as a judge of the Supreme Court.

Independence:

- CAG is provided with the security of tenure.
- His rights cannot be altered to his disadvantage after his appointment.
- All the expenses of the office of CAG are charged on the Consolidated Fund of India.
- His salary is equal to that of a judge of the Supreme Court.

Duties:

- The duties and powers of CAG are mentioned in article 149 of the Constitution.
- All the accounts related to the expenses from the Consolidated Fund of India, Consolidated Fund of the States, and Union Territories are audited by CAG.
- Also, the expenditure from Contingency Fund and Public Account of India and States are audited by CAG.
- The net proceeds of any tax or duty are ascertained and certified by CAG.
- CAG acts as a guide, friend, and philosopher of the Public Accounts Committee.

- All the receipts and expenditure of bodies financed from the central or state revenue are also audited by CAG.
- The audits of any other body as and when requested by the President or Governor are audited by CAG.
- Three reports are submitted by CAG to the President. They are: (1) Audit report on appropriation accounts (2) Audit report on finance accounts (3) Audit report on public undertakings.

Role of CAG:

- The office of CAG secures the accountability of the executive to the Parliament in the sphere of financial administration.
- The CAG acts as an agent of the Parliament and is responsible only to the Parliament.
- Along with legal and regulatory audits, CAG also conducts propriety audits.

ADVOCATE GENERAL OF THE STATE:

- Article 165 of the Constitution provides for Advocate General for the states.
- He is considered the highest law officer in the state.
- The Advocate General is appointed by the governor and holds the office during his pleasure.
- A person qualified to be appointed as a judge of a high court is eligible for the office of Advocate General.

Duties and Rights of Advocate General:

- To advise the government of the state on the matters referred to him by the governor.
- To discharge those functions conferred upon him by the Constitution of India.
- He has the right to speak and take part in the proceedings of both the houses of the state legislature. However, he doesn't enjoy the right to vote.

4. STATE FINANCE COMMISSION:

- The governor of a state shall, after every five years, constitute a finance commission.
- Articles 243-I and 243-Y deal with the formation of this body.
- The composition, qualifications of members, and the manner of their selection is decided by the concerned state legislature.

Functions:

- The distribution of the net proceeds of taxes, tolls, and fees between the state and local bodies.
- The determination of such taxes, duties, and tolls to be assigned to local bodies.
- The grants-in-aid to be given to the local bodies from the consolidated fund of the state.
- Measures to be taken for improving the financial position of local bodies.
- Any other matter referred to the commission by the governor of the state.

STATE ELECTION COMMISSION:

- The elections to the panchayats and municipalities are looked after by the State Election Commission.
- Articles 243-K and 243-ZA deal with the elections to the rural and urban local bodies.
- SEC consists of a state election commissioner who is appointed by the governor.
- The removal of the state election commissioner is the same as that of a judge of the state high court.

DISTRICT PLANNING COMMITTEE:

- A district planning committee is constituted and given the task to consolidate the plans of both panchayats and municipalities.
- It prepares a draft development plan for the district.
- Article 243-ZD deals with the committee for district planning.
- The composition, manner of election of chairperson and members is decided by the state legislature.
- Four-fifths of the committee are elected by the elected members of panchayats and municipalities.
- The representation of these members is proportional to the ratio of the rural and urban population in the district.
- In preparing the plan, DPC should consider the following: Matters of common interest between the

rural and urban local bodies regarding sharing of resources, infrastructure development, and conservation of environment. Extent and type of resources available.

METROPOLITAN PLANNING COMMITTEE:

- A metropolitan planning committee is constituted for every metropolitan area.
- Article 243 -2E deals with the committee for metropolitan planning.
- The composition, manner of election of chairpersons and members, functions, etc are decided by the concerned state legislature.
- Two-thirds of MPC are elected by the elected members of the municipalities and chairpersons of panchayats.
- The representation of these members is proportional to the ratio of the population of municipalities and panchayats.
- While preparing the draft plan, the committee shall consider: Plans of municipalities and panchayats in the metropolitan area. Matters of common interest between the rural and urban local bodies regarding sharing of resources, infrastructural development and conservation of environment. The extent of investments to be made in the concerned metropolitan area. Objectives and priorities of the center and the concerned state.

INTER-STATE COUNCIL:

- Article 263 deals with the establishment of Inter-State Councils for the coordination between centre and states as well among the different states.
- The president establishes such a council and also defines its duties and organization.
- Its decision is advisory in nature and is not binding.

Composition:

- The council consists of the following members: Prime Minister as the chairman Chief Ministers of all the states and union territories having a legislative assembly Administrators of unionterritories with no legislative assemblies Governors of states under the president's rule Six central cabinet ministers nominated by PM.
- The council consists of a standing committee set up in 1996. Its members are: Union Home Minister as the chairman Five Union Cabinet Ministers Nine Chief Ministers

9. FINANCE COMMISSION:

- The Finance Commission is a quasi-judicial body.
- The formation of FC is provided by the constitution under article 280.
- It is constituted every fifth year or at such an earlier time as the president of India considers necessary.

