CONTENT

1. Brief History of Development of Indian Constitution

- After the Victory of plassy in 1757 and Buxur in 1764 by the Birtish army, Bengal administration come under the East India Company.
- To keep Bengal administration in their favour, British enacted many Acts which latter became the foundation of Indian Constitution.
- **The Regulation Act of 1773:** It laid the foundation of a government in Calcutta presidency in which a council of the Governor general established consisting of 4 members. They exercised their powers jointly. The main features of this Act are-
  - Subordination of the Presidencies of Bombay and Madras to that of Bengal.
  - Governor of Bengal made the Governor-General of Bengal.
  - A Supreme Court established at Fort William
  - Parliamentary control over the government of the company.
- **Pitt's India Act, 1784**
  - It reduced the number of members of the Governor General in council from 4 to 3
  - Also established Board of Control for Political affairs.
  - Established Court of Directors for trade affairs
- **Charter Act of 1793**
  - It Provided that the member of Home Govt. (member of board of control and Employees) were in future to be paid salaries from the Indian revenues and not from British Exchequer.
- **Charter Act of 1813**
  - But its monopoly of trade with china and trade in tea with eastern countries was retained
  - It abolished the monopoly of the company's Indian trade and threw open to all British subject under certain regulations.
  - It renewed the company's charter for a further period of 20 years
- **Charter Act of 1833**
  - A Law commission was constituted for consolidating, codifying and improving Indian laws.
  - It reduced the company from a governing body to a mere administrative body of British Govt.
  - Governor General of Bengal made Governor General of India.
  - Complete abolition of company's monopoly over trade
- **Charter act of 1853**
  - This was the last charter Act.
  - The law member became the full member of the Governor General in Council.
  - Strength of the Court of Directors reduced
- **Act of 1858**
  - Indian administration came under direct control of the British crown.
  - A council of 15 members, known as the council of India, was created.
  - Indian administration taken over by British crown.
  - Portfolio system was introduced in Indian.
  - System of double government (introduced by pitt's India Act, 1784) finally abolished
- **Indian Council Act, 1861**
  - Govermor General was empowered to establish legislative councils for Bengal, Northern-Western Frontier Province and Punjab.
  - Portfolio-system was introduced.
  - Governor-General was empowered to issue ordiance in time of an emergency.
  - Governor General's Executive Council expanded
- **Indian Council Act, 1892**
  - Council members granted right to ask question.
  - Beginning of Parliamentary system as this Act allowed discussion over budget and querries by members.

- **Indian Council Act, 1909 (Morley - Minto Reforms)**
  - Power of Legislatures were enlarged allowing them to pass resolutions, ask questions and seplimentasies, vote on separate items in the budget but budget as whole could not be voted upon.
  - No of elected members increased in Legislative councils
  - One Indian was to be appointed to the viceroy's executive council and Satyanarayan Singh became the first Indian to be appointed to the council in 1909.
  - First time separats electorate for muslims introduced.
- **The Govt. of India Act. 1919 (Montague - Chelmsford Reforms)**
  - The only difference was that the lower house had the power to pass the budget.
  - The No. of member in the council of states was 60 and out of them 34 were elected for a five year term.
  - 145 members was the strength of legislative Assembly and out of them 104 were elected and 41 were nominated for 3 years. Both House were given equal right.
  - The Act introduced 'Dyarchy' in the provines which provided for the division of provicial subjects into "Reserved" and "Transferred" categories.
  - The central legislature council made bicameral i.e, legislative Assembly and council of states.

Reserved Subject: Finace, landtax, femine help, justice, police, pension, criminals, Newspaper, Irrigation, Mines, waterway, factories, electricity, gas, labour - welfare, industrial disputes, Motervehicles, miner port and public services etc.

Transferred Subject: Education, library, Museum, local self government, Health, Public building department, excise, weight and measurement, industry, control over public entertainment, religion etc.

- **Government of India Act, 1935:**
  - At the provincial level 'autonomy' replaced dyarchy and responsible government was intoduced.
  - Secretary of state for India was empowered to appoint comptroller and Auditor-General in India.
  - Provided the Provision to estabtish a public Service Commission in India.
  - Abolition of Dyarchy
  - This Act made the provisions for an all India federation consisting of eleven British Provines, six chief commissioner's areas and those princely state which desired to be the part of the federation.
  - There were 451 Acts & 15 annexes in Act.
- **Dyarch at center level:**
  - Some Union subjects (Security, Foreign affairs, Religious matters) were vested in Governor-general. For other union subject, a council of ministers was set up.
- **Establishment of Federal Court:**
  - Privy council (London) has the supreme powery of Judiciary
  - Its jurisdiction was extnded to provinces and princely states there were a chief justice two other judges in the court.
- **Supremacy of British Parliament:**
  - The Act separated Burma from India and two new states were created. Adan came under British subordination and Barar mingled with central Province.
  - This Act abolished the Council of state for India.
  - This Act could be amended by British Parliament. Only British Parliament was empowered to amend This Act.
  - Communal Election Pattern expanded.
  - There was no preamble in the Act.
  - Communal electorate system continued for different communities at centre and provincial level and it extended to Anglo - Indians, Indian-Christians, Europeans & Harijans.
- **Indian Independence Act, 1947:**

It was proposed on 4th July 1947 in British Parliament but it was Passed on 18th July 1947. Main provisions of this Act are as follows

  - It fixed the date of 15th August 1947 for setting up the two dominions, Namely India and Pakistan. It is decided to hand over the responsibility of powers to the constituent assemblies of the dominion states.

- There would be separate Governor General for each Dominion (India & Pakistan)
- The Act also laid down temporary provision for the government of the dominions by giving the status of parliament with full power of dominion legislature to both the constituent Assemblies.
- The Act further mentioned that till the new constitutions are not effective, the governments in the two states will be run of the basis of provisions of the GOI Act, 1935
- Sovereignty and responsibility of British Parliament abolished.
- Pakistan was to comprise East Bengal, west Punjab, Sind and the sylhet district of Assam.

Interim Government (1946)

Sl. No.	Members	Porfolions Held
1.	Jawaharlal Nehru	External Affairs & Commonwealth Relations
2.	Sardar Vallabhbahai Patel	Home, Information & Broadcasting
3.	Dr. Rajendra Prasad	Food & Agriculture
4.	Dr. John Mathai	Industries & Supplies
5.	Jagjivan Ram	Labour
6.	Sardar Baldev Singh	Defence
7.	C.H. Bhabha	Works, Mines & Power
8.	Liaquat Ali Khan	Finance
9.	Abdur Rab Nishtar	Posts & Air
10.	Asaf Ali	Railways & Transport
11.	C. Rajagopalachari	Education & Arts
12.	I.I. Chundrigar	Commerce
13.	Ghaznafar Ali Khan	Health
14.	Joginder Nath Mandal	Law

Note: The members of The interim government were members of the Viceroy's Esecutive Council. The Viceroy continued to be the head of the Council. But, Jawaharlal Nehru was designated as the Vice-President of the Council.

First Cabinel of Free India (1947)

Sl. No.	Members	Portfolios Held
1.	Jawaharlal Nehru	Prime Minister; External Affairs & Commonwealth Relations; Scientfic Research
2.	Sardar Vallabhbhai Patel	Home, Infromation & Broadcasting; States
3.	Dr. Rajendra Prasad	Food & Agriculture
4.	Maulana Abul Kalam Azad	Education
5.	Dr. John Mathai	Railways & Transport
6.	R.K. Shanumgham Chetty	Finance
7.	Dr. B.R. Ambedkar	Law
8.	Jagjivan Ram	Labour
9.	Sardar Baldev Singh	Defence
10.	Raj Kumari Amrit Kaur	Health
11.	C.H. Bhabha	Commerce
12.	Rafi Ahmed Kidwai	Communication
13.	Dr. Shyam Prased Mukherji	Industries & Supplies
14.	V.N. Gadgil	Works, Mines & Power

2. MAKING OF THE CONSTITUTION

It was in 1934 that the idea of a Constituent Assembly for India was put forward for the first time by M.N. Roy. In 1935 the indian National Congress (INC), for the first tiem, officially demanded a Constituent Assembly to frame the Constitution of India. In 1942, Sir Stafford Cripps, a member of the cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after the World War II.

COMPOSITION OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan. The features of the scheme were:

- The representatives of princely states were to be nominated by the heads of the princely states.
- Roughly, one seat was to be allotted for every million population.
- Seats allocated to each British province were to be decided among the three principal communities—Muslims, Sikhs and general in proportion to their population.
- The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the Princely States.
- The representatives of each community were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferable vote.

It is thus clear that the Constituent Assembly was to be a partly elected and partly nominated body.

Although the Constituent Assembly was not directly elected by the people of India on the basis of adult franchise,

WORKING OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly held its first meeting on December 9, 1946. Dr. Sachchidanand Sinha, the oldest member, was elected as the temporary President of the Assembly, following the French practice.

Later, on December 11, 1946, Dr Rajendra Prasad and H C Mukherjee were elected as the President and Vice-President of the Assembly respectively. Sir B N Rau was appointed as the Constitutional advisor to the Assembly.

Other Functions Performed

In addition to the making of the Constitution and enacting of ordinary laws, the Constituent Assembly also performed the following functions:

- It ratified the India's membership of the Commonwealth in May 1949.
- It adopted the national flag on July 22, 1947.
- It elected Dr Rajendra Prasad as the first President of India on January 24, 1950.
- It adopted the national anthem on January 24, 1950.
- It adopted the national song on January 24, 1950.

In all, the Constituent Assembly had 11 sessions over two years, 11 months and 18 days. The Constitution-makers had gone through the constitutions of about 60 countries, and the Draft Constiution was sonsiderd for 114 days. It, however, did not end, and continued as the provisional parliament of India from January 26, 1950 till the formation of new Parliament[8] after the first general elections in 1951—52.

COMMITTEES OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly appointed a number of committees to deal with different tasks of constition-making. Out of these, eight were major committees and the others were minor committees. The names of these committees and their charimen are given below:

Major Committees:

- Provincial Constitution Committee — Sardar Patel
- Drafting Committee — Dr. B.R. Ambedkar
- Union Powers Committee — Jawaharlal Nehru
- Union Constitution Committee — Jawaharlal Nehru
- Advisory Committee on Fundamental Rights and Minorities — Sardar Patel. This committee had two sub-committes:
  - Minorities Sub-Committee — H.C. Mukherjee
  - Fundamental Rights Sub-Committee — J.B. Kripalani.

- Steering Committee — Dr. Rajendra Prasad
- Rules of Procedure Committee — Dr. Rajendra Prasad
- States Committee (Committee for Negotiating with States) — Jawaharlal Nehru

Minor Committees:

- Committee on Chief Commissioners' Provinces
- Commission on Lingustic Provinces
- Expert Committee on Financial Provisions
- Ad-hoc Committee on the Supreme Court
- Hindi Translation Committee
- Urdu Translation Commitee
- Press Gallery Committee
- Committee on the Functions of the Constituent Assembly — G.V. Mavalankar
- Order of Business Committee — Dr. K.M. Munshi
- House Commitee — B. Pattabhi Sitaramayya
- Ad-hoc Committee on the National Flag — Dr. Rajendra Prasad
- Special Committee to Examine the Draft Constitution — Alladi Krishnaswamy Ayyar
- Credentials Committee — Alladi Krishnaswamy Ayyar
- Finance and Staff Committee — A.N. Sinha
- Committee to Examine the Effect of Indian Independence Act of 1947

Drafting Committee :

Among all the committees of the Constituent Assembly, the most important committee was the Drafting Committee set up on August 29, 1947. It was this committee that was entrusted with the task of preparing a draft of the new Constitution. It consisted of seven members. They were:

- N Madhava Rau (He replaced B L Mitter who resigned due to ill-health)
- T T Krishanmachari (He replaced D P Khaitan who died in 1948)
- Alladi Krishnaswamy Ayyar
- Dr K M Munshi
- Dr B R Ambedkar (Chairman)
- N Gopalaswamy Ayyangar
- Syed Mohammad Saadullah

The Drafting Committee, after taking into consideration the proposals of the various committees, prepared the first draft of the Constitution of India, which was published in February 1948. The people of India were given eight months to discuss the draft and propose amendments. In the light of the public comments, criticisms and suggestions, the Drafting Committee prepared a second draft, which was published in October 1948.

ENACTMENT OF THE CONSTITUTION

Dr. B R Ambedkar introduced the final draft of the Constitution in the Assembly on November 4, 1948. The motion on Draft Constitution was declared as passed on November 26, 1949, and received the signatures of the members and the president. Out of a total 299 members of the Assembly, only 284 were actually present on that day and signed the Constitution.

The Constitution as adopted on November 26, 1949, contained a Preamble,395 Article and 8 Schedules

Dr B R Ambedkar, the them Law Minister, piloted the Draft Constitution in the Assembly. He is recognised as the 'Father of the Constitution of India'. This brilliant writer, constitutional expert, undisputed leader of the scheduled castes and the 'chief architect of the Constitution of India' is also known as a 'Modern Manu'.

ENFORCEMENT OF THE CONSTITUTION

Some provisions of the Constitution pertaining to citizenship, elections, provisional parliament, temporary and transitional provisions, and short title contained in Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 came into force on November 26, 1949 itself.

The remaining provisions (the major part) of the Constitution came into force on January 26, 1950. This day is referred to in the constitution as the 'date of its commenecement', and celebrated as the Republic Day.

3. PREAMBLE OF THE CONSTITUTION

The American Constitution was the first to begin with a Preamble. It contains the summary or essence of the Constitution. The Preamble to the Indian Constitution is based on the 'Objectives Resolution', drafted and moved by Pandit Nehru, and adopted by the Constituent Assembly[1]. It has been amended by the 42nd Constitutional Amendment Act (1976), which added three new words—socialist, secular and integrity.

TEXT OF THE PREAMBLE

The pramble in its present form reads:

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

JUSTICE, Social, Economic and Political;

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

EQUALITY of status and of opportunity; and to promote among them all;

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

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

INGREDIENTS OF THE PREAMBLE

The Pramble reveals four ingredients or components:

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

KEY WORKD IN THE PREAMBLE

Equality

The term 'equality' means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination. The Preamble secures to all citizens of India equality of status and opportunity.

Fraternity

Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship. The Preamble declares that fraternity has to assure two things the dignity of the individual and the unity and integrity of the nation. The word 'integrity' has been added to the preamble by the 42nd Constitutional Amendment (1976).

Secular

The term 'secular' too was added by the 42nd Constitutional Amendment Act of 1976. The Indian Constitution embodies the positive concept of secularism ie, all religions in our country (irrespective of their strength) have the same status and support from the state.

Democratic

A democratic polity, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, possession of supreme power by the people. The term 'democratic' is used in the preamble in the broader sense embracing not only political democracy but also social and economic democracy.

Republic

The tem 'republic' in our Preamble indicates that India has an elected head called the president. He is elected indirectly for a fixed period of five years. A republic also means two more things: one, vesting of plitical sovereignty in the people and not in a single individual like a king; second, the absence of any privileged class and hence all public offices being opened to every citizen without any discrimination.

Justice

The term 'justice' in the Preamble embraces three distinct forms—social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles. The ideal of justice—social, economic and Policial - has been taken from the Russian Revolution (1917).

Sovereign

The word 'Sovereign' implies that India is neither a dependency nor a dominion of any other nation, but an independent state. Being a sovereing state, India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state.

Socialist

Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the from of certain Directive Principles of State Policy. The Indian brand of socialism is a 'democratic socialism' and not a 'communistic socialism'. Democratic socialism, on the other hand, holds faith in a 'mixed economy' where both public and private sectors co-exist side by side.

Liberty

The term 'liberty' means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities. Liberty as elaborated in the Preamble is very essential for the successful functioning of the Indian democratic system. The ideals of liberty, equality and fraternity in our Preamble have been taken from the French Revolution (1789-1799).

4. UNION AND ITS TERRITORY

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

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

- Union territories
- Territories of the states
- Territories that my be acquired by the Government of India at any time.

The names of states and union territories and their territorial extent are mentioned in the first schedule of the Constitution. Being a sovereing state, India can acquire foreign territories according to the modes recognised by international law, i.e., cession (following treaty, purchase, gift, lease or plebiscite), occupation (hitherto unoccupied by a recognise ruler), conquest or subjugation.

Article 2 grants two powers to the Parliament: (a) the power to admit into the Union of India new states: and (b) the power to establish new states. Articale 2 relates to the admission or establishment of new states that are not part of the Union of India. Article 3, on the other hand, relates to the formation of or changes in the existing states of the Union of India.

PARLIAMENT'S POWER TO REORGANISE THE STATES

Article 3 authoriese the Parliament to:

- from a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any terrritory to a part of any state.
- increase the area of any state,
- diminish the area of any state,
- alter the boundaries of any state, and
- alter the name of any state.

However, Article 3 lays down tow conditions in this regard: one, a bill contemplating the above changes can be introduced in the Parliament only with the prior recommendation of the President; and two, before recommending the bill, the President has to refer the same to the state legistature concerned for expressing its views within a specified period.

It it thus clear that the Constitution authorises the Parliament to form new states of alter the areas, boundries or names of the existing states without their consent. In other word, the Parliament can redraw the political map of India according to its will. Hence, the territorial integrity or continued existence of any state is not guaranteed by the Constitution.

Moreover, the Constitution (Article 4) itself declares that laws made for admission or establishment of new states (under Article 2) and formation of new states and alteration of areas, boundaries or name of existing states (under Articles3) are not to be considered as amendments of the Constitution under Article 368. This means that such laws can be passed by a simple majority and by the ordiary legislative process.

EVOLUTION OF STATES AND UNION TERRITORIES

Integration of Princely States

The Indian Independence Act (1947) created two independent and separate dominions of India and Pakistan and gave three option to the princely states viz., joining India, joining Pakistan or remaining independent. Of the 552 princely states situated within the geographical boundaries of India, 549 joined India and the remaining 3 (Hyderabad, Junagarh and Kashmir) refused to join India. However, in course of time, they were also integrated with India—Hyderabd by means of police action, Junagarh by means of referendum and Kashmir by the Instrument of Accession.

Dhar Commission and JVP Committee

The integration of princely states with the rest of India has purely an ad hoc arrangement. There has been a demand from different regions, particulaly South India, for Reorganisation of states on linquistic basis. Accordingly, in June 1948, the Government of India appointed the Lingusitic Provinecs Commission under the charimanship of S K Dhar to examine the fesibility of this. The commission submitted its report in December 1948 and recommened the reorganisation of states on the basis of administrative convenience rather than linguistic factor. This created much resentment and led to the appointment of another Linguistic Prvinces Committee by the Congress in December 1948 itself to examine the whole question afresh. It consisted of Jawaharlal Nehru, Vallahbhi Patel and Pattabhi Sitaramayya and hence, was popularly known as JVP Committee. It submitted its report in April 1949 and formally rejected language as the basis for reorganisation of states.

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

Fazl Ali Commission

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

- Preservation and strengthening of the Unity and security of the country.
- Linguistic and cultural homogeneity.
- Financial, economic and administrative considerations.
- Planing and promotion of the welfare of the people in each state as well as of the nation as a whole.

The commission suggested the abolition of the four-fold classification of states under the original Constitution and creation of 16 states and 3 centrally administered territories. The Government of India accepted these recommendations with certain minor modifications. By the States Reorganisation Act (1956) and the 7th Constitutionl Amendment Act (1956) the distinction between Part-A and Part-B states was done away with and Part-C states were abolished. Some of them were merged with adjacent states and some other were designated as union territories. As a result, 14 states and 6 union territories were created on November 1, 1956

New States and Union Territories Created After 1956

Maharashtra and Gujarat:

In 1960 the bilingual state of Bombay was divided into two separate states—Maharashtra for Marathispeaking people and Gujarat for Gujarati-speaking people.

Dadra and Nagar haveli:

The Portuguese rules this territory unitl its liberation in 1954. Subsequently, the administratin was carried on till 1961 by an administrator chosen by the people themselves. It was converted into a union territory of India by the 10th Constitutional Amendment Act, 1961.

Goa, Daman and Diu:

India acquired these three territories from the Portuguese by means of a police action in 1961.

Puducherry:

The territory of Puducherry comprieses the former French establishments in India known as Puducherry, Karaikal, Mahe and Yanam. The French handed over this territory to Inida in 1954.

Nagaland:

In 1963, the State of Nagaland was formed by taking the Naga Hills and Tuensang area out of the state of Assam.

Haryana, Chandigarh and Himachal Pradeh:

In 1966, the State of Punjab was bifurcated to create Haryana, the 17th state of the Indian Union, and the union territory of Chandigarh. On the recommendation of the Shah Commission (1966), the punjabi-speaking areas were consituted into the unilingual state of Punjab, the Hindi-speaking mean were constituted into the State of Haryana. In 1971, the union territory of Himachal Pradesh was elevated to the status of a state (18th state of the Indian Union.)

Manipur, Tripura, Meghalaya and Sikkim :

In 1972, the political map of Northeast India underwent a major change. Thus, the two Union Territories of Manipur and Tripura and the Sub-State of Meghalaya got statehood and in 1947, Sikkim was an Indian princely state ruled by Chogyal. In a referendum held in 1975, they voted for the abolition of the institution of Chogyal and Sikkin becoming an integral part of India.

Mizoram, Arunachal Pradesh and Goa :

In 1987, three new, States of Mizoram, Arunachal Pradesh and Goa came into being as the 23rd, 24th and 25th states of the Indian Union respectively.

Chhattisgarh, Uttarakhand and Jharkhand:

In 2000, three more new States of Chhattisgarh, Uttarakhand and Jharkhand were created out of the territories of Madhya Pradesh, Uttar Pradesh and Bihar respectively.

Schedules of the Constitution at a Glance

Number		Subjext Matter	Articles Covered
First Schedule	:	• Names of the States and their Territorial Jurisdiction. • Name of the The Union Territories and their extent.	1 and 4
Second Schedule	:	Provisions relating to the emoluments, allowances, privileges and so on of: • The President of India • The Governors of States • The Speaker and the Deputy Speaker of the Lok Sabha • The Chairman and the Deputy Chairman of the Rajya Sabha • The Speaker and the Deputy Speaker of the Legislative Assembly in the states • The Chairman and the Deputy Chairman of the Legislative Council in the states • The Judges of the Supreme Court • The judges of the High Courts • The Comptroller and Auditor-General of India	59, 65, 75, 97, 125, 148, 158, 164, 186 & 221
Third Schedule	:	Forms of Oaths or Affirmations for: • The Union ministers • The candidates for election to the Parliament • The members of Parliament • The judges of the Supreme Court • The Comptroller and Auditor-General of India • The state ministers • The candidates for election to the state legislature • The members of the state legislature • The judges of the High Courts	75, 84, 99, 124, 146, 173, 188 and 219
Fourth Schedule	:	Allocation of seats in the Rajya Sabha to the states and the union territories.	4 and 80
Fifth Schedule	:	Provisions relating to the administration and control of scheduled areas and Scheduled tribes.	244
Sixth Schedule	:	Provisions relationg to the administration	244 and 275

		of tribal areas in the states of Assam, Meghalays, Tripura and Mizoram.	
Seventh Schedule	:	Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List). Presently, the Union List contains 100 subjects (orginally 97), the state list contains 61 subjects (originally 66) and the concurrent list contains 52 subjects (originally 47).	246
Eighth Schedule		Languagues recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages. They are: Assames Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Mathili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21st Amendment Act of 1967; Konkani, Manipuri and Nepali were added by the 71st Amendment Act of 1992; and Bodo, Dongri, Maithili and Sandthali were added by the 92nd Amendment Act of 2003.	344 and 351
Ninth Schedule		Acts and Regulation (originally 13 but presently 282) of the state legislatures dealing with land reforms and abolition of the zamindari system and of the Parliament dealing with other matters. This schedule was added by the 1st Amendment (1951) to protect the laws included in it from judicial scrutiny on the ground of violation of fundamental rights. However, in 2007 the Supreme Court ruled that the laws included in this schedule after April 24, 1973, are now open to judicial review.	31 - B
Tenth Schedule		Prvisions relating to disqualification of the members of Parliament and State Legislatures on the ground of defection. This schedule was added by the 52nd Amendment Act of 1985, also known as Anti-defection law.	102 and 191
Eleventh Schedule		Specifies the powers, authority and responsibilities of Panchayats. It has	243 - G

	29 matters. This schedule was added by the 73nd Amendment Act of 1992.	
Twelfth Schedule	Specifies the powers, authority and responsibilities of Municipalities. It has 18 matters. This schedule was added by the 74th Amendment Act of 1992.	243 - W

Sources of the Constitution at a Glance

Sources	**Features Borrowed**
• Government of India Act of 1935	Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
• British Constitution	Parliamentary government, Rule of Law, Legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
• US Constitution	Fundamental rights, independence of judiciary, judicial review, impeachment of the persident, removal of Supreme Court and high court judges and post of vice-president.
• Irish Constitution	Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.
• Canadian Constitution	Federation with a strong Centre, vesting of residuary power in the Centre, appointement of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
• Australian Constitution	Concurrent List, Freedom of trade, commerce and intercourse, and joint sitting of the two Houses of Parliament.
• Weimar Constitution of Germany	Suspension of Fundamental Rights during Emergency.
• Soviet Constitution (USSR, now Russia)	Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
• French Constitution	Republic and the ideals of liberty, equality and fraternity in the Preamble.
• South African Constitution	Procedure for amendment of the Constitution and election of members of Rajya Sahba.
• Japanese Constiution	Procedure established by Law.

5. CITIZENSHIP

MEANING AND SIGNIFICANCE

Like any other modern state, India has two kind of people—citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and polititals rights. Aliens, on the other hand, are the Citizens of some other state and hence, do not enjoy all the civil and Political rights. The Constitution confers the following rights and privileges on the citizens of India (and denies the same to aliens):

- Right against discrimination on grounds of religion, race, caste, sex of place of birth (Article 15).
- Right to equality of opportunity in the matter of public employment (Article 16).
- Right to freedom of speech and expresion, assembly, association, movemet, residence and profession (Article 19).
- Cultural and educational rights (Articles 29 and 30).
- Eligibility to hold certain public offices, that is, President of India, Vice-Pesident of India judges of the Supreme Court and the hight courts, governor of states, attorney general of Inida and advocate general of states.
- Right to vote in elections to the Lok Sabha and state legislative assembly.
- Right to contest for the membership of the Parliament and the state legislature.

CONSTITUTIONAL PROVISIONS

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

- A person who had his domicile in India and also fulfilled any one of the three conditions, if he was born in India; or if either of his parents was born in India: or if he has been ordinarily resident in India for five years immediately before the commencement of the Constitution, became a citizen of India (Article 5).
- A person who migrated to India from Pakistan became an Indian citizen if he or either of his parents or any of his grandparents was born in undivided India.
- A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become an Indian citizen. For this, he had to be resident in India for six months preceding the date of his application for registration (Article 7).
- A person who, or any of whose parents or grandparents, was born in undivided India but who is ordinarily residing out side India Shall become an Indian citizen if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his residence, whether befor or after the commencement of the Constitution. Thus, this provision covers the overseas Indians who may want to acquire Indian citizenship (Article 8)

The other constitutional provisions with respect to the citizenship are as follows:

- No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state (Article 9).
- Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament (Article 10).
- Parliament shall have the power to make any provision with respect to the acquisition and termination of citizensip and all other matters relating to citizenship (Article - II).

Acquisition of Citizenship

The Citizenship Act of 1955 prescibes five ways of acquiring citizenship.

By Birth :

- A person born in India on or after 26th January 1950 but before 1st July 1987 is a citizen of India by birth irrespective of the nationality of his parents.

By Descent :

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

By Resistration :

- A person of full age and capacity who has been registered as an overseas citizen of India for five

years, and who has been residing in India for one year before making an application for registration.

- A person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
- Minor children of persons who are citizens of India;
- A person of full age and capacity whose parents are registered as citizens of India.
- A person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;
- A person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

By Naturalisation:

By Incorporation of Territory:

It any foreign territory becomes a part of India the Government of India specifies the persons who among the people of the territory shall be the citizens of India.

Loss of Citizenship

The Citizenship Act, 1955, prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the Constitution.

By Renunciation:

Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship. when a person renounces his Indian citizenship, every minor child of that person also loses Indian citizenship.

By Termination:

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

By Deprivation:

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

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

SINGLE CITIZENSHIP

I though the Indian Constituion in federal and envisages a dual polity (Centre and states), it provides for only a single citizenship, that is, the Indian citizenship. The citizens in India owe allegiance only to the Union. There is no separate state citizenship. The other federal states like USA and Switzerland, on the other hand, adopted the system of double citizenship.

6. FUNDAMENTAL RIGHTS

The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35. In this regard, the framers of the Constitution derived inspiration from Constitution derived inspiration from the Constitution of USA (i.e., Bill of Rights.)

The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. They are 'fundamental' also in the sense that they are most essential for the all-round development (material, intellectual, moral and spiritual) of the individuals.

Originally, the Constitution provided for seven Fundamental Rights viz,

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

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

FEATURES OF FUNDAMENTAL RIGHTS

- Their application can be restricted while martial law is in force in any area.
- Most of them are directly enforceable (self-executory) while a few of them can be enforced on the basis of a law made for giving effect to them.
- Most of them are available against the arbitrary action of the State, which a few exceptions like those against the State's action and against the action of private individuals.
- Some of them are negative in character, that is, place limitations on the authority of the State.
- They are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.
- They are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court.
- They are not sacrosanct or permanent. They Parliament can curtail or repeal them but only by a constitutional amendment act and not by an ordinary act.
- They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21.
- Their application to the members of armed forces, para-military forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament.
- Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
- They are not absolute but qualified. The state can impose reasonable restrictions on them.

LAWS INCONSISTENT WITH FUNDAMENTAL RIGHTS

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. In other words, It expressively provides for the doctrine of judicial review. This power has been conferred on the Supreme Court (Article 32) and the high courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.

Further, Article 13 declares that a constitutional amendment is not a law and hence cannot be challenged. However, the Supreme Court held in the Kesavananda Bharati case (1973) that a Constitutional amendment can be challenged on the ground that it violates a fundamental right that forms a part of the 'basic structure' of the Constitution and hence, can be declared as void.

Fundamental Rights at a Glance

Category	Consists of
• Right to equality (Articles 14—18)	• Equality before law and equal protection of Laws (Article 14). • Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15). • Equality of opportunity in matters of public employment (Article 16). • Abolition of untouchability and prohibition of its practice (Article 17). • Ablition of titles except military and academic (Article 18).
• Right to freedom (Articles 19-22)	• Protection of six right regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement (v) Residence and (vi) profession (Article 19). • Protection in respect of conviction for offecence (Article 20). • Protection of life and personal liberty (Article 21). • Right to elementary education (Article 21 A.) • Protection against arrest and detention in certain cases (Article 22).
• Right against exploition (Article 23—24)	• Prohibition of traffic in human beings and forced labour (Article 23). • Prohibition of employment of children infactories etc (Article 24)
• Right to freedom of religion (Article 25—28)	• Freedom of conscience and free profession, practice and propagation of religion (Article 25). • Freedom to manage religious affairs (Article 26.) • Freedom from payment of taxes for promotion of any religion (Article 27). • Freedom from attending religious instruction or worship in certain educational institutions (Article 28).
• Cultural and educational rights (Article 29—30)	• Protection of language, script and culture of minorities (Article 29). • Right of minorities to establish and administer educational institutions (Article 30).
• Right to constitutional remedies (Article 32)	Right to move the Supreme Court for the enforcement of fundamental rights including the wits of (i) habeas corpus, (ii) mondamus, (iii) prohibition, (iv) certiorari, and (v) quo warrento (Article 32).

Fundamental Rights (FR) of Foreigners

FR available only to citizens and not to foreigners	**FR available to both citizens and foreigners (except enemy aliens)**
• Prohibition of discrimination on grounds of religion, race, casts, sex or place of birth (Article 15).	• Equality before law and equal protection of laws (Article 14).
• Equality of opportunity in matters of public employment (Article 16).	• Protection in respect of conviction for offences (Article 20).
• Protection of six rights regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19).	• Protection of life and personal liberty (Article 21.
• Protection of language, script culture of minorities (Article 29).	• Right to elementary education (Article 21A)
• Right of minorities to establish and Administer educational Instituationals (Article 30)	• Protection against arrest and detention in certain cases (Article 22).
	• Prohibition of traffic in human beings and forced labour (Article 23).
	• Prohibition of employment of children in factories etc., (Article 24).
	• Freedom of conscience and free profession, practice and propagation of religion (Article 25).
	• Freedom to manage religious affairs (Article 26).
	• Freedom from payment of taxes for promotion of any religion (Article 27.)
	• Freedom from attending religious instruction or worship in certain educational institutions (Article 28).

RIGHT TO EQUALITY

Equality before Law and Equal Protection of Laws

Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This provision confers rights on all persons whether citizens of foreigners.

The Supreme Court held that where equals and unequals are treated differently, Article 14 does not apply. While Article 14 forbids class legislation, it permits reasonable classification of persons, objects and transactions by the law.

Rule of Law

The concept of 'equality before law' is an element of the concept of the concept of 'Rule of Law', propounded by A.V. Dicey, the British jurist. His concept has the following three elements or aspects:

- Equality before the law, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts.

- Absence of arbitrary power, that is, no man can be punished except for a breach of law.

Prohibition of Discrimination on Certain Grounds

Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.

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

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

- The state is permitted to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes.
- The state is permitted to make any special provision for women and children.

The last provision was added by the 93rd Amendment Act of 2005. In order to give effect to this provision, the Centre enacted the Central Educational Institution (Reservation in Admission) Act, 2006, providing a quota of 27% for candidates belonging to the Other Backward Classes (OBCs) in all central higher educational institutions.

Equality of Opportunity in Public Employment

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

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

- A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular religion or denomination.
- Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority.
- The State can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services.

Mandal Commission and Aftermath

In 1979, the Morarji Desai Government appointed the Secound[6] Backward Classes Commission under the chairmanship of B P Mandal, a Member of Parliament, in terms of Article 340 of the Constitution to investigate the conditions of the socially and educationally backward classes and suggest measures for their advancement. The commission recommended for reservation of 27% government jobs for the OBCs. So that the total Reservation for all (SCs, STs and OBCs) amounts to 50% it it was ofter ten years in 1990 that the V.P. Singh Goverment declared Reservation of 27% Government Jobs for the OBCs.

Abolition of Untouchability

Article 17 abolishes 'untouchability' and forbids its practice in any form. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

Abolition of Untouchability

Article 17 abolished "untouchability and forbids its practices in any form the inforcement of any disability arising out of untouchability shall be an offence punishable in accordonce with law.

The term 'untouchability' has not been defined either in the Constitution or in the Act. Under the Protection of Civil Rights Act (1955), the offences committed on the ground of untouchability are punishable either by Rs 500 or both.

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

5. Abolition of Titles

Article 18 abolishes titles and makes and four provisions in that regard:

- No citizen or foreigner holding any office of profit or trust under the Stage is to accept any present, emolument of office from or under any foreign State without the consent of the president.
- It prohibits a citizen of India from accepting any title from any foreign sate.
- A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the president.
- It prohibits the state from conferring any title (except a military or academic distinction) on any body, whether a citizen or a foreigner.

RIGHT TO FREEDOM

Protection of Six Rights

Article 19 guarantees to all citizens the rights. These are:

- Right to practice any profession or to carry on any occupation, trade or business.
- Right to assemble peaceably and without arms.
- Right to form association or unions.
- Right to move freely throughout the to rritory of India.
- Right to reside and settle in any part the territory of India.
- Right to freedom of speech and expression.

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

These six rights are protected against only state action and not private individuals.

Freedom of Speech and Expression

The Supreme Court held that the freedom of speech and expression includes the following :

- Right to know about government activities.
- Freedom of silence.
- Freedom of commercial advertisements.
- Right against tapping of telephonic conversation.
- Right to telecast, that is, government has no monopoly on electronic media.
- Right against bundh called by a political party or organisation.
- Right to propagate one's views as well as views of others.
- Freedom of the press.

Protection in Respect of Conviction for Offences

Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It contains three provisions in that direction :

- No *ex-post-facto* law : No person shall be (i) convicted of any offence except for violation of a law in force at the time of the commission of the act, nor (ii) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.
- No double jeopardy : No person shall be prosecuted and punished for the same offence more than once.
- No self-incrimination : No person accused of any offence shall be compelled to be a witness against himself.

Protection of Life and Personal Liberty

Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens.

The Supreme Court has reaffirmed its judgement in the *Menaka* case in the subsequent cases. It has declared the following rights as part of Article 21 :

Right to Education

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

This provision was added by the 86th Constitutional Amendment Act of 2002.

Protection Against Arrest and Detention

Article 22 grants protection to persons who are arrested or detained. Detention is of two types, namely, punitive and preventive. **Punitive detention** is to punish a person for an offence committed by him after

trial and conviction in a court. **Preventive detention,** on the other hand, means detention of a person without trial and conviction by a court.

Article 22 also authorises the Parliament to prescribe (a) the circumstances and the classes of cases in which a person can be detained for more than three months under a preventive detention law without obtaining the opinion of an advisory board; (b) the maximum period for which a person can be detained in any classes of cases under a preventive detention law; and (c) the procedure to be followed by an advisory board in an inquiry.

RIGHT AGAINST EXPLOITATION

Prohibition of Traffic in Human Beings and Forced Labour

Article 23 prohibits traffic in human beings, *begar* (forced labour) and other similar forms of forced labour. Any contravention of this provision shall be an offence punishable in accordance with law. This right is available to both citizens and non-citizens. It protects the individual not only against the State but also against private persons.

The expression 'traffic in human beings' include (a) selling and buying of men, women and children like goods; (b) immoral traffic in women and children, including prostitution; (c) *devadasis;* and (d) slavery. To punish these acts, the Parliament has made the Immoral Traffic (Prevention) Act, 1956.

Prohibition of Employment of Children in Factories, etc.

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

In 2006, the government banned the employment of children as domestic servants or workers in business establishments like hotels, dhabas, restaurants, shops, factories, resorts, spas, tea-shops and so on.

RIGHT TO FREEDOM OF RELIGION

Freedom of Conscience and Free Profession, Practice and Propagation of Religion

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

- Freedom of conscience
- Right to propagate
- Right to practice
- Right to profess

Freedom to Manage Religious Affairs

According to Article 26, every religious denomination or any of its section shall have the following rights :

- Right to administer such property in accordance with law.
- Right to manage its own affairs in matters of religion;
- Right to establish and maintain institutions for religious and charitable purposes;
- Right to own and acquire movable and immovable property; and

Freedom from Taxation for Promotion of a Religion

Article 27 lays down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination. In other words, the State should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion. This provision prohibits the State from favouring, patronising and supporting one religion over the other.

Freedom from Attending Religious Instruction

Under Article 28, no religious instruction shall be provided in any educational institution wholly maintained out of State funds. How-ever, this provision shall not apply to an educational institution administered by the State but established under any endowment or trust, requiring imparting of religious instruction in such institution.

CULTURAL AND EDUCATIONAL RIGHTS

Protection of Interests of Minorities

Article 29 provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same. Further, no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, or language.

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

Right of Minorities to Establish and Administer Educational Institutions

Article 30 grants the following rights to minorities, whether religious or linguistic :

- In granting aid, the State shall not discriminate against any educational institution managed by a minority.
- All minorities shall have the right to establish and administer educational institutions of their choice.
- The compensation amount fixed by the State for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them.

The right under Article 30 also includes the Right of a minority to impart education to its children in its own language.

RIGHT TO CONSTITUTIONAL REMEDIES

A mere declaration of fundamental rights in the Constitution is meaningless, useless and worthless without providing an effective machinery for their enforcement, if and when they are violated. Hence, Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen. This makes the fundamental rights real. That is why Dr. Ambedkar called Article 32 as the most important article of the Constitution–'an Article without which this constitution would be a nullity. It is the very soul of the Constitution and the very heart of it'. It contains the following four provisions :

- The right to move the Supreme Court shall not be suspended except as other-wise provided for by the Constitution.
- The Supreme Court shall have power to issue directions or orders or writs for the enforcement of any of the fundamental rights.
- Parliament can empower any other court to issue directions, orders and writs of all kinds.
- The right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights is guaranteed.

The purpose of Article 32 is to provide a guaranteed, effective, expedious, inexpensive and summary remedy for the protection of the fundamental rights. Only the Fundamental Rights guaranteed by the Constitution can be enforced under Article 32 and not any other right like non-fundamental constitutional rights, statutory rights, customary rights and so on.

In case of the enforcement of Fundamental Rights, the jurisdiction of the Supreme Court is original but not exclusive.

However, the Supreme Court has ruled that where relief through high court is available under Article 226, the aggrieved party should first move the high court.

WRITS–TYPES AND SCOPE

The Supreme Court (under Article 32) and the high courts (under Article 226) can issue the writs of *habeas corpus, mandamus,* prohibition, *certiorari* and *quo-warranto.* Further, the Parliament (under Article 32) can empower other court to issue these writs. Since no so provision has been made so far only supreme court and the high courts can issue writs and not any other court.

Habeas Corpus

It is a Latin term which literally means 'to liave the body of'. It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it. The court then examines the cause and legality of detention. It would set the detained person free, if the detention is found to be illegal. Thus, this writ is a bulwark of individual liberty against arbitrary detention.

The writ of *habeas corpus* can be issued against both public authorities as well as private individuals.

Mandamus

It literally means 'we command'. It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform. It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

The writ of *mandamus* cannot be issued (a) against a private individual or body; (b) to enforce departmental instruction that does not possess statutory force; (c) when the duty is discretionary and not mandatory; (d) to enforce a contracutual obligation; (e) against the president of India or the state governors; and (f) against the chief justice of a high court acting in judicial capacity.

Prohibition

Literally, it means 'to forbid'. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. Thus, unlike *mandamus* that directs activity, the prohibition directs inactivity.

The writ of prohibition can be issued only against judicial and quasi-judicial authorities. It is not available

against administrative authorities, legislative bodies, and private individuals or bodies.

Certiorari

In the literal sense, it means 'to be certified' or 'to be informed'. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case. It is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law. Thus, unlike prohibition, which is only preventive, *certiorari* is both preventive as well as curative.

Till recently, the writ of *certiorari* could be issued only against judicial and quasi-judicial authorities and not against administrative authories. However, in 1991, the Supreme Court ruled that the *certiorari* can be issued even against administrative authorities affecting rights of individuals.

Like prohibition, *certiorari* is also not available against legislative bodies and private individuals or bodies.

Quo-Warranto

In the literal sense, it means 'by what authority or warrant'. It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.

The writ can be issued only in case of a substantive public office of a permanent character created by a statute or by the Constitution. It cannot be issued in cases of ministerial office or private office.

Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.

ARMED FORCES AND FUNDAMENTAL RIGHTS

Article 33 empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces, intelligence agencies and analogous forces.

The power to make laws under Article 33 is conferred only on Parliament and not on state legislatures. Any such law made by Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.

MARTIAL LAW AND FUNDAMENTAL RIGHTS

Article 34 provides for the restrictions on fun damental rights while martial law is in force in any area within the territory of India. It empowers the Parliament to indemnify any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force.

PRESENT POSITION OF RIGHT TO PROPERTY

Originally, the right to property was one of the seven fundamental rights under Part III of the Constitution. It was dealt by Article 19(1)(f) and Article 31. Article 19(1)(f) guaranteed to every citizen the right to acquire, hold and dispose of property. Article 31, on the other hand, guaranteed to every person, whether citizen.

Therefore, the 44th Amendment Act of 1978 abolished the right to property as a Fundamental Right by repealing Article 19(1)(f) and Article 31 from Part III. Instead, the Act in serted a new Article 300A in Part XII under the heading 'Right to Property'. It provides that no person shall be deprived of his Property except by authority of law. Thus, the right to property still remains a legal right or a constitutional right, though no longer a fundamental right. It is not a part of the basic structure of the Constitution.

7. DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51. *The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution.* Dr B R Ambedkar described these principles as 'novel features' of the Indian Constitution.

FEATURES OF THE DIRECTIVE PRINCIPLES

- The Directive Principles, though non-justiciable in nature, help the courts in examining and determining the constitutional validity of a law.
- The Directive Principles resemble the 'Instrument of Instructions' enumerated in the Government of India Act of 1935.
- The Directive Principles constitute a very comprehensive economic, social and political programme for a modern democratic State. They embody the concept of a 'welfare state' and not that of a 'police state'.
- The Directive Principles are non-justiciable in nature, that is, they are not legally enforceable by the courts for their violation.
- The phrase 'Directive Principles of State Policy' denotes the ideals that the State should keep in mind while formulating policies and enacting laws. These are the constitutional instructions or recommendations to the State in legislative, executive and administrative matters.

CLASSIFICATION OF THE DIRECTIVE PRINCIPLES

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:

- To promote the welfare of the people by securing a social order permeated by justice–social, economic and political–and to minimise inequalities in income, status, facilities and opportunities (Article 38).
- 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).
- To promote equal justice and to provide free legal aid to the poor (Article 39 A)
- To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (Article 41).
- To make provision for just and humane conditions for work and maternity relief (Article 42).
- To secure a living wage, a decent standard of life and social and cultural opportunities for all workers (Article 43).
- To take steps to secure the participation of workers in the management of industries (Article 43 A).
- To raise the level of nutrition and the standard of living of people and to improve public health (Article 47).

Gandhian Principles

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

- To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (Article 40).
- To promote cottage industries on an indiavidual or co-operation basis in rural areas (Article 43).
- 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).
- To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47).

- To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (Article 48).

Liberal-Intellectual Principles

The principles included in this category represent the ideology of liberalism. They direct the state.

- To secure for all citizens a uniform civil code throughout the country (Article 44).
- To provide early childhood care and education for all children until they complete the age of six years (Article 45).
- To organise agriculture and animal husbandry on modern and scientfic lines (Article 48).
- To. protect and improve the environment and to safeguard forests and wild life (Article 48 (A).
- To. protect monuments, places and objects of artistic or historic interest which are declared to be of national importance (Article 49).
- To separate the judiciary from the executive in the public services of the State (Article 50).
- To promote international peace and security and maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration (Article 51).

NEW DIRECTIVE PRINCIPLES

The 42nd Amendment Act of 1976 added four new Directive Principles to the original list. They require the State :

- To secure opportunities for healthy development of children (Article 39).
- To promote equal justice and to provide free legal aid to the poor (Article 39 A).
- To take steps to secure the participation of workers in the management of industries (Article 43 A).
- To protect and improve the environment and to safeguard forests and wild life (Article 48 A).

The 44th Amendment Act of 1978 added one more Directive Principle, which requires the State to minimise inequalities in income, status, facilities and opportunities (Article 38).

Again, the 86th Amendment Act of 2002 changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.

Distinction Between Fundamental Rights and Directive Principles

Fundamental Rights	Directive Principles
• These are negative as they prohibit the State from doing certain things.	• These are positive as they require the State to do certain things.
• These are justiciable, that is, they are legally enforceable by the courts in case of their violation.	• These are non-justiciable, that is, they are not legally enforceable by the courts for their violation.
• They aim at establishing political democracy in the country.	• They aim at establishing social and economic democracy in the country.
• These have legal sanctions.	• These have moral and political sanctions.
• They promote the welfare of the individual. Hence, they are personal and individualistic.	• They promote the welfare of the community. Hence, they are societarian and socialistic.
• They do not require any legislation for their implementation. They are automatically enforced.	• They require legislation for their implementation. They are not automatically enforced.
• The courts are bound to declare a law violative of any of the Fundamental Rights as unconstitutional and invalid.	• The courts cannot declare a law violative of any of the Directive Principles as unconstitutional and invalid. However, they can uphold the validity of a law on the ground that it was enacted to give effect to a directive.

DIRECTIVES OUTSIDE PART IV

Apart from the Directives included in Part IV, there are some other Directives contained in other Parts of the Constitution. They are :

- **Claims of SCs and STs to Services :** The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or a State (Article 335 in Part XVI).
- **Instruction in mother tongue :** It shall be the endeavour of every state and every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups (Article 350-A in Part XVII).
- **Development the Hindi Language :** It shall be the duty of the Union to promote the spread of the Hindi language and to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India (Article 351 in Part XVII).

The above Directives are also non-justiciable in nature. However, they are also given equal importance and attention by the judiciary on the ground that all parts of the constitution must be read together.

8. FUNDAMENTAL DUTIES

- Fundamental Duties are added to the constitution (42nd Amendment) Act, 1976 on the recommendations of Sardar Swarn Singh Committee.
- These Duties are mentioned in Part IV (A) Under Article 51 (A) of our constitution.
- This novel feature of the constitution has been adopted from the constitution of Russia.
- There are eleven fundamental duties, and it shall be the duty of every citizen of India-
  - to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises top higher levels of endeavour and achievement.
  - Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.
  - to abide by and respect the constitution, the National Flag, and the National Anthem.
  - to cherish and fallow the noble ideals of the freedom struggle.
  - to uphold and protect the sovereighty, Unity and integrity of India.
  - to defend the country and render national service when called upon to do so.
  - 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.
  - to value and preserve the rich heritage of our composite culture.
  - to Protect and improve the natural environment including forests, laks, rives and wild life, and to have compassion for living creatures.
  - to develop scientific, temper; humanism and the spirit of inquiry and reform.
  - to safeguard Public property and abjure violence.
- A list of ten fundamental duties was included in the constitution by the 42nd 'Amendment Act, 1976 in the form of Article 51 (A) but subsequently one more duty has been added by constitution (86th Amendment) Act, 2002 in the form of 51 A (k).

9. AMENDMENT OF THE CONSTITUTION

Like any other written Constitution, the Constitution of India also provides for its amendment in order to adjust itself to the changing conditions and needs. However, the procedure laid down for its amendment is neither as easy as in Britain nor as difficult as in USA.

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

PROCEDURE FOR AMENDMENT

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

- The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament.
- After the president's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.
- The bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
- Each House must pass the bill separately. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
- If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
- An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament and not in the state legislatures.
- The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
- After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.

TYPES OF AMENDMENTS

Article 368 provides for two types of amendments, that is, by a special majority of Parliament and also through the ratification of half of the states by a simple majority. But, some other articles provide for the amendment of certain provisions of the Constitution by a simple majority of Parliament, that is, a majority of the members of each House present and voting (similar to the ordinary legislative process). Notably, these amendments are not deemed to be amendments of the Constitution for the purposes of Article 368.

Therefore, the Constitution can be amended in three ways:

- Amendment by special majority of the Parliament and the ratification of half of the state legislatures.
- Amendment by simple majority of the Parliament,
- Amendment by special majority of the Parliament, and

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:

- Quorum in Parliament.
- Salaries and allowances of the members of Parliament.
- Rules of procedure in Parliament.
- Admission or establishment of new states.
- Formation of new states and alteration of areas, boundaries or names of existing states.
- Abolition or creation of legislative councils in states.
- Second Schedule–emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.

- Union territories.
- Fifth Schedule–administration of scheduled areas and scheduled tribes.
- Sixth Schedule–administration of tribal areas.
- Privileges of the Parliament, its members and its committees.
- Use of English language in Parliament.
- Number of puisne judges in the Supreme Court.
- Conferment of more jurisdiction on the Supreme Court.
- Citizenship–acquisition and termination.
- Elections to Parliament and state legislatures.
- Delimitation of constituencies.
- Use of official language.

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 per cent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of fact whether there are vacancies or absentees.

'Strictly speaking, 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 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 includes: (i) Fundamental Rights; (ii) Directive Principles of State Policy; and (iii) All other provisions which are not covered by the first and third categories.

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:

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

AMENDABILITY OF FUNDAMENTAL RIGHTS

The question whether Fundamental Rights can be amended by the Parliament under Article 368 came for consideration of the Supreme Court within a year of Constitution coming into force. In the *Shankari Prasad* case (1951), the constitutional validity of the First Amendment Act (1951), which curtailed the right to property, was challenged. The Supreme Court ruled that the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights. The word 'law' in Article 13 includes only ordinary laws and not the constitutional amendment acts (constituent laws). Therefore, the Parliament can abridge or take away any of the Fundamental Rights by enacting a constitutional amendment act and such a law will not be void under Article 13.

But in the *Golak Nath* case (1967), the Supreme Court reversed its earlier stand. In that case, the constitutional validity of the Seventh Amendment Act, which inserted certain state acts in the Ninth Schedule, was challenged. The Supreme Court ruled that the Fundamental Rights are given a 'transcendental and immotable' position and hence, the Parliament cannot abridge or take away any of the Fundamental Rights. A constitutional amendment act is also a law within the meaning of Article 13 and hence, would be void for violating any of the Fundamental Rights.

The Parliament reacted to the Supreme Court's judgement in the *Golak Nath* case (1967) by enacting the 24th Amendment Act (1971). This Act amended Articles 13 and 368. It declared that the Parliament has the power to abridge or take away any of the Fundamental Rights under Article 368 and such an act will not be a law under the meaning of Article 13.

However, in the *Kesavananda Bharati* case (1973), the Supreme Court overruled its judgement in the *Golak Nath* case (1967). It upheld the validity of the 24th Amendment Act (1971) and stated that Parliament is empowered to abridge or take away any of the Fundamental Rights. At the same time, it laid down a new doctrine of the 'basic structure' (or 'basic features') of the Constitution. It ruled that the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution. This means that the Parliament cannot abridge or take away a Fundamental Right that forms a part of the 'basic structure' of the Constitution.

Again, the Parliament reacted to this judicially innovated doctrine of 'basic structure' by enacting the 42nd Amendment Act (1976). This Act amended Article 368 and declared that there is no limitation on the constituent power of Parliament and no amendment can be questioned in any court on any ground including the contravention of any of the fundamental rights.

However, the Supreme Court in the *Minerva Mills* case (1980) invalidated this provision as it excludes judicial review which is a 'basic feature' of the Constitution. Again in the *Waman Rao* case (1981), the Supreme Court adhered to the doctrine of the 'basic structure' and further clarified that it would apply to constitutional amendments enacted after April 24, 1973 (i.e., the date of the judgement in the *Kesavananda Bharati* case).

INGREDIENTS OF THE 'BASIC STRUCTURE'

The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the 'basic structure' of the Constitution. However, the Supreme Court is yet to define or clarify as to what constitutes the 'basic structure' of the Constitution. From the various judgements, the following have emerged as 'basic features' of the Constitution:

- Limited power of Parliament to amend the Constitution.
- Effective access to justice.
- Reasonableness.
- Federal character of the Constitution.
- Unity and integrity of the nation.
- Welfare state (socio–economic justice).
- Judicial review.
- Freedom and dignity of the individual.
- Parliamentary system.
- Rule of law.
- Harmony and balance between Fundamental Rights and Directive Principles.
- Principle of equality.
- Free and fair elections.
- Independence of Judiciary.
- Supremacy of the Constitution.
- Sovereign, democratic and republican nature of the Indian polity.
- Secular character of the Constitution.
- Separation of powers between the legislature, the executive and the judiciary.

10. PRESIDENT AND VICE-PRESIDENT

PRESIDENT

Articles 52 to 78 in Part V of the Constitution deal with the Union executive.

The Union executive consists of the President, the Vice-President, the Prime Minister, the council of ministers and the attorney general of India.

The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

ELECTION OF THE PRESIDENT

The President is elected not directly by the people but by members of electoral college consisting of :

- the elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry·
- the elected members of both the Houses of Parliament;
- the elected members of the legislative assemblies of the states; and

Thus, the nominated members of both of Houses of Parliament, the nominated members of the state legislative assemblies, the members (both elected and nominated) of the state legislative councils (in case of the bicameral legislature) and the nominated members of the Legislative Assemblies of Delhi and Puducherry do not participate in the election of the President. Where an assembly is dissolved, the members cease to be qualified to vote in presidential election, even if fresh elections to the dissolved assembly are not held before the presidential election.

The Constitution provides that there shall be uniformity in the scale of representation of different states as well as parity between the states as a whole and the Union at the election of the President. To achieve this, the number of votes which each elected member of the legislative assembly of each state and the Parliament is entitled to cast at such election shall be determined in the following manner:

- Every elected member of the legislative assembly of a state shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the state by the total number of the elected members of the assembly. This can be expressed as:

Value of the vote of an MLA

$$= \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000}$$

- Every elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to members of the legislative assemblies of the states by the total number of the elected members of both the Houses of Parliament. This can be expressed as :

Value of the vote of an MP =

$$= \frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}}$$

The President's election is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot. This system ensures that the successful canidate is returned by the absolute majority of votes. A candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes. The quota of votes is determined by dividing the total number of valid votes polled by the number of candidates to be elected (here only one candidate is to be elected as President) plus one and adding one to the quotient. The formula can be expressed as :

Electoral quota =

$$= \frac{\text{Total number of valid votes polled}}{1+1=(2)} + 1$$

Each member of the electoral college is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1, 2, 3, 4, etc. against the names of candidates. This means that

the voter can indicate as many preferences as there are candidates in the fray.

In the first phase, the first preference votes are counted. In case a candidate secures the required quota in this phase, he is declared elected. Otherwise, the process of transfer of votes is set in motion. The ballots of the candidate securing the least number of first preference votes are cancelled and his second preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota.

All doubts and disputes in connection with election of the President are inquired into and decided by the Supreme Court whose decision is final.

Elections of the Presidents (1952-2012)

Sl. No.	*Election Year*	*Victorious Candidate*
1.	1952	Dr. Rajendra Prasad
2.	1957	Dr. Rajendra Prasad
3.	1962	Dr. S. Radhakrishnan
4.	1967	Dr. Zakir Hussain
5.	1969	V.V. Giri
6.	1974	Fakhruddin Ali Ahmed
7.	1977	N. Sanjeeva Reddy
8.	1982	Giani Zail Singh
9.	1987	R. Venkataraman
10.	1992	Dr. Shankar Dayal Sharma
11.	1997	K.R. Narayanan
12.	2002	Dr. A.P.J. Abdul Kalam
13.	2007	Ms. Pratibha Patil
14.	2012	Pranav Mukherjee

QUALIFICATIONS, OATH AND CONDITIONS

Qualifications for Election as President

A person to be eligible for election as President should fulfil the following qualifications:

- He should be a citizen of India.
- He should have completed 35 years of age.
- He should be qualified for election as a member of the Lok Sabha.
- 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.

Further, the nomination of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers and 50 electors as seconders. Every candidate has to make a security deposit of Rs. 15,000 in the Reserve Bank of India.

Oath or Affirmation by the President

Before entering upon his office, the President has to make and subscribe to an oath or affirmation. In his oath, the President swears :

- to faithfully execute the office;
- to preserve, protect and defend the Constitution and the law; and
- to devote himself to the service and wellbeing of the people of India.

The oath of office to the President is administered by the Chief Justice of India and in his absence, the seniormost judge of the Supreme Court available.

Any other person acting as President or discharging the functions of the President also undertakes the similar oath or affirmation.

TERM, IMPEACHMENT AND VACANCY

Term of President's office

The President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the Vice-President. Further, he can also be removed from the office before completion of his term by the process of impeachment.

Impeachment of President

The President can be removed from office by a process of impeachment for 'violation of the Constitution'. However, the Constitution does not define the meaning of the phrase 'violation of the Constitution'.

The impeachment charges can be initiated by either House of Parliament. These charges should be signed by one-fourth members of the House (that framed the charges), and a 14 days' notice should be given to the President. After the impeachment bill is passed by a majority of two-thirds of the total membership of that House, it is sent to the other House, which should investigate the charges. The President has the right to appear and to be represented at such investigation. If the other House also sustains the charges and passes the impeachment bill by a majority of two-thirds of the total membership, then the President stands removed from his office from the date on which the bill is so passed.

No President has so far been impeached.

Vacancy in the President's Office

A vacancy in the President's office can occur in any of the following ways :

- Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.
- On the expiry of his tenure of five years.
- On his removal by the process of impeachment.
- By his death.
- By his resignation.

When the vacancy is going to be caused by the expiration of the term of the sitting President, an election to fill the vacancy must be held before the expiration of the term. In cas of any delay in conducting the election of President by any reason, the outgoing President continues to hold office (beyond his tem of five years) until his successor assume charge.

When a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise, the Vice-President acts as the President until a new President is elected.

In case the office of Vice-President is vacant, the Chief Justice of India (or if his office is also vacant, the seniormost judge of the Supreme Court available) acts as the President or discharges the functions of the President.

POWERS AND FUNCTIONS OF THE PRESIDENT

The powers enjoyed and the functions performed by the President can be studied under the following heads.

Executive Powers

The executive powers and functions of the President are :

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

Legislative Powers

The President is an integral part of the Parliament of India, and enjoys the following legislative powers.

- He decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission.
- His prior recommendation or permission is needed to introduce certain types of bills in the Parliament. For example, a bill involving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.
- He can address the Parliament at the commencement of the first session after each general election and the first session of each year.
- He can send messages to the Houses of Parliament, whether with respect to a bill pending in the Parliament or otherwise.

- He can summon or prorogue the Parliament and dissolve the Lok Sabha. He can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.
- He can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.
- He nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.
- He can nominate two members to the Lok Sabha from the Anglo-Indian Community.
- When a bill is sent to the President after it has been passed by the Parliament, he can:
  - give his assent to the bill, or
  - withhold his assent to the bill, or
  - return the bill (if it is not a money bill) for reconsideration of the Parliament.

However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his assent to the bill.

- When a bill passed by a state legislature is reserved by the governor for consideration of the President, the President can:
  - give his assent to the bill, or
  - withhold his assent to the bill, or
  - direct the governor to return the bill (if it is not a money bill) for reconsideration of the state legislature. It should be noted here that it is not obligatory for the President to give his assent even if the bill is again passed by the state legislature and sent again to him for his consideration.
- He can promulgate ordinances when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. He can also withdraw an ordinance at any time.
- He lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.
- He can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshad-dweep, Dadra and Nagar Haveli and Daman and Diu. In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved.

Financial Powers

The financial powers and functions of the President are:

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

Judicial Powers

The judicial powers and functions of the President are:

- He appoints the Chief Justice and the judges of Supreme Court and high courts.
- He can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.
- He can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence:
  - In all cases where the punishment or sentence is by a court martial;
  - In all cases where the punishment or sentence is for an offence against a Union law; and
  - In all cases where the sentence is a sentence of death.

Diplomatic Powers

The international treaties and agreements are negotiated and concluded on behalf of the President. However, they are subject to the approval of the Parliament.

Military Powers

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

Emergency Powers

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

- National Emergency (Article 352);
- President's Rule (Article 356 & 365); and
- Financial Emergency (Article 360)

VETO POWER OF THE PRESIDENT

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

- He may give his assent to the bill, or
- He may withhold his assent to the bill, or
- 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.

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

- Qualified veto, which can be overridden by the legislature with a higher majority.
- Absolute veto, that is, withholding of assent to the bill passed by the legislature.
- Suspensive veto, which can be over ridden by the legislature with an ordinary majority.
- Pocket veto, that is, taking no action on the bill passed by the legislature.

Of the above four, the President of India is vested with three–absolute veto, suspensive veto and pocket veto.

Absolute Veto

It refers to the power of the President to with-hold his assent to a bill passed by the Parliament. The bill then ends and does not become an act.

In 1954, President Dr. Rajendra Prasad with-held his assent to the PEPSU Appropriation Bill.

Again in 1991, President R. Venkataraman withheld his assent to the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill.

Suspensive Veto

The President exercises this veto when he returns a bill for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, it is obligatory for the President to give his assent to the bill.

Pocket Veto

In this case, the President neither ratifies nor rejects nor returns the bill, but simply keeps the bill pending for an indefinite period. This power of the President not to take any action (either positive or negative) on the bill is known as the pocket veto.

In 1986, President Zail Singh exercised the pocket veto with respect to the Indian Post Office (Amendment) Bill. The bill, passed by the Rajiv Gandhi Government, imposed restrictions on the freedom of press and hence, was widely criticised.

Presidential Veto over State Legislation

When a bill is reserved by the governor for the consideration of the President, the President has three alternatives (Under Article 201 of the Constitution):

- He may give his assent to the bill, or
- He may withhold his assent to the bill, or
- He may direct the governor to return the bill (if it is not a money bill) for the reconsideration of the state legislature. If the bill is passed again by the state legislature with or without amendments and presented again to the President for his assent, the President is not bound to give his assent to the bill. This means that the state legislature cannot override the veto power of the President.

ORDINANCE-MAKING POWER OF THE PRESIDENT

Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament. These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws.

- He can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament are

not in session. An ordinance can also be issued when only one House is in session because a law can be passed by both the Houses and not by one House alone. Thus, the power of the President to legislate by ordinance is not a parallel power of legislation.

- He can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.
- His ordinance-making power is coextensive as regards all matters except duration, with the law-making powers of the Parliament. This has two implications:
  - An ordinance can be issued only on those subjects on which the Parliament can make laws.
  - An ordinance is subject to the same constitutional limitation as an act of Parliament. Hence, an ordinance cannot abridge or take away any of the fundamental rights.
- Every ordinance issued by the President during the recess of Parliament must be laid before both the Houses of Parliament when it reassembles.

The President can also withdraw an ordinance at any time. However, his power of or dinance-making is not a discretionary power and he can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the Prime Minister.

PARDONING POWER OF THE PRESIDENT

Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:

- Punishment or sentence is for an offence against a Union Law;
- Punishment or sentence is by a court martial (military court); and
- Sentence is a sentence of death.

The pardoning power of the President includes the following:

- **Pardon :** It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.
- **Commutation :** It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.
- **Remission :** It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.
- **Respite :** It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.
- **Reprieve :** It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

The Supreme Court examined the pardoning power of the President under different cases and laid down the following principles:

- The petitioner for mercy has no right to an oral hearing by the President.
- The President can examine the evidence afresh and take a view different from the view taken by the court.
- The power is to be exercised by the President on the advice of the union cabinet.
- The President is not bound to give reasons for his order.
- The President can afford relief not only from a sentence that he regards as unduly harsh but also from an evident mistake.
- The exercise of power by the President is not subject to judicial review except where the presidential decision is arbitrary, irrational, *mala fide* or discriminatory.

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.

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, this electoral college is different from the electoral college for the election of the President in the following two respects:

- It consists of both elected and nominated members of the Parliament (in the case of president, only elected members).
- 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).

Elections of the Vice-Presidents (1952-2012)

Sl. No.	*Election Year*	*Victorious Candidate*
1.	1952	Dr. Radhakrishnan
2.	1957	Dr. S. Radhakrishnan
3.	1962	Dr. Zakir Hussain
4.	1967	V.V. Giri
5.	1969	G.S. Pathak
6.	1974	B.D. Jatti
7.	1979	M. Hidaytullah
8.	1984	R. Venkataraman
9.	1987	Dr. Shankar Dayal Sharma
10.	1992	K.R. Narayanan
11.	1997	Krishna Kant
12.	2002	B.S. Shekhawat
13.	2007	Mohd. Hamid Ansari
14.	2012	Mohd. Hamid Ansari

QUALIFICATIONS

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

- He should be a citizen of India.
- He should have completed 35 years of age.
- He should be qualified for election as a member of the Rajya Sabha.
- 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.

The nomination of a candidate for election to the office of Vice-President must be subscribed by at least 20 electors as proposers and 20 electors as seconders. Every candidate has to make a security deposit of Rs. 15,000 in the Reserve Bank of India.

OATH OR AFFIRMATION

Before entering upon his office, the Vice-President has to make and subscribe to an oath or affirmation. In him oath, the Vice-President swears:

- to bear true faith and allegiance to the Constitution of India; and
- to faithfully discharge the duties of his office.

The oath of office to the Vice-President is administered by the President or some person appointed in that behalf by him.

TERM OF OFFICE

The Vice-President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the President. He can also be removed from the office before completion of his term. A formal impeachment is not required for his removal. He can be removed by a resolution of the Rajya Sabha passed by an absolute majority (ie, a majority of the total members of the House) and agreed to by the lok Sabha.

VACANCY IN OFFICE

A vacancy in the Vice-President's office can occur in any of the following ways:

- On the expiry of his tenure of five years.
- By his resignation.
- On his removal.
- By his death.
- Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

ELECTION DISPUTES

All doubts and disputes in connection with election of the Vice-President are inquired into and decided by the Supreme Court whose decision is final. The election of a person as Vice-President cannot be challenged on the ground that the electoral college was incomplete (i.e., existence of any vacancy among the members of electoral college).

POWERS AND FUNCTIONS

The functions of Vice-President are two-fold:

- He acts as the *ex-officio* Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha.
- He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or other-wise.

11. Prime Minister and Council of Minister

PRIME MINISTER

In the scheme of parliamentary system of government provided by the constitution, the President is the nominal executive authority (*de jure* executive) and Prime Minister is the real executive authority (*de facto* executive).

APPOINTMENT OF THE PRIME MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister. Article 75 says only that the Prime Minister shall be appointed by the president. In accordance with the conventions of the parliamentary system of government, the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. But, when no party has a clear majority in the Lok Sabha, then the President may exercise his personal discretion in the selection and appointment of the Prime Minister. In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month.

In 1980, the Delhi High Court held that the Constitution does not require that a person must prove his majority in the Lok Sabha before he is appointed as the Prime Minister. The President may first appoint him the Prime Minister and then ask him to prove his majority in the Lok Sabha within a reasonable period. For example, Charan Singh (1979), VP Singh (1989), Chandrasekhar (1990), PV Narasimha Rao (1991), AB Vajyapee (1996), Deve Gowda (1996), IK Gujral (1997) and again AB Vajpayee (1998) were appointed as Prime Ministers in this way.

OATH, TERM AND SALARY

Before the Prime Minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the Prime Minister swears:

- to bear true faith and allegiance to the Constitution of India,
- to uphold the sovereignty and integrity of India,
- to faithfully and conscientiously discharge the duties of his office, and
- to do right to all manner of people in accordance with the Constitution and the law, without fear of favour, affection or ill will.

The salary and allowances of the Prime Minister are determined by the Parliament from time to time. He gets the salary and allowances that are payable to a member of Parliament.

POWERS AND FUNCTIONS OF THE PRIME MINISTER

In Relation to Council of Ministers

The Prime Minister enjoys the following powers as head of the Union council of minister:

- He recommends persons who can be appointed as ministers by the president. The President can appoint only those person as ministers who are recommended by the Prime Minister.
- He allocates and reshuffles various portfolios among the ministers.
- He can ask a minister to resign or advis the President to dismiss him in case of difference of opinion.
- He presides over the meeting of council of ministers and influences its decisions
- He guides, directs, controls, and co-ordinates the activities of all the ministers.
- He can bring about the collapse of the council of ministers by resigning from office.

Relation to the President

Prime Minister enjoys the following power in relation to the President:

- He is the principal channel of communication between the President and the council of ministers.[4] It is the duty of the Prime Minister :
  - to communicate to the President all decisions of the council of ministers relating to the

administration of the affairs of the Union and proposals for legislation;

- to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

- He advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.

In Relation to Parliament

The Prime Minister is the leader of the Lower House. In this capacity, he enjoys the following powers:

- He advises the President with regard to summoning and proroguing of the sesions of the Parliament.
- He can recommend dissolution of the Lok Sabha to President at any time.
- He announces government policies on the floor of the House.

Other Powers & Functions

- He is the chairman of the Planning Commission, National Development Council, National Integration Council, Inter-State Council and National Water Resources Council.
- He plays a significant role in shaping the foreign policy of the country.
- He is the chief spokesman of the Union government.
- He is the crisis manager-in-chief at the political level during emergencies.
- As a leader of the nation, he meets various sections of people in different states and receives memorands from them regarding their problems, and so on.
- He is leader of the party in power.
- He is political head of the services.

CENTRAL COUNCIL OF MINISTERS

As the Constitution of India provides for a parliamentary system of government modelled on the British pattern, the council of ministers headed by the prime minister is the real executive authority is our politico-administrative system.

CONSTITUTIONAL PROVISIONS

Article 74–Council of Ministers to aid and advise President:

- There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. However, the President may require the Council of Ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.
- The advice tendered by Ministers to the President shall not be inquired into in any court.

Article 75–Other Provisions as to Ministers:

- The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.
- The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. The provision was added by the 91st Amendment Act of 2003.
- A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.
- The ministers shall hold office during the pleasure of the President.
- The council of ministers shall be collectively responsible to the Lok Sabha.
- The President shall administer the oaths of office and secrecy to a minister.
- A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.

- The salaries and allowances of ministers shall be determined by the Parliament.

NATURE OF ADVICE BY MINISTERS

Article 74 provides for a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The 42nd and 44th Constitutional Amendment Acts have made the advice binding on the President. Further, the nature of advice tendered by ministers to the President cannot be enquired by any court.

APPOINTMENT OF MINISTERS

The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister.

Usually, the members of Parliament, either Lok Sabha or Rajya Sabha, are appointed as ministers. A person who is not a member of either House of Parliament can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of Parliament, otherwise, he ceases to be a minister.

Oath and Salary of Ministers

Before a minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the minister swears:

- to bear true faith and allegiance to the Constitution of India,
- to uphold the sovereignty and integrity of India,
- to faithfully and conscientiously discharge the duties of his office, and
- to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

The salaries and allowances of ministers are determined by Parliament from time to time. A minister gets the salary and allowances that are payable to a member of Parliament.

RESPONSIBILITY OF MINISTERS

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha.

The principle of collective responsibility also means that the Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting.

Individual Responsibility

Article 75 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the president, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha. However, the President removes a minister only on the advice of the Prime Minister.

COMPOSITION OF THE COUNCIL OF MINISTERS

The council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state,[5] and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the Prime Minister–the supreme governing authority of the country.

The ministers of state can either be given independent charge of ministries/departments or can be attached to cabinet ministers.

Next in rank are the deputy ministers. They are not given independent charge of ministries/departments. They are attached to the cabinet ministers or ministers of state and assist them in their administrative, political, and parliamentary duties.

Distinction Between Council of Minsiters and Cabinet

S. No.	*Council of ministers*	*Cabinet*
1.	It is a wider body consisting of 60 to 70 ministers.	1. It is a smaller body consisting of 15 to 20 ministers.
2.	It includes all the three categories of ministers, that is, cabinet ministers, ministers of state, and deputy ministers.	2. It includes the cabinet ministers only. Thus, it is a part of the council of ministers.
3.	It does not meet, as a body, to transact government business. It has no collective functions.	3. It meets, as a body, frequently and usually once in a week to deliberate and take decisions regarding the transaction of government business. Thus, it has collective functions.
4.	It is vested with all powers but in theory.	4. It exercises, in practice, the powers of the council of ministers and thus, acts for the latter.
5.	Its functions are determined by the cabinet.	5. It directs the council of ministers by taking policy decisions which are binding on all ministers.
6.	It implements the decisions taken by the cabinet.	6. It supervises the implementation of its decisions by the council of ministers.
7.	It is a constitutional body, dealt in detail by the Articles 74 and 75 of the Constitution. Its size and classification are, however, not mentioned in the Constitution. Its size is determined by the prime minister according to the exigencies of the time and requirements of the situation. Its classification into a three-tier body is based on the conventions of parliamentary government as developed in Britain. It has, however, got a legislative sanction. Thus, the Salaries and Allowances Act of 1952 defines a 'minister' as 'member of the council of ministers, by whatever name called, and includes a deputy minister'.	7. It was inserted in Article 352 of the Constitution in 1978 by the 44th Constitutional Amendment Act. Thus, it did not find a place in the original text of the Constitution. Now also, Article 352 only defines the cabinet saying that it is 'the council consisting of the prime minister and other ministers of cabinet rank appointed under Article 75' and does not describe its powers and functions. In other words, its role in our politico-administrative system is based on the conventions of parliamentary government as developed in Britain.
8.	It is collectively responsible to the Lower House of the Parliament.	8. It enforces the collective responsibility of the council of ministers to the Lower House of Parliament.

Kitchen Cabinet

KITECHEN CABINET

The cabinet, a small body consisting of the prime minister as its head and some 15 to 20 most important ministers, is the highest decision-making body in the formal sense. However, a still smaller body called the 'inner Cabinet' or 'Kitchen Cabinet' has become the real centre of power. This informal body consists of the prime minister and two to four influential colleagues in whom he has faith and with whom he can discuss every problem. It is composed of not only cabinet ministers but also outsiders like friends and family members of the prime minister.

CABINET COMMITTEES

The cabinet works through various committees. The following points can be noted with regard to cabinet committees:

- They are extra-constitutional as they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.
- They are of two types–standing and *ad hoc*. The former are of a permanent nature while the latter are of a temporary nature.
- They are set up by the prime minister according to the exigencies of the time and requirements of the situation.
- Their membership varies from three to eight.
- They are mostly headed by the prime minister. Sometimes, other cabinet ministers particularly the home minister or the finance minister also act as their chairman.
- They are an organisational device to reduce the enormous workload of the cabinet.
- The more important standing committees are four– Political Affairs Committee, Economic Affairs Committee, Appointments Committee and Parliamentary Affairs Committee. The first three are chaired by the prime minister and the last one by the home minister. Of all the cabinet committees, the most powerful is the Political Affairs Committee, often described as a 'Super-Cabinet'.

12. 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 organisation, composition, duration, officers, procedures, privileges, powers and so on of the Parliament.

ORGANISATION OF PARLIAMENT

Under the Constitution, the Parliament of India consists of three parts viz, the President, the Council of States and the House of the People. In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively.

Though the President of India is not a member of either House of Parliament and does not sit in the Parliament to attend its meetings, he is an integral part of the Parliament. This is because a bill passed by both the Houses of Parliament cannot become law without the President's assent.

COMPOSITION OF THE TWO HOUSES

Composition of Rajya Sabha

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

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

- **Representation of States :** The representatives of states in the Rajya Sabha are elected by the elected members of state legislative assemblies. The election is held in accordance with the system of proportional representation by means of the single transferable vote. The seats are allotted to the states in the Rajya Sabha on the basis of population.
- **Representation of Union Territories :** The representatives of each union territory in the Rajya Sabha are indirectly elected by members of an electroral college specially constituted for the purpose. Out of the seven union territories, only two (Delhi and Pondicherry) have representation in Rajya Sabha.
- **Nominated Members :** The president nominates 12 members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service.

Composition of Lok Sabha

The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and 2 members are to be nominated by the president from the Anglo-Indian community.

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

- **Representation of States :** The representatives of states in the Lok Sabha are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.
- **Representation of Union Territories :** The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Sabha. Accordingly, the Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the members of Lok Sabha from the union territories are also chosen by direct election.
- **Nominated Members :** The president can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Sabha.

SYSTEM OF ELECTIONS TO LOK SABHA

Territorial Constituencies

For the purpose of holding direct elections to the Lok Sabha, each state is divided into territorial

constituencies. In this respect, the Constitution makes the following two provisions:

- Each state is allotted a number of seats in the Lok Sabha in such a manner that the ratio between that number and its population is the same for all states.
- Each state is divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state.

Readjustment after each Census

After every census, a readjustment is to be made in (a) allocation of seats in the Lok Sabha to the states, and (b) division of each state into territorial constituencies. Parliament is empowered to determine the authority and the manner in which it is to be made.

The 42nd Amendment Act of 1976 froze the allocation of seats in the Lok Sabha to the states and the division of each state into territorial constituencies till the year 2000 at the 1971 level. This ban on readjustment was extended for another 25 years (ie, upto year 2026) by the 84th Amendment Act of 2001, with the same objective of encouraging population limiting measures.

Reservation of Seats for SCs and STs

Though the Constitution has abandoned the system of communal representation, it provides for the reservation of seats for scheduled castes and scheduled tribes in the Lok Sabha on the basis of population ratios.

Originally, this reservation was to operate for ten years (ie, up to 1960), but it has been extended continuously since then by 10 years each time.

The 87th Amendment Act of 2003 provided for the refixing of the reserved seats on the basis of 2001 census and not 1991 census.

DURATION OF TWO HOUSES

Duration of Rajya Sabha

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

Duration of Lok Sabha

Unlike the Rajya Sabha, the Lok Sabha is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections, after which it automatically dissolves. However, the President is authorised to dissolve the Lok Sabha at any time even before the completion of five years and this cannot be challenged in a court of law.

MEMBERSHIP OF PARLIAMENT

Qualifications

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

- He must be a citizen of India.
- He must make and subscribe before the person authorised by the election commission an oath or affirmation according to the form prescribed in the Third Schedule.
- He must be not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years of age in the case of the Lok Sabha.
- He must posses other qualifications prescribed by Parliament.

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

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

Under the Constitution, a person shall be disqualified for being elected as a member of Parliament:

- if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by Parliament).
- if he is of unsound mind and stands so declared by a court.
- if he is an undischarged insolvent.

- if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state; and
- if he is so disqualified under any law made by Parliament.

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

- He must not have been found guilty of certain election offences or corrupt practices in the election.
- He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
- He must not have failed to lodge an account of his election expenses within the time.
- He must not have any interest in government contracts, works or services.
- He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 percent share.
- He must not have been dismissed from government service for corruption or disloyalty to the State.
- He must not have been convicted for promoting enmity between different groups or for the offence of bribery.
- He must not have been punished for preaching and practising social crime such as untouchability, dowry and sati.

On the auestion whether a member is subject to any of the above disqualifications, the president's decision is final. However, he should obtain the opinon of the election commission and act. accordingly.

Disqualification on Ground of Defection : The Constitution also lays down that a person shall be disqualified from being a member of Parliament if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule. A member incurs disqualification under the defection law:

- if he voluntary gives up the membership of the political party on whose ticket he is elected to the House;
- if he votes or abstains from voting in the House contrary to any direction given by his political party;
- if any independently elected member joins any political party; and
- if any nominated member joins any political party after the expiry of six months.

The question of disqualification under the Tenth Schedule is decided by the Chairman in the case of Rajya Sabha and Speaker in the case of Lok Sabha (and not by the president of India). In 1992, the Supreme Court ruled that the decision of the Chairman/Speaker in this regard is subject to judicial review.

Vacating of Seats

- **Double Membership :** A person cannot be a member of both Houses of Parliament at the same time.

a person cannot be a member of both the Parliament and the state legislature at the same time. If a person is so elected, his seat in Parliament becomes vacant if he does not resign his seat in the state legislature within 14 days.

- **Disqualification :** If a member of Parliament becomes subject to any of the disqualifications specified in the Constitution, his seat becomes vacant.
- **Resignation :** A member may resign his seat by writing to the Chairman of Rajya Sabha or Speaker of Lok Sabha, as the case may be.
- **Absence :** A House can declare the seat of a member vacant if he is absent from all its meetings for a period of sixty days without its permission.
- **Other cases :** A member has to vacate his seat in the Parliament:
  - if his election is declared void by the court;
  - if he is expelled by the House;
  - if he is elected to the office of President or Vice-President ; and
  - if he is appointed to the office of governor of a state.

Oath or Affirmation

Every member of either House of Parliament, before taking his seat in the House, has to make and subscribe to an oath or affirmation before the President or some person appointed by him for this purpose. In his oath or affirmation, a member of Parliament swears:

- to bear true faith and allegiance to the Constitution of India;
- to uphold the sovereignty and integrity of India; and

- to faithfully discharge the duty upon which he is about to enter.

Unless a member takes the oath, he cannot vote and participate in the proceedings of the House and does not become eligible to parliamentary privileges and immunities.

Salaries and Allowances

Members of either House of Parliament are entitled to receive such salaries and allowances as may be determined by Parliament, and there is no provision of pension in the Constitution. However, Parliament has provided pension to the members.

PRESIDING OF FICERS OF PARLIAMENT

Each House of Parliament has its own presiding officer. There is a Speaker and a Deputy Speaker for the Lok Sabha and a Chairman and a Deputy Chairman for the Rajya Sabha.

Speaker of Lok Sabha

Election and Tenure : The Speaker is elected by the Lok Sabha from amongst its members (as soon as may be, after its first sitting).

Usually, the Speaker remains in office during the life of the Lok Sabha. However, he has to vacate his office earlier in any of the following three cases:

- if he ceases to be a member of the Lok Sabha;
- if he resigns by writing to the Deputy Speaker; and
- if he is removed by a resolution passed by a majority of all the members of the Lok Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

It should be noted here that, whenever the Lok Sabha is dissolved, the Speaker does not vacate his office and continues till the newlyelected Lok Sabha meets.

Role, Powers and Functions : The Speaker is the head of the Lok Sabha, and its representative. He is the guardian of powers and privileges of the members, the House as a whole and its committees. He is the principal spokesman of the House, and his decision in all Parliamentary matters is final.

The Speaker of the Lok Sabha derives his powers and duties from three sources, that is, the Constitution of India, the Rules of Procedure and Conduct of Business of Lok Sabha, and Parliamentary Conventions (residuary powers that are unwritten or unspecified in the Rules). Altogether, he has the following powers and duties:

- He maintains order and decorum in the House for conducting its business and regulating its proceedings.
- He is the final interpreter of the provision of
  - the Constitution of India
  - the Rules of Procedure and Conduct of Business of Lok Sabha, and
  - the parliamentary precedents, within the House.
- He adjourns the House or suspends the meeting in absence of a quorum. The quorum to constitute a meeting of the House is one-tenth of the total strength of the House.
- He does not vote in the first instance But he can exercise a casting vote in the case of a tie.
- He presides over a joint setting of the two Houses of Parliament.
- He can allow a 'secret' sitting of the House at the request of the Leader of the House.
- He decides whether a bill is a money bill or not and his decision on this question is final.
- He decides the questions of disqualification of a member of the Lok Sabha, arising on the ground of defection under the provisions of the Tenth Schedule.
- He acts as the *ex-officio* chairman of the Indian Parliamentary Group of the Inter-Parliamentary Union.
- He appoints the chairman of all the parliamentary committees of the Lok Sabha and supervises their functioning.

Deputy Speaker of Lok Sabha

Like the Speaker, the Deputy Speaker is also elected by the Lok Sabha itself from amongst its members. He is elected after the election of the Speaker has taken place. The date of election of the Deputy Speaker is fixed by the Speaker. Whenever the office of the Deputy Speaker falls vacant, the Lok Sabha elects another member to fill the vacancy.

It should be noted here that the Deputy Speaker is not subordinate to the Speaker. He is directly responsible to the House.

Upto the 10th Lok Sabha, both the Speaker and the Deputy Speaker were usually from the ruling party.

Since the 11th Lok Sabha, there has been a consensus that the Speaker comes from the ruling party (or ruling alliance) and the post of Deputy Speaker goes to the main opposition party.

Speaker Pro Tem

As provided by the Constitution, the Speaker of the last Lok Sabha vacates his office immediately before the first meeting of the newlyelected Lok Sabha. Therefore, the President appoints a member of the Lok Sabha as the Speaker *Pro Tem.* Usually, the seniormost member is selected for this.

He presides over the first sitting of the newly-elected Lok Sabha. His main duty is to administer oath to the new members.

Chairman of Rajya Sabha

The presiding officer of the Rajya Sabha is known as the Chairman. The vice-president of India is the *ex-officio* Chairman of the Rajya Sabha. During any period when the Vice-President acts as President or discharges the functions of the President, he does not perform the duties of the office of the Chairman of Rajya Sabha.

The Chairman of the Rajya Sabha can be removed from his office only if he is removed from the office of the Vice-President.

Unlike the Speaker (who is a member of the House), the Chairman is not a member of the House.

Deputy Chairman of Rajya Sabha

The Deputy Chairman is elected by the Rajya Sabha itself from amongst its members. Whenever the office of the Deputy Chairman falls vacant, the Rajya Sabha elects another member to fill the vacancy.

The Deputy Chairman vacates his office in any of the following three cases:

- if he ceases to be a member of the Rajya Sabha;
- if he resigns by writing to the Chairman; and
- if he is removed by a resolution passed by a majority of all the members of the Rajya Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

LEADERS IN PARLIAMENT

Leader of the House

Under the Rules of Lok Sabha, the 'Leader of the House' means the prime minister, if he is a member of the Lok Sabha and is nominated by the prime minister to function as the Leader of the House.

Leader of the Opposition

In each House of Parliament, there is the 'Leader of the Opposition'. The leader of the largest Opposition party having not less than one-tenth seats of the total strength of the House is recognised as the leader of the Opposition in that House. The leader of Opposition in the Lok Sabha and the Rajya Sabha were accorded statutory recognition in 1977. They are also entitled to the salary, allowances and other facilities equivalent to that of a cabinet minister.

Whip

The office of 'whip', on the other hand, is mentioned neither in the Constitution of India nor in the Rules of the House nor in a Parliamentary Statute. It is based on the conventions of the parliamentary government.

Every political party, whether ruling or Opposition has its own whip in the Parliament. He is appointed by the political party to serve as an assistant floor leader. He is charged with the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favour of or against a particular issue.

SESSIONS OF PARLIAMENT

Summoning

The president from time to time sumons each House of Parliament to meet. But, the maximum gap between two sessions of Parliament cannot be more than six months. There are usually three sessions in a year, viz,

- the Budget Session (February to May);
- the Monsoon Session (July to September); and
- the Winter Session (November to December).

A 'session' of Parliament is the period spanning between the first sitting of a House and its prorogation (or dissolution in the case of the Lok Sabha).

Adjournment

A session of Parliament consists of many meetings. Each meeting of a day consists of two sittings, that is, a morning sitting from 11 am to 1 pm and post-lunch sitting from 2 pm to 6 pm. A sitting of Parliament can be terminated by adjournment or adjournment *sine die* or prorogation or dissolution (in the case of the Lok Sabha). An adjournment suspends the work in a sitting for a specified time, which may be hours, days or weeks.

Adjournment *Sine Die*

Adjournment *sine die* means terminating a sitting of Parliament for an indefinite period. In other words, when the House is adjourned with-out naming a day for reassembly, it is called adjournment *sine die.* The power of adjournment as well as adjournment *sine die* lies with the presiding officer of the House. He can also call a sitting of the House before the date or time to which it has been adjourned or at any time after the House has been adjourned *sine die.*

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned *sine die*, when the business of a session is completed. Within the next few days, the President issues a notification for prorogation of the session.

Dissolution

Rajya Sabha, being a permanent House, is not subject to dissolution. Only the Lok Sabha is subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after general elections are held.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is one-tenth of the total number of members in each House including the presiding officer. It means that there must be at least 55 members present in the Lok Sabha and 25 members present in the Rajya Sabha, if any business is to be conducted.

Language in Parliament

The Constitution has declared Hindi and English to be the languages for transacting business in the Parliament. However, the presiding officer can permit a member to address the House in his mother-tongue.

Rights of Ministers and Attorney General

In addition to the members of a House, every minister and the attorney general of India have the right to speak and take part in the proceedings of either House, any joint sitting of both the Houses and any committee of Parliament of which he is a member, without being entitled to vote. There are two reasons underlying this constitutional provision:

- A minister can participate in the proceedings of a House, of which he is not a member. In other words, a minister belonging to the Lok Sabha can participate in the proceedings of the Rajya Sabha and vice-versa.
- A minister, who is not a member of either House, can participate in the proceedings of both the Houses. It should be noted here that a person can remain a minister for six months, without being a member of either House of Parliament.

Lame-duck Session

It refers to the last session of the existing Lok Sabha, after a new Lok Sabha has been elected. Those members of the existing Lok Sabha who could not get re-elected to the new Lok Sabha are called lame-ducks.

DEVICES OF PARLIAMENTARY PROCEEDINGS

Question Hour

The first hour of every parliamentary sitting is slotted for this. During this time, the members ask questions and the ministers usually give answers. The questions are of three kinds, namely, starred, unstarred and short notice.

A **starred question** (distinguished by an asterisk) requires an oral answer and hence supplementary questions can follow.

An **unstarred question,** on the other hand, requires a written answer and hence, supplementary questions cannot follow.

A **short notice question** is one that is asked by giving a notice of less than ten days. It is answered orally.

Zero Hour

Unlike the question hour, the zero hour is not mentioned in the Rules of Procedure. Thus it is an informal device available to the members of the Parliament to raise matters without any prior notice. The zero hour starts immediately after the question hour and lasts until the agenda for the day (ie, regular business of the House) is taken up. It is an Indian innovation in the field of parliamentary procedureas and has been in existence since 1962.

Privilege Motion : It is concerned with the breach of parliamentary privileges by a minister. It is moved by a member when he feels that a minister has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts. Its purpose is to censure the concerned minister.

Calling Attention Motion : It is introduced in the Parliament by a member to call the attention of a minister to a matter of urgent public impoirtance, and to seek an authoritative statement from him on that matter. Like the zero hour, it is also an Indian innovation in the parliamentary procedure and has been in existence since 1954. However, unlike the zero hour, it is mentioned in the Rules of Procedure.

Adjournment Motion : It is introduced in the Parliament to draw attention of the House to a definite matter of urgent public importance, and needs the support of 50 members to be admitted. As it interrupts the normal business of the House, it is regarded as an extraordinary device. It involves an elecment of censure against the government and hence Rajya Sabha is not permitted to make use of this device. The discussion on an adjournment motion should last for not less than two hours and thirty minutes.

The right to move a motion for an adjournment of the business of the House is subject to the following restrictions:

- It should raise a matter which is definite, factual, urgent and of public importance;
- It should not cover more than one matter;
- It should be restricted to a specific matter of recent occurrence and should not be framed in general terms;
- It should not raise a question of privilege;
- It should not revive discussion on a matter that has been discussed in the same session;
- It should not deal with any matter that is under adjudication by court; and
- It should not raise any question that can be raised on a distinct motion.

No-Confidence Motion : Article 75 of the Constitution says that the council of ministers shall be collectively responsible to the Lok Sabha. It means that the ministry stays in office so long as it enjoys confidence of the majority of the members of the Lok Sabha. In other words, the Lok Sabha can remove the ministry from office by passing a no-confidence motion. The motion needs the support of 50 members to be admitted.

Motion of Thanks : The first session after each general election and the first session of every fiscal year is addressed by the president. In this address, the president outlines the policies and programmes of the government in the preceding year and ensuing year. At the end of the discussion, the motion is put to vote. This motion must be passed in the House. Otherwise, it amounts to the defeat of the government.

ensure Motion vs No Confidence Motion

Censure Motion	*No-Confidence Motion*
• It should state the reasons for its adoption in the Lok Sabha.	• It need not state the reasong for its adoption in the Lok Sabha.
• It can be moved against an individual minister or a group of ministers or the entire council of ministers.	• It can be moved against the entire council of ministers only.
• It is moved for censuring the council of ministers for specific policies and actions.	• It is moved for ascertaining the confidence of Lok Sabha in the council of ministers.
• If it is passed in the Lok Sabha, the council of ministers need not resign from the office.	• If it is passed in the Lok Sabha, the council of ministers must resign from office.

Half-an-Hour Discussion

It is meant for discussing a matter of sufficient public importance, which has been subjected to a lot of debate and the answer to which needs elucidation on a matter of fact. The Speaker can allot three days in a week for such discussions. There is no formal motion or voting before the House.

Short Duration Discussion

It is also known as two-hour discussion as the time allo-tted for such a discussion should not exceed two hours. The members of the Parliament can raise such discussions on a matter of urgent public importance. The Speaker can allot two days in a week for such discussions. There is neither a formal motion before

the house nor voting. This device has been in existence since 1953.

Special Mention

A matter which is not a point of order or which cannot be raised during question hour, half-an hour discussion, short duration discussion or under adjournment motion, calling attention notice or under any rule of the House can be raised under the special mention in the Rajya Sabha. Its equivalent procedural device in the Lok Sabha is known as 'Notice (Mention) Under Rule 377'.

LEGISLATIVE PROCEDURE IN PARLIAMENT

The legislative procedure is identical in both the Houses of Parliament. Every bill has to pass through the same stages in each House.

The bills introduced in the Parliament can also be classified into four categories:

- Ordinary bills, which are concerned with any matter other than financial subjects.
- Money bills, which are concerned with the financial matters like taxation, public expenditure, etc.
- Financial bills, which are also concerned with financial matters (but are different from money bills).
- Constitution amendment bills, which are concerned with the amendment of the provisions of the Constitution.

Ordinary Bills

Every ordinary bill has to pass through the following five stages in the Parliament before it finds a place on the Statute Book:

- **First Reading :** An ordinary bill can be introduced in either House of Parliament. Such a bill can be introduced either by a minister or by any other member. The member who wants to introduce the bill has to ask for the leave of the House. When the House grants leave to introduce the bill, the mover of the bill introduces it by reading its title and objectives. No discussion on the bill takes place at this stage. Later, the bill is published in the Gazette of India. If a bill is published in the Gazette before its introduction, leave of the House to introduce the bill is not necessary. The introduction of the bill and its publication in the Gazette constitute the first reading of the bill.
- **Second Reading :** During this stage, the bill receives not only the general but also the detailed scrutiny and assumes its final shape. Hence, it forms the most important stage in the enactment of a bill. In fact, this stage involves three more sub-stages, namely, stage of general discussion, committee stage and consideration stage.
  - **Stage of General Discussion :** The printed copies of the bill are distributed to all the members. The principles of the bill and its provisions are discussed generally, but the details of the bill are not discussed.

  At this stage, the House can take any one of the following four actions:
  - It may take the bill into consideration immediately or on some other fixed date;
  - It may refer the bill to a select committee of the House;
  - It may refer the bill to a joint committee of the two Houses; and
  - It may circulate the bill to elicit public opinion.

  A Select Committee consists of members of the House where the bill has originated and a joint committee consists of members of both the Houses of Parliament.
  - **Committee Stage :** The usual practice is to refer the bill to a select committee of the House. This committee examines the bill thoroughly and in detail, clause by clause. It can also amend its provisions, but without altering the principles underlying it. After completing the scrutiny and discussion, the committee reports the bill back to the House.
  - **Consideration Stage :** The House, after receiving the bill from the select committee, considers the provisions of the bill clause by clause. Each clause is discussed and voted upon separately. The members can also move amendments and if accepted, they become part of the bill.
- **Third Reading :** At this stage, the debate is confined to the acceptance or rejection of the bill as a whole and no amendments are allowed, as the general principles underlying the bill have already been scrutinised during the stage of second reading. If the majority of members present and

voting accept the bill the bill is regarded as passed by the House Thereafter, the bill is authenticated by the presiding officer of the House and transmitted to the second House for consideration and approval. A bill is deemed to have been passed by the Parliament only when both the Houses have agreed to it, either with or without amendments.

- **Bill in the Second House :** In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading. There are four alternatives before this House:
  - it may pass the bill as sent by the first house (ie, without amendments);
  - it may pass the bill with amendments and return it to the first House for reconsideration;
  - it may reject the bill altogether; and
  - it may not take any action and thus keep the bill pending.

If the second House passes the bill without any amendments or the first House accepts the amendments suggested by the second House, the bill is deemed to have been passed by both the Houses and the same is sent to the president for his assent. On the other hand, if the first House rejects the amendments suggested by the second House or the second House rejects the bill altogether or the second House does not take any action for six months, a deadlock is deemed to have taken place. To resolve such a deadlock, the president can summon a joint sitting of the two Houses. If the majority of members present and voting in the joint sitting approves the bill, the bill is deemed to have been passed by both the Houses.

- **Assent of the President :** Every bill after being passed by both Houses of Parliament either singly or at a joint sitting, is presented to the President for his assent. There are three alternatives before the president:
  - he may give his assent to the bill; or
  - he may withhold his assent to the bill; or
  - he may return the bill for reconsideration of the Houses.

If the president gives his assent to the bill, the bill becomes an act and is placed on the Statute Book. If the President withholds his assent to the bill, it ends and does not become an act. If the President returns the bill for reconsideration and if it is passed by both the Houses again with or without amendments and presented to the President for his assent, the president must give his assent to the bill. Thus, the President enjoys only a "suspensive veto."

Money Bills

Article 110 of the Constitution deals with the definition of money bills. It states that a bill is deemed to be a money bill if it contains 'only' provisions dealing with all or any of the following matters:

- The imposition, abolition, remission, alteration or regulation of any tax;
- The regulation of the borrowing of money by the Union government;
- The custody of the Consolidated Fund of India or the contingency fund of India, the payment of moneys into or the withdrawal of money from any such fund;
- The appropriation of money out of the Consolidated Fund of India;
- Declaration of any expenditure charged on the Consolidated Fund of India or increasing the amount of any such expenditure;
- The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money, or the audit of the accounts of the Union or of a state; or
- Any matter incidental to any of the matters specified above.

However, a bill is not to be deemed to be a money bill by reason only that it provides for:

- the imposition of fines or other pecuniary penalties, or
- the demand or payment of fees for licenses or fees for services rendered; or
- the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

If any question arises whether a bill is a money bill or not, the decision of the Speaker of the Lok Sabha is final. His decision in this regard cannot be questioned in any court of law or in the either House of Parliament or even the president. When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the president for assent, the Speaker endorses it as a money bill.

The Constitution lays down a special procedure for the passing of money bills in the Parliament. A money bill can only be introduced in the Lok Sabha and that too on the recommendation of the president. Every such bill is considered to be a government bill and can be introduced only by a minister.

After a money bill is passed by the Lok Sabha, it is transmitted to the Rajya Sabha for its consideration. The Rajya Sabha has restricted powers with regard to a money bill. It cannot reject or amend a money bill. It can only make the recommendations. It must return the bill to the Lok Sabha within 14 days, wither with or without recommendations. The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha.

Finally, when a money bill is presented to the president, he may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the Houses.

Financial Bills

Financial bills are those bills that deal with fiscal matters, that is, revenue or expenditure. However, the Constitution uses the term 'financial bill' in a technical sense. Financial bills are of three kinds:

- Money bills–Article 110
- Financial bills (I)–Article 117 (1)
- Financial bills (II)–Article 117 (3)

The classification implies that money bills are simply a species of financial bills. Hence, all money bills are financial bills but all financial bills are not money bills. Only those financial bills are money bills which contain exclusively those matters which are mentioned in Article 110 of the Constitution. These are also certified by the Speaker of Lok Sabha as money bills. The financial bills (I) and (II), on the other hand, have been dealt with in Article 117 of the Constitution.

JOINT SITTING OF TWO HOUSES

Joint sitting is an extraordinary machinery provided by the Constitution to resolve a dead-lock between the two Houses over the passage of a bill. A deadlock is deemed to have taken place under any one of the following three situations after a bill has been passed by one House and transmitted to the other House:

- if the bill is rejected by the other House;
- if the Houses have finally disagreed as to the amendments to be made in the bill; or
- if more than six months have elapsed from the date of the receipt of the bill by the other House without the bill being passed by it.

In the above three situations, the president can summon both the Houses to meet in a joint sitting for the purpose of deliberating and voting on the bill. It must be noted here that the provision of joint sitting is applicable to ordinary bills or financial bills only and not to money bills or Constitutional amendment bills.

Since 1950, the provision regarding the joint sitting of the two Houses has been invoked only thrice. The bills that have been passed at joint sittings are:

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

BUDGET IN PARLIAMENT

The Constitution refers to the budget as the 'annual financial statement'. In other words, the term 'budget' has nowhere been used in the Constitution. It is the popular name for the 'annual financial statement' that has been dealt with in Article 112 of the Constitution.

The budget is a statement of the estimated receipts and expenditure of the Government of India in a financial year, which begins on 1 April and ends on 31 March of the following year.

In addition to the estimates of receipts and expenditure, the budget contains certain other elements. Overall, the budget contains the following:

- Estimates of revenue and capital receipts;
- Ways and means to raise the revenue;
- Estimates of expenditure;
- Details of the sactual receipts and expenditure of the closing financial year and the reasons for any deficit or surplus in that year; and
- Economic and financial policy of the coming year, that is, taxation proposals, prospects of revenue, spending programme and introduction of new schemes/projects.

The Government of India has two budgets, namely, the Railway Budget and the General Budget. While the former consists of the estimates of receipts and expenditures of only the Ministry of Railways, the latter consists of the estimates of receipts and expenditure of all the ministries of the Government of India (except the railways).

The Railway Budget was separated from the General Budget in 1921 on the recommendations of

the Acworth Committee. The reasons or objectives of this separation are as follows :

- To introduce flexibility in railway finance.
- To facilitate a business approach to the railways policy.
- To secure stability of the general revenues by providing an assured annual contribution from railway revenues.
- To enable the railways to keep their profits for their own development (after paying a fixed annual contribution to the general revenuses).

Constitutional Provisions

The Constitution of India contains the following provisions with regard to the enactment of budget:

- The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of estimated receipts and expenditure of the Government of India for that year.
- No demand for a grant shall be made except on the recommendation of the President.
- No money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law.
- No money bill imposing tax shall be introduced in the Parliament except on the recommendation of the President, and such a bill shall not be introduced in the Rajya Sabha.
- No tax shall be levied or collected except by authority of law.
- Parliament can reduce or abolish a tax but cannot increase it.
- The Constitution has also defined the relative roles or position of both the Houses of Parliament with regard to the enactment of the budget in the following way:
  - A money bill or finance bill dealing with taxation cannot be introduced in the Rajya Sabha–it must be introduced only in the Lok Sabha.
  - The Rajya Sabha has no power to vote on the demand for grants; it is the exclusive privilege of the Lok Sabha.
  - The Rajya Sabha should return the Money bill (or Finance bill) to the Lok Sabha within fourteen days. The Lok Sabha can either accept or reject the recommendations made by Rajya Sabha in this regard.
- The estimates of expenditure embodied in the budget shall show separately the expenditure charged on the Consolidated Fund of India and the expenditure made from the Consolidated Fund of India.
- The budget shall distinguish expenditure on revenue account from other expenditure.

Charged Expenditure

The budget consists of two types of expenditure– the expenditure 'charged' upon the Consolidated Fund of India and the expenditure 'made' from the Consolidated Fund of India. The charged expenditure is non-votable by the Parliament, that is, it can only be discussed by the Parliament, while the other type has to be voted by the Parliament. The list of the charged expenditure is as follows:

- Emoluments and allowances of the President and other expenditure relating to his office.
- Salaries and allowances of the Chairman and the Deputy Chairman of the Rajya Sabha and the Speaker and the Deputy Speaker of the Lok Sabha.
- Salaries, allowances and pensions of the judges of the Supreme Court.
- Pensions of the judges of high courts.
- Salary, allowances and pension of the Comtroller and Auditor General of India.
- Salaries, allowances and pension of the chairman and members of the Union Public Service Commission.
- Administrative expenses of the Supreme Court, the office of the Comptroller and Auditor General of India and the Union Public Service Commission including the salaries, allowances and pensions of the persons serving in these offices.
- The debt charges for which the Government of India is liable, including interest, sinking fund charges and redemption charges and other expenditure relating to the raising of loans and the service and redemption of debt.
- Any sum required to satisfy any judgement, decree or award of any court or arbitral tribunal.
- Any other expenditure declared by the Parliament to be so charged.

Stages in Enactment

The budget goes through the following six stages in the Parliament:

- Presentation of budget.
- General discussion.
- Scrutiny by departmental committees.
- Voting on demands for grants.
- Passing of appropriation bill.
- Passing of finance bill.
- **Presentation of Budget :** The budget is presented in two parts–Railway Budget and General Budget. Both are governed by the same procedure.

The introduction of Railway Budget precedes that of the General Budget. While the former is presented to the Lok Sabha by the railway minister in the third week of February, the latter is presented to the Lok Sabha by the finance minister on the last working day of February.

The Finance Minister presents the General Budget with a speech known as the 'budget speech'. At the end of the speech in the Lok Sabha, the budget is laid before the Rajya Sabha, which can only discuss it and has no power to vote on the demands for grants.

- **General Discussion :** The general discussion on budget begins a few days after its presentation. It takes place in both the Houses of Parliament and lasts usually for three to four days.

During this stage, the Lok Sabha can discuss the budget as a whole or on any question of principle involved therein but no cut motion can be moved nor can the budget be submitted to the vote of the House. The finance minister has a general right of reply at the end of the discussion.

- **Scrutiny by Departmental Committees :** After the general discussion on the budget is over, the Houses are adjourned for about three to four weeks. During this gap period, the 24 departmental standing committees of Parliament examine and discuss in detail the demands for grants of the concerned ministers and prepare reports on them. These reports are submitted to both the Houses of Parliament for consideration.

The standing committee system established is 1993 (and expanded in 2004) makes parliamentary financial control over ministries much more detailed, close, in-depth and comprehensive.

- **Voting on Demands for Grants :** In the light of the reports of the departmental standing committees, the Lok Sabha takes up voting of demands for grants. The demands are presented ministrywise. A demand becomes a grant after it has been duly voted.

Two points should be noted in this context. One, the voting of demands for grants is the exclusive privilege of the Lok Sabha, that is, the Rajya Sabha has no power of voting the demands. Second, the voting is confined to the votable part of the budget–the expenditure charged on the Consolidated Fund of India is not submitted to the vote (it can only be discussed).

While the General Budget has a total of 109 demands (103 for civil expenditure and 6 for defence expenditure), the Railway Budget has 32 demands. Each demand is voted separately by the Lok Sabha. During this stage, the members of Parliament can discuss the details of the budget. They can also move motions to reduce any demand for grant. Such motions are called as 'cut motion', which are of three kinds:

- **Policy Cut Motion :** It represents the disapproval of the policy underlying the demand. It states that the amount of the demand be reduced to Re 1. The members can also advocate an alternative policy.
- **Economy Cut Motion :** It represents the economy that can be affected in the proposed expenditure. It states that the amount of the demand be reduced by a specified amount (which may be either a lumpsum reduction in the demand or ommission or reduction of an item in the demand).
- **Token Cut Motion :** It ventilates a specific grievance that is within the sphere of responsibility of the Government of India. It states that the amount of the demand be reduced by Rs 100.

In total, 26 days are allotted for the voting of demands. On the last day the Speaker puts all the remaining demands to vote and disposes them whether they have been discussed by the members or not. This is known as 'guillotine'.

- **Passing of Appropriation Bill :** The Constitution states that 'no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law'.

No such amendment can be proposed to the appropriation bill in either house of the Parliament that will have the effect of varying the amount or altering the destination of any grant voted, or of varying the amount of any expenditure charged on the Consolidated Fund of India.

The Appropriation Bill becomes the Appropriation Act after it is assented to by the President.

- **Passing of Finance Bill :** The Finance Bill is introduced to give effect to the financial proposals of the Government of India for the following year. It is subjected to all the conditions applicable to a Money Bill. Unlike the Appropriation Bill, the amendments (seeking to reject or reduce a tax) can be moved in the case of finance bill.

According to the Provisional Collection of Taxes Act of 1931, the Finance Bill must be enacted (i.e., passed by the Parliament and assented to by the president) within 75 days.

Other Grants

Supplementary Grant : It is granted when the amount authorised by the Parliament through the appropriation act for a particular service for the current financial year is found to be insufficient for that year.

Additional Grant : It is granted when a need has arisen during the current financial year for additional expenditure upon some new service not contempleted in the budget for that year.

Excess Grant : It is granted when money has been spent on any service during a financial year in excess of the amount granted for that service in the budget for that year. It is voted by the Lok Sabha after the financial year.

Vote of Credit : It is granted for meeting an unexpected demand upon the resources of India, when on account of the magnitude or the indefinite character of the service, the demand cannot be stated with the details ordinarily given in a budget. Hence, it is like a blank cheque given to the Executive by the Lok Sabha.

Exceptional Grant : It is granted for a special purpose and forms no part of the current service of any financial year.

Token Grant : It is granted when funds to meet the proposed expenditure on a new service can be made available by reappropriation. Reappropriation involves transfer of funds from one head to another. It does not involve any additional expenditure.

FUNDS

Consolidated Fund of India : It is a fund to which all receipts are credited and all payments are debited. In other words, (a) all prevenues received by the Government of India; (b) all loans raised by the Government by the issue of treasury bills, loans or ways and means of advances; and (c) all money received by the government in repayment of loans forms the Consolidated Fund of India. All the legally authorised payments on behalf of the Government of India are made out of this fund. No money out of this fund can be appropriated (issued or drawn) except in accordance with a parliamentary law.

Public Account of India : All other public money (other than those which are credited to the Consolidated Fund of India) received by or on behalf of the Government of India shall be credited to the Public Account of India. This includes provident fund deposits, judicial deposits, savings bank deposits, departmental deposits, remittances and so on. This account is operated by executive action, that is, the payments from this account can by made without parliamentary appropriation. Such payments are mostly in the nature of banking transactions.

Contingency Fund of India : The Constitution authorised the Parliament to establish a 'Contingency Fund of India', into which amounts determined by law are paid from time to time. Accordingly, the Parliament enacted the contingency fund of India Act in 1950. This fund is placed at the disposal of the president, and he can make advances out of it to meet unforeseen expenditure pending its authorisation by the Parliament. The fund is held by the finance secretary on behalf of the president. Like the public account of India, it is also operated by executive action.

Special Powers of Rajya Sabha

Due to its federal character, the Rajya Sabha has been given two exclusive or special powers that are not enjoyed by the Lok Sabha:

- It can authorise the Parliament to make a law on a subject enumerated in the State List (Article 249).
- It can authorise the Parliament to create new All-India Services common to both the Centre and states (Article 312).

COMMITTEES OF PARLIAMENT

Public Accounts Committee

This committee was setup first in 1921 under the provisions of the Government of India Act of 1919 and has since been in existence. At present, it consists of 22 members (15 from the Lok Sabha and 7 from the Rajya Sabha). The term of office of the members is one year. A minister cannot be elected as a member of the committee. The chairman of the committee is appointed by the Speaker from amongst its members. Until 1966–67, the chairman of the committee belonged to the ruling party. However, since 1967 a convention has developed whereby the chairman of the committee is selected invariably from the Opposition.

The function of the committee is to examine the annual audit reports of the comptroller and auditor general of India (CAG).

The functions of the Committee are:

- To examine the appropriation accounts and the finance accounts of the Union government and any other accounts laid before the Lok Sabha.
- In scrutinising the appropriation accounts and the audit report of CAG on it, the Committee has to satisfy itself that:
  - the money that has been disbursed was legally available for the applied service or purpose;
  - the expenditure conforms to the authority that governs it; and
  - every reappropriation has been made in accordance with the related rules.
- To examine the accounts of state corporations, trading concerns and manufacturing projects and the audit report of CAG on them

Estimates Committee

The origin of this committee can be traced to the standing financial committee set up in 1921. The first Estimates Committee in the post-in-dependence era was constituted in 1950 on the recommendation of John Mathai. Originally, it had 25 members but in 1956 its membership was raised to 30. All the thirty members are from Lok Sabha only. The chairman of the committee is appointed by the Speaker from amongst its members and he is invariably from the ruling party.

It has been described as a 'continuous economy committee.

- To report what economies, improvements in organisation, efficiency and administrative reform consistent with the policy underlying the estimates, can be affected.
- To suggest alternative policies in order to bring about efficiency and economy in administration.
- To examine whether the money is well laid out within the limits of the policy implied in the estimates.
- To suggest the form in which the estimates are to be presented to Parliament.

Committee on Public Undertakings

This committee was created in 1964 on the recommendation of the Krishna Menon Committee. In 1974, its membership was raised to 22 (15 from the Lok Sabha and 7 from the Rajya Sabha). A minister cannot be elected as a member of the committee. The chairman of the committee is appointed by the Speaker from amongst its members who are drawn from the Lok Sabha only.

The functions of the committee are:

- To examine the reports and accounts of public undertakings.
- To examine the reports of the comptroller and auditor general on public undertakings.

Departmental Standing Committees

On the recommendation of the Rules Committee of the Lok Sabha, 17 departmentally related standing committees were set-up in 1993. In 2004, seven more such committees were set-up, thus increasing their number from 17 to 24.

The main objective is to secure more accountability of the Executive to the Parliament, particularly financial accountability.

Each standing committee consists of 31 members (21 from Lok Sabha and 10 from Rajya Sabha).

A minister is not eligible to be nominated as a member of any of the standing committee.

Out of the 24 standing committees, 8 committees work under the Rajya Sabha and 16 committees work under the Lok Sabha.

Business Advisory Committee

It regulates the programme and time table of the House. It allocates time for the transaction of legislative and other business brought before the House by the government. The Lok Sabha committee consists of 15 members including the Speaker as its chairman. In the

Rajya Sabha, it has 11 members including the Chairman as its *ex-officio* chairman.

Committee on Government Assurances

It examines the assurances, promises and undertakings given by ministers from time to time on the the floor of the House and reports on the extent to which they have been implemented. In the Lok Sabha, it consists of 15 members and in the Rajya Sabha, it consists of 10 members. It was constituted in 1953.

Committee on Subordinate Legislation

It examines and reports to the House whether the powers to make regulations, rules, sub-rules and bye-laws delegated by the Parliament or conferred by the Constitution to the Executive are being properly exercised by it. In both the House, the committe consists of 15 members. It was constiuted in 1953.

PARLIAMENTARY PRIVILEGES

Parliamentary privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions.

It must be clarified here that the parliamentary privileges do not extend to the president who is also an integral part of the Parliament.

Collective Privileges

- In has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same
- It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
- It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
- It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment.
- No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precints of the House without the permission of the presiding officer.

Individual Privileges

- They cannot be arrested during the session of Parliament and 40 days before the beginning and 40 days after the end of a session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
- They have freedom of speech in Parliament.
- They are exempted from jury service.

Allocation of Seats in Parliament

Sl. No.	*States/UTs*	*No. of Seats in Rajya Sabha*	*No. of Seats in Lok Sabha*
I.	**States**		
1.	Andhra Pradesh	18	42
2.	Arunachal Pradesh	1	2
3.	Assam	7	14
4.	Bihar	16	40
5.	Chhattisgarh	5	11
6.	Goa	1	2
7.	Gujarat	11	26
8.	Haryana	5	10
9.	Himachal Pradesh	3	4
10.	Jammu and Kashmir	4	6
11.	Jharkhand	6	14
12.	Karnataka	12	28
13.	Kerala	9	20
14.	Madhya Pradesh	11	29
15.	Maharashtra	19	48
16.	Manipur	1	2

17.	Meghalaya	1	2
18.	Mizoram	1	1
19.	Nagaland	1	1
20.	Orissa	10	21
21.	Punjab	7	13
22.	Rajasthan	10	25
23.	Sikkim	1	1
24.	Tamil Nadu	18	39
25.	Tripura	1	2
26.	Uttaranchal	3	5
27.	Uttar Pradesh	31	80
28.	West Bengal	16	42
II.	**Union Territories**		
1.	Andman and Nicobar Islands	—	1
2.	Chandigarh	—	1
3.	Dadra and NagarHaveli	—	1
4.	Daman and Diu	—	1
5.	Delhi (The National Capital Territory of Delhi)	3	7
6.	Lakshadweep	—	1
7.	Pondicherry	1	1
III.	**Nominated members**	12	2
a	**Total**	**245**	**545**

13. GOVERNOR, CHIEF MINISTER AND COUNCIL OR MINISTER

GOVERNOR

The Constitution of India envisages the same pattern of government in the states as that for the Centre, that is, a parliamentary system. Part VI of the Constitution, which deals with the government in the states, is not applicable to the State of Jammu and Kashmir.

Articles 153 to 167 in Part VI of the Constitution deal with the state executive.

The governor is the chief executive head of the state. But, like the president, he is a nominal executive head the office of governor has a dual role.

Usually, there is a governor for each state, but the 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states.

APPOINTMENT OF GOVERNOR

He is appointed by the president by warrant under his hand and seal. In a way, he is a nominee of the Central government. But, as held by the Supreme Court in 1979, the office of governor of a state is not an employment under the Central government.

The Draft Constitution provided for the direct election of the governor on the basis of universal adult suffrage. But the Constituent Assembly opted for the present system of appointment of governor by the president because of the following reasons:

The Constitution lays down only two qualifications for the appointment of a person as a governor. These are:

- He should have completed the age of 35 years.
- He should be a citizen of India.

Additionally, two conventions have also developed in this regard over the years. First, he should be an outsider, that is, he should not belong to the state where he is appointed, so that he is free from the local politics. Second, while appointing the governor, the president is required to consult the chief minister of the state concerned.

CONDITIONS OF GOVERNOR'S OFFICE

The Constitution lays down the following conditions for the the governor's office:

- When the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as determined by the president.
- He should not hold any other office of profit.
- He is entitled without payment of rent to the use of his official residence (the *Raj Bhavan*).
- He should not be a member of either House of Parliament or a House of the state legislature.
- He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.

Like the President, the governor is also entitled to a number of privileges and immunities. He enjoys personal immunity from legal liability for his official acts. During his term of office, he is immune from any criminal proceedings, even in respect of his personal acts. He cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can be instituted against him during his term of office in respect of his personal acts.

The oath of office to the governor is administered by the chief justice of the concerned state high court and in his absence, the seniormost judge of that court available.

TERM OF GOVERNOR'S OFFICE

A governor holds office for a term of five years from the date on which he enters upon his office. However, this term of five years is subject to the pleasure of the President. Further, he can resign at any time by addressing a resignation letter to the President.

POWERS AND FUNCTIONS OF GOVERNOR

A governor possesses executive, legislative, financial and judicial powers more or less analogous to the President of India. However, he has no diplomatic, military or emergency powers like the president.

Executive Powers

- He can seek any information relating to the administration of the affairs of the state and proposals for legislation from the chief minister.
- He can recommend the imposition of constitutional emergency in a state to the president. During the period of President's rule in a state, the

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

- All executive actions of the government of a state are formally taken in his name.
- He can make rules for more convenient transaction of the business of a state government and for the allocation among the ministers of the said business.
- He appoints the chief minister and other ministers.
- He appoints the advocate general of a state and determines his remuneration. The advocate general holds office during the pleasure of the governor.
- He appoints the state election commissioner and determines his conditions of service and tenure of office.
- He appoints the chairman and members of the state public service commission.
- He acts as the chancellor of universities in the state.
- He can make rules specifying the manner in which the Orders and other instruments made and executed in his name shall be authenticated.

Legislative Powers

- He can nominate one member to the state legislature assembly from the Anglo-Indian Community.
- He decides on the question of disqualification of members of the state legislature in consultation with the Election Commission.
- He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.
- He can appoint any member of the State legislative assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.
- He nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.
- He can summon or prorogue the state legislature and dissolve the state legislative assembly.
- He can address the state legislature at the commencement of the first session after each general election and the first sesion of each year.
- When a bill is sent to the governor after it is passed by state legislature, he can:
  - Give his assent to the bill, or
  - Withhold his assent to the bill or
  - Return the bill (if it is not a money bill) for reconsideration of the state legislature.
  - Reserve the bill for the consideration of the president. In one case such reservation is obligatory, that is, where the bill passed by the state legislature endangers the position of the state high court. In addition, the governor can also reserve the bill if it is of the following nature:
    - *Ultra-vires*, that is, against the provisions of the Constitution.
    - Opposed to the Directive Principles of State Policy.
    - Against the larger interest of the country.
    - Of grave national importance.
    - Dealing with compulsory acquisition of property under Article 31A of the Constitution.
- He can promulgate ordinances when the state legislature is not in session.
- He lays the reports of the State Finance Commission, State Public Service Commission Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.

Financial Powers

- He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.
- He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.
- He sees that the Annual Financial State-ment (state budget) is laid before the state legislature.
- Money bills can be introduced in the state legislature only with his prior recommendation
- No demand for a grant can be made except on his recommendation.

Judicial Powers

- He also appoints persons to the judicial service of the state in consultation with the state high court and the State Public Service Commission.
- He can grant pardons, reprives, respites and remissions of punishment or suspend, remit and

commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.

- He makes appointments, postings and promotions of the district judges in consultation with the state high court.
- He is consulted by the president while appointing the judges of the concerned state high court.

Comparing Pardoning Powers of President and Governor

President	*Governor*
• He can pardon, reprive, respite, remit, suspend or commute the punishment or sentence of any person convicted of any offence against a Central law.	• He can pardon, reprieve, respite, suspend or commute the punishment or sentence of any person convicted of any offence against a state law.
• He can pardon, reprieve, respite, remit, suspend or commute a death sentence. He is the only authority to pardon a death sentence.	• He cannot pardon a death sentence. Even if a state law prescribes for death sentence, the power to grant pardon lies with the President and not the governor. But, the governor can suspend, remit or commute a death sentence.
• He can grant pardon, reprieve, respite, suspension, remission or commutation in respect to punishment or sentence by a court-martial (military court).	• He does not possess any such power.

CONSTITUTIONAL POSITION OF GOVERNOR

The governor has certain special responsibilities to discharge according to the directions issued by the President. In this regard, the governor, though has to consult the council of ministers led by the chief minister, acts finally on his discretion. They are as follows:

- Sikkim—For peace and for ensuring social and economic advancement of the different sections of the population.
- Gujarat—Establishment of separate development boards for Saurashtra and Kutch.
- Nagaland–With respect to law and order in the state for so long as the internal disturbance in the Naga Hills–Tuensang Area continues.
- Assam—With respect to the administration of tribal areas.
- Manipur—Regarding the administration of the hill areas in the state.
- Maharashtra—Establishment of separate development boards for Vidarbha and Marathwada.

CHIEF MINISTER

In the scheme of parliamentary system of government provided by the Constitution, the governor is the nominal executive authority *(de jure* executive) and the Chief Minister is the real executive authority (*de facto* executive). In other words, the governor is the head of the state while the Chief Minister is the head of the government.

APPOINTMENT OF CHIEF MINISTER

The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. Article 164 only says that the Chief Minister shall be appointed by the governor. In accordance with the convections of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state legislative assembly as the Chief Minister. But, when no party has a clear majority in the assembly, then the governor may exercise his personal discretion in the selection and appointment of the Chief Minister.

A person who is not a member of the state legislature can be appointed as Chief Minister for six months, within which time, he should be elected to the

state legislature, failing which he ceases to be the Chief Minister.

OATH, TERM AND SALARY

Before the Chief Minister enters his office, the governor administers to him the oaths of office and secrecy.

In his oath of secrecy, the Chief Minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a state minister except as may be required for the due discharge of his duties as such minister.

The term of the Chief Minister is not fixed and he holds office during the pleasure of the governor. However, this does not mean that the governor can dismiss him at any time. He cannot be dismissed by the governor as long as he enjoys the majority support in the legislative assembly.

POWERS AND FUNCTIONS OF CHIEF MINISTER

In Relation to Council of Ministers

- The governor appoints only those persons as ministers who are recommended by the Chief Minister.
- He allocates and reshuffles the portfolios among ministers.
- He can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.
- He guides, directs, controls and coordinates the activities of all the ministers.
- He can bring about the collapse of the council of ministers by resigning from office.

In Relation to the Governor

- He advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election commissioner, and so on.
- He is the principal channel of communication between the governor and the council of ministers. It is the duty of the Chief Minister:

In Relation to State Legislature

- He announces the government policies on the floor of the house.
- He advises the governor with regard to the summoning and proroguing of the sesions of the state legislature.
- He can recommend the dissolution of the legislative assembly to the governor at any time.

Other Powers and Functions

- As a leader of the state, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.
- He is the political head of the services.
- He is the chairman of the State Planning Board.
- He acts as a vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.
- He is a member of the Inter-State Council and the National Development Council, both headed by the prime minister.
- He is the chief spokesman of the state government.
- He is the crisis manager-in-chief at the political level during emergencies.

STATE COUNCIL OF MINISTERS

As the Constitution of India provides for a parliamentary system of government in the states on the Union pattern, the council of ministers headed by the chief minister is the real executive authority in the political-administrative system of a state.

CONSTITUTIONAL PROVISIONS

Article 163—Council of Ministers to aid and advise Governor

- The advice tendered by Ministers to the Governor shall not be inquired into in any court.
- There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion.
- If any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

Article 164—Other Provisions as to Ministers

- The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed 15 per cent of the total strength of the

legislative assembly of that state. But, the number of ministers, including the chief minister, in a state shall not be less than 12. This provision was added by the 91st Amendment Act of 2003.

- A member of either House of state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. The provision was also added by the 91st Amendment Act of 2003.
- The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. However, in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and back-ward classes or any other work. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.
- A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be a minister.
- The salaries and allowances of ministers shall be determined by the state legislature.
- The ministers shall hold office during the pleasure of the Governor.
- The council of ministers shall be collectively responsible to the state Legislative Assembly.
- The Governor shall administer the oaths of office and secrecy to a minister.

RESPONSIBILITY OF MINISTERS

Collective Responsibility

The fundamental principle underlying of parliamentary system of government is the principle of collective responsibility. Article 164 clearly states that the council of ministers is collectively responsible to the legislative assembly of the state. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission.

The principle of collective responsibility also men that the cabinet decisions bind all cabinet ministers (and other ministers) even if they deferred in the cabinet meeting.

Individual Responsibility

Article 164 also contains the principle of individual responsibility. It states that the ministers hold office during the pleaure of the governor. This means that the governor can remove a minister at a time when the council of ministers enjoys the confidence of the legislative assembly.

No Legal Responsibility

As at the Centre, there is no provision in the Constitution for the system of legal responsibility of the minister in the states. It is not required that an order of the governor for a public act should be countersigned by a minister.

14. STATE LEGISLATURE

Articles 168 to 212 in Part VI of the constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature.

ORGANISATION OF STATE LEGISLATURE

There is no uniformity in the organisation of state legislatures. Most of the states have an unicameral system, while others have a bicamcral system. At present (2009), only six states have two Houses (bicameral). These are Andhra Pradesh, Uttar Pradesh, Bihar, Maharashtra, Karnatak and Jammu and Kashmir.

The twenty-two states have unicameral system. Here, the state legislature consists of the governor and the legislative assembly. In the states having bicameral system, the state legislature consists of the governor, the legislative council and the legislative assembly.

The Constitution provides for the abolition or creation of legislative councils in states. Accordingly, the Parliament can abolish a legislative council (where it already exists) or create it (where it does not exist), if the legislative assembly of the concerned state passes a resolution to that effect. Such a specific resolution must be passed by the state assembly by a special majority, that is, a majority of the total membership of the assembly and a majority of not less than two-thirds of the members of the assembly present and voting. This Act of Parliament is not to be deemed as an amendment of the Constitution for the purposes of Article 368 and is passed like an ordinary piece of legislation (ie, by simple majority).

COMPOSITION OF TWO HOUSES

Composition of Assembly

Strength : The legislative assembly consists of representatives directly elected by the people on the basis of universal adult franchise. Its maximum strength is fixed at 500 and minimum strength at 60. It means that its strength varies from 60 to 500 depending on the population size of the state. However, in case of Arunachal Pradesh, Sikkim and Goa, the minimum number is fixed at 30 and in case of Mizoram and Nagaland, it is 40 and 46 respectively. Further, some members of the legislative assemblies in Sikkim and Nagaland are also elected indirectly.

Nominated Member : The governor can nominate one member from the Anglo-Indian community, if the community is not adequately represented in the assembly.

Territorial Constituencies : For the purpose of holding direct elections to the assembly, each state is divided into territorial constituencies. The demarcation of these constituencies is done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state.

Readjustment after each census : After each census, a readjustment is to be made in the (a) total number of seats in the assembly of each state and (b) the division of each state into territorial constituencies. The Parliament is empowered to determine the authority and the manner in which it is to be made. Accordingly, Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose.

Reservation of seats for SCs and STs : The Constitution provided for the reservation of seats for scheduled castes and scheduled tribes in the assembly of each state on the basis of population ratios.

Composition of Council

Strength : Unlike the members of the legislative assembly, the members of the legislative council are indirectly elected. The maximum strength of the council is fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 40.

Manner of Election : Of the total number of members of a legislative council:

- 1/12 are elected by graduates of three years standing and residing within the state,
- 1/12 are elected by teachers of three years standing in the state, not lower in standard than secondary school,
- 1/3 are elected by the members of local bodies in the state like municipalities, district boards, etc.,
- 1/3 are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and
- the remainder are nominated by the governor from amongst persons who have a special knowledge or practical experience of literature, science, art, cooperative movement and social service.

Thus, 5/6 of the total number of members of a legislative council are indirectly elected and 1/6 are nominated by the governor. The members are elected in accordance with the system of proportional representation by means of a single transferable vote. The bonafides or propriety of the governor's nomination in any case cannot be challenged in the courts.

This scheme of composition of a legislative council as laid down in the Constitution is tentative and not final. The Parliament is authorised to modify or replace the same. However, it has not enacted any such law so far.

DURATION OF TWO HOUSES

Duration of Assembly

Like the Lok Sabha, the legislative assembly is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections. The expiration of the period of five years operates as automatic dissolution of the assembly.

Duration of Council

Like the Rajya Sabha, the legislative council is a continuing chamber, that is, it is a permanent body and is not subject to dissolution. But, one-third of its members retire on the expiration of every second year. So, a member continues as such for six years.

MEMBERSHIP OF STATE LEGISLATURE

Qualifications

The Constitution lays down the following qualifications for a person to be chosen a member of the state legislature.

- He must be a citizen of India.
- He must make and subscribe before the person authorised by the election commission an oath or affirmation according to the form prescribed in the Third Schedule.
- He must be not less than 30 years of age in the case of the legislative council not less than 25 years of age in the case of the legislative assembly.
- He must posses other qualifications prescribed by Parliament.

Disqualifications

- if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by state legislature).
- if he is of unsound mind and stands so declared by a court,
- if he is an undischarged insolvent,
- if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state, and
- if he is so disqualified under any law made by Parliament.

On the question whether a member has become subject to any of the above disqualifications, the governor's decision is final. However, he should obtain the opinion of the Election Commission and act accordingly.

Disqualification on Ground of Defection : The Constitution also lays down that a person shall be disqualified for being a member of either House of state legislature if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule.

The question of disqualification under the Tenth Schedule is decided by the Chairman, in the case of legislative council and, Speaker, in the case of legislative assembly (and not by the governor). In 1992, the Supreme Court ruled that the decision of Chairman/ Speaker in this regard is subject to judicial review.

Vacation of Seats

- **Double Membership :** A person cannot be a member of both Houses of state legislature at one and the same time.
- **Disqualification :** If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.
- **Resignation :** A member may resign his seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls.
- **Absence :** A House of the state legislature can declare the seat of a member vacant if he absents himself from all its meeting for a period of sixty days without its permission.
- **Other Cases :**
  - if his election is declared void by the court,
  - if he is expelled by the House,
  - if he is elected to the office of president or office of vice-president, and
  - if he is appointed to the office of governor of a state.

PRESIDING OFFICERS OF STATE LEGISLATURE

Each House of state legislature has its own presiding officer. There is a Speaker and a Deputy Speaker for the legislative assembly and Chairman and a Deputy Chairman for the legislative council.

Speaker of Assembly

The Speaker is elected by the assembly itself from amongst its members.

Usually, the Speaker remains in office during the life of the assembly.

The Speaker has the following powers and duties:

- He maintains order and decorum in the assembly for conducting its business and regulating its proceedings. This is his primary responsibility and he has final power in this regard.
- He is the final interpreter of the provisions of
  - the Constitution of India,
  - the rules of procedure and conduct of business of assembly, and
  - the legislative precedents, within the assembly.
- He adjourns the assembly or suspends the meeting in the absence of a quorum.
- He does not vote in the first instance. But, he can exercise a casting vote in the case of a tie.
- He decides whether a bill is a Money Bill or not and his decision on this question is final.
- He decides the questions of disqualification of a member of the assembly, arising on the ground of defection under the provisions of the Tenth Schedule.
- He appoints the chairmen of all the committees of the assembly and supervises their functioning. He himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

Deputy Speaker of Assembly

Like the Speaker, the Deputy Speaker is also elected by the assembly itself from amongst its members. He is elected after the election of the Speaker has taken place.

SESSIONS OF STATE LEGISLATURE

Summoning

The governor from time to time summons each House of state legislature to meet. The maximum gap between the two sessions of state legislature cannot be more than six months, the state legislature should meet at least twice a year.

Adjournment

An adjournment suspends the work in a sitting for a specified time which may be hours, days or weeks.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned *sine die*, when the business of the session is completed. Within the next few days, the governor issues a notification for prorogation of the session.

Dissolution

The legislative council, being a permanent house, is not subject to dissolution. Only the legislative assembly is subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after the general elections are held.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is ten members or onetenth of the total number of members of the House (including the presiding officer), which-ever is greater.

LEGISLATIVE PROCEDURE IN STATE LEGISLATURE

Ordinary Bills

Bill in the Originating House : An ordinary bill can originate in either House of the state legislature (in case of a bicameral legislature). Such a bill can be introduced either by a minister or by anyother member. The bill passes through three stages in the originating House, viz,

- Third reading.
- Second reading, and
- First reading,

After the bill is passed by the originating House, it is transmitted to the second House for consideration and passage. A bill is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments. In case of a unicameral legislature, a bill passed by the legislative assembly is sent directly to the governor for his assent.

Bill in the Second House : In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading.

When a bill is passed by the legislative assembly and transmitted to the legislative council, the latter has four alternatives before it:

- it may pass the bill as sent by the assembly (i.e., without amendments);
- it may pass the bill with amendments and return it to the assembly for reconsideration;
- it may reject the bill altogether; and
- it may not take any action and thus keep the bill pending.

If the council passes the bill without amendments or the assembly accepts the amendments suggested by the council, the bill is deemed to have been passed by both the Houses and the same is sent to the the governor for his assent. On the other hand, if the assembly rejects the amendments suggested by the council or the council rejects the bill altogether or the council does not take any action for three months, then the assembly may pass the bill again and transmit the same to the council. If the council rejects the bill again or passes the bill with amendments not acceptable to the assembly or does not pass the bill within one month, then the bill is deemed to have been passed by both the Houses in the form in which it was passed by the assembly for the second time.

Therefore, the ultimate power of passing an ordinary bill is vested in the assembly. At the most, the council can detain or delay the bill for a period of four months—three months in the first instance and one month in the second instance. The Constitution does not provide for the mechanism of joint sitting of both the Houses to resolve the disagreement between the two Houses over a bill. On the other hand, there is a provision for joint sitting of the Lok Sabha and the Rajya Sabha to resolve a disagreement between the two over an ordinary bill. Moreover, when a bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead.

Thus, the council has been given much lesser significance, position and authority than that of the Rajya Sabha at the Centre.

Assent of the Governor : Every bill, after it is passed by the assembly or by both the Houses in case of a bicameral legislature, is presented to the governor for his assent. There are four alternatives before the governor:

- he may give his assent to the bill;
- he may withhold his assent to the bill;
- he may return the bill for reconsideration of the House or Houses; and
- he may reserve the bill for the consideration of the President.

If the governor gives his assent to the bill, the bill becomes an Act and is placed on the Statute Book. If the governor withholds his assent to the bill, the bill ends and does not become an Act. If the governor returns the bill for reconsideration and if the bill is passed by the House or both the Houses again, with or without amendments, and presented to the governor for his assent, the governor must give his assent to the bill. Thus, the governor enjoys only a *suspensive veto*. The position is same at the Central level also.

Assent of the President : When a bill is reserved by the governor for the consideration of the President, the President may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the House or Houses of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within a period of six months. The bill is presented again to the presidential assent after it is passed by the House or Houses with or without amendments. It is not mentioned in the Constitution whether it is obligatory on the part of the president to give his assent to such a bill or not.

Money Bills

The Constitution lays down a special procedure for the passing of Money Bills in the state legislature. This is as follows:

A Money Bill cannot be introduced in the legislative council. It can be introduced in the legislative assembly only and that too on the recommendation of the governor. Every such bill is considered to be a government bill and can be introduced only by a minister.

After a Money Bill is passed by the legislative assembly, it is transmitted to the legislative council for its consideration. The legislative council has restricted powers with regard to a Money Bill. It cannot reject or amend a Money Bill. It can only make recommendations and must return the bill to the legislative assembly within 14 days. The legislative assembly can either

accept or reject all or any of the recommendations of the legislative council.

If the legislative assembly accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form. If the legislative assembly does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the legislative assembly without any change.

If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both Houses at the expiry of the said period in the form originally passed by the legislative assembly. Thus, the legislative assembly has more powers than legislative council with regard to a money bill. At the most, the legislative council can detain or delay a money bill for a period of 14 days.

Finally, when a Money Bill is presented to the governor, he may either give his assent, withhold his assent or reserve the bill for presidential assent but cannot return the bill for reconsideration of the state legislature. Normally, the governor gives his assent to a money bill as it is introduced in the state legislature with his prior permission.

When a money bill is reserved for consideration of the President, the president may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the state legislature.

PRIVILEGES OF STATE LEGISLATURE

Privileges of a state legislature are a sum of special rights, immunities and exemptions enjoyed by the Houses of state legislature, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions.

Strength of State Legislatures

Sl. No.	*Name of the State/Union Territory*	*Number of Seats in Legislative Assembly*	*Number of Seats in Legislative Council*
I.	**States**		
1.	Andhra Pradesh	294	90
2.	Arunachal Pradesh	60	—
3.	Assam	126	—
4.	Bihar	243	75
5.	Chhattisgarh	90	—
6.	Goa	40	—
7.	Gujarat	182	—
8.	Haryana	90	—
9.	Himachal Pradesh	68	—
10.	Jammu and Kashmir	87	36
11.	Jharkhand	81	—
12.	Karnataka	224	75
13.	Kerala	140	—
14.	Madhya Pradesh	230	—
15.	Maharashtra	288	78
16.	Manipur	60	—
17.	Meghalaya	60	—
18.	Mizoram	40	—
19.	Nagaland	60	—
20.	Orissa	147	—
21.	Punjab	117	—
22.	Rajasthan	200	—
23.	Sikkim	32	—
24.	Tamil Nadu	234	—

25.	Tripura	60	—
26.	Uttarakhand	70	—
27.	Uttar Pradesh	403	100
28.	West Bengal	294	—
II.	**Union Territories**		
1.	Delhi	70	—
2.	Puducherry	30	—

Seme of the Nate/Union Territory		***Total***	***Number of seats in the House after the Delimitation in 2008***	
			Reserved for the Scheduled Castes	***Reserved for the Scheduled Tribes***
I.	**States**			
1.	Andhra Pradesh	294	48	19
2.	Arunachal Pradesh	60	—	59
3.	Assam	126	8	16
4.	Bihar	243	38	2
5.	Chhattisgarh	90	10	29
6.	Goa	40	1	—
7.	Gujarat	182	13	27
8.	Haryana	90	17	—
9.	Himachal Pradesh	68	17	3
10.	Jammu & Kashmir	—	—	—
11.	Jharkhand	81	9	28
12.	Karnataka	224	36	15
13.	Kerala	140	14	2
14.	Madhya Pradesh	230	35	47
15.	Maharashtra	288	29	25
16.	Manipur	60	1	19
17.	Meghalaya	60	—	55
18.	Mizoram	40	—	38
19.	Nagaland	60	—	59
20.	Orissa	147	24	33
21.	Punjab	117	34	—
22.	Rajasthan	200	34	25
23.	Sikkim	32	2	12
24.	Tamil Nadu	234	44	2
25.	Tripura	60	10	20
26.	Uttarakhand	70	13	2
27.	Uttar Pradesh	403	85	—
28.	West Bengal	294	68	16
II.	**Union Territories**			
1.	Delhi	70	12	—
2.	Puducherry	30	5	—

15. SUPREME COURT

Unlike the American Constitution, the Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the high courts below it. Under a high court (and below the state level), there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts, adopted from the Government of India Act of 1935, enforces both Central laws as well as the state laws.

The Supreme Court of India was inaugurated on January 28, 1950. It succeeded the Federal Court of India, established under the Government of India Act of 1935.

Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court.

ORGANISATION OF SUPREME COURT

At present, the Supreme Court consists of thirty-one judges (one chief justice and thirty other judges). In February 2009, the centre notified an increase in the number of Supreme Court judges from twenty-six to thirty-one, including the Chief Justice of India.

Judges

Appointment of Judges : The judges of the Supreme Court are appointed by the president. The chief justice is appointed by the president after consultation with such judges of the Supreme Court and high courts as he deems necessary. The other judges are appointed by president after consultation with the chief justice and such other judges of the Supreme Court and the high courts as he deems necessary. The consultation with the chief justice is obligatory in the case of appointment of a judge other than Chief justice.

Qualifications of Judges : A person to be appointed as a judge of the Supreme Court should have the following qualifications:

- He should be a distinguished jurist in the opinion of the president.
- He should be a citizen of India.
- He should have been a judge of a High Court (or high courts in succession) for five years; or
- He should have been an advocate of a High Court (or High Courts in succession) for ten years; or

Oath or Affirmation : A person appointed as judge of the Supreme Court, before entering upon his Office, has to make and subscribe an oath or affirmation before the President, of some person appointed by him for this purpose.

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

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

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 (ie, a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two–proved misbehaviour or incapacity.

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impenchment:

- If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
- A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/ Chairman.
- The Speaker/Chairman may admit the motion or refuse to admit it.

- 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.
- Finally, the president passes an order removing the judge.
- If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.
- After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.

If is interesting to know that no judge of the Supreme Court has been impeached so far. The Supreme Court has been impeached so far. The first and the only case of impeachment is that of justice V Ramaswami of the Supreme Court (1991–1993). Though the enquiry Committee found him guilty of misbehaviour, he could not be removed as the impeachment motion was defeated in the Lok Sabha. The Congress Party abstained from voting.

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 can-not 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 Chief Justice of India is unable to perform the duties of his office.
- the office of Chief Justice of India is vacant; or
- the Chief Justice of India is temporarily absent; or

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.

Retired Judges

At any time, the chief justice of India can request a retired judge of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period.

SEAT OF SUPREME COURT

The Constitution declares Delhi as the seat of the Supreme Court. But, it also authorises the chief justice of India to appoint other place or places as seat of the Supreme Court. He can take decision in this regard only with the approval of the President.

PROCEDURE OF THE 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.

JURISDICTION AND POWERS OF SUPREME COURT

The Constitution has conferred a very extensive jurisdiction and vast powers on the Supreme Court. It is not only a Federal Court like the American Supreme Court but also a final court of appeal like the British House of Lords.

Original Jurisdiction

As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation. More elaborately, any dispute between :

- between two or more states.
- the Centre and one or more states; or
- the Centre and any state or states on one side and one or more states on the other; or

In the above federal disputes, the Supreme Court has exclusive original jurisdiction. Exclusive means, no other court can decide such disputes and original means, the power to hear such disputes in the first instance, not by way of appeal.

Writ Jurisdiction

The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens. The Supreme Court is empowered

to issue writs including *habeas corpus, mandamus,* prohibition, *quo warrento* and *certiorari* for the enforcement of the fundamental rights of an aggrieved citizem. However, the writ jurisdiction of the Supreme Court is not exclusive. The high courts are also empowered to issue writs for the enforcement of the Fundamental Rights.

There is also a difference between the writ jurisdiction of the Supreme Court and that of the high court. The Supreme Court can issue writs only for the enforcement of the Fundamental Rights and not for other purposes. The high court, on the other hand, can issue writs not only of the enforcement of the fundamental rights but also for other purposes. It means that the writ jurisdiction of the high court is wider than that of the Supreme Court.

Appellate Jurisdiction

The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:

- **Constitutional Matters :** In the constitutional cases, an appeal can be made to the Supreme Court against the judgement of a high court if the high court certifies that the case involves a substantial question of law that requires the interpretation of the Constitution.
- **Civil Matters :** In civil cases, an appeal lies to the Supreme Court from any judgement of a high court if the high court certifies—
  - that the question needs to be decided by the Supreme Court.
  - that the case involves a substantial question of law of general importance; and
- **Criminal Matters :** The Supreme Court hears appeals against the judgement in a criminal proceeding of a high court if the high court—
  - certifies that the case is a fit one for appeal to the Supreme Court.
  - has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
  - has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to death; or
- **Appeal by Special Leave :** The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court martial). This provision contains the four aspects as under:
  - It can be granted aginst any court or tribunal and not necessarily against a high court (of course, except a military court).
  - It is a discretionary power and hence, cannot be claimed as a matter of right.
  - It can be granted in any judgement whether final or interlocutory.
  - It may be related to any matter—constitutional, civil, criminal, income-tax, labour, revenue, advocates, etc.

Advisory Jurisdiction

The Constitution (Article 143) authorises the president to seek the opinion of the Supreme Court in the two categories of matters:

- On any dispute arising out of any preconstitution treaty, agreement, covenant, engagement, sanad or other similar instruments.
- On any question of law or fact of public importance which has arisen or which is likely to arise.

In both the cases, the opinion expressed by the Supreme Court is only advisory and not a judicial pronouncement. Hence, it is not binding on the president; he may follow or may not follow the opinion

A Court of Record

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

- 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 Rs. 2,000 or with both.
- The judgements, proceedings and acts of the Supreme Court are recorded for prepetual

memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court.

Power of Judicial Review

Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (*ultra-vires*), they can be declared as illegal, unconstitutional and invalid (null and void) by the Supreme Court.

Judicial review is needed for the following reasons:

- To protect the fundamental rights of the citizens.
- To uphold the principle of the supremacy of the Constitution.
- To maintain federal equilibrium (balance between Centre and states).

The constitutional validity of a legislative enactment or an executive order can be challenged in the Supreme Court on the following three grounds:

- it is repugnant to the constitutional provisions.
- it infringes the Fundamental Rights (Part III),
- it is outside the competence of the authority which has framed it, and

Other Powers

Besides the above, the Supreme Court has numerous other powers:

- It is the ultimate interpreter of the Constitution.
- It has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country.
- It has power to review its own judgement or order. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare.
- It is authorised to withdraw the cases pending before the high courts and dispose them by itself.
- Its law is binding on all courts in India. Its decree or order is enforceable throughout the country.
- It decides the disputes regarding the election of the president and the vice-president. In this regard, it has the original, exclusive and final authority.
- It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. The advice tendered by the Supreme Court in this regard is binding on the President.

16. HIGH COURT AND SUPORDINATE 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 courts and a hierarchy of subordinate courts.

At present, there are 21 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 courts from any union territory.

Articles, 214 to 231 in Part VI of the Constitution deal with the organization, independence, jurisdiction, power, procedures and so on of the high courts.

Organisation 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.

Appointment of Judges

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

Qualifications of Judges

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

- He should be a citizen of India.
- 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.

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.

Tenure of Judges

The Constitution has not fixed the tenure of a judge of a high court.

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

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 or 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 high court by the process of impeachment :

- A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/ Chairman.
- The Speaker/Chairman may admit the motion or refuse to admit it.
- If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.

- The committee should consist of (a) the chief justice or a judge of the Supreme Court,(b) a chief justice of a high court, and (c) a distinguished jurist.
- If the committee finds the judge to be guilty of misbehavior of suffering from an incapacity, the House can take up the consideration of the motion.
- After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
- Finally, the president passes an order removing the judge.

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

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

Transfer of Judges

The President can transfer a judge from one high court to another after consulting the Chief Justice of India.

In the *Third Judges* case (1998), the Supreme Court opined that in case of the transfer of high court judges, the Chief Justice of India should consult, in addition to the collegiums of four seniormost judges of the Supreme Court, the chief justice of the two high courts (one from which the judge is being transferred and the other receiving him.)

Acting Chief Justice

The President can appoint a judge of a high courts as an acting chief justice of the high court when:

- the chief justice of the high court is unable to perform the duties of his office.
- the office of chief justice of the high court is vacant; or
- the chief justice of the high court is temporarily absent; or

Additional and Acting Judges

The President can appoint duly qualified persons as additional judges of a high court for a temporary period not exceeding two years.

The President can also appoint a duly qualified person as an acting judge of a high court when a judge of that high court (other than the chief justice) is :

- unable to perform the duties of his office due to absence or any other reason; or
- appointed to act temporarily as chief justice of that high court.

An acting judge holds office until the permanent judge resumes his office. However, both the additional or acting judges cannot hold office after attaining the age of 62 years.

Retired Judges

At any time, the chief justice of a high court of a state can request a retired judge of that high court or any other high court to act as a judge of the high court of that state for a temporary period.

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 Right of the citizens.

Original Jurisdiction

It means the power of a high court to hear disputes in the first instance, not by way of appeal. It extends to the following :

- Matters of admirality, will, marriage, divorce, company laws and contempt of court.
- Disputes relating to the election of members of Parliament and state legislatures.
- Regarding revenue matter or an act ordered or done in revenue collection.
- Enforcement of fundamental rights of citizens.

Writ Jurisdiction

Article 226 of the constitution empowers a high court to issue writs including *habeas corpus, mandamus, certiorari,* prohibition and *quo-warrento* for the enforcement of the fundamental rights of the citizens and for any other purpose.

The writ jurisdiction of the high court (under Article 226) is not exclusive but concurrent with the writ jurisdiction of the Supreme Court (under Article 32).

Appellate Jurisdiction

A high court is primarily a court of appeal. It hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters. Hence, the appellate jurisdiction of a high court is wider than its original jurisdiction.

Supervisory jurisdiction

A high court has the power of superientendence

over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals). Thus

This power of superintendence of a high court is very broad because, (i) it extends to all courts and tribunals whether they are subject to the appellate jurisdiction of the high court or not; (ii) it covers not only administrative superintendence but also judicial superintendence; (iii) it is revisional jurisdiction; and (iv) it can be *suo-motu* (on its own) and not necessarily on the application of a party.

Control over Subordinate Courts

- It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state (other than district judges).
- It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state.
- It can withdraw a case pending in a sub-ordinate court if it involves a substantial question of law that require the interpretation of the Constitution.
- Its law is binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.

A Court of Record

As a court of record, a high court has two powers:

- The judgements, proceedings and acts of the high courts are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any subordinate court.
- It has power to punish for contempt of court, either with simple imprisonment or with fine or with both.

Power of Judicial Review

Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments.

Though the phrase 'judicial review' has no where been used in the Constitution, the provisions of Articles 13 and 226 explicitly confer the power of judicial review on a high court.

SUBORDINATE COURTS

The state judiciary consists of a high court and a hierarchy of sub-ordinate courts, also known as lower courts. The subordinate courts are so called because of their subordination to the state high court.

Constitutional Provisions

Articles 233 to 237 in Part VI of the Constitution make the following provisions to regulate the organization of subordinate courts and to ensure their independence from the executive.

Appointment of District Judges

The appointments, posting and promotion of district judges in a state are made by the governor of the state in consultation with the high court.

A person to be appointed as district judge should have the following qualifications :

- He should not already be in the service of the Central or the state government.
- He should have been an advocate or a pleader for seven years.
- He should be recommended by the high court for appointment.

Appointment of other judges

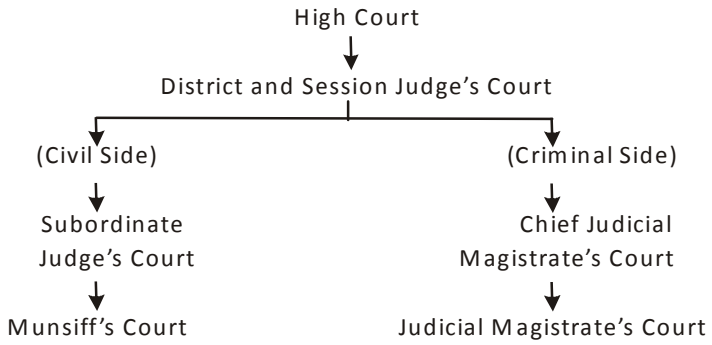
Appointment of persons (other than district judges) to the judicial service of a state are made by the governor of the state after consultation with the State Public Service Commission and the high court.

Control over Subordinate Courts

The control over district courts and other subordinate courts including the posting, promotion and leave of persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the high court.

STRUCTURE AND JURISDICTION

The organizational structure, jurisdiction and nomenclature of the subordinate judiciary are laid down by the states. Hence, they differ slightly from state to state. Broadly speaking, there are three tiers of civil and criminal courts below the High Court. This is shown below :



The district judge is the highest judicial authority in the district. He possesses original and appellate jurisdiction in both civil as well as criminal matters. In other words, the district judges is also the sessions judge. When he deals with civil cases, he is known as the district judge and when he hears the criminal cases, he is called as the sessions judge.

He also has supervisory powers over all the subordinate courts in the district.

The sessions judge has the power to impose any sentence including life imprisonment and capital punishment (death sentence). However, a capital punishment passed by him is subject to confirmation by the High court, whether there is an appeal or not.

At the lowest level, on the civil sides, is the Court of Munsiff and on the criminal side. Is the Court of Judicial Magistrate.

In some states, Panchayat courts try petty civil and criminal cases. They are variously known as Nyayu Panchayat, Gram Kutchery, Adalati Panchayat, Panchayat Adalat and so on.

17. ATTORNEY GENERAL AND SOLICITOR GENERAL OF INDIA

The Constitution (Article 76) has provided for the officer of the Attorney General for India. He is the highest law officer in the country.

Appointment and Term

The Attorney General (AG) is appointed by the president. He must be a person who is qualified to be appointed a judge of the Supreme Court. In other words, he must be a citizen of India and he must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist, in the opinion of the president.

The term of officer the AG is not fixed by the Constitution.

The remuneration of the AG is not fixed by the Constitution. He receives such remuneration as the president may determine.

Duties and functions

- To discharge the functions conferred on him by the Constitution or any other law.
- To perform such other duties of a legal character that are assigned to him by the president
- To give advice to the Government of India upon such legal matters, which are referred to him by the president.

Rights and Limitations

In the performance of his official duties, the Attorney General has the right of audience in all courts in the territory of India. Further, he has the right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting and any committee of the Parliament of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that are available to a member of Parliament.

Solicitor general of India

In addition to the AG, there are other law officers of the Government of India. They are the solicitor general of India and additional solicitor general of India. They assist the after in the fulfillment of his official responsibilities.

The AG is not a member of the Central cabinet. There is a separate law minister in the Central cabinet to look after legal matters of the government level.

Advocate General of the State

The Constitution (Article 165) has provided for the office of the advocate general for the states. He is the highest law officer in the state.

Appointment and Term

The advocate general is appointed by the governor. He must be a person who is qualified to be appointed a judge of a high court. In other words, he must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years.

The term of officer of the advocate general is not fixed by the Constitution.

Duties and Functions

As the chief law officer of the government in the state, the duties of the advocate general include the following:

- To give advice to the government of the state upon such legal matters which are referred to him by the governor.
- To perform such other duties of a legal character that are assigned to him by the governor.
- To discharge the functions conferred on him by the Constitution or any other law.

18. PANCHAYATI RAJ

The term *Panchayati Raj* in India signifies the system of rural local self-government. It has been established in all the states of India by the Acts of the State legislatures to build democracy at the grass root level.

EVOLUTION OF PANCHAYATI RAJ

BALWANT RAI MEHTA COMMITTEE

In January 1957, the Government of India appointed a committee to examine the working of the Community Development Programme (1952) and the National Extension Service (1953) and to suggest measures for their better working. The committee submitted its report in November 1957 and recommended the establishment of the scheme of 'democratic decentralisation',

- The district collector should be the chairman of the zila parishad.
- The village panchayat should be constituted whith directly elected representatives, whereas the panchayat samiti and zila parishad should be constituted with indirectly elected members.
- The panchayat samiti should be the executive body while the zila parishad should be the advisory, coordinating and supervisory body.
- Establishment of a three-tier panchayati raj system – gram panchayat at the village level, panchayat samiti at the block level and zila parishad at the district level.

These recommendations of the committee were accepted by the National Development Council in January 1958.

Rajasthan was the first state to establish Panchayati Raj. The scheme was inaugurated by the prime minister on October 2, 1959, in Nagaur district. Rajasthan was followed by Andhra Pradesh, which also adopted the system in 1959;

ASHOK MEHTA COMMITTEE

In December 1977, the Janata Government Appointed a committee on panchayati raj institutions under the chairmanship of Ahsok Mehta. It submitted its report in August 1978.

- The three-tier system of panchayti raj should be replaced by the two-tier system, that is, zila parishad at the district level, and below it, the mandal anchayat consisting of a group of villages with a total population of 15,000 to 20,000.
- Zila parishad should be the executive body and made responsible for planning at the district level.
- There should be an official participation of political parties at all levels of panchayat elections.
- There should be a regular social audit by a district level agency and by a committee of legislators to check whether the funds allotted for the vulnerable social and economic groups are actually spent on them.
- The nyaya panchayats should be kept as separate bodies from that of development panchayats. They should be presided over by a qualified judge.
- A minister for panchayti raj should be appointed in the state council of ministers to look after the affairs of the panchayati raj institutions.
- Seats for SCs and STs should be reserved on the basis of their populations.

GVK RAO COMMITTEE

The Committee on Administrative Arrangement for Rural Development and Poverty Alleviation Programes under the chairmanship of G.V.K. Rao was appointed by the Planning Commission in 1985. The Committee came to conclusion that the developmental process was gradually bureaucratized and divorced from the Panchayati Raj.

- Elections to thePanchayati Raj institutions should be held regularly.
- A post of District Development Commissioner should be created. He should act as the chief executive officer of the Zila Parishad and should be in charge of all the development departments at the district level.
- The district level body, that is, the Zila Parishad should be of pivotal importance in the scheme of democratic decentralization.

L M SINGHVI COMMITTEE

In 1986, Rajiv Gandhi government appointed a committee on 'Revitalisation of Panchayati Raj Institutions for Democracy and Development' under the chairmanship of L M Singhvi.

- The Panchayati Raj institutions should be constitutionally recognized, protected and preserved.
- Nyaya Panchayats should be established for a cluster of villages.
- The Village Panchayats should have more financial resources.
- The judicial tribunals should be established in each state to adjudicate controversies about election to the Panchayati Raj institutions.

CONSTITUTIONALISATION

Narasimha Rao Government : The Congress Government under the prime ministership of P V Narashimbha Rao once again considered the matter of the constitutionalisation of panchayati raj bodies. It drastically modified the proposals in this regard to delete the controversial aspects and introduced a constitutional amendment bill in the Lok Sabha in September, 1991. This bill finally emerged as the 73rd Constitutional Amendment Act, 1992 and came into force on 24 April, 1993.

73RD AMENDMENT ACT OF 1992

SIGNIFICANCE OF THE Act

This act has added a new Part-IX to the Constitution of India. It is entitled as 'The Panchayats' and consists of provisions from Articles 243 to 243 O. In addition, the act has also added a new Eleventh Schedule to the Constitution. It contains 29 functional items of the panchayats.

SALIENT FEATURES :

GRAM SABHA : The Act provides for a Gram Sabha as the foundation of the panchayati raj system. It is body consisting of persons registered in the electoral rolls of a village comprised within the area of Panchayat at the village level.

THREE-TIER SYSTEM : The act provides for a three-tier system of panchayati raj in every state, that is, panchayats at the village, intermediate, and district levels. Thus, the act brings about uniformity in the structure of panchayati raj throughout the country. However, a state having a population not exceeding 20 lakh may not constitute panchayats at the intermediate level.

ELECTION OF MEMBERS AND CHAIRPERSONS : All the members of panchayats at the village, intermediate and district levels shall be elected directly by the people. Further, the chairperson of panchayats at the intermediate and district levels shall be elected indirectly – by and from amongst the elected members thereof. However, the chairperson of a panchayat at the village level shall be elected in such manner as the state legislature determines.

RESERVATION OF SEATS

The act provides for the reservation of seats for scheduled castes and scheduled tribes in every panchayat (i.e., at all the three levels) in proportion of their population to the total population in the panchayat area. Further, the state legislature shall provide for the reservation of offices of chairperson in the panchayat at the village or any other level for the SCs and STs.

The act provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for women belonging the SCs and STs). Further, not less that one-third of the total number of offices of chairpersons in the panchayats at each level shall be reserved for women.

The act also authorises the legislature of a state to make any provision for reservation of seats in any panchayat or offices of chairperson in the panchayat at any level in favour of backward classes.

DURATION OF PANCHAYATS

The act provides for a five-year term of office to the panchayat at every level. However, it can be dissolved before the completion of its term. Further, fresh elections to constitute a panchayat shall be completed (a) before the expiry of its duration of five years; or (b) in case of dissolution, before the expiry of a period of six months from the date of its dissolution.

DISQUALIFICATIONS

A person shall be disqualified for being chosen as or for being a member of panchayat if he is so disqualified, (a) under any law for the time being in force for the purpose of elections to the legislature of the state concerned, or (b) under any law made by the state legislature. However, no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years. Further, all questions of disqualifications shall be referred to such authority as the state legislature determines.

STATE ELECTION COMMISSION

The Superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the panchayats shall be vested in the state

election commission. It consists of a state election commissioner to be appointed by the governor. His conditions of service and tenure of office shall also be determined by the governor. He shall not be removed from the office except in the manner and on the grounds prescribed for the removal of a judge of the state high court. His conditions of service shall not be varied to his disadvantage after his appointment.

The state legislature may make provision with respect to all matters relating to elections to the panchayats.

POWERS AND FUNCTIONS

The state legislature may endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such a scheme may contain provisions for the devolution of powers and responsibilities upon Panchayats a the appropriate level with respect to (a) the preparation of plans for economic development and social justice ; (b) the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the 29 matters listed in the Eleventh Schedule.

FINANCES

The state legislature may (a) authorise a panchayat to levy, collect and appropriate taxes, duties, tolls and fees. (b) assing to a panchayat taxes, duties, tolls and fees levied and collected by the state government; (c) provided for making grants-in-aid to the panchayats from the consolidated fund of the state; and (d) provide for constitution of funds for crediting all moneys of the panchayats.

FINANCE COMMISSION

The governor of a state shall, after every five years, constitute a finance commission to review the financial position of the panachayats. It shall make the following recommendations to the Governor:

- The principles that should govern :
  - The distribution between the state and the panchayats of the net proceeds of the taxes, duties, tolls and fees levied by the state.
  - The determination of taxes, duties, tolls and fees that may be assigned to the panchayats.
  - The grants-in-aid to the panchayats from the consolidated fund of the state.
- The measures needed to improve the financial position of the panchayats.
- Any other matter referred to it by the governor in the interest of sound Finance of panchayats.

The state legislature may provided for the composition of the commission, the required qualifications of its members and the manner of their selection.

The governor shall place the recommendations of the commission along with the action taken report before the state legislature.

The Central Finance Commission shall also suggest the measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats in the states (on the basis of the recommendations made by the finance commission of the state).

AUDIT OF ACCOUNTS

The state legislature may make provisions with respect to the maintenance of accounts by the panchayats and the auditing of such accounts.

APPLICATION TO UNION TERRITORIES

The president of India may direct that the provisions of this act shall apply to any union territory subject to such exceptions and modifications as he may specify.

EXEMPTED STATES AND AREAS

The act does not apply to the states of Jammu and Kashmir, Nagaland, Meghalaya and Mizoram and certain other areas. These areas included, (a) the scheduled areas and the tribal areas in the states; (b) the hill area of Manipur for which a district council exists; and (c) Darjeeling district of west Bengal for which Darjeeling Gorkha Hill Council exists.

However, the Parliament may extend the provisions of this Part to the scheduled areas subject to such exceptions and modification as it may specify. Under this provision, the Parliament has enacted the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA)

BAR ON INTERFERENCE BY COURTS

The act bars the interference by courts in the electoral matters of panchayats. It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court.

ELEVENTH SCHEDULE

It contains the following 29 functional items placed within the purview of panchayats :

- Welfare of the weaker sections, and in particular, of the scheduled caste and the scheduled tribes
- Public distribution system
- Maintenance of community assets.
- Agriculture, including agricultural extension
- Land improvement, implementation of land reforms, land consolidation and soil conservation
- Minor irrigation, water management and watershed development
- Animal husbandry, dairying and poultry
- Fishereis
- Social forestry and farm forestry
- Minor forest produce
- Small-scale industries, including food processing industries
- Khadi, village and cottage industries
- Roads, culverts, bridges, ferries, waterways and other means of communication
- Rural electrification, including distribution of electricity
- Non-conventional energy sources
- Poverty alleviation programme
- Education, including primary and secondary schools
- Technical training and vocational education
- Adult and non-formal education
- Libraries
- Cultural activities
- Markets and fairs
- Health hand sanitation including hospitals, primary health centres and dispensaries
- Family welfare
- Women and child development
- Social welfare, including welfare of the handicapped and mentally retarded
- Rural housing
- Drinking water
- Fuel and fodder

COMPULSORY AND VOLUNTARY PROVISIONS

Now, we will identify separately the compulsory (obligatory or mandatory) and valunatary (discretionary or optional) provisions (features) of the 73rd Constitutional Amendment Act (1992) or the Part IX of the Constitution.

A. COMPULSORY PROVISIONS

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

B. VOLUNTARY PROVISIONS

- Giving representation to members of the Parliament (both the Houses) and the state legislature (both the Houses) in the panchayats at different levels falling within their constituencies.
- Providing reservation of seats (both members and chairpersons) for backward classes in panchayats at any level.
- Granting powers and authority to the panchayats to enable them to function as institutions of self-government (in brief, making them autonomous bodies).
- Devolution of powers and responsibilities upon panchayats to prepare plans for economic development and social justice; and to perform some or all of the 29 functions listed in the Eleventh Schedule of the Constitution.
- Granting financial powers to the pachayats, that is, authorizing them to levy, collect and appropriate taxes, duties, tolls and fees.

19. URBAN LOCAL GOVERNMENTS

The term 'Urban Local Government' in India signifies the governance of an urban area by the people through their elected representatives.

There are eight types of urban local governments in India – municipal corporation, municipality, notified area committee, town area committee, cantonment board, township, port trust and special purpose agency.

In 1687-88, the first municipal corporation in India was set up at Madras. In 1726, municipal corporations were set up in Bombay and Calcutta. In 1882, Lord Ripon issued a resolution that has been hailed as the Magna Carta of local self-government. It continued to influence the development of local self-government in India till 1947. He is called the father of local self-government in India.

P.V. Narasimha Rao's Government also introduced the modified Municipalities Bill in the Lok Sabha in September 1991. It finally emerged as the 74th Constitutional Amendment Act of 1992 and came into force on 1st June, 1993.

74TH AMENDMENT ACT OF 1992

This act has added a new Part IX-A to the Constitution of India. It is entitled as 'The Municipalities' and consists of provisions from Articles 243-P to 243-ZG. In addition, the act has also added a new Twelfth Schedule to the Constitution. It contains eighteen functional items of municipalities.

SALIENT FEATURES

THREE TYPES OF MUNICIPALITIES

The act provides for the constitution of the following three types of municipalities in every state.

- A *nagar panchayat* (by whatever name called) for a transitional area, that is, an area in transition from a rural area to an urban area.
- A *municipal council* for a smaller urban area.
- A *municipal corporation* for a larger urban area.

COMPOSITION

All the members of a municipality shall be elected directly by the people of the municipal area. For this purpose, each municipal area shall be divided into territorial constituencies to be known as wards. The state legislature may provide the manner of election of the chairperson of a municipality. It may also provide for the representation of the following persons in a municipality.

- Persons having special knowledge or experience in municipal administration without the right to vote in the mettings of municipality.
- The members of the Lok Sabha and the state legislative assembly representing constituencies that comprise wholly or partly the municipal area.
- The members of the Rajya Sabha and the state legislative council registered as electors within the municipal area.
- The chairpersons of committees (other than wards committees).

WARDS COMMITTEES

There shall be constituted a wards committee, consisting of one or more wards, within the territorial area of a municipality having population of three lakh or more. The state legislature may make provision with respect to the composition and the territorial area of a wards committee and the manner in which the seats in a wards committee shall be filled. It may also make any provision for the constitution of committees in addition to the wards committees.

RESERVATION OF SEATS

The act provides for the reservation of seats for the scheduled castes and the scheduled tribes in every municipality in proportion of their population to the total population in the municipal area. Further, it provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for woman belonging to the SCs and The STs).

The state legislature may provide for the manner of reservation of offices of chairpersons in the municipalities for SCs, STs and women. It may also make any provision for the reservation of seats in any municipality of offices of chairpersons in municipalities in favour of backward classes.

DURATION OF MUNICIPALITIES

The act provides for a five-years term of office for every municipality. However, it can be dissolved before the completion of its term. Further, the fresh elections to constitute a municipality shall be completed

(a) before the expiry of its duration of five years; or (b) in case of dissolution, before the expiry of a period of six months from the date of its dissolution.

DISQUALIFICATIONS

A person shall be disqualified for being chosen as or for being a member of a municipality if he is so disqualified (a) under any law for the time being in force for the purposes of elections to the legislature of the state concerned; or (b) under any law made by the state legislature. However, no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years. Further, all questions of disqualifications shall be referred to such authority as the state legislature determines.

STATE ELECTION COMMISSION

The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the municipalities shall be vested in the state election commission.

The state legislature may make provision with respect to all matters relating to elections to the muncipalities.

POWERS AND FUNCTIONS

The state legislature may endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such a scheme may contain provisions for the devolution of powers and responsibilities upon municipalities at the appropriate level with respect to (a) the preparation of plans for economic development and social police. (b) the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the eighteen matters listed in the twelfth schedule.

FINANCES

The state legislature may (a) authorize a municipality to levy, collect and appropriate taxes, duties, tolls and fees; (b) assign to a municipality taxes, duties, tolls and fees levled and collected by state government; (c) provide for making grants-in-aid to the municipalities from the consolidated fund of the sate; and (d) provide for constitution of funds for crediting all moneys of the municipalities.

FINANCE COMMISSION

The finance commission (which is constituted for the panchayats) shall also, for every five years, review the financial position of municipalities and make recommendation to the governor as to :

- The principles that should govern:
  - The distribution between the state and the municipalities, the net proceeds of the taxes, duties, tolls and fees levied by the state.
  - The determination of the taxes, duties, tolls and fees that may be assinged to the municipalities
  - The Grants in-aid to the municipalities from the consolidated fund of the state.
- The measures needed to improve the financial position of the municipalities.

3. Any other matter referred to it by the governor in the interests of sound finance of municipalities.

The governor shall place the recommendations of the commission along with the action taken report before the state legislature.

The central finance commission shall also suggest the measures needed to augment the consolidated fund of a state to supplement the resources of the municipalities in the state (on the basis of the recommendations made by the finance commission of the state).

AUDIT OF ACCOUNTS

The state legislature may make provisions with respect to the maintenance of accounts by municipalities and the auditing of such accounts.

APPLICATION TO UNION TERRITORIES

The president of India may direct that the provisions of this act shall apply to any union territory subject to such exceptions and modifications as he may specify.

EXEMPTED AREAS

The act does not apply to the scheduled areas and tribal areas in the states. It shall also not affect the functions and powers of the Darjeeling Gorkha Hill Council of the West Bengal.

DISTRICT PLANNING COMMITTEE

Every state shall constitute at the district level, a district planning committee to consolidate the plans prepared by panchayats and municipalities in the district, and to prepared a draft development plan for the district as a whole. The state legislature may make provisions with respect to the following :

- The composition of such committees;
- The manner of election of members of such committees;

- The functions of such committees in relation to district planning; and
- The manner of the election of the chairpersons of such committees.

The act lays down that four-fifths of the members of a district planning committee should be elected by the elected members of the district panchayat and municipalities in the district from amongst themselves. The representation of these members in the committee should be in proportion to the ration between the rural and urban populations in the district.

The chairperson of such committee shall forward the development plan to the state government.

METROPOLITAN PLANNING COMMITTEE

Every metropolitan area shall have a metro-politan planning committee to prepare a draft development plan. The state legislature may make provisions with respect to the following :

- The functions of such committess in relation to planning and coordination for the metropolitan area; and
- The manner of election of chairpersons of such committees.
- The composition of such committees;
- The manner of election of members of such committees;
- The representation in such committees of the Central government, state government and other organizations;

The act lays down that two-thirds of the members of a metropolitan planning committee should be elected by the elected members of the municipalities and chairpersons of the panchayats in the metropolitan area from amongst themselves. The representation of these members in the committee should be in proportion to the ratio between the population of the municipalities and the panchayats in that metropolitan area.

The chairpersons of such committees shall forward the development plan to the state government.

BAR TO INTERFERENCE BY COURTS

The act bars the interference by courts in the electoral matters of municipalities. It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court.

TWELFTH SCHEDULE

It contains the following 18 functional items placed within the purview of municipalities :

- Cattle ponds, prevention of cruelty to animals;
- Vital statistics including registration of births and deaths;
- Public amenities including street lighting parking lots, bus stops and public conveniences; and
- Regulation of slaughter houses and tanneries.
- Water supply for domestic, industrial and commercial purposes;
- Public health, sanitation, conservancy and solid waste management;
- Fire services;
- Urban forestry, protection of the environment and promotion of ecological aspects;
- Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded;
- Slum improvement and upgradation;
- Urban poverty alleviation;
- Provision of urban amenities and facilities such as parks, gardens, playgrounds;
- Promotion of cultural, educational and aesthetic aspects;
- Burials and burial grounds, cremations and cremation grounds and electric crematoriums;
- Urban planning including town planning ;
- Regulation of land use and construction of buildings;
- Planning for economic and social development ;
- Road and bridges;

TYPE OF URBAN GOVERNMENTS

Municipal Corporations are created for the administration of big cities like Delhi, Mumbai, Kolkata, Hyderabad, Bangalore and others. They are established in the states by the acts of the concerned state legislatures, and in the union territories by the acts of the Parliament of India. There may be one common act for all the municipal corporations in a state or a separate act for each municipal corporation.

A municipal corporation has three authorities, namely, the council, the standing committees and the commissioner.

MUNICIPALITY

The municipalities are established for the admin-

istration of towns and smaller cities. Like the corporations, they are also set up in the states by the acts of the concerned state legislatures and in the union territory by the acts of the Parliament of India. They are also known by various other names like municipal council, municipal committee, municipal board, borough municipality, city municipality and others.

NOTIFIED AREA COMMITTEE

A notified area committee is created for the administration of two types of areas – a fast developing town due to industrialization, and a town which does not yet fulfil all the conditions necessary for the constitution of a municipality. It is established by a notification in the government gazette.

TOWN AREA COMMITTEE

A town area committee is set up for the administration of a small town. It is a semi-municipal authority and is entrusted with a limited number of civic functions like drainage, roads, street lighting, and conservancy.

CANTONMENT BOARD

A cantonment board is established for municipal administration for civilian population in the cantonment area. It is set up under the provisions of the Cantonments Act of 2006 – a legislation enacted by the Central government. It works under the administrative control of the defence ministry of the Central government.

At present, there are 62 cantonment boards in the country.

TOWNSHIP

This type of urban government is established by the large public enterprises top provide civic amenities to its staff and workers who live in the housing colonies built near the plant.

PORT TRUST

The port trusts are established in the port area like Mumbai, Kolkata, Chennai and so on for two purposes : (a) to manage and protect the ports; and (b) to provided civic amenities. A port trust is created by an Act of Parliament.

SPECIAL PURPOSE AGENCY

In addition to these seven area-based urban bodies (or multipurpose agencies), the state have set up certain agencies to undertake designated activities or specific functions that 'legitimately' belong to the domain of municipal corporations or municipalities or other local urban governments.

20. ELECTION AND ELECTION COMMISSION

ELECTORAL STYSTEM

Articles 324 to 329 in Part XV of the Constitution make the following provisions with regard to the electoral system in our country :

- The Constitution (Article 324) provides for an independent Election Commission in order to ensure free and fair elections in the country. The power of supertendence, direction and conduct of elections to the Parliament, the state legislatures, the office of the President and the officer of the Vice-President is vested in the Commission. At present, the commission consists of a chief election commissioner and two election commissioners.
- There is to be only one general electoral roll for every territorial constituency for election to the Parliament and the state legislatures. Thus, the Constitution has abolished the system of communal representation and separate electorates which led to the partition of the country.
- No person is to be ineligible for inclusion in the electoral roll on grounds only of religion, race, caste, sex or any of them. Further, no person can claim to be included in any special electoral roll for any constituency on grounds only of religion, race, caste or sex or any of them. Thus, the Constitution has accorded equality to every citizen in the matter of electoral franchise.
- The elections to the Lok Sabha and the state assemblies are to be on the basis of adult franchise. Thus, every person who is a citizen of India and who is 18 years of age, is entitled to vote at the election provided he is not disqualified under the provisions of the Constitution or any law made by the appropriate legislature (parliament or state legislature) on the ground of non-residence, unsound mind, crime or corrupt or illegal practice.
- Parliament may make provision with respect to all matters relating to elections to the Parliament and the state legislatures including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing their due constitution. In exercise of this power, the Parliament has enacted the following laws :
  - Representation of the People Act of 1950 which provides for the qualification of voters, preparation of electoral rolls, delimitation of constituencies, allocation of seats in the Parliament and state legislatures and so on.
  - Representation of the People Act of 1951 which provides for the actual conduct of elections and deals with administrative machinery for conducting elections, the poll, election offences, election disputes, by-elections registration of political parties and so on.
  - Delimitation Commission Act of 1952 which provides for the readjustment of seats, delimitation and reservation of territorial constituencies and other related matters.
- The state legislatures can also make provision with respect to all matters relating to elections to the state legislatures including the preparation of electoral rolls and all other matters necessary for securing their due constitution. But, they can make provision for only those matters which are not covered by the Parliament. In other words, they can only supplement the parliamentary law and cannot override it.
- The Constitution declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court. Consequently, the order issued by the Delimitation Commission become final and cannot be challenged in any court.
- The Constitution lays down that no election to the parliament or the state legislature is to be questioned except by an election petition presented to such authority, and in such manner as provided by the appropriate legislature. Since 1966, the election petitions are triable by high courts alone. But, the appellate jurisdiction lies with the Supreme Court alone.

Article 323 B empowers the appropriate legislature (Parliament of state legislature) to establish a tribunal for the adjudication of election disputes. It also provides for the exclusion of the jurisdiction of all courts (except the special leave appeal jurisdiction of the Supreme Court) in such disputes. So far, no such

tribunal has been established. It must be noted here that in Chandra Kumar case (1997), the Supreme Court declared this provision as unconstitutional. Consequently, if at any time an election tribunal is established, an appeal from its decision lied to the high court.

Besides the three laws (mentioned above) the other laws and rules in respect of elections are :

- Prohibition of Simultaneous Membership Rules, 1950.
- Presidential and Vice-Presidential Elections Act, 1952
- Registration of Electors Rules, 1960.
- Conduct of Elections Rules, 1961.
- Government of Union Territories Act, 1963.
- Government of the National Capital Territory of Delhi Act, 1991.
- Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991.

Further, the Election Commission has issued the Election Symbols (Reservation and Allotment) Order, 1968. It is concerned with the registration and recognition of political parties, allotment of symbols and settlement of disputes among them.

ELECTORAL REFORMS

LOWERING OF VOTING AGE :

The 61st Constitutional Amendment Act of 1988 reduced the voting age from 21 years to 18 years for the Lok Sabha as well as the assembly elections.

ELECTRONIC VOTING MACHINE :

In 1989 a provision was made to facilitate the use of Electronic Voting Machines (EVMs) in elections. The EVMs were used for the first time in 1998 on experimental basis in selected constituencies in the elections to the Assemblies of Rajasthan, Madhya Pradesh and Delhi.

RESTRICTED TO TWO CONSTITUENCIES :

A candidate would not be eligible to contest from more than two parliamentary or assembly constituencies at a general election or at the bye-elections which are held simultaneously.

VOTING THROUGH POSTAL BALLOT :

In 1999, a provision was made for voting by certain classes of persons through postal ballot.

FACILITY TO OPT TO VOTE THROUGH PROXY :

In 2003, the facility to opt to vote through proxy was provided to the service voters belonging to the Armed Forces and members belonging to a Force to which provisions of the Army Act applies.

DECLARATION OF CRIMINAL ANTECEDENTS, ASSETS, ETC., BY CANDIDATES :

In 2003, the Election Commission issued an order directing every candidate seeking election to the Parliament or a State Legislature to furnish on his nomination paper the information on the following matters :

- Prior to six months of filling nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charges were framed or cognizance was taken by a court. If so, the details thereof.
- The assets (immovable, movable, bank balances, etc.) of a candidate and his/her spouse and that of dependents.

Furnishing of any false information in the affidavit is now an electoral offence punishable with imprisonment upto six month or fine or both.

ELECTION COMMISSION

The Election Commission is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections in the country.

Article 324 of the constitution provides that the power of superintendence direction and control of elections to parliament, state legilslatures, the office of President of India and the office of Vice-President of India shall be vested in the Election Commission. Thus the Election Commission is an all India body in the sense that it is common to both the central government and state government.

COMPOSITION

Article 324 of the Constitution has made the following provisions with regard to the composition of election commission :

- The Election Commission shall consist of the chief election commissioner and such number of other election commissioners, if any, as the president may from time to time fix.

- The appointment of the chief election commissioner and other election commissioner shall be made by the president.
- When any other election commissioner is so appointed, the chief election commissioner shall act as the chairman of the election commission.
- The president may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.
- The conditions of service and tenure of office of the election commissioners and the regional commissioners shall be determined by the president.

Since its inception in 1950 and till 15 October 1989, the election commission functioned as a single member body consisting of the Chief Election Commissioner. On 16 October 1989, the president appointed two more election commissioners to cope with the increased work of the election commission on account of lowering of the voting age from 21 to 18 years. Thereafter, the Election Commission functioned as a multimember body consisting of three election commissioners. However, the two posts of election commissioners were abolished in January 1990 and the Election Commission was reverted to the earlier position. Again in October 1993, the president appointed two more election commissioners. Since then and till today, the Election Commission has been functioning as a multi-member body consisting of three election commissioners.

The chief election commissioner and the two other election commissioners have equal powers and receive equal salary, allowances and other perquisites, which are similar to those of a judge of the Supreme Court. In case of difference of opinion amongst the Chief Election Commissioner and/ or two other election commissioners, the matter id decided by the Commission by majority.

They hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. They can resign at any time or can also be removed before the expiry of their term.

INDEPENDENCE

Article 324 of the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Election Commission :

- Any other election commissioner or a regional commissioner cannot be removed from office except on the recommendation of the chief election commissioner.
- The service conditions of the chief election commissioner cannot be varied to his disadvantage after his appointment.
- The chief election commissioner is provided with the security of tenure. He cannot be removed from his office except in same manner and on the same grounds as a judge of the Supreme Court. In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehavior or in capacity. Thus, he does not hold his office till the pleasure of the president, though he is appointed by him.

Though the constitution has sought to safeguard and ensure the independence and impartiality of the Election Commission, Some flaws can be noted. Viz.,

- The Constitution has not prescribed the qualification (legal, education, administrative or judicial) of the members of the Election Commission.
- The Constitution has not specified the term of the members of the Election Commission.
- The Constitution has not debarred the ritiring election commissioners from any further appointment by the government.

IN DETAILS, THESE POWERS AND FUNCTIONS ARE :

- To supervise the machinery of elections throughout the country to ensure free and fair elections.
- To advise the president whether elections can be held in a state under president's rule in order to extend the period of emergency after one year.
- Top register political parties for the purpose of elections and grant them the status of national or state parties on the basis of their poll performance.
- To determine the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.

21. UNION PUBLIC SERVICE COMMISSION

The Union Public Service Commission (UPSC) is the central recruiting agency in India. It is an independent constitutional body in the sense that it has been directly created by the Constitution. Articles 315 to 323 in Part XIV of the Constitution contain elaborate provisions regarding the composition, appointment and removal of members along with the independence, powers and functions of the UPSC.

COMPOSITION

The UPSC consists of a chairman and other members appointed by the president of India. The Constitution, without specifying the strength of the Commission has left the matter to the discretion of the president, who determines its composition. Usually, the Commission consists of nine to eleven members including the chairman. Further, no qualifications are prescribed for the Commission's membership except that one-half of the members of the Commission should be such persons who have held office for at least ten years either under the Government of India or under the government of a state. The Constitution also authorizes the president to determine the conditions of service of the chairman and other members of the Commission.

The chairman and members of the Commission hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. However, they can relinquish their offices at any time by addressing their resignation to the president. They can also be removed before the expiry of their term by the president in the manner as provided in the Constitution.

The President can appoint one of the members of the UPSC as an acting chairman in the following two circumstances :

- When the chairman is unable to perform his functions due to absence or some other reason.
- When the office of the chairman falls vacant; or

The acting chairman functions till a person appointed as chairman enters on the duties of the office or till the chairman is able to resume his duties.

REMOVAL

The President can remove the chairman or any other member of UPSC from the office under the following circumstances;

- If he is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body.
- If he engages, during his term of office, an any paid employment outside the duties of his officer; or
- If he is adjudged an insolvent (that is, has gone bankrup);

In addition to these, the president can also remove the chairman or any other member of UPSC for misbehaviour. However, in this case the president has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, the president can remove the chairman or a member. Under the provisions of the Constitution, the advise tendered by the Supreme Court in this regard is binding on the president. During the course of enquiry by the Supreme Court, the president can suspend the chairman or the member of UPSC.

INDEPENDENCE

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the UPSC;

- The chairman or a member or UPSC is (after having completed his first term) not eligible for reappointment to that office (i.e., not eligible for second term).
- The conditions of service of the chairman or a member, though determined by the president, cannot be varied to his disadvantage after his appointment.
- The entire expenses including the salaries, allowances and pensions of the chairman and members of the UPSC are charged on the Consolidated Fund of India. Thus, they are not subject to vote of Parliament.
- The chairman of UPSC (on ceasing to hold office) is not eligible for further employment in the Government of India or a State.
- A member of UPSC (on ceasing to hold office) is eligible for appointment as the chairman of UPSC or a State Public Service Commission (SPSC), but not for any other employment in the Government India or a state.

- The chairman or a member of the UPSC can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy security of tenure.

FUNCTIONS

The UPSC performs the following functions.

- It serves all or any of the needs of a state on the request of the state governor and with the approval of the president of India.
- It assists the states (if requested by two or more states to do so) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
- It conducts examinations for appointment to the all-India services, Central services and public services of the centrally administered territories.
- It is consulted on the following matters related to personnel management ;
  - All matters relating to methods of recruitment to civil services and for civil posts.
  - The principles to be followed in marking appointments to civil services and posts and in making promotions and transfers from one service to another.
  - All disciplinary matters affecting a person serving under the Government of India in a civil capacity including memorials or petitions relating to such matters. These include :
    - Censure (Severe disapproval)
    - Withholding of increments
    - Withholding of promotions
    - Recovery of pecuniary loss
    - Reduction to lower service or rank (Demotion)
    - Compulsory retirement
    - Removal from Service
    - Dismissal from service
  - Matters of temporary appointments for period exceeding one year and on regularization of appointments.
  - Matters related to grant of extension of service and re-employment of certain retired civil servants.
  - Any other matter related to personnel management.

LIMITATIONS

This following matters are kept outside the functional jurisdiction of the UPSC. In other words, the UPSC is not consulted on the following matters;

- With regard to the selections for chairmanship or membership of commissions or tribunals, posts of the highest diplomatic nature and a bulk of group C and group D services.
- With regard to the selection for temporary or officiating appointment to a post if the person appointed is not likely to hold the post for more than a year.
- While taking into consideration the claims of scheduled caste and scheduled tribes in making appointments to services and posts.
- While making reservations of appointments or posts in favour of any backward class of citizens.

STATE PUBLIC SERVICE COMMISSION

Parallel to the Union Public Service Commission (UPSC) at the Centre, there is a State Public Service Commission (SPSC) in a state. The same set of Articles (i.e., 315 to 323 in Part XIV) of the Constitution also deal with the composition, appointment and removal of members, power and functions and independence of a SPSC.

COMPOSITION

A State Public Service Commission consists of a chairman and other members appointed by the governor of the state. The Constitution does not specify the strength of the Commission but has left the matter to the discretion fo the Governor. Further, no qualifications are prescribed for the commission's membership except that one-half of the members of the commission should be such persons who have held office for at least ten years either under the government of India or under the Government of a state. The constitution also authorizes the governor to determine the conditions of service of the chairman and members of the Commission.

The chairman and members of the Commission hold office for a term of six years or until they attain the age of 62 years, whichever is earlier (in the case of UPSC, the age limit is 65 years). However, they can relinquish their offices at any time by addressing their resignation to the governor.

The governor can appoint one of the members of the SPSC as an acting chairman in the following two circumstances :

- When the office of the chairman falls vacant; or
- When the chairman is unable to perform his functions due to absence or some other reasons.

The acting chairman functions till the person appointed as chairman enters on the duties of the office or till the chairman is able to resume his duties.

REMOVAL

Although the chairman and members of a SPSC are appointed by the governor, they can be removed only be the president (and not by the governor). The president can removed them on the same grounds and in the same manner as he can remove a chairman or a member of the UPSC. Thus, he can remove him under the following circumstances:

- If he is, in the opinion of the president, unfit to continue in office by reason of infirmity of mind or body.
- If he engages, during his term of office, in any paid employment outside the duties of his office.
- If he is adjudged an insolvent (i.e., has gone bankrupt).

In addition to these, the president can also remove the chairman or any other member of SPSC for misbehavior. However, in this case, the president has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, the president can remove the chairman or a member. Under the provisions of the Constitution, the advise tendered by the Supreme Court in this regard is binding on the president. However, during the course of enquiry by the Supreme Court, the governor can suspend the concerned chairman or member, pending the final removal order of the president on receipt of the report of the Supreme court.

INDEPENDENCE

As in the case of UPSC, the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a SPSC:

- The chairman or a member of a SPSC can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy the security to tenure.
- The chairman of a SPSC (on ceasing to hold office) is eligible for appointment as the chairman or a member of the UPSC or as the chairman of any other SPSC but not for any other employment under the Government of India or a state.
- A member of a SPSC (on ceasing to hold office) is eligible for appointment as the chairman or a member of the UPSC or as the chairman of the SPSC or any other SPSC, but not for any other employment under the Government of India or a state.

JOINT STATE PUBLIC SERVICE COMMISSION

The Constitution makes a provision for the establishment of a Joint State Public Service Commission (JSPSC) for two or more states. While the UPSC and the SPSC are created directly by the Constitution, a JSPSC can be created by an act of Parliament on the request of the state legislatures concerned. Thus, a JSPSC is a statutory and not a constitutional body. The two states of Punjab and Haryana had a JSPSC for a short period, after the creation of Haryana out of Punjab in 1966.

The chairman and members of a JSPSC are appointed by the president. They hold office for a term on six years or until they attain the age of 62 years, whichever is earlier. They can be suspended or removed by the president. They can also resign from their offices at any time by submitting their resignation letters to the president.

The number of members of a JSPSC and their conditions of service are determined by the president.

A JSPC presents its annual performing report to each of the concerned state governors. Each governor places the report before the state legislature.

The UPSC can also serve the needs of a state on the request of the state governor and with the approval of the president.

As provided by the Government of India Act of 1919, a Central Public Service Commission was set up in 1926 and entrusted with the task of recruiting civil servants. The Government of India Act of 1935 provided for the establishment of not only a Federal Public Service Commission and Joint Public Servie Commission for two or more provinces.

22. Finance Commission

Article 280 of the Constitution of India provides for a Finance Commission as a quasi judicial body. It is constituted by the president of India every fifth year or at such earlier time as he considers necessary.

COMPOSITION

The Finance Commission consists of a chairman and four other members to be appointed by the president. They hold office for such period as specified by the president in his order. They are eligible for reappointment.

The Constitution authorizes the parliament to determine the qualifications of members of the commission and the manner in which they should be selected. Accordingly, the Parliament has specified the qualifications of the chairman and members of the commission. The chairman should be a person having experience in public affairs and the four other members should be selected from amongst the following :

- A person who has special knowledge of economics.
- A person who has specialized knowledge of finance and accounts of the government.
- A judge of high court or one qualified to be appointed as one.
- A person who has wide experience in financial matters and in administration.

FUNCTIONS

The Finance Commission is required to make recommendations to the president of India on the following matters :

- Any other matter referred to it by the president in the interest of sound finance.
- The principles that should govern the grants-in-aid to the states by the Centre (i.e,. out of the consolidated fund of India).
- The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the state finance commission.
- The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states of the respective shares of such proceeds.

The commission submits its report to the president. He lays it before both the Houses of Parliament along with an explanatory memorandum as to the action taken on its recommendations.

ADVISORY ROLE

It must be clarified here that the recommendations made by the Finance Commission are only of advisory nature and hence, not binding on the government. It is up to the Union government to implement its recommendations on granting money to the states.

FINANACE COMMISSIONS APPOINTED SO FAR

Finance Commission	*Chairman*	*Appointed in*	*Submitted Report in*	*Period of implementation of Report*
First	K.C.Neogy	1951	1952	1952-57
Second	K. Santhanam	1956	1957	1957-62
Third	A.K. Chanda	1960	1961	1962-66
Fourth	Dr. P.V. Rajamannar	1964	1965	1966-69
Fifth	Mahavir Tyagi	1968	1969	1969-74
Sixth	Brahamananda Reddy	1972	1973	1974-79
Seventh	J.M. Shelat	1977	1978	1979-84
Eighth	Y.B. Shelat	1982	1984	1984-89
Ninth	N.K.P. Salve	1987	1989	1989-95
Tenth	K.C. Pant	1992	1994	1995-2000
Eleventh	A.M.Khusro	1998	2000	2000-2005
Twelfth	Dr. C. Rangarajan	2002	2004	2005-2010
Thirteenth	Dr. Vijay Kelkar	2007	2009	2010-2015

COMPTROLLER AND AUDITOR GENERAL OF INDIA

The Constitution of India (Article 148) provides for an independent office of the Comptroller and Auditor General of India (CAG). He is the head of the Indian Audit and Accounts Department. He is the guardian of the public purse and controls the entire financial system of the country at both the levels – the centre and the state. His duty is to uphold the Constitution of India and laws of Parliament in the field of financial administration. This is the reason why Dr. B.R. Ambedkar said that the CAG shall be the most important Officer under the Constitution of India. He is one of the bulwarks of the democratic system of government in India; the other being the Supreme Court, the Election Commission and the Union Public Service Commission.

APPOINTMENT AND TERM

The CAG is appointed by the president of India by a warrant under his and seal. The CAG, before taking over his office, makes and subscribes before the president an oath or affirmation :

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

He holds office for a period of six years or upto the age of 65 years, whichever is earlier. He can resign any time from his office by addressing the resignation letter to the president. He can also be removed by the president on same grounds and in the same manner as a judge of the Supreme Court. In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehavior or incapacity.

INDEPENDENCE

The Constitution has made the following provisions to safeguard and ensure the independence of CAG :-

- Neither his salary nor his rights in respect of leave of absence, pension or age of retirement can be altered to his disadvantage after his appointment.
- The conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the CAG are prescribed by the president after consultation with the CAG.
- He is not eligible for further officer, either under the Government of India or of any state, after he ceases to hold his office.
- His salary and other service conditions are determined by the Parliament. His salary is equal to that of a judge of the Supreme Court.
- The administrative expenses of the office of the CAG, including all salaries, allowances and pensions of persons serving in that office are charged upon the Consolidated Fund of India. Thus, they are not subject to the vote of Parliament.
- He is provided with the security of tenure. He can be removed by the president only in accordance with the procedure mentioned in the Constitution. Thus, he does not hold his office till the pleasure of the president though he is appointed by him.

Further, no minister can represent the CAG in Parliament (both Houses) and no minister can be called upon to take any responsibility for any actions done by him.

DUTIES AND POWERS

The Constitution (Article 149) authorises the Parliament to prescribe the duties and powers of the CAG in relation to the accounts of the Union and of the sates and of any other authority or body. Accordingly, the Parliament enacted the CAG's (Duties, Powers and Conditions of Service) act, 1971. This Act was amended in 1976 to separate accounts from audit in the Central government.

The duties and functions of the CAG as laid down by the Parliament and the Constitution are;

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

fund of each state and consolidated fund of each union territory having a Legislative Assembly.

- He audits the accounts of any other authority when requested by the President or Governor. For example, the audit of local bodies.
- He audits the receipts and expenditure of the Centre and each state to satisfy him self that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue:
- He audits all transactions of the Central and state governments related to debt sinking funds, deposits, advances, suspense accounts and remittance business. He also audits receipts, stock accounts and others, with approval of the President, or when required by the President.
- He advises the President with regard to prescription of the form in which the accounts of the Centre and the states shall to be kept (Article 150).
- He submits his audit reports relating to the accounts of the Centre to President, who shall, in turn, place them before both the Houses of Parliament (Article 151).
- He submits his audit reports relating to the accounts of a state to governor, who shall, in turn, place them before the state legislature (Article 151).
- He compiles and maintains the accounts of state governments. In 1976, he was relieved of his responsibilities with regard to the compilation and maintenance of accounts of the Central Government due to the separation of accounts from audit, that is, departmentalization of accounts.
- He ascertains and certifies the net proceeds of any tax or duty (Article 279). His certificate if final. The net proceeds means to proceeds of a tax or a duty minus the cost of collection.
- He acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament.

The CAG submits three audit reports to the President – audit report on appropriation accounts, audit report on finance accounts, and audit report on public undertakings. The President lays these reports before both the Houses of Parliament. After this, the Public Accounts Committee examines them and reports its findings to the Parliament.

23. PLANNING COMMISSION

The Planning Commission was established in March 1950 by an executive resolution of the Government of India, (i.e., union cabinet) on the recommendation of the Advisory Planning Board constituted in 1946, under the chairmanship of K.C.Neogi. Thus, the Planning Commission is neither a constitutional body nor a statutory body. In other words, it is a non-institutional or extra-constitutional body (i.e., no created by the Constitution) and a non-statutory body (not created by an act of Parliament). In India, it is the Supreme organ of planning for social and economic development.

FUNCTIONS

The functions of the Planning Commission include the following :

- To appraise, from time to time, the progress achieved in execution of the plan and to recommend necessary adjustments.
- To make appropriate recommendations for facilitation the discharge of its duties, or on a matter referred to it for advice by Central or state governments.
- To formulate a plan for the most effective and balanced utilization of the country's resources.
- To determine priorities and to define stages in which the plan should be carried out.
- To indicate the factors that retard economic development.
- To determine the nature of the machinery required for successful implementation of the plan in each state.
- To make an assessment of material, capital and human resources of the country and investigate the possibilities of augmenting them.

It should be noted that the Planning Commission is only a staff agency – an advisory body and has no executive responsibility. It is not responsible for taking and implementing decisions. This responsibility rests with the Central and state governments.

COMPOSITION

The following points can be noted in context of the composition (membership) of the Planning Commission :

- The commission has four to seven fulltime expert members. They enjoy the rank of a minister of state.
- The commission has a member-secretary. He is usually a senior members of IAS.
- The prime minister of India has been the chairman of the commission. He presides over the meetings of the commission.
- The commission has a deputy chairman. He is the de facto executive head (i.e., full-time functional head) of the commission. He is responsible for the formulation and submission of the draft Five-Year Plan to the Central cabinet. He is appointed by the Central cabinet for a fixed tenure and enjoys the rank of a cabinet minister. Though he is not a member of cabinet, he is invited to attend all its meeting (without a right to vote).
- Some Central ministers are appointed as a part-time members of the commission. In any case, the finance minister and planning minister are the ex-officio (by virtue of) members of the commission.

The state governments are not represented in the commission in any way. Thus, the Planning Commission is wholly a Centre-constituted body.

INTERNAL ORGANISATION

The Planning Commission has the following three organs :

- Technical Divisions
- House keeping Branches
- Programme Advisors

TECHNICAL DIVISIONS

The technical divisions are the major functional units of Planning Commission. They are mainly concerned with plan formulation, plan monitoring and plan evaluation. These fall under two broad categories, that is, general divisions (concerned with aspects of the entire economy). and subject divisions (concerned with specified fields of development).

HOUSEKEEPING BRANCHES :

The Planning Commission has the following housekeeping branches :

- General administration branch.

- Establishment branch
- Vigilance branch
- Accounts branch
- Personal training branch

PROGRAMME ADVISORS

The post of programme advisors were created in the Planning Commission in 1952 to act as a link between the Planning Commission and the states of Indian Union in the field of planning.

NATIONAL DEVELOPMENT COUNCIL

The National Development Council (NDC) was established in August 1952 by an executive resolution of the Government of India on the recommendation of the first five year plan (draft outline). Like the Planning Commission, it is neither a constitutional body nor a statutory body.

COMPOSITION

The NDC is composed of the following members.

- Chief ministers/administrators of all union territories.
- Members of the Planning Commission.
- Prime minister of India (as its chairman/head).
- All Union cabinet ministers (since 1967).
- Chief ministers of all states.

The secretary of the Planning Commission acts as the secretary of the NDC. It (NDC) is also provided with administrative and other assistance for its work by the Planning Commission.

OBJECTIVES

The NDC was established with the following objectives.

- To secure cooperation of states in the execution of the Plan.
- To strengthen and mobilize the efforts and resources of the nation in support of the Plan.
- To promote common economic policies in all vital spheres.
- To ensure balanced and rapid development of all parts of the country.

FUNCTIONS

To realize the above objective, the NDC is assigned with the following functions :

- To review the working of the national Plan from time to time.
- To recommend measures for achievement of the aims and targets set out in the national Plan.
- To make an assessment of the resources that are required for implementing the plan and to suggest measures for augmenting them.
- To prescribe guidelines for preparation of the national Plan.
- To consider the national Plan as prepared by the Planning Commission.
- To consider important questions of social and economic policy affecting national development.

The Draft Five-Year Plan prepared by the Planning Commission is first submitted to the union cabinet. After its approval, it is placed before the NDC, for its acceptance. Then, the Plan is presented to the Parliament. With its approval, it emerges as the official Plan and published in the official gazette.

Therefore, the NDC is the highest body, below the Parliament, responsible for policy matters with regard to planning for social and economic development. However, it is listed as an advisory body to the Planning Commission and its recommendations are not binding.

24. Some importint Amendments of the Constitution

- **1st Constitutional Amendment Act, 1951 :** This amendment added Article, 15(4) and Article, 19(6) and brought changes in the right to private property in pursuance with the decision of Supreme Court concerning fundamental rights. Ninth schedule to the Constitution was also added by it.
- **7th Constitutional Amendment Act, 1956 :** Through this amendment the implementation of State Reorganisation Act, was made possible. The categorisation of States into Part A, Part B and Part C ceased henceforth. Part C states were redesignated as Union Territories. The seats in the Rajya Sabha and in the Union and State Legislatures were reallocated. It also effected changes regarding appointment of additional and acting judges. High Courts and their jurisdictions etc.
- **10th Constitutional Amendment Act, 1961 :** Incorporated Dadra and Nagar Haveli as Union Territory.
- **12th Constitutional Amendment Act, 1962 :** Inclusion of territories of Goa, Daman and Diu into the Indian Union.
- **13th Constitutional Amendment Act, 1962 :** Insertion of Art. 371 A to make special provisions for the administration of the State of Nagaland.
- **14th Constitutional Amendment Act, 1962:** Pondicherry, Karaikal, Malic and Yenam, the former French territories, were specified in the Constitution as the Union Territory of Pondicherry (now Puducherry). Enabled the UTs ol Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry to have Legislatures and Council of Ministers.
- **15 th Constitutional Amendment Act, 1963 :** It raised the ageof retirement of a High Court Judge from 60 to 62. Extended the jurisdiction of a High Court to issue writs under Art. 226 to a Government or authority situated outside its territorial jurisdiction where the cause of action arises within such jurisdiction.
- **16th Constitutional Amendment Act, 1963 :** Changes were effected in Art. 19 to enable the Parliament to make laws providing reasonable restrictions on the freedom of expression in the larger interests of sovereign ty and integrity of India. Amendments were made in the form of oath contained in the third Schedule with emphasis on upholding the sovereignty and integrity of India.
- **19th Constitutional Amendment Act, 1966 :** Art. 324 was amended to clarify the duties of the Election Commission. It deprived the Election Commission of the power to appoint election tribunals for deciding election disputes of members of Parliament and State Legislatures.
- **21st Constitutional Amendment Act, 1967 :** Sindhi language was included as 15th regional language in the Eighth Schedule.
- **24th Constitutional Amendment Act, 1971 :** It was a retaliatory act of the Parliament to neutralise the effect of the judgement in Golak Nath Case. It affirmed the parliament's power to amend any part of the Constitution, including Fundamental Rights by amending Arts. 368 and 13. It made obligatory for the President to give assent to Amendment Bills, when they are presented to him/her.
- **25th ConstitutionalAmendmentAct, 1971 (cameintoforceon20.04.1972):** It restricted the jurisdiction of the Courts over acquisition laws with regard to adequacy of Compensation. This amendment came primarily in the wake of Bank Nationalisation case and the word 'amount' was substituted in place of 'compensation' in Article 31.

  It also provided that no law passed by the State to give effect to Directive Principles specified under clauses (b) and (c) of Art. 39 can be declared void on the ground that it was inconsistent with Fundamental Rights conferred by Arts. 14,19 and 31.
- **26th Constitutional Amendment Act, 1971 :** This amendment withdrew the recognition to the rulers of Princely States and their privy purses were abolished.
- **30th Constitutional Amendment Act, 1972 (27.02.1973):** It provided that only such appeals can be brought to the Supreme Court which involve a substantial question of law. The

valuation aspect of Rs. 20,000 for appeals in civil cases to the Supreme Court was abolished.

- **31st Constitutional Amendment Act, 1973 :** By this amendment, the seats of the Lok Sabha was increased from 525 to 545 but reduced the representation of UTs in Lok Sabha from 25 to 20.
- **35th Constitutional Amendment Act, 1974 (01.03.1975):** Accorded status of Associate State to Sikkim by ending its protectorate kingdom status which was a novel concept introduced in the Constitution.
- **36th Constitutional Amendment Act, 1975 :** Made Sikkim a full fledged State of the Union of India.
- **38th Constitutional Amendment Act, 1975 :** Clarified that declaration of emergency by the President and promulgation of Ordinance by the President or Governor cannot be challenged in any Court on any ground.
- **39th Constitutional Amendment Act, 1975 :** The disputes or questions regarding elections of President, Vice-President, Prime Minister and Speaker of Lok Sabha were taken out of the purview of judicial review of the Su prrmt Court or High Courts.
- **42nd Constitutional Amendment Act, 1976 (Mini Constitution) :** The 42nd Amendment made fundamental changes in the contitutional strin 11110 and it incorporated the words 'SOCIALIST', 'SECULAR' and 'INTFXIKI I V in the Preamble. Fundamental Duties were added in Part IVA. Direcliv Principles were given precedence over Fundamental Rights and any l.m made to this effect by the Parliament was kept beyond the scope of judit 1.1I review by the Court. It made the power of Parliament supreme so far namendment to the Constitution was concerned. It authorised the Suprcim Court to transfer certain cases from one High Court to another and redefi the writ jurisdiction of the High Courts. It provided for Administrate Tribunals for speedy justice. It empowered the Centre to deploy armed forces in any State to deal with the grave law and order situation. It authorised the President to make Proclamation of Emergency for any part of the count or to whole of India. It made it obligatory for the President to act on the advice of the Council of Ministers. Tenure of the Lok Sabha and the State Assemblies was increased by one year.
- **43rd Constitutional Amendment Act, 1977 (13.04.1978) :** The 43rd Amendment omitted many articles inserted by 42nd Amendment. It restored the jurisdicition of the Supreme Court and the High Courts, which had been curtailed under the 42nd Amendment.
- **44th Constitutional Amendment Act, 1978 (June-September, 1979):** The amendment was brought by the Janata Party Government which repealed some of the changes effected by 42nd Amendment, omitted a few and provided alterations. Right to property was taken away from the list of Fundamental Rights and placed in a new Art. 300A as an ordinary legal right. Constitutionality of the Proclamation of Emergency by the President could be questioned in a court on the ground of malafide (42nd Amendment had made it immune from judicial review). It brought the revocation of a Proclamation under Parliamentary control. In Article 352 regarding National Emergency, the words ' internal disturbance' were substituted by the words 'armed rebellion'. It authorised the President to refer back the advice to the Council of Ministers for reconsideration, but made it binding for the President to act on the reconsidered advice. The power of the Courts to decide disputes regarding election of Prime Minister and Speaker was restored. Constitutional protection on publication of proceedings of Parliament and State Legislatures was provided.
- **52nd Constitutional Amendment Act, 1985 :** This amendment was brought about during Rajiv Gandhi regime with a view to put an end to political defections. It added Tenth Schedule to the Constitution containing the modes for disqualification in case of defection from the Parliament or State Legislature.
- **55th Constitutional Amendment Act, 1986 (20.02.1987) :** The formation of Arunachal Pradesh took place with special powers given to the Governor. It also provided for a 30-member State Assembly.

- **56th Constitutional Amendment Act, 1987:** Goa was made a full fledged State with a State Assembly but Daman and Diu stayed as UT.
- **57th Constitutional Amendment Act, 1987 :** It provided for reservation ill '.oats for Scheduled Tribes of Nagaland, Meghalaya, Mizoram and Arunachal Pradesh in Lok Sabha. Seats were also reserved for the Scheduled Tribes of Nagaland and Meghalaya in the State Assemblies of Nagaland and Mughalaya.
- **58th Constitutional Amendment Act, 1987 :** An authoritative text nl the Constitution in Hindi was provided to the people of India by the ('resident.
- **59th Constitutional Amendment Act, 1988 :** It amended Art. 356 to privide that the declaration of Emergency may remain in operation upto 3 years Mrs and also authorised the Government to proclaim emergency in Punjab on ground of 'internal disturbance'. The amendment made in Art. 352 thus provided that the emergency with respect to Punjab shall operate only in I lint State.
- **61st Constitutional Amendment Act, 1988 (28.03.1989):** It brought .ibout an amendment to Article 326 for the reduction of voting age from 21 to 18 years .
- **62nd Constitutional Amendment Act, 1989 :** It increased the period of reservation of seats provided to the Scheduled Castes and Scheduled Tribes lor another 10 years i.e. upto 2000 A.D. The reservation for Anglo-Indians through nomination in case of their inadequate representation, was also extended upto 2000 A.D.
- **65th Constitutional Amendment Act, 1990 (12.03.1992) :** ANational Commission for Scheduled Castes and Scheduled Tribes with wide powers was provided to take care of the cause of SCs/STs.
- **66th Constitutional Amendment Act, 1990 :** This amendment provided for the inclusion of 55 new land reform Acts passed by the States into the Ninth Schedule.
- **69th Constitutional Amendment Act, 1991 (01.02.1992):** Arts. 239- AA and 239-AB were inserted in the Constitution to provide a National Capital Territory designation to Union Territory of Delhi with a legislative Assembly and Council of Ministers.
- **70th Constitutional Amendment Act, 1992 :** Altered Art. 54 and 368 to include members of legislative assemblies of Union Territories of Delhi and Pondicherry in the electoral college for the election of the President.
- **71st Constitutional Amendment Act, 1992 :** It included M'anipuri, Konkani and Nepalese languages in the 8th Schedule.
- **73rd Constitutional Amendment Act, 1992 (24.04.1993) :** The institution of Panchayati Raj received Constitutional guarantee, status and legitimacy . Xlth Schedule was added to deal with it. It also inserted part IX, containing Arts, 243, 243A to 2430.
- **74th Constitutional Amendment Act, 1992 (01.06.1993):** Provided for constitutional sanctity to Municipalities by inserting Part IX-A, containing Arts. 243P to 243ZG and the Xllth Schedule which deals with the items concerning Municipalities.
- **77th Constitutional Amendment Act, 1995 :** By this amendment a new clause 4A was added to Art. 16 which authorised the State to make provisions for Scheduled Castes and Scheduled Tribes with regard to promotions in Government jobs.
- **78th Constitutional Amendment Act, 1995 :** This amended the Ninth Schedule of the Constitution to insert 27 Land Reform Acts of various States. After this the total number of Acts included in the Ninth Schedule went upto 284.
- **79th Constitutional Amendment Act, 1999 :** Amended Art. 334 to extend the reservation of seats for SCs/ STs and Anglo-Indians in the Lok Sabha and in the State Legislative Assemblies upto 60 years from the commencement of the Constitution (i.e., till 2010).
- **80th Constitutional Amendment Act, 2000 :** Amended Art. 269 and substituted a new Article for Art. 270 and abolished Art. 272 of the Constitution. This was based on the recommendation of the Tenth Finance Commission. This amendment was deemed to have come into operation from 1st April 1996. The Amendment widened the scope of the Central taxes and duties on the consignment of goods levied by the Government of India and distributed among States.

- **81st Constitutional Amendment Act, 2000 :** Amended Art. 16(1) of the Constitution and added a new clause (4-B) after clause (4-A) to Art. 16(1) of the Constitution. The new clause (4-B) ends the 50% ceiling on reservation for Scheduled Caste and Scheduled Tribes and other Backward Classes in backlog vacancies.
- **82nd Constitutional Amendment Act, 2000 :** This amendment restored the relaxation in qualifying marks and standards of evaluation in both job reservation and promotions to Scheduled Castes and Scheduled Tribes which was set aside by a Supreme Court's judgement in 1996.
- **84th Constitutional Amendment Act, 2001 (21.02.2002) :** This amendment provided that till the publication of the relevent figures of the first census after 2026 the ascertainment of the population of a State for following purposes shall be made on the basis of the census shown against each of them :
  - Election of the President under Art. 55 — 1971 census.
  - Allotment of seats to each State in Lok Sabha — 1971 census.
  - Division of State into territorial Lok Sabha constituencies — 1991 census.
  - Composition of Legislative Assemblies under Art. 170 — 1991 census.
  - Reservation of seats for SC / ST in the Lok Sabha under Art. 330 —1991 census
- **85th Constitutional Amendment Act, 2001 :** It amended clause (4- A) of Art. 16 and substituted the words "in matters of promotion, with consequential seniority, to any class" for the words "in matter of promotion to any class".

  The amendment provided for 'consequential seniority' to the SCs /STs for promotion in government service.
- **86th Constitutional Amendment Act, 2002:** Added a new Art. 21A after. Art. 21 which makes the right of education for children of the age of 6 to 14 years a Fundamental Right. Substitutes Article 45 to direct the State to endeavour to provide early childhood care and education for all children until they complete the age of six years. Added a new Fundamental Duty to Part IV (Art. 51A) of the Constitution.
- **87th ConstitutionalAmendmentAct, 2003 (19.02.2004):** Provided that the allocation of seats in the Lok Sabha and division of each State into territorial Constituencies will be done on the basis of population as ascertained by the '2001 census' and not by '1991' census.
- **88th Constitutional Amendment Act, 2003 (15.01.2004) :** This amendment inserted a new Article 268A after Article 268 which empowered the Union of India to levy 'service tax' .

  This tax shall be collected and appropriated by the Union and States in the manner as formulated by Parliament.
- **89th Constitutional Amendment Act, 2003 :** Provided for the establish- ment of a separate National Commission for Scheduled Tribes by bifurcating the existing National Commission for Scheduled Castes and Scheduled Tribes. The commission shall consist of a Chairman, Vice-Chairman and three other members. They shall be appointed by the President of India.
- **90th Constitutional Amendment Act, 2003 :** This amendment was ne- cessitated due to creation of Bodoland Territorial Areas District within the State of Assam by agreement reached between the Centre and Bodo repre- sentatives for solving Bodoland problem. It stated that the representation of Scheduled Tribes and non-Scheduled Tribes in the Constitution of the Bodoland Territorial Areas District shall be maintained. It meant that the representation of the above categories shall remain the same as existed prior to the creation of Bodoland Territorial Areas District.
- **91st Constitutional Amendment Act, 2003 (01.01.2004) :** This amendment limits the size Of Ministries at the Centre and in States. According to new Clause (1-A) the total number of Ministers, including the Prime Minister in the Union Council of Ministers or Chief Minister in the State Lagislative Assemblies shall not exceed 15 per cent of the total members of the Lok Sabha in the Centre or Vidhan Sabha in the states. The new Clause (1-B) of Article 75 provides that a member of either House of Parliament belonging to any political party who is disqualified for being member of that house on the ground of defection shall also be disqualified to be appointed as a

minister under Clause (1) of Art. 75 and 164 until he is again elected. However, the number of Ministers, including the Chief Minister in a State shall not be less than 12 (in smaller States like Sikkim, Mizoram and Goa).

- **92nd Constitutional Amendment Act, 2003 (07.01.2004) :** It amended the Eighth Schedule of the Constitution and has inserted 4 new languages in it, namely—Bodo, Dogri, Maithili and Santhali. After this amendment the total number of constitutionally recognised official languages has become 22.
- **93rd Constitutional Amendment Act, 2005 (20.01.2006) :** Provided reservation in admissions in private unaided educational institutions for students belonging to scheduled castes/tribes and other backward classes.
- **94th Constitutional Amendment Act, 2006 :** Excluded Bihar from the provision to Clause (1) of Art. 164 of the constitution which provides that there shall be a minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes in Bihar, Madhya Pradesh and Orissa (now Odisha). It extends the provisions of clause(l) of Art. 164 to the newly formed States of Chhattisgarh and Jharkhand.
- **95th Constitutional Amendment Act, 2009 :** Extended the reservation of seats for SCs and STs in the Lok Sabha and State assemblies by another 10 years (beyond January 25,2010). The time period of 60 years under Art. 334 of the constitution was to lapse on January 25, 2010. Through this amendment in Art. 334 the words 'sixty years' has been substituted by 'seventy years'.
- **96th Constitutional Amendment Act, 2011 :** Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Ninety-sixth Amendment) Act, 2011.
2. In the Eighth Schedule to the Constitution, in entry 15, for the word "Oriya", the word "Odia" shall be substituted.

- **97th Constitutional Amendment Act, 2011 :** Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows :

1. This Act may be called the Constitution (Ninety-seventh Amendment) Act, 2011. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In Part III of the Constitution, in article 19, in clause (/), in sub-clause **(c),** after the words "or unions", the words "or co-operative societies" shall be inserted.
3. In Part IV of the Constitution, after article 43A, the following article shall be inserted, namely:—
"43B. The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies."