

**STUDY MATERIAL FOR B.A. HISTORY  
CONSTITUTION OF INDIA  
SEMESTER - III, ACADEMIC YEAR 2020-21**

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**UNIT - I**  
**FRAMING OF THE INDIAN CONSTITUTION**

The Constitution of India was drawn up by a Constituent Assembly. The Assembly met for the first time on December 9, 1946. The Assembly constituted a Drafting Committee, under the chairmanship of Dr.B.R.Ambedkar, to frame a constitution for India. Indian Constitution was adopted on November 26, 1949 and it came into effect on January 26, 1950. It is the longest written Constitution in the world containing 395 Articles, 22 Parts and 12 Schedules.

- a. Rajendra Prasad was elected its Permanent Chairman on 11.12.1946.
- b. The Draft Constitution was published in January, 1948. The people of India were given 8 months to discuss the draft and propose amendments. As many as 7,635 amendments were proposed and 2,473 were actually discussed.
- c. The Constituent Assembly held 11 sessions.
- d. The Draft Constitution was considered for 114 days. In all the Constitutional Assembly sat for 2 years, 11 months and 18 days.
- e. The New Constitution of India was adopted by the Constituent Assembly on 26th November, 1949 and was signed by the President, Dr. Rajendra Prasad. 15 Articles (5,6,7,8,9,60,324,366,367,372, 380, 388, 391,392 and 393) came into force at once.
- f. The remaining provisions of the Constitution came into force on 26th January, 1950 which is the date of the commencement of the Constitution.
- g. On January 26, 1950, the Indian Government also adopted Sarnath, the Lion Capital of Ashoka with the wheel, bull, and horse as the national emblem of India.
- h. The design of the National Flag was adopted by the Constituent Assembly of India on 22 July 1947.
- i. The national calendar based on the Saka Era, with Chaitra as its first month and a normal year of 365 days was adopted from 22 March 1957

National Anthem "Jana-gana-mana", composed originally in Bengali by Rabindranath Tagore, was adopted in its Hindi version by the Constituent Assembly as the National Anthem of India on 24 January 1950. It was first sung on 27 December 1911 at the Calcutta Session of the Indian National Congress.

**Salient Features of the Constitution of India**

**(I) A written and lengthy constitution**

The Constitution of India is a single, written document (unlike the British constitution which is not a single, written document, but is drawn from legislation, treaties, judicial precedents, convention, and numerous other sources). It was framed by a Constituent Assembly which was established for the purpose in 1946. As originally adopted, it had 22 Parts, 395 Articles and 8 Schedules. A number of amendments, passed since its enforcement in 1950, have also become a part of the constitution.

The Constitution of India is the lengthiest constitution in the world as no other constitution contains as many articles. The constitution of USA has 7 Articles, China 138, Japan 103, and Canada 107 Articles.

**(ii) Single Constitution**

Unlike the US which is considered as a role model of federalism, India has a single constitution, that is, the Indian states do not have separate constitutions.

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**(iii) Sovereign, socialist, secular, democratic, republic**

The Constitution declares India to be a Sovereign, Socialist, Secular, and Democratic, Republic. The words, 'Socialist' and 'secular' were added in the Preamble of the Constitution by 42nd Amendment which was passed in 1976.

**Sovereign:** Sovereign means absolutely independent; it is not under the control of any other state.

**Socialist:**

The Word 'Socialist' was added in the Preamble by 42nd Amendment of the Constitution which was passed in 1976. This implies a system which will endeavor to avoid concentration of wealth in a few hands and will assure its equitable distribution.

**Secular:**

The word 'Secular', like Socialist, was also added in the Preamble by 42nd Amendment of the Constitution. There is no state religion in India. Every citizen is free to follow and practice, the religion of his/her own choice. The state cannot discriminate among its citizens on the basis of religion.

**Democratic** - It means that the power of the government is vested in the hands of the people. People exercise this power through their elected representatives who, in turn, are responsible to them. All the citizens enjoy equal political rights.

**Republic:**

It means that the head of the State is not a hereditary monarch but a President who is indirectly elected by the people for a definite period.

**(iv) Unique blend of rigidity and flexibility**

Whether a constitution is rigid or flexible depends on the process of amendment. If the constitutional laws and ordinary laws are amended separate ways, it is a rigid constitution. On the contrary, in a flexible constitution, constitutional laws and ordinary laws are amended in the same way.

Some provisions of the Constitution of India can be amended by the Indian Parliament with simple majority. The amendment of most provisions of the constitution requires a special majority in both houses of the parliament. There are some other provisions of constitution which cannot be amended by the parliament alone. In case of such provision the amending bill has first to be approved by both houses of parliament by a special majority (with the support of two-thirds of the members of each house present and voting). Then it has to be ratified by the legislatures of at least half of the states of India.

So, there is a balance between rigidity and flexibility in our constitution. Some amount of flexibility was introduced into our constitution in order to encourage its growth.

**(v) Patchwork, but a beautiful patchwork**

The Indian Constitution is often referred to as a patchwork. It has been inspired and derived from various sources. The best features of various constitutions have been incorporated in our constitution.

**(vi) Parliamentary form of democracy**

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Indian Constitution provides for a parliamentary form of government. President is the nominal head of the state. In actual practice, the government is run by the Prime Minister and other members of the Council of Minister. The Council of Ministers is collectively responsible to the Parliament.

**(vii) Fundamental rights and duties**

The Constitution of India guarantees six fundamental rights to every citizen.

The ZY are:

- a. Right to Equality
- b. Right to Freedom
- c. Right against Exploitation
- d. Right to Freedom of Religion
- e. Cultural and Educational Rights
- f. Right to Constitutional Remedies

The Constitution initially did not provide for Fundamental Duties. By the 42<sup>nd</sup> Amendment of the Constitution, ten Fundamental Duties of citizens have also been added. Currently there are 11 Fundamental Duties.

**(viii) Directive principles of state policy**

The Directive Principles of State Policy are listed in Part Four of the Constitution. The framers of our constitution took the idea of having such principles from the Irish Constitution. These principles are instructions given by the Constitution to government.

All the governments-Central, State and Local-are expected to frame their policies in accordance with these principles. The aim of these principles is to establish a welfare state in India. They, however, are not binding on the government-they are mere guidelines.

**(ix) Single citizenship**

In federation, normally we have double citizenship. In U.S.A. every citizen besides being a citizen of United States of America is the citizen of the state in which he or she resides. But the Constitution of India provides for single citizenship - every Indian, irrespective of his place of birth or residence, is a citizen of India.

**(x) Universal adult franchise**

The constitution provides for Universal Adult Franchise (article 326). It means that every citizen who is 18 years of age or more is entitled to cast his/her vote irrespective of his caste, creed, sex, religion or place of birth.

**(xi) Affirmative action**

The Constitution provides for affirmative action by the State to improve the conditions of the weaker sections of society by providing reservations in the legislatures and government jobs (articles 15 & 16).

**(xii) Independent judiciary**

The Indian Constitution provides for an independent judiciary. The judiciary has been made independent of the Executive as well as the Legislature. The judges give impartial justice.

**(xiii) Independent agencies**

The Constitution provides for some Independent Agencies to perform functions allotted to

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them. The important agencies are  
Election Commission (article 324)  
Comptroller and Auditor General (article 148)  
Union and State Public Service Commission (article 315)  
Finance Commission (article 280)

**(xiv) Emergency provisions**

The framers of our constitution had realized that there could be certain dangerous situations when government could not be run as in ordinary time. Hence our constitution contains certain emergency provisions. During emergency the fundamental rights of the citizens can be suspended and our government becomes a unitary one.

The Constitution makes provisions for the proclamation of National Emergency under Article 352, State Emergency under Article 356 and Financial Emergency under Article 360.

**Constitutional Amendment**

Amending the Constitution of India is the process of making changes to the nation's fundamental law or supreme law. The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India. This procedure ensures the sanctity of the Constitution of India and keeps a check on arbitrary power of the Parliament of India.

However, there is another limitation imposed on the amending power of the constitution of India, which developed during conflicts between the Supreme Court and Parliament, where Parliament wants to exercise discretionary use of power to amend the constitution while the Supreme Court wants to restrict that power. This has led to the laying down of various doctrines or rules in regard to checking the validity/legality of an amendment, the most famous among them is the Basic structure doctrine as laid down by the Supreme Court in the case of Kesavananda Bharati vs State of Kerala types of Amendments in Indian Constitution.

The list of types of amendments can be found below. There are three ways in which the Constitution can be amended:

1. Amendment by simple majority of the Parliament
2. Amendment by special majority of the Parliament
3. Amendment by special majority of the Parliament and the ratification of at least half of the state legislatures

A brief description of the above types of amendments of the Indian Constitution has been laid down below:

**1. by Simple Majority of Parliament**

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

**Admission or establishment of new states:**

- a. Formation of new states and alteration of areas, boundaries or names of existing states
- b. Abolition or creation of legislative councils in states
- c. Second Schedule-emoluments
- d. Allowances, privileges and so on of the president, the governors, the Speakers, judges,

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- etc
- e. Quorum in Parliament
  - f. Salaries and allowances of the Members of Parliament
  - g. Rules of procedure in Parliament
  - h. Privileges of the Parliament, its members and its committees
  - i. Use of the English language in Parliament
  - j. Number of judges in the Supreme Court
  - k. Conferment of more jurisdiction on the Supreme Court
  - l. Citizenship-acquisition and termination
  - m. Elections to Parliament and state legislatures
  - n. Delimitation of constituencies
  - o. Union territories
  - p. Fifth Schedule-administration of scheduled areas and scheduled tribes
  - q. Sixth Schedule-administration of tribal areas

## **2. By Special Majority of Parliament**

The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.

The special majority is required only for voting at the third reading stage of the bill but by way of abundant caution, the requirement for the special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill.

The provisions which can be amended by this way include: (i) Fundamental Rights; (ii) Directive Principles of State Policy; and (iii) All other provisions which are not covered by the first and third categories.

## **3. by Special Majority of Parliament and Consent of States**

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

- a. Election of the President and its manner
- b. Extent of the executive power of the Union and the states
- c. Supreme Court and high courts
- d. Distribution of legislative powers between the Union and the states
- e. Any of the lists in the Seventh Schedule
- f. Representation of states in Parliament
- g. Power of Parliament to amend the Constitution and its procedure (Article 368 itself)

## **Indian Federal System**

Federalism in India describes the distribution of legal authority across national, state

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and local governments in India. It is embedded from the Canadian model of federalism.

The Constitution of India establishes a federal structure to the Indian government, declaring it to be a "Union of States". Part XI of the Indian constitution specifies the distribution of legislative, administrative and executive powers between the union government and the States of India. The legislative powers are categorized under a Union List, a State List and a Concurrent List, representing, respectively, the powers conferred upon the Union government, those conferred upon the State governments and powers shared among them.

This federalism is asymmetric in that the devolved powers of the constituent units are not all the same. Historically, the state of Jammu and Kashmir was accorded a higher degree of autonomy than other States under Article 370 (which was revoked by the union government in 2019). Union territories are unitary type, directly governed by the Union government. Article 1 (1) of the constitution stipulates two tier-governance with an additional local elected government. Delhi and Puducherry were accorded legislatures under Article 239AA and 239A, respectively.

The fundamental rights of citizens vary by state per Article 31 (B), as changes are added to Constitution schedule IX by constitutional amendments. Legislative power

The division of powers is defined by the constitution and the legislative powers are divided into three lists:

**Union List**

Union List consists of 100 items (earlier 97) on which the parliament has exclusive power to legislate including: defence, armed forces, arms and ammunition, atomic energy, foreign affairs, war and peace, citizenship, extradition, railways, shipping and navigation, airways, posts and telegraphs, telephones, wireless and broadcasting, currency, foreign trade, inter-state trade and commerce, banking, insurance, control of industries, regulation and development of mines, mineral and oil resources, elections, audit of Government accounts, constitution and organization of the Supreme Court, High courts and union public service commission, income tax, custom duties and export duties, duties of excise, corporation tax, taxes on capital value of assets, estate duty and terminal taxes.

**State List**

State List consists of 61 items (earlier 66 items). Uniformity is desirable but not essential on items in this list: maintaining law and order, police forces, healthcare, transport, land policies, electricity in the state, village administration, etc. The state legislature has exclusive power to make laws on these subjects. In certain circumstances, the parliament can make laws on subjects mentioned in the State List, but to do so the Rajya Sabha (Council of States) must pass a resolution with a two-thirds majority that it is expedient to legislate in the national interest. Though states have exclusive powers to legislate with regards to items on the State List, articles 249, 250, 252, and 253 mention situations in which the Union government can legislate.

**Concurrent List**

Concurrent List consists of 52 (earlier 47) items. Uniformity is desirable but not essential on items in this list. The list mentions: marriage and divorce, transfer of property other than agricultural land, education, contracts, bankruptcy and insolvency, trustees and trusts, civil

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procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic and social planning, trade unions, labor welfare, electricity, newspapers, books and printing press NS stamp duties.

**Other (residuary) subjects**

Subjects not mentioned in any of the three lists are known as residuary subjects. However, many provisions in the constitution outside these lists permit parliament or state Legislative assembly to legislate. Excluding the provisions of the constitution outside these lists per Article 245, the power to legislate on such subjects, rests with the parliament exclusively per Article 248. Parliament shall legislate on residuary subjects following the Article 368 procedure as constitutional amendments.

In case the above lists are to be expanded or amended, the legislation should be done by the Parliament under its constituent power per Article 368 with ratification by the majority of the states. Federalism is part of the basic structure of the Indian constitution which cannot be altered or destroyed through constitutional amendments under the constituent powers of the Parliament without undergoing judicial review by the Supreme Court.

**Executive powers**

The Union and States have independent executive staff controlled by their respective governments. In legislative and administrative matters, the union government cannot overrule the constitutional rights/powers of a state government except when presidential rule is declared in a State. The Union's duty is to ensure that the government of every State is carried on in accordance with the provisions of the Constitution as per Article 355 and Article 256. The State governments cannot violate the Central laws in administrative matters. When a State violates the Constitution, Presidential rule is imposed under Article 356 and the President takes over the State's administration with ex post facto consent of the Parliament per Article 357.

**Financial powers**

Article 282 accords financial autonomy in spending financial resources available to the states for public purpose. Article 293 allows States to borrow without limit without consent from the Union government. However, the Union government can insist upon compliance with its loan terms when a state has outstanding loans charged to the consolidated fund of India or a federally-guaranteed loan.