Composition:

- FC consists of a chairman and four other members appointed by the president.
- The qualification of the members and the manner of their selection is determined by parliament.
- They are eligible for reappointment.
- The four members should be selected from amongst the following:
- A judge of HC or one qualified to be appointed as such.
- A person with specialized knowledge in finance and accounts of the government.
- A person with wide experience in financial matters and administration.
- A person with special knowledge in economics.

Functions:

- FC makes recommendations to the president on the following matters:
- Distribution and allocation of the net proceeds of the taxes between center and states and also among different states.
- The principles that should govern the grants-in-aid to the states.
- Measures needed to augment the consolidated fund of the state to supplement the resources of local bodies.
- Any other matter referred to it by the president of India.

Role of FC:

- The commission submits its report to the president who lays it before both the Houses of the Parliament.
- The recommendations made by FC are only advisory in nature and are not binding on the government.
- The Finance Commission is envisaged as the balancing wheel of fiscal federalism in India.

10. GOODS AND SERVICES TAX COUNCIL:

- The GST council was formed under article 279-A.
- Its function is to make recommendations to center and state governments regarding GST.
- It has representation from both centre and states and hence is a federal body.
- GST council consists of the following members:
- Union Finance Minister as Chairperson Union Minister of State in charge of revenue or finance as a member Minister in charge of revenue or finance or any other minister nominated by the state government as members.
- The decisions of the council are taken by a majority of not less than three-fourths of weighted votes cast by the members present and voting.
- The weightage of the vote of the central government is one-third of the total votes and the weightage of votes of the state government is two-thirds of all votes cast.
- It aims to uphold the principle of cooperative federalism.

11. UNION PUBLIC SERVICE COMMISSION:

- UPSC is the central recruiting agency of the country.
- Articles 315 to 323 in Part XIV of the constitution talk about UPSC.
- UPSC is visualized as the watchdog of the merit system of the country.

Composition:

- UPSC consists of a chairman and other members. The number of other members is left to the discretion of the president.
- Generally, the number of members in the commission including the chairman is nine to eleven.
- They hold the office for a term of six years or until they attain the age of 65 years, whichever is earlier.

Removal:

- The chairman and other members of UPSC can be removed by the president under the following situations: If he is adjudged an insolvent While in office, if he engages in any paid employment If he gets unfit by reason of infirmity of mind or body For misbehavior.
- In the last case, the president has to refer the matter to the Supreme Court for inquiry. The advice of SC is binding on the president.

Independence:

- The chairman and the members of the commission enjoy the security of tenure.
- Their conditions of service cannot be varied after an appointment.
- Their entire expenses are charged on the Consolidated Fund of India.
- The chairman of UPSC is not eligible for any future employment in the government of India or a state.

Functions:

- Examinations for recruitment to All India Services, central services, and public services of union territories are held by UPSC.
- All disciplinary matters affecting a person in civil capacity are dealt with by UPSC.
- Assists the states in matters relating to joint recruitment.

12. STATE PUBLIC SERVICE COMMISSION:

- Just as UPSC at the center, there is a State Public Service Commission in every state.
- Articles 315 to 323 in part XIV of the constitution deal with the various provisions of SPSC.
- SPSC is considered as the watchdog of the merit system in the state.

establishment being charged with NSA are becoming common.

- Rather than for stopping future crimes, NSA is often used as a response to ordinary law and order cases. The NSA morphs into a punitive measure in such instances.
- The vague language of the law means NSA being used for the detention of individuals based on the government's satisfaction that an individual is a threat to foreign relations, national security, public order, or the maintenance of essential supplies and services. Thus, theoretically, the government can invoke the NSA if an individual's act threatens to disrupt public order like causing a commotion or obstructing the traffic.

Conclusion:

There are no separate figures currently available for detentions under the NSA. The 177th Law Commission Report of 2001 reveals that 14,57,779 persons were arrested under preventive provisions in India. It is paramount to review the continued usage of NSA and to close the loopholes that permit law enforcement to abuse constitutional and statutory rights. Preventive detention must not be used for regular law and order issues. The endeavour must be to guard liberty – one of the fundamental rights guaranteed by the Constitution.

GOVERNANCE

CHAPTER – 1

GOVERNMENT SCHEMES AND THE IMPLEMENTING MINISTRIES

100+ Government Schemes and the Implementing Ministries:

The government of India runs hundreds of schemes– under the Central Plan and Central Assistance to States Plan.

