

## SSC INDIAN POLITY CAPSULE 2015 for Railways, SSC CGL, CPO and DMRC

### Framing of the Constitution:

- a) The Constitution of India was framed by a Constituent Assembly which was set up under the Cabinet mission plan (1946).
- b) The Constituent Assembly took almost 3 years (2 years, 11 months, and 18 days) to complete its historic task of drafting the Constitution for an Independent India.
- c) During this period it held 11 sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of and discussion on the Draft Constitution.
- d) As for the composition of the Assembly, members were chosen by indirect election by the members of the Provincial Legislative Assemblies, following the scheme recommended by the Cabinet Mission. The arrangement was as follows:
  - (i) 292 members were elected through the Provincial Legislative Assemblies;
  - (ii) 93 members represented the Indian Princely States; and
  - (iii) 4 members represented the Chief Commissioners Provinces.

The total membership of the assembly thus was to be 389.

- e) However, as a result of the partition under the Mountbatten Plan of 3 June 1947, a separate Constituent Assembly was set up for Pakistan and representatives of some provinces ceased to be members of the Assembly. As a result, the membership of the Assembly was reduced to 299.

### The Cabinet Mission

World War II in Europe came to an end on May 9, 1945. The new British Govt. announced its Indian Policy and decided to convene a constitution drafting body. Three British cabinet ministers were sent to find a solution to the question of India's independence. This team of ministers (Lord Pethick Lawrence, Stafford Cripps, A V Alexander) was called the Cabinet Mission. The Mission was in India from March 1946 to May 1946. The Cabinet Mission discussed the framework of the constitution and laid down in some detail the procedure to be followed by the constitution drafting body. Elections for the 296 seats assigned to the British Indian provinces were completed

by July-August 1946. The Assembly began work on 9 December 1946.

### First Interim National Govt.

The formation of an interim national Govt. was announced on 24 August, 1946. The Govt. was constituted on 2 September, 1946. It was led by Pundit Nehru and it comprised 11 other members, including 3 Muslims. Muslim League initially didn't join the Govt.. Technically, however, all the 12 members of the interim Govt. were members of Viceroy's Executive Council. The Viceroy continued to be the head of the Council. Pundit Jawahar Lal Nehru was designated as the Vice-President of the Council.



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### The Constituent Assembly

- a) The people of India elected members of the provincial assemblies, who in turn elected the constituent assembly.
- b) Rajendra Prasad, Sardar Patel, Maulana Abul Kalam Azad and Shyama Prasad Mukherjee were some important figures in the Assembly.
- c) Frank Anthony represented the Anglo-Indian community.
- d) The Parsis were represented by H.P. Modi.
- e) The Chairman of the Minorities Committee was Harendra Coomarr Mookerjee, a distinguished Christian who represented all Christians other than Anglo-Indians.

f) Dr. Sachidanand Sinha was the first president of the Constituent Assembly. Later, Dr. Rajendra Prasad was elected president of the Constituent Assembly while B.R. Ambedkar was appointed the Chairman of the Drafting Committee.

**COMMITTEES**

1. Committee on the Rules of Procedure 2. Steering Committee 3. Finance and Staff Committee 4. Ad hoc Committee on the National Flag	Rajendra Prasad
5. States Committee . Union Powers Committee . Union Constitution Committee	Jawaharlal Nehru
6. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas	Vallabhbhai Patel
7. Drafting Committee	B.R. Ambedkar
8. House Committee	B. Patabhi Sitaramayya
9. Committee on the Functions of the Constituent Assembly	G.V. Mavalankar
10. Minorities Sub-Committee	H.C. Mookherjee
11. Fundamental Rights Sub-Committee	J.B. Kripalani
12. North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee	Gopinath Bardoloi

**Constitutional Reforms in British India**

**Regulating Act, 1773:**

- End of Dual govt.
- Governor of Bengal to be the Governor – General of British territories of India.
- Establishment of Supreme Court in Calcutta.
- Court of directors to be elected for 4 years
- Number of Directors fixed at 24, 1/4th retiring every year.
- In Bengal, collegiate govt was created with Governor General and 4 members of the council and were named in the act:- GG -> Warren Hastings and 4 members -> Philip Francis, Clavering, Monson, and Barwell.

**Amending Act of 1781:**

- Actions of public servants of the Company in their official capacity were exempted from the jurisdiction of Supreme Court.
- Jurisdiction of Supreme Court was defined. SC had to take into consideration and respect the religious and social customs and usages of the Indian while enforcing its decrees and processes.
- The rules and regulations made by GG-in-Council were not to be registered with SC.

**Pitts Act of 1784:**

- Introduced Dual System of Govt by the company and by a Parliamentary board of directors.
- gave the British Government a measure of control over the company’s affairs
- company became a subordinate department of the State.
- Reduced the number of members of Executive Council of the GG to three.

**Act of 1786:**

- Governor General given the power to over-ride the Council and was made the Commander-in-chief also to prevail upon Cornwallis to accept the GG-ship of India

**Charter Act of 1793:**

- Company given monopoly of trade for 20 more years.
- laid the foundation of govt. by written laws, interpreted by courts.

**Charter Act of 1813:**

- Company deprived of its trade monopoly in India except in tea and trade with China.
- An amount of one lakh rupees was set aside for the promotion of Education in India.

**Charter Act of 1833:**

- End of Company’s monopoly even in tea and trade with China.
- Company was asked to close its business at the earliest.
- Governor General of Bengal to be Governor General of India
- (1st Governor General of India was Lord William Bentinck).

**Charter Act of 1853:**

- The Act renewed the powers of the Company and allowed it to retain the possession of Indian territories in trust of the British crown.
- Recruitment to Civil Services was based on open annual competition examination (excluding Indians).

**Government of India Act, 1858:**

- Rule of Company in India ended and that of the Crown began.
- A post of Secretary of State (a member of the British cabinet) for India created.
- He was to exercise the powers of the Crown.

- Secretary of State governed India through the Governor General.
- Governor General received the title of Viceroy. He represented Secretary of State and was assisted by an Executive Council, which consisted of high officials of the Govt.
- The system of double govt introduced by Pitt's Act 1784 was finally abolished

**Indian Council Act, 1861:**

- The Executive Council was now to be called Central Legislative Council.
- The Governor General was conferred power to promulgate ordinance.

**Indian Council Act, 1892:**

- Indians found their way in the Provincial Legislative Councils.
- Element of Election was introduced.

**Indian Council Act, 1909 or Minto-Morley Reforms:**

It envisaged a separate electorate for Muslims.

**Government of India Act, 1919 Or Montague-Chelmsford Reforms:**

- Dyarchy system introduced in the provinces.
- The Provincial subjects of administration were to be divided into 2 categories:
  - **Transferred**
  - administered by the Governor with the aid of ministers responsible to the Legislative Council
  - **Reserved**
  - The Governor and the Executive Council were to administer the reserved subjects without any responsibility to the legislature.
- Indian legislature became bicameral for the first time, it actually happened after 1935 Act.
- Secy of state be paid by British Exchequer
- Post of Commissioner of India

**Government of India Act, 1935:**

- Provided for the establishment of All-India Federation consisting of
- British Provinces
- Princely States.

- The joining of Princely States was voluntary and as a result the federation did not come into existence as the minimum number of princes required to join the federation did not give their assent to join the federation.
  - Dyarchy was introduced at the Centre (e.g. Department of Foreign Affairs and Defence were reserved for the Governor General).
  - Provincial autonomy replaced Dyarchy in provinces. They were granted separate legal identity.
- Burma (now Myanmar) separated from India.

**PARTS OF INDIAN CONSTITUTION**

1. **Part I** Articles 1-4 Territory of India,, admission,, establishment or formation of new states
2. **Part II** Articles 5-11 Citizenship
3. **Part III** Articles 12-35 Fundamental Rights
4. **Part IV** Articles 36-51 Directive Principles of State Policy
  - Part IV A** Article 51-A Duties of a citizen of India. It was added by the 42nd Amendment in 1976
5. **Part V** Articles 52-151 Government at the Union level
6. **Part VI** Articles 152-237 Government at the State level
7. **Part VII** Article 238 Deals with states in Part B of the First Schedule. It was repealed by 7th Amendment in 1956
8. **Part VIII** Articles 239-241 Administration of Union Territories
9. **Part IX** Article 242-243 Territories in Part D of the First Schedule and other territories. It was repealed by 7th Amendment in 1956
10. **Part X** Articles 244-244 A Scheduled and tribal areas
11. **Part XI** Articles 245-263 Relations between the Union and States
12. **Part XII** Articles 264-300 Finance,, property,, contracts and suits
13. **Part XIII** Articles 301-307 Trade,, commerce and travel within the territory of India
14. **Part XIV** Articles 308-323 Services under the Union and States
  - Part XIV-A** Articles 323A-323B Added by the 42nd Amendment in 1976 and deals with administrative tribunals to hear disputes and other complaints
15. **Part XV** Articles 324-329 Election and Election Commission
16. **Part XVI** Articles 330-342 Special provision to certain classes ST/SC and Anglo Indians
17. **Part XVII** Articles 343-351 Official languages
18. **Part XVIII** Articles 352-360 Emergency provisions
19. **Part XIX** Articles 361-367 Miscellaneous provision regarding exemption of the President and governors from criminal proceedings

20. **Part XX** Article 368 Amendment of Constitution
21. **Part XXI** Articles 369-392 Temporary,, transitional and special provisions
22. **Part XXII** Articles 393-395 Short title, commencement and repeal of the Constitution

### SCHEDULES OF INDIAN CONSTITUTION

1. **First Schedule** - List of States & Union Territories
2. **Second Schedule** -Salary of President, Governors, Chief Judges, Judges of High Court and Supreme court, Comptroller and Auditor General
3. **Third Schedule**-Forms of Oaths and affirmations
4. **Fourth Schedule**-Allocate seats for each state of India in Rajya Sabha
5. **Fifth Schedule**-Administration and control of scheduled areas and tribes
6. **Sixth Schedule**-Provisions for administration of Tribal Area in Asom, Meghalaya, Tripura, Mizoram & Arunachal Pradesh
7. **Seventh Schedule**-Gives allocation of powers and functions between Union & States. It contains 3 lists- Union List (For central Govt) /States List (Powers of State Govt) /Concurrent List (Both Union & States).
8. **Eighth Schedule**-List of 22 languages of India recognized by Constitution
9. **Ninth Schedule**-Added by 1st amendment in 1951. Contains acts & orders related to land tenure, land tax, railways, industries.
10. **Tenth Schedule**-Added by 52nd amendment in 1985. Contains provisions of disqualification of grounds of defection
11. **Eleventh Schedule**-By 73rd amendment in 1992. Contains provisions of Panchayati Raj.
12. **Twelfth Schedule**-By 74th amendment in 1992. Contains provisions of Municipal Corporation.

### Sources of our Constitution

The Indian Constitution is borrowed from almost all the major countries of the world but has its own unique features too. Major sources are:

1. **Government of India Act of 1935** - Federal Scheme, Office of Governor, Judiciary, Public Service Commission, Emergency provisions and administrative details.
2. **British Constitution** – Parliamentary System, Rule of law, Lagislative Procedure, Single Citizenship, Cabinet System, Prerogative Writs, Parliamentary Privileges and Bicameralism.
3. **US Constitution** – Fundamental rights, independence of judiciary, judicial review, impeachment of president, removal of Supreme court and high court judges and post of vice president.

4. **Irish Constitution**- Directive Principles of State Policy, nomination of members of Rajya Sabha and method of election of president
5. **Canadian Constitution**- Federation with a strong centre, vesting of residuary power in the centre, appointment of state Governor by the centre and advisory jurisdiction of Supreme Court.
6. **Australian Constitution**- Concurrent list, joint sitting of two houses of Parliament.
7. **Constitution of Germany**- Suspension of fundamental rights during emergency.
8. **French Constitution**- Republic and ideals of liberty, equality and fraternity in the Preamble.
9. **South African Constitution**- Procedure for amendment of the constitution and election of members of Rajya Sabha.
10. **Japanese Constitution**- Procedure established by Law.
11. **Constitution of former USSR**: Procedure of five-year plan, fundamental duties, ideals of justice in Preamble.

### Preamble to the Constitution

The Constitution begins with the Preamble. The objective resolution proposed by Pt. Nehru ultimately became the preamble. It contains the summary or essence of the Constitution. It has been amended by the 42nd Constitutional Amendment Act (1976), which added three new words— socialist, secular and integrity.

The Preamble 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 November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”.

### Amendment in the Preamble ?

The question as to whether the Preamble can be amended under Article 368 of the Constitution arose for the first time in the historic case of Kesavananda Bharati (1973). It was urged that the Preamble cannot be amended as it is not a part of the Constitution. But the Supreme Court held that the Preamble is a part of the Constitution. The Preamble has been amended only once so far, in 1976, by the 42nd Constitutional Amendment Act, which has added three new words—socialist, secular and integrity—to the Preamble. This amendment was held to be valid.

**Fundamental Rights**

- ✦ 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 can be suspended during the operation of a National Emergency except the rights guaranteed by **Articles 20 and 21**. More, the six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression.

**Originally the Constitution provided for seven fundamental rights:**

1. Right to equality [Art. 14-18]
2. Right to freedom [Art. 19-22]
3. Right against exploitation [Art. 23-24].
4. Right to freedom [Art. 25-28]
5. Cultural and educational rights [Art. 29-30]
6. Right to property [Art. 31]
7. Right to constitutional remedies [Art. 32]

However, the 'right to property' was deleted from the list of fundamental rights by the **44th Constitutional Amendment Act, 1978**. It has been made a legal right under **Article 300- A** in the Constitution. So, at present, there are only six fundamental rights.

**FUNDAMENTAL RIGHTS in Brief**

Right to Equality	<ul style="list-style-type: none"> <li>• Article 14:- Equality before law and equal protection of law</li> <li>• Article 15:- Prohibition of discrimination on grounds only of religion, race, caste, sex or place of birth.</li> <li>• Article 16:- Equality of opportunity in matters of public employment</li> <li>• Article 17 :- End of untouchability</li> <li>• Article 18 :- Abolition of titles, Military and academic distinctions are, however, exempted</li> </ul>
Right to Freedom	<ul style="list-style-type: none"> <li>• Article 19 :- It guarantees the citizens of India the following six fundamentals freedoms:-                             <ol style="list-style-type: none"> <li>1. Freedom of Speech and Expression</li> <li>2. Freedom of Assembly</li> <li>3. Freedom of form Associations</li> <li>4. Freedom of Movement</li> <li>5. Freedom of Residence and Settlement</li> <li>6. Freedom of Profession, Occupation, Trade and Bussiness</li> </ol> </li> <li>• Article 20 :- Protection in respect</li> </ul>

	<ul style="list-style-type: none"> <li>of conviction for offences</li> <li>• Article 21 :- Protection of life and personal liberty</li> <li>• Article 22 :- Protection against arrest and detention in certain cases</li> </ul>
Right Against Exploitation	<ul style="list-style-type: none"> <li>• Article 23 :- Traffic in human beings prohibited</li> <li>• Article 24 :- No child below the age of 14 can be employed</li> </ul>
Right to freedom of Religion	<ul style="list-style-type: none"> <li>• Article 25 :- Freedom of conscience and free profession, practice and propagation of religion</li> <li>• Article 26 :- Freedom to manage religious affairs</li> <li>• Article 27 :- Prohibits taxes on religious grounds</li> <li>• Article 28 :- Freedom as to attendance at religious ceremonies in certain educational institutions</li> </ul>
Cultural and Educational Rights	<ul style="list-style-type: none"> <li>• Article 29 :- Protection of interests of minorities</li> <li>• Article 30 :- Right of minorities to establish and administer educational institutions</li> <li>• Article 31 :- Omitted by the 44th Amendment Act</li> </ul>
Right to Constitutiona l Remedies	<ul style="list-style-type: none"> <li>• Article 32 :- The right to move the Supreme Court in case of their violation (called Soul and heart of the Constitution by BR Ambedkar)</li> <li>• Forms of Writ check</li> <li>• Habeas Corpus :- Equality before law and equal protection of law</li> </ul>

**Part-IV: Directive Principles of State Policy [Article 36 to 51]**

The phrase 'Directive Principles of State Policy' denotes the ideals that the State should keep in mind while formulating policies and enacting laws. It includes the legislative and executive organs of the central and state governments, all local authorities and all other public authorities in the country. The Directive Principles are **non-justiciable in nature**, that is, they are not legally enforceable by the courts for their violation. Therefore, the government cannot be compelled to implement them. They aim at providing social and economic justice of the people.

**FUNDAMENTAL DUTIES**

A list of ten fundamental duties was included in the Indian **Constitution by the 42nd Amendment Act, 1976 in the form of Article 51 A**. For this a new part was created in

the Constitution in the form of Part IV-A. **It is based on the Japanese model.** The idea of including a separate chapter on duties was recommended by the **Swam Singh Committee** in view of the fact that duties and rights are inseparable. Moreover, subsequently **11<sup>th</sup> duty has been added by Constitution (86th Amendment) Act, 2002 in the form of 51 A (k).** It reads:

"It shall be the duty of every citizen of India "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."

**The 11 duties**

It shall be the duty of every citizen of India -

1. to abide by and respect the Constitution, the National Flag, and the National Anthem.
2. to cherish and follow the noble ideals of the freedom struggle.
3. to uphold and protect the sovereignty, unity and integrity of India.
4. to defend the countrj and render national service when required.
5. to promote common brotherhood and establish dignity of women.
6. to preserve the rich heritage of the nation 's composite culture.
7. to protect and improve natural environment.
8. to develop scientific temper, humanism and spirit of inquiry.
9. to safeguard public property and abjure violence.
10. to strive for excellence in all spheres of individual and collective activity.
11. 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.

**CITIZENSHIP**

A citizen is a person who enjoys full membership of the community or State in which he lives or ordinarily lives. The State demands extra duty from its citizen which cannot be asked to non-citizens. 42nd Constitution (Amendment) Act, 1976 has inserted 10 Fundamental Duties in Article 51-A.

**Ways to acquire Indian Citizenship**

Constitution of India under Citizenship (Amendment) Act, 1986 provides five ways to acquire citizenship of India. These five ways are:

**a) Citizenship by Birth**

Every person born in India on or after 26th Jan 1950 shall be a citizen of India provided either, or both of his parents are citizens of India at the time of his birth. However, such a person shall not be a citizen of India if at the time of his birth:

- His/her father is a foreign diplomat or

- His/her father is an enemy alien.

**b) Citizenship by Descent**

- A person born outside India on or after 26th Jan 1950 shall be a citizen of India by descent, if his father is a citizen of India at the time of his birth.

**c) Citizenship by Registration**

Any person who is not a citizen of India and belongs to any of the following categories; can apply for registration as a citizen (He must have resided in India for at least 5 years):

- 1) Person of Indian origin who are ordinarily resident in India for 5 years immediately before making an application for registration. PIO who are ordinarily resident in any country or place outside India.
- 2) Women who are married to citizens of India.
- 3) Minor children of persons who are citizen of India.
- 4) Persons of full age and capacity who are citizens of a country mentioned in the first Schedule to the Act.



**d) Citizenship by Naturalization**

A foreigner, on application for naturalization can acquire Indian citizenship provided he satisfies certain conditions:

- 1) He is not a citizen or subject of a country where Indian citizens are prevented from becoming citizens by naturalization.
- 2) He renounces his citizenship of the other country.
- 3) He has resided and/or bears in Govt. services for 12 months immediately preceding the date of application. During 7 years prior to these 12 months, he has resided and/or been in Govt. Service for not less than 4 years.
- 4) He is of good character.
- 5) He has an adequate knowledge of a language recognized by the Constitution of India.
- 6) After naturalization he intends to reside in India.
- 7) If the Central Govt. is of the opinion that the applicant has rendered distinguished service to the cause of Science, philosophy, art, literature, world peace or human progress generally, it may waive the condition for naturalization in his case.

### e) Citizenship by incorporation of Territory

If any new territory becomes a part of India, the Govt. of India shall notify the persons of that territory to be Indian citizens.

### The President

**Article 52** – There shall be a President of India.

**Article 53** – The executive power of the Union shall be vested in the President. He shall exercise the executive power directly or through subordinate officers in accordance with the constitution.

Thus the President is:

- (1) Executive head of the Republic.
- (2) All the executive actions are taken in his name. The executive power vested in the President is to be exercised on the aid and advice of the Council of Ministers [Article 74(1)]. It is obligatory on the part of President to accept the advice of the council of ministers as per the 42nd and 44th Constitutional Amendment Acts.
- (3) He is the first citizen of India and occupies the first position under the warrant of precedence. Warrant of Precedence indicates the hierarchy of positions occupied by various dignitaries attending a state function.
- (4) He is the Supreme Commander of Armed Forces.

### Election of the President

The President of India is elected by indirect election. He is elected by an electoral college in accordance with the system of proportional representation by means of the single transferable vote and the vote being secret.

### Article 54 –

The Electoral College consists of:

- (a) The elected members of both houses of Parliament (nominated members are not the members of electoral college)
- (b) The elected members of the Legislative Assemblies of the States (including National Capital Territory of Delhi and the Union Territory of Pondicherry)

### Manner of Election of the President

The provisions dealing with the manner of election of the President of India are provided in Article 55 and the President and Vice-President (Elections) Act of 1952, amended subsequently in 1974. He is elected following the system of proportional representation by means of single transferable vote. The formula is provided by Article 55 of the Constitution:

**Value of vote of an MLA** = Total population of the State / (Total number of elected MLAs) x 1000

This means that the value of the vote of an MLA differs from one state to another. This is done to give equality of representation in terms of the population.

Thus an MP will have the number of votes as determined by this formulae:

**The value of vote of an MP** = Total votes cast by all the elected MLAs of 28 States and the two UTs (Delhi & Pondicherry) / (Total number of elected MPs)

This formula is designed to bring parity between the votes of all MLAs and those of all MPs.

**Article 62** of the Constitution provides that an election to fill a vacancy shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy (if such occurrence of vacancy is caused by resignation or death or impeachment or otherwise). It also says that the vacancy caused by the expiration of the term of office must be completed before the date of expiration of the term.

### Qualification for election as President

- (a) He must be a citizen of India.
- (b) He must have completed the age of 35 years.
- (c) He must be qualified for election as a Member of the House of the People.
- (d) He must not hold any office of Profit under the Govt. of India or the Govt. of any State or under any local or other authority subject to the control of any of the said Govt. However, following persons are not deemed to be holding any office of profit and hence they cannot be disqualified for election as the President: **A sitting President or Vice-President of India/Governor of any state/A minister of the Union or of any State.**

### Eligibility for re-election

A person, who holds or who has held office as President shall be eligible for reelection to that office.

### Impeachment of the President [Article 61]

- (1) The President can be removed from his office before the expiry of his term by the process of impeachment.
- (2) The President can be impeached only for the violation of the Constitution.
- (3) It is a quasi-judicial procedure.
- (4) The impeachment procedure can be initiated in either House of the Parliament. The resolution must be signed by at least 1/4th of the total membership of the House. Before the resolution could be passed, a 14 day notice must be given to the President. Such a Resolution must be passed by a majority of not less than 2/3<sup>rd</sup> of the total membership of the House.

- (5) Then, the other House of Parliament called the "Investigating House" investigates the charges by itself or cause the charge to be investigated.
- (6) The President has the right to appear and to be represented at such investigation to defend him.
- (7) If, as a result of the investigation the other House also passes a resolution supported by not less than 2/3rd of the total membership of House, the President stands removed from his office from the date on which the investigating House passed the resolution.

**Note:**

- (a) The elected members of the legislative assemblies of States have no role in the impeachment proceedings, while they elect the President.
- (b) The nominated members of the Parliament have the right to deliberate and vote when the resolution of impeachment is under consideration while they have no vote in the election of the President.

**Vacancy filled up with Acting President**

- (1) In case the office of the President falls vacant due to death, resignation or impeachment the Vice-President or in his absent. Chief Justice of Supreme Court or on his absence, senior most Judge of the Supreme Court becomes President till the fresh election for the Post and new incumbent assumes office.
- (2) If the President is not able to discharge his duties due to sickness or absence due to any other reasons, the Vice-President discharges the functions of the President and is entitled to the same salary, allowances and privileges which are available to the President under the constitution.

**Legislative powers of President**

The legislative Powers of President are as follows:

1. The President summons both the Houses of the Parliament and prorogues them. He or she can dissolve the Lok Sabha according to the advice of the Council of Ministers headed by the Prime Minister.
2. President inaugurates the Parliament by addressing it after the general elections and also at the beginning of the first session each year.
3. All bills passed by the Parliament can become laws only after receiving the assent of the President. The President can return a bill to the Parliament, if it is not a money bill or a constitutional amendment bill, for reconsideration. When after reconsideration, the bill is passed and presented to the President, with or without amendments; President is obliged to assent to it.
4. The President can also withhold his assent to the bill thereby exercising pocket veto.
5. When both Houses of the Parliament are not in session and if Govt. feels the need for immediate

action, President can promulgate ordinances which have the same force and effect as laws passed by Parliament.

**Executive powers of President**

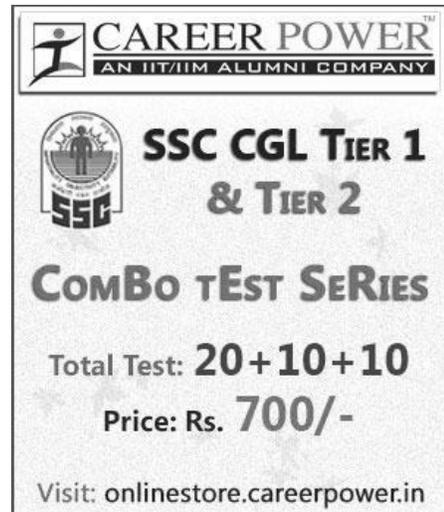
The executive powers of President are as follows:

1. The President appoints the Prime Minister, the President then appoints the other members of the Council of Ministers, distributing portfolios to them on the advice of the Prime Minister.

The President is responsible for making a wide variety of appointments. These include:

**Governors of States/The Chief Justice, other judges of the Supreme Court and High Courts of India/The Attorney General/The Comptroller and Auditor General/The Chief Election Commissioner and other Election Commissioners/The Chairman and other Members of the Union Public Service Commission/Ambassadors and High Commissioners to other countries.**

3. The President is the Commander in Chief of the Indian Armed Forces.



**Financial powers**

1. All money bills originate in Parliament, but only if the President recommends it.
2. He or she causes the Annual Budget and supplementary Budget before Parliament.
3. The President appoints a finance commission every five years. The President appoints a finance commission every five years.

**Judicial powers**

1. The president appoints the Chief Justice of the Union Judiciary and other judges on the advice of the Chief Justice.
2. The President dismisses the judges if and only if the two

Houses of the Parliament pass resolutions to that effect by two-thirds majority of the members present.

3. He/she has the right to grant pardon. The President can suspend, remit or commute the death sentence of any person.

**Pardon** - completely absolves the offender

**Reprieve** - temporary suspension of the sentence

**Commutation** - substitution of one form a punishment for another form which is of a lighter character

**Respite** - awarding a lesser sentence on special ground

**Remission** - reducing the amount of sentence without changing its character

### Diplomatic powers

All international treaties and agreements are negotiated and concluded on behalf of the President. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign Minister). Also, such treaties are subject to the approval of the Parliament. The President represents India in international forums and affairs where such a function is chiefly ceremonial. The President may also send and receive diplomats, ie the officers from the Indian Foreign Service.

### Military powers

The President is the supreme commander of the defense forces of India. The President can declare war or conclude peace, subject to the approval of parliament. All important treaties and contracts are made in president's name.

### Emergency powers

The President can declare three types of emergencies: national, state and financial.

### Vice President of India

The Vice-President is elected by an electoral college consisting of members of both Houses of Parliament, in accordance with the system of proportional representation by means of the single transferable vote and the voting in such election is by secret ballot. The Electoral College to elect a person to the office of the Vice-President consists of all members of both Houses of Parliament.

The Vice-President should not be a member of either House of Parliament or of a House of a Legislature of any state. If a member of either House of Parliament or of a House of a Legislature of any state is elected as Vice-President, he is deemed to have vacated his seat in that House on the date he/she enters his office as Vice-President.

**A person cannot be elected as Vice-President unless she/he-**

- ✚ is a citizen of India has completed the age of 35 years

- ✚ is qualified for election as a member of the Council of States (Rajya Sabha).
- ✚ Holds any office of profit under the Govt. of India or a State Govt. or any subordinate local authority.

### Removal of Vice President

The Constitution states that the Vice President can be removed by a resolution of the Rajya Sabha passed by an absolute majority (more than 50% of total membership) and agreed to by a simple majority (50% of voting members) of the Lok Sabha (Article 67(a)).

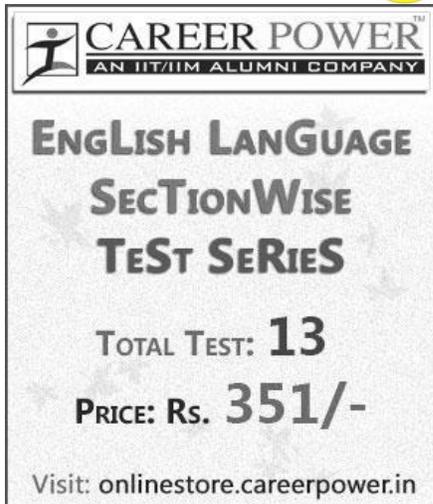
### Powers and functions of a VP

The functions of Vice-President are twofold:

1. He acts as the ex-officio Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha.
2. He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise. He can act as President only for a maximum period of six months, within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

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

- If the offices of both the President and the Vice-President fall vacant by reason of death, resignation, removal etc the Chief Justice of India or in his absence the seniormost judge of the Supreme Court acts as President.
- For the first time, during the 15-day visit of Dr. Rajendra Prasad to the Soviet Union in June 1960, the then Vice- President Dr. Radhakrishnan acted as the President.
- For the first time, in 1969, when the President Dr. Zakir Hussain died and the Vice-President V.V. Giri resigned, the Chief Justice Md. Hidayatullah acted as President.



### **PRIME MINISTER**

In the scheme of parliamentary system of government provided by the Constitution, the President is the nominal executive authority and Prime Minister is the real executive authority. The President is the head of the State while Prime Minister is the head of the government.

### **Appointment of the Prime Minister**

Article 75 says that the Prime Minister shall be appointed by the President. The President appoints 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.

### **Term**

The term of the Prime Minister is not fixed and he holds office during the pleasure of the President. So long as the Prime Minister enjoys the majority support in the Lok Sabha, he cannot be dismissed by the President. However, if he loses the confidence of the Lok Sabha, he must resign or the President can dismiss him.

### **Powers and functions of Prime Minister**

The powers and functions of Prime Minister can be studied under the following heads:

- He recommends persons who can be appointed as ministers by the President.
- He can recommend dissolution of the Lok Sabha to the President at any time.
- He is the chairman of the Planning Commission, National Development Council, National Integration Council, Inter-State Council and National Water Resources Council.

### **Central Council of Minister**

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. Article 74 deals with the status of the council of ministers while

Article 75 deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.

### **Note:**

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. [91<sup>st</sup> Constitutional Amendment Act, 2003]

The council of ministers shall be collectively responsible to the Lok Sabha. A person who is not a member of either House can also become a minister but he cannot continue as minister for more than six months unless he secures a seat in either House of Parliament (by election/nomination). [Art. 75(5)]

The council of ministers consists of three categories: Cabinet ministers, ministers of state, and deputy ministers.

**Cabinet Ministers:** The cabinet ministers head the important ministries of the Central government like home, defence, finance and external affairs.

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

**Deputy Ministers:** The deputy ministers are not given independent charge of ministries/departments and always assist the Cabinet or State Minister or both. They are not members of the cabinet and do not attend cabinet meetings.

Minister may be taken from members of either House and minister who is member of one House has the right to speak and take part in the proceedings of the other House but cannot vote in the House of which he is not member. [Art. 88]

### **PARLIAMENT OF INDIA**

#### **The House of the People (Lok Sabha)**

The Lok Sabha is the popular house of the parliament because its members are directly elected by the common electorates of India. All the members of this House are popularly elected, except not more than two from the Anglo-Indian community, who can be nominated by the President. In the Constitution, the strength of the Lok Sabha is provisioned under Art. 81 to be not more than 552 (530 from the States, 20 from the Union Territories and 2 may be nominated from the Anglo-Indian community). Recently again, the Govt. has extended this freeze in the Lok Sabha seats till the year 2026 by Constitution (84<sup>th</sup> Amendment Act, 2001).

### **Special Powers of the Lok Sabha**

There are certain powers, which are constitutionally granted to the Lok Sabha and not to the Rajya Sabha. These powers are-

1. Money and Financial Bills can only originate in the Lok Sabha.
2. In case of a Money Bill, the Rajya Sabha has only the right to make recommendation and the Lok Sabha may or may not accept the recommendation. Also, a Money Bill must be passed by the Upper House within a period of 14 days. Otherwise, the Bill shall be automatically deemed to be passed by the House. Thus, the Lok Sabha enjoys exclusive legislative jurisdiction over the passage of the Money Bills.
3. The Council of Ministers are responsible only to the Lok Sabha and hence the Confidence and No-confidence motions can be introduced in this House only.
4. Under Art. 352, the Lok Sabha in a special sitting can disapprove the continuance of a national emergency proclaimed by the President, even if the Rajya Sabha rejects such a resolution.

#### **Tenure of the Lok Sabha**

The normal tenure of the Lok Sabha is five years. But the House can be dissolved by the President even before the end of the normal tenure. Also, the life of the Lok Sabha can be extended by the Parliament beyond the five-year term during the period of national emergency proclaimed under Art. 352.

#### **Qualifications for the membership of Lok Sabha**

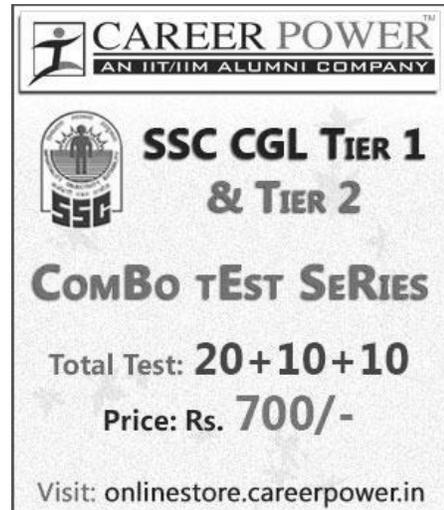
To become a member of the Lok Sabha, the person must:

1. be a citizen of India.
2. be not less than 25 years of age.
3. be a registered voter in any of the Parliamentary constituencies in India.
4. should not hold any office of profit
5. Should not be insolvent
6. Should not be mentally unsound.

#### **Speaker and Deputy Speaker of Lok Sabha**

The Speaker is the

- 1) Chief presiding officer of the Lok Sabha.
- 2) The Speaker presides over the meetings of the House and his rulings on the proceedings of the House are final.
- 3) The Speaker and Deputy Speaker may be removed from their offices by a resolution passed by the House by an effective majority of the House after a prior notice of 14 days to them.
- 4) The Speaker, to maintain impartiality of his office, votes only in case of a tie i.e to remove a deadlock and this is known as the Casting Vote.



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#### **Special powers of the Speaker**

There are certain powers which belong only to the Speaker of Lok Sabha while similar powers are not available to his counterpart in the upper house, i.e. the Chairman of Rajya Sabha. These are-

1. Whether a Bill is Money Bill or not is certified only by the Speaker and his decision in this regard is final and binding.
2. The Speaker, or in his absence, the Deputy Speaker, presides over the joint-sittings of the parliament.
3. The committees of parliament function essentially under the Speaker and their chairpersons are also appointed or nominated by him. Members of the Rajya Sabha are also present in some of these committees.
4. If the Speaker is a member of any committee, he is the ex-officio chairman of such a committee.

#### **Special position of the Speaker**

The Constitution has given a special position to the office of the Speaker.

1. Though he is an elected member of the Lok Sabha, he continues to hold his office even after the dissolution of the
2. House till a new Lok Sabha is constituted. This is because he not only presides and conducts the parliamentary proceedings but also acts as the Head of the Lok Sabha Secretariat which continues to function even after the House is dissolved.
3. The Speaker presides over the joint sitting of the two Houses of the Parliament
4. Speaker certifies a Bill as Money Bill and his decision is final in this regard.
5. The Speaker is ex-officio President of Indian Parliamentary Group which in India functions as the national group of Inter-parliament Union.

#### **Pro tem Speaker**

As provided by the Constitution, the Speaker of the last Lok Sabha vacates his office immediately before the first meeting of the newly elected Lok Sabha. Therefore, the President appoints a member of the Lok Sabha as the *Pro tem* Speaker. Usually, the seniormost member is selected for this. The President himself administers oath to the *Pro tem* Speaker.

The *Pro tem* Speaker has all the powers of the Speaker. He presides over the first sitting of the newly elected Lok Sabha. His main duty is to administer oath to the new members.

### **RAJYA SABHA**

The Rajya Sabha (RS) or Council of States is the upper house of the Parliament of India. Membership is limited to 250 members, 12 of whom are nominated by the President of India for their contributions to art, literature, science, and social services.

The remainder of the body is elected by the state and territorial legislatures. Members sit for six-year terms, with one third of the members retiring every two years. The Rajya Sabha meets in continuous sessions and, unlike the Lok Sabha, the lower house of Parliament, is not subject to dissolution. The Vice President of India (currently, Hamid Ansari) is the ex-officio Chairman of the Rajya Sabha, who presides over its sessions. The Deputy Chairman who is elected from amongst the RS's members, takes care of the day-to-day matters of the house in the absence of the Chairman. The Rajya Sabha held its first sitting on 13 May 1952.

### **Leader of the House**

Besides the Chairman (Vice-President of India) and the Deputy Chairman, there is also a function called Leader of the House. This is a cabinet minister - the prime minister if he is a member of the House, or another nominated minister. The Leader has a seat next to the Chairman, in the front row.

### **MEMBER**

A person in order to be elected to the Rajya Sabha must

- (a) be a citizen of India,
- (b) be 30 years of age or more,
- (c) not be holding any office of profit under the central or state Govt. or local body and
- (d) possess all other qualification prescribed by the act of parliament from time to time.

### **Powers of Rajya Sabha**

So far as powers of Rajya Sabha is concerned it enjoys co-equal power with the Lok Sabha in respect of all bills other than money bill. In case of Money Bills Rajya Sabha has no powers Money Bills can only be introduced in the Lok Sabha. When it comes to the Rajya Sabha after being passed by the Lok Sabha, the former can keep it maximum

for a period of 14 days only after which it is deemed to be passed.

### **Exclusive Functions of Rajya Sabha**

The Rajya Sabha, under Article 249, may by a special majority of two-thirds votes adopt a resolution asking the Parliament to make laws on subjects of the State list, in the national interest.

This resolution gets due attention from the Parliament. The resolution remains valid for one year only which however can be extended further in terms of another one year.

**Secondly**, Rajya Sabha can take steps to create All India Services by adopting resolutions supported by special majority in the national interest.

**Thirdly**, Rajya Sabha has the exclusive right to initiate a resolution for the removal of the Vice-President. This becomes the exclusive right of the Rajya Sabha because the Vice-President happens to be its Chairman and draws his salary as such.

### **DIFFERENT TERMS RELATED TO PARLIAMENT**

#### **a) Summoning**

The President from time to time summons each House of Parliament to meet. But, the maximum gap between two sessions of Parliament cannot be more than six months. In other words, the Parliament should meet at least twice a year. There are usually three sessions in a year:

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

The period between the prorogation of a House and its reassembly in a new session is called 'recess'.

#### **b) Joint Sitting**

Under Article 108, there is a Provision of Joint sitting of both the Houses of the Parliament.

The Lok Sabha speaker presides over the joint sitting [Art. 118(4)].

There are only three occasions in the history of Indian Parliament that the joint sessions of the Parliament took place. They are as follows:

- (i) In May 1961, for Dowry Prohibition Bill, 1959.
- (ii) In May 1978 for Banking Services Commission.
- (iii) In 2002 for POTA (Prevention of Terrorism Act).

#### **Joint sitting of both Houses can be convened on two occasions:**

- (i) For resolving any deadlock over the passage of a Bill.
- (ii) Special address by the President at the commencement of the first session after each general election of the Lok Sabha; First Session of each year (the Budget Session).

**Note:** Joint sitting cannot be called for resolving deadlock regarding “Money Bill” and “Constitution Amendment Bill”.

### c) Prorogation

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

### d) Adjournment

This is a short recess within a session of the Parliament, called by the presiding officer of the House. Its duration may be from a few minutes to days together.

### e) Adjournment *sine die*

When the House is adjourned without naming a day for reassembly, it is called adjournment *sine die*.

## Grounds for disqualification of members of Parliament

There are five grounds for disqualification of Member of Parliament.

☑ Article 102(1) (a): A Member of Parliament shall be disqualified from being a member of House, if he holds any office of profit under state other than an office declared by Parliament by law not to disqualify its holder. If he holds an office of profit under state, there emerges a clash of interest and duty. Interest will prevail over duty. The Parliament enacted the

✚ Ordinary Bill

✚ Money Bill

### Ordinary Bill

Any bill other than Money, Financial or Constitution Amendment bill is called an Ordinary bill. It can be introduced in either Houses of the Parliament. It does not need the recommendation of the President for its introduction in Parliament (except a bill under article 3). It is passed by a simple majority by both the Houses. They enjoy equal legislative powers over the passage of an ordinary bill. If there is a deadlock over the bill it can be resolved in a joint sitting of both the Houses of Parliament.

### Money Bill

A bill that deals exclusively with money matters that are mentioned in Article 110 in Constitution is called a Money Bill. These Money matters are:

- (1) Imposition, abolition or alternation of any tax.
- (2) The borrowing of any money or giving any guarantee by the Govt. of India.

Parliament (Disqualification of members) Act 1959, which exempts certain officers of profit whose holders shall not be disqualified from being members of Parliament.

✚ Article 102(1) (b): If the Member of Parliament is of unsound mind and stands so declared by the court of law

✚ Article 102(1) (c): If he is a discharged insolvent declared by court of law.

✚ Article 102(1) (d): If he is not a citizen of India or has acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state.

✚ Article 102(2): If a person is disqualified being a Member of Parliament under anti-Defection Law (Tenth Schedule).

## Legislative procedures 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. **A bill is a proposal for legislation and it becomes an act or law when duly enacted.**

Bills introduced in the Parliament are of two kinds: **public bills** and **private bills** (also known as government bills and private members' bills respectively). Though both are governed by the same general procedure and pass through the same stages in the House, they differ in various respects.

## BILLS IN PARLIAMENT

The four kinds of bills mentioned in the Constitution are:

✚ Financial Bill

✚ Constitutional Amendment Bill

(3) The custody of the Consolidated Fund of India or Contingency fund of India or deposition or withdrawal of any money from any such funds.

(4) The appropriation of the money out of the Consolidated Fund of India.

(5) Declaring any expenditure as charged on the Consolidated Fund of India.

(6) The receipt of money on the account of consolidated Fund of India or Public Account of India.

(7) Any matter that is incidental to the above matters.

Appropriation – Authorize someone to withdraw and spend withdraw you withdraw and spend.

A money bill can be introduced only in Lok Sabha on the recommendation of the President. It is passed by a simple majority by both the Houses of Parliament. The Lok Sabha enjoys overriding legislative power in the passage of a money bill and Rajya Sabha cannot reject or approve a money bill by virtue of its own legislative power. Any money bill shall bear the certificate of speaker that it is a money bill. The Speaker's decision in

this regard is final and binding and cannot be questioned in any court of law.

A money bill is transmitted to Rajya Sabha after it has been passed by Lok Sabha. The Rajya Sabha can exercise any of the following four options:

- (i) It also passes the bill.
- (ii) It rejects the bill outright – upon being rejected the bill is deemed to have been passed by both the Houses.
- (iii) The Rajya Sabha does not pass the bill for 14 days, then on the expiry of 14th day after having received the bill it is deemed to have been passed by both the Houses.
- (iv) The Rajya Sabha suggests amendments to the bill, the bill then goes back to the power House. If the Lok Sabha accepts one or more of the amendment then the bill is deemed to have been passed in that form on the other hand if Lok Sabha rejects the amendment then the bill is deemed to have been passed in its original form.

There is no deadlock between the Houses over the passage of a money bill. When a money bill is presents to the President, under the Constitution he shall declare that he give assent or withhold assent.

#### **Financial Bill**

A Bill apart from dealing with one or more money matters if also deals with one or more non-money matters then it is called a financial Bill. It is introduced in the same manner as that of money Bill. Since it contains non-money matters after its introduction, it is passed in same manner an ordinary bill is passed.

#### **Constitutional Amendment Bill**

A bill introduced under article 368 to amend one or more provisions of the Constitution is called a Constitutional Amendment Bill. It can be introduced in either House of the Parliament. It does not require the recommendation of President for its introduction. It shall be passed by both the House of the Parliament sitting separately by majority of not less than 2/3rd of members present and voting and a majority of total strength of the House. The Constitution does not provide for a joint sitting of both the Houses of the Parliament if a deadlock develop between the two Houses over the passage of a Constitutional Amendment Bill.

#### **Veto power of the President:**

A bill passed by the Parliament can become an act only if it receives the assent of the President. However, the President has the veto power over the bills passed by the Parliament, i.e. he can withhold his assent to the bills.

#### • **Absolute Veto**

It refers to the power of the President to withhold his assent to a bill passed by the Parliament. The bill then ends and does not become an act. Usually, this veto is exercised in the following two cases:

- a) With respect to private members' bills; and
- b) With respect to the government bills when the cabinet resigns (after the passage of the bills but before the assent by the President) and the new cabinet advises the President not to give his assent to such bills.

#### • **Suspensive Veto**

The President exercises this veto when he returns a bill for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, it is obligatory for the President to give his assent to the bill. The President does not possess this veto in the case of money bills.

#### • **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 pocket veto. There is no time limit for the President to give comment on bills under this veto.

#### **Emergency provisions in India**

**Emergency provisions are adopted in India from Weimar Constitution of Germany.**

In Indian constitution there are three kind of emergency provisions:

- (1) Article 352 – National Emergency
- (2) Article 356 – President's Rule
- (3) Article 360 – Financial Emergency



#### **National Emergency (Article 352)**

- a) If the President is satisfied that there exist a grave emergency whether due to war or external aggression or armed rebellion, then President can proclaim emergency to that effect. Such a proclamation can be made for the whole of India or any part thereof. The President can proclaim National Emergency only on the written advice of the Cabinet.
- b) The President has power to revoke or modify the National Emergency. All such proclamations of Emergency shall have to be sent to Parliament for approval and it ceases to be operational if not approved within 1 month of the proclamation of Emergency. Such approval by Parliament is to be on the basis of Special Majority of not less than 2/3rd of members present and voting and the majority of the House. Emergency shall be imposed for not more than 6 months from the date of approval.
- c) At the expiry of 6 months it ceases unless approved by Parliament again. If Lok Sabha is dissolved then proclamation of Emergency, it must be approved by the Rajya Sabha within 1 month and reconstituted Lok Sabha must approve within 1 month of its reconstitution.
- d) Lok Sabha enjoys powers to disapprove continuation of Emergency at any stage. In such case if not less than 1/10th of members (55) of Lok Sabha give in writing to the Speaker if Lok Sabha is in session or to the President if Lok Sabha is not in the session, expressing intention to more resolution for the disapproval of National Emergency. Then special session of Lok Sabha shall be convened within 14 days. If Lok Sabha disapproves continuance of National Emergency then President shall have to revoke National Emergency.

### **Emergency in States on President's Rule (Article 356)**

Under Article 356 if the President is satisfied on the report of Governor or otherwise that there exists a grave situation in a State where the administration of the State cannot be carried out in accordance with provisions of Constitution, then he can:

- (a) Takeover the administration of the State himself and  
(b) Notify that the Parliament shall exercise jurisdiction over State subject for the State concerned, the President cannot take over the powers conferred on the High Courts of State concerned.

Every proclamation made under Article 356 ceases to be in operation unless approved by both Houses of the Parliament within 2 months after its proclamation. Once, approved by Parliament, Emergency shall be enforced for not more than 6 months from the date of proclamation by the President.

Such an approval by the Parliament needs only simple Majority. If Lok Sabha stands dissolved then Rajya Sabha shall have to approve it within 2 months and Lok Sabha shall approve it within 1 month of its reconstitution. However, Parliament can extend it for a further period of 6 months only.

If it has to approve beyond 1 year then two conditions shall have to be satisfied.

- ✚ There shall be National Emergency in force either in whole of the State concerned or in part thereof.
- ✚ Election Commission is satisfied that under prevailing conditions general election to State Legislative Assembly of the State concerned cannot be held.

But under no circumstances, State Emergency cannot be extended beyond 3 years. To extend it further, constitutional amendment is required.

### **Financial Emergency**

Under Article 360 the President enjoys the power to proclaim the financial Emergency. If he is satisfied that a situation has arisen that financial stability and credit of India or any part thereof is threatened he may proclaim emergency to that effect.

All such proclamations:

- (a) Can be varied or revoked by the President.  
(b) Financial Emergency must be approved by the Parliament within 2 months after its proclamation. Once it is approved, it will remain till the President revokes it.

### **Effects of Financial Emergency**

- (1) President is empowered to suspend the distribution of financial resources with States.  
(2) President can issue directions to States to follow canons of financial propriety.  
(3) He can direct State Govt. to decrease salaries allowances of Civil Servants and other Constitutional dignitaries.  
(4) President can direct the Govt. to resume all the financial and Money Bills passed by legislature for his consideration. The President can issue directions for the reduction of salaries and allowances of Judges of the Supreme Court and the High Courts.

### **STATE LEGISLATURE**

#### **The State Legislature Legislative Assembly (Vidhan Sabha)**

The Vidhan Sabha or the Legislative Assembly is the lower house of the state legislature in the different states and for the two of the union territories, Delhi and Pondicherry. Members of a Vidhan Sabha are direct

representatives of the people of the particular state as they are directly elected by the adult suffrage. Each Vidhan Sabha is formed for a five year term after which all seats are up for election. The maximum size of Vidhan Sabha is not more than 500 members and not less than 60. However, the size of the Vidhan Sabha can be less than 60 members through an Act of Parliament, such is the case in the states of Goa, Sikkim and Mizoram. The Governor can appoint one member to represent the Anglo-Indian community if he or she finds that community to not be adequately represented in the House.

### Qualification to be a member of Vidhan Sabha

1. To become a member of a Vidhan Sabha:
2. A person must be a citizen of India
3. She/he must have attained 25 years of age.
4. She/he should be mentally sound and should not be bankrupt.
5. She/he should also state an affidavit that there are no criminal procedures against him.

### Vidhan Sabha via-a-vis Lok Sabha

The position of Vidhan Sabha is relatively stronger than Lok Sabha when it comes to the relation with the respective upper houses. The following are differences in the legislative procedures:

1. As regard to Money Bills the position of Vidhan Sabha is same as that of Lok Sabha. The upper houses at Union and at the states have no powers for the amendments or to withhold the Bill for the period for more than 14 days from the date of receipt of the Bill.
2. In case of Bills other than money Bills the position of Vidhan Sabha is stronger as compared to Lok Sabha. While disagreement between the two Houses of the Union Parliament is resolved by "Joint Sitting", there is no such provision of solving the deadlock at the state level. The will of the Vidhan Sabha shall ultimately prevail. The upper house at the state level can just delay the bill for the maximum period of 4 months i.e. 3 months in first journey and 1 month in second journey.
3. While the period for passing a Bill (other than money Bill) from Rajya Sabha is six months is the case of Legislative Councils it is just three months.

### Legislative Council (Vidhan Parishad)

The Legislative Council is a permanent body that cannot be dissolved; each Member of the Legislative Council (MLC) serves for a six-year term, with terms staggered so that the terms of one-third of a Council's members expire every two years. This arrangement parallels that for the Rajya Sabha, the upper house of the Parliament of India. Six states in

India have a Legislative Council: Andhra Pradesh, Bihar, Jammu and Kashmir, Karnataka, Maharashtra, and Uttar Pradesh.

### Qualification to be a member of Vidhan Parishad

Eligibility criteria to be the member of Vidhan Parishad:

- ✚ She/he must be citizen of India
- ✚ She/he must have attained at least 30 years of age
- ✚ She/he must be mentally sound,
- ✚ She/he must not be a bankrupt
- ✚ She/he must be listed the voters' list of the state for which he or she is contesting an election.

### Election of members of Legislative Council

- ✚ One-third of the members are elected by members of local bodies such as corporations, municipalities, and Zilla Parishads.
- ✚ One-third of the members are elected by members of Legislative Assembly from among the persons who are not members of the Assembly.
- ✚ One-twelfth of the members are elected by the persons who are graduates of three years' standing residing in that state.
- ✚ One-twelfth are elected by persons engaged for at least three years in teaching in educational institutions within the state not lower than secondary schools, including colleges and universities.
- ✚ One-sixth are nominated by the governor from persons having knowledge or practical experience in fields such as literature, science, arts, the co-operative movement and social service.

### Governor

The Governor is merely appointed by the President which really means, by the Union Council of Ministers. The Governor holds office during the pleasure of the President, there is no security of his tenure. He can be removed by the President at any time. There is no impeachment process for removal of Governors as prescribed in constitution in the case of President.

### The powers of Governors

#### Executive Powers

- ✚ The Governor appoints the Chief Minister who enjoys the support of the majority in the Vidhan Sabha.
- ✚ The Governor also appoints the other members of the Council of Ministers and distributes portfolios to them on the advice of the Chief Minister.
- ✚ He/she also appoints the Advocate General and the chairman and members of the State Public Service Commission.
- ✚ The Governor appoints the judges of the District Courts.

## Legislative Powers

- ✚ The Governor summons the sessions of both houses of the state legislature and prorogues them.
- ✚ The Governor inaugurates the state legislature by addressing it after the assembly elections and also at the beginning of the first session every year.
- ✚ The Governor can even dissolve the Vidhan Sabha. These powers are formal and the Governor while using these powers must act according to the advice of the Council of Ministers headed by the Chief Minister.
- ✚ The Governor's address on these occasions generally outlines new policies of the state Govt.
- ✚ A bill that the state legislature has passed can become a law only after the Governor gives assent.
- ✚ The Governor can return a bill to the state legislature, if it is not a money bill, for reconsideration
- ✚ The Governor has the power to reserve certain bills for the President.
- ✚ When the state legislature is not in session and the Governor considers it necessary to have a law, then the Governor can promulgate ordinances.

## Financial Powers

- ✚ Money bills can be introduced in the State Legislative Assembly only on the prior recommendation of the Governor.
- ✚ Governor also causes to be laid before the State Legislature the annual financial statement which is the State Budget.
- ✚ Further no demand for grant shall be made except on his/her recommendation.
- ✚ He can also make advances out of the Contingency Fund of the State to meet any unforeseen expenditure.
- ✚ Governor constitutes the State Finance Commission

## Discretionary Powers

There are situations when the Governor has to act as per his/her own judgment and take decisions on his own. Such powers are called discretionary Powers:

- ✚ When no party gets a majority in the Vidhan Sabha, the Governor can either ask the leader of the single largest party or the consensus leader of two or more to form the Govt.. The Governor then appoints the leader of the largest party to Chief Minister.
- ✚ The Governor can send a report to the President informing him or her that the State's constitutional functioning has been compromised and recommending the President impose "President's rule" upon the state.
- ✚ Governor can reserve any Bill for the President.

## Governor's power of Veto

When a Bill is presented before the Governor after its passage by the house(s) of the state legislature, the Governor may take any of the following steps:

1. He may declare his assent to the Bill
2. He may declare that he withholds his assent to the Bill
3. He may (in case of a Bill other than money Bill), return the Bill with a message
4. The Governor may also reserve a Bill for the consideration of President  
The President enjoys absolute veto in the case of Bills reserved for him by the Governors. The president may act in the following manner:
  1. In case of money Bill President may either declare his assent or withhold his assent.
  2. In the case of Bills other than money Bill the President apart from declaring his assent or refusing it, direct the Governor to return the Bill to the Legislature for recommendations in such cases.

## Local Self-Governance

### Panchayati Raj

- ✚ The Panchayati Raj System is the **first tier** or level of democratic government.
- ✚ The term Panchayati Raj in India signifies the system of rural local self-government. It was constitutionalized through the **73rd Constitutional Amendment Act** of 1992.
- ✚ The development of the village was the immediate problem faced by our country after independence. Hence the **Community Development Programme** was launched in 1952 with a view to carrying out the integral rural development work.
- ✚ **Rajasthan** was the first state to set up Panchayati Raj System in 1959 followed by Andhra Pradesh.

## Main Provisions of 73rd Amendment 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(A) 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.
- Fixing tenure of five years for Panchayats at all levels and holding fresh elections within six months in the event of supersession of any Panchayat.
- Reservation of 1/3 seats (both members and chairpersons) for women in Panchayats at all the levels.
- The Act provides for a three-tier system of the Panchayati Raj in the states namely:

- (i) **Gram Panchayat** at the Village level.
- (ii) **Panchayat Samiti** at the Block level.
- (iii) **Zila Parishad** at the District level.

**Compulsory Provisions for Panchayati Raj Institutions**

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

**Organisational Structure**

**(i) Gram Panchayat at the Village level**

The members of the Gram Panchayat are elected by the Gram Sabha. The **Pradhans** (Presidents) of the Gram Sabha are the *ex-officio* members of the Gram Panchayat. **Note: Gram Sabha** means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level.

**(ii) Panchayat Samiti at the Block level**

The Panchayat Samiti has many Gram Panchayats under it. All the Presidents of the Panchayats within the Block are the *ex officio* members of the 'Panchayat Samitis'.

**(iii) Zila Parishad at the District level**

- Zila Parishad is an apex body under the Panchayati Raj. It co-ordinates the activities of the various Panchayat Samitis.
- Zila Parishad actually makes developmental plans at the district level.
- With the help of Panchayat Samitis, it also regulates the money distribution among all the Gram Panchayats.

**Urban Local Governance**

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

**74th Amendment of 1992**

This act has added a new **Part IX-A** to the Constitution of India. It consists of provisions from **Articles 243-P to 243-ZG**. In addition, the act has also added a new **Twelfth Schedule** to the Constitution.

- ☑ The Amendment has added 18 new Articles relating to urban local bodies in the Constitution.
- ☑ The institutions of self government are called by a general name "**Municipalities**".

**Three Types of Municipalities:** The act provides for the constitution of the following three types of municipalities in every state:

- ☑ A **nagar panchayat** 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.

**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).

**Duration of Municipalities:** The act provides for a five year term of office for every municipality. However, it can be dissolved before the completion of its term.

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**Supreme Court of India**

Supreme Court of India is the highest judicial forum and final court of appeal. According to the Constitution of

India, the role of the Supreme Court is that of a federal court and guardian of the Constitution.

### Composition of Supreme Court

Under Article 124(1) the constitution originally provided for 1 Chief Justice of India and not more than 6 other judges. The constitution authorizes the Parliament to provide by law in fixing the Strength of the judges of the Supreme Court.

The Parliament passed the Supreme Court (Number of Judges) thus accordingly, a Constitutional Amendment Act in 2008 has increased the strength of Supreme Court to 31 (1 Chief Justice + 30 other judges).

### Qualification to be a judge of Supreme Court

1. A person must be a citizen of India
2. He/she must have been, for at least five years, a Judge of a High Court or of two or more such Courts in succession
3. Or an Advocate of a High Court or of two or more such Courts in succession for at least ten years
4. Or the person must be, in the opinion of the President, a distinguished jurist.

### Removal of judges of Supreme Court

Article 124(4) provides for the removal of a judge of the Supreme Court. He is removed by the President upon an address by both the Houses of the Parliament supported by a majority of not less than 2/3rd of members present and voting and a majority of total strength of the House on the ground of misbehavior or incapacity.

**The President shall pass the order of removal in the same session in which the Parliament passed the resolution.** Article 124(5) confers the power on the Parliament to provide by law for the procedure for the Presentation of an address and for the investigation for proof of misbehavior or incapacity of a judge. Accordingly the Parliament passed Judges (Inquiry) Act 1968 which states that a resolution seeking the removal of a judge of

Supreme Court can be introduced in either House of Parliament.

- ☐ It should be supported by not less than 100 member of Lok Sabha.
- ☐ If it is to be introduced in Rajya Sabha it should be supported by no less than 50 members of Rajya Sabha.
- ☐ Once the resolution is initiated in either house of the parliament, the presiding officer of that House shall appoint a three member Judicial Committee to investigate into charges and provide proof of misbehavior or incapacity.
- ☐ The judicial committee shall be headed by a serving judge of the Supreme Court. Second member can be

a serving judge of the High Court and the third member can be an eminent jurist.

- ☐ The Court divided the entire process of removal of a judge into two parts mainly Judicial Act and Political Act. Whenever the authority concerned does not enjoy discretionary power it is called Judiciary act and the judge concerned does not enjoy the right to be heard in such cases.

The judicial parts consist of:

1. The presiding officer appointing a three member judicial committee.
2. Judicial committee investigating the charges.
3. The President passing the order of removal of a Judge

Whereas the political parts consist of:

1. Introduction of resolution in Parliament.
2. Houses of Parliament passing the resolution.

The Court also clarified that the Parliament is not bound to pass the resolution even if the judicial committee establish proof of misbehavior or incapacity. However, if the Judicial Committee failed to provide proof of misbehavior or incapacity, the Parliament cannot take up the resolution process further.

### SUPREME COURT IN INDIA(JURISDICTION)

The Supreme Court of India is the highest judicial forum and final court of appeal as established by Part V, Chapter IV of the Constitution of India. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. The Supreme Court has Original jurisdiction, Appellate jurisdiction and Advisory jurisdiction. The Supreme Court is the highest appellate court which takes up appeals against the verdicts of the High Courts and other courts of the states and territories.

The Supreme Court has the power to transfer the cases from one High Court to another and even from one District Court of a particular state to another District Court of the other state. The Supreme Court has the power of Constitutional review. The Supreme Court of India held its inaugural sitting on 28 January 1950.

**Salary**-Article 125 of the Indian Constitution leaves it to the Indian Parliament to determine the salary, other allowances, leave of absence, pension, etc. of the Supreme Court judges. However, the Parliament cannot alter any of these privileges and rights to the judge's disadvantage after his appointment. A judge gets ₹ 90,000 and the Chief Justice gets a sum of ₹1,00,000.

### Some Important Points on SC

1. The first woman judge of the Supreme Court was Justice Fatima Beevi in 1987. However, there has been no female Chief Justice
2. Ad hoc Judges:
  - a) Ad hoc Judges are non-Supreme Court judges who sit in the Supreme Court when there is insufficient quorum to perform the judicial duties.
  - b) Ad hoc Judges are appointed by the Chief Justice after obtaining consent from the President.
  - c) Serving(HC) and retired(SC & HC) judges of the Supreme Court (and High Courts) can sit and act as ad hoc Judges of the Supreme Court.
  - d) Only such persons can be appointed as ad hoc Judges who are qualified to be appointed as a regular Judge of the Supreme Court
3. The Chief Justice administers the oath in front of the President.
4. The first Chief Justice of India was H J Kania (1950 – 1951).
5. The shortest tenure was for K N Singh (Nov 1991 – Dec 1991, UP)
6. The longest tenure was for Y V Chandrachud (1978 – 1985, Bombay)

### JURISDICTION OF THE SUPREME COURT:

#### a) Original Jurisdiction:

1. Original Jurisdiction means that certain types of cases can originate with the Supreme Court only
2. The Supreme Court has original jurisdiction in
  - a) Disputes between the Centre and one or more states.
  - b) Disputes between the Centre and any state(s) on one side and one or more states on the other side.
  - c) Disputes between two or more states.
  - d) Disputes regarding the enforcement of Fundamental Rights.

#### b) Appellate Jurisdiction:

Appellate Jurisdiction means that appeals against judgements of lower courts can be referred to SC as the Supreme Court is the highest court of appeal in the country.

#### c) Advisory Jurisdiction:

1. Advisory Jurisdiction refers to the process where the President seeks the Court's advice on legal matters.
2. If the President asks for advice from the Supreme Court, the Court is duty-bound to give it. However, it is not binding on the President to accept the advice.

### HIGH COURT

- 1) The High Court is at the apex of the judicial administration of the state.
- 2) Art 214 of the Constitution provides that there shall be a High Court for each state of the Indian union. But the Indian Parliament is empowered to establish a common High Court for two or more states and to extend the jurisdiction of a High Court to a union territory. Similarly, Parliament can also reduce the area of jurisdiction of a High Court.
- 3) The High Court consists of a Chief Justice and some other Judges. The number of judges is to be determined by the President of India from time to time.
- 4) The Chief Justice of a High Court is appointed by the President in consultation with the Chief Justice of the Supreme Court and the Governor of the state concerned. The procedure for appointing other judges is the same except that the Chief Justice of the High Court concerned is also consulted. HC JUDGE hold office until they attain the age of 62 years and are removed from office in the same manner as a judge of the Supreme Court.

### Qualification

A person shall be qualified for appointment as a judge of the High Court if

- (a) he is a citizen of India,
- (b) has for at least ten years held a judicial office in the territory of India, or
- (c) has for at least ten years been an advocate of a High Court, or of two or more such courts in succession.

Every judge of the High Court before entering upon his office shall make and subscribe before the Governor of the state, an oath of affirmation in the form prescribed by the Constitution.

### Removal of judges

A judge of the High Court shall hold office until he attains the age of 62 years. A judge may resign from his office by writing under his hand to the president of India. He can also be removed by the President of India on the ground of proved misbehavior or inefficiency if a resolution to that effect is passed by both the Houses of Parliament by a two-thirds majority of the total members present and voting, supported by a majority of the total membership of each house.

### Jurisdiction of a HC

**The High Court has Original jurisdiction in such matters as writs and Appellate jurisdiction over all subordinate courts in their jurisdiction.** Every High court has the power to issue to any person or authority including any Govt. within its jurisdiction, direction, or orders including writs which are in the nature of habeas

corpus, mandamus prohibition, qua-warranto and certiorari or any of them for enforcement of fundamental rights conferred by part III of the constitution and for any other purpose.

**1) Election petitions challenging the elections of Members of Parliament or member of State Legislative Assembly or other local bodies can be filed in the concerned High Court.**

**2) The High Courts have Appellate jurisdiction in both civil and criminal cases against the decisions of lower courts.**

**Under Revisory jurisdiction, the High Court is empowered to call for the records of any court to satisfy itself about the correctness of the legality of the orders passed.** This power may be exercised on the petition of the interested party or it can suo moto call for the records and pass necessary orders.

All Courts excepting tribunals dealing with the Armed forces, are under the supervision of the High Court. Tribunals dealing with the Armed forces are not under the supervision of HC.

This power is enjoyed under Art 227 of the Constitution. Thus administration of the state's judiciary is the essential function of the High Court.

**Writs in Indian Constitution**

As per the Right to Constitutional Remedies-Articles 32-35, A citizen has right to move to the courts for securing the fundamental rights. Citizens can go to the Supreme Court or the high Courts for getting their fundamental rights enforced. It empowers the Courts to issue directions or orders or writs for this purpose. Writs are issued for enforcement of FUNDAMENTAL RIGHTS BY EITHER SC or HC.



**Types of Writs:**

**1. Writ of Habeas Corpus :**

- (a) Habeas Corpus means 'you may have the body'.
- (b) This ensures that a prisoner can be released from unlawful detention—that is, detention lacking sufficient cause or evidence.

**2. Writ of Quo Warranto :**

- (a) The meaning of the term Quo Warranto is 'by what authority'.
- (b) The writ shall be issued only when the public office is held by a particular person in an illegal manner.
- (c) If a person has usurped a public office, the Court may direct him not to carry out any activities in the office or may announce the office to be vacant.

**3. Writ of Mandamus :**

- (a) A writ of mandamus is an order issued by a superior court to a lower court or other entity commanding the lower court, corporation or public authority to perform or not perform specific acts.
- (b) It cannot be issued to compel an authority to do something against statutory provision.
- (c) For example, it cannot be used to force a lower court to reject or authorize applications that have been made, but if the court refuses to rule one way or the other then a mandamus can be used to order the court to rule on the applications

**4. Writ of Certiorari :**

- (a) It is a writ (order) of a higher court to a lower court to send all the documents in a case to it so the higher court can review the lower court's decision.
- (b) It is a writ seeking judicial review.
- (c) The granting of this writ does not necessarily mean that the Supreme Court disagrees with the decision of the lower court. Granting a writ of certiorari means merely that at least four of the justices have determined that the circumstances described in the petition are sufficient to warrant review by the Court.

**5. Writ of Prohibition :**

- (a) A writ of prohibition is issued primarily to prevent an inferior court from exceeding its jurisdiction, or acting contrary to the rule of natural justice, for example, to restrain a Judge from hearing a case in which he is personally interested.
- (b) These Writs are issued as "alternative" or "peremptory." An alternative Writ directs the recipient to immediately act, or desist, and "Show Cause" why the directive should not be made permanent. A peremptory Writ directs the recipient to immediately act, or desist, and "return" the Writ, with certification of its compliance, within a certain time.

(c) The writ can be issued only when the proceedings are pending in a court if the proceeding has matured into decision, writ will not lie.

### Union Territories

- **Articles 239 to 241** in Part VIII of the Constitution deal with the union territories. Even though all the union territories belong to one category, there is no uniformity in their administrative system.
- Every union territory is administered by the president acting through an administrator appointed by him. An administrator of a union territory is an agent of the president and not head of state like a governor.
- The president can specify the designation of an administrator; it is Lieutenant Governor in the case of Delhi, Puducherry and Andaman and Nicobar Islands and Administrator in the case of Chandigarh, Dadra and Nagar Haveli, Daman and Diu and Lakshadweep.
- The Parliament can make laws on any subject of the three lists (including the State List) for the union territories. This power of Parliament also extends to Puducherry and Delhi, which have their own local legislatures but the legislative assembly of both (Delhi and Puducherry) can also make laws on any subject of the State List and Concurrent List. This means that the legislative power of Parliament for the union territories on subjects of the State List remain unaffected even after establishing a local legislature for them.

### Special Status of Jammu and Kashmir

Article 370 in Part XXI of the Constitution grants a special status to it. Accordingly, all the provisions of the Constitution of India do not apply to it. It is also the only state in the Indian Union which has its own separate Constitution.

### The important features of the special state are as follows:

1. Contrary to the case with the other states, the residuary power lies with the legislature of the Jammu and Kashmir (and not the Parliament).
2. The state has its own Constitution. This also implies that 'dual citizenship' principle is followed in this state.
3. Part-IV (Directive Principles of State Policy) and Part- IV(A) (Fundamental Duties) are not applicable to the state.
4. The National Emergency proclaimed only on the ground of war or external aggression shall have automatic extension to the state of J&K. This means that the National Emergency proclaimed on the

ground of armed rebellion shall not have automatic extension to J&K.

5. Financial Emergency (Art 360) cannot be imposed on the state.
6. Art. 19(1) and 31(2) have not been abolished for this state and hence "right to property" still stands guaranteed to the people of J&K.
7. The Parliament is not empowered to make laws on the subjects of state list (7th schedule) for the state of J&K under any circumstance.
8. The Governor of the state is to be appointed only after consultation with the Chief Minister of that state.

### GOVERNMENT BODIES

#### 1) Election Commission

- The Election Commission is a permanent, 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 legislatures, the office of president of India and the office of vice-president of India shall be vested in the election commission.
- Elections are conducted according to the constitutional provisions supplemented by laws made by Parliament.
- The major laws are Representation of the People Act, 1950, which mainly deals with the preparation and revision of electoral rolls, and the Representation of the People Act, 1951, which deals in detail with all aspects of conduct of elections and past election disputes.
- The electoral system in India is borrowed from the one operating in Great Britain. Presently, the Election Commission consists of one Chief Election Commissioner (CEC) and two Election Commissioners.
- The Commission works under the overall supervision of the Chief Election Commissioner.
- The tenure of the CEC and the Election Commissioners has been fixed as six years, subject to the maximum age limit of 65 years (whichever is earlier).
- The Chief Election Commissioner and the Election Commissioners are placed at par in matters of salary and allowances and they are the same as those of a judge of Supreme Court.
- The Chief Election Commissioner is not eligible for reappointment.

- The Election Commission is not concerned with the elections to Panchayats and municipalities in the states.
- The elections to the Panchayats and the municipalities in the states are conducted by 'State Election Commissions'.

### **Independence of CEC**

Article 324 of the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Election Commission:

1. The Chief Election Commissioner is provided with the security of tenure. He cannot be removed from his office except in same manner and on the same grounds as a judge of the Supreme Court.
2. The Election Commissioner cannot be removed from office except on the recommendation of the Chief Election Commissioner.

### **Powers and functions**

1. To determine the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.
2. To prepare and periodically revise electoral rolls and to register all eligible voters.
3. To notify the dates and schedules of elections and to scrutinise nomination papers.
4. To grant recognition to political parties and allot election symbols to them.
5. To act as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.
6. To determine the code of conduct to be observed by the parties and the candidates at the time of elections.
7. To advise the President on matters relating to the disqualification of the members of Parliament.
8. To advise the governor on matters relating to the disqualification of the members of state legislature.
9. To cancel polls in the event of rigging, booth capturing, violence and other irregularities.
10. To register political parties for the purpose of elections and grant them the status of national or state parties on the basis of their poll performance

### **Union Public Service Commission**

- With the promulgation of the new Constitution for independent India on 26th January, 1950, the Federal Public Service Commission was accorded a constitutional status as an autonomous entity and given the title – Union Public Service Commission.
- The UPSC has been established under Article 315 of the Constitution of India. The Commission consists of a Chairman and ten Members.

- 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.
- It is an independent constitutional body.
- The main function of UPSC is Recruitment to services and posts under the Union through conduct of competitive examinations.

### **State Public Service Commission**

- A state public service commission consists of a chairman and other members appointed by the governor of the state. But they can be removed only by the President.
- It is an independent constitutional body.
- 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.
- The main function of SPSC is to conduct examinations for appointments to the services of the 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.
- 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 chairman of JSPSC is appointed by the President.

### **Comptroller and Auditor General**

- The Constitution of India (Article 148) provides for an independent office of the Comptroller and Auditor General of India (CAG).
- It is the supreme audit institution of India.
- He is the head of the Indian Audit and Accounts Department and the guardian of the public purse and controls the entire financial system of the country at both the levels—the Centre and the state.

### **Appointment and term**

- The CAG is appointed by the President of India. He holds office for a period of six years or up to 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.

**Main function of the CAG**

1. He audits the accounts related to all expenditure from the Consolidated Fund of India and consolidated fund of each state.
2. He audits all expenditure from the Contingency Fund of India and the Public Account of India as well as the contingency fund of each state and the public account of each state.
3. He audits the accounts of any other authority when requested by the President or Governor.

**Note:** He submits his audit reports relating to the accounts of the Centre to President and relating to the accounts of a state to governor.

**Attorney General of India**

- Art. 76 states that the President shall appoint a person who is qualified to be appointed as a judge of the Supreme Court to be the Attorney General of India.
- He is the first legal officer of the Govt. of India.
- The term of office of the AGI is not fixed by the Constitution of India.
- He holds office during the pleasure of the President and receives remuneration as the President may determine. Although, he is not a member of either House of Parliament, he enjoys the right to attend and speak in the Parliamentary deliberations and meeting (of both the Lok Sabha and the Rajya Sabha), without a right to vote.
- He advises the Government of India on any legal matter.
- He performs any legal duties assigned by the President of India.
- He discharges any functions conferred on him by the Constitution or the President.
- In the performance of his official duties, the Attorney General has the right of audience in all courts in the territory of India.
- He is entitled to all the privileges and immunities as a Member of Parliament.

**Note:** 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. Thus he corresponds to the Attorney General of India. He is appointed by the Governor of the state.

**Parliamentary Funds**

**Consolidated Fund of India**

1. Article 266 has established Consolidated Fund of India.
2. It is a constitutional fund.

3. All the receipts received, loans raised and the income of the Govt. of India are deposited into a Fund called the Consolidated Fund of India.
4. It is the largest fund of the Govt. of India and any amount of money can be deposited into this account.
5. It is a regular fund of Govt. of India.
6. All expenditures of the Govt. of India are spent out of the Consolidated Fund of India.
7. It has been placed at the disposal of the Parliament. No money can be deposited into withdrawn or appropriated out of the Consolidated Fund of India without the prior sanction of the Parliament. Article 266 has also created a separate Consolidated Fund for each State.

**Public Account of India**

Under Article 266 any money other than the receipts, loans and the income received by the Govt. of India is deposited into an account called the Public Account of India. The Public Account of India is placed at the disposal of the President article 266 has also created public account for each states.



**Contingency Fund of India**

Article 267 empowers the Parliament to provide by law for the establishment of a public fund called the Contingency Fund of India. Accordingly, the Parliament enacted the Contingency Fund of India (Misc. Provisions Act) 1950, which has created the contingency Fund of India with an upper limit of Rs. 50 Cr. It is not a regular fund of Govt. of India and it is used to meet on unforeseen expenditures of the Govt. of India. It is placed at the disposal of President who can provide the sanction for meeting an emergency expenditure out of contingency Fund of India.

The Fund is used when the Parliament is not in a position to sanction money out of Consolidated Fund of India to meet an unforeseen expenditure. The money so sanctioned out of contingency fund of India by the President is placed before the Parliament for its approval subsequently. If the Parliament approves the expenditure then the equal amount of money is transferred from Consolidated Fund of India to Contingency Fund of India. Thus the Contingency Fund is replenished by the Contingency Fund. The Parliament by law may increase the upper limit of Contingency Fund either permanently or temporarily.

### Political Parties

A recognised political party has been classified either as a “national party” or a “state party”. Recognition to a party is granted by the “Election Commission of India”.

### Conditions for Recognition as a National Party

**A party is recognized as a national party if any of the following conditions is fulfilled:**

1. If it wins 2% of seats in Lok Sabha at a general election; and these candidates are elected from three states; or
2. If it secures 6% of valid votes polled in any four or more states at a general election to the Lok Sabha or to the legislative assembly; and in addition, it wins four seats in the Lok Sabha from any state or states; or
3. If it is recognized as state party in your states.

### Important Points to look at

1. The draft of a legislative proposal-**Bill**
2. Bill passed by both the Houses of Parliament and assented to by the President-**Act**
3. Annual Financial statement of the estimated receipts and expenditure of the Government of India for a financial year-**Budget**
4. The estimate of expenditure in respect of a Ministry/Department not charged upon the Consolidated Fund of India, placed for approval before the House on the recommendations of the President -**Demand for Grant**
5. A Bill ordinarily introduced each year to give effect to the financial proposals of the Government for the following financial year-**Finance Bill**
6. A bill containing only provisions dealing with all or any of the matters specified in sub-clauses (a) to (g) of Clause (1) of Article 110 of the Constitution. (Such a bill cannot be introduced without the recommendation of the President and it also cannot be introduced in the Rajya Sabha-**Money Bill**)
7. A Bill passed annually (or at various times of the year) providing for the withdrawal or appropriation

from and out of the Consolidated Fund of India of moneys by Lok Sabha and moneys charged on the Consolidated Fund for the services of a financial year or a part thereof-**Appropriation Bill**

8. A motion for reduction of a demand for grant by or to a specified amount-**Cut motion**
9. Cut motion can be of three types - **Disapproval of policy cut, Economy cut and Token cut**
10. A grant made by Lok Sabha in advance in respect of the estimated expenditure of the Government of India for a part of a financial year pending the voting of Demands for Grants for the financial year. A Motion for Vote on Account is dealt with in the same way as if it were a demand for grant.-**Vote on Account**
11. The first hour of a sitting of the House normally allotted for asking and answering of questions-**Question Hour**
12. A self-contained independent proposal submitted for the approval of the House and drafted in such a way as to be capable of expressing a decision of the House.-**Resolution**
13. The vote cast by the Speaker or the Chairman in the case of an equality of votes on a matter-**Casting vote**
14. A question relating to a matter of public importance of an urgent character asked with notice shorter than ten clear days--**Short Notice Question**

### Motions in Parliament

#### (1) Private Member's business

Every member who is not a Minister is called a Private Member. The Private Member's business includes Private Member's Bills and Private Member's Resolutions. The period of notice for introduction of Bill is one month unless the Presiding officer allows introduction at a shorter notice.

#### (2) Question Hour

Normally, the first hour of the business of a House everyday is devoted to questions and is called Question Hour (11:00 AM to 12:00 Noon).

#### (3) Starred and Unstarred Questions

A starred question is one to which a member desires an oral answer in the House. Answer to such a question may be followed by five supplementary questions by other members. An unstarred question is one to which written answer is desired by the Member. No supplementary questions can be asked thereon.

#### (4) Short Notice Questions

These are related to matter of urgent public importance and can be asked by members with notice shorter than the 10 days prescribed for an ordinary question. It is for

the Speaker to determine whether the matter is of real urgent nature or not.

### (5) Adjournment Motions

An adjournment motion is an extra-ordinary procedure which if admitted leads to setting aside the normal business of the House for discussing a definite matter of Urgent Public importance.

### (6) Calling Attention

It is a notice by which a member with the prior permission of the Speaker, Calls the attention of a Minister of any matter of urgent public importance and the Minister may make a brief statement or ask for time to make a statement at a later hour or date it is an Indian Innovation.

There is no calling attention Notice in the Rajya Sabha. Instead there exists a motion called 'Motion for Papers.'

### (7) Privilege Motion

This motion is moved by a member if in his opinion any minister or any of the members commits a breach of privilege of the House by withholding any fact.

## Kinds of Majorities

### 1) Simple Majority

It means a majority of more than 50% of the members present and voting.

Example:

- Total strength of Lok Sabha= 545
- Members present at time of voting = 500
- Members present and voting= 400

**Simple majority** in such case would mean consent of 201 or more members. Motions or Bills passed by Simple Majority are:

1. No-confidence Motion
2. Confidence Motion
3. Censure Motion
4. Adjournment Motion
5. A motion under Article 352 in Lok Sabha (for the disapproval of the continuance of the National Emergency)
6. The removal of the Vice-President in the Lok Sabha
7. Money Bill
8. Financial Bill and Ordinary bill
9. State legislature can pass the constitutional Amendment Bill with simply majority
10. The Govt. survives by means of Simple Majority.

### 2) Absolute Majority

It refers to a majority of more than 50% of the total membership of the house. In Constitution such kind of majority is not required in isolation.

### 3) Effective Majority

Effective Majority of house means more than 50% of the effective strength of the house.

**Example:** In Rajya Sabha 245 is the total strength of the house. Let us assume that on a particular day 8 members are absent and 2 seats are vacant on different grounds. Then in such case 235 would be the effective Strength of House. Effective Majority in this case is 118 or more.

### Special Majorities

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

**Various types of Special Majority are:-**

(a) Majority under Article 249

Article 249 allows Parliament to legislate in a subject in State List in the national interest. It requires **2/3<sup>rd</sup> or more of members present and voting.**

(b) Majority under Article 312 (Creation of one or more new All India Services)

The resolution must be passed by Rajya Sabha supported by not less than 2/3<sup>rd</sup> of the members present and voting. Then only the bill can be introduced in Lok Sabha.

(c) Majority under Article 368 (Constitutional Amendment Bill)

The Bill can be introduced in either House of the Parliament. The Bill must be passed by:

Majority of the Total Strength of the house (Absolute Majority) Majority of not less than 2/3<sup>rd</sup> of the member of House present and Voting.

This majority is required in the following cases:

- In the passage of constitutional Amendment Bill.
- A resolution passed in both the Houses of Parliament for approving the continuation of National Emergency. (National Emergency can be discontinued by a Simple Majority)

**A resolution passed in both the Houses of Parliament seeking the removal of:**

- A Judge of the Supreme Court or High Court.
- The Comptroller and Auditor – General of India (CAG)
- Chief Election Commissioner (CEC)
- Removal of State Election Commissioner (SEC)
- Members of Central and State Information Commission (CIC)
- Chief Vigilance Commissioner (CVC)

(d) Majority as under Article 61 (Impeachment of the President)

The resolution of impeachment of President must be passed by a majority of not less than 2/3<sup>rd</sup> of the Total membership of the House. (Each Houses has to pass it separately)

2/3 x 545 = 364 (Lok Sabha)  
2/3 x 245 = 164 (Rajya Sabha)

**ARTICLES RELATED TO BILLS**

- Article 107 : Provisions as to introduction and passing of Bills
- Article 108 : Joint sitting of both Houses in certain cases
- Article 109 : Special procedure in respect of Money Bills
- Article 110 : Definition of “Money Bills”
- Article 111 : Assent to Bills
- Article 112 : Annual financial statement
- Article 113 : Procedure in Parliament with respect to estimates
- Article 114 : Appropriation Bills
- Article 115 : Supplementary, additional or excess grants
- Article 116 : Votes on account, votes of credit and exceptional grants
- Article 117 : Special provisions as to financial Bills
- Article 118 : Rules of procedure
- Article 119 : Regulation by law of procedure in Parliament in relation to financial business
- Article 120 : Language to be used in Parliament
- Article 121 : Restriction on discussion in Parliament
- Article 122 : Courts not inquire into proceedings of Parliament

**IMPORTANT ARTICLES OF THE CONSTITUTION OF INDIA**

Article No.	Article is about
2	Admission or establishment of new States.
3	Formation of new States and alteration of areas, boundaries or names of existing States.
5	Citizenship at the commencement of the Constitution.
17	Abolition of Untouchability
18	Abolition of titles.
32	Remedies for enforcement of rights conferred by this Part.
52	The President of India.
60	Oath or affirmation by the President.
62	Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy.
63	The Vice-President of India.
64	The Vice-President to be ex officio

	Chairman of the Council of States.
65	The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President.
74	Council of Ministers to aid and advise President.
76	Attorney-General for India.
78	Duties of Prime Minister as respects the furnishing of information to the President, etc.
79	Constitution of Parliament.
80	Composition of the Council of States.
81	Composition of the House of the People.
83	Duration of Houses of Parliament.
84	Qualification for membership of Parliament.
89	The Chairman and Deputy Chairman of the Council of States.
90	Vacation and resignation of, and removal from, the office of Deputy Chairman.
93	The Speaker and Deputy Speaker of the House of the People.
94	Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.
96	The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.
101	Vacation of seats in parliament.
102	Disqualifications for membership.
107	Provisions as to introduction and passing of Bills.
108	Joint sitting of both Houses in certain cases.
109	Special procedure in respect of Money Bills.
110	Definition of –Money Bills.
117	Special provisions as to financial Bills.
120	Language to be used in Parliament.
124	Establishment and constitution of Supreme Court.
127	Appointment of ad hoc judges.
131	Original jurisdiction of the Supreme Court.
132	Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.
133	Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to Civil matters.
134	Appellate jurisdiction of Supreme Court in regard to criminal matters.
148	Comptroller and Auditor-General of India.
149	Duties and powers of the Comptroller and

	Auditor-General.
153	153 Governors of States.
154	Executive power of State.
155	Appointment of Governor.
156	Term of office of Governor.
157	Qualifications for appointment as Governor.
163	Council of Ministers to aid and advise Governor.
165	Advocate-General for the State.
167	Duties of Chief Minister as respects the furnishing of information to Governor, etc.
169	Abolition or creation of Legislative Councils in States.
170	Composition of the Legislative Assemblies.
171	Composition of the Legislative Councils.
178	The Speaker and Deputy Speaker of the Legislative Assembly.
179	Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.
182	The Chairman and Deputy Chairman of the Legislative Council.
183	Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.
184	Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.
185	The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.
197	Restriction on powers of Legislative Council as to Bills other than Money Bills.
214	High Courts for States.
215	High Courts to be courts of record.
217	Appointment and conditions of the office of a Judge of a High Court.
222	Transfer of a Judge from one High Court to another.
231	Establishment of a common High Court for two or more states.
239	Administration of Union territories.
239 A	Special provisions with respect to Delhi.
240	Power of President to make regulations for certain Union territories.
243 E	Duration of Panchayats, etc.
244	Administration of Scheduled Areas and Tribal Areas.
252	Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

266	Consolidated Funds and public accounts of India and of the States.
267	Contingency Fund.
280	Finance Commission.
292	Borrowing by the Govt. of India.
293	Borrowing by States.
300	Right to property
312	All- India-Service
315	Public service commissions for the union and for the states
320	Functions of Public Service Commission
323A	Administrative Tribunals
324	Superintendence, direction and control of Elections to be vested in an Election Commission
325	No person to be ineligible for inclusion in or to claim to be included in a special, electoral roll on grounds of religion, race, caste, or sex
338	National Commission for the SC, & ST
343	Official languages of the Union
345	Official languages or languages of a states
348	Languages to be used in the Supreme Court and in the High Courts
352	Proclamation of emergency (National Emergency)
356	State Emergency (President's Rule)
360	Financial Emergency
361	Protection of President and Governors
368	Powers of Parliaments to amend the constitution
370	Special provision of J&K
371	Special provision with respect to the States of Maharashtra and Gujarat
374	Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before His Majesty in Council
376	Provisions as to Judges of High Courts
377	Provisions as to Comptroller and Auditor-General of India
393	Short title
394	Commencement
394A	Authoritative text in the Hindi language
395	Repeals

### Important Amendments to Indian Constitution

**1st amendment** – June 18, 1951 – zamindari abolition laws.

**2nd amendment** – May 1, 1953 – fix the size of each parliamentary constituency between 650,000 and 850,000 voters.

**6th amendment** – September 11, 1956 – the Union and State Lists with respect to raising of taxes

**7th amendment** – November 1, 1956 – Reorganization of states on linguistic lines and Introduction of Union Territories

**10th amendment** – August 11, 1961 – Incorporation of Dadra, Nagar and Haveli as a Union Territory after acquisition from Portugal

**11th amendment** – December 19, 1961 – Election of Vice President by Electoral

**12th amendment** – December 20, 1961 – Incorporation of Goa, Daman and Diu as a Union Territory, after acquisition from Portugal

**13th amendment** – December 1, 1963 – Formation of State of Nagaland, with special protection under Article 371A

**14th amendment** – December 28, 1962 – Incorporation of Pondicherry into the Union of India Creation of Legislative Assemblies for Himachal Pradesh, Tripura, Manipur and Goa

**15th amendment** – October 5, 1963 – Raise retirement age of judges from 60 to 62

**22nd amendment** – September 25, 1969 – Provision to form Autonomous states within the State of Assam

**24th amendment** – November 5, 1971 – Enable parliament to dilute fundamental rights through amendments to the constitution

**31st amendment** – October 17, 1973 – Increased size of Parliament from 525 to 545 seats.

**32nd amendment** – July 1, 1974 – Protection of regional rights in Telangana and Andhra regions of State of Andhra Pradesh

**33rd amendment** – May 19, 1974 – Prescribes procedure for resignation by members of parliament and state legislatures Prescribes procedure for verification and acceptance of resignation by house speaker.

**35th amendment** – March 1, 1975 – Terms and Conditions for the Incorporation of Sikkim into the Union of India

**37th amendment** – May 3, 1975 – Formation of Arunachal Pradesh legislative assembly

**38th amendment** – August 1, 1975 – Enhances the powers of President and Governors to pass ordinances

**42nd amendment** – April 1, 1977 - Provides for curtailment of fundamental rights, imposes fundamental duties and changes to the basic structure of the constitution by making India a “Socialist Secular” Republic

**51th amendment** – June 16, 1986 – Provide reservation to Scheduled Tribes in Nagaland, Meghalaya, Mizoram and Arunachal Pradesh Legislative Assemblies

**52nd amendment** – March 1, 1985 – Anti Defection Law – Provide disqualification of members from

parliament and assembly in case of defection from one party to other

**56th amendment** – May 30, 1987 – Transition provision to enable formation of state of Goa

**58th amendment** – December 9, 1987 – Provision to publish authentic Hindi translation of constitution

**61th amendment** – March 28, 1989 – Reduce age for voting rights from 21 to 18

**65th amendment** – March 12, 1992 – National Commission for Scheduled Castes and Scheduled Tribes formed and its statutory powers specified in The Constitution.

**69th amendment** – February 1, 1992 – To provide for a legislative assembly and council of ministers for Federal National Capital of Delhi. Delhi continues to be a Union Territory

**70th amendment** – December 21, 1991 – Include National Capital of Delhi and Union Territory of Pondicherry in electoral college for Presidential Election

**82nd amendment** – September 8, 2000 – Permit relaxation of qualifying marks and other criteria in reservation in promotion for SC / ST candidates

**86th amendment** – December 12, 2002 – Provides Right to Education until the age of fourteen and Early childhood care until the age of six

**93rd amendment** – January 20, 2006 – To enable provision of reservation for other backward classes (O.B.C.) in government as well as private educational institutions

**97th amendment** – 12 January 2012 – Added the words “or co-operative societies” in Article 19(1)(c) and inserted article 43B i.e, Promotion of Co-operative Societies and added Part-IXB i.e, THE CO-OPERATIVE SOCIETIES

**98th Amendment-** To insert Article 371J in the Constitution.

**99th Amendment-** Insertion of new articles 124A, 124B and 124C. Amendments to Articles 127, 128, 217, 222, 224A, 231- The amendment provides for the formation of a National Judicial Appointments Commission.

**100th Amendment of First Schedule to Constitution:** Exchange of certain enclave territories with Bangladesh and conferment of citizenship rights to residents of enclaves consequent to signing of Land Boundary Agreement (LBA) Treaty between India and Bangladesh.