The President of India constitutes a Finance Commission every five years to recommend devolution of Union revenues to State governments.

Under Article 360, the President can proclaim a financial emergency when the financial stability or credit of the nation or of any part of its territory is threatened. However, no guidelines define "financial emergency" for the country or a state or a union territory or a panchayat or a municipality or a corporation.

An emergency like this must be approved by the Parliament within two months by a simple majority and has never been declared. A state of financial emergency remains in force indefinitely until revoked by the President. The President can reduce the salaries of all government officials, including judges of the Supreme Court and high courts, in cases of a financial emergency. All money bills passed by the state legislatures are submitted to the President for approval. He can direct the state to observe economy measures.



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## **Citizenship**

### **How is Citizenship Defined?**

Citizenship signifies the relationship between the individual and the state. Like any other modern state, India has two kinds of people - citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. Citizenship is an idea of exclusion as it excludes non-citizens.

### **There are two well-known principles for the grant of citizenship:**

- a. While 'jus soli' confers citizenship on the basis of place of birth, 'jussanguinis' gives recognition to blood ties.
- b. From the time of the Motilal Nehru Committee (1928), the Indian leadership was in favour of the enlightened concept of jus soli.
- c. The racial idea of discriminations was also rejected by the Constituent Assembly as it was against the Indian ethos.
- d. Constitutional Provisions
- e. Citizenship is listed in the Union List under the Constitution and thus is under the exclusive jurisdiction of Parliament.
- f. The Constitution does not define the term 'citizen' but details of various categories of persons who are entitled to citizenship are given in Part 2 (Articles 5 to 11).
- g. Unlike other provisions of the Constitution, which came into being on January 26, 1950, these articles were enforced on November 26, 1949 itself, when the Constitution was adopted.

### **Article 5:**

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

### **Article 6:**

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

### **Article 7:**

Provided Rights of citizenship of certain migrants to Pakistan. Those who had migrated to Pakistan after March 1, 1947 but subsequently returned on resettlement permits were included within the citizenship net.

The law was more sympathetic to those who migrated from Pakistan and called them refugees than to those who, in a state of confusion, were stranded in Pakistan or went there but decided to return soon.

### **Article 8:**

Provided Rights of citizenship of certain persons of Indian origin residing outside India. Any Person of Indian Origin residing outside India who, or either of whose parents or

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grandparents, was born in India could register himself or herself as an Indian citizen with Indian Diplomatic Mission.

**Article 9:**

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

**Article 10:**

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

**Article 11:**

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

**Acts and Amendments**

- a. The Citizenship Act, 1955 provides for the acquisition and determination of Indian citizenship.
- b. Acquisition and Determination of Indian Citizenship
- c. There are four ways in which Indian citizenship can be acquired: birth, descent, registration and naturalization. The provisions are listed under the Citizenship Act, 1955.

**By Birth:**

Every person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of his/her parents.

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

**By Registration:**

Citizenship can also be acquired by registration. Some of the mandatory rules are:

- a. A person of Indian origin who has been a resident of India for 7 years before applying for registration
- b. A person of Indian origin who is a resident of any country outside undivided India
- c. A person who is married to an Indian citizen and is ordinarily resident for 7 years before applying for registration

Minor children of persons who are citizens of India

**By Descent:**

A person born outside India on or after January 26, 1950 is a citizen of India by descent if his/her father was a citizen of India by birth.

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

If a person born outside India or after December 3, 2004 has to acquire citizenship,

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his/her parents have to declare that the minor does not hold a passport of another country and his/her birth is registered at an Indian consulate within one year of birth.

**By Naturalization:**

- a. A person can acquire citizenship by naturalization if he/she is ordinarily resident of India for 12 years (throughout 12 months preceding the date of application and 11 years in the aggregate) and fulfils all qualifications in the third schedule of the Citizenship Act.
- b. The Act does not provide for dual citizenship or dual nationality. It only allows citizenship for a person listed under the provisions above ie: by birth, descent, registration or naturalization.
- c. The act has been amended four times — in 1986, 2003, 2005, and 2015.
- d. Through these amendments Parliament has narrowed down the wider and universal principles of citizenship based on the fact of birth.
- e. Moreover, the Foreigners Act places a heavy burden on the individual to prove that he/she is not a foreigner.
- f. 1986 amendment: Unlike the constitutional provision and the original Citizenship Act that gave citizenship on the principle of jus soli to everyone born in India, the 1986 amendment to Section 3 was less inclusive.
- g. The amendment has added the condition that those who were born in India on or after January 26, 1950 but before July 1, 1987, shall be Indian citizen.
- h. Those born after July 1, 1987 and before December 4, 2003, in addition to one's own birth in India, can get citizenship only if either of his parents was an Indian citizen at the time of birth.
- i. 2003 amendment: The amendment made the above condition more stringent, keeping in view infiltration from Bangladesh.
- j. Now the law requires that for those born on or after December 4, 2004, in addition to the fact of their own birth, both parents should be Indian citizens or one parent must be Indian citizen and other should not be an illegal migrant.
- k. With these restrictive amendments, India has almost moved towards the narrow principle of jus sanguinis or blood relationship.
- l. This lays down that an illegal migrant cannot claim citizenship by naturalization or registration even if he has been a resident of India for seven years.
- m. Citizenship (Amendment) Bill 2019: The amendment proposes to permit members of six communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Pakistan, Bangladesh and Afghanistan — to continue to live in India if they entered India before December 14, 2014.
- n. It also reduces the requirement for citizenship from 11 years to just 6 years.
- o. Two notifications also exempted these migrants from the Passport Act and Foreigners Act.
- p. A large number of organizations in Assam protested against this Bill as it may grant citizenship to Bangladeshi Hindu illegal migrants.
- q. The justification given for the bill is that Hindus and Buddhists are minorities in Bangladesh, and fled to India to avoid religious persecution, but Muslims are a majority in Bangladesh and so the same cannot be said about them.
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### **Fundamental Rights**

#### **What are Fundamental Rights?**

Fundamental Rights are those Rights which are mentioned under Part III of the Indian Constitution.

There are certain Rights which are mentioned in the Constitution, but not under Fundamental Rights. Such Rights are called Constitutional Rights. (E.g. Right to Vote)

There are certain Rights which are available to citizens through laws passed by Legislatures (Centre or State). Such Rights are called Statutory Rights. (E.g. Right to Information)

#### **Nature of Fundamental Rights**

- a. Most of the Rights are Negative Obligations on the State (E.g. Article 14), with certain exceptions (E.g. Article 21A). Negative Obligations means that the State cannot do something that hurts or curtails people's rights.
- b. Majority of Rights mentioned in Part III are enjoyed by citizens against the State.
- c. These Rights are Justiciable.
- d. Fundamental Rights are not absolute i.e. certain reasonable restrictions can be imposed upon them.
- e. Fundamental Rights can be suspended during emergency.
- f. Fundamental Rights of people occupying sensitive positions (Armed Forces, Intelligence Agencies etc.) can be restricted or even denied by Parliament by law.
- g. Most of the Right is self-executor i.e. the parliament need not make laws to implement these Rights. There are certain exceptions e.g. For Right to Education under Article 21A, a law was required by the parliament.
- h. Some of these Rights are available to aliens (Foreigners).

**Article 12** – Definition of State

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

#### **Classification of Fundamental Rights**

1. Right to Equality (Article 14 to 18)
2. Right to Freedom (Article 19 to 22)
3. Right against Exploitation (Article 23 to 24)
4. Right to Freedom of Religion (Article 25 to 28)

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5. Cultural and Educational Right (Article 29 to 30)
6. Right to Constitutional Remedies

### **Right to Equality**

#### **1. Right to Equality (Art. 14-18)**

##### **Article 14 Equality before Law**

Article 14 represents the idea of equality, which states 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. The equality before the law is guaranteed to all without regard to race, color, or nationality.

##### **Article 15 Non-discrimination on grounds of religion, race, caste, sex, or place of birth**

Article 15 states that the state shall not discriminate against any citizen on grounds only of religion, caste, sex, place of birth, or any of them and would not be subject to any disability, liability, restriction, or condition. Nothing in this article shall prevent the state from making any special provisions for women and children.

Nothing in this article or in sub-clause (G) of clause (1) of Article 19 shall prevent the state from making any special provision by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or Scheduled Tribes.

##### **(Article 16): Equality of opportunity in public employment**

Article 16 states that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence, or any of them, be ineligible for or discriminated against in respect of any employment or office under the state.

##### **(Article 17): Abolition of untouchability**

Article 17 abolishes Untouchability and forbids its practice in any form. Untouchability refers to a social practice that looks down upon certain oppressed classes solely on account of their birth and makes any discrimination against them on this ground.

##### **(Article 18): Abolition of Titles**

Article 18 abolishes all titles and prohibits the state to confer titles on anybody whether a citizen or a non-citizen. However, military and academic distinctions are exempted from the prohibition.

##### **(Article 19): Right to Freedom**

The Right to Freedom guarantees to the citizens of India six Fundamental Freedoms:

- 1) Freedom of Speech and Expression.
- 2) Freedom of Assembly.
- 3) Freedom to form associations.
- 4) Freedom of Movement.
- 5) Freedom to reside and to settle.
- 6) Freedom of profession, occupation, trade, or business.

Originally, Article 19 contained seven rights. But, the right to acquire, hold and dispose of property was deleted by the 44th Amendment Act of 1978.

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

Article 20 provides protection against arbitrary and excessive punishment for any

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person who commits an offense. This article has taken care to safeguard the rights of persons accused of crimes. Moreover, this article cannot be suspended even during an emergency in operation under Article 359.

**(Article 21): Protection of Life and Personal Liberty**

Article 21 states no person shall be deprived of his life or personal liberty except according to the procedure established by law. However, Article 21 puts a limit on the power of the State given under Article 246, read with the legislative lists. Thus, Article 21 does not recognize the Right to Life and Personal Liberty as an absolute right but limits the scope of the right itself.

**(Article 22): Safeguards against Arbitrary Arrest and Detention**

Firstly, Article 22 guarantees the right of every person who is arrested to be informed of the cause of his arrest; secondly, his right to consult and to be defended by a lawyer of his choice. Thirdly, every person arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours and shall be kept in continued custody only with his authority.

**(Articles 23-24): Right against Exploitation**

**Article 23** prohibits traffic in human beings, women, children, beggars or other forced labor militates against human dignity.

**Article 24** prohibits employing children below the age of 14 years in any hazardous profession. This right followed the human rights concepts and United Nations norms.

**(Articles 25-28): Right to Freedom of Religion**

Articles 25 and 26 embody the principles of religious tolerance and serve to emphasize the secular nature of Indian democracy, i.e. equal respect to all religions.

**Article 25** offers freedom of Conscience and Free Profession, Practice and Propagation of Religion

**Article 26** helps to manage religious affairs, which is subject to public order, morality and health, every religious denomination or any section.

**Article 27** provides freedom not to pay taxes for religious expenses on the promotion or maintenance of any particular religion.

**Article 28** prohibits religious instructions in educational institutions wholly maintained by the state.

**5. (Articles 29-30): Rights to minorities (cultural and educational rights)**

**Article 29** provides protection of the interests of minorities. A minority community can effectively conserve its language, script, or culture by and through an educational institution.

**Article 30** states the rights of minorities whether based on religion or language to establish and administer educational institutions.

The 44th Amendment has abolished the Right to Property as a Fundamental Right guaranteed by Art.19 (f) and Art.31 of the Constitution. It is now only a Legal Right under article

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300-A, gives protection against executive action but not against legislative action.

**6. (Articles 32-35): Right to Constitutional Remedies**

Rights, in order to be meaningful, must be enforceable and backed by remedies in case of violation. This article guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights and deals with the Supreme Court's power to issue order or writs for the enforcement of Fundamental Rights.

Empowers Parliament to modify the application of Fundamental Rights to the armed forces or forces charged with the maintenance of public order. On the other hand, Article 35 lies down that the power to make laws to give effect to certain specified Fundamental Rights shall vest only with the Parliament and not with State Legislatures.

Therefore, Fundamental Rights play a significant role because they are most essential for the attainment of the full intellectual, moral, and spiritual status of an individual. Therefore, the objective behind the inclusion of Fundamental Rights in the Constitution was to establish a government of Law to preserve individual liberty, building an equitable society, and establish a welfare state.

**Articles Related to Fundamental Rights at a Glance**

**General**

- a. Definition of State
- b. Laws inconsistent with or in derogation of the Fundamental Rights

**Right to Equality**

- a. Equality before law
- b. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- c. Equality of opportunity in matters of public employment
- d. Abolition of untouchability
- e. Abolition of titles

**Right to Freedom**

1. Protection of certain rights regarding freedom of speech, etc
2. Protection in respect of conviction for offences
3. Protection of life and personal liberty
4. Right to education
5. Protection against arrest and detention in certain cases

**Right against Exploitation**

1. Prohibition of traffic in human beings and forced labor
2. Prohibition of employment of children in factories, etc.

**Right to Freedom of Religion**

1. Freedom of conscience and free profession, practice and propagation of religion
2. Freedom to manage religious affairs
3. Freedom as to payment of taxes for promotion of any particular religion
4. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

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**Cultural and Educational Rights**

1. Protection of interests of minorities
2. Right of minorities to establish and administer educational institutions
3. Compulsory acquisition of property—(Repealed)

**Saving of Certain Laws**

- 31A saving of laws providing for acquisition of estates, etc.
- 31B. Validation of certain Acts and Regulations
- 31C. saving of laws giving effect to certain directive principles
- 31D. saving of laws in respect of anti-national activities—(Repealed)

**Right to Constitutional Remedies**

32. Remedies for enforcement of rights conferred by this part
- 32A. Constitutional validity of State laws not to be considered in proceedings under Article 32(Repealed)
33. Power of Parliament to modify the rights conferred by this part in their application to forces, etc.
34. Restriction on rights conferred by this part while martial law is in force in any area
35. Legislation to give effect to the provisions of this part.



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**UNIT - II**  
**FUNDAMENTAL DUTIES**

**PART IVA – FUNDAMENTAL DUTIES**

**Part IVA consists of Article 51A**

It was added by 42nd Amendment Act, 1976, based on the recommendations of Swaran Singh committee.

Fundamental Duties for citizens are in nature of a code of conduct.

These fundamental duties are inspired by the Constitution of the former Soviet Union.

It is the Constitutional sanction being given to the Indian way of life.

Since, the Fundamental Duties are included in Part IV of the Constitution, these cannot come into force automatically, and neither can these duties be enforced by judicial process.

The Constitution does not make any provision to enforce these duties automatically or any sanction to prevent the violation of these duties by the citizens. However, it is expected that if a law is enacted by the legislature to enforce these provisions, it shall not be declared unconstitutional on the ground of its inconsistency with the provisions of Article 14 or that of 19.

In the year 2000, the Government of India set up a National Committee to review the working of the Constitution.

It was headed by former CJI M N Venkatachalaiah. The committee submitted its report in 2002.

The committee recommended the government to take active steps to increase awareness of Fundamental Duties among citizens.

It also stated that the list of duties is not exhaustive. It said that duties like duty to vote, pay taxes etc. could be added

**51A. Duty of every citizen of India**

- a. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
- b. To cherish and follow the noble ideals which inspired our national struggle for freedom;
- c. To uphold and protect the sovereignty, unity and integrity of India.
- d. To defend the country and render national service when called upon to do so.
- e. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women.
- f. To value and preserve the rich heritage of our composite culture.
- g. To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.
- h. To develop the scientific temper, humanism, and the spirit of inquiry and reform.
- i. To safeguard public property and to abjure violence.
- j. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of Endeavour and achievement.
- k. To provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years. Note—(k) was added by the 86th Constitution amendment Act, 2002.

**Some acts passed to enforce Fundamental Duties**

- a. The Emblems and Names (Prevention of Improper use) Act, 1950
- b. The Prevention of Insult to National Honor's Act, 1971

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- c. The Untouchability (Offences) Act, 1955
- d. The Representation of Peoples Act, 1951

### **The Directive Principles of State Policy**

Part IV of Indian Constitution deals with Directive Principles of our 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 concept of Directive Principles of State Policy was borrowed from the Irish Constitution. 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.

### **Table of Contents**

Article 36: Definition

Article 37: Application of the principles contained in this Part

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

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

Article 39A: Equal justice and free legal aid

Article 40: Organization of Village Panchayats

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

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

Article 43: Living wage, etc., for workers

Article 43A: Participation of workers in management of industries

Article 44: Uniform civil code for the citizen

Article 45: Provision for free and compulsory education for children

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

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

Article 48: Organization of agriculture and animal husbandry

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

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

Article 50: Separation of judiciary from the executive

Article 51: Promotion of international peace and security

### **Classification of the Directive Principles**

The Constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz., socialistic, Gandhian and liberal–intellectual.

### **Socialistic Principles**

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state.

They direct the state:

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

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and opportunities (Article 38).

2. To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for the common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children (Article 39).
3. To promote equal justice and to provide free legal aid to the poor (Article 39 A)
4. To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (Article 41).
5. To make provision for just and humane conditions for work and maternity relief (Article 42)
6. To secure a living wage, a decent standard of life and social and cultural opportunities for all workers (Article 43)
7. To take steps to secure the participation of workers in the management of industries (Article 43 A)
8. To raise the level of nutrition and the standard of living of people and to improve public health (Article 47)

### **Gandhian Principles**

These socialistic 9 principles are based on Gandhian ideology. They represent the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfill the dreams of Gandhi, some of his ideas were included as Directive Principles.

They require the State:

1. To organize village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (Article 40)
2. To promote cottage industries on an individual or co-operation basis in rural areas (Article 43)
3. To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B)
4. To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation (Article 46)
5. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47)
6. To prohibit the slaughter of cows, calves and other milk and draught cattle and to improve their breeds (Article 48)

### **Economic Principles**

The State is expected to formulate its policy with the following objectives:

1. To minimize the inequalities of income of the people
2. To secure adequate means of livelihood to all citizens
3. To provide equal pay for equal work
4. To protect strength and health of workers and avoiding circumstances which force citizens to enter avocations to their age or strength
5. To provide opportunities to the needy poor to get free legal aid
6. To secure the right to work to all
7. To provide public assistance in cases of unemployment, old age and sick.

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8. To provide a living wage and a decent standard of life
9. To prevent concentration of wealth in the hands of a few
10. To provide within ten years from the commencement of the constitution, free compulsory education to all children up to the age of 14 years of age

**Table 8.1 Distinction between Fundamental Rights and Directive Principles**

<b>Fundamental rights</b>	<b>Directive principles</b>
1. These are negative as they prohibit the State from doing certain things.	1. These are positive as they require the State to do certain things
2. These are justiciable, that is, they are legally enforceable by the courts in case of their violation	2. These are non-justiciable, that is, they are not legally enforceable by the courts for their violation
3. They aim at establishing political democracy in the country.	3. They aim at establishing social and economic democracy in the country.
4. These have legal sanctions	4. These have moral and political sanctions.
5. They promote the welfare of the individual. Hence, they are personal and individualistic.	5. They promote the welfare of the community. Hence, they are societarian and socialistic
6. They do not require any legislation for their implementation. They are automatically enforced.	6. They require legislation for their implementation. They are not automatically enforced
7. The courts are bound to declare a law violate of any of the Fundamental Rights as unconstitutional and invalid.	7. The courts cannot declare a law violate of any of the Directive Principles as unconstitutional and invalid.

### **THE PRESIDENT**

The Executive broadly covers the President, Council of Ministers and position of the Prime Minister. President is the head of the Union Executive. Article 52 creates the position of the President.

#### **Single Transferable Vote System:**

The election of the President is held through single transferable vote system of proportional representation. Under this system names of all the candidates are listed on the ballot paper and the elector gives them numbers according to his/her preference. Every voter may mark on the ballot paper as many preferences as there are candidates. Thus the elector shall place the figure 1 opposite the name of the candidate whom he/she chooses for first preference and may mark as many preferences as he/she wishes by putting the figures 2, 3, 4 and so on against the names of other candidates. The ballot becomes invalid if first preference is marked against more than one candidate or if the first preference is not marked at all.

#### **Conditions of President's office**

- a. Article 59 of the constitution lays down the conditions
- b. The President cannot be a member of either of House of Parliament or State Legislature when holding the office of President
- c. The President cannot hold any other office of profit
- d. Parliament by law will determine the salary of the President

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**Time of holding Presidential Elections**

- a. 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 current term.
- b. An election to fill a vacancy in the office of President occurring by the reasons of death, resignation or removal, or otherwise, should be held within 6 months from the date of occurrence of vacancy.

**Privileges and Immunities**

- a. The President cannot be asked to be present in any court of law during his tenure.
- b. A prior notice of two months' time is to be served before instituting a civil case against him
- c. The President can neither be arrested nor any criminal proceedings be instituted against him in any court of law during his tenure.
- d. The President is not answerable to any court of law for the exercise of his functions.

**Qualifications**

**The qualifications for the office of President are:**

- I. Should be a citizen of India.
- II. Should have completed the age of 35 years.
- III. Should be qualified to be elected as a member of Lok Saba.
- IV. Should not hold any office of profit i.e. the candidate should not be a government servant. However the office of the President, the Vice-President, the Governor or the Minister of the Union or the State is not considered as an office of profit for this purpose.

**Election of President**

**Electoral College which elects President consists of.**

- a. Elected members of both the Houses of Parliament (does not include nominated members)
- b. Electoral College which elects the President consists of elected MP's and elected MLA's at the state level
- c. MLA of National Capital Territory of Delhi and the Union territory of Pondicherry are also included
- d. The election is held by means of single transferable vote system of proportional representation. The voting is done by secret ballot.
- e. The term of President is five years.

**Removal of the President:**

The President can only be removed from office through a process called impeachment. The Constitution lays down a detailed procedure for the impeachment of the President.

**Procedure:**

The resolution to impeach the President can be moved in either House of Parliament. Such a resolution can be moved only after a notice has been given by at least one-fourth of the total number of members of the House. Such a resolution charging the President for violation of the Constitution must be passed by a majority of not less than two-third of the total

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membership of that House before it goes to the other House for investigation. The charges leveled against the President are investigated by the second House. President has the right to be heard or defended when the charges against him are being investigated. The President may defend himself in person or through his counsel. If the charges are accepted by a two-third majority of the total membership of the second House, the impeachment succeeds. The President thus stands removed from the office from the date on which the resolution is passed.

**Executive Powers of the President**

The executive powers and functions of the President are:

- a. All executive actions of the Government of India are formally taken in his name.
- b. He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.
- c. He can make rules for more convenient transaction of business of the Union government, and for allocation of the said business among the ministers.
- d. He appoints the prime minister and the other ministers. They hold office during his pleasure.
- e. He appoints the attorney general of India and determines his remuneration. The attorney general holds office during the pleasure of the President.
- f. He appoints the comptroller and auditor general of India, the chief election commissioner and other election commissioners, the chairman and members of the Union Public Service Commission, the governors of states, the chairman and members of finance commission, and so on.
- g. He can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the Prime Minister.
- h. He can require the Prime Minister to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council.
- i. He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.
- j. He can appoint an inter-state council to promote centre–state and inter-state cooperation.
- k. He directly administers the union territories through administrators appointed by him.
- l. He can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.

**Article 53 – Executive power of the Union**

53. (1) the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinates to him in accordance with this Constitution.

53. (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.

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53. (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.

Indian Government is following the Westminster system of Parliamentary democracy. In India, the President is the nominal head. The President is empowered to exercise executive powers either directly or through officers subordinate to him who means through the Prime Minister and Council of Ministers. This is mentioned in Article 74 of the Indian Constitution.

#### **Administrative Powers of the President**

Under Article 77, all the actions of the government are taken under the name of the President.

Under Article 78, the President has the right to seek any information from the Centre and the State.

Under Article 310, every officer of the government occupies his/her position during the pleasure of the President.

#### **Legislative Powers of the President**

- a. President summons both the Houses of the Parliament for sessions.
- b. President also prorogues the sessions.
- c. President is also responsible for dissolving the LokSaba.
- d. The first session of each year and the first session of newly elected LokSaba after the general elections begin with the address of the President.
- e. President can nominate two members in the LokSaba belonging to the Anglo Indian community.
- f. President has the power to send messages to the Parliament.
- g. President can nominate 12 members to the RajyaSaba.
- h. President submits the reports of UPSC, Finance Commission etc. to the Parliament.
- i. No bill can become a law without the assent of the President. To introduce certain bills in the Parliament, prior permission of the President is required. E.g. Money bills.
- j. President possesses Veto power.
- k. President has Ordinance making power under Article 123.

#### **Judicial Powers of the President**

The President, as head of state, can pardon a criminal or reduce the punishment or suspend commute or remit the sentence of a criminal convicted by the Supreme Court or High Courts for an offence against the federal laws.

President's pardoning power comprises of pardon, reprieve, remission, respite and commutation.

The President can pardon a person convicted by a Court Martial. His/her power of pardon includes granting of pardon even to a person awarded death sentence. But, the President performs this function on the advice of Law Ministry.

Advisory Jurisdiction under Article 143 also comes under judicial powers of the President.

#### **Emergency powers of the President**

President has the power to declare National emergency under Article 352 on the

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grounds of war, external aggression and armed rebellion.

President also has the power to declare Constitutional Emergency under Article 356.

President can also declare financial emergency under Article 360.

**Areas where the President can act independently**

- Can reject the advice of the Prime Minister if the PM has lost majority in the house
  - Power to send messages to the Parliament
  - Power of suspense veto
  - If the general elections to the Lok Saba throw up a 'Hung House'
  - Under Article 78 – Presidents Right to Information
  - Under Article 74 – Send an advice back to the Council of Ministers for reconsideration.
  - Receive memorandum from the opposition, study the situation and speak to the PM privately.
- Entitled to comment on the affairs of the state

**Financial Powers**

The financial powers and functions of the President are:

- a. Money bills can be introduced in the Parliament only with his prior recommendation.
- b. He causes to be laid before the Parliament the annual financial statement (i.e., the Union Budget).
- c. No demand for a grant can be made except on his recommendation.
- d. He can make advances out of the contingency fund of India to meet any unforeseen expenditure.
- e. He constitutes a finance commission after every five years to recommend the distribution of revenues between the Centre and the states.

**Diplomatic Powers**

The international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to the approval of the Parliament. He represents India in international forums and affairs and sends and receives diplomats like ambassadors, high commissioners, and so on.

**Military Powers**

He is the supreme commander of the defense forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force. He can declare war or conclude peace, subject to the approval of the Parliament.

**Emergency Powers**

In addition to the normal powers mentioned above, the Constitution confers extraordinary powers on the President to deal with the following three types of emergencies.

- a. National Emergency (Article 352).
- b. President's Rule (Article 356 & 365).
- c. Financial Emergency (Article 360)

**Veto Power of the President**

A bill passed by the Parliament can become an act only if it receives the assent of the President. When such a bill is presented to the President for his assent, he has three alternatives (under Article 111 of the Constitution):



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1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or
3. He may return the bill (if it is not a Money bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, the President must give his assent to the bill.

Thus, the President has the veto power over the bills passed by the Parliament<sup>10</sup>, that is, he can withhold his assent to the bills. The object of conferring this power on the President is two-fold—(a) to prevent hasty and ill-considered legislation by the Parliament; and (b) to prevent legislation which may be unconstitutional.

The veto power enjoyed by the executive in modern states can be classified into the following four types:

- a. Absolute veto that is, withholding of assent to the bill passed by the legislature
- b. Qualified veto, which can be overridden by the legislature with a higher majority
- c. Suspense veto, which can be over ridden by the legislature with an ordinary majority
- d. Pocket veto that is, taking no action on the bill passed by the legislature of the above four, the President of India is vested with three—absolute veto, suspense veto and pocket veto. There is no qualified veto in the case of Indian President; it is possessed by the American President.

### **Vice President**

The Vice-President occupies the second highest office in the country. He is accorded a rank next to the President in the official warrant of precedence. This office is modeled on the lines of the American Vice-President.

### **Election**

The Vice-President, like the president, is elected not directly by the people but by the method of indirect election. He is elected by the members of an Electoral College consisting of the members of both Houses of Parliament. Thus Electoral College is different from the Electoral College for the election of the President in the following two respects:

- a. It consists of both elected and nominated members of the Parliament (in the case of president, only elected members).
- b. It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included).

### **Qualifications**

To be eligible for election as Vice-President, a person should fulfill the following qualifications:

1. He should be a citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the RajyaSaba.
4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

### **Powers and Functions**

The functions of Vice-President are two-fold:

1. He acts as the ex-officio Chairman of RajyaSaba. In this capacity, his powers and functions

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are similar to those of the Speaker of LokSaba. In this respect, he resembles the American vice-president who also acts as the Chairman of the Senate the Upper House of the American legislature.

2. He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, and death or otherwise. He can act as President only for a maximum period of six months within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

While acting as the President or discharging the functions of the President, the Vice-President does not perform the duties of the office of the chairman of RajyaSaba. During this period, those duties are performed by the Deputy Chairman of RajyaSaba

### **PRIME MINISTER**

The Prime Minister of India is the leader of the executive of the Government of India. The prime minister is also the chief adviser to the president of India and head of the Council of Ministers. They can be a member of any of the two houses of the Parliament of India the LokSaba (House of the People) and the RajyaSaba (Council of the States) but has to be a member of the political party or coalition, having a majority in the LokSaba.

The Prime Minister is the senior-most member of cabinet in the executive of government in a parliamentary system. The Prime Minister selects and can dismiss members of the cabinet; allocates posts to members within the government; and is the presiding member and chairperson of the cabinet.

The Union Cabinet headed by the Prime Minister is appointed by the President of India to assist the latter in the administration of the affairs of the executive. Union cabinet is collectively responsible to the LokSaba as per article 75(3) of the Constitution of India. The prime minister has to enjoy the confidence of a majority in the LokSaba and shall resign if they are unable to prove majority when instructed by the president.

### **Origins and history**

India follows a parliamentary system in which the Prime Minister is the presiding head of the government and chief of the executive of the government. In such systems, the head of state, or, the head of state's official representative (i.e., the Monarch, President, or Governor-general) usually holds a purely ceremonial position and acts on most matters only on the advice of the Prime Minister.

(The Prime Minister if they are not already shall become a member of parliament within six months of beginning his/her tenure.) A prime minister is expected to work with other central ministers to ensure the passage of bills by the parliament.

### **Eligibility**

According to Article 84 of the Constitution of India, which sets the principal qualification for the Member of Parliament, and Article 75 of the Constitution of India, which sets the qualifications for the minister in the Union Council of Ministers, and the argument that the position of Prime Minister has been described as *primus inter pares* (the first among equals), A Prime Minister must:

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- a. Be a citizen of India.
- b. Be a member of the LokSaba or the Rajah Saba. If the person chosen as the prime minister is neither a member of the LokSaba nor the Rajah Saba at the time of selection, they must become a member of either of the houses within six months.
- c. Be above 25 years of age if they are a member of the LokSaba, or, above 30 years of age if they are a member of the RajyaSaba.
- d. Not hold 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.

### **Role and Power of the Prime Minister**

#### **Executive powers**

The Prime Minister leads the functioning and exercise of authority of the government of India. The President of India—subject to eligibility—invites a person who is commanding support of majority members of LokSaba to form the government of India—also known as the central government or Union government—at the national level and exercise its powers. In practice the Prime Minister nominates the members of their council of ministers to the president. They also work upon to decide a core group of ministers (known as the cabinet), as in charge of the important functions and ministries of the government of India.

The Prime Minister is responsible for aiding and advising the president in distribution of work of the government to various ministries and offices and in terms of the Government of India (Allocation of Business) Rules, 1961. The co-ordination work is generally allocated to the Cabinet Secretariat. While the work of the government is generally divided into various Ministries, the Prime Minister may retain certain portfolios if they are not allocated to any member of the cabinet.

The Prime Minister—in consultation with the cabinet—schedules and attends the sessions of the houses of parliament and is required to answer the question from the Members of Parliament to them as the in-charge of the portfolios in the capacity as Prime Minister of India. Some specific ministries/department is not allocated to anyone in the cabinet but the prime minister themselves. The prime minister is usually always in charge/head of Ministry of Personnel, Public Grievances and Pensions (as Minister of Personnel, Public Grievances and Pensions)

1. Cabinet Secretariat
2. Appointment Committee of the Cabinet
3. Cabinet Committee on Security
4. Cabinet Committee on Economic Affairs
5. NITI AAYOG
6. Department of Atomic Energy
7. Department of Space
8. Nuclear Command Authority

The Prime Minister represents the country in various delegations, high level meetings and international organizations that require the attendance of the highest government office, and also addresses to the nation on various issues of national or other importance. As Per Article 78 of the constitution, the official communication between the union cabinet and the president are through the prime minister. Otherwise constitution recognizes the prime minister as a member of the union cabinet only outside the sphere of union cabinet.

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**Administrative and Appointment Powers**

The Prime Minister recommends to the President—among others—names for the appointment of:

- a. Chief Election Commissioner of India (CEC) and other Election Commissioners of India (ECs)
- b. Comptroller and Auditor General of India (C&AG)
- c. Chairperson and members of the Union Public Service Commission (UPSC)
- d. Chief Information Commissioner of India (CIC) and Information Commissioners of India
- e. Chairperson and members of the finance commission (FC)
- f. Attorney General of India (AG) and Solicitor General of India (SG)

**Legislative Powers**

The Prime Minister acts as the leader of the house of the chamber of parliament—generally the LokSaba—he/she belongs to. In this role, the prime minister is tasked with representing the executive in the legislature, he/she is also expected to announce important legislation, and is further expected to respond to the opposition's concerns. Article 85 of the Indian constitution confers the President with the power to convene and end extraordinary sessions of the parliament, this power, however, is exercised only on the advice of the prime minister and his/her council, so, in practice, the Prime Minister does exercise some control over the affairs of the parliament.

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**UNIT - III**  
**PARLIAMENT**

The Parliament is the legislative organ of the Union government. It occupies a pre-eminent and central position in the Indian democratic political system due to adoption of the parliamentary form of government, also known as 'Westminster' model of government. Articles 79 to 122 in Part V of the Constitution deal with the organization, composition, duration, officers, procedures, privileges, powers and so on of the Parliament.

**Composition of the Two Houses**

**Composition of RajyaSaba**

The maximum strength of the RajyaSaba is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president.

At present, the RajyaSaba has 245 members. Of these, 229 members represent the states, 4 members represent the union territories and 12 members are nominated by the president.

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

**1. Representation of States:**

The representatives of states in the RajyaSaba are elected by the elected members of state legislative assemblies. The election is held in accordance with the system of proportional representation by means of the single transferable vote. The seats are allotted to the states in the RajyaSaba on the basis of population. Hence, the number of representatives varies from state to state. For example, Uttar Pradesh has 31 members while Tripura has 1 member only. However, in USA, all states are given equal representation in the Senate irrespective of their population. USA has 50 states and the Senate has 100 members and 2 members elected from each state.

**2. Representation of Union Territories:**

The representatives of each union territory in the RajyaSaba are indirectly elected by members of an electoral college specially constituted for the purpose. This election is also held in accordance with the system of proportional representation by means of the single transferable vote. Out of the seven union territories, only two (Delhi and Pondicherry) have representation in Rajya Saba. The populations of other five union territories are too small to have any representative in the Rajya Saba.

**3. Nominated Members:**

The President nominates 12 members to the Rajya Saba from people who have special knowledge or practical experience in art, literature, science and social service. The rationale behind this principle of nomination is to provide eminent persons a place in the Rajya Saba without going through the process of election. It should be noted here that the American Senate has no nominated members.

**Composition of Lok Saba**

The maximum strength of the Lok Saba is fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and members are to be nominated by the president from the Anglo-Indian

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community.

At present, the Lok Saba has 545 members. Of these, 530 members represent the states, 13 members represent the union territories and 2 Anglo-Indian members are nominated by the President.

**1. Representation of States:**

The representatives of states in the Lok Saba are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. Every Indian citizen who is above 18 years of age and who is not disqualified under the provisions of the Constitution or any law is eligible to vote at such election. The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.

**2. Representation of Union Territories:**

The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Saba. Accordingly, the Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the members of Lok Saba from the union territories are also chosen by direct election.

**Nominated Members:**

The President can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Saba. Originally, this provision was to operate till 1960 but has been extended till 2020 by the 95th Amendment Act, 2009.

**System of Elections to Lok Saba**

The various aspects related to the system of elections to the Lok Saba are as follows:

1. Territorial Constituencies
2. Readjustment after each Census
3. Reservation of Seats for SCs and STs
4. Proportional Representation not Adopted

**Duration of Two Houses**

**Duration of Rajya Saba**

The Rajya Saba (first constituted in 1952) is a continuing chamber, that is, it is a permanent body and not subject to dissolution. However, one-third of its members retire every second year. Their seats are filled up by fresh elections and presidential nominations at the beginning of every third year. The retiring members are eligible for re-election and denomination any number of times.

The Constitution has not fixed the term of office of members of the Rajya Saba and left it to the Parliament. Accordingly, the Parliament in the Representation of the People Act (1951) provided that the term of office of a member of the Rajya Saba shall be six years. The act also empowered the president of India to curtail the term of members chosen in the first RajyaSaba. In the first batch, it was decided by lottery as to who should retire. Further, the act also authorized the President to make provisions to govern the order of retirement of the members of the Rajya Saba.

**Duration of Lok Saba**

Unlike the Rajya Saba, the Lok Saba is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections, after which it automatically

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dissolves. However, the President is authorized to dissolve the Lok Saba at any time even before the completion of five years and this cannot be challenged in a court of law.

Further, the term of the Lok Saba can be extended during the period of national emergency by a law of Parliament for one year at a time<sup>7</sup> for any length of time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.

### **Membership of Parliament**

#### **Qualifications**

The Constitution lays down the following qualifications for a person to be chosen a member of the Parliament:

1. He must be a citizen of India.
2. He must make and subscribe to an oath or affirmation before the person authorized by the election commission for this purpose. In his oath or affirmation, he swears
  - i. To bear true faith and allegiance to the Constitution of India
  - ii. To uphold the sovereignty and integrity of India
3. He must be not less than 30 years of age in the case of the Rajya Saba and not less than 25 years of age in the case of the Lok Saba.
4. He must possess other qualifications prescribed by Parliament.

The Parliament has laid down the following additional qualifications in the Representation of People Act (1951).

1. He must be registered as an elector for a parliamentary constituency. This is same in the case of both, the Rajya Saba and the Lok Saba. The requirement that a candidate contesting an election to the Rajya Saba from a particular state should be an elector in that particular state was dispensed with in 2003. In 2006, the Supreme Court upheld the constitutional validity of this change.

2. He must be a member of a scheduled caste or scheduled tribe in any state or union territory, if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

#### **Disqualifications for membership – Article 102**

102. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

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

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A Member of Parliament cannot hold office of profit under the Government of India or that of any state as it would lead to conflict of interest. Minister's office is exempted from this. Parliament, by law, determines the offices which are exempted. In accordance, Members of Parliament (Prevention of disqualification) Act 1959 was enacted. This Act was amended in 2006, which added certain offices of profit to list, and was given retrospective effect. There is a Joint Committee on offices of profit in Parliament, which advises the Parliament on the offices which has to be added to the list, as and when new offices are created. Members can also be disqualified under any other laws made by the Parliament. E.g. Representation of People's Act 1951.

**Decision on questions as to disqualifications of members – Article 103**

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

103.(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

If a Member of Parliament is subject to disqualification under grounds mentioned in Article 102, the decision shall be referred to the President and the President shall act in accordance with the opinion of the Election Commission.

**SPEAKER OF LOK SABA**

- a. G. V. Mavalankar was the Lok Saba speaker after independence. Sir Frederick Whyte was the first Lok Saba speaker of British India. Vittalbhai Patel was the first Indian speaker during British India.
- b. According to Article 93, the Lok Saba has to choose two members as the Speaker and the Deputy Speaker respectively.
- c. The Speaker or Deputy Speaker shall vacate his office if he ceases to be the member of the House of the People.
- d. If the Speaker wishes to resign, he sends his resignation letter to Deputy Speaker and vice versa.
- e. A Speaker can be removed from his office by passing a resolution with a majority of the then members of the Parliament. A prior notice of 14 days has to be given before moving the resolution.
- f. Speaker need not resign when the Lok Saba is dissolved. He continues to hold office until the first meeting of next Lok Saba is held and the next speaker is elected.
- g. If the office of the speaker is vacant; the duties shall be performed by the Deputy Speaker. If the office of Deputy Speaker is also vacant, the President shall appoint a person to take over the proceedings of the House (Pro tem Speaker).

**Powers of the Lok Saba Speaker**

- a. He presides over the meeting of Lok Saba.
- b. He has the final power to maintain order in the House and also to interpret the rules of procedure.
- c. The Speaker decides whether a bill is money bill or not (available only to Lok Saba speaker).
- d. He presides over the joint sitting of both the Houses of the Parliament.
- e. The Speaker cannot vote in the first instance. If there is a tie in the first instance, then the speaker is allowed to vote to break the deadlock. This is called Casting Vote.
- f. During the removal procedure of the speaker, he is allowed to vote in the first



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- instance.
- g. The Speaker has the power to disqualify any member of the house, if the member is held guilty of any wrong doings.
  - h. The Speaker has the right to nominate members for certain committees of the Parliament.
  - i. It is the speaker who decides who shall hold the floor (speak in the house).
  - j. Speaker decides which points of order are accepted and rejected.
  - k. Position of the Chairperson of Rajya Saba
  - l. Article 63 creates the Position of the Vice President of India.
  - m. Vice President is the official chairperson of Rajya Saba, according to Article 63.
  - n. The tenure of Members of Rajya Saba is 6 years whereas the tenure of the chairperson of Rajya Saba is 5 years.
  - o. If the Vice President is discharging duties of the President; he shall not officiate as the chairperson of Rajya Saba.
  - p. The Deputy Chairperson is elected from amongst the members of Rajya Saba.

**Vacancy in the seat of a Member of Parliament in both the Houses**

- a. Vacancy can occur on account of death, resignation, the Disqualification.
- b. If the MP is not present in the proceedings of the house for a period of 60 days or more, without the permission of the house, the MP can be disqualified.
- c. Dual Membership – the MP is not allowed to hold membership of more than one house simultaneously. He is also not allowed to hold more than one seat in the same house.

**Legislative Procedures in the Parliament**

Legislative Procedures are the procedures through which bills become laws.

Types of bills introduced in the Parliament;

- a. Ordinary bills
- b. Money bills
- c. Financial bills – Class I and Class II Financial bills
- d. Constitution Amendment bills
- e. Private Member's bill

If a minister wants to introduce a bill, a notice of not more than 7 days is required to be given.

A longer notice period is required for a Private Member's bill.

Any bill introduced in the Parliament has to go through 3 stages (Reading of the bills)

**First Reading - Introduction of the bill**

- a. Bill may be referred to a select committee
- b. Bill may be referred to Joint Committee of both the Houses of the Parliament
- c. Bill may be circulated or elicit public opinion
- d. Bill may be taken for consideration

Generally in the first reading, fundamentals of the bills are discussed.

Second Reading ends after the house considers the bill on a clause-by-clause basis (in detail). In the third Reading, the concerned MP will request the house (move a motion) to pass the bill.

After the bill is passed in one house (for e.g. Lok Saba) the other house (Rajya Saba) can

- a. Accept the bill and pass it to the President for assent.
- b. It can completely reject it or pass it with amendments.
- c. It might not do anything for a period of 6 months.
- d. If there is a deadlock; a joint sitting will be called by the President to resolve the

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deadlock.

### **Money Bill**

Article 110 and 199 describe what constitutes a money bill of Central and State Legislatures.

- a. On money bills, RajyaSaba does not have much power.
- b. A money bill can be introduced only in LokSaba.
- c. Sanction of the President is required before the introduction of money bill.
- d. RajyaSaba has the power to delay the passage of the money bill by at most 14 days.
- e. RajyaSaba can offer suggestions and advice but it cannot amend the bill.
- f.

### **Financial Bill**

- a. A bill that deals with certain matters, alongside the matters present in Article 110 or 199.
- b. All money bills are financial bills but all financial bills are not money bills.

### **Special Provisions of Financial Bill Class I**

- a. Can be introduced only in Lok Saba
- b. Can be introduced only with the prior consent of the President.
- c. Rajya Saba has equal powers as the Lok Saba on this bill

### **Special Provisions of Financial Bill Class II**

- a. They involve with some expenditure of money
- b. They can be introduced in both the houses.
- c. The President's consent is required before the bill is taken up for consideration.

### **Budget – Annual Financial Statement**

- a. Article 112 and 202 of the Indian Constitution deals with the Annual Financial Statement of the Centre and State respectively. According to Article 112, either the President has to present the budget or ask one of his ministers to present it. By convention, it is the Finance Minister who presents the budget.
- b. No expenditure can be incurred without the approval of the parliament.
- c. Most of the expenditures are voted by the Parliament. There are certain expenditures on which voting does not take place exclusively. Such expenditures are referred to as expenditures charged on the Consolidated Fund of India.
- d. Charged expenditures on the Consolidated Fund of India
- e. The emoluments and allowances of the president and other expenditure relating to his office
- f. Salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People
- g. Debt charges
- h. Salaries, allowances and pensions payable to or in respect of the Judges of Supreme Court
- i. Salary, allowance and pension of CAG
- j. Sums required satisfying any judgment, decree or award of any court or arbitral tribunal
- k. Parliament by law can declare any other expenditure to be charged on Consolidated Fund of India.

### **Dual Budget**

India follows a system of Dual Budget i.e. Railway Budget is presented separately. This

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was done on the recommendations of Acworth Committee in 1921. This separation was done as Railway department was one of the most commercial ministries. Most of the other ministries were spending departments.

Railway Budget precedes the General Budget.

Budget in the Parliament has to go through 6 stages

It is first introduced by the Finance Minister on the last working day of February.

After the General discussion on the budget happens (usually after 3 4 days after the budget is introduced. Generally the policies underlying the budget are discussed.

### **Committee Stage**

Department Related Standing Committee (DRSC) was set up in 1993. There are 24 committees at present with each committee having 21 members from Lok Saba and 10 members from Rajya Saba. Demands of the ministries are submitted to the respective DRSC's, which study the budget in detail and prepare a report. DRSC's help the MPs to control the finances of the government in a more effective manner.

### **Voting on Demands**

Here each department's demands would be taken up and discussed in detail. MP s have certain devices available to them to influence the budget known as cut motions.

**Economy cut motion** The aim of this motion is to make the demands more reasonable.

**Token cut motion**-The aim of the token cut motion is to register a grievance on the records of parliament.

**Policy disapproval cut motion** This is used by the Parliament to express disapproval about the underlying policies of the budget. This would virtually amount to no-confidence motion and the government has to resign.

**Appropriation Bill Stage** Appropriation bill contains all the bills that have been passed along with the charged expenditure. Appropriation bill authorizes to withdraw from the Consolidated Fund of India.

**Finance Bill** Taxation part of the budget is present in a separate bill called the finance bill.

**UNIT - IV  
THE UNION JUDICIARY - SUPREME COURT**

**Supreme Court of India: Composition, Power, and Functions**

**Qualifications of Judges**

- a. A person to be appointed as a judge of the Supreme Court should have the following qualifications:
- b. He should be a citizen of India.
- c. He should have been a judge of a High Court (or high courts in succession) for five years; or
- d. He should have been an advocate of a High Court (or High Courts in succession) for ten years or
- e. He should be a distinguished jurist in the opinion of the President.
- f. The Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.
- g. The Indian constitution under Article 124(1) states that there shall be a Supreme Court of India consisting of a Chief justice of India (CJI) and 31 judges including the CJI. The Jurisdiction of the Supreme Court of India can broadly be categorized into original jurisdiction, appellate jurisdiction and advisory jurisdiction. However, there are other multiple powers of the Supreme Court.

**Supreme Court of India**

Supreme Court at the apex of Indian Judiciary is the highest authority to uphold the constitution of India, to protect rights and liberties of citizens and to uphold the values of rule of law. Hence it is known as the guardian of our Constitution.

The Indian constitution provides for a provision of Supreme Court under Part 5 (The Union) the Union Judiciary. Indian Constitution has provided an independent judiciary with a hierarchical setup containing High Courts and Subordinate Courts under it.

**Composition of the Supreme Court**

Article 124(1) and Amendment act of 2008 states that there shall be a Supreme Court of India consisting of a Chief justice of India (CJI) and 31 judges including the CJI. Article 124(2) states that every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of Supreme Court and of the High Courts in the states.

Here the collegiums system (appointment of judges to the courts) was followed also known as the three judges cases, which comprises of the Chief Justice of India and four senior most judges of the SC, one chief justice of a high court and two of its senior most judges. This system demanded a consensus decision of all the senior most judges in conformity with the Chief Justice of India.

However due to lack of transparency and delay in appointment, a new article 124 A was incorporated in the constitution, under which the National Judiciary Appointments Commission (NJAC) replaced the collegiums system for the appointment of judges as mandated in the existing pre-amended constitution by a new system.

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**The NJAC consists of the following persons:**

1. Chief Justice of India (chairperson)
2. Two senior most Supreme Court judges
3. The Union Minister of Law and Justice
4. Two eminent persons nominated by committee consisting of CJI, Prime minister of India and leader of opposition.

**Functions of the Commission are as follows:**

Recommending persons for CJI, judges of Supreme Court, Chief Justice of High court, Judges of High court,

Transfer of Chief justices and judges from one court to other Ensure persons recommended are of ability and integrity

**Powers of the Supreme Court**

1. Power to punish for contempt (civil or criminal) of court with simple imprisonment for 6 months or fine up to 2000. Civil contempt means willful disobedience to any judgment. Criminal contempt means doing any act which lowers the authority of court or causing interference in judicial proceedings
2. Judicial review - to examine constitutionality of legislative enactments and executive orders. The grounds of review is limited by- Parliamentary legislation or rules made by Supreme Court.
3. Deciding authority regarding election of President and Vice President
4. Enquiring authority in conduct and behavior of UPSC members
5. Withdraw cases pending before high courts and dispose them itself
6. Appointment of ad hoc judges-Art 127 states that if at any time there is lack of quorum of Judges of Supreme Court, the CJI may with previous consent of the President and Chief Justice of High Court concerned request in writing the attendance of Judge of High Court duly qualified to be appointed as Judge of SC.
7. Appointment of retired judges of Supreme court or high court - Art 128- The CJI at any time with the previous consent of the President and the person to be so appointed can appoint any person who had previously held office of a Judge of SC.
8. Appointment of acting Chief Justice- Art 126- when the office of CJI is vacant or when the Chief Justice is by reason of absence or otherwise unable to perform duties of office, the President in such case can appoint Judge of the court to discharge the duties of office.
9. Reviser Jurisdiction: The Supreme Court under Art. 137 are empowered to review any judgment or order made by it with a view to removing any mistake or error that might have crept in the judgment or order.
10. Supreme Court as a Court of Record. The Supreme Court is a court of record as its decisions are of evidentiary value and cannot be questioned in any court.

**Removal of Supreme Court Judge:**

A judge of Supreme Court can be removed only from the office by the President on the basis of a resolution passed by both the Houses of Parliament with a majority of the total membership and a majority of not less than two-thirds of the members present and voting in each house, on the grounds of proved misbehavior or incapacity of the judge in question.

Hence, a democratic country like India needs a judiciary because democratic values tend to lose their prominence without proper checks and balances.

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### **Tenure of Judges**

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

- a. He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.
- b. He can resign his office by writing to the President.
- c. He can be removed from his office by the President on the recommendation of the Parliament.

### **Removal of Judges**

A judge of the Supreme Court can be removed from his office by an order of the President. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.

The address must be supported by a special majority of each House of Parliament (i.e., a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two—proved misbehavior or incapacity. The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:

No judge of the Supreme Court has been impeached so far. Impeachment motions of Justice V Ram swami (1991–1993) and the Justice Deepak Mishra (2017-18) were defeated in the Parliament.

### **Salaries and Allowances**

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

### **Acting Chief Justice**

The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:

The office of Chief Justice of India is vacant; or

The Chief Justice of India is temporarily absent; or

The Chief Justice of India is unable to perform the duties of his office.

### **Ad hoc Judge**

When there is a lack of quorum of the permanent judges to hold or continue any session of the Supreme Court, the Chief Justice of India can appoint a judge of a High Court as an ad hoc judge of the Supreme Court for a temporary period. He can do so only after consultation with the Chief Justice of the High Court concerned and with the previous consent of the President.

The judge so appointed should be qualified for appointment as a judge of the Supreme Court. It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his office. While so attending, he enjoys all the jurisdiction, powers and privileges (and discharges the duties) of a judge of the Supreme Court

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### **Retired Judges**

At any time, the CJI can request a retired judge of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period. He can do so only with the previous consent of the President and also of the person to be so appointed.

Such a judge is entitled to such allowances as the President may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of the Supreme Court. But, he will not otherwise be deemed to be a judge of the Supreme Court.

### **Procedure of Court**

The Supreme Court can, with the approval of the President, make rules for regulating generally the practice and procedure of the court.

The Constitutional cases or references made by the President under Article 143 are decided by a Bench consisting of at least five judges. All other cases are usually decided by a bench consisting of not less than three judges. The judgments are delivered by the open court. All judgments are by majority vote but if differing, then judges can give dissenting judgments or opinions.

### **Independence of Supreme Court**

The Supreme Court is a Federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution.

Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament). It should be allowed to do justice without fear or favor.

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

- a. Mode of appointment
- b. Security of tenure
- c. Fixed service conditions
- d. Expenses charged on the consolidated fund
- e. Conduct of judges cannot be discussed
- f. Ban on practice after retirement
- g. Power to punish for its contempt
- h. Freedom to appoint its staff
- i. Its jurisdiction cannot be curtailed
- j. Separation from Executive

### **Jurisdiction and Powers of Supreme Court**

#### **A Court of Record**

As a Court of Record, the Supreme Court has two powers:

- a. The judgments, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court.
- b. They are recognized as legal precedents and legal references.
- c. It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to 2,000 or with both.

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**Jurisdiction (Articles 141, 137)**

Articles 137 to 141 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. Art 141, states that Law declared by Supreme Court is binding on all the courts in India and Art 137 empowers SC to review its own judgment. The Jurisdiction of the Supreme Court of India can broadly be categorized into three parts:

**Original Jurisdiction (Art 131)**

This jurisdiction extends to cases originating in SC only and states that Indian SC has original and exclusive jurisdiction in cases between:

Government on one hand and one or more states on the other Government and one or more states on one side and other states on the other two or more states

**Appellate Jurisdiction (Art 132,133,134)**

Appeal lies with SC against high court in following 4 categories

- a. **Constitutional matters**-if high court certifies that the case involves substantial question of law that needs interpretation of constitution.
- b. **Civil matters**- if case involves substantial question of law of general importance
- c. **Criminal matters**-if high court has on appeal reversed the order of acquittal of an accused and sentenced him to death or has withdrawn for trial before itself any case from subordinate court
- d. **Special leave to appeal is granted by SC** if it is satisfied that the case does not involve any question of law. However it cannot be passed in case of judgment passed by a court or tribunal of armed forces.

However, under this jurisdiction SC can transfer to itself cases from one or more high courts if it involves question of law in the interest of justice.

**Advisory Jurisdiction (Art 143)**

The Article 143 authorizes the President to seek advisory opinion from the Supreme Court in the two categories of matters-(a) matters of public importance (b) of any question arising out of pre-constitution, treaty, agreement, engagement, sanad or other similar instruments. Also Art 144 states that all the authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

**Power of Judicial Review**

Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violating of the Constitution (ultra-vires), they can be declared as illegal, unconstitutional and invalid (null and void) by the Supreme Court. Consequently, they cannot be enforced by the Government.

**Recent issues in Supreme Court**

Master of Roster: It refers to the privilege of the Chief Justice to constitute Benches to hear cases. The controversy has emerged in the Supreme Court over absolute power of Chief Justice on the judicial administration. The SC has upheld a number of times that “the Chief Justice is the master of the roster and he alone has the prerogative to constitute the Benches of the Court and allocate cases to the Benches so constituted.”

Be it the Chief Justice of India or Chief Justice of any high court it is he or she who heads



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the administrative side. This includes allocation of matters before a judge as well. So, no Judge can take up the matter on his own, unless allocated by the Chief Justice of India.

**UNIT - V  
THE CHIEF MINISTER**

**Governor**

**Powers of State Governor in Indian Constitution**

Article 157 in The Constitution of India 1949 says that no person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty five years. Governor is also the chief executive head of the state, who exercises his function in accordance with the advice of council of ministers of the state concerned. In addition to this, the governor holds dual role as he functions as an agent of central government also.

Article 157 in The Constitution of India 1949 says that no person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty five years. Governor is also the chief executive head of the state, who exercises his function in accordance with the advice of council of ministers of the state concerned. In addition to this, the governor holds dual role as he functions as an agent of central government also.

Under Article 153 there shall be Governor of each state and also nothing in this article shall prevent the appointment of the same person to be appointed as Governor of two or more states. The executive power of the state shall be vested in the Governor and shall be exercised by him directly or through officers subordinate to him.

**Appointment of Governor**

**Qualification for Appointment as Governor (Article 157).**

The constitution has laid down the following qualifications to be appointed as Governor:

- a. No person shall be eligible to be appointed as Governor unless he is a citizen of India
- b. He should have completed the age of 35 years.
- c. He should be such a person who is outside the state so as to not indulge in local politics
- d. When the same person is appointed as Governor for 2 or more states, the emoluments and allowances payable to the Governor shall be allocated among the states in such a manner as the President by order determine.
- e. The emoluments and allowances of the Governor shall not be diminished during his term of office.

**Powers of Governor**

The Governor of the state shall possess executive, legislative, financial and judicial powers. But he does not possess diplomatic, military or emergency powers which President of India has the powers and functions of Governor can be classified under following heads:

- a. Executive powers
- b. Legislative powers
- c. Financial powers
- d. Judicial powers

**Executive Powers**

As stated above the executive powers refer to those powers which are exercised by the council of ministers in the name of Governor. Hence Governor is only nominal head and council of ministers is the real executive. The following posts are appointed by Governor and hold office during his term: Chief Minister of the state, other ministers of the state on the advice of Chief Minister, Advocate General. He can recommend the imposition of constitutional emergency in a state to the President. During the period of President's rule in a state, the

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governor enjoys extensive executive powers as an agent of the President.

**Legislative Powers:**

This power of Governor can be classified further in to 2 sub-groups i.e. writ to bills and writ legislature.

**With Respect to Bills**

When a bill other than money bill is presented before Governor for his assent, he either gives assent to the bill, with hold his assent to the bill, return the bill for reconsideration of houses, but if the bill is passed again by state legislature with or without amendments, he has to give his assent or reserve the bill for consideration of President.

However, the Governor also cannot send money bill back for reconsideration. This is because the money bill would usually be introduced with prior assent of Governor only. In case the money bill reserved for Presidents assent, the President has to state whether he is giving assent or withholding his assent.

**With Respect to Legislature:**

He has the power to summon, prorogue the state legislature and can also dissolve the legislative assembly when it loses the confidence (art 176).

**Financial Powers**

- a. He lies before the legislature annual financial statement (state budget)
- b. Money bill can only be introduced in state legislature on his prior recommendation
- c. No demand for grant can be made except on his recommendation
- d. Money from contingency fund can be withdrawn after his recommendation for meeting the unforeseen expenditures
- e. He constitutes finance commission for every 5 years to review the financial situation of municipality and panchayats.

**Judicial Powers**

President consults the Governor of the concerned state while making appointment to the judges of State High Court.

**Pardoning powers**

He has the below pardoning powers against any offences to which state power extends.

- **Pardon**- completely absolve the offender
- **Reprieve**- stays on execution of sentence
- **Respite**-awarding lesser punishment in some special circumstances
- **Remission**- reduction of sentence without changing the character
- **Commutation**-substitution of one form with other

**Discretionary Powers**

**Ordinance making power**

**Removal of Governor**

The President in effect of central government has the power to remove the governor of any state at any time even without giving any reasons for his removal.

However this power cannot be exercised in arbitrary manner. It is to be exercised in

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rare and exceptional circumstances for valid and compelling reasons.

The mere reason that Governor is at variance with the policies and ideologies of the central government or central government has lost confidence in him cannot be the reason for his removal.

Change in central government cannot be the reason for his removal.

The decision to remove a Governor can be challenged in any court of law. The court in any case required can ask the central government to produce the materials on the basis of which the decision was made to verify the presence of compelling reasons.

### **CHIEF MINISTER**

As a real executive authority, the Chief Minister is called the head of the government. He is assisted by his council of ministers who are a part of state executive along with Governor and Advocate-General of State. Similar to Prime Minister who is the head of the government at the center, the Chief Minister is the head of the government at the state level.

#### **Who is called a Chief Minister?**

He is the head of the state government. While the governor is the nominal executive of the state government, the person who becomes the chief minister is the real executive of the government. The real executive is called 'de facto' executive that means, 'in fact, whether by right or not.'

#### **How is a Chief Minister appointed?**

Just like the Prime Minister, provisions of whose appointment are not mentioned in the Indian Constitution, Chief Minister's appointment particulars are not mentioned in the Constitution. According to Article 164 in the Indian Constitution, Governor appoints Chief Minister. However, the Governor cannot appoint any random person as the Chief Minister but has to follow a provision.

A leader of the party that has got the majority share of votes in the assembly elections is appointed as the Chief Minister of the state.

#### **Note:**

When no party gets a majority in the elections, governor exercises his own discretion and appoints a Chief Minister accordingly.

In a case where no party has won the majority votes, Governor appoints the member of the largest party or one from the coalition (if occurs) as the Chief Minister and then he is given 1 month time to prove confidence in the house.

If the incumbent dies in the office, Governor at his own discretion can appoint a Chief Minister however, the ruling party nominates a member and Governor usually appoints that person as the Chief Minister. This person then has to prove confidence within a specified time.

A person not belonging to either house (Legislative Assembly & Council) can also be appointed as the Chief Minister; however, within six months of his tenure as a CM he should be elected to either house without which he ceases to be a CM.

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Chief Minister can belong to any house in the State Legislature.

**What is the term of Chief Minister's office?**

Aspirants should clearly understand that the term of Chief Minister is not fixed and he holds his office during the pleasure of the governor.

**Note:**

- a. The Governor cannot remove him any time.
- b. The Governor cannot even dismiss him till the time he enjoys the support of the majority of the house.
- c. When CM loses his majority support, he has to resign and the Governor dismisses him then.

**What is the main function of the Chief Minister?**

The CM of the state performs functions in relation to the different categories of people:

- a. In relation to the Council of Ministers
- b. In relation to the Governor
- c. In relation to the State Legislature

Other than that, he also performs the following functions:

- a. He chairs the State Planning Board
- b. He is a vice-chairperson of the concerned zonal council by rotation, holding that office for a period of one year at a time
- c. He is a member of Inter-State Council and National Development Council which are headed by the Prime Minister.

**In Relation to the Council of Ministers**

The Chief Minister is the head of the state council of ministers. He performs the following functions:

- a. He recommends to the Governor on who to appoint as ministers
- b. He designates or reshuffles the portfolios of the ministers
- c. He can ask a minister to resign
- d. Meeting of the council of ministers is headed by him
- e. All activities of the ministers are guided and controlled by the Chief Minister
- f. If he resigns, the entire council of ministers collapses.

**Note:** If the CM dies (or resigns), the council automatically dissolves.

**In Relation to the Governor**

In relation to the governor, the Chief Minister performs the following functions:

- a. All the activities, decisions that are taken up by the council of ministers are communicated to the governor by the chief minister
- b. To report to the governor, information about the administrative affairs if and when asked by the governor
- c. If any minister has decided on any issue, the same has to be reported to the Governor by the Chief Minister when the same has not been considered by the council.

He gives his advice to the governor for the appointment of the following persons:

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- a. Advocate-General
- b. Chairman of state public service commission
- c. The state election commission, etc

**In Relation to the State Legislature**

He is the leader of the house and holding this position, he performs the following functions:

- a. Before a governor prorogues and summons the sessions of the state legislature, Chief Minister's advice is a must
- b. Legislative Assembly can be dissolved at any time on his recommendation to the governor
- c. All government policies are announced by him on the floor of the house.

**Chief Minister and the Governor**

The relationship between the Chief Minister of the state and the state's Governor has always been in the news. The debate on the authority of the respective posts has made the rounds throughout. IAS aspirants will understand the dynamics shared by the CM and the Governor by following the details given below:

**Article 163**

The Governor is advised by the council of ministers which is headed by the Chief Minister.

**Note:** When the Governor acts at his own discretion, no advice is needed by the council

**Article 164**

The Governor appoints the Chief Minister and later the Chief Minister recommends the Governor on the appointment of ministers

**Article 167**

The Chief Minister has to communicate all the administrative decisions that are taken up by him and the council of ministers to the Governor

**Who is State Council of Ministers?**

The State Council of Ministers is similar to the Central Council of Ministers. The state council is headed by the Chief Minister. The council comprises ministers appointed by the governor on the recommendation of the CM.

**How is the Council of Ministers appointed?**

They are appointed by the Governor on the advice of the CM. The Governor also appoints a tribal affairs minister for the following states:

1. Chattisgarh
2. Jharkhand
3. Madhya Pradesh
4. Odisha

**Note:** Bihar was also one of the states to have tribal affairs minister; however, 94th Amendment Act 2006 freed Bihar from this obligation.

**Composition of Council of Ministers**

The size of the council is not mentioned in the Indian Constitution. Chief Minister decides the

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size and the rank of the ministers as per the requirement in the State Legislature.

There are three categories of Council of Ministers:

1. Cabinet Ministers
2. Ministers of State
3. Deputy Ministers

### **Collective Responsibility**

The provision of collective responsibility is dealt by the Article 164. The Article mentions that the council of ministers is collectively responsible to the state legislature. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission.

### **Note:**

When the legislative assembly passed a no-confidence motion against the council, all the ministers of the council have to resign including those belonging to Legislative Council too. The council of ministers can advise the governor to dissolve the legislative assembly on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The governor may not oblige the council of ministers which has lost the confidence of the legislative assembly.

### **Articles related to State Council of Ministers**

The following articles of the Indian Constitution are important to be read by the aspirants for UPSC 2020. These articles are attached with council of ministers. Refer to these in the table given below:

**Articles 163-** Council of Ministers to aid and advice Governor

**Articles 164-** Other provisions as to Ministers

**Articles 166-** Conduct of business of the Government of a State

**Articles 167-** Duties of Chief Minister as respects the furnishing of information to Governor, etc

## **STATELEGISLATURE**

### **Organization, Powers and Limitations on the Powers of State Legislature**

#### **I. State Legislature:**

The Constitution of India provides for a legislature in each State and entrusts it with the responsibility to make laws for the state. However, the composition of a state Legislature can be different in different states. It can be either bicameral or unicameral. Presently, only six states (Andhra Pradesh, Bihar, J&K, Karnataka Maharashtra and UP) have bi-cameral legislatures. Twenty two States and Two Union Territories (Delhi and Pondicherry) have unicameral Legislatures.

In case of a bicameral state legislature, the upper house is known as State Legislative Council (Vidhan Parishad) and the lower house as the State Legislative Assembly (Vidhan Saba). Where there is only one House of the State Legislature, it is known as the State Legislative Assembly. Orissa has a unicameral legislature with Orissa Legislative Assembly as its all powerful house.

#### **(I) Method of Abolition or Creation of a State Legislative Council:**

The power to establish or abolish the Legislative Council in a state belongs to the Union Parliament. It can do it by enacting a law. The Parliament, however, acts when the Legislative Assembly of the concerned state passes a desired resolution by a majority of its total

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membership and by a majority of not less than two-thirds of the members of the State Legislative Assembly present and voting.

**Organization of a State Legislature:**

**Composition of the State Legislative Assembly (Vidhan Saba):**

The State Legislative Assembly, popularly known as Vidhan Saba, is the lower, directly elected, popular and powerful house of the state legislature. Its membership is in proportion to the population of the state and hence it differs from state to state. The members are directly elected by the people of the state through a secret ballot, simple majority vote victory and single member territorial constituency system. Orissa Legislative Assembly has 147 members.

A citizen of India, who is not less than 25 years of age and who fulfills every other qualification as laid down by a law can become its member by winning an election from any constituency in the state. However, no person can simultaneously be a member of two Houses of the Parliament or of any other State Legislature.

The normal term of Legislative is 5 years. However, it can be dissolved by the Governor at any time. It can be suspended or dissolved when an emergency under Art. 356 are proclaimed in the state. In May 2009, in the Orissa Legislative Assembly elections the BJD won 103 seats while the Congress got 26, the BJP 6 and independents and other 12 seats.

**(B) Composition of State Legislative Council:**

At present only 6 States - Andhra Pradesh, UP, Maharashtra, Karnataka, J&K and Bihar— have Legislative Councils. The popular name of the State Legislative Council is VidhanParishad. The total membership of a Legislative council cannot be normally less than 40 and more than 1/3rd of the total membership of the State Legislative Assembly.

Andhra Pradesh VidhanParishad has 90 members UP VidhanParishad 100, Maharashtra VidhanParishad 78, J&K VidhanParishad 36, Bihar VidhanParishad 75 and Karnataka VidhanParishad 75 members. The membership of VidhanParishad includes elected as well as nominated representatives from several types of constituencies.

The following formula is used:

- a. 1/3<sup>rd</sup> members are elected by the members of State Legislative Assembly.
- b. 91/3<sup>rd</sup> members are elected by local bodies of the state.
- c. 1/12<sup>th</sup> members are elected by teachers of at least three years standing, serving educational institutions of the state.
- d. 1/12<sup>th</sup> members are elected by state university graduates of not less than three years-standing.
- e. 1/6<sup>th</sup> members are nominated by the Governor of the state.

Any citizen of India who is not less than 30 years of age, who possesses all the qualifications as lay down by the Parliament, who is not a member of any other legislature or Union Parliament can become a member of the State Legislative Council either by winning an election or by securing Governor's nomination. Legislative council is a semi-permanent House. It is never dissolved as a whole. 1/3rd of its members retire after every 2 years. Each member has a term of 6 years.

**Powers and Functions of a State Legislature:**



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Each State Legislature exercises law-making powers over the subjects of the State List and the Concurrent List. In case a state has a unicameral legislature, i.e., in case it has only State Legislative Assembly, all the powers are exercised by it. However, even in case it is a bicameral state legislature with state Legislative Council (Vidhan Parishad) as the upper house and state Legislative Assembly as the lower house, almost all the powers are exercised by the latter. The Legislative Council plays only a secondary and minor role.

**Powers of State Legislature:**

**1. Legislative Powers:**

The State Legislature can make laws on the subjects of the State List and the Concurrent List. It can enact any bill on any subject of State List, which becomes an Act with the signatures of the Governor. Normally, the Governor acts as a nominal and constitutional head and as such follows the advice of the State Chief Minister and his Council of Ministers.

However, he can reserve some bills passed by the State Legislature for the approval of the President of India. Further, in case a law made by the State Legislature on a concurrent subject comes into conflict with a Union Law on the same subject, the latter gets precedence over the former. In ordinary law-making, both the Houses (Legislative Assembly and Legislative Council wherever these exist together) have co-equal powers. In practice the Legislative Assembly dominates the law-making work. Most of the non-money ordinary bills are introduced in the Legislative Assembly and it plays a major role in their passing. The Legislative Council acts only as a revising and delaying second chamber.

A bill passed by the Legislative Assembly and rejected by the Legislative Council or not decided upon by the latter within 3 months, when re-passed by the Legislative Assembly becomes an Act after the expiry of one month from the date on which it was sent to the Legislative Council a second time.

A bill first passed by the Legislative Council becomes an Act only when it gets the approval of the Legislative Assembly. Thus, Legislative Council can only delay the passing of an ordinary bill by a maximum of 4 months. In case the State Legislature is a unicameral body, all the law-making powers are exercised by the Legislative Assembly.

**2. Financial Powers:**

The State Legislature has the power to levy taxes in respect of all subjects of the State List. It is the custodian of the finances of the state. No revenue can be collected or tax can be levied or collected by the state government without the consent of the State Legislature. The budget and all other financial policies and programmes of the state government become operational only after getting an approval from the State Legislature.

However, in emergencies declared under Articles 352, or 356 or 360, the financial powers of the state become subordinate to the Union. When the state is under a constitutional emergency (Art. 356), the State Legislature stands either suspended or dissolved. In this situation, the financial powers for the state are exercised by the Union Parliament.

When a State Legislature is unicameral, all the financial powers are naturally exercised by the Legislative Assembly. However, even when it is bi-cameral, the real financial powers are in the hands of the Legislative Assembly. A money bill can be introduced only in the Legislative Assembly and after passage it goes to the Legislative Council.

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The latter can delay its passage for only 14 days. In case, it rejects or amends the bill, the decision of the Legislative Assembly prevails. When the Legislative Council returns a financial bill to the Legislative Assembly with some amendments, it is the power of the Legislative Assembly to accept or reject these. Thus, in respect of financial powers, the real authority is in the hands of the State Legislative Assembly.

**3. Power to control the Executive:**

Control over the State Council of Ministers is exercised by the State Legislative Assembly. Little role has been assigned to the State Legislative Council. The State Chief Minister is the leader of majority in the State Legislative Assembly. The State Council of Ministers is collectively responsible before the Legislative Assembly.

The latter can cause the fall of the ministry by passing a vote of no-confidence or by rejecting a bill or policy or budget sponsored by the Council of Ministers. The State Legislative Council can exercise only a limited control over the ministry by putting questions and supplementary questions to the ministers.

**4. Other Powers:**

The State Legislature, particularly its Legislative Assembly, exercises several other powers. The elected members of the Legislative Assembly (MLAs) participate in the election of the President of India. They also elect representatives of the state in the Rajya Saba. Certain constitutional amendments can be made by the Union Parliament only with the ratification by at least half of the State Legislatures.

The State Legislature considers the reports of the State Public Service Commission, State Auditor General, and others. It also acts as a forum for ventilation of the grievances of the people. The State Legislative Assembly has the right of adopting a resolution for the creation or abolition of the State Legislative Council.

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**Position of a State Legislature:**

The State Legislature occupies the same position in a state as is the position of the Parliament in the Union. There is, however, a difference of degree in their relative powers. Indian Unitarian Federalism makes the Union Parliament more powerful than each state legislature. Further, there are several specific limitations on the powers of a state legislature.

**Some Limitations on the Powers of State Legislature:**

**Prior consent of the President of India for introduction of some Bills:**

There are certain bills which can be introduced in a state legislature only with the prior consent of the President of India.

**Reservation of bills by the Governor for President's Assent:**

There are certain bills, which after having been passed by the state legislature, can be reserved by the Governor for the consent of the President. Such bills become laws only after the President has given his assent.

**Limitation that can be imposed by the Rajya Saba:**

The Union Parliament gets the power to pass laws on the State List, (for one year) if the Rajya Saba adopts a resolution (supported by 2/3rd majority of the members present and voting) and declares a state subject mentioned in the resolution as a subject of national importance.

**Limitations during National Emergency:**

When a national emergency (Under Art. 352) is in operation, the Parliament is empowered to pass a law on any subject of the State List. The law so passed operates during the period of emergency and for six months after the end of the emergency.

**Limitations during a Constitutional Emergency:**

During the operation of constitutional emergency in a state under Art 356, the Union Parliament gets the authority of making laws for that state. The State Legislature stands either dissolved or suspended.

**Discretionary Powers of the Governor:**

Discretionary powers of the Governor of a state also constitute a limitation on the State Legislature. Whenever he acts in his discretion, he is beyond the jurisdiction of the State Legislature. Acting in his discretion, the Governor can even dissolve the State Legislative Assembly.

**Precedence of Union Laws on the Concurrent Subject:**

The State Legislature and the Union Parliament, both have the concurrent power to make laws on the subjects of the Concurrent List. If both the Union Parliament and a State Legislature pass a law on the same subject of the Concurrent List and there is inconsistency between the two, the law passed by the Union Parliament gets precedence over the corresponding state law.

Thus each State Legislature in India exercises law-making powers over the subjects given to it by the Constitution. However, even in respect of these, it exercises law-making powers under the above constitutional limitations. Nevertheless in general the State Legislatures act as important and powerful legislatures in all the 28 States and 2 Union

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Territories of India.

There are overall, 4,121 legislative assembly seats in States and Union Territories of India. Andhra Pradesh abolished its legislative council in 1984, but has set up new legislative Council following elections in 2007.

### **High Court**

In the Indian single integrated judicial system, the high court operates below the Supreme Court but above the subordinate courts. The judiciary in a state consists of a high court and a hierarchy of subordinate courts. The high court occupies the top position in the judicial administration of a state.

The institution of high court originated in India in 1862 when the high courts were set up at Calcutta, Bombay and Madras<sup>1</sup>. In 1866, a fourth high court was established at Allahabad. In the course of time, each province in British India came to have its own high court. After 1950, a high court existing in a province became the high court for the corresponding state.

The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorized the Parliament to establish a common high court for two or more states or for two or more states and a union territory. The territorial jurisdiction of a high court is co-terminus with the territory of a state. Similarly, the territorial jurisdiction of a common high court is co-terminus with the territories of the concerned states and union territory. At present, there are 24 high courts in the country. Out of them, three are common high courts. Delhi is the only union territory that has a high court of its own (since 1966). The other union territories fall under the jurisdiction of different state high courts. The Parliament can extend the jurisdiction of a high court to any union territory or exclude the jurisdiction of a high court from any union territory.

The name, year of establishment, territorial jurisdiction and seat (with bench or benches) of all the 24 high courts. Articles 214 to 231 in Part VI of the Constitution deal with the organization, independence, jurisdiction, powers, and procedures and so on of the high courts.

### **Organization of High Court**

Every high court (whether exclusive or common) consists of a chief justice and such other judges as the president may from time to time deem necessary to appoint. Thus, the Constitution does not specify the strength of a high court and leaves it to the discretion of the president. Accordingly, the President determines the strength of a high court from time to time depending upon its workload.

### **Judges**

Judges of a high court are appointed by the President. The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned. For appointment of other judges, the chief justice of the concerned high court is also consulted. In case of a common high court for two or more states, the governors of all the states concerned are consulted by the President.

In the Second Judge's case (1993), the Supreme Court ruled that no appointment of a judge of the high court can be made, unless it is in conformity with the opinion of the chief

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justice of India. In the Third Judges case (1998), the Supreme Court opined that in case of the appointment of high court judges, the chief justice of India should consult a collegiums of two senior-most judges of the Supreme Court. Thus, the sole opinion of the chief justice of India alone does not constitute the 'consultation' process.

### **Qualifications of Judges**

A person to be appointed as a judge of a high court, should have the following qualifications:

1. He should be a citizen of India.
2. He should have held a judicial office in the territory of India for ten years; or He should have been an advocate of a high court (or high courts in succession) for ten years.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of a high court. Moreover, unlike in the case of the Supreme Court, the Constitution makes no provision for appointment of a distinguished jurist as a judge of a high court.

### **Oath or Affirmation**

A person appointed as a judge of a high court, before entering upon his office, has to make and subscribe an oath or affirmation before the governor of the state or some person appointed by him for this purpose. In his oath, a judge of a high court swears:

1. To bear true faith and allegiance to the Constitution of India;
2. To uphold the sovereignty and integrity of India;
3. To duly and faithfully and to the best of his ability, knowledge and judgment perform the duties of the office without fear or favor, affection or ill-will; and
4. To uphold the Constitution and the laws

### **Tenure of Judges**

The Constitution has not fixed the tenure of a Judge of a high court. However, it makes the following four provisions in this regard:

1. He holds office until he attains the age of 62 years<sup>5</sup>. Any questions regarding his age is to be decided by the president after consultation with the chief justice of India and the decision of the president is final.
2. He can resign his office by writing to the president.
3. He can be removed from his office by the President on the recommendation of the Parliament.
4. He vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.

### **Removal of Judges**

A judge of a high court can be removed from his office by an order of the President. The President can issue the removal order only after an address by the Parliament has been presented to him in the same session for such removal. The address must be supported by a special majority of each House of Parliament (i.e., a majority of the total membership of that House and majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two proved misbehavior or incapacity. Thus, a judge of a high court can be removed in the same manner and on the same grounds as a judge of the Supreme Court.

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of a

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high court by the process of impeachment:

- a. A removal motion signed by 100 members (in the case of Lok Saba) or 50 members (in the case of Rajya Saba) is to be given to the Speaker/Chairman.
- b. The Speaker/Chairman may admit the motion or refuse to admit it.
- c. If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
- d. The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.
- e. If the committee finds the judge to be guilty of misbehavior or suffering from incapacity, the House can take up the consideration of the motion.
- f. After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
- g. Finally, the president passes an order removing the judge.

From the above, it is clear that the procedure for the impeachment of a judge of a high court is the same as that for a judge of the Supreme Court.

It is interesting to know that no judge of a high court has been impeached so far.

### **Salaries and Allowances**

The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency. In 2009, the salary of the chief justice was increased from `30,000 to `90,000 per month and that of a judge from `26,000 to `80,000 per month. They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc. The retired chief justice and judges are entitled to 50% of their last drawn salary as monthly pension.

### **Independence of High Court**

The independence of a high court is very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the legislature. It should be allowed to do justice without fear or favor.

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a high court.

1. Mode of Appointment
2. Security of Tenure
3. Fixed Service Conditions
4. Expenses Charged on Consolidated Fund
5. Conduct of Judges cannot be discussed
6. Ban on Practice after Retirement
7. Power to punish for its Contempt
8. Freedom to appoint its Staff
9. Its Jurisdiction cannot be curtailed
10. Separation from Executive

### **Jurisdiction and Powers of High Court**

Like the Supreme Court, the high court has been vested with quite extensive and effective powers. It is the highest court of appeal in the state. It is the protector of the Fundamental Rights of the citizens. It is vested with the power to interpret the

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Constitution. Besides, it has supervisory and consultative roles.

However, the Constitution does not contain detailed provisions with regard to the jurisdiction and powers of a high court. It only lays down that the jurisdiction and powers of a high court are to be the same as immediately before the commencement of the Constitution. But, there is one addition that is the Constitution gives a high court jurisdiction over revenue matters (which it did not enjoy in the reconstitution era). The Constitution also confers (by other provisions) some more additional person a high court like writ jurisdiction, power of superintendence, consultative power, etc. Moreover, it empowers the Parliament and the state legislature to change the jurisdiction and powers of a high court.

**At present, a high court enjoys the following jurisdiction and powers:**

- a. Original jurisdiction.
- b. Writ jurisdiction.
- c. Appellate jurisdiction.
- d. Supervisory jurisdiction.
- e. Control over subordinate courts.
- f. A court of record.
- g. Power of judicial review.

**The present jurisdiction and powers of a high court are governed by**

- a. The constitutional provisions,
- b. The Letters Patent
- c. The Acts of Parliament
- d. The Acts of State Legislature
- e. Indian Penal Code, 1860
- f. Criminal Procedure Code, 1973
- g. Civil Procedure Code, 1908.

**THE CENTRE AND STATE RELATIONS**

**Position of the States in Indian Union:**

**Introduction**

In India, before the formation of the federation the States were not 'sovereign' entities. As such, there was no need for safeguards to protect 'States'. On account of the exigencies of the situation, the Indian federation has acquired characteristics which are quite different from the American model.

The residuary powers under the Indian Constitution are assigned to the Union and not to the States. However, it may be noted that the Canadian Constitution does the same mode of distributing the powers cannot be considered as eroding the federal nature of the Constitution.

Though there is division of powers between the Union and the States, the Indian Constitution provides the Union with power to exercise control over the legislation as well as the administration of the States. Legislation by a State can be disallowed by the President, when reserved by the Governor for his consideration.

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The Governor is appointed by the President of the Union and holds office “during his pleasure”. Again these ideas are found in the Canadian Constitution though not in the Constitution of the U.S.A.

The Constitution of India lays down the Constitution of the Union as well as the States, and no State, except Jammu and Kashmir, has a right to determine its own (State) Constitution.

When considering the amendment of the Constitution we find that except in a few specific matters affecting the federal structure, the States need not even be consulted in the matter of amendment of the Constitution. The bulk of the Constitution can be amended by a Bill in the Union Parliament being passed by a special majority.

In the case of the Indian Constitution, while the Union is indestructible, the States are not. It is possible for the Union Parliament to reorganize the States or to alter their boundaries by a simple majority in the ordinary process of legislation.

The ‘consent’ of the State Legislature concerned is not required; the President has only to ‘ascertain’ the views of the Legislatures of the affected States. The ease with which the federal organization may be reshaped by an ordinary legislation by the Union Parliament has been demonstrated by the enactment of the States Reorganization Act, 1956. A large number of new States have, since, been formed.

Under the Indian Constitution, there is no equality of representation of the States in the Council of States. Hence, the federal safeguard against the interests of the lesser States being overridden by the interests of the larger or more populated States is absent under our Constitution. Its federal nature is further affected by having a nominated element of twelve members against 238 representatives of the States and Union Territories.

**Distribution of powers: Legislative, Administrative and Financial:**

Our Constitution is one of the very few that has gone into details regarding the relationship between the Union and the States. A total of 56 Articles from **Article 245 to 300 in Part XI and XII** are devoted to the State-Centre relations. **Part XI (Articles 245-263)** contains the legislative and administrative relations and **Part XII (Articles 246-300)** the financial relations.

By going into great details of the relations, the Constitution framers hope to minimize the conflicts between the Centre and the states. By and large, the confrontations between the two have been minimal.

The Centre-State relations are divided into three parts, which are mentioned below:

Legislative Relations (**Article 245-255**)

Administrative Relations (**Article 256-263**)

Financial Relations (**Article 268-293**)

**Legislative Relations**

Articles 245 to 255 in Part XI deals with different aspects of legislative relations between Centre and states. These include:

- a. Territorial jurisdiction of laws made by the Parliament and by the Legislatures of States.
- b. Distribution of legislative subjects



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- c. Power of parliament to legislate with respect to a matter in the State List
- d. Centre's control state legislation

However, the Seventh Schedule of the Constitution provides for the distribution of legislative powers between the Centre and the States. The legislative subjects are divided into List I (the Union List), List II (the Concurrent List) and List III (the State List).

At present, there are 100 subjects in the Union list which includes subjects such as foreign affairs, defense, railway, postal services, banking, atomic energy, communication, currency etc.

At present, there are 61 subjects in the State list. The list includes subjects such as police, public order, roadways, health, agriculture, local government, drinking water facilities, sanitation etc.

At present, there are 52 subjects in the concurrent list. The list includes subjects such as education, forests, protection of wild animals and birds, electricity, labor welfare, criminal law and procedure, civil procedure, population control and family planning, drugs etc.

**Article 245** empowers the Centre to give directions to the States in certain cases in regards to the exercise of their executive powers.

**Article 249** empowers the parliament to legislate with respect to a matter in the State List in the national interest.

Under **Article 250**, the parliament becomes empowered to make laws on the matters related to State list when national emergency (under Article 352) is in operation.

Under **Article 252**, the parliament is empowered to legislate for two or more States by their consent.

### **Administrative Relations**

**Article 256 to 263** deals with the administrative relations between the Centre and the states.

**Article 256** states that "the executive power of every State shall be so exercised as to ensure compliance with the laws made by the parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose".

### **Cooperation between the Centre and the States**

The constitution lays down various provisions to secure cooperation and coordination between the Centre and the States. These include:

- I. **Article 261** states that "Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State".
- II. According to **Article 262**, the parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.
- III. **Article 263** empowers the President to establish an inter-State Council to inquire into and advise upon disputes between states, to investigate and discuss

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subjects in which some or all of the States, or the Union and one or more of the States, have a common interest.

- IV. As per **Article 307**, Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of the constitutional provisions related to the inter-state freedom of trade and commerce.

#### **Centre-State Relations during Emergency**

During a national emergency (**under Article 352**), the state government become subordinate to the central government. All the executive functions of the state come under the control of the union government.

During a state emergency (**under Article 356**), the President can assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or authority in the State other than the Legislature of the State. During the operation of financial emergency (**under Article 360**), the Union may give directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

#### **Financial Relations**

The Constitution deals with the Centre-state financial relations in **Article 268-293 of Part XII**.

Allocation of taxing powers

The Constitution has provided the union government and the state governments with the independent sources of revenue. It allocates the powers to Centre and the states in the following way:

- I. The parliament has exclusive power to levy taxes on the subjects mentioned in the Union List.
- II. The State Legislatures has exclusive power to levy taxes on the subjects mentioned in the State List
- III. Both the parliament and the state legislature are empowered to levy taxes on the subjects mentioned in the Concurrent List.
- IV. The parliament has exclusive power to levy taxes on the matters related to the residuary subjects.

However, in case of tax revenue distribution

**Article 268** states that duties are levied by the Union but are collected and appropriated by the States.

**Article 268-A** Service tax levied by Union and collected and appropriated by the Union and the States

**Article 269** Taxes levied and collected by the Union but assigned to the States.

**Article 270** Taxes levied and collected by the Union but distributed between the Union and the States.

Surcharge on certain duties and taxes for purposes of the Union (**Article-271**).

Under **Article 275**, the parliament is authorized to provide grants-in-aid to any state as parliament may deem terminal to be in need of assistance, and different sums may be fixed for

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different States.

Under **Article 282**, the union or a state may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

Under **Article 352**, during the operation of national emergency, the distribution of revenues between the Centre and the States can be altered by the president.

Under **Article 360**, During the financial emergency, the executive authority of the Union shall give directions to any State to observe such canons of financial propriety as may be specified in the directions and to the give the directions as the President may deem necessary and adequate for the purpose.

The important recommendations of the first administrative reforms commission related to the Centre-State relations are:

Establishment of an Inter-state council under Article 263

1. Decentralization of powers to the states as much as possible
2. More transfer of financial resources to the states
3. Arrangements for devolution in such a way that the states can fulfill their obligations
4. Advancement of loans to states should be related to as 'the productive principle'.
5. Deployment of central armed forces in the states either on their request or otherwise

During state emergency, under Article 356, President's Rule can be imposed in event of the failure of constitutional machinery in a state.

## **ELECTION COMMISSION**

**Headquarters Nirvachan Sadan, Asoka Road, New Delhi**

This article is about the body which oversees elections in India. For similar bodies in other jurisdictions, see Election commission. Not to be confused with Election Commissioners of India. The Election Commission of India is an autonomous constitutional authority responsible for administering election processes in India at national, state and district level. The body administers elections to the Lok Saba, RajyaSaba State Legislative Assemblies, State Legislative Councils, and the offices of the President and Vice President of the country. The Election Commission operates under the authority of Constitution per Article 324, and subsequently enacted Representation of the People Act. The commission has the powers under the Constitution, to act in an appropriate manner when the enacted laws make insufficient provisions to deal with a given situation in the conduct of an election. Being a constitutional authority, Election Commission is amongst the few institutions which function with both autonomy and freedom, along with the country's higher judiciary, the Union Public Service Commission and the Comptroller and Auditor General of India.

### **Structure**

The commission was established in 1950 and originally only had a Chief Election Commissioner. Two additional Commissioners were appointed to the commission for the first time on 16 October 1989 (on the eve of the 1989 General Election), but they had a very short tenure, ending on 1 January 1990. "The Election Commissioner Amendment Act, 1989" was adopted on 1 January 1990 which turned the commission into a multi-member body: a 3-member Commission has been in operation since then and the decisions by the commission are

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made by a majority vote. The Chief Election Commissioner and the two Election Commissioners who are usually retired IAS officers draw salaries and allowances at par with those of the Judges of the Supreme Court of India as per the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Rules, 1992.

The commission is served by its secretariat located in New Delhi. The Election Commissioners are assisted by Deputy Election Commissioners, who are generally IAS officers. They are further assisted by Directors General, Principal Secretaries, and Secretaries and Under Secretaries.

At the State level, Election Commission is assisted by the Chief Electoral Officer of the State, who is an IAS officer of Principal Secretary Rank. At the district and constituency levels, the District Magistrates in their capacity as District Election Officers), Electoral Registration Officers and Returning Officers perform election work.

### **Types of Elections**

Elections in the Republic of India include elections for:

1. Members of the Parliament in Lok Saba,
2. Members of State Legislative Assemblies,
3. Members of the Parliament in Rajya Saba,
4. Members of State Legislative Councils,
5. Members in village panchayats or city corporation councils.

By-election is held when a person of a particular constituent dies, resigns, or is disqualified.

### **General Elections (Lok Saba)**

Members of Lok Saba (House of the People) or the lower house of India's Parliament are elected by being voted upon by all adult citizens of India, from a set of candidates who stand in their respective constituencies. Every adult citizen of India can vote only in their constituency. Candidates who win the Lok Saba elections are called 'Member of Parliament' and hold their seats for five years or until the body is dissolved by the President on the advice of the council of ministers. The house meets in the Lok Saba Chambers of the Sansad Bhavan in New Delhi, on matters relating to creation of new laws, removing or improving the existing laws that affect all citizens of India. Elections take place once in 5 years to elect 545 members for the Lok Saba (Lower house).

### **State Assembly (Vidhan Saba) Elections**

Members of State Legislative Assembly are elected directly by voting, from a set of candidates who stands in their respective constituencies. Every adult citizen of India can vote only in their constituency. Candidates who win the State Legislative Assemblies elections are called 'Member of Legislative Assembly' (MLA) and hold their seats for five years or until the body is dissolved by the Governor. The house meets in the respective state, on matters relating to creation of new laws, removing or improving the existing laws that affect all citizens living in that state.

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Total strength of each assembly depends on each State, mostly based on size and population. Similar to Lok Saba elections, leader of the majority party/alliance takes oath as the Chief Minister of the State.

### **By-election**

As the name suggests, when an elected candidate to the State Assembly, Rajya Saba or Lok Saba leaves the office vacant before their term ends, an election is conducted to find a suitable replacement to fill the vacant position. It is often referred in India as by polls.

### **Common reasons for by elections:**

Sitting MLA resigns once he gets elected as MP.

Sitting MLA or MP died.

But there are other reasons that occur when the incumbent becomes ineligible to continue in office (criminal conviction, or failure to maintain a minimum attendance in the office or due to election irregularities found later. Also, when a candidate has won more than one seat, they have to vacate one.)

### **Rajya Saba (Upper House) Elections**

The Rajya Saba, also known as the Council of States, is the upper house of India's Parliament. Candidates are not elected directly by the citizens, but by the Members of Legislative Assemblies and up to 12 can be nominated by the President of India for their contributions to art, literature, science, and social services. Members of the Parliament in Rajya Saba get tenure of six years, with one-third of the body facing re-election every two years. Rajya Saba acts as a second-level review body before a bill becomes an act.

The Vice President of India is the ex-officio Chairman of the Rajya Saba, who presides over its sessions.

The Legislative proposals (making new laws, removing or appending new conditions to the existing law) are brought before either house of the Parliament in the form of a bill. A bill is the draft of a legislative proposal, which, when passed by both the houses of Parliament (Lok Saba and Rajya Saba) and assented to by the President, becomes an Act of Parliament.

The Constitution of India however places some restrictions on the Rajya Saba which makes the Lok Saba more powerful in certain areas. For example, it stipulates that Money bills must originate in the Lok Saba.

Members of Rajya Saba debate bills sent by the Lok Saba and can approve, reject or send the bill back to the Lok Saba for further debate and discussion on the matter, as well as to suggest better changes in the drafted bill. Members of Rajya Saba can only make recommendations to the Lok Saba for money bills within 14 days. Even if Rajya Saba fails to return the money bill in 14 days to the Lok Saba, that bill is deemed to have passed by both the Houses. Also, if the Lok Saba rejects any (or all) of the amendments proposed by the Rajya Saba, the bill is deemed to have been passed by both the Houses of Parliament of India in the form the Lok Saba finally passes it.

### **Electoral procedures**

Candidates are required to file their nomination papers with the Electoral Commission. Then, a list of candidates is published. No party is allowed to use government resources for campaigning. No party is allowed to bribe the candidates before elections. The government

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cannot start a project during the election period. Campaigning ends by 6:00 pm two days before the polling day.

The polling is held between 7:00 am and 6:00 pm. The Collector of each district is in charge of polling. Government employees are employed as poll officers at the polling stations. Electronic Voting Machines (EVM) are being used instead of ballot boxes to prevent election fraud. After the citizen votes his or her left index finger is marked with an indelible ink. This practice was instituted in 1962.

Research into an indelible ink was commenced by the Council of Scientific and Industrial Research (CSIR). In the 1950s, M. L. Gael worked on this research at the Chemical Division of the National Physical Laboratory of India. The ink used contains silver nitrate, which makes it photo-sensitive. It is stored in amber colored plastic or brown colored glass bottles. On application, the ink remains on the fingernail for at least two days. It may last up to a month depending upon the person's body temperature and the environment.

#### **Voter Id**

In an effort to prevent electoral fraud, in 1993, EPICs or Electors Photo Identity Cards were issued, which became mandatory by the 2004 elections. However ration cards have been allowed for election purposes in certain situations.

#### **Voting Procedure**

Voting in India is done using Electronic voting machines or EVMs, there is also a provision for the \* Postal voting in India, as well as the special arrangements for the disabled voters.

#### **Electronic voting machines (EVM)**

India has been the first country to adopt Electronic Voting at such a large scale. Electronic voting machines (EVM) were introduced by Election Commission in order to reduce malpractices and improve efficiency. They were tried for the first time on an experimental basis for the 1982 Kerala State Legislative Assembly Elections. After a successful testing and the legal inquiries, the commission took the decision to begin the use of these voting machines.

The introduction of Voter-verified paper audit trail (VVPAT) in eight Lok Saba constituencies in 2014 Indian General Elections was a big achievement for the Election Commission. This Voter-verified paper audit trail (VVPAT) system was first used with EVMs in a by-poll in September 2013 in Noksen (Assembly Constituency) in Nagaland and eventually in all elections from September 2013 onwards in various Legislative elections in the country.

#### **NOTA Voting Symbol in India**

Photo electoral rolls with photographs of the candidates on the EVMs were first introduced in the 2015 Bihar Legislative Assembly election.

In 2014, none of the above or NOTA was also added as an option on the voting machines which is now a mandatory option to be provided in any election. The specific symbol for NOTA, a ballot paper with a black cross across it, was introduced on 18 September 2015. The symbol has been designed by National Institute of Design, Ahmedabad.

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Election Commission organized an open hackathon on 3 June 2017, to attempt hacking of Electronic Voting Machine used by the commission in various Indian elections. The NCP and CPI (M) were the only two parties that registered for the event but none of them participated. Functioning of EVMs and VVPAT machines were demonstrated to the teams.

**Absentee voting**

India does not provide general absentee voting. On 24 November 2010, the Representation of the People (Amendment) Bill 2010 was gazette to give voting rights to non-resident Indians but a physical presence at the voting booth is still required.

**Postal voting**

Postal voting in India is done only through the "Electronically Transmitted Postal Ballot Papers (ETPB)" system of Election Commission of India, ballot papers are distributed to the registered eligible voters who return the votes by post. Postal votes are counted first before the counting of votes from the EVM. Only certain categories of people are eligible to register as postal voters. Employees working in the union armed forces and state police as well as their wives, and those working for the Government of India who are officially posted abroad can register for the postal vote; these are also called the "Service voters". People in preventive detention can use postal vote. Prisoners cannot vote at all.

**Electors with disabilities**

The Election Commission of India came under severe criticism when an RTI application filed by activist Dr.Satendra Singh revealed the commission's ill-preparedness to safeguard electors with disabilities in the 2014 Lok Saba elections. There were many violations of the Supreme Court order from 2014 to enfranchise persons with disabilities.