1.PAHAL (DBT)

- **Ministry/Department : Ministry of Petroleum and Natural Gas.**

2.Pradhan Mantri UJJAWALA Yojana

- **Ministry/Department : Ministry of Petroleum and Natural Gas.**

3.National LED Programme (UJALA) – UJALA stands for Unnat Jyoti by Affordable LEDs for All.

- **Ministry/Department: Ministry of Power.**

4.Green Corridor Project:

- **Ministry of New & Renewable Energy.**

5.Green Highway Policy:

- **Ministry of Road Transport and Highway.**

6.Namami Gange:

- **Ministry of Water Resources.**
- **Ministries of Environment, Urban Development, Shipping, Tourism & Rural Development are coordinating with the Water Resource ministry in it.**

7.National Mission of Green India:

- **Ministry/Department : Ministry of Environment, Forest & Climate Change.**

8.Crime and Criminal Tracking Network and Systems (CCTNS):

- **Ministry/Department : Ministry of Home Affairs.**

9.Digital India:

- **Ministry/Department: DeitY, Ministry of Communication. Implemented by entire government machinery in their respective domains.**

10.Digi-Locker:

- Ministry/Department : Ministry of Communication and IT.

11.e-Biz:

- Ministry/Department : Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry
- Implemented by Infosys

12.e-Courts Mission Mode Project:

- Ministry/Department : Ministry of Law and Justice
- The project is being implemented by National Informatics Centre (NIC), Ministry of IT.

13.Jeevan Pramaan:

- Ministry/Department : Department of Electronics and IT, Ministry of Communication and IT.

14.National Optical Fibre Network (NOFN):

- Ministry/Department : Department of Electronics and IT, Ministry of Communication and IT.

15.Nowcast:

- Ministry/Department : Ministry of Agriculture
- collaborative effort between mKisan Portal developed by DAC, weather technologies adopted by IMD and GIS Portal of NIC.

16.PRAGATI – ProActive Governance and Timely Implementation:

- Ministry/Department: Prime Minister's Office.

17.Startup-India:

- Ministry/Department : DIPP, Ministry of Commerce and Industry.

18.India Aspiration Fund & SMILE loans

- Ministry of Finance.

19.Atal Pension Yojana:

- Ministry/Department : Ministry of Finance
- Administered by the Pension Fund Regulatory and Development Authority.

20.Mudra Bank and Pradhan Mantri Mudra Yojana:

- Ministry/Department : Ministry of Finance.

21.Pradhan Mantri Jan Dhan Yojana:

- Ministry/Department : Ministry of Finance.

22.Pradhan Mantri Suraksha Bima Yojana (PMSBY):

- Ministry/Department : Ministry of Finance.

23.Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY):

- Ministry/Department : Ministry of Finance.

24.Stand-up India:

- Ministry/Department : Department of Financial Services (DFS), Ministry of Finance.

25.Sovereign Gold Bonds:

- Ministry/Department : Ministry of Finance
- In association with RBI

26.Gold Monetization Scheme:

- Ministry/Department : Ministry of Finance.

27.Rashtriya Arogya Nidhi (RAN):

- Ministry/Department : Ministry of Health & Family Welfare.

28.Jan Aushadhi Scheme:

- Ministry/Department : Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers.

29.Janani Shishu Suraksha Karyakram (JSSK):

- Ministry/Department : Ministry of Health and Family Welfare.

30.Janani Suraksha Yojana (JSY):

- Ministry/Department : Ministry of Health and Family Welfare.

31.Mission Indradhanush:

- Ministry/Department : Ministry of Health & Family Welfare.

32.National Health Assurance Mission

- Ministry/Department : Ministry of Health & Family Welfare.

33.National Rural Health Mission (NHM)

- Ministry/Department : Ministry of Health & Family Welfare.

34.National Urban Health Mission (NUHM):

- Ministry/Department : Ministry of Health & Family Welfare

- Implemented by the Ministries of Urban Development, Housing & Urban Poverty Alleviation, Human Resource Development and Women & Child Development.

35.National Ayush Mission:

- Ministry/Department : Department of Ayush, Ministry of Health & Family Welfare.

36.National Health Protection Scheme:

- Ministry/Department : Ministry of Finance.

37.Pradhan Mantri Swasthya Suraksha Yojana (PMSSY):

- Ministry/Department : Ministry of Health & Family Welfare.

38.Pharma Jan Samadhan Scheme

- Ministry/Department : National Pharmaceutical Pricing Authority (NPPA), Department of Pharma,
- Ministry of Chemical & Fertilisers.

39.Rashtriya Swasthya Bima Yojana (RSBY)

- Ministry/Department : Ministry of Health & Family Welfare (Earlier it was under the Ministry of Labour and Employment).

40.Bharat Mala Project:

- Ministry/Department : Ministry of Road, Transport and Highway.

41.Deendayal Upadhyaya Gram Jyoti Yojana:

- Ministry/Department : Ministry of Power.

42.Ganga Gram Yojana:

- Ministry/Department: Ministry of Water Resources.

43.Integrated Power Development Scheme

- Ministry/Department : Ministry of Power

44.Mega Food Park Scheme

- Ministry/Department : Ministry of Food Processing Industries

45.Pradhan Mantri Gram Sadak Yojana (PMGSY):

- Ministry/Department : Ministry of Rural Development

46.Project Mausam:

- Ministry/Department : Ministry of Culture.
- Implemented by the Archaeological Survey of India (ASI) as the nodal agency.

47.RURBAN – Also called Shyama Prasad Mukherjee Rurban mission:

- Ministry/Department : Ministry of Rural Development.

48.Sagarmala scheme:

- Ministry/Department : Ministry of Shipping.

49.Sansad Adarsh Gram Yojana:

- Ministry/Department : Ministry of Rural Development

50.Setu Bharatam:

- Ministry/Department: Ministry of Road, Transport and Highway

51.Swacchh Bharat Abhiyan:

- Ministry/Department: Ministry of Drinking Water and Sanitation (for Gramin) and Ministry of Urban Development (for Urban).

52.UDAY – UDAY stands for Ujwal DISCOM Assurance Yojana:

- Ministry/Department: Ministry of Power.

53.Amended Technology Upgradation Fund Scheme:

- Ministry/Department : Ministry of Textile.

54.Make in India Programme:

- Ministry/Department : Ministry of Commerce & Industry.

55.National Investment and Manufacturing Zones:

- Ministry/Department : Ministry of Commerce & Industry.

56.Gram Uday se Bharat Uday Abhiyan:

- Run jointly by the Ministries of Rural Development, Agriculture, Social Justice, Labour and Information and Broadcasting along with the States.

57.Khelo India:

- Ministry/Department : Ministry of Youth Affairs and Sports.

58.Ishan Uday:
- Ministry/Department : Ministry of Human Resource Development

59.Ishan Vikas:
- Ministry/Department : Ministry of Human Resource Development

60.Aajeevika – National Rural Livelihoods Mission (NRLM):
- Ministry/Department : Ministry of Rural Development

61.MGNREGA:
- Ministry/Department : Ministry of Rural Development.

62.National Skill Development Mission:
- Ministry/Department : Ministry of Skill Development and Entrepreneurship

63.Pradhan Mantri Kaushal Vikas Yojana:
- Ministry/Department : Ministry of Skill Development and Entrepreneurship.

64.Pandit Deendayal Upadhyay Shramev Jayate Karyakram:
- Ministry/Department : Ministry of Labour and Employment.

65.USTAAD Scheme:
- Ministry/Department : Ministry of Minority Affairs.

66.PRASAD – Pilgrimage Rejuvenation and Spirituality Augmentation Drive:
- Ministry/Department : Ministry of Tourism.

67.HRIDAY – National Heritage City Development and Augmentation Yojana:
- Ministry/Department : Ministry of Urban Development

68.Nai Manzil Scheme:
- Ministry/Department : Ministry of Minority Affairs

69.Nai Roshni Scheme:
- Ministry/Department : Ministry of Minority Affairs

70.Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY):
- Ministry/Department : Ministry of Mines

71.Vanbandhu Kalyan Yojna:
- Ministry/Department : Ministry of Tribal Affairs

72.AMRUT – Atal Mission for Rejuvenation and Urban Transformation:
- Ministry/Department : Ministry of Urban Development.

73.Housing for All by 2022 Mission:
- Ministry/Department : Ministry of Housing & Urban Poverty Alleviation.

74.Pradhan Mantri Awas Yojana:
- Ministry/Department : Ministry of Housing & Urban Poverty Alleviation.

75.Pradhan Mantri Awas Yojana – Gramin:
- Ministry/Department : Ministry of Rural Development.

76.Smart City:
- Ministry/Department: Ministry of Urban Development.

77.Beti Bachao, Beti Padhao Scheme:
- Ministry/Department : Ministry of Women and Child Development, Ministry of Health and Family Welfare and Ministry of Human Resource Development.

78.Digital Gudda Guddi Board:
- Ministry/Department : Ministry of Women and Child Development

79.Indira Gandhi Matritva Sahayog Yojana:
- Ministry/Department : Ministry of Women and Child Development

80.Integrated Child Development Services (ICDS):
- Ministry/Department : Ministry of Women and Child Development

81.SABLA – Rajiv Gandhi Scheme for Empowerment of Adolescent Girls:
- Ministry/Department : Ministry of Women and Child Development

82.Soil Health Card Scheme:
- Ministry/Department : Department of Agriculture, Cooperation & Farmers Welfare

83.PM Krishi Sinchai Yojana: