K.S.R. COLLEGE OF ENGINEERING (Autonomous) R 2018

SEMESTER – I / II / III

		L	T	P	C
18MC051	CONSTITUTION OF INDIA (Common to all branches)	3	0	0	0

Prerequisite: Nil

Objectives:

- *To know about the fundamentals of our Indian constitution and their structure.*
- *The student should be able to know the formation of state government and union government.*
- *To know more about the Indian Judiciary System and Election Commission.*

UNIT - I INTRODUCTION [9]

Historical Background – Significance of the Constitution - Making of the constitution – Constituent Assembly of India - Role of the constituent Assembly - Salient features of the constitution - Nature of Federal system.

UNIT - II FUNDAMENTAL RIGHTS AND DUTIES [9]

Preamble – Citizenship – Fundamental Rights – Fundamental Duties and Responsibilities – Directive Principles of State Policy - Procedure for Amendment.

UNIT - III UNION GOVERNMENT [9]

Union Government – President – Vice President – Prime Minister – Powers and Duties – Cabinet – Council of Ministers – Parliament - Functions – Lok Sabha – Rajya Sabha – Role of the Speaker.

UNIT - IV STATE GOVERNMENT [9]

State Government – The Governor – Council of Ministers and Chief Minister – Powers and Functions – State legislature – Local Governance.

UNIT - V JUDICIAL SYSTEM AND ELECTION COMMISION [9]

The Indian Judicial System – Supreme Court – High Courts of India – Judicial Review – Election Commission of India – Duties and Responsibilities – State Election Commissions – Roles and functions.

Total = 45 Periods

Course Outcomes: On Completion of this course, the student will be able to

- *explain about the historical background of Indian constitution and features*
- *know about fundamental rights and responsibilities of the citizen*
- *learn about the structure and function of union government.*
- *gain knowledge about the legislature assembly of state government.*
- *know about Indian judiciary system and working of Election Commission.*

Text Book :

1 P.M. Bakshi,"The Constitution of India "15th Edition, Universal law Publishing, New Delhi, 2018.

2 D.D.Basu, "Introduction to the constitution india",Lexis nexis Publisher, New Delhi, 2015.

Reference Books :

1 Brij Kishore sharma,"Introduction to the constitution india", 7th Edition, PHI Learning Pvt. Ltd, New Delhi, 2015.

2 Sharma B. K, "Introduction to the Constitution of India" 6th Edition, PHI Learning Pvt. Ltd, New Delhi, 2011.

3 http://nptel.ac.in/courses/109104074/8

4 https://www.vidyarthiplus.com/vp/thread-28159.html#.Vrmlwrh97IU

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Unit I: Introduction of Constitution

Constitution:

A constitution is a set of rules for the government to govern the country and defines the nature of polity of that country.

The polity lays down the relations between the legislature, executive and the judiciary apart from defining the basic structure of law, and the rights and obligations of both the state and the citizens. Without the constitution, there can hardly be any rule of law; leave aside other nuances like democracy, equality, freedom etc.

Functions of Constitution:

The constitution is a political structure, whether it is written or not and followed or not. They have several functions:

a) **Expression of Ideology:** it reflects the ideology and philosophy of a nation state. For example: the ideology of Indian Constitution is based on a socialist and secular social system. On the other hand, the U.S.A. follows the ideal of a capitalist social order.

b) **Expression of Basic Law:** Constitutions present basic laws which could be modified or replaced through a process called extra-ordinary procedure of amendment. There is a special law also which usually focuses upon the rights of the citizens, for instance, rights concerning language, speech, religion, assembly, the press, property and so on.

c) **Organizational frame work:** It provides organizational framework for the governments. It defines the functions of the legislature, executive and judiciary, their inter-relationship, restrictions on their authority etc.

d) **Levels of Government:** Constitution generally explains the levels of different organs of the government. Whether it is federal, co federal or unitary, will be described by the constitution. They delineate the power levels of national and provincial governments.

e) **Amendment provision:** As it would not be possible to foretell all possibilities in future with great degree of accuracy, there must be sufficient provisions for amendment of the constitution. It should contain a set of directions for its own modifications. The system might collapse if it lacks in scope for modification. An inherent capacity to change according to changing times and needs, help any system to survive and improve.

Classifications of Constitution:

Constitutions are broadly classified on the basis of two features

1. ***Nature of polity whether unitary or federal.***
2. ***Nature of the document whether written or unwritten.***

Unitary Constitution: This type of constitution establishes a single, central organ of government without dividing powers between two separate entities. For example, the British Constitution is a unitary constitution which recognizes only one central organ i.e., the British Parliament and the central government. In England we have no state type legislatures or governments. There may be other legislative and executive authorities under a unitary constitution but they enjoy only delegated powers and not constitutionally granted powers.

Federal Constitution: This type of constitution is based on power sharing between two distinct entities namely, the federal or the union government and the state governments. These two levels of government enjoy coordinate authority and none is inferior to each other as both derive their respective authorities directly from the constitution. Countries with large population, geographical size, social, cultural and linguistic diversities generally adopt federal form of constitution to allow autonomy of governance to the constituent states. For example, the US, Canadian, Australian Constitutions are federal constitutions.

Written Constitution: A written constitution is one which is subjected to systematic presentation in black & white. Written constitution is contained in one document, such as of Soviet Union or Constitution of India or Swiss Constitution. Some constitutions are found in several documents, such as Canadian Constitution which include a 'Constitution Act', as well as several pieces of the legislation and historical documents. Thus a written constitution has to be prepared by a body called the Constituent Assembly which is elected by the people for whom the constitution is being written. The federal constitutions are generally written ones because they involve two partner's viz., the union and the states. A written constitution is thus, quite clear and above doubt and dispute.

Historical Background:

The British came to India in 1600 as traders, in the form of East India Company, which had the exclusive right of trading in India under a charter granted by Queen Elizabeth I. In 1765, the Company, which till now had purely trading functions obtained the 'diwani' (i.e., rights over revenue and civil justice) of Bengal, Bihar and Orissa. This started its career as a territorial power. In 1858, in the wake of the 'sepoy mutiny', the British Crown assumed direct responsibility for the governance of India. This rule continued until India was granted independence on August 15, 1947. With Independence came the need of a Constitution. As suggested by M N Roy in 1934, a Constituent Assembly was formed for this purpose in 1946 and on January 26, 1950, the Constitution came into being. However, various features of the Indian Constitution and polity have their roots in the British rule. There are certain events in the British rule that laid down the legal framework for the organisation and functioning of government and administration in British India. These events have greatly influenced our constitution and polity. They are explained here in a chronological order:

The Company Rule (1773–1858)

Regulating Act of 1773

This act is of great constitutional importance as it was the first step taken by the British Government to control and regulate the affairs of the East India Company in India; it recognised, for the first time, the political and administrative functions of the Company; and it laid the foundations of central administration in India.

Features of the Act

It designated the Governor of Bengal as the 'Governor-General of Bengal' and created an Executive Council of four members to assist him. The first such Governor-General was Lord Warren Hastings.

It made the governors of Bombay and Madras presidencies subordinate to the governor-general of Bengal, unlike earlier, when the three presidencies were independent of one another.

It provided for the establishment of a Supreme Court at Calcutta (1774) comprising one chief justice and three other judges.

It prohibited the servants of the Company from engaging in any private trade or accepting presents or bribes from the 'natives'.

Pitt's India Act of 1784

In a bid to rectify the defects of the Regulating Act of 1773, the British Parliament passed the Amending Act of 1781, also known as the Act of Settlement. The next important act was the Pitt's India Actof 1784.

Features of the Act

It distinguished between the commercial and political functions of the Company.

It allowed the Court of Directors to manage the commercial affairs but created a new body called Board of Control to manage the political affairs. Thus, it established a system of double government.

It empowered the Board of Control to supervise and direct all operations of the civil and military government or revenues of the British possessions in India.

Charter Act of 1833

This Act was the final step towards centralisation in British India.

Features of the Act

It made the Governor-General of Bengal as the Governor-General of India and vested in him all civil and military powers. Thus, the act created, for the first time, a Government of India having authority over the entire territorial area possessed by the British in India. Lord William Bentick was the first governor-general of India.

It deprived the governor of Bombay and Madras of their legislative powers. The Governor-General of India was given exclusive legislative powers for the entire British India.

Charter Act of 1853

This was the last of the series of Charter Acts passed by the British Parliament between 1793 and 1853. It was a significant constitutional landmark.

Features of the Act

It separated, for the first time, the legislative and executive functions of the Governor-General's council. It provided for addition of six new members called legislative councillors to the council. This legislative wing of the council functioned as a mini-Parliament, adopting the same procedures as the British Parliament.

It introduced an open competition system of selection and recruitment of civil servants. The covenanted civil service was thus thrown open to the Indians also. Accordingly, the Macaulay Committee (the Committee on the Indian Civil Service) was appointed in 1854.

It introduced, for the first time, local representation in the Indian (Central) Legislative Council. Of the six new legislative members of the governor-general's council, four members were appointed by the local (provincial) governments of Madras, Bombay, Bengal and Agra.

The Crown Rule (1858–1947)

Government of India Act of 1858

This significant Act was enacted in the wake of the Revolt of 1857—also known as the First War of Independence or the 'sepoy mutiny'. The act known as the **Act for the Good Government of India**, abolished the East India Company, and transferred the powers of government, territories and revenues to the British Crown.

Features of the Act

It provided that India henceforth was to be governed by, and in the name of, Her Majesty. It changed the designation of the Governor-General of India to that of Viceroy of India. He (viceroy) was the direct representative of the British Crown in India. Lord Canning thus became the first Viceroy of India.

It ended the system of double government by abolishing the Board of Control and Court of Directors.

It created a new office, Secretary of State for India, vested with complete authority and control over Indian administration. The secretary of state was a member of the British cabinet and was responsible ultimately to the British Parliament.

It established a 15-member Council of India to assist the secretary of state for India. The council was an advisory body. The secretary of state was made the chairman of the council.

Indian Councils Act of 1861, 1892 and 1909

After the great revolt of 1857, the British Government felt the necessity of seeking the cooperation of the Indians in the administration of their country. In pursuance of this policy of association, three acts were enacted by the British Parliament in 1861, 1892 and 1909. The Indian Councils Act of 1861 is an important landmark in the constitutional and political history of India.

Features of the Act of 1861

It made a beginning of representative institutions by associating Indians with the law-making process. It thus provided that the viceroy should nominate some Indians as non-official members of his expanded council. In 1862, Lord Canning, the then viceroy, nominated three Indians to his legislative council—the Raja of Benaras, the Maharaja of Patiala and Sir Dinakar Rao.

It initiated the process of decentralisation by restoring the legislative powers to the Bombay and Madras Presidencies. This policy of legislative devolution resulted in the grant of almost complete internal autonomy to the provinces in 1937.

It also provided for the establishment of new legislative councils for Bengal, North-Western Frontier Province (NWFP) and Punjab, which were established in 1862, 1866 and 1897 respectively.

It empowered the Viceroy to make rules and orders for the more convenient trans-action of business in the council. It also gave recognition to the 'portfolio' system, introduced by Lord Canning in 1859.

Features of the Act of 1892

It increased the number of additional (non-official) members in the Central and provincial legislative councils, but maintained the official majority in them.

It increased the functions of legislative councils and gave them the power of discussing the budget and addressing questions to the executive.

'The act made a limited and indirect provision for the use of election in filling up some of the non-official seats both in the Central and provincial legislative councils. The word "election" was, however, not used in the act. The process was described as nomination made on the recommendation of certain bodies.'

Features of the Act of 1909 This Act is also known as **Morley-Minto Reforms** (Lord Morley was the then Secretary of State for India and Lord Minto was the then Viceroy of India).

It considerably increased the size of the legislative councils, both Central and provincial. The number of members in the Central Legislative Council was raised from 16 to 60. The number of members in the provincial legislative councils was not uniform.

It retained official majority in the Central Legislative Council but allowed the provincial legislative councils to have non-official majority.

It enlarged the deliberative functions of the legislative councils at both the levels. For example, members were allowed to ask supplementary questions, move resolutions on the budget, and so on.

It provided (for the first time) for the association of Indians with the executive Councils of the Viceroy and Governors. **Satyendra Prasad Sinha** became the first Indian to join the Viceroy's Executive Council. He was appointed as the law member.
It introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'. Under this, the Muslim members were to be elected only by Muslim voters. Thus, the Act 'legalized communalism' and Lord Minto came to be known as the **Father of Communal Electorate**.

Government of India Act of 1919

On August 20, 1917, the British Government declared, for the first time, that its objective was the gradual introduction of responsible government in India.
The Government of India Act of 1919 was thus enacted, which came into force in 1921. This Act is also known as **Montagu-Chelmsford Reforms** (Montagu was the Secretary of State for India and Lord Chelmsford was the Viceroy of India).

Features of the Act

It relaxed the central control over the provinces by demarcating and separating the central and provincial subjects. The central and provincial legislatures were authorized to make laws on their respective list of subjects. However, the structure of government continued to be centralized and unitary.
This dual scheme of governance was known as 'diarchy'—a term derived from the Greek word *di-arche* which means double rule. However, this experiment was largely unsuccessful.
It introduced, for the first time, bicameralism and direct elections in the country. Thus, the Indian Legislative Council was replaced by a bicameral legislature consisting of an Upper House (Council of State) and a Lower House (Legislative Assembly). The majority of members of both the Houses were chosen by direct election.
It required that the three of the six members of the Viceroy's executive Council (other than the commander-in-chief) were to be Indian.
It extended the principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.
It provided for the establishment of a public service commission. Hence, a Central Public Service Commission was set up in 1926 for recruiting civil servants.
It separated, for the first time, provincial budgets from the Central budget and authorized the provincial legislatures to enact their budgets.

Simon Commission In November 1927 itself, the British Government announced the appointment a seven-member statutory commission under the chairmanship of Sir John Simon to report on the condition of India under its new Constitution. All the members of the commission were British and hence, all the parties boycotted the commission. The commission submitted its report in 1930 and recommended the abolition of diarchy, extension of responsible government in the provinces, establishment of a federation of British India and princely states, continuation of communal electorate and so on. The recommendations of this committee were incorporated in the next Government of India Act of 1935.
Communal Award In August 1932, Ramsay MacDonald, the British Prime Minister, announced a scheme of representation of the minorities, which came to be known as the Communal Award. The award not only continued separate electorates for the Muslims, Sikhs, Indian Christians, Anglo-Indians and Europeans but also extended it to the depressed classes (scheduled castes). Gandhiji was distressed over this extension of the principle of communal representation to the

depressed classes and undertook fast unto death in Yeravada Jail (Poona) to get the award modified. At last, there was an agreement between the leaders of the Congress and the depressed classes. The agreement, known as Poona Pact, retained the Hindu joint electorate and gave reserved seats to the depressed classes.

Government of India Act of 1935

The Act marked a second milestone towards a completely responsible government in India. It was a lengthy and detailed document having 321 Sections and 10 Schedules.

Features of the Act

It provided for the establishment of an All-India Federation consisting of provinces and princely states as units. The Act divided the powers between the Centre and units in terms of three lists—**Federal List** (for Centre, with 59 items), **Provincial List** (for provinces, with 54 items) and the Concurrent List (for both, with 36 items). Residuary powers were given to the Viceroy.

It abolished diarchy in the provinces and introduced 'provincial autonomy' in its place. The provinces were allowed to act as autonomous units of administration in their defined spheres.

It introduced bicameralism in six out of eleven provinces. Thus, the legislatures of Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house). However, many restrictions were placed on them.

It further extended the principle of communal representation by providing separate electorates for depressed classes (scheduled castes), women and labour (workers).

It abolished the Council of India, established by the Government of India Act of 1858. The secretary of state for India was provided with a team of advisors.

It provided for the establishment of a Reserve Bank of India to control the currency and credit of the country.

It provided for the establishment of not only a Federal Public Service Commission but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.

It provided for the establishment of a Federal Court, which was set up in 1937.

Indian Independence Act of 1947

On February 20, 1947, the British Prime Minister Clement Atlee declared that the British rule in India would end by June 30, 1948; after which the power would be transferred to responsible Indian hands. This announcement was followed by the agitation by the Muslim League demanding partition of the country. Again on June 3, 1947, the British Government made it clear that any Constitution framed by the Constituent Assembly of India (formed in 1946) cannot apply to those parts of the country which were unwilling to accept it. On the same day (June 3, 1947), Lord Mountbatten, the viceroy of India, put forth the partition plan, known as the **Mountbatten Plan**. The plan was accepted by the Congress and the Muslim League. Immediate effect was given to the plan by enacting the Indian Independence Act (1947).

Features of the Act

It ended the British rule in India and declared India as an independent and sovereign state from August 15, 1947.

It provided for the partition of India and creation of two independent dominions of India and Pakistan with the right to secede from the British Commonwealth.

It empowered the Constituent Assemblies of the two dominions to frame and adopt any constitution for their respective nations and to repeal any act of the British Parliament, including the Independence act itself.
It abolished the office of the secretary of state for India and transferred his functions to the secretary of state for Commonwealth Affairs.
It granted freedom to the Indian princely states either to join the Dominion of India or Dominion of Pakistan or to remain independent.

It provided for the governance of each of the dominions and the provinces by the Government of India Act of 1935, till the new Constitutions were framed.
At the stroke of midnight of 14–15 August, 1947, the British rule came to an end and power was transferred to the two new independent Dominions of India and Pakistan. Lord Mountbatten became the first governor-general of the new Dominion of India. He swore in Jawaharlal Nehru as the first prime minister of independent India.
Table 1.1 *Interim Government (1946)*

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

Table 1.2 *First Cabinet of Free India (1947)*

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

14.	V.N. Gadgil	Works, Mines & Power

Making of Constitution

It was in 1934 that the idea of a Constituent Assembly for India was put forward for the first time by M. N. Roy, a pioneer of communist movement in India and an advocate of radical democratism. In 1935, the Indian National Congress (INC), for the first time, officially demanded a Constituent Assembly to frame the Constitution of India. In 1938, Jawaharlal Nehru, on behalf the INC declared that 'the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise'.

Composition of the Constituent Assembly

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

The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the Princely States. Out of 296 seats allotted to the British India, 292 members were to be drawn from the eleven governors' provinces and four from the four chief commissioners' provinces, one from each.

Each province and princely state was to be allotted seats in proportion to their respective population. Roughly, one seat was to be allotted for every million population.

The representatives of each community were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferable vote.

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

The elections to the Constituent Assembly (for 296 seats allotted to the British Indian Provinces) were held in July–August 1946. The Indian National Congress won 208 seats, the Muslim League 73 seats, and the small groups and independents got the remaining 15 seats. However, the 93 seats allotted to the princely states were not filled as they decided to stay away from the Constituent Assembly.

Although the Constituent Assembly was not directly elected by the people of India on the basis of adult franchise, the Assembly comprised representatives of all sections of Indian Society—Hindus, Muslims, Sikhs, Parsis, Anglo–Indians, Indian Christians, SCs, STs including women of all these sections. The Assembly included all important personalities of India at that time, with the exception of Mahatma Gandhi and MA Jinnah.

Working of the Constituent Assembly

The Constituent Assembly held its first meeting on December 9, 1946. The Muslim League boycotted the meeting and insisted on a separate state of Pakistan. The meeting was thus attended by only 211 members. *Dr Sachchidanand Sinha, the oldest member, was elected as the temporary President of the Assembly, following the French practices.*

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

Other Functions Performed

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

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

In all, the Constituent Assembly had 11 sessions over two years, 11 months and 18 days. The Constitution-makers had gone through the constitutions of about 60 countries, and the Draft Constitution was considered for 114 days. The total expenditure incurred on making the Constitution amounted to 64 lakh.

On January 24, 1950, the Constituent Assembly held its final session. It, however, did not end, and continued as the provisional parliament of India from January 26, 1950 till the formation of new Parliament after the first general elections in 1951–52.

Committees of the Constituent Assembly

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

Major Committees

Union Powers Committee – Jawaharlal Nehru
Union Constitution Committee – Jawaharlal Nehru
Provincial Constitution Committee – Sardar Patel
Drafting Committee – Dr. B.R. Ambedkar
Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – Sardar Patel. This committee had the following sub-committes:
Fundamental Rights Sub-Committee – J.B. Kripalani
Minorities Sub-Committee – H.C. Mukherjee
North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee – Gopinath Bardoloi
Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee – A.V. Thakkar
Rules of Procedure Committee – Dr. Rajendra Prasad
States Committee (Committee for Negotiating with States) – Jawaharlal Nehru
Steering Committee – Dr. Rajendra Prasad

Minor Committees

Committee on the Functions of the Constituent Assembly – G.V. Mavalankar
Order of Business Committee – Dr. K.M. Munshi

House Committee – B. Pattabhi Sitaramayya

Ad-hoc Committee on the National Flag – Dr. Rajendra Prasad

Special Committee to Examine the Draft Constitution – Alladi Krishnaswamy Ayyar
Credentials Committee – Alladi Krishnaswamy Ayyar
Finance and Staff Committee – Dr. Rajendra Prasad.
Hindi Translation Committee
Urdu Translation Committee
Press Gallery Committee
Committee to Examine the Effect of Indian Independence Act of 1947
Committee on Chief Commissioners' Provinces – B. Pattabhi Sitaramayya.
Commission on Linguistic Provinces
Expert Committee on Financial Provisions

Ad-hoc Committee on the Supreme Court – S. Varadachariar.

Drafting Committee

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

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

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

The Drafting Committee took less than six months to prepare its draft. In all it sat only for 141 days.

Enactment of the Constitution

Dr B R Ambedkar introduced the final draft of the Constitution in the Assembly on November 4, 1948 (first reading). The Assembly had a general discussion on it for five days (till November 9, 1948).

The second reading started on November 15, 1948 and end-ed on October 17, 1949. During this stage, as many as 7653 amendments were proposed and 2473 were actually discussed in the Assembly.

The third reading of the draft started on November 14, 1949. Dr B R Ambedkar moved a motion —'the Constitution as settled by the Assembly be passed'. The motion on Draft Constitution was declared as passed on November 26, 1949, and received the signatures of the members and the president. Out of a total 299 members of the Assembly, only 284 were actually present on that day and signed the Constitution.

The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 Schedules. The Preamble was enacted after the entire Constitution was already enacted.

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

Enforcement of the Constitution

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

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

January 26 was specifically chosen as the 'date of commencement' of the Constitution because of its historical importance. It was on this day in 1930 that *Purna Swaraj* day was celebrated, following the resolution of the Lahore Session (December 1929) of the INC.

With the commencement of the Constitution, the Indian Independence Act of 1947 and the Government of India Act of 1935, with all enactments amending or supplementing the latter Act, were repealed. The Abolition of Privy Council Jurisdiction Act (1949) was however continued.

Criticism of The Constituent Assembly

The critics have criticised the Constituent Assembly on various grounds. These are as follows:

Not a Representative Body: The critics have argued that the Constituent Assembly was not a representative body as its members were not directly elected by the people of India on the basis of universal adult franchise.

Not a Sovereign Body: The critics maintained that the Constituent Assembly was not a sovereign body as it was created by the proposals of the British Government. Further, they said that the Assembly held its sessions with the permission of the British Government.

Time Consuming: According to the critics, the Constituent Assembly took unduly long time to make the Constitution. They stated that the framers of the American Constitution took only four months to complete their work.

Dominated by Congress: The critics charged that the Constituent Assembly was dominated by the Congress party. Granville Austin, a British Constitutional expert, remarked: 'The Constituent Assembly was a one-party body in an essentially one-party country. The Assembly was the Congress and the Congress was India'.

Lawyer–Politician Domination: It is also maintained by the critics that the Constituent Assembly was dominated by lawyers and politicians. They pointed out that other sections of the society were not sufficiently represented. This, to them, is the main reason for the bulkiness and complicated language of the Constitution.

Dominated by Hindus: According to some critics, the Constituent Assembly was a Hindu dominated body. Lord Viscount Simon called it 'a body of Hindus'. Similarly, Winston Churchill commented that the Constituent Assembly represented 'only one major community in India'.

Table 2.2 *Sessions of the Constituent Assembly at a Glance*

Sessions	***Period***
First Session	9–23 December, 1946
Second Session	20–25 January, 1947
Third Session	28 April–2 May, 1947
Fourth Session	14–31 July, 1947
Fifth Session	14–30 August, 1947
Sixth Session	27 January, 1948
Seventh Session	4 November, 1948–8 January, 1949

Eighth Session	16	May–16 June, 1949
Ninth Session	30	July–18 September, 1949
Tenth Session	6–17 October, 1949	
Eleventh Session	14–26 November, 1949	

Salient Features of the Constitution

Lengthiest Written Constitution

Constitutions are classified into written, like the American Constitution, or unwritten, like the British Constitution. The Constitution of India is the lengthiest of all the written constitutions of the world. It is a very comprehensive, elaborate and detailed document.

Originally (1949), the Constitution contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules. Presently (2013), it consists of a Preamble, about 465 Articles (divided into 25 Parts) and 12 Schedules. The various amendments carried out since 1951 have deleted about 20 Articles and one Part (VII) and added about 85 Articles, four Parts (IVA, IXA, IXB and XIVA) and four Schedules (9, 10, 11 and 12). No other Constitution in the world has so many Articles and Schedules.

Drawn From Various Sources

The Constitution of India has borrowed most of its provisions from the constitutions of various other countries as well as from the Government of India Act of 1935. Dr B R Ambedkar proudly acclaimed that the Constitution of India has been framed after 'ransacking all the known Constitutions of the World.

The structural part of the Constitution is, to a large extent, derived from the Government of India Act of 1935. The philosophical part of the Constitution (the Fundamental Rights and the Directive Principles of State Policy) derive their inspiration from the American and Irish Constitutions respectively. The political part of the Constitution (the principle of Cabinet Government and the relations between the executive and the legislature) have been largely drawn from the British Constitution.

The other provisions of the Constitution have been drawn from the constitutions of Canada, Australia, Germany, USSR (now Russia), France, South Africa, Japan, and so on.

However, the criticism that the Indian Constitution is a 'borrowed Constitution', a 'patchwork' and contains nothing new and original is unfair and illogical. This is because, the framers of the Constitution made necessary modifications in the features borrowed from other constitutions for their suitability to the Indian conditions, at the same time avoiding their faults.

Blend of Rigidity and Flexibility

Constitutions are also classified into rigid and flexible. A rigid Constitution is one that requires a special procedure for its amendment, as for example, the American Constitution. A flexible constitution, on the other hand, is one that can be amended in the same manner as the ordinary laws are made, as for example, the British Constitution.

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

Federal System with Unitary Bias

The Constitution of India establishes a federal system of government. It contains all the usual features of a federation, viz., two governments, and division of powers, written Constitution, supremacy of Constitution, rigidity of Constitution, independent judiciary and bicameralism.

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

Parliamentary Form of Government

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

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

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

Even though the Indian Parliamentary System is largely based on the British pattern, there are some fundamental differences between the two. For example, the Indian Parliament is not a sovereign body like the British Parliament. Further, the Indian State has an elected head (republic) while the British State has hereditary head (monarchy).

In a parliamentary system whether in India or Britain, the role of the Prime Minister has become so significant and crucial that the political scientists like to call it a 'Prime Ministerial Government'.

Synthesis of Parliamentary Sovereignty and Judicial Supremacy

The doctrine of sovereignty of Parliament is associated with the British Parliament while the principle of judicial supremacy with that of the American Supreme Court.

Just as the Indian parliamentary system differs from the British system, the scope of judicial review power of the Supreme Court in India is narrower than that of what exists in US. This is because the American Constitution provides for 'due process of law' against that of 'procedure established by law' contained in the Indian Constitution (Article 21).

Therefore, the framers of the Indian Constitution have preferred a proper synthesis between the British principle of parliamentary sovereignty and the American principle of judicial supremacy. The Supreme Court, on the one hand, can declare the parliamentary laws as unconstitutional through its power of judicial review. The Parliament, on the other hand, can amend the major portion of the Constitution through its constituent power.

Integrated and Independent Judiciary

The Indian Constitution establishes a judicial system that is integrated as well as independent.
The Supreme Court stands at the top of the integrated judicial system in the country. Below it, there are high courts at the state level. Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts enforces both the central laws as well as the state laws, unlike in USA, where the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary.
The Supreme Court is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the Constitution. Hence, the Constitution has made various provisions to ensure its independence—security of tenure of the judges, fixed service conditions for the judges, all the expenses of the Supreme Court charged on the Consolidated Fund of India, prohibition on discussion on the conduct of judges in the legislatures, ban on practice after retirement, power to punish for its contempt vested in the Supreme Court, separation of the judiciary from the executive, and so on.

Fundamental Rights

Part III of the Indian Constitution guarantees six fundamental rights to all the citizens:

Right to Equality (Articles 14–18),
Right to Freedom (Articles 19–22),
Right against Exploitation (Articles 23–24),
Right to Freedom of Religion (Articles 25–28),
Cultural and Educational Rights (Articles 29–30), and
Right to Constitutional Remedies (Article 32).

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

Directive Principles of State Policy

According to Dr B R Ambedkar, the Directive Principles of State Policy is a 'novel feature' of the Indian Constitution. They are enumerated in Part IV of the Constitution. They can be classified into three broad categories—socialistic, Gandhian and liberal–intellectual.
The directive principles are meant for promoting the ideal of social and economic democracy. They seek to establish a 'welfare state' in India. However, unlike the Funda-mental Rights, the directives are non-justiciable in nature, that is, they are not enforceable by the courts for their violation. Yet, the Const-itution itself declares that 'these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws'. Hence, they impose a moral obligation on the state author-ities for their application. But, the real force (sanction) behind them is political, that is, public opinion.
In the *Minerva Mills* case (1980), the Supreme Court held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles'

Fundamental Duties

The original constitution did not provide for the fundamental duties of the citizens. These were added during the operation of internal emergency (1975–77) by the 42nd Constitutional Amendment Act of 1976 on the recommendation of the Swaran Singh Committee. The 86th Constitutional Amendment Act of 2002 added one more fundamental duty.

The Part IV-A of the Constitution (which consists of only one Article—51-A) specifies the eleven Fundamental Duties viz., to respect the Constitution, national flag and national anthem; to protect the sovereignty, unity and integrity of the country; to promote the spirit of common brotherhood amongst all the people; to preserve the rich heritage of our composite culture and so on.

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

A Secular State

The Constitution of India stands for a secular state. Hence, it does not uphold any particular religion as the official religion of the Indian State. The following provisions of the Constitution reveal the secular character of the Indian State:

The term 'secular' was added to the Preamble of the Indian Constitution by the 42nd Constitutional Amendment Act of 1976.

The Preamble secures to all citizens of India liberty of belief, faith and worship.

The State shall not deny to any person equality before the law or equal protection of the laws (Article 14).

The State shall not discriminate against any citizen on the ground of religion (Article 15).

Equality of opportunity for all citizens in matters of public employment (Article 16).

All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate any religion (Article 25).

Every religious denomination or any of its section shall have the right to manage its religious affairs (Article 26).

No person shall be compelled to pay any taxes for the promotion of a particular religion (Article 27).

No religious instruction shall be provided in any educational institution maintained by the State (Article 28).

Any section of the citizens shall have the right to conserve its distinct language, script or culture (Article 29).

All minorities shall have the right to establish and administer educational institutions of their choice (Article 30).

The State shall endeavour to secure for all the citizens a Uniform Civil Code (Article 44).

The Western concept of secularism connotes a complete separation between the religion (the church) and the state (the politics).

Universal Adult Franchise

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

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

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

Single Citizenship

Though the Indian Constitution is federal and envisages a dual polity (Centre and states), it provides for only a single citizenship, that is, the Indian citizenship.

In countries like USA, on the other hand, each person is not only a citizen of USA but also a citizen of the particular state to which he belongs. Thus, he owes allegiance to both and enjoys dual sets of rights—one conferred by the National government and another by the state government.

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

Despite the constitutional provision for a single citizenship and uniform rights for all the people, India has been witnessing the communal riots, class conflicts, caste wars, linguistic clashes and ethnic disputes. This means that the cherished goal of the Constitution-makers to build an united and integrated Indian nation has not been fully realised.

Independent Bodies

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

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

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

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

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

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

Emergency Provisions

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

The Constitution envisages three types of emergencies, namely:

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

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

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

During an emergency, the Central Government becomes all-powerful and the states go into the total

Control of the centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique feature of the Indian Constitution.

Three-tier Government

Originally, the Indian Constitution, like any other federal constitution, provided for a dual polity and contained provisions with regard to the organisation and powers of the Centre and the states. Later, the 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of government (i.e., local) which is not found in any other Constitution of the world.

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

Table 3.1 *The Constitution of India at a Glance*

Parts	***Subject Matter***	***Articles Covered***
I	The Union and its territory	1 to 4
II	Citizenship	5 to 11
III	Fundamental Rights	12 to 35
IV	Directive Principles of State Policy	36 to 51
IV-A	Fundamental Duties	51-A
V	The Union Government	52 to 151
	Chapter I – The Executive	52 to 78
	Chapter II – Parliament	79 to 122
	Chapter III – Legislative Powers of President	123
	Chapter IV – The Union Judiciary	124 to 147

	Chapter V – Comptroller and Auditor-General of India	148 to 151
VI	The State Governments	152 to 237
	Chapter I – General	152
	Chapter II – The Executive	153 to 167
	Chapter III – The State Legislature	168 to 212
	Chapter IV – Legislative Powers of Governor	213
	Chapter V – The High Courts	214 to 232
	Chapter VI – Subordinate Courts	233 to 237
VIII	The Union Territories	239 to 242

IX	The Panchayats	243 to 243-0
IX-A	The Municipalities	243-P to 243-ZG
IX-B	The Co-operative Societies	243-ZH to 243-ZT
X	The Scheduled and Tribal Areas	244 to 244-A
XI	Relations between the Union and the States	245 to 263

	Chapter I – Legislative Relations	245 to 255
	Chapter II – Administrative Relations	256 to 263
XII	Finance, Property, Contracts and Suits	264 to 300-A
	Chapter I – Finance	264 to 291
	Chapter II – Borrowing	292 to 293
	Chapter III – Property, Contracts, Rights, Liabilities, Obligations and Suits	294 to 300
	Chapter IV – Right to Property	300-A
XIII	Trade, Commerce and Intercourse within the Territory of India	301 to 307
XIV	Services under the Union and the States	308 to 323
	Chapter I – Services	308 to 314
	Chapter II – Public Service Commissions	315 to 323
XIV-A	Tribunals	323-A to 323-B
XV	Elections	324 to 329-A
XVI	Special Provisions relating to Certain Classes	330 to 342

XVII	Official Language	343 to 351
	Chapter I – Language of the Union	343 to 344
	Chapter II – Regional Languages	345 to 347
	Chapter III—Language of the Supreme Court, High Courts, and so on	348 to 349
	Chapter IV—Special Directives	350 to 351
XVIII	Emergency Provisions	352 to 360
XIX	Miscellaneous	361 to 367
XX	Amendment of the Constitution	368
XXI	Temporary, Transitional and Special Provisions	369 to 392
XXII	Short title, Commencement, Authoritative Text in Hindi and Repeals	393 to 395

Table 3.2 *Important Articles of the Constitution at a Glance*

Articles	***Deals with***
1	Name and territory of the Union
3	Formation of new states and alteration of areas, boundaries or names of existing states
13	Laws inconsistent with or in derogation of the fundamental rights
14	Equality before law

16	Equality of opportunity in matters of public employment
17	Abolition of untouchability
19	Protection of certain rights regarding freedom of speech, etc.
21	Protection of life and personal liberty
21A	Right to elementary education
25	Freedom of conscience and free profession, practice and propagation of religion
30	Right of minorities to establish and administer educational institutions
31C	Saving of laws giving effect to certain directive principles
32	Remedies for enforcement of fundamental rights including writs
38	State to secure a social order for the promotion of welfare of the people
40	Organisation of village panchayats
44	Uniform civil code for the citizens
45	Provision for early childhood care and education to children below the age of 6 years.
46	Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections
50	Separation of judiciary from executive
51	Promotion of international peace and security
51A	Fundamental duties
72	Power of president to grant pardons, etc., and to suspend, remit or commute sentences in certain cases
74	Council of ministers to aid and advise the president
78	Duties of prime minister as respects the furnishing of information to the president, etc.
110	Definition of Money Bills
112	Annual financial statement (Budget)
123	Power of president to promulgate ordinances during recess of Parliament
143	Power of president to consult Supreme Court
155	Appointment of governor
161	Power of governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

163	Council of ministers to aid and advise the governor
167	Duties of chief minister with regard to the furnishing of information to governor, etc.
169	Abolition or creation of legislative councils in states
200	Assent to bills by governor (including reservation for President)
213	Power of governor to promulgate ordinances during recess of the state legislature
226	Power of high courts to issue certain writs
239AA	Special provisions with respect to Delhi
249	Power of Parliament to legislate with respect to a matter in the State List in the national interest
262	Adjudication of disputes relating to waters of inter-state rivers or river valleys
263	Provisions with respect to an inter-state council
265	Taxes not to be imposed save by authority of law
275	Grants from the Union to certain states
280	Finance Commission
300	Suits and proceedings
300A	Persons not to be deprived of property save by authority of law (Right to property)
311	Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a state.
312	All-India Services
315	Public service commissions for the Union and for the states
320	Functions of Public service commissions
323-A	Administrative tribunals
324	Superintendence, direction and control of elections to be vested in an Election Commission
330	Reservation of seats for scheduled castes and scheduled tribes in the House of the People
335	Claims of scheduled castes and scheduled tribes to services and posts
352	Proclamation of Emergency (National Emergency)

356	Provisions in case of failure of constitutional machinery in states (President's Rule)
360	Provisions as to financial emergency.
365	Effect of failure to comply with, or to give effect to, directions given by the Union (President's Rule)
368	Power of Parliament to amend the Constitution and procedure there for
370	Temporary provisions with respect to the state of Jammu and Kashmir

Table 3.3 *Schedules of the Constitution at a Glance*

Numbers	***Subjext Matter***		***Articles Covered***
First Schedule	1.	Names of the States and their territorial jurisdiction.	1 and 4
	2.	Names of the Union Territories and their extent.	
Second Schedule	Provisions relating to the emoluments, allowances, privileges and so on of:		59, 65, 75, 97, 125, 148, 158, 164, 186 &221
	1.	The President of India	
	2.	The Governors of States	
	3.	The Speaker and the Deputy Speaker of the Lok Sabha	
	4.	The Chairman and the Deputy Chairman of the Rajya Sabha	
	5.	The Speaker and the Deputy Speaker of the Legislative Assembly in the states	
	6.	The Chairman and the Deputy Chairman of the Legislative Council in the states	
	7.	The Judges of the Supreme Court	
	8.	The Judges of the High Courts	

	9. The Comptroller and Auditor-General of India	
Third Schedule	Forms of Oaths or Affirmations for:	75, 84, 99, 124, 146, 173, 188 and219
	1. The Union ministers	
	2. The candidates for election to the Parliament	
	3. The members of Parliament	
	4. The judges of the Supreme Court	
	5. The Comptroller and Auditor-General of India	
	6. The state ministers	
	7. The candidates for election to the state legislature	
	8. The members of the state legislature	
	9. The judges of the High Courts	
Fourth Schedule	Allocation of seats in the Rajya Sabha to the states and the union territories.	4 and 80
Fifth Schedule	Provisions relating to the administration and control of scheduled areas and scheduled tribes.	244
Sixth Schedule	Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.	244 and275
Seventh Schedule	Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List). Presently, the Union List contains 100 subjects (originally 97), the state list contains 61 subjects (originally 66) and the concurrent list contains 52 subjects (originally 47).	246
Eighth	Languages recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages.	344 and

Schedule	They are: Assamese, Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Mathili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21st Amendment Act of 1967; Konkani, Manipuri and Nepali were added by the 71st Amendment Act of 1992; and Bodo, Dongri, Maithili and Santhali were added by the 92nd Amendment Act of 2003.	351
Ninth Schedule	Acts and Regulations (originally 13 but presently 282)[19] of the state legislatures dealing with land reforms and abolition of the zamindari system and of the Parliament dealing with other matters. This schedule was added by the 1st Amendment (1951) to protect the laws included in it from judicial scrutiny on the ground of violation of fundamental rights. However, in 2007, the Supreme Court ruled that the laws included in this schedule after April 24, 1973, are now open to judicial review.	31-B
Tenth Schedule	Provisions relating to disqualification of the members of Parliament and State Legislatures on the ground of defection. This schedule was added by the 52nd Amendment Act of 1985, also known as Anti-defection Law.	102 and 191
Eleventh Schedule	Specifies the powers, authority and responsibilities of Panchayats. It has 29 matters. This schedule was added by the 73rd Amendment Act of 1992.	243-G
Twelfth Schedule	Specifies the powers, authority and responsibilities of Municipalities. It has 18 matters. This schedule was added by the 74th Amendment Act of 1992.	243-W

Table 3.4 *Sources of the Constitution at a Glance*

	Sources	***Features Borrowed***
1.	Government of India Act of 1935	Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.

2.	British Constitution	Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
3.	US Constitution	Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Sup-reme Court and high court judges and post of vice-president.
4.	Irish Constitution	Directive Principles of State Policy, nomination of mem-bers to Rajya Sabha and method of election of president.
5.	Canadian Constitution	Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court
6.	Australian Constitution	Concurrent List, freedom of trade, commerce and inter-course, and joint sitting of the two Houses of Parliament.
7.	Weimar Constitution of Germany	Suspension of Fundamental Rights during Emergency.
8.	Soviet Constitution (USSR, now Russia)	Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
9.	French Constitution	Republic and the ideals of liberty, equality and fraternity in the Preamble.
10.	South African Constitution	Procedure for amendment of the Constitution and election of members of Rajya Sabha.
11.	Japanese Constitution	Procedure established by Law.

Nature of the Federal systerm

Political scientists have classified governments into unitary and federal on the basis of the nature of relations between the national government and the regional governments. By definition, a unitary government is one in which all the powers are vested in the national government and the regional governments, if at all exist, derive their authority from the national government. A federal government, on the other hand, is one in which powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently. Britain, France, Japan, China, Italy, Belgium, Norway, Sweden, Spain and so on have the unitary model of government while the US, Switzerland, Australia, Canada, Russia, Brazil, Argentina and so on have the federal model of government. In a federal model, the national government is known as the Federal government or the Central government or the Union government and the regional government is known as the state government or the provincial government.

Table 13.1 *Comparing Features of Federal and Unitary Governments*

S.No	***Federal Government***	***Unitary Government***
1.	Dual Government (that is, national government and regional government)	Single government, that is, the national government which may create regional governments

2.	Written Constitution	Constitution may be written (France) or unwritten (Britain)
3.	Division of powers between the national and regional government	No division of powers. All powers are vested in the national government
4.	Supremacy of the Constitution	Constitution may be supreme (Japan) or may not be supreme (Britain)
5.	Rigid Constitution	Constitution may be rigid (France) or flexible (Britain)
6.	Independent judiciary	Judiciary may be independent or may not be independent
7.	Bicameral legislature	Legislature may be bicameral (Britain) or uni-cameral (China)

The term 'federation' is drived from a Latin word *foedus* which means 'treaty' or 'agreement'. Thus, a federation is a new state (political system) which is formed through a treaty or an agreement between the various units. The units of a federation are known by various names like states (as in US) or cantons (as in Switzerland) or provinces (as in Canada) or republics (as in Russia).

A federation can be formed in two ways, that is, by way of integration or by way of disintegration. In the first case, a number of militarily weak or economically backward states (independent) come together to form a big and a strong union, as for example, the US. In the second case, a big unitary state is converted into a federation by granting autonomy to the provinces to promote regional interest (for example, Canada). The US is the first and the oldest federation in the world. It was formed in 1787 following the American Revolution (1775–83). It comprises 50 states (originally 13 states) and is taken as the model of federation. The Canadian Federation, comprising 10 provinces (originally 4 provinces) is also quite old—formed in 1867.

The Constitution of India provides for a federal system of government in the country. The framers adopted the federal system due to two main reasons—the large size of the country and its socio-cultural diversity. They realised that the federal system not only ensures the efficient governance of the country but also re-conciles national unity with regional autonomy.

However, the term 'federation' has no where been used in the Constitution. Instead, Article 1 of the Constitution describes India as a 'Union of States'. According to Dr B R Ambedkar, the phrase 'Union of States' has been preferred to 'Federation of States' to indicate two things: **(i)** the Indian federation is not the result of an agreement among the states like the American federation; and **(ii)** the states have no right to secede from the federation. The federation is union because it is indestructible.[1]

The Indian federal system is based on the 'Canadian model' and not on the 'American model'. The 'Canadian model' differs fundamentally from the 'American model' in so far as it establishes a very strong centre. The Indian federation resembles the Candian federation **(i)** in its formation (i.e., by way of disintegration); **(ii)** in its preference to the term 'Union' (the Canadian federation is also called a 'Union'); and **(iii)** in its centralising tendency (i.e., vesting more powers in the centre vis-a-vis the states).

Federal Features of the Constitution

The federal features of the Constitution of India are explained below:

Dual Polity

The Constitution establishes a dual polity consisting the Union at the Centre and the states at the periphery. Each is endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The Union government deals with the matters of national importance like defence, foreign affairs, currency, communication and so on. The state governments, on the other hand, look after the matters of regional and local importance like public order, agriculture, health, local government and so on.

Written Constitution

The Constitution is not only a written document but also the lengthiest Constitution of the world. Originally, it contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules. At present (2013), it consists of a Preamble, about 465 Articles (divided into 25 Parts) and 12 Schedules. It specifies the structure, orga-nisation, powers and functions of both the Central and state governments and prescribes the limits within which they must operate. Thus, it avoids the misunderstandings and disagreements between the two.

Division of Powers

The Constitution divided the powers between the Centre and the states in terms of the Union List, State List and Concurrent List in the Seventh Schedule. The Union List consists of 100 subjects (originally 97), the State List 61 subjects (originally 66) and the Concurrent List 52 subjects (originally 47). Both the Centre and the states can make laws on the subjects of the concurrent list, but in case of a conflict, the Central law prevails. The residuary subjects (ie, which are not mentioned in any of the three lists) are given to the Centre.

Supremacy of the Constitution

The Constitution is the supreme (or the highest) law of the land. The laws enacted by the Centre and the states must confirm to its provisions. Otherwise, they can be declared invalid by the Supreme Court or the high courts through their power of judicial review. Thus, the organs of the government (legislative, executive and judicial) at both the levels must operate within the jurisdiction prescribed by the Constitution.

Rigid Constitution

The division of powers established by the Constitution as well as the supremacy of the Constitution can be maintained only if the method of its amendment is rigid. Hence, the Constitution is rigid to the extent that those provisions which are concerned with the federal structure (i.e., Centre–state relations and judicial organi-sation) can be amended only by the joint action of the Central and state governments. Such provisions require for their amendment a special majority of the Parliament and also an approval of half of the state legislatures.

Independent Judiciary

The Constitution establishes an independent judiciary headed by the Supreme Court for two purposes: one, to protect the supremacy of the Constitution by exercising the power of judicial review; and two, to settle the disputes between the Centre and the states or between the states. The Constitution contains various measures like security of tenure to judges, fixed service conditions and so on to make the judiciary independent of the government.

Bicameralism

The Constitution provides for a bicameral legislature consisting of an Upper House (Rajya Sabha) and a Lower House (Lok Sabha). The Rajya Sabha represents the states of Indian Federation, while the Lok Sabha represents the people of India as a whole. The Rajya Sabha (even though a less powerful chamber) is required to maintain the federal equilibrium by protecting the interests of the states against the undue interference of the Centre.

Critical Evaluation of the Federal System

From the above, it is clear that the Constitution of India has deviated from the traditional federal systems like US, Switzerland and Australia and incorporated a large number of unitary or non-federal features, tilting the balance of power in favour of the Centre.

On the nature of Indian Constitution, Dr B R Ambedkar made the following observation in the Constituent Assembly: "The Constitution is a Federal Constitution in as much as it establishes a dual polity. The Union is not a league of states, united in a loose relationship, nor are the states the agencies of the Union, deriving powers from it. Both the Union and the states are created by the Constitution, both derive their respective authority from the Constitution." He further observed: "Yet the Constitution avoids the tight mould of federalism and could be both unitary as well as federal according to the requirements of time and circumstances". While replying to the criticism of over-centralisation in the Constitution, he stated: "A serious complaint is made on the ground that there is too much centralisation and the states have been reduced to municipalities. It is clear that this view is not only an exaggeration but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relations between the Centre and the states, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the states not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The states are in no way dependent upon the Centre for their legislative or executive authority. The states and the Centre are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It is, therefore, wrong to say that the states have been placed under the Centre. The Centre cannot by its own will alter the boundary of this partition. Nor can the judiciary.

Unit II: Fundamental Rights and Duties

Preamble

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".

Ingredients of the Preamble

The Preamble reveals four ingredients or components:

Source of authority of the Constitution: The Preamble states that the Constitution derives its authority from the people of India.

Nature of Indian State: It declares India to be of a sovereign, socialist, secular democratic and republican polity.

Objectives of the Constitution: It specifies justice, liberty, equality and fraternity as the objectives.

Date of adoption of the Constitution: It stipulates November 26, 1949 as the date.

Key Words in the Preamble

Certain key words—Sovereign, Socialist, Secular, Democratic, Republic, Justice, Liberty, Equality and Fraternity—are explained as follows.

Sovereign

The word 'sovereign' implies that India is neither a dependency nor a dominion of any other nation, but an independent state. There is no authority above it, and it is free to conduct its own affairs (both internal and external).

Being a sovereign state, India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state.

Socialist

Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy. In other words, what was hitherto implicit in the Constitution has now been made explicit.

Notably, the Indian brand of socialism is a 'democratic socialism' and not a 'communistic socialism' (also known as 'state socialism') which involves the nationalization of all means of production and distribution and the abolition of private property.

Secular

The term 'secular' too was added by the 42nd Constitutional Amendment Act of 1976. However, as the Supreme Court said in 1974, although the words 'secular state' were not expressed in the Constitution, there can be no doubt that Constitution-makers wanted to establish such a state and accordingly Articles 25 to 28 (guaranteeing the fundamental right to freedom of religion) have been included in the constitution.

Democratic

A democratic polity, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, possession of supreme power by the people.

Democracy is of two types—direct and indirect. In direct democracy, the people exercise their supreme power directly as is the case in Switzerland. There are four devices of direct democracy, namely, **Referendum, Initiative, Recall** and **Plebiscite**. In indirect democracy, on the other hand, the representatives elected by the people exercise the supreme power and thus carry on the government and make the laws. This type of democracy, also known as representative democracy, is of two kinds—parliamentary and presidential.

Republic

A democratic polity can be classified into two categories—monarchy and republic. In a monarchy, the head of the state (usually king or queen) enjoys a hereditary position, that is, he comes into office through succession, eg, Britain. In a republic, on the other hand, the head of the state is always elected directly or indirectly for a fixed period, eg, USA.

Therefore, the term 'republic' in our Preamble indicates that India has an elected head called the president. He is elected indirectly for a fixed period of five years.

Justice

The term 'justice' in the Preamble embraces three distinct forms—social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles.

Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It means absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward classes (SCs, STs and OBCs) and women.

Economic justice denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring in-equalities in wealth, income and property. A combination of social justice and economic justice denotes what is known as 'distributive justice'.

Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government.

The ideal of justice—social, economic and political—has been taken from the Russian Revolution (1917).

Liberty

The term 'liberty' means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.

The Preamble secures to all citizens of India liberty of thought, expression, belief, faith and worship, through their Fundamental Rights, enforceable in court of law, in case of violation. The ideals of liberty, equality and fraternity in our Preamble have been taken from the French Revolution (1789–1799).

Equality

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

The following provisions of the chapter on Fundamental Rights ensure civic equality:

- Equality before the law (Article 14).
- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
- Equality of opportunity in matters of public employment (Article 16).
- Abolition of untouchability (Article 17).
- Abolition of titles (Article 18).

Fraternity

Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship. Also, the Fundamental Duties (Article 51-A) say that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities.

Significance of the Preamble

The Preamble embodies the basic philosophy and fundamental values—political, moral and religious —on which the Constitution is based. It contains the grand and noble vision of the Constituent Assembly, and reflects the dreams and aspirations of the founding fathers of the Constitution. In the words of Sir Alladi Krishnaswami Iyer, a member of the Constituent Assembly who played a significant role in making the Constitution, 'The Preamble to our Constitution expresses what we had thought or dreamt so long'.

Citizenship

Meaning and Significance

Like any other modern state, India has two kinds of people—citizens and aliens. Citizens are full

members of the Indian State and owe allegiance to it. They enjoy all civil and political rights.
Aliens, on the other hand, are the citizens of some other state and hence, do not enjoy all the civil and political rights.
The Constitution confers the following rights and privileges on the citizens of India (and denies the same to aliens):

- Right against discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
- Right to equality of opportunity in the matter of public employment (Article 16).
- Right to freedom of speech and expression, assembly, association, movement, residence and profession (Article 19).
- Cultural and educational rights (Articles 29 and 30).
- Right to vote in elections to the Lok Sabha and state legislative assembly.
- Right to contest for the membership of the Parliament and the state legislature.
- Eligibility to hold certain public offices, that is, President of India, Vice-President of India, judges of the Supreme Court and the high courts, governor of states, attorney general of India and advocate general of states.
- Along with the above rights, the citizens also owe certain duties towards the Indian State, as for example, paying taxes, respecting the national flag and national anthem, defending the country and soon.

Constitutional Provisions

The Constitution deals with the citizenship from Articles 5 to 11 under Part II. However, it contains neither any permanent nor any elaborate provisions in this regard. It only identifies the persons who became citizens of India at its commencement (i.e., on January 26, 1950) Accordingly, the Parliament has enacted the Citizenship Act, 1955, which has been amended in 1986, 1992, 2003 and 2005.
According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on 26 January, 1950:
A person who had his domicile in India and also fulfilled any one of the three conditions, viz., if he was born in India; or if either of his parents was born in India; or if he has been ordinarily resident in India for five years immediately before the commencement of the Constitution, became a citizen of India (Article 5).
A person who migrated to India from Pakistan became an Indian citizen if he or either of his parents or any of his grandparents was born in undivided India and also fulfilled any one of the two conditions viz., in case he migrated to India before July 19, 1948, he had been ordinarily resident in India since the date of his migration. (Article 6).
A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become an Indian citizen. For this, he had to be resident in India for six months preceding the date of his application for registration (Article 7).
A person who, or any of whose parents or grandparents, was born in undivided India but who is ordinarily residing outside India shall become an Indian citizen if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his residence, whether before or after the commencement of the Constitution. Thus, this provision covers the overseas Indians who may want to acquire Indian citizenship (Article 8).

To sum up, these provisions deal with the citizenship of (a) persons domiciled in India; (b) persons migrated from Pakistan; (c) persons migrated to Pakistan but later returned; and (d) persons of Indian origin residing outside India.
The other constitutional provisions with respect to the citizenship are as follows:
No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state (Article 9).

Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament (Article 10).
Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship (Article 11).

Citizenship Act, 1955

The Citizenship Act (1955) provides for acquisition and loss of citizenship after the commencement of the Constitution. This Act has been amended so far four times by the following Acts:

- The Citizenship (Amendment) Act, 1986.
- The Citizenship (Amendment) Act, 1992.
- The Citizenship (Amendment) Act, 2003.
- The Citizenship (Amendment) Act, 2005.

Acquisition of Citizenship

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

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

A person born in India on or after 1st July 1987 is considered as a citizen of India only if either of his parents is a citizen of India at the time of his birth.

Further, those born in India on or after 3rd December 2004 are considered citizens of India only if both of their parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of their birth.

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

A person born outside India on or after 10th December 1992 is considered as a citizen of India if either of his parents is a citizen of India at the time of his birth.

From 3rd December 2004 onwards, a person born outside India shall not be a citizen of India by descent, unless his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period.

By Registration The Central Government may, on an application, register as a citizen of India any person (not being an illegal migrant) if he belongs to any of the following categories, namely:-
a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;
a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
minor children of persons who are citizens of India;
a person of full age and capacity whose parents are registered as citizens of India;
a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;

a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration.

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

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

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

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

that during the fourteen years immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven years; that he is of good character; that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution, and

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

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

Loss of Citizenship

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

By Renunciation Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship. Upon the registration of that declaration, that person ceases to be a citizen of India. However, if such a declaration is made during a war in which India is engaged, its registration shall be withheld by the Central Government.

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

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

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

Fundamental Rights

Part III of the Constitution is rightly described as the *Magna Carta* of India. It contains a very long and comprehensive list of 'justiciable' Fundamental Rights. In fact, the Fundamental Rights in our Constitution are more elaborate than those found in the Constitution of any other country in the world, including the USA.

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

Originally, the Constitution provided for seven Fundamental Rights viz,

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

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

Table 7.1 *Fundamental Rights at a Glance*

Category	***Consists of***
1. Right to equality (Articles 14–18)	(a) Equality before law and equal protection of laws (Article 14). (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15). (c) Equality of opportunity in matters of public employment (Article 16). (d) Abolition of untouchability and prohibition of its practice (Article 17). (e) Abolition of titles except military and academic (Article 18).
2. Right to freedom (Articles 19–22)	(a) Protection of six rights regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19). (b) Protection in respect of conviction for offences (Article 20). (c) Protection of life and personal liberty (Article 21). (d) Right to elementary education (Article 21A). (e) Protection against arrest and detention in certain cases (Article 22).
3. Right against exploitation (Articles	(a) Prohibition of traffic in human beings and forced labour (Article 23). (b) Prohibition of employment of children in factories, etc. (Article 24).

23–24)	
4. Right to freedom of religion (Article 25–28)	(a) Freedom of conscience and free profession, practice and propagation of religion (Article 25). (b) Freedom to manage religious affairs (Article 26). (c) Freedom from payment of taxes for promotion of any religion (Article 27). (d) Freedom from attending religious instruction or worship in certain educational institutions (Article 28).
5. Cultural and educational rights (Articles 29–30)	(a) Protection of language, script and culture of minorities (Article 29). (b) Right of minorities to establish and administer educational institutions (Article 30).
6. Right to constitutional remedies (Article 32)	Right to move the Supreme Court for the enforcement of fundamental rights including the writs of (i) *habeas corpus*, (ii) *mandamus*, (iii) prohibition, (iv) *certiorari*, and (v) *quo warrento* (Article 32).

Right to Equality

Equality before Law and Equal Protection of Laws

Article 14 says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This provision confers rights on all persons whether citizens or foreigners. Moreover, the word 'person' includes legal persons, viz, statutory corporations, companies, registered societies or any other type of legal person.

The concept of 'equality before law' is of British origin while the concept of 'equal protection of laws' has been taken from the American Constitution. The first concept connotes: **(a)** the absence of any special privileges in favour of any person, **(b)** the equal subjection of all persons to the ordinary law of the land administered by ordinary law courts, and **(c)** no person (whether rich or poor, high or low, official or non-official) is above the law.

The second concept, on the other hand, connotes: **(a)** the equality of treatment under equal circumstances, both in the privileges conferred and liabilities imposed by the laws, **(b)** the similar application of the same laws to all persons who are similarly situated, and **(c)** the like should be treated alike without any discrimination.

Exceptions to Equality

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

The President of India and the Governor of States enjoy the following immunities (Article361):

The President or the Governor is not answerable to any court for the exercise and performance of the powers and duties of his office.

No criminal proceedings shall be instituted or continued against the President or the Governor in any court during his term of office.

No process for the arrest or imprisonment of the President or the Governor shall be issued from any court during his term of office.

No civil proceedings against the President or the Governor shall be instituted during his term of office in any court in respect of any act done by him in his personal capacity, whether before or after he entered upon his office, until the expiration of two months next after notice has been delivered to him.

No person shall be liable to any civil or criminal proceedings in any court in respect of the publication in a newspaper (or by radio or television) of a substantially true report of any proceedings of either House of Parliament or either House of the Legislature of a State (Article 361-A).

No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof (Article 105).

No member of the Legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof (Article 194).

Article 31-C is an exception to Article 14. It provides that the laws made by the state for implementing the Directive Principles contained in clause (b) or clause (c) of Article 39 cannot be challenged on the ground that they are violative of Article 14. The Supreme Court held that "where Article 31-C comes in, Article 14 goes out".

Prohibition of Discrimination on Certain Grounds

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

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

Creamy Layer

The children of the following different categories of people belong to 'creamy layer' among OBCs and thus will not get the quota benefit :

- Persons holding constitutional posts like President, Vice-President, Judges of SC and HCs, Chairman and Members of UPSC and SPSCs, CEC, CAG and so on.
- Group 'A' / Class I and Group 'B' / Class II Officers of the All India, Central and State Services; and Employees holding equivalent posts in PSUs, Banks, Insurance Organisations, Universities etc., and also in private employment.
- Persons who are in the rank of colonel and above in the Army and equivalent posts in the Navy, the Air Force and the Paramilitary Forces.
- Professionals like doctors, lawyers, engineers, artists, authors, consultants and so on.

- Persons engaged in trade, business and industry.
- People holding agricultural land above a certain limit and vacant land or buildings in urban areas.

Persons having gross annual income of more than 4.5 lakhs or possessing wealth above the exemption limit. In 1993, when the "creamy layer" ceiling was introduced, it was 1 lakh. It was subsequently revised to 2.5 lakh in 2004 and `4.5 lakh in 2008. Presently (2013), the proposal to raise creamy layer ceiling to 6 lakh a year is under consideration of the government.

Equality of Opportunity in Public Employment

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

Abolition of Untouchability

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

In 1976, the Untouchability (Offences) Act, 1955 has been comprehensively amended and renamed as the Protection of Civil Rights Act, 1955 to enlarge the scope and make penal provisions more stringent. The act defines civil right as any right accruing to a person by reason of the abolition of untouchability by Article 17 of the Constitution.

Under the Protection of Civil Rights Act (1955), the offences committed on the ground of untouchability are punishable either by imprisonment up to six months or by fine upto `500 or both. A person convicted of the offence of 'untouchability' is disqualified for election to the Parliament or state legislature. The act declares the following acts as offences:

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

Right to Freedom

Protection of Six Rights

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

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

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

These six rights are protected against only state action and not private individuals. Moreover, these rights are available only to the citizens and to shareholders of a company but not to foreigners or legal persons like companies or corporations, etc.

The State can impose 'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned in the Article 19 itself and not on any other grounds.

Freedom of Speech and Expression

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

Right to propagate one's views as well as views of others.
Freedom of the press.
Freedom of commercial advertisements.
Right against tapping of telephonic conversation.
Right to telecast, that is, government has no monopoly on electronic media.
Right against bundh called by a political party or organization.
Right to know about government activities.
Freedom of silence.
Right against imposition of pre-censorship on a newspaper.
Right to demonstration or picketing but not right to strike.

Freedom of Assembly

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

The State can impose reasonable restrictions on the exercise of right of assembly on two grounds, namely, sovereignty and integrity of India and public order including the maintenance of traffic in the area concerned.

Freedom of Association

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

Freedom of Movement

This freedom entitles every citizen to move freely throughout the territory of the country. He can move freely from one state to another or from one place to another within a state. This right underline the idea that India is one unit so far as the citizens are concerned. Thus, the purpose is to promote national feeling and not parochialism.

Freedom of Residence

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

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

Freedom of Profession, etc.

All citizens are given the right to practice any profession or to carry on any occupation, trade or business. This right is very wide as it covers all the means of earning one's livelihood.

The State can impose reasonable restrictions on the exercise of this right in the interest of the general public. Further, the State is empowered to:

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

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

Right to Education

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

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

Protection Against Arrest and Detention

Article 22 grants protection to persons who are arrested or detained. Detention is of two types, namely, punitive and preventive. **Punitive detention** is to punish a person for an offence committed by him after trial and conviction in a court. **Preventive detention**, on the other hand, means detention of a person without trial and conviction by a court. Its purpose is not to punish a person for a past offence but to prevent him from committing an offence in the near future. Thus, preventive detention is only a precautionary measure and based on suspicion.

The Article 22 has two parts—the first part deals with the cases of ordinary law and the second part deals with the cases of preventive detention law.

The first part of Article 22 confers the following rights on a person who is arrested or detained under an ordinary law:

- Right to be informed of the grounds of arrest.
- Right to consult and be defended by a legal practitioner.
- Right to be produced before a magistrate within 24 hours, excluding the journey time.
- Right to be released after 24 hours unless the magistrate authorises further detention.

The preventive detention laws made by the Parliament are:

- Preventive Detention Act, 1950. Expired in 1969.
- Maintenance of Internal Security Act (MISA), 1971. Repealed in 1978.
- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974.
- National Security Act (NASA), 1980.
- Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act (PBMSECA), 1980.
- Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985. Repealed in 1995.
- Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PITNDPSA), 1988.
- Prevention of Terrorism Act (POTA), 2002. Repealed in 2004.

Right Against Exploitation

Prohibition of Traffic in Human Beings and Forced Labour

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

The expression 'traffic in human beings' include (a) selling and buying of men, women and children like goods; (b) immoral traffic in women and children, including prostitution; (c)

devadasis; and (d) slavery. To punish these acts, the Parliament has made the Immoral Traffic (Prevention) Act 1956.

Prohibition of Employment of Children in Factories, etc.

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

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

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

Total Ban on Child Labour

In August 2012, the Union Cabinet approved a proposal to completely ban employment of children below 14 years in all occupations and processes.

The Child Labour (Prohibition & Regulation) Act, 1986, will be amended to incorporate the changes and will be renamed a Child and Adolescent Labour (Prohibition) Act. Giving more teeth to the Act, offences under it have been made cognizable and the punishment has been increased.

Right to Freedom of Religion

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

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

- *Freedom of conscience:* Inner freedom of an individual to mould his relation with God or Creatures in whatever way he desires.
- *Right to profess:* Declaration of one's religious beliefs and faith openly and freely.
- *Right to practice:* Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.
- *Right to propagate:* Transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion. But, it does not include a right to convert another person to one's own religion. Forcible conversions impinge on the 'freedom of conscience' guaranteed to all the persons alike.

From the above, it is clear that Article 25 covers not only religious beliefs (doctrines) but also religious practices (rituals). Moreover, these rights are available to all persons—citizens as well as non-citizens.

Freedom to Manage Religious Affairs

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

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

Right to Constitutional Remedies

A mere declaration of fundamental rights in the Constitution is meaningless, useless and worthless without providing effective machinery for their enforcement, if and when they are violated. Hence, Article 32 confers the right to remedies for the enforcement of the fundamental rights of an

aggrieved citizen. In other words, the right to get the Fundamental Rights protected is in itself a fundamental right. This makes the fundamental rights real. That is why Dr Ambedkar called Article 32 as the most important article of the Constitution—'an Article without which this constitution would be a nullity. It is the very soul of the Constitution and the very heart of it'. The Supreme Court has ruled that Article 32 is a basic feature of the Constitution. Hence, it cannot be abridged or taken away even by way of an amendment to the Constitution. It contains the following four provisions:

- The right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights is guaranteed.
- The Supreme Court shall have power to issue directions or orders or writs for the enforcement of any of the fundamental rights. The writs issued may include *habeas corpus, mandamus,* prohibition, *certiorari* and *quo-warranto.*
- Parliament can empower any other court to issue directions, orders and writs of all kinds. However, this can be done without prejudice to the above powers conferred on the Supreme Court. Any other court here does not include high courts because Article 226 has already conferred these powers on the high courts.
- The right to move the Supreme Court shall not be suspended except as otherwise provided for by the Constitution. Thus the Constitution provides that the President can suspend the right to move any court for the enforcement of the fundamental rights during a national emergency (Article 359).

Exceptions to Fundamental Rights

Saving of Laws Providing for Acquisition of Estates, etc.

Article 31A saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) and Article 19 (protection of six rights in respect of speech, assembly, movement, etc.). They are related to agricultural land reforms, industry and commerce and include the following:

- Acquisition of estates and related rights by the State;
- Taking over the management of properties by the State;
- Amalgamation of corporations;
- Extinguishment or modification of rights of directors or shareholders of corporations; and
- Extinguishment or modification of mining leases.

This Article also provides for the payment of compensation at market value when the state acquires the land held by a person under his personal cultivation and the land is within the statutory ceiling limit.

Validation of Certain Acts and Regulations

Article 31B saves the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the fundamental rights. Thus, the scope of Article 31B is wider than Article 31A. Article 31B immunises any law included in the Ninth Schedule from all the fundamental rights whether or not the law falls under any of the five categories specified in Article 31A.

Saving of Laws Giving Effect to Certain Directive Principles

Article 31C, as inserted by the 25th Amendment Act of 1971, contained the following two provisions:

- No law that seeks to implement the socialistic directive principles specified in Article 39(b)[21] or (c)[22] shall be void on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) or Article 19 (protection of six rights in respect of speech, assembly, movement, etc.)

- No law containing a declaration that it is for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

Criticism of Fundamental Rights

The Fundamental Rights enshrined in Part III of the Constitution have met with a wide and varied criticism. The arguments of the critics are:

Excessive Limitations

They are subjected to innumerable exceptions, restrictions, qualifications and explanations. Hence, the critics remarked that the Constitution grants Fundamental Rights with one hand and takes them away with the other. Jaspat Roy Kapoor went to the extent of saying that the chapter dealing with the fundamental rights should be renamed as 'Limitaions on Fundamental Rights' or ' Fundamental Rights and Limitations Thereon'.

No Social and Economic Rights

The list is not comprehensive as it mainly consists of political rights. It makes no provision for important social and economic rights like right to social security, right to work, right to employment, right to rest and leisure and so on. These rights are made available to the citizens of advanced democratic countries. Also, the socialistic constitutions of erstwhile USSR or China provided for such rights.

No Clarity

They are stated in a vague, indefinite and ambiguous manner. The various phrases and words used in the chapter like 'public order', 'minorities', 'reasonable restriction', 'public interest' and so on are not clearly defined. The language used to describe them is very complicated and beyond the comprehension of the common man. It is alleged that the Constitution was made by the lawyers for the lawyers. Sir Ivor Jennings called the Constitution of India a 'paradise for lawyers'.

No Permanency

They are not sacrosanct or immutable as the Parliament can curtail or abolish them, as for example, the abolition of the fundamental right to property in 1978. Hence, they can become a play tool in the hands of politicians having majority support in the Parliament. The judicially innovated 'doctrine of basic structure' is the only limitation on the authority of Parliament to curtail or abolish the fundamental right.

Suspension During Emergency

The suspension of their enforcement during the operation of National Emergency (except Articles 20 and 21) is another blot on the efficacy of these rights. This provision cuts at the roots of democratic system in the country by placing the rights of the millions of innocent people in continuous jeopardy. According to the critics, the Fundamental Rights should be enjoyable in all situations—Emergency or no Emergency.

Expensive Remedy

The judiciary has been made responsible for defending and protecting these rights against the interference of the legislatures and executives. However, the judicial process is too expensive and hinders the common man from getting his rights enforced through the courts. Hence, the critics say that the rights benefit mainly the rich section of the Indian Society.

Preventive Detention

The critics assert that the provision for preventive detention (Article 22) takes away the spirit and substance of the chapter on fundamental rights. It confers arbitrary powers on the State and negates individual liberty. It justifies the criticism that the Constitution of India deals more with the rights of the State against the individual than with the rights of the individual against the State. Notably,

no democratic country in the world has made preventive detention as an integral part of their Constitutions as has been made in India.

No Consistent Philosophy

According to some critics, the chapter on fundamental rights is not the product of any philosophical principle. Sir Ivor Jennings expressed this view when he said that the Fundamental Rights proclaimed by the Indian Constitution are based on no consistent philosophy.[25] The critics say that this creates difficulty for the Supreme Court and the high courts in interpreting the fundamental rights.

Significance of Fundamental Rights

In spite of the above criticism and shortcomings, the Fundamental Rights are significant in the following respects:

- They constitute the bedrock of democratic system in the country.
- They provide necessary conditions for the material and moral protection of man.
- They serve as a formidable bulwark of individual liberty.
- They facilitate the establishment of rule of law in the country.
- They protect the interests of minorities and weaker sections of society.
- They strengthen the secular fabric of the Indian State.
- They check the absoluteness of the authority of the government.
- They lay down the foundation stone of social equality and social justice.
- They ensure the dignity and respect of individuals.
- They facilitate the participation of people in the political and administrative process.

Directive principle of state policy

The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51. The Directive Principles along with the Fundamental Rights contain the philosophy of the Constitution and is the soul of the Constitution. Granville Austin has described the Directive Principles and the Fundamental Rights as the 'Conscience of the Constitution'.

Features of the Directive Principles

- The phrase 'Directive Principles of State Policy' denotes the ideals that the State should keep in mind while formulating policies and enacting laws. These are the constitutional instructions or recommendations to the State in legislative, executive and administrative matters. According to Article 36, the term 'State' in Part IV has the same meaning as in Part III dealing with Fundamental Rights. Therefore, 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 constitute a very comprehensive economic, social and political programme for a modern democratic State. They aim at realising the high ideals of justice, liberty, equality and fraternity as outlined in the Preamble to the Constitution. They embody the concept of a 'welfare state' and not that of a 'police state', which existed during the colonial era[3]. In brief, they seek to establish economic and social democracy 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 (Central, state and local) cannot be compelled to implement them. Nevertheless, the Constitution (Article 37) itself says that these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.
- The Directive Principles, though non-justiciable in nature, help the courts in examining and determining the constitutional validity of a law. The Supreme Court has ruled many a times that in determining the constitutionality of any law, if a court finds that the law in question seeks to give effect to a Directive Principle, it may consider such law to be

'reasonable' in relation to Article 14 (equality before law) or Article 19 (six freedoms) and thus save such law from unconstitutionality.

Classification of the Directive Principles

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

Socialistic Principles

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

- To promote the welfare of the people by securing a social order permeated by justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities (Article 38).
- To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for the common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children[5] (Article 39).
- To promote equal justice and to provide free legal aid to the poor[6] (Article 39 A).
- To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (Article 41).
- To make provision for just and humane conditions for work and maternity relief (Article 42).
- To secure a living wage, a decent standard of life and social and cultural opportunities for all workers (Article 43).
- To take steps to secure the participation of workers in the management of industries [8] (Article 43 A).
- To raise the level of nutrition and the standard of living of people and to improve public health (Article 47).

Gandhian Principles

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

- To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (Article 40).
- To promote cottage industries on an individual or co-operation basis in rural areas (Article 43).
- To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies[8a] (Article 43B).
- To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation (Article 46).
- To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47).
- To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (Article 48).

Liberal–Intellectual Principles

The principles included in this category repre-sent the ideology of liberalism. They direct the state:

- To secure for all citizens a uniform civil code throughout the country (Article 44).
- To provide early childhood care and education for all children until they complete the age of six years[9] (Article 45).

- To organise agriculture and animal husbandry on modern and scientific lines (Article 48).
- To protect and improve the environment and to safeguard forests and wild life [10] (Article 48 A).
- To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance (Article 49).
- To separate the judiciary from the executive in the public services of the State (Article 50).
- To promote international peace and security and maintain just and honorable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration (Article 51).

New Directive Principles

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

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

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

Implementation of Directive Principles

Since 1950, the successive governments at the Centre and in the states have made several laws and formulated various programmes for implementing the Directive Principles. These are mentioned below:

- The Planning Commission was established in 1950 to take up the development of the countryin a planned manner. The successive Five Year Plans aimed at securing socio-economic justice and reducing inequalities of income, status and opportunities.
- Almost all the states have passed land reform laws to bring changes in the agrarian society and to improve the conditions of the rural masses. These measures include **(a)** abolition of intermediaries like zamindars, jagirdars, inamdars, etc; **(b)** tenancy reforms like security of tenure, fair rents, etc; **(c)** imposition of ceilings on land holdings; **(d)** distribution of surplus land among the landless labourers; and **(e)** cooperative farming.
- The Minimum Wages Act (1948), the Payment of Wages Act (1936), the Payment of Bonus Act (1965), the Contract Labour Regulation and Abolition Act (1970), the Child Labour Prohibition and Regulation Act (1986), the Bonded Labour System Abolition Act (1976), the Trade Unions Act (1926), the Factories Act (1948), the Mines Act (1952), the Industrial Disputes Act (1947), the Workmen's Compensation Act (1923) and so on have been enacted to protect the interests of the labour sections. In 2006, the government banned the child labour.
- The Maternity Benefit Act (1961) and the Equal Remuneration Act (1976) have been made to protect the interests of women workers.
- Various measures have been taken to utilise the financial resources for promoting the common good.These include nationalisation of life insurance (1956), the nationalisation of fourteen leading commercial banks (1969), nationalisation of general insurance (1971), abolition of Privy Purses (1971) and so on.
- The Legal Services Authorities Act (1987) has established a nation-wide network to provide free and competent legal aid to the poor and to organise lok adalats for promoting equal justice. Lok adalat is a statutory forum for conciliatory settlement of legal disputes. It has

been given the status of a civil court. Its awards are enforceable, binding on the parties and final as no appeal lies before any court against them.

- Khadi and Village Industries Board, Khadi and Village Industries Commission, Small-Scale Industries Board, National Small Industries Corporation, Handloom Board, Handicrafts Board, Coir Board, Silk Board and so on have been set up for the development of cottage industries in rural areas.
- The Community Development Programme (1952), Hill Area Development Programme (1960), Drought-Prone Area Programme (1973), Minimum Needs Programme (1974), Integrated Rural Development Programme (1978), Jawahar Rozgar Yojana (1989), Swarnajayanti Gram Swarozgar Yojana (1999), Sampoorna Grameena Rozgar Yojana (2001), National Rural Employment Guarantee Programme (2006) and so on have been launched for raising the standard of living of people.
- The Wildlife (Protection) Act, 1972 and the Forest (Conservation) Act, 1980, have been enacted to safeguard the wildlife and the forests respectively. Further, the Water and Air Acts have provided for the establishment of the Central and State Pollution Control Boards, which are engaged in the protection and improvement of environment. The National Forest Policy (1988) aims at the protection, conservation and development of forests.
- Agriculture has been modernised by providing improved agricultural inputs, seeds, fertilisers and irrigation facilities. Various steps have also been taken to organise animal husbandry on modern and scientific lines.
- Three-tier panchayati raj system (at village, taluka and zila levels) has been introduced to translate into reality Gandhiji's dream of every village being a republic. The 73rd Amendment Act (1992) has been enacted to provide constitutional status and protection to these panchayati raj institutions.
- Seats are reserved for SCs, STs and other weaker sections in educational institutions, government services and representative bodies. The Untouchability (Offences) Act, 1955, which was renamed as the Protection of Civil Rights Act in 1976 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, have been enacted to protect the SCs and STs from social injustice and exploitation. The 65th Constitutional Amendment Act of 1990 established the National Commission for Scheduled Castes and Scheduled Tribes to protect the interests of SCs and STs. The 89 th Constitutional Amendment Act of 2003 bifurcated this combined commission into two separate bodies, namely, National Commission for Schedule Castes and National Commission for Schedule Tribes.
- The Criminal Procedure Code (1973) separated the judiciary from the executive in the public services of the state. Prior to this separation, the district authorities like the collector, the sub-divisional officer, the tehsildar and so on used to exercise judicial powers along with the traditional executive powers. After the separation, the judicial powers were taken away from these executive authorities and vested in the hands of district judicial magistrates who work under the direct control of the state high court.
- The Ancient and Historical Monument and Archaeological Sites and Remains Act (1951) has been enacted to protect the monuments, places and objects of national importance.
- Primary health centres and hospitals have been established throughout the country to improve the public health. Also, special programmes have been launched to eradicate widespread diseases like malaria, TB, leprosy, AIDS, cancer, filaria, kala-azar, guineaworm, yaws, Japanese encephalitis and so on.

- Laws to prohibit the slaughter of cows, calves, and bullocks have been enacted in some states.
- Some states have initiated the old age pension schemes for people above 65 years.
- India has been following the policy of non-alignment and panchsheel to promote international peace and security.

In spite of the above steps by the Central and state governments, the Directive Principles have not been implemented fully and effectively due to several reasons like inadequate financial resources, unfavourable socio-economic conditions, population explosion, strained Centre-state relations and so on.

Fundamental duties:

Though the rights and duties of the citizens are correlative and inseparable, the original constitution contained only the fundamental rights and not the fundamental duties. In other words, the framers of the Constitution did not feel it necessary to incorporate the fundamental duties of the citizens in the Constitution. However, they incorporated the duties of the State in the Constitution in the form of Directive Principles of State Polity. Later in 1976, the fundamental duties of citizens were added in the Constitution. In 2002, one more Fundamental Duty was added. The Fundamental Duties in the Indian Constitution are inspired by the Constitution of erstwhile USSR. Notably, none of the Constitutions of major democratic countries like USA, Canada, France, Germany, Australia and so on specifically contain a list of duties of citizens. Japanese Constitution is, perhaps, the only democratic Constitution in world which contains a list of duties of citizens. The socialist countries, on the contrary, gave equal importance to the fundamental rights and duties of their citizens. Hence, the Constitution of erstwhile USSR declared that the citizen's exercise of their rights and freedoms was inseparable from the performance of their duties and obligations.

List of Fundamental Duties

According to Article 51 A, it shall be the duty of every citizen of India:

- to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- to cherish and follow the noble ideals that inspired the national struggle for freedom;
- to uphold and protect the sovereignty, unity and integrity of India;
- to defend the country and render national service when called upon to do so;
- to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
- to value and preserve the rich heritage of the country's composite culture;
- to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;
- to develop scientific temper, humanism and the spirit of inquiry and reform;
- to safeguard public property and to abjure violence;
- to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and
- to provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

Features of the Fundamental Duties

Following points can be noted with regard to the characteristics of the Fundamental Duties:

- Some of them are moral duties while others are civic duties. For instance, cherishing noble ideals of freedom struggle is a moral precept and respecting the Constitution, National Flag and National Anthem is a civic duty.

- They refer to such values which have been a part of the Indian tradition, mythology, religions and practices. In other words, they essentially contain just a codification of tasks integral to the Indian way of life.
- Unlike some of the Fundamental Rights which extend to all persons whether citizens or foreigners, the Fundamental Duties are confined to citizens only and do not extend to foreigners.
- Like the Directive Principles, the fundamental duties are also non-justiciable. The Constitution does not provide for their direct enforcement by the courts. Moreover, there is not legal sanction against their violation. However, the Parliament is free to enforce them by suitable legislation.

Significance of Fundamental Duties

In spite of criticisms and opposition, the fundamental duties are considered significant from the following viewpoints:

- They serve as a reminder to the citizens that while enjoying their rights, they should also be conscious of duties they owe to their country, their society and to their fellow citizens.
- They serve as a warning against the anti-national and antisocial activities like burning the national flag, destroying public property and so on.
- They serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them. They create a feeling that the citizens are not mere spectators but active participants in the realisation of national goals.
- They help the courts in examining and determining the constitutional validity of a law. In 1992, the Supreme Court ruled that in determining the constitutionality of any law, if a court finds that the law in question seeks to give effect to a fundamental duty, it may consider such law to be 'reasonable' in relation to Article 14 (equality before law) or Article 19 (six freedoms) and thus save such law from unconstitutionality.
- They are enforceable by law. Hence, the Parliament can provide for the imposition of appropriate penalty or punishment for failure to fulfil any of them.

Procedure for Amendment

Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure. It states that the Parliament may, in exercise of its constituent power, amend by way of addition, variation or repeal any provision of the Constitution in accordance with the procedure laid down for the purpose. However, the Parliament cannot amend those provisions which form the 'basic structure' of the Constitution.

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

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

- After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
- The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament.[2]
- After the president's assent, the bill becomes an Act (i.e., a constitutional amen-dment act) and the Constitution stands amended in accordance with the terms of the Act.

Types of Amendments

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

Therefore, the Constitution can be amended in three ways:

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

By Simple Majority of Parliament

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

- Admission or establishment of new states.
- Formation of new states and alteration of areas, boundaries or names of existing states.
- Abolition or creation of legislative councils in states.
- Second Schedule—emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
- Quorum in Parliament.
- Salaries and allowances of the members of Parliament.
- Rules of procedure in Parliament.
- Privileges of the Parliament, its members and its committees.
- Use of English language in Parliament.
- Number of puisne judges in the Supreme Court.
- Conferment of more jurisdiction on the Supreme Court.
- Use of official language and Citizenship—acquisition and termination.

By Special Majority of Parliament

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

'Strictly speaking, the special majority is required only for voting at the third reading stage of the bill but by way of abundant caution the requirement for special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill'[3].

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

By Special Majority of Parliament and Consent of States

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

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

Unit III: Union Government

President

Articles 52 to 78 in Part V of the Constitution deal with the Union executive.
The Union executive consists of the President, the Vice-President, the Prime Minister, the council of ministers and the attorney general of India. The President is the head of the Indian State. He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

Election of the President

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

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

The nominated members of both of Houses of Parliament, the nominated members of the state legislative assemblies, the members (both elected and nominated) of the state legislative councils (in case of the bicameral legislature) and the nominated members of the Legislative Assemblies of Delhi and Puducherry do not participate in the election of the President. Where an assembly is dissolved, the members cease to be qualified to vote in presidential election, even if fresh elections to the dissolved assembly are not held before the presidential election.
The Constitution provides that there shall be uniformity in the scale of representation of different states as well as parity between the states as a whole and the Union at the election of the President.

Qualifications for Election as President

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

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

Conditions of President's Office

The Constitution lays down the following conditions of the President's office:

He should not be a member of either House of Parliament or a House of the state legislature.
If any such person is elected as President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as President.
He should not hold any other office of profit.
He is entitled, without payment of rent, to the use of his official residence

He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.

His emoluments and allowances cannot be diminished during his term of office.

Term of President's office

The President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the Vice-President. Further, he can also be removed from the office before completion of his term by the process of impeachment.The President can hold office beyond his term of five years until his successor assumes charge. He is also eligible for re-election to that office. He may be elected for any number of terms. However, in USA, a person cannot be elected to the office of the President more than twice.

Impeachment of President

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

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

No President has so far been impeached.

Vacancy in the President's Office

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

On the expiry of his tenure of five years.

By his resignation.

On his removal by the process of impeachment.

By his death.

When the vacancy is going to be caused by the expiration of the term of the sitting President, an election to fill the vacancy must be held before the expiration of the term. In case of any delay in conducting the election of new President by any reason, the outgoing President continues to hold office (beyond his term of five years) until his successor assumes charge. This is provided by the Constitution in order to prevent an 'interregnum'. In this situation, the Vice-President does not get the opportunity to act as President or to discharge the functions of the President.

If the office falls vacant by resignation, removal, death or otherwise, then election to fill the vacancy should be held within six months from the date of the occurrence of such a vacancy. The newly-elected President remains in office for a full term of five years from the date he assumes charge of his office.

When a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise, the Vice-President acts as the President until a new President is elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

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

When any person, ie, Vice-President, chief justice of India, or the senior most judge of the Supreme Court is acting as the President or discharging the functions of the President, he enjoys all the powers and immunities of the President and is entitled to such emoluments, allowances and privileges as are determined by the Parliament.

Powers and Functions of the President

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

Executive powers
Legislative powers
Financial powers
Judicial powers
Diplomatic powers
Military powers
Emergency powers

Executive Powers

The executive powers and functions of the President are:

All executive actions of the Government of India are formally taken in his name.

He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated.

He can make rules for more convenient transaction of business of the Union government, and for allocation of the said business among the ministers.

He appoints the prime minister and the other ministers. They hold office during his pleasure.

He appoints the attorney general of India and determines his remuneration. The attorney general holds office during the pleasure of the President.

He appoints the comptroller and auditor general of India, the chief election com-missioner and other election commissioners, the chairman and members of the Union Public Service Commission, the governors of states, the chairman and members of finance commission.

He can seek any information relating to the administration of affairs of the Union, and proposals for legislation from the prime minister.

He can require the Prime Minister to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council.

He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.

He can appoint an inter-state council to promote Centre–state and inter-state cooperation.

He directly administers the union territories through administrators appointed by him.

He can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.

Legislative Powers

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

He can address the Parliament at the commencement of the first session after each general election and the first session of each year.

He can send messages to the Houses of Parliament, whether with respect to a bill pending in the Parliament or otherwise.

He can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he can also appoint

any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.

He nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.

He can nominate two members to the Lok Sabha from the Anglo-Indian Community.

He decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission.

His prior recommendation or permission is needed to introduce certain types of bills in the Parliament.

He can promulgate ordinances when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. He can also withdraw an ordinance at any time.

He lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.

He can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu.

Financial Powers

The financial powers and functions of the President are:

Money bills can be introduced in the Parliament only with his prior recommendation.

He causes to be laid before the Parliament the annual financial statement (ie, the Union Budget).

No demand for a grant can be made except on his recommendation.

He can make advances out of the contingency fund of India to meet any unforeseen expenditure.

He constitutes a finance commission after every five years to recommend the distribution of revenues between the Centre and the states.

Judicial Powers

The judicial powers and functions of the President are:

He appoints the Chief Justice and the judges of Supreme Court and high courts.

He can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.

He can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence:

In all cases where the punishment or sentence is by a court martial;

In all cases where the punishment or sentence is for an offence against a Union law; and

In all cases where the sentence is a sentence of death.

Diplomatic Powers

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

Military Powers

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

Emergency Powers

In addition to the normal powers mentioned above, the Constitution confers extraordinary powers on the President to deal with the following three types of emergencies:
National Emergency (Article 352);
President's Rule (Article 356 & 365);
Financial Emergency (Article 360)

Veto power of the president

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

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

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

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

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

Ordinance making power of the president

Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament. These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws. The ordinance-making power is the most important legislative power of the President. It has been vested in him to deal with unforeseen or urgent matters.

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

Pardoning power of the president

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

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

The pardoning power of the President is independent of the Judiciary; it is an executive power. But, the President while exercising this power, does not sit as a court of appeal. The object of conferring this power on the President is two-fold: (a) to keep the door open for correcting any judicial errors in the operation of law; and, (b) to afford relief from a sentence, which the President regards as unduly harsh.

Constitutional position of the president

The Constitution of India has provided for a parliamentary form of government. Consequently, the President has been made only a nominal executive; the real executive being the council of ministers headed by the prime minister. In other words, the President has to exercise his powers and

functions with the aid and advise of the council of ministers headed by the prime minister. In estimating the constitutional position of the President, particular reference has to be made to the provisions of Articles 53, 74 and 75. These are:

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

There shall be a council of ministers with the Prime Minister at the head to aid and advise the President who 'shall', in the exercise of his functions, act in accordance with such advice (Article 74).

The council of ministers shall be collectively responsible to the Lok Sabha (Article 75). This provision is the foundation of the parliamentary system of government.

Though the President has no constitutional discretion, he has some situational discretion. In other words, the President can act on his discretion under the following situations:

Appointment of Prime Minister when no party has a clear majority in the Lok Sabha or when the Prime Minister in office dies suddenly and there is no obvious successor.

Dismissal of the council of ministers when it cannot prove the confidence of the Lok Sabha.

Dissolution of the Lok Sabha if the council of ministers has lost its majority.

Vice President:

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

Election

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

It consists of both elected and nominated members of the Parliament.

It does not include the members of the state legislative assemblies

But, the manner of election is same in both the cases. Thus, the Vice-President's election, like that of the President's election, is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot.

Qualifications

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

He should be a citizen of India.

He should have completed 35 years of age.

He should be qualified for election as a member of the Rajya Sabha.

He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

Conditions office

The Constitution lays down the following two conditions of the Vice-President's office:

He should not be a member of either House of Parliament or a House of the state legislature.

If any such person is elected Vice-President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

He should not hold any other office of profit.

Term of office

The Vice-President holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the President. He can also be removed from the office before completion of his term. A formal impeachment is not required for his removal. He can be removed by a resolution of the Rajya

Sabha passed by an absolute majority (ie, a majority of the total members of the House) and agreed to by the Lok Sabha. But, no such resolution can be moved unless at least 14 days' advance notice has been given. Notably, no ground has been mentioned in the Constitution for his removal.

The Vice-President can hold office beyond his term of five years until his successor assumes charge. He is also eligible for re-election to that office. He may be elected for any number of terms.

Vacancy in office

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

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

When the vacancy is going to be caused by the expiration of the term of the sitting vice-president, an election to fill the vacancy must be held before the expiration of the term.

Powers and Functions

The functions of Vice-President are two-fold:

He acts as the *ex-officio* Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American vice-president who also acts as the Chairman of the Senate—the Upper House of the American legislature.

He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise.[7] 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.

Prime Minister:

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

Oath, Term and Salary

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

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

Powers and Functions of the Prime Minister

He recommends persons who can be appointed as ministers by the president. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
He allocates and reshuffles various portfolios among the ministers.
He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.

He presides over the meeting of council of ministers and influences its decisions.

He guides, directs, controls, and coordinates the activities of all the ministers.

He can bring about the collapse of the council of ministers by resigning from office.

Since the Prime Minister stands at the head of the council of ministers, the other ministers cannot function when the Prime Minister resigns or dies. In other words, the resignation or death of an incumbent Prime Minister automatically dissolves the council of ministers and thereby generates a vacuum. The resignation or death of any other minister, on the other hand, merely creates a vacancy which the Prime Minister may or may not like to fill.

In Relation to the President

The Prime Minister enjoys the following powers in relation to the President:

He is the principal channel of communication between the President and the council of ministers. It is the duty of the prime minister :

to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;

to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

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

In Relation to Parliament

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

He advises the President with regard to summoning and proroguing of the sessions of the Parliament.

He can recommend dissolution of the Lok Sabha to President at any time.

He announces government policies on the floor of the House.

Other Powers & Functions

In addition to the above-mentioned three major roles, the Prime Minister has various other roles. These are:

He is the chairman of the Planning Commission, National Development Council, National Integration Council, Inter-State Council and National Water Resources Council.

He plays a significant role in shaping the foreign policy of the country.

He is the chief spokesman of the Union government.

He is the crisis manager-in-chief at the political level during emergencies.

As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.

He is leader of the party in power.

He is political head of the services.

Relationship with the President

The following provisions of the Constitution deal with the relationship between the President and the Prime Minister:

Article 74 There shall be a council of ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. However, the President may require the council of ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.

Article 75 (a) The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the president on the advice of the Prime Minister; (b) The ministers shall hold office during the pleasure of the president; and (c) The council of ministers shall be collectively responsible to the House of the People.

Article 78 It shall be the duty of the Prime Minister: to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation; to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

Council of Ministers

The principles of parliamentary system of government are not detailed in the Constitution, but two Articles (74 and 75) deal with them in a broad, sketchy and general manner. 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.

Constitutional Provisions

Article 74—Council of Ministers to aid and advise President

There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. However, the President may require the Council of Ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.

The advice tendered by Ministers to the President shall not be inquired into in any court.

Article 75—Other Provisions as to Ministers

The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. The provision was added by the 91st Amendment Act of 2003.

A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.

The ministers shall hold office during the pleasure of the President.

The council of ministers shall be collectively responsible to the Lok Sabha.

The President shall administer the oaths of office and secrecy to a minister.

A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.

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

Article 77—Conduct of Business of the Government of India

All executive action of the Government of India shall be expressed to be taken in the name of the President.

Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President.

Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

Article 78—Duties of Prime Minister

It shall be the duty of the Prime Minister

To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation

To furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for

If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council

Appointment of Ministers

The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister. This means that the President can appoint only those persons as ministers who are recommended by the Prime minister.

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

A minister who is a member of one House of Parliament has the right to speak and to take part in the proceedings of the other House also, but he can vote only in the House of which he is a member.

Oath of Ministers

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

to bear true faith and allegiance to the Constitution of India,

to uphold the sovereignty and integrity of India,

to faithfully and conscientiously discharge the duties of his office, and

to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

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

Responsibility of Ministers

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha. This means that all the ministers own joint responsibility to the Lok Sabha for all their acts of ommission and commission. They work as a team and swim or sink together. When the Lok Sabha passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the Rajya Sabha.[3] Alternatively, the council of ministers can advise the president to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The President may not oblige the council of ministers that has lost the confidence of the Lok Sabha.

The principle of collective responsibility also means that the Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting. It is the duty of every minister to stand by cabinet decisions and support them both within and outside the Parliament. If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign. Several ministers have resigned in the past owing to their differences with the cabinet.

Individual Responsibility

Article 75 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the president, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha. However, the President removes a minister only on the advice of the Prime Minister. In case of a difference of opinion or dissatisfaction with the performance of a minister, the Prime Minister can ask him to resign or advice the President to dismiss him. By exercising this power, the Prime Minister can ensure the realization of the rule of collective responsibility.

No Legal Responsibility

In Britain, every order of the King for any public act is countersigned by a minister. If the order is in violation of any law, the minister would be held responsible and would be liable in the court. The legally accepted phrase in Britain is, "The king can do no wrong." Hence, he cannot be sued in any court.

In India, on the other hand, there is no provision in the Constitution for the system of legal responsibility of a minister. It is not required that an order of the President for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the president.

Role of Cabinet

It is the highest decision-making authority in our politico-administrative system.
It is the chief policy formulating body of the Central government.
It is the supreme executive authority of the Central government.
It is chief coordinator of Central administration.
It is an advisory body to the president and its advice is binding on him.
It is the chief crisis manager and thus deals with all emergency situations.
It deals with all major legislative and financial matters.
It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.
It deals with all foreign policies and foreign affairs.

Kitchen Cabinet

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

Every prime minister in India has had his 'Inner Cabinet'—a circle within a circle. Prime Minister Jawaharlal Nehru's 'Inner Cabinet' consisted of Sardar Patel, Maulana Azad, Gopalaswamy Ayyangar, and Kidwai. Lal Bahadur Shastri relied upon YB Chavan, Swaran Singh, and GL Nanda. During the era of Indira Gandhi, the 'Inner Cabinet' which came to be called the 'Kitchen Cabinet' was particularly powerful and consisted of persons like YB Chavan, Uma Shanker Dixit, Fakhruddin Ali Ahmed, Dr Karan Singh and others. AB Vajpayee's 'inner cabinet' consisted of LK Advani, George Fernandes, MM Joshi, Pramod Mahajan, and so on.

Cabinet Committees:

The following are the features of Cabinet Committees:

They are extra-constitutional in emergence. In other words, they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.

They are of two types—standing and *ad hoc*. The former are of a permanent nature while the latter are of a temporary nature. The *ad hoc* committees are constituted from time to time to deal with special problems. They are disbanded after their task is completed.[1]

They are set up by the Prime Minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature, and composition varies from time to time.

Their membership varies from three to eight. They usually include only Cabinet Ministers. However, the non-cabinet Ministers are not debarred from their membership.

They not only include the Ministers in charge of subjects covered by them but also include other senior Ministers.

They are mostly headed by the Prime Minister. Some times other Cabinet Ministers, particularly the Home Minister or the Finance Minister, also acts as their Chairman. But, in case the Prime Minister is a member of a committee, he invariably presides over it.

They not only sort out issues and formulate proposals for the consideration of the Cabinet, but also take decisions. However, the Cabinet can review their decisions.

They are an organisational device to reduce the enormous workload of the Cabinet. They also facilitate in-depth examination of policy issues and effective coordination. They are based on the principles of division of labour and effective delegation.

List of Cabinet Committees

In 1994, there were the following 13 Cabinet Committees:

Cabinet Committee on Political Affairs
Cabinet Committee on Natural Calamities
Cabinet Committee on Parliamentary Affairs
Appointments Committee of the Cabinet
Cabinet Committee on Accommodation
Cabinet Committee on Foreign Investment
Cabinet Committee on Drug Abuse Control
Cabinet Committee on Prices
Cabinet Committee on Minority Welfare
Cabinet Committee on Economic Affairs
Cabinet Committee on Trade and Investment
Cabinet Committee on Expenditure
Cabinet Committee on Infrastructure
Cabinet Committee on Economic Affairs
Cabinet Committee on Prices
Cabinet Committee on Political Affairs
Appointments Committee of the Cabinet
Cabinet Committee on Security
Cabinet Committee on World Trade Organisation (WTO) Matters
Cabinet Committee on Investment
Cabinet Committee on Unique Identification Authority of India (UIDAI) related issues
Cabinet Committee on Parliamentary Affairs
Cabinet Committee on Accommodation

Functions of cabinet committees

The following four are the more important cabinet committees:

The Political Affairs Committee deals with all policy matters pertaining to domestic and foreign affairs.

The Economic Affairs Committee directs and coordinates the governmental activities in the economic sphere.

Appointments Committee decides all higher level appointments in the Central Secretariat, Public Enterprises, Banks and Financial Institutions.

Parliamentary Affairs Committee looks after the progress of government business in the Parliament.

The first three committees are chaired by the Prime Minister and the last one by the Home Minister. Of all the Cabinet Committees, the most powerful is the Political Affairs Committee, often described as a "Super-Cabinet".

Parliament:

The Parliament is the legislative organ of the Union government. It occupies a pre-eminent and central position in the Indian democratic political system due to adoption of the parliamentary form of government, also known as 'Westminster' model of government.

Articles 79 to 122 in Part V of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the Parliament.

Organization of Parliament

Under the Constitution, the Parliament of India consists of three parts viz, the President, the Council of States and the House of the People. In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively. The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House). The former represents the states and union territories of the Indian Union, while the latter represents the people of India as a whole.

Composition of Rajya Sabha

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

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

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

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

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

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

Composition of Lok Sabha

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

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

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

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

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

Duration of Rajya Sabha

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

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

Duration of Lok Sabha

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

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

Presiding officers of Parliament

Each House of Parliament has its own presiding officer. There is a Speaker and a Deputy Speaker for the Lok Sabha and a Chairman and a Deputy Chairman for the Rajya Sabha. A panel of chairpersons for the Lok Sabha and a panel of vice-chairpersons for the Rajya Sabha is also appointed.

Speaker of Lok Sabha

Election and Tenure The Speaker is elected by the Lok Sabha from amongst its members (as soon as may be, after its first sitting). Whenever the office of the Speaker falls vacant, the Lok Sabha elects another member to fill the vacancy. The date of election of the Speaker is fixed by the President.

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

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

When a resolution for the removal of the Speaker is under consideration of the House, he cannot preside at the sitting of the House, though he may be present. However, he can speak and take part in the proceedings of the House at such a time and vote in the first instance, though not in the case of an equality of votes.

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

Roles, Powers and Functions

The Speaker is the head of the Lok Sabha, and its representative. He is the guardian of powers and privileges of the members, the House as a whole and its committees. He is the principal spokesman of the House, and his decision in all Parliamentary matters is final. He is thus much more than merely the presiding officer of the Lok Sabha. In these capacities, he is vested with vast, varied and vital responsibilities and enjoys great honour, high dignity and supreme authority within the House.

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

He maintains order and decorum in the House for conducting its business and regulating its proceedings. This is his primary responsibility and he has final power in this regard.

He is the final interpreter of the provisions of (a) the Constitution of India, (b) the Rules of Procedure and Conduct of Business of Lok Sabha, and (c) the parliamentary precedents, within the House.

He adjourns the House or suspends the meeting in absence of a quorum. The quorum to constitute a meeting of the House is one-tenth of the total strength of the House.

He does not vote in the first instance. But he can exercise a casting vote in the case of a tie. In other words, only when the House is divided equally on any question, the Speaker is entitled to vote. Such vote is called casting vote, and its purpose is to resolve a deadlock.

He presides over a joint setting of the two Houses of Parliament. Such a sitting is summoned by the President to settle a deadlock between the two Houses on a bill.

He can allow a 'secret' sitting of the House at the request of the Leader of the House. When the House sits in secret, no stranger can be present in the chamber, lobby or galleries except with the permission of the Speaker.

He decides whether a bill is a money bill or not and his decision on this question is final. When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the President for assent, the Speaker endorses on the bill his certificate that it is a money bill.

He decides the questions of disqualification of a member of the Lok Sabha, arising on the ground of defection under the provisions of the Tenth Schedule. In 1992, the Supreme Court ruled that
the decision of the Speaker in this regard is subject to judicial review.
He acts as the *ex-officio* chairman of the Indian Parliamentary Group of the Inter-Parliamentary Union. He also acts as the *ex-officio* chairman of the conference of presiding officers of legislative bodies in the country.
He appoints the chairman of all the parliamentary committees of the Lok Sabha and supervises their functioning. He himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

Independence and Impartiality

As the office of the Speaker is vested with great prestige, position and authority, independence and impartiality becomes its *sine qua non.*

The following provisions ensure the independence and impartiality of the office of the Speaker:

He is provided with a security of tenure. He can be removed only by a resolution passed by the Lok Sabha by an absolute majority (ie, a majority of the total members of the House) and not by an ordinary majority (ie, a majority of the members present and voting in the House). This motion of removal can be considered and discussed only when it has the support of at least 50 members.
His salaries and allowances are fixed by Parliament. They are charged on the Consolidated Fund of India and thus are not subject to the annual vote of Parliament.
His work and conduct cannot be discussed and criticised in the Lok Sabha except on a substantive motion.
His powers of regulating procedure or conducting business or maintaining order in the House are not subject to the jurisdiction of any Court.
He cannot vote in the first instance. He can only exercise a casting vote in the event of a tie. This makes the position of Speaker impartial.
He is given a very high position in the order of precedence. He is placed at seventh rank, along with the Chief Justice of India. This means, he has a higher rank than all cabinet ministers, except the Prime Minister or Deputy Prime Minister.

In Britain, the Speaker is strictly a non-party man. There is a convention that the Speaker has to resign from his party and remain politically neutral. This healthy convention is not fully established in India where the Speaker does not resign from the membership of his party on his election to the exalted office.

Deputy Speaker of Lok Sabha

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

Like the Speaker, the Deputy Speaker remains in office usually during the life of the Lok Sabha. However, he may vacate his office earlier in any of the following three cases:

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

The Deputy Speaker performs the duties of the Speaker's office when it is vacant. He also acts as the Speaker when the latter is absent from the sitting of the House. In both the cases, he assumes

all the powers of the Speaker. He also presides over the joint sitting of both the Houses of Parliament, in case the Speaker is absent from such a sitting.

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

The Deputy Speaker has one special privilege, that is, whenever he is appointed as a member of a parliamentary committee, he automatically becomes its chairman.

Like the Speaker, the Deputy Speaker, while presiding over the House, cannot vote in the first instance; he can only exercise a casting vote in the case of a tie. Further, when a resolution for the removal of the Deputy Speaker is under consideration of the House, he cannot preside at the sitting of the House, though he may be present.

Chairman of Rajya Sabha

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

The Chairman of the Rajya Sabha can be removed from his office only if he is removed from the office of the Vice-President. As a presiding officer, the powers and functions of the Chairman in the Rajya Sabha are similar to those of the Speaker in the Lok Sabha. However, the Speaker has two special powers which are not enjoyed by the Chairman:

The Speaker decides whether a bill is a money bill or not and his decision on this question is final.

The Speaker presides over a joint sitting of two Houses of Parliament.

Unlike the Speaker (who is a member of the House), the Chairman is not a member of the House. But like the Speaker, the Chairman also cannot vote in the first instance. He too can cast a vote in the case of an equality of votes.

The Vice-President cannot preside over a sitting of the Rajya Sabha as its Chairman when a resolution for his removal is under consideration. However, he can be present and speak in the House and can take part in its proceedings, without voting, even at such a time (while the Speaker can vote in the first instance when a resolution for his removal is under consideration of the Lok Sabha).

Deputy Chairman of Rajya Sabha

The Deputy Chairman is elected by the Rajya Sabha itself from amongst its members. Whenever the office of the Deputy Chairman falls vacant, the Rajya Sabha elects another member to fill the vacancy. The Deputy Chairman vacates his office in any of the following three cases:

if he ceases to be a member of the Rajya Sabha;

if he resigns by writing to the Chairman; and

if he is removed by a resolution passed by a majority of all the members of the Rajya Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

The Deputy Chairman performs the duties of the Chairman's office when it is vacant or when the Vice-President acts as President or discharges the functions of the President. He also acts as the Chairman when the latter is absent from the sitting of the House. In both the cases, he has all the powers of the Chairman.

It should be emphasized here that the Deputy Chairman is not subordinate to the Chairman. He is directly responsible to the Rajya Sabha.

Like the Chairman, the Deputy Chairman, while presiding over the House, cannot vote in the first instance; he can only exercise a casting vote in the case of a tie. Further, when a resolution for the

removal of the Deputy Chairman is under consideration of the House, he cannot preside over a sitting of the House, though he may be present.

When the Chairman presides over the House, the Deputy Chairman is like any other ordinary member of the House. He can speak in the House, participate in its proceedings and vote on any question before the House.

Leaders in Parliament

Leader of the House

Under the Rules of Lok Sabha, the 'Leader of the House' means the prime minister, if he is a member of the Lok Sabha, or a minister who is a member of the Lok Sabha and is nominated by the prime minister to function as the Leader of the House. There is also a 'Leader of the House' in the Rajya Sabha. He is a minister and a member of the Rajya Sabha and is nominated by the prime minister to function as such. The leader of the house in either House is an important functionary and exercises

direct influence on the conduct of business. He can also nominate a deputy leader of the House. The same functionary in USA is known as the 'majority leader'.

Leader of the Opposition

In each House of Parliament, there is the 'Leader of the Opposition'. The leader of the largest Opposition party having not less than one-tenth seats of the total strength of the House is recognized as the leader of the Opposition in that House. In a parliamentary system of government, the leader of the opposition has a significant role to play. His main functions are to provide a constructive criticism of the policies of the government and to provide an alternative government. Therefore, the leader of Opposition in the Lok Sabha and the Rajya Sabha were accorded statutory recognition in 1977. They are also entitled to the salary, allowances and other facilities equivalent to that of a cabinet minister. It was in 1969 that an official leader of the opposition was recognized for the first time. The same functionary in USA is known as the 'minority leader'.

The British political system has an unique institution called the 'Shadow Cabinet'. It is formed by the Opposition party to balance the ruling cabinet and to prepare its members for future ministerial offices. In this shadow cabinet, almost every member in the ruling cabinet is 'shadowed' by a corresponding member in the opposition cabinet. This shadow cabinet serves as the 'alternate cabinet' if there is change of government. That is why Ivor Jennings described the leader of Opposition as the 'alternative Prime Minister'. He enjoys the status of a minister and is paid by the government.

Whip

Though the offices of the leader of the House and the leader of the Opposition are not mentioned in the Constitution of India, they are mentioned in the Rules of the House and Parliamentary Statute respectively. The office of 'whip', on the other hand, is mentioned neither in the Constitution of India nor in the Rules of the House nor in a Parliamentary Statute. It is based on the conventions of the parliamentary government.

Every political party, whether ruling or Opposition has its own whip in the Parliament. He is appointed by the political party to serve as an assistant floor leader. He is charged with the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favor of or against a particular issue. He regulates and monitors their behavior in the Parliament. The members are supposed to follow the directives given by the whip. Otherwise, disciplinary action can be taken.

Sessions of Parliament

Summoning

The president from time to time summons each House of Parliament to meet. But, the maximum gap between two sessions of Parliament cannot be more than six months. In other words, the Parliament should meet at least twice a year. There are usually three sessions in a year, viz,
the Budget Session (February to May);
the Monsoon Session (July to September); and
the Winter Session (November to December).

Adjournment

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

Adjournment *Sine Die*

Adjournment *sine die* means terminating a sitting of Parliament for an indefinite period. In other words, when the House is adjourned without naming a day for reassembly, it is called adjournment *sine die.* The power of adjournment as well as adjournment *sine die* lies with the presiding officer of the House. He can also call a sitting of the House before the date or time to which it has been adjourned or at any time after the House has been adjourned *sine die*.

Prorogation

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

Dissolution

Rajya Sabha, being a permanent House, is not subject to dissolution. Only the Lok Sabha is subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after general elections are held. The dissolution of the Lok Sabha may take place in either of two ways:

Automatic dissolution, that is, on the expiry of its tenure of five years or the terms as extended during a national emergency; or

Whenever the President decides to dissolve the House, which he is authorized to do. Once the Lok Sabha is dissolved before the completion of its normal tenure, the dissolution is irrevocable.

When the Lok Sabha is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committees lapse. They (to be pursued further) must be reintroduced in the newly-constituted Lok Sabha. However, some pending bills and all pending assurances that are to be examined by the Committee on Government Assurances do not lapse on the dissolution of the Lok Sabha.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is one-tenth of the total number of members in each House including the presiding officer. It means that there must be at least 55 members present in the Lok Sabha and 25 members present in the Rajya Sabha, if any business is to be conducted. If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Voting in House

All matters at any sitting of either House or joint sitting of both the Houses are decided by a majority of votes of the members present and voting, excluding the presiding officer. Only a few matters, which are specifically mentioned in the Constitution like impeachment of the President,

amendment of the Constitution, removal of the presiding officers of the Parliament and so on, require special majority, not ordinary majority.

The presiding officer of a House does not vote in the first instance, but exercises a casting vote in the case of an equality of votes. The proceedings of a House are to be valid irrespective of any unauthorized voting or participation or any vacancy in its membership.

Language in Parliament

The Constitution has declared Hindi and English to be the languages for transacting business in the Parliament. However, the presiding officer can permit a member to address the House in his mother-tongue. In both the Houses, arrangements are made for simultaneous translation. Though English was to be discontinued as a floor language after the expiration of fifteen years from the commencement of the Constitution (that is, in 1965), the Official Languages Act (1963) allowed English to be continued along with Hindi.

Rights of Ministers and Attorney General

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

A minister can participate in the proceedings of a House, of which he is not a member. In other words, a minister belonging to the Lok Sabha can participate in the proceedings of the Rajya Sabha and vice-versa.

A minister, who is not a member of either House, can participate in the proceedings of both the Houses. It should be noted here that a person can remain a minister for six months, without being a member of either House of Parliament.

Lame-duck Session

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

Devices of Parliamentary Proceedings

Question Hour

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

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

A n **un starred question**, on the other hand, requires a written answer and hence, supplementary questions cannot follow.

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

Zero Hour

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

Motions

No discussion on a matter of general public importance can take place except on a motion made with the consent of the presiding officer. The House expresses its decisions or opinions on various issues through the adoption or rejection of motions moved by either ministers or private members. The motions moved by the members to raise discussions on various matters fall into three principal categories

Substantive Motion: It is a self-contained independent proposal dealing with a very important matter like impeachment of the President or removal of Chief Election Commissioner.

Substitute Motion: It is a motion that is moved in substitution of an original motion and proposes an alternative to it. If adopted by the House, it supersedes the original motion.

Subsidiary Motion: It is a motion that, by itself, has no meaning and cannot state the decision of the House without reference to the original motion or proceedings of the House. It is divided into three sub-categories:

Ancillary Motion: It is used as the regular way of proceeding with various kinds of business.

Superseding Motion: It is moved in the course of debate on another issue and seeks to supersede that issue.

Amendment: It seeks to modify or substitute only a part of the original motion.

Closure Motion It is a motion moved by a member to cut short the debate on a matter before the House. If the motion is approved by the House, debate is stopped forthwith and the matter is put to vote. There are four kinds of closure motions.

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

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

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

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

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

No-Confidence Motion Article 75 of the Constitution says that the council of ministers shall be collectively responsible to the Lok Sabha. It means that the ministry stays in office so long as it enjoys confidence of the majority of the members of the Lok Sabha. In other words, the Lok Sabha

can remove the ministry from office by passing a no-confidence motion. The motion needs the support of 50 members to be admitted.

Motion of Thanks The first session after each general election and the first session of every fiscal year is addressed by the president. In this address, the president outlines the policies and programmes of the government in the preceding year and ensuing year. This address of the president, which corresponds to the 'speech from the Throne in Britain', is discussed in both the Houses of Parliament on a motion called the 'Motion of Thanks'. At the end of the discussion, the motion is put to vote. This motion must be passed in the House. Otherwise, it amounts to the defeat of the government. This inaugural speech of the president is an occasion available to the members of Parliament to raise discussions and debates to examine and criticise the government and administration for its lapses and failures.

No-Day-Yet-Named Motion It is a motion that has been admitted by the Speaker but no date has been fixed for its discussion. The Speaker, after considering the state of business in the House and in consultation with the leader of the House or on the recommendation of the Business Advisory Committee, allots a day or days or part of a day for the discussion of such a motion.

Point of Order

A member can raise a point of order when the proceedings of the House do not follow the normal rules of procedure. A point of order should relate to the interpretation or enforcement of the Rules of the House or such articles of the Constitution that regulate the business of the House and should raise a question that is within the cognizance of the Speaker. It is usually raised by an opposition member in order to control the government. It is an extraordinary device as it suspends the proceedings before the House. No debate is allowed on a point of order.

Half-an-Hour Discussion

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

Short Duration Discussion

It is also known as two-hour discussion as the time allotted for such a discussion should not exceed two hours. The members of the Parliament can raise such discussions on a matter of urgent public importance. The Speaker can allot two days in a week for such discussions. There is neither a formal motion before the house nor voting. This device has been in existence since 1953.

Special Mention

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

Resolutions

The members can move resolutions to draw the attention of the House or the government to matters of general public interest. The discussion on a resolution is strictly relevant to and within the scope of the resolution. A member who has moved a resolution or amendment to a resolution cannot withdraw the same except by leave of the House.

Resolutions are classified into three categories:

- *Private Member's Resolution:* It is one that is moved by a private member (other than a minister). It is discussed only on alternate Fridays and in the afternoon sitting.
- *Government Resolution:* It is one that is moved by a minister. It can be taken up any day from Monday to Thursday.

Statutory Resolution: It can be moved either by a private member or a minister. It is so called because it is always tabled in pursuance of a provision in the Constitution or an Act of Parliament.

Youth Parliament

The scheme of Youth Parliament was started on the recommendation of the Fourth All India Whips Conference. Its objectives are:

to acquaint the younger generations with practices and procedures of Parliament;
to imbibe the spirit of discipline and tolerance cultivating character in the minds of youth;
and to inculcate in the student community the basic values of democracy and to enable them to acquire a proper perspective on the functioning of democratic institutions.

The ministry of parliamentary affairs provides necessary training and encouragement to the states in introducing the scheme.

Budget in Parliament

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

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

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

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

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

Constitutional Provisions

The Constitution of India contains the following provisions with regard to the enactment of budget:
The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of estimated receipts and expenditure of the Government of India for that year.

No demand for a grant shall be made except on the recommendation of the President.

No money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law.

No money bill imposing tax shall be introduced in the Parliament except on the recommendation of the President, and such a bill shall not be introduced in the Rajya Sabha.
No tax shall be levied or collected except by authority of law.
Parliament can reduce or abolish a tax but cannot increase it.
The Constitution has also defined the relative roles or position of both the Houses of Parliament with regard to the enactment of the budget in the following way:
A money bill or finance bill dealing with taxation cannot be introduced in the Rajya Sabha—it must be introduced only in the Lok Sabha.
The Rajya Sabha has no power to vote on the demand for grants; it is the exclusive privilege of the Lok Sabha.

The Rajya Sabha should return the Money bill (or Finance bill) to the Lok Sabha within fourteen days. The Lok Sabha can either accept or reject the recommendations made by Rajya Sabha in this regard.

The estimates of expenditure embodied in the budget shall show separately the expenditure charged on the Consolidated Fund of India and the expenditure made from the Consolidated Fund of India.

The budget shall distinguish expenditure on revenue account from other expenditure.

Stages in Enactment

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

Presentation of budget.

General discussion.

Scrutiny by departmental committees.

Voting on demands for grants.

Passing of appropriation bill.

Passing of finance bill.

Presentation of Budget The budget is presented in two parts—Railway Budget and General Budget. Both are governed by the same procedure.

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

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

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

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

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

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

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

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

While the General Budget has a total of 109 demands (103 for civil expenditure and 6 for defence expenditure), the Railway Budget has 32 demands. Each demand is voted separately by the Lok

Sabha. During this stage, the members of Parliament can discuss the details of the budget. They can also move motions to reduce any demand for grant. Such motions are called as 'cut motion', which are of three kinds:

Policy Cut Motion It represents the disapproval of the policy underlying the demand. It states that the amount of the demand be reduced to Re 1. The members can also advocate an alternative policy.

Economy Cut Motion It represents the economy that can be affected in the proposed expenditure. It states that the amount of the demand be reduced by a specified amount (which may be either a lumpsum reduction in the demand or ommission or reduction of an item in the demand).

Token Cut Motion It ventilates a specific grievance that is within the sphere of responsibility of the Government of India. It states that the amount of the demand be reduced by Rs 100.

A cut motion, to be admissible, must satisfy the following conditions:

It should relate to one demand only.

It should be clearly expressed and should not contain arguments or defamatory statements.

It should be confined to one specific matter.

It should not make suggestions for the amendment or repeal of existing laws.

It should not refer to a matter that is not primarily the concern of Union government.

It should not relate to the expenditure charged on the Consolidated Fund of India.

It should not relate to a matter that is under adjudication by a court.

It should not raise a question of privilege.

It should not revive discussion on a matter on which a decision has been taken in the same session.

It should not relate to a trivial matter.

The significance of a cut motion lies in: (a) facilitating the initiation of concentrated discussion on a specific demand for grant; and (b) upholding the principle of responsible government by probing the activities of the government. However, the cut motion do not have much utility in practice. They are only moved and discussed in the House but not passed as the government enjoys majority support. Their passage by the Lok Sabha amounts to the expressions of want of parliamentary confidence in the government and may lead to its resignation.

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

Passing of Appropriation Bill The Constitution states that 'no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law'. Accordingly, an appropriation bill is introduced to provide for the appropriation, out of the Consolidated Fund of India, all money required to meet:

The grants voted by the Lok Sabha.

The expenditure charged on the Consolidated Fund of India.

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

The Appropriation Bill becomes the Appropriation Act after it is assented to by the President. This act authorises (or legalises) the payments from the Consolidated Fund of India. This means that the government cannot withdraw money from the Consolidated Fund of India till the enactment of the appropriation bill. This takes time and usually goes on till the end of April. But the government needs money to carry on its normal activities after 31 March (the end of the financial year). To overcome this functional difficulty, the Constitution has authorised the Lok Sabha to make any grant in advance in respect to the estimated expenditure for a part of the financial year, pending the completion of the voting of the demands for grants and the enactment of the appropriation bill.

This provision is known as the 'vote on account'. It is passed (or granted) after the general discussion on budget is over. It is generally granted for two months for an amount equivalent to one-sixth of the total estimation.

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

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

The Finance Act legalises the income side of the budget and completes the process of the enactment of the budget.

Other Grants

In addition to the budget that contains the ordinary estimates of income and expenditure for one financial year, various other grants are made by the Parliament under extraordinary or special circumstances:

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

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

Excess Grant It is granted when money has been spent on any service during a financial year in excess of the amount granted for that service in the budget for that year. It is voted by the Lok Sabha after the financial year. Before the demands for excess grants are submitted to the Lok Sabha for voting, they must be approved by the Public Accounts Committee of Parliament.

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

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

Token Grant It is granted when funds to meet the proposed expenditure on a new service can be made available by reappropriation. A demand for the grant of a token sum (of Re 1) is submitted to the vote of the Lok Sabha and if assented, funds are made available. Reappropriation involves transfer of funds from one head to another. It does not involve any additional expenditure.

Supplementary, additional, excess and exceptional grants and vote of credit are regulated by the same procedure which is applicable in the case of a regular budget.

Funds

The Constitution of India provides for the following three kinds of funds for the Central government:

Consolidated Fund of India (Article 266)

Public Account of India (Article 266)

Contingency Fund of India (Article 267)

Consolidated Fund of India It is a fund to which all receipts are credited and all payments are debited. In other words, (a) all revenues received by the Government of India; (b) all loans raised by the Government by the issue of treasury bills, loans or ways and means of advances; and (c) all money received by the government in repayment of loans forms the Consolidated Fund of India. All the legally authorised payments on behalf of the Government of India are made out of this

fund. No money out of this fund can be appropriated (issued or drawn) except in accordance with a parliamentary law.

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

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

Multifunctional role of Parliament

In the 'Indian politico-administrative system', the Parliament occupies a central position and has a multifunctional role. It enjoys extensive powers and performs a variety of functions towards the fulfilment of its constitutionally expected role. Its powers and functions can be classified under the following heads:

Legislative Powers and Functions
Executive Powers and Functions
Financial Powers and Functions
Constituent Powers and Functions
Judicial Powers and Functions
Electoral Powers and Functions
Other powers and functions.

1. Legislative Powers and Functions

The primary function of Parliament is to make laws for the governance of the country. It has exclusive power to make laws on the subjects enumerated in the Union List (which at present has 100 subjects, originally 97 subjects) and on the residuary subjects (that is, subjects not enumerated in any of the three lists). With regard to Concurrent List (which has at present 52 subjects, originally 47 subjects), the Parliament has overriding powers, that is, the law of Parliament prevails over the law of the state legislature in case of a conflict between the two.

The Constitution also empowers the Parliament to make laws on the subjects enumerated in the State List (which at present has 61 subjects, originally 66 subjects) under the following five abnormal circumstances:

when Rajya Sabha passes a resolution to that effect.
when a proclamation of National Emergency is in operation.
when two or more states make a joint request to the Parliament.
when necessary to give effect to international agreements, treaties and conventions.
when President's Rule is in operation in the state.

All the ordinances issued by the president (during the recess of the Parliament) must be approved by the Parliament within six weeks after its reassembly. An ordinance becomes inoperative if it is not approved by the parliament within that period.

The Parliament makes laws in a skeleton form and authorises the Executive to make detailed rules and regulations within the framework of the parent law. This is known as **delegated legislation** or executive legislation or subordinate legislation. Such rules and regulations are placed before the Parliament for its examination.

2. Executive Powers and Functions

The Constitution of India established a parliamentary form of government in which the Executive is responsible to the Parliament for its policies and acts. Hence, the Parliament exercises control over the Executive through question-hour, zero hour, half-an-hour discussion, short duration discussion, calling attention motion, adjournment motion, no-confidence motion, censure motion and other discussions. It also supervises the activities of the Executive with the help of its committees like committee on government assurance, committee on subordinate legislation, committee on petitions, etc.

The ministers are collectively responsible to the Parliament in general and to the Lok Sabha in particular. As a part of collective responsibility, there is individual responsibility, that is, each minister is individually responsible for the efficient administration of the ministry under his charge. This means that they continue in office so long as they enjoy the confidence of the majority members in the Lok Sabha. In other words, the council of ministers can be removed from office by the Lok Sabha by passing a no-confidence motion. The Lok Sabha can also express lack of confidence in the government in the following ways:

By not passing a motion of thanks on the President's inaugural address.
By rejecting a money bill.
By passing a censure motion or an adjournment motion.
By defeating the government on a vital issue.
By passing a cut motion.

Therefore, "the first function of Parliament can be said to be to select the group which is to form the government, support and sustain it in power so long as it enjoys its confidence, and to expel it when it ceases to do so, and leave it to the people to decide at the next general election."[23]

3. Financial Powers and Functions

No tax can be levied or collected and no expenditure can be incurred by the Executive except under the authority and with the approval of Parliament. Hence, the budget is placed before the Parliament for its approval. The enactment of the budget by the Parliament legalises the receipts and expenditure of the government for the ensuing financial year.

The Parliament also scrutinises government spending and financial performance with the help of its financial committees. These include public accounts committee, estimates committee and committee on public undertakings. They bring out the cases of illegal, irregular, unauthorised, improper usage and wastage and extravagance in public expenditure.

Therefore, the parliamentary control over the Executive in financial matters operates in two stages:
budgetary control, that is, control before the appropriation of grants through the enactment of the budget; and
post-budgetary control, that is, control after the appropriation of grants through the three financial committees.

The budget is based on the principle of annuality, that is, the Parliament grants money to the government for one financial year. If the granted money is not spent by the end of the financial year, then the balance expires and returns to the Consolidated Fund of India. This practice is known as the 'rule of lapse'. It facilitates effective financial control by the Parliament as no reserve funds can be built without its authorisation. However, the observance of this rule leads to heavy rush of expenditure towards the close of the financial year. This is popularly called as 'March Rush'.

4. Constituent Powers and Functions

The Parliament is vested with the powers to amend the Constitution by way of addition, variation or repeal of any provision. The major part of the Constitution can be amended by the Parliament with special majority, that is, a majority (that is, more than 50 per cent) of the total membership of each House and a majority of not less than two-thirds of the members present and voting in each House.

Some other provisions of the Constitution can be amended by the Parliament with simple majority, that is, a majority of the members present and voting in each House of Parliament. Only a few provisions of the Constitution can be amended by the Parliament (by special majority) and with the consent of at least half of the state Legislatures (by simple majority). However, the power to initiate the process of the amendment of the Constitution (in all the three cases) lies exclusively in the hands of the Parliament and not the state legislature. There is only one exception, that is, the state legislature can pass a resolution requesting the Parliament for the creation or abolition of the legislative council in the state. Based on the resolution, the Parliament makes an act for amending the Constitution to that effect. To sum up, the Parliament can amend the Constitution in three ways:
By simple majority;
By special majority; and
By special majority but with the consent of half of all the state legislatures.
The constituent power of the Parliament is not unlimited; it is subject to the 'basic structure' of the Constitution. In others words, the Parliament can amend any provision of the Constitution except the 'basic features' of the Constitution. This was ruled by the Supreme Court in the *Kesavananda Bharati* case (1973) and reaffirmed in the *Minerva Mills* case (1980)[24].

5. Judicial Powers and Functions

The judicial powers and functions of the Parliament include the following:
It can impeach the President for the violation of the Constitution.
It can remove the Vice-President from his office.
It can recommend the removal of judges (including chief justice) of the Supreme Court and the high courts, chief election commissioner, comptroller and auditor general to the president.
It can punish its members or outsiders for the breach of its privileges or its contempt.

6. Electoral Powers and Functions

The Parliament participates in the election of the President (along with the state legislative assemblies) and elects the Vice-President. The Lok Sabha elects its Speaker and Deputy Speaker, while the Rajya Sabha elects its Deputy Chairman.
The Parliament is also authorised to make laws to regulate the elections to the offices of President and Vice-President, to both the Houses of Parliament and to both the Houses of state legislature. Accordingly, Parliament enacted the Presidential and Vice-Presidential Election Act (1952), the Representation of People Act (1950), the Representation of People Act (1951), etc.

7. Other Powers and Functions

The various other powers and functions of the Parliament include:
It serves as the highest deliberative body in the country. It discusses various issues of national and international significance.
It approves all the three types of emergencies (national, state and financial) proclaimed by the President.It can create or abolish the state legislative councils on the recommendation of the concerned state legislative assemblies.
It can increase or decrease the area, alter the boundaries and change the names of states of the Indian Union.
It can regulate the organisation and jurisdiction of the Supreme Court and high courts and can establish a common high court for two or more states.

Ineffectiveness of parliamentary control

The parliamentary control over government and administration in India is more theoretical than practical. In reality, the control is not as effective as it ought to be. The following factors are responsible for this:
The Parliament has neither time nor expertise to control the administration which has grown in volume as well as complexity.

Parliament's financial control is hindered by the technical nature of the demands for grants. The parliamentarians being laymen cannot understand them properly and fully.
The legislative leadership lies with the Executive and it plays a significant role in formulating policies.
The very size of the Parliament is too large and unmanagable to be effective.
The majority support enjoyed by the Executive in the Parliament reduces the possibility of effective criticism.
The financial committees like Public Accounts Committee examines the public expenditure after it has been incurred by the Executive. Thus, they do post mortem work.
The increased recourse to 'guillotine' reduced the scope of financial control.
The growth of 'delegated legislation' has reduced the role of Parliament in making detailed laws and has increased the powers of bureaucracy.
The frequent promulgation of ordinances by the president dilutes the Parliament's power of legislation.
The Parliament's control is sporadic, general and mostly political in nature.
Lack of strong and steady opposition in the Parliament, and a setback in the parliamentary behaviour and ethics, have also contributed to the ineffectiveness of legislative control over administration in India.

Unit IV: State Government

The Governor

Articles 153 to 167 in Part VI of the Constitution deal with the state executive. The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state. Thus, there is no office of vice-governor like that of Vice-President at the Centre.
The governor is the chief executive head of the state. But, like the president, he is a nominal executive head. The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role.
Usually, there is a governor for each state, but the 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states.

Appointment of governor

The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president. He is appointed by the president by warrant under his hand and seal. In a way, he is a nominee of the Central government. But, as held by the Supreme Court in 1979, the office of governor of a state is not an employment under the Central government. It is an independent constitutional office and is not under the control of or subordinate to the Central government.
The Draft Constitution provided for the direct election of the governor on the basis of universal adult suffrage. But the Constituent Assembly opted for the present system of appointment of governor by the president because of the following reasons[1]:
The direct election of the governor is incompatible with the parliamentary system established in the states.
The mode of direct election is more likely to create conflicts between the governor and the chief minister.
The governor being only a constitutional (nominal) head, there is no point in making elaborate arrangements for his election and spending huge amount of money.
The election of a governor would be entirely on personal issues. Hence, it is not in the national interest to involve a large number of voters in such an election.

An elected governor would naturally belong to a party and would not be a neutral person and an impartial head.
The election of governor would create separatist tendencies and thus affect the political stability and unity of the country.
The system of presidential nomination enables the Centre to maintain its control over the states.
The direct election of the governor creates a serious problem of leadership at the time of a general election in the state.
The chief minister would like his nominee to contest for governorship. Hence, a second rate man of the ruling party is elected as governor.
Therefore, the American model, where the Governor of a state is directly elected, was dropped and the Canadian model, where the governor of a province (state) is appointed by the Governor-General (Centre), was accepted in the Constituent Assembly.
The Constitution lays down only two qualifications for the appointment of a person as a governor. These are:
He should be a citizen of India.
He should have completed the age of 35 years.
Additionally, two conventions have also developed in this regard over the years. First, he should be an outsider, that is, he should not belong to the state where he is appointed, so that he is free from the local politics. Second, while appointing the governor, the president is required to consult the chief minister of the state concerned, so that the smooth functioning of the constitutional machinery in the state is ensured. However, both the conventions have been violated in some of the cases.

Conditions of governor's office

The Constitution lays down the following conditions for the the governor's office:
He should not be a member of either House of Parliament or a House of the state legislature. If any such person is appointed as governor, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as the governor.
He should not hold any other office of profit.
He is entitled without payment of rent to the use of his official residence (the *Raj Bhavan*).
He is entitled to such emoluments, allowances and privileges as may be determined by Parliament. When the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as determined by the president.
His emoluments and allowances cannot be diminished during his term of office. In 2008, the Parliament has increased the salary of the governor from `36,000 to `1.10 lakh per month.
Like the President, the governor is also entitled to a number of privileges and immunities. He enjoys personal immunity from legal liability for his official acts. During his term of office, he is immune from any criminal proceedings, even in respect of his personal acts. He cannot be arrested or imprisoned. However, after giving two months' notice, civil proceedings can be instituted against him during his term of office in respect of his personal acts.
Before entering upon his office, the governor has to make and subscribe to an oath or affirmation. In his oath, the governor swears:
to faithfully execute the office;
to preserve, protect and defend the Constitution and the law; and
to devote himself to the service and well-being of the people of the state.
The oath of office to the governor is administered by the chief justice of the concerned state high court and in his absence, the senior-most judge of that court available. Every person discharging the functions of the governor also undertakes the similar oath or affirmation.

Term of governor's office

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

The Supreme Court held that the pleasure of the President is not justifiable. The governor has no security of tenure and no fixed term of office. He may be removed by the President at any time.
The Constitution does not lay down any grounds upon which a governor may be removed by the President. Hence, the National Front Government headed by V P Singh (1989) asked all the governors to resign as they were appointed by the Congress government. Eventually, some of the governors were replaced and some were allowed to continue. The same thing was repeated in 1991, when the Congress Government headed by P V Narasimha Rao changed fourteen governors appointed by the V P Singh and Chandra Sekhar governments.
The President may transfer a Governor appointed to one state to another state for the rest of the term. Further, a Governor whose term has expired may be reappointed in the same state or any other state. A governor can hold office beyond his term of five years until his successor assumes charge. The underlying idea is that there must be a governor in the state and there cannot be an interregnum.
The President can make such provision as he thinks fit for the discharge of the functions of the governor in any contingency not provided for in the Constitution, for example, the death of a sitting governor. Thus, the chief justice of the concerned state high court may be appointed temporarily to discharge the functions of the governor of that state.

Powers and functions of governor

A governor possesses executive, legislative, financial and judicial powers more or less analogous to the President of India. However, he has no diplomatic, military or emergency powers like the president.
The powers and functions of the governor can be studied under the following heads:
Executive powers.
Legislative powers.
Financial powers.
Judicial powers.

Executive Powers

The executive powers and functions of the Governor are:
All executive actions of the government of a state are formally taken in his name.
He can make rules specifying the manner in which the Orders and other instruments made and executed in his name shall be authenticated.
He can make rules for more convenient transaction of the business of a state government and for the allocation among the ministers of the said business.
He appoints the chief minister and other ministers. They also hold office during his pleasure. There should be a Tribal Welfare minister in the states of Chattisgarh, Jharkhand, Madhya Pradesh and Odisha appointed by him.
He appoints the advocate general of a state and determines his remuneration. The advocate general holds office during the pleasure of the governor.
He appoints the state election commissioner and determines his conditions of service and tenure of office. However, the state election commissioner can be removed only in like manner and on the like grounds as a judge of a high court.
He appoints the chairman and members of the state public service commission. However, they can be removed only by the president and not by a governor.
He can seek any information relating to the administration of the affairs of the state and proposals for legislation from the chief minister.
He can require the chief minister to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
He can recommend the imposition of constitutional emergency in a state to the president. During the period of President's rule in a state, the governor enjoys extensive executive powers as an agent of the President.
He acts as the chancellor of universities in the state. He also appoints the vice-chancellors of

universities in the state.

Legislative Powers

A governor is an integral part of the state legislature. In that capacity, he has the following legislative powers and functions:

He can summon or prorogue the state legislature and dissolve the state legislative assembly.

He can address the state legislature at the commencement of the first session after each general election and the first session of each year.

He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.

He can appoint any member of the State legislative assembly to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he can appoint any member of the state legislature council to preside over its proceedings when the offices of both Chairman and Deputy Chairman fall vacant.

He nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.

He can nominate one member to the state legislature assembly from the Anglo-Indian Community.

He decides on the question of disqualification of members of the state legislature in consultation with the Election Commission.

When a bill is sent to the governor after it is passed by state legislature, he can:

Give his assent to the bill, or

Withhold his assent to the bill, or

Return the bill (if it is not a money bill) for reconsideration of the state legislature. However, if the bill is passed again by the state legislature with or without amendments, the governor has to give his assent to the bill, or

Reserve the bill for the consideration of the president. In one case such reservation is obligatory, that is, where the bill passed by the state legislature endangers the position of the state high court. In addition, the governor can also reserve the bill if it is of the following nature:

Ultra-vires, that is, against the provisions of the Constitution.

Opposed to the Directive Principles of State Policy.

Against the larger interest of the country.

Of grave national importance.

Dealing with compulsory acquisition of property under Article 31A of the Constitution.

He can promulgate ordinances when the state legislature is not in session. These ordinances must be approved by the state legislature within six weeks from its reassembly. He can also withdraw an ordinance anytime. This is the most important legislative power of the governor.

He lays the reports of the State Finance Commission, the State Public Service Commission and the Comptroller and Auditor-General relating to the accounts of the state, before the state legislature.

Financial Powers

The financial powers and functions of the governor are:

He sees that the Annual Financial Statement (state budget) is laid before the state legislature.

Money bills can be introduced in the state legislature only with his prior recommendation.

No demand for a grant can be made except on his recommendation.

He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure.

He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

Judicial Powers

The judicial powers and functions of the governor are:

He can grant pardons, reprives, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter

to which the executive power of the state extends.[5]
He is consulted by the president while appointing the judges of the concerned state high court.
He makes appointments, postings and promotions of the district judges in consultation with the state high court.
He also appoints persons to the judicial service of the state (other than district judges) in consultation with the state high court and the State Public Service Commission.
Now, we will study in detail the three important powers of the governor (veto power, ordinance-making power and pardoning power) by comparing them with that of the President.

Constitutional position of governor

The Constitution of India provides for a parliamentary form of government in the states as in the Centre. Consequently, the governor has been made only a nominal executive, the real executive constitutes the council of ministers headed by the chief minister. In other words, the governor has to exercise his powers and functions with the aid and advise of the council of ministers headed by the chief minister, except in matters in which he is required to act in his discretion (i.e., without the advice of ministers).
In estimating the constitutional position of the governor, particular reference has to be made to the provisions of Articles 154, 163 and 164. These are:
The executive power of the state shall be vested in the governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution (Article 154).
There shall be a council of ministers with the chief minister as the head to aid and advise the governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion (Article 163).
The council of ministers shall be collectively responsible to the legislative assembly of the state (Article 164). This provision is the foundation of the parliamentary system of government in the state.
From the above, it is clear that constitutional position of the governor differs from that of the president in the following two respects.
While the Constitution envisages the possibility of the governor acting at times in his discretion, no such possibility has been envisaged for the President.
After the 42nd Constitutional Amendment (1976), ministerial advice has been made binding on the President, but no such provision has been made with respect to the governor.
The Constitution makes it clear that if any question arises whether a matter falls within the governor's discretion or not, the decision of the governor is final and the validity of anything done by him cannot be called in question on the ground that he ought or ought not to have acted in his discretion.

Chief Minister:

In the scheme of parliamentary system of government provided by the Constitution, the governor is the nominal executive authority (*de jure* executive) and the Chief Minister is the real executive authority (*de facto* executive). In other words, the governor is the head of the state while the Chief Minister is the head of the government. Thus the position of the Chief Minister at the state level is analogous to the position of prime minister at the Centre.

Appointment of chief minister

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

discretion in the selection and appointment of the Chief Minister. In such a situation, the governor usually appoints the leader of the largest party or coalition in the assembly as the Chief Minister and ask him to seek a vote of confidence in the House within a month.

The governor may have to exercise his individual judgement in the selection and appointed of the Chief Minister when the Chief Minister in office dies suddenly and there is no obvious successor. However, on the death of a Chief Minister, the ruling party usually elects a new leader and the governor has no choice but to appoint him as Chief Minister.

The Constitution does not require that a person must prove his majority in the legislative assembly before he is appointed as the Chief Minister. The governor may first appoint him as the Chief Minister and then ask him to prove his majority in the legislative assembly within a reasonable period. This is what has been done in a number of cases.

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

According to the Constitution, the Chief Minister may be a member of any of the two Houses of a state legislature. Usually Chief Ministers have been selected from the Lower House (legislative assembly), but, on a number of occasions, a member of the Upper House (legislative council) has also been appointed as Chief Minister.

Oath, term and salary

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

to bear true faith and allegiance to the Constitution of India,

to uphold the sovereignty and integrity of India,

to faithfully and conscientiously discharge the duties of his office, and

to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

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

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

The salary and allowances of the Chief Minister are determined by the state legislature. In addition to the salary and allowances, which are payable to a member of the state legislature, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

Powers and functions of chief minister

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

In Relation to Council of Ministers

The Chief Minister enjoys the following powers as head of the state council of ministers:

The governor appoints only those persons as ministers who are recommended by the Chief Minister.

He allocates and reshuffles the portfolios among ministers.

He can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.

He presides over the meetings of the council of ministers and influences its decisions.

He guides, directs, controls and coordinates the activities of all the ministers.

He can bring about the collapse of the council of ministers by resigning from office. Since the Chief Minister is the head of the council of ministers, his resignation or death automatically dissolves the council of ministers. The resignation or death of any other minister, on the other hand, merely creates a vacancy, which the Chief Minister may or may not like to fill.

In Relation to the Governor

The Chief Minister enjoys the following powers in relation to the governor:

He is the principal channel of communication between the governor and the council of ministers.

It is the duty of the Chief Minister:

to communicate to the Governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation;

to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for; and

if the governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

He advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election commissioner, and so on.

In Relation to State Legislature

The Chief Minister enjoys the following powers as the leader of the house:

He advises the governor with regard to the summoning and proroguing of the sessions of the state legislature.

He can recommend the dissolution of the legislative assembly to the governor at any time.

He announces the government policies on the floor of the house.

Other Powers and Functions

In addition, the Chief Minister also performs the following functions:

He is the chairman of the State Planning Board.

He acts as a vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.

He is a member of the Inter-State Council and the National Development Council, both headed by the prime minister.

He is the chief spokesman of the state government.

He is the crisis manager-in-chief at the political level during emergencies.

As a leader of the state, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.

He is the political head of the services.

Thus, he plays a very significant and highly crucial role in the state administration. However, the discretionary powers enjoyed by the governor reduces to some extent the power, authority, influence, prestige and role of the Chief Minister in the state administration.

Relationship with the governor

The following provisions of the Constitution deal with the relationship between the governor and the Chief Minister:

Article 163:

There shall be a council of ministers with the Chief Minister as the head to aid and advise the governor on the exercise of his functions, except in so far as he is required to exercise his functions or any of them in his discretion.

Article 164:

The Chief Minister shall be appointed by the governor and other ministers shall be appointed by

the governor on the advice of the Chief Minister;

The ministers shall hold office during the pleasure of the governor; and

The council of ministers shall be collectively responsible to the legislative assembly of the state.

Article 167:

It shall be the duty of the Chief Minister:

to communicate to the governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation;

to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for ; and

if the governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

Council of Ministers:

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

the politico-administrative system of a state. The council of ministers in the states is constituted and function in the same way as the council of ministers at the Centre.

The principles of parliamentary system of government are not detailed in the Constitution; but two Articles (163 and 164) deal with them in a broad, sketchy and general manner. Article 163 deals with the status of the council of ministers while Article 164 deals with the appointment, tenure, responsibility, qualifications, oath and salaries and allowances of the ministers.

Constitutional provisions

Article 163—Council of Ministers to aid and advice Governor

There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is required to exercise his functions in his discretion.

If any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

The advice tendered by Ministers to the Governor shall not be inquired into in any court.

Article 164—Other Provisions as to Ministers

The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. However, in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and backward classes or any other work. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.

The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed 15 per cent of the total strength of the legislative assembly of that state. But, the number of ministers, including the chief minister, in a state shall not be less than 12. This provision was added by the 91st Amendment Act of 2003.

A member of either House of state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. The provision was also added by the 91st Amendment Act of 2003.

The ministers shall hold office during the pleasure of the Governor.

The council of ministers shall be collectively responsible to the state Legislative Assembly.

The Governor shall administer the oaths of office and secrecy to a minister.

A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be a minister.

The salaries and allowances of ministers shall be determined by the state legislature.

Article 166—Conduct of Business of the Government of a State

All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

Orders and other instruments made and executed in the name of the Governor shall be

authenticated in such manner as may be specified in rules to be made by the Governor. Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.The Governor shall make rules for the more convenient transaction of the business of the government of the state, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is required to act in his discretion.

Article 167—Duties of Chief Minister

It shall be the duty of the Chief Minister of each state

To communicate to the governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislationTo furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for If the governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council

Appointment of ministers

The chief minister is appointed by the governor. The other ministers are appointed by the governor on the advice of the chief minister. This means that the governor can appoint only those persons as ministers who are recommended by the chief minister.

But, there should be a tribal welfare minister in Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha. Originally, this provision was applicable to Bihar, Madhya Pradesh and Odisha. The 94 th Amendment Act of 2006 freed Bihar from the obligation of having a tribal welfare minister as there are no Scheduled Areas in Bihar now and the fraction of population of the Scheduled Tribes is very small. The same Amendment also extended the above provision to the newly formed states of Chhattisgarh and Jharkhand.

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

A minister who is a member of one House of the state legislature has the right to speak and to take part in the proceedings of the other House. But, he can vote only in the House of which he is a member.

Oath and salary of ministers

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

to bear true faith and allegiance to the Constitution of India,

to uphold the sovereignty and integrity of India,

to faithfully and conscientiously discharge the duties of his office, and

to do right to all manner of people in accordance with the Constitution and the law, without fear or favors, affection or ill-will.

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

The salaries and allowances of ministers are determined by the state legislature from time to time. A minister gets the salary and allowances which are payable to a member of the state legislature. Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, travelling allowance, medical facilities, etc.

Responsibility of ministers

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 164 clearly states that the council of ministers is

collectively responsible to the legislative assembly of the state. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission. They work as a team and swim or sink together. When the legislative assembly passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the legislative council. Alternatively, the council of ministers can advice the governor to dissolve the legislative assembly on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The governor may not oblige the council of ministers which has lost the confidence of the legislative assembly.

The principle of collective responsibility also mean that the cabinet decisions bind all cabinet ministers (and other ministers) even if they deferred in the cabinet meeting. It is the duty of every minister to stand by the cabinet decisions and support them both within and outside the state legislature. If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign. Several ministers have resigned in the past owing to their differences with the cabinet.

Individual Responsibility

Article 164 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the governor. This means that the governor can remove a minister at a time when the council of ministers enjoys the confidence of the legislative assembly. But, the governor can remove a minister only on the advice of the chief minister. In case of difference of opinion or dissatisfaction with the performance of a minister, the chief minister can ask him to resign or advice the governor to dismiss him. By exercising this power, the chief minister can ensure the realization of the rule of collective responsibility.

No Legal Responsibility

As at the Centre, there is no provision in the Constitution for the system of legal responsibility of the minister in the states. It is not required that an order of the governor for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the governor.

Composition of the council of ministers

The Constitution does not specify the size of the state council of ministers or the ranking of ministers. They are determined by the chief minister according to the exigencies of the time and requirements of the situation.

Like at the Centre, in the states too, the council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the chief minister—supreme governing authority in the state.

The cabinet ministers head the important departments of the state government like home, education, finance, agriculture and so forth[3]. They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of state government.

The ministers of state can either be given independent charge of departments or can be attached to cabinet ministers. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of departments. They are attached to the cabinet ministers and assist them in their administrative, political and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.

At times, the council of ministers may also include a deputy chief minister. Thus, Andhra Pradesh had the office of deputy chief minister till 1956. This post was created in West Bengal in 1967. More recently, Rajasthan, Madhya Pradesh and Karnataka have created this office. The deputy chief ministers are appointed mostly for local political reasons.

Cabinet

A smaller body called *cabinet* is the nucleus of the council of ministers. It consists of only the cabinet ministers. It is the real centre of authority in the state government. It performs the following role:

It is the highest decisionmaking authority in the politico-administrative system of a state.
It is the chief policy formulating body of the state government.
It is the supreme executive authority of the state government.
It is the chief coordinator of state administration.
It is an advisory body to the governor.
It is the chief crisis manager and thus deals with all emergency situations.
It deals with all major legislative and financial matters.
It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

Cabinet Committees

The cabinet works through various committees called cabinet committees. They are of two types—standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature.

They are set up by the chief minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature and composition varies from time to time.

They not only sort out issues and formulate proposals for the consideration of the cabinet but also take decisions. However, the cabinet can review their decisions.

State Legislature:

The state legislature occupies a pre-eminent and central position in the political system of a state. Articles 168 to 212 in Part VI of the Constitution deal with the organization, composition, duration, officers, procedures, privileges, powers and so on of the state legislature. Though these are similar to

that of Parliament, there are some differences as well.

Organization of state legislature

There is no uniformity in the organization of state legislatures. Most of the states have an unicameral system, while others have a bicameral system. At present (2013), only six states have two Houses (bicameral). These are Andhra Pradesh, Uttar Pradesh, Bihar, Maharashtra, Karnataka and Jammu and Kashmir[1]. The Tamil Nadu Legislative Council Act, 2010 has not come into force. The Legislative Council in Andhra Pradesh was revived by the Andhra Pradesh Legislative Council Act, 2005. The 7th Amendment Act of 1956 provided for a Legislative Council in Madhya Pradesh. However, a notification to this effect has to be made by the President. So far, no such notification has been made. Hence, Madhya Pradesh continues to have one House only.

The twenty-two states have unicameral system. Here, the state legislature consists of the governor and the legislative assembly. In the states having bicameral system, the state legislature consists of the governor, the legislative council and the legislative assembly. The legislative council (Vidhan Parishad) is the upper house (second chamber or house of elders), while the legislative assembly (Vidhan Sabha) is the lower house (first chamber or popular house).

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

"The idea of having a second chamber in the states was criticised in the Constituent Assembly on the ground that it was not representative of the people, that it delayed legislative process and that it was an expensive institution[2]." Consequently the provision was made for the abolition or creation

of a legislative council to enable a state to have a second chamber or not according to its own willingness and financial strength. For example, Andhra Pradesh got the legislative council created in 1957 and got the same abolished in 1985. The Legislative Council in Andhra Pradesh was again revived in 2007, after the enactment of the Andhra Pradesh Legislative Council Act, 2005. The legislative council of Tamil Nadu had been abolished in 1986 and that of Punjab and West Bengal in 1969.

In 2010, the Legislative Assembly of Tamil Nadu passed a resolution for the revival of the Legislative Council in the state. Accordingly, the Parliament enacted the Tamil Nadu Legislative Council Act, 2010 which provided for the creation of Legislative Council in the state. However, before this Act was enforced, the Legislative Assembly of Tamil Nadu passed another resolution in 2011 seeking the abolition of the proposed Legislative Council.

Membership of state legislature

Qualifications

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

He must be a citizen of India.

He must make and subscribe to an oath or affirmation before the person authorised by the Election Commission for this purpose. In his oath or affirmation, he swears

To bear true faith and allegiance to the Constitution of India

To uphold the sovereignty and integrity of India

He must be not less than 30 years of age in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly.

He must posses other qualifications prescribed by Parliament.

Disqualifications

Under the Constitution, a person shall be disqualified for being chosen as and for being a member of the legislative assembly or legislative council of a state:

if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by state legislature[9]),

if he is of unsound mind and stands so declared by a court,

if he is an undischarged insolvent,

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

Oath or Affirmation

Every member of either House of state legislature, before taking his seat in the House, has to make and subscribe an oath or affirmation before the governor or some person appointed by him for this purpose.

In this oath, a member of the state legislature swears:

to bear true faith and allegiance to the Constitution of India;

to uphold the sovereignty and integrity of India; and

to faithfully discharge the duty of his office.

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

A person is liable to a penalty of `500 for each day he sits or votes as a member in a House:

before taking and subscribing the prescribed oath or affirmation; or

when he knows that he is not qualified or that he is disqualified for its membership; or

when he knows that he is prohibited from sitting or voting in the House by virtue of any law made by Parliament or the state legislature.

Members of a state legislature are entitled to receive such salaries and allowances as may from time to time be determined by the state legislature.

Vacation of Seats

In the following cases, a member of the state legislature vacates his seat:

Double Membership: A person cannot be a member of both Houses of state legislature at one and the same time. If a person is elected to both the Houses, his seat in one of the Houses falls vacant as per the provisions of a law made by the state legislature.

Disqualification: If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.

Resignation: A member may resign his seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls vacant when the resignation is accepted[11].

Absence: A House of the state legislature can declare the seat of a member vacant if he absents himself from all its meeting for a period of sixty days without its permission.

Other Cases: A member has to vacate his seat in the either House of state legislature,

if his election is declared void by the court,
if he is expelled by the House,
if he is elected to the office of president or office of vice-president, and
if he is appointed to the office of governor of a state.

Presiding officers of state legislature

Each House of state legislature has its own presiding officer. There is a Speaker and a Deputy Speaker for the legislative assembly and Chairman and a Deputy Chairman for the legislative council. A panel of chairmen for the assembly and a panel of vice-chairmen for the council is also appointed.

Speaker of Assembly

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

Usually, the Speaker remains in office during the life of the assembly. However, he vacates his office earlier in any of the following three cases:

if he ceases to be a member of the assembly;
if he resigns by writing to the deputy speaker; and
if he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days advance notice.

The Speaker has the following powers and duties:

He maintains order and decorum in the assembly for conducting its business and regulating its proceedings. This is his primary responsibility and he has final power in this regard.

He is the final interpreter of the provisions of (a) the Constitution of India, (b) the rules of procedure and conduct of business of assembly, and (c) the legislative precedents, within the assembly.

He adjourns the assembly or suspends the meeting in the absence of a quorum.

He does not vote in the first instance. But, he can exercise a casting vote in the case of a tie.

He can allow a 'secret' sitting of the House at the request of the leader of the House.

He decides whether a bill is a Money Bill or not and his decision on this question is final.

He decides the questions of disqualification of a member of the assembly, arising on the ground of defection under the provisions of the Tenth Schedule.

He appoints the chairmen of all the committees of the assembly and supervises their functioning.

He himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

Deputy Speaker of Assembly

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

Like the Speaker, the Deputy Speaker remains in office usually during the life of the assembly. However, he also vacates his office earlier in any of the following three cases:

if he ceases to be a member of the assembly;

if he resigns by writing to the speaker; and
if he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days' advance notice.

The Deputy Speaker performs the duties of the Speaker's office when it is vacant. He also acts as the Speaker when the latter is absent from the sitting of assembly. In both the cases, he has all the powers of the Speaker.

The Speaker nominates from amongst the members a panel of chairmen. Any one of them can preside over the assembly in the absence of the Speaker or the Deputy Speaker. He has the same powers as the speaker when so presiding. He holds office until a new panel of chairmen is nominated.

Chairman of Council

The Chairman is elected by the council itself from amongst its members.

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

if he ceases to be a member of the council;

if he resigns by writing to the deputy chairman; and

if he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.

As a presiding officer, the powers and functions of the Chairman in the council are similar to those of the Speaker in the assembly. However, the Speaker has one special power which is not enjoyed by the Chairman. The Speaker decides whether a bill is a Money Bill or not and his decision on this question is final.

As in the case of the Speaker, the salaries and allowances of the Chairman are also fixed by the state legislature. They are charged on the Consolidated Fund of the State and thus are not subject to the annual vote of the state legislature.

Deputy Chairman of Council

Like the Chairman, the Deputy Chairman is also elected by the council itself from amongst its members.

The deputy chairman vacates his office in any of the following three cases:

if he ceases to be a member of the council;

if he resigns by writing to the Chairman; and

if he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.

The Deputy Chairman performs the duties of the Chairman's office when it is vacant. He also acts as the Chairman when the latter is absent from the sitting of the council. In both the cases, he has all the powers of the Chairman.

The Chairman nominates from amongst the members a panel of vice-chairmen. Any one of them can preside over the council in the absence of the Chairman or the Deputy Chairman. He has the same powers as the chairman when so presiding. He holds office until a new panel of vice-chairmen is nominated.

Sessions of state legislature

Summoning

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

Adjournment

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

Adjournment *sine die* means terminating a sitting of the state legislature for an indefinte period. The power of the adjournment as well as adjournment *sine die* lies with the presiding officer of the House.

Prorogation

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

However, the governor can also prorogue the House which is in session. Unlike an adjournment, a prorogation terminates a session of the House.

Dissolution

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

The position with respect to lapsing of bills on the dissolution of the assembly is mentioned below:

A Bill pending in the assembly lapses (whether originating in the assembly or transmitted to it by the council).

A Bill passed by the assembly but pending in the council lapses.

A Bill pending in the council but not passed by the assembly does not lapse.

A Bill passed by the assembly (in a unicameral state) or passed by both the houses (in a bicameral state) but pending assent of the governor or the President does not lapse.

A Bill passed by the assembly (in a unicameral state) or passed by both the Houses (in a bicameral state) but returned by the president for reconsideration of House (s) does not lapse.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is ten members or one-tenth of the total number of members of the House (including the presiding officer), whichever is greater. If there is no quorum during a meeting of the House, it is the duty of the pre-siding officer either to adjourn the House or to suspend the meeting until there is quorum.

Voting in House

All matters at any sitting of either House are decided by a majority of votes of the members present and voting excluding the presiding officer. Only a few matters which are specifically mentioned in the Constitution like removal of the speaker of the assembly, removal of the Chairman of the council and so on require special majority, not ordinary majority. The presiding officer (i.e., Speaker in the case of assembly or chairman in the case of council or the person acting as such) does not vote in the first instance, but exercises a casting vote in the case of an equality of votes.

Language in State Legislature

The Constitution has declared the official language(s) of the state or Hindi or English, to be the languages for transacting business in the state legislature. However, the presiding officer can permit a member to address the House in his mother-tongue. The state legislature is authorised to decide whether to continue or discontinue English as a floor language after the completion of fifteen years from the commencement of the Constitution (i.e., from 1965). In case of Himachal Pradesh, Manipur, Meghalaya and Tripura, this time limit is twenty-five years and that of Arunachal Pradesh, Goa and Mizoram, it is forty years.

Rights of Ministers and Advocate General

In addition to the members of a House, every minister and the advocate general of the state have the right to speak and take part in the proceedings of either House or any of its committees of which he is named a member, without being entitled to vote. There are two reasons underlying this constitutional provision:

A minister can participate in the proceedings of a House, of which he is not a member.

A minster, who is not a member of either House, can participate in the proceedings of both the Houses.

Legislative procedure in state legislature

Ordinary Bills

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

First reading,

Second reading, and

Third reading.

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

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

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

it may pass the bill as sent by the assembly (i.e., without amendments);

it may pass the bill with amendments and return it to the assembly for reconsideration;

it may reject the bill altogether; and

it may not take any action and thus keep the bill pending.

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

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

Assent of the Governor

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

he may give his assent to the bill;

he may withhold his assent to the bill;

he may return the bill for reconsideration of the House or Houses; and

he may reserve the bill for the consideration of the President.

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

Assent of the President

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

Money Bills

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

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

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

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

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

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

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

Privileges of state legislature

Privileges of a state legislature are a sum of special rights, immunities and exemptions enjoyed by the Houses of state legislature, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their legislative responsibilities.

The Constitution has also extended the privileges of the state legislature to those persons who are entitled to speak and take part in the proceedings of a House of the state legislature or any of its committees. These include advocate-general of the state and state ministers.

It must be clarified here that the privileges of the state legislature do not extend to the governor who is also an integral part of the state legislature.

The privileges of a state legislature can be classified into two broad categories—those that are enjoyed by each House of the state legislature collectively, and those that are enjoyed by the members individually.

Collective Privileges

The privileges belonging to each House of the state legislature collectively are:

It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same.
It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
It has the right to receive immediate in-formation of the arrest, detention, conviction, imprisonment and release of a member.
It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.
The courts are prohibited to inquire into the proceedings of a House or its Committees.
No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

Individual Privileges

The privileges belonging to the members individually are:
They cannot be arrested during the session of the state legislature and 40 days before the beginning and 40 days after the end of such session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
They have freedom of speech in the state legislature. No member is liable to any proceedings in any court for anything said or any vote given by him in the state legis-lature or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the state legislature.
They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when the state legislature is in session.

Local Governance

Panchayat Raj:

The term *Panchayat Raj* in India signifies the system of rural local self-government. It has been established in all the states of India by the Acts of the state legislatures to build democracy at the grass root level. It is entrusted with rural development. It was constitutionalised through the 73rd Constitutional Amendment Act of 1992.

Evolution of panchayat raj

In January 1957, the Government of India appointed a committee to examine the working of the Community Development Programme (1952) and the National Extension Service (1953) and to suggest measures for their better working. The chairman of this committee was Balwant Rai G Mehta. The committee submitted its report in November 1957 and recommended the establishment of the scheme of 'democratic decentralisation', which ultimately came to be known as Panchayat Raj. The specific recommendations made by it are:
Establishment of a three-tier panchayat raj system gram panchayat at the village level, panchayat samiti at the block level and zila parishad at the district level. These tiers should be organically linked through a device of indirect elections.
The village panchayat should be constituted with directly elected representatives, whereas the panchayat samiti and zila parishad should be constituted with indirectly elected members.
All planning and development activities should be entrusted to these bodies.
The panchayat samiti should be the executive body while the zila parishad should be the advisory, coordinating and supervisory body.
The district collector should be the chairman of the zila parishad.
There should be a genuine transfer of power and responsibility to these democratice bodies.
Adequate resources should be transferred to these bodies to enable them to discharge their

functions and fulfil their responsibilities.

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

Though most of the states created panchayat raj institutions by mid 1960s, there were differences from one state to another with regard to the number of tiers, relative position of samiti and parishad, their tenure, composition, functions, finances and so on. For example, Rajasthan adopted the three-tier system while Tamil Nadu adopted the two-tier system. West Bengal, on the other hand, adopted the four-tier system. Further, in the Rajasthan–Andhra Pradesh pattern, panchayat samiti was powerful as the block was the unit of planning and development, while in Maharashtra–Gujarat pattern, zila parishad was powerful as the district was the unit of planning and development. Some states also established nyaya panchayats, that is, judicial panchayats to try petty civil and criminal cases.

Constitutionalisation

Rajiv Gandhi Government The Rajiv Gandhi Government introduced the 64th Constitutional Amendment Bill in the Lok Sabha in July 1989 to constitutionalise panchayati raj institutions and make them more powerful and broad based. Although, the Lok Sabha passed the bill in August 1989, it was not approved by the Rajya Sabha. The bill was vehemently opposed by the Opposition on the ground that it sought to strengthen centralisation in the federal system.

V P Singh Government The National Front Government, soon after assuming office in November 1989 under the Prime Minist-ership of V P Singh, announced that it would take steps to strengthen the panchayat raj institutions. In June 1990, a two-day conference of the state chief ministers under the chairmanship of V P Singh was held to discuss the issues relating to the strengthening of the panchayati raj bodies. The conference approved the proposals for the introduction of a fresh constitutional amendment bill. Consequently, a constitutional amendment bill was introduced in the Lok Sabha in September 1990. However, the fall of the government resulted in the lapse of the bill.

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

73rd amendment act of 1992

Significance of the Act

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

The act has given a practical shape to Article 40 of the Constitution which says that, "The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government." This article forms a part of the Directive Principles of State Policy.

The act gives a constitutional status to the panchayati raj institutions. It has brought them under the purview of the justiciable part of the Constitution. In other words, the state governments are under constitutional obligation to adopt the new panchayati raj system in accordance with the provisions of the act. Consequently, neither the formation of panchayats nor the holding of elections at regular intervals depend on the will of the state government any more.

The provisions of the act can be grouped into two categories—compulsory and voluntary. The compulsory (mandatory or obligatory) provisions of the act have to be included in the state laws creating the new panchayati raj system. The voluntary provisions, on the other hand, may be included at the discretion of the states. Thus the voluntary provisions of the act ensures the right of

the states to take local factors like geographical, politico–administrative and others, into consideration while adopting the new panchayati raj system.

The act is a significant landmark in the evolution of grassroot democratic institutions in the country. It transfers the representative democracy into participatory democracy. It is a revolutionary concept to build democracy at the grassroot level in the country.

Salient Features

The salient features of the act are:

Gram Sabha The act provides for a Gram Sabha as the foundation of the panchayati raj system. It is a body consisting of persons registered in the electoral rolls of a village comprised within the area of Panchayat at the village level. Thus, it is a village assembly consisting of all the registered voters in the area of a panchayat. It may exercise such powers and perform such functions at the village level as the legislature of a state determines.

Three-Tier System The act provides for a three-tier system of panchayati raj in every state, that is, panchayats at the village, intermediate, and district levels[3]. Thus, the act brings about uniformity in the structure of panchayati raj throughout the country. However, a state having a population not exceeding 20 lakh may not constitute panchayats at the intermediate level.

Election of Members and Chairpersons All the members of panchayats at the village, intermediate and district levels shall be elected directly by the people. Further, the chairperson of panchayats at the intermediate and district levels shall be elected indirectly—by and from amongst the elected members thereof. However, the chairperson of a panchayat at the village level shall be elected in such manner as the state legislature determines.

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

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

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

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

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

State Election Commission The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the panchayats shall be vested in the state election commission. It consists of a state election commissioner to be appointed by the governor. His conditions of service and tenure of office shall also be determined by the governor. He shall not be removed from the office except in the manner and on the grounds prescribed for the removal of a judge of the state high court[4]. His conditions of service shall not be varied to his disadvantage after his appointment.

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

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

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

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

The principles that should govern:

The distribution between the state and the panchayats of the net proceeds of the taxes, duties, tolls and fees levied by the state.

The determination of taxes, duties, tolls and fees that may be assigned to the panchayats.

The grants-in-aid to the panchayats from the consolidated fund of the state.

The measures needed to improve the financial position of the panchayats.

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

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

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

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

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

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

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

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

Continuance of Existing Laws and Panchayats All the state laws relating to panchayats shall continue to be in force until the expiry of one year from the commencement of this act. In other words, the states have to adopt the new panchayati raj system based on this act within the maximum period of one year from 24 April, 1993, which was the date of the commencement of this act. However, all the panchayats existing immediately before the commencement of act shall continue till the expiry of their term, unless dissolved by the state legislature sooner.

Consequently, majority of states passed the panchayat raj acts in 1993 and 1994 to adopt the new system in accordance with the 73rd Constitutional Amendment Act of 1992.

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

It further lays down that no election to any panchayat is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

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

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

Municipalities:

The term 'Urban Local Government' in India signifies the governance of an urban area by the people
through their elected representatives. The jurisdiction of an urban local government is limited to a specific urban area which is demarcated for this purpose by the state government.

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

The system of urban government was constitutionalised through the 74th Constitutional Amendment Act of 1992. At the Central level, the subject of 'urban local government' is dealt with by the following three ministries:

Ministry of Urban Development, created as a separate ministry in 1985
Ministry of Defence in the case of cantonment boards
Ministry of Home Affairs in the case of Union Territories

Evolution of urban bodies

Historical Perspective

The institutions of urban local government originated and developed in modern India during the period of British rule. The major events in this context are as follows:
In 1687-88, the first municipal corporation in India was set up at Madras.
In 1726, the municipal corporations were set up in Bombay and Calcutta.
Lord Mayo's Resolution of 1870 on financial decentralisation visualised the development of local self-government institutions.
Lord Ripon's Resolution of 1882 has been hailed as the 'Magna Carta' of local self-government. He is called as the father of local-self government in India.
The Royal Commission on decentralisation was appointed in 1907 and it submitted its report in 1909. Its chairman was Hobhouse.
Under the dyarchical scheme introduced in Provinces by the Government of India Act of 1919, local self-government became a transferred subject under the charge of a responsible Indian minister.
In 1924, the Cantonments Act was passed by the Central legislature.

74th amendment act of 1992

This Act has added a new Part IX-A to the Constitution of India. It is entitled 'The Municipalities' and consists of provisions from Articles 243-P to 243-ZG. In addition, the act has also added a new Twelfth Schedule to the Constitution. This schedule contains eighteen functional items of municipalities. It deals with Article 243-W.
The act gave constitutional status to the municipalities. It has brought them under the purview of justiciable part of the Constitution. In other words, state governments are under constitutional obligation to adopt the new system of municipalities in accordance with the provisions of the act.
The act aims at revitalising and strengthening the urban governments so that they function effectively as units of local government.

Salient Features

The salient features of the act are:
Three Types of Municipalities The act provides for the constitution of the following three types of municipalities in every state.
A *nagar panchayat* (by whatever name called) for a transitional area, that is, an area in transition from a rural area to an urban area.
A *municipal council* for a smaller urban area.
A *municipal corporation* for a larger urban area.
Composition All the members of a municipality shall be elected directly by the people of the municipal area. For this purpose, each municipal area shall be divided into territorial constituencies to be known as wards. The state legislature may provide the manner of election of the chairperson of a municipality. It may also provide for the representation of the following persons in a municipality.
Persons having special knowledge or experience in municipal administration without the right to vote in the meetings of municipality.
The members of the Lok Sabha and the state legislative assembly representing constituencies that comprise wholly or partly the municipal area.

The members of the Rajya Sabha and the state legislative council registered as electors within the municipal area.
The chairpersons of committees (other than wards committees).
Wards Committees There shall be constituted a wards committee, consisting of one or more wards, within the territorial area of a municipality having population of three lakh or more. The state legislature may make provision with respect to the composition and the territorial area of a wards committee and the manner in which the seats in a wards committee shall be filled. It may also make any provision for the constitution of commitees in addition to the wards committees.

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

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

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

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

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

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

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

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

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

The principles that should govern:

The distribution between the state and the municipalities, the net proceeds of the taxes, duties, tolls and fees levied by the state.

The determination of the taxes, duties, tolls and fees that may be assigned to the municipalities.

The grants-in-aid to the municipalities from the consolidated fund of the state.

The measures needed to improve the financial position of the municipalities.

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

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

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

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

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

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

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

The composition of such committees;

The manner of election of members of such committees;

The functions of such committees in relation to district planning; and

The manner of the election of the chairpersons of such committees.

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

The chairperson of such committee shall forward the development plan to the state government. In preparing the draft development plan, a district planning committee shall

Have regard to—

matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

the extent and type of available resources whether financial or otherwise; and

(b) Consult such institutions and organisations as the Governor may specify.

Metropolitan Planning Committee Every metropolitan area shall have a metropolitan planning committee to prepare a draft development plan[5]. The state legislature may make provisions with respect to the following:

The composition of such committees;

The manner of election of members of such committees;

The representation in such committes of the Central government, state government and other organisations;

The functions of such committees in relation to planning and coordination for the metropolitan area; and

The manner of election of chairpersons of such committees.

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

The chairpersons of such committees shall forward the development plan to the state government. In preparing the draft development plan, a metropolitan planning committee shall

Have regard to—

the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

the overall objectives and priorities set by the Government of India and the government of the state;

the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise; and consult such institutions and organisations as the Governor may specify.

Continuance of Existing Laws and Municipalities All the state laws relating to municipalities shall continue to be in force until the expiry of one year from the commencement of this act. In other words, the states have to adopt the new system of municipalities based on this act within the maximum period of one year from 1 June, 1993, which is the date of commencement of this act. However, all municipalities existing immediately before the commencement of this act shall continue till the expiry of their term, unless dissolved by the state legislature sooner.

Bar to Interference by Courts in Electoral Matters The act bars the interference by courts in the electoral matters of municipalities. It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court. It further lays down that no election to any municipality is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

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

Urban planning including town planning;
Regulation of land use and construction of buildings;
Planning for economic and social development;
Roads and bridges;
Water supply for domestic, industrial and commercial purposes;
Public health, sanitation, conservancy and solid waste management;
Fire services;
Urban forestry, protection of the environment and promotion of ecological aspects;
Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded;
Slum improvement and upgradation;
Urban poverty alleviation;
Provision of urban amenities and facilities such as parks, gardens, playgrounds;
Promotion of cultural, educational and aesthetic aspects;
Burials and burial grounds, cremations and cremation grounds and electric crematoriums;
Cattle ponds, prevention of cruelty to animals;
Vital statistics including registration of births and deaths;
Public amenities including street lighting, parking lots, bus stops and public conveniences; and
Regulation of slaughter houses and tanneries.

Types of urban governments

The following eight types of urban local bodies are created in India for the administration of urban areas:

Municipal Corporation
Municipality
Notified Area Committee
Town Area Committee
Cantonment Board
Township
Port Trust
Special Purpose Agency

Municipal Corporation

Municipal corporations are created for the administration of big cities like Delhi, Mumbai, Kolkata, Hyderabad, Bangalore and others. They are established in the states by the acts of the concerned state legislatures, and in the union territories by the acts of the Parliament of India. There may be

one common act for all the municipal corporations in a state or a separate act for each municipal corporation.

A municipal corporation has three authorities, namely, the council, the standing committees and the commissioner.

The Council is the deliberative and legislative wing of the corporation. It consists of the Councillors directly elected by the people, as well as a few nominated persons having knowledge or experience of municipal administration. In brief, the composition of the Council including the reservation of seats for SCs, STs and women is governed by the 74th Constitutional Amendment Act.

The Council is headed by a Mayor. He is assisted by a Deputy Mayor. He is elected in a majority of the states for a one-year renewable term. He is basically an ornamental figure and a formal head of the corporation. His main function is to preside over the meetings of the Council.

The standing committees are created to facilitate the working of the council, which is too large in size. They deal with public works, education, health, taxation, finance and so on. They take decisions in their fields.

The municipal commissioner is responsible for the implementation of the decisions taken by the council and its standing committees. Thus, he is the chief executive authority of the corporation. He is appointed by the state government and is generally a member of the IAS.

Municipality

The municipalities are established for the administration of towns and smaller cities. Like the corporations, they are also set up in the states by the acts of the concerned state legislatures and in the union territory by the acts of the Parliament of India. They are also known by various other names like municipal council, municipal committee, municipal board, borough municipality, city municipality and others.

Like a municipal corporation, a municipality also has three authorities, namely, the council, the standing committees and the chief executive officer.

The council is the deliberative and legislative wing of the municipality. It consists of the councilors directly elected by the people.

The council is headed by a president/chairman. He is assisted by a vice-president/vice-chairman. He presides over the meetings of the council.

Unlike the Mayor of a municipal corporation, he plays a significant role and is the pivot of the municipal administration. Apart from presiding over the meetings of the Council, he enjoys executive powers.

The standing committees are created to facilitate the working of the council. They deal with public works, taxation, health, finance and so on.

The chief executive officer/chief municipal officer is responsible for day-to-day general administration of the municipality. He is appointed by the state government.

Notified Area Committee

A notified area committee is created for the administration of two types of areas—a fast developing town due to industrialization, and a town which does not yet fulfill all the conditions necessary for the constitution of a municipality, but which otherwise is considered important by the state government. Since it is established by a notification in the government gazette, it is called as notified area committee. Though it functions within the framework of the State Municipal Act, only those provisions of the act apply to it which are notified in the government gazette by which it is created. It may also be entrusted to exercise powers under any other act. Its powers are almost equivalent to those of a municipality. But unlike the municipality, it is an entirely nominated body, that is, all the members of a notified area committee including the chairman are nominated by the state government. Thus, it is neither an elected body nor a statutory body.

Town Area Committee

A town area committee is set up for the administration of a small town. It is a semi-municipal authority and is entrusted with a limited number of civic functions like drainage, roads, street

lighting, and conservancy. It is created by a separate act of a state legislature. Its composition, functions and other matters are governed by the act. It may be wholly elected or wholly nominated by the state government or partly elected and partly nominated[6].

Cantonment Board

A cantonment board is established for municipal administration for civilian population in the cantonment area[7]. It is set up under the provisions of the Cantonments Act of 2006—a legislation enacted by the Central government. It works under the administrative control of the defence ministry of the Central government. Thus, unlike the above four types of urban local bodies, which are created and administered by the state government, a cantonment board is created as well as administered by the Central government.

The Cantonments Act of 2006 was enacted to consolidate and amend the law relating to the administration of cantonments with a view to impart greater democratisation, improvement of their financial base to make provisions for developmental activities and for matters connected with them. This Act has repealed the Cantonments Act of 1924.

At present (2013), there are 62 cantonment boards in the country. They are grouped into four categories on the basis of the civil population.

A cantonment board consists of partly elected and partly nominated members. The elected members hold office for a term of five years while the nominated members (i.e., ex-officio members) continue so long as they hold the office in that station. The military officer commanding the station is the ex-officio president of the board and presides over its meetings. The vice-president of the board is elected by the elected members from amongst themselves for a term of five years.

The Category I cantonment board consists of the following members:

A military officer commanding the station

An executive engineer in the cantonment

A health officer in the cantonment

A first class magistrate nominated by the district magistrate

Three military officers nominated by the officer commanding the station

Eight members elected by the people of the cantonment area

Chief Executive Officer of the cantonment board

The functions performed by a cantonment board are similar to those of a municipality. These are statutorily categorized into obligatory functions and discretionary functions. The source of income includes both, tax revenue and non-tax revenue.

The executive officer of the cantonment board is appointed by the president of India. He implements all the resolutions and decisions of the board and its committees. He belongs to the central cadre established for the purpose.

Township

This type of urban government is established by the large public enterprises to provide civic amenities to its staff and workers who live in the housing colonies built near the plant. The enterprise appoints a town administrator to look after the administration of the township. He is assisted by some engineers and other technical and non-technical staff. Thus, the township form of urban government has no elected members. In fact, it is an extension of the bureaucratic structure of the enterprises.

Port Trust

The port trusts are established in the port areas like Mumbai, Kolkata, Chennai and so on for two purposes: (a) to manage and protect the ports; and (b) to provide civic amenities. A port trust is created by an Act of Parliament. It consists of both elected and nominated members. Its chairman is an official. Its civic functions are more or less similar to those of a municipality.

Special Purpose Agency

In addition to these seven area-based urban bodies (or multipurpose agencies), the states have set up certain agencies to undertake designated activities or specific functions that 'legitimately' belong to the domain of municipal corporations or municipalities or other local urban governments. In

other words, these are function-based and not area-based. They are known as ‘single purpose’, ‘uni-purpose’ or ‘special purpose’ agencies or ‘functional local bodies’. Some such bodies are:
Town improvement trusts.
Urban development authorities.
Water supply and sewerage boards.
Housing boards.
Pollution control boards.
Electricity supply boards.
City transport boards.
These functional local bodies are established as statutory bodies by an act of state legislature or as departments by an executive resolution. They function as autonomous bodies and deal with the functions allotted to them independently of the local urban governments, that is, municipal corporations or municipalities and so forth. Thus, they are not subordinate agencies of the local municipal bodies.

Central council of local government

The Central Council of Local Government was set up in 1954. It was constituted under Article 263 of the Constitution of India by an order of the President of India. Originally, it was known as the Central Council of Local Self-Government. However, the term ‘self-government’ was found to be superfluous and hence was replaced by the term ‘government’ in the 1980s. Till 1958, it dealt with both urban as well as rural local governments, but after 1958 it has been dealing with matters of urban local government only.
The Council is an advisory body. It consists of the Minister for Urban Development in the Government of India and the ministers for local self government in states. The Union minister acts as the Chairman of the Council.
The Council performs the following functions with regard to local government:
Considering and recommending the policy matters
Making proposals for legislation
Examining the possibility of cooperation between the Centre and the states
Drawing up a common programme of action
Recommending Central financial assistance
Reviewing the work done by the local bodies with the Central financial assistance.

Unit V: Judicial System and Election Commission

Supreme Court

Unlike the American Constitution, the Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the high courts below it. Under a high court (and below the state level), there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts, adopted from the Government of India Act of 1935, enforces both Central laws as well as the state laws. In USA, on the other hand, the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary. There is thus a double system of courts in USA—one for the centre and the other for the states. To sum up, India, although a federal country like the USA, has a unified judiciary and one system of fundamental law and justice.
The Supreme Court of India was inaugurated on January 28, 1950. It succeeded the Federal Court of India, established under the Government of India Act of 1935. However, the jurisdiction of the Supreme Court is greater than that of its predecessor. This is because; the Supreme Court has replaced the British Privy Council as the highest court of appeal.

Articles 124 to 147 in Part V of the Constitution deal with the organization, independence, jurisdiction, powers, and procedures and so on of the Supreme Court. The Parliament is also authorized to regulate them.

Organization of Supreme court

At present, the Supreme Court consists of thirty-one judges (one chief justice and thirty other judges). In February 2009, the centre notified an increase in the number of Supreme Court judges from twenty-six to thirty-one, including the Chief Justice of India. This followed the enactment of the Supreme Court (Number of Judges) Amendment Act, 2008. Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges). The Parliament has increased this number of other judges progressively to ten in 1956, to thirteen in 1960, to seventeen in 1977 and to twenty-five in 1986.

Judges

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

Controversy over Consultation The Supreme Court has given different interpretation of the word 'consultation' in the above provision. In the *First Judges* case (1982), the Court held that consultation does not mean concurrence and it only implies exchange of views. But, in the *Second Judges* case (1993), the Court reversed its earlier ruling and changed the meaning of the word consultation to concurrence. Hence, it ruled that the advice tendered by the Chief Justice of India is binding on the President in the matters of appointment of the judges of the Supreme Court. But, the Chief Justice would tender his advice on the matter after consulting two of his senior most colleagues. Similarly, in the *third judges* case (1998), the Court opined that the consultation process to be adopted by the Chief justice of India requires 'consultation of plurality judges'. The sole opinion of the chief justice of India does not constitute the consultation process. He should consult collegiums of four senior most judges of the Supreme Court and even if two judges give an adverse opinion, he should not send the recommendation to the government. The court held that the recommendation made by the chief justice of India without complying with the norms and requirements of the consultation process are not binding on the government.

Appointment of Chief Justice

From 1950 to 1973, the practice has been to appoint the senior most judge of the Supreme Court as the chief justice of India. This established convention was violated in 1973 when A N Ray was appointed as the Chief Justice of India by superseding three senior judges. Again in 1977, M U Beg was appointed as the chief justice of India by superseding the then senior-most judge. This discretion of the government was curtailed by the Supreme Court in the Second Judges Case (1993), in which the Supreme Court ruled that the senior most judge of the Supreme Court should alone be appointed to the office of the chief justice of India.

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

He should be a citizen of India.

(a) He should have been a judge of a High Court (or high courts in succession) for five years; or

(b) He should have been an advocate of a High Court (or High Courts in succession) for ten years;

(c) He should be a distinguished jurist in the opinion of the president.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.

Oath or Affirmation

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

to bear true faith and allegiance to the Constitution of India;

to uphold the sovereignty and integrity of India;

to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of

the Office without fear or favour, affection or ill-will; and

to uphold the Constitution and the laws.

Tenure of Judges

The Constitution has not fixed the tenure of a judge of the Supreme Court.

However, it makes the following three provisions in this regard:

He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.

He can resign his office by writing to the president.

He can be removed from his office by the President on the recommendation of the Parliament.

Removal of Judges

A judge of the Supreme Court can be removed from his Office by an order of the president. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.[5] The address must be supported by a special majority of each House of Parliament (ie, a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two—proved misbehavior or incapacity.

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

A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case

of Rajya Sabha) is to be given to the Speaker/Chairman.

The Speaker/Chairman may admit the motion or refuse to admit it.

If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.

The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief

justice of a high court, and (c) a distinguished jurist.

If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the

House can take up the consideration of the motion.

After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.

Finally, the president passes an order removing the judge.

It is interesting to know that no judge of the Supreme Court has been impeached so far. The first and the only case of impeachment is that of Justice V Ramaswami of the Supreme Court (1991–1993). Though the enquiry Committee found him guilty of misbehaviour, he could not be removed

as the impeachment motion was defeated in the Lok Sabha. The Congress Party abstained from voting.

Salaries and Allowances

The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency. In 2009, the salary of the chief justice was increased from `33,000 to `1 lakh per month and that of a judge from `30,000 to `90,000 per month. They are also paid sumptuary allowance and provided with free accommodation and other facilities like medical, car, telephone, etc.

The retired chief justice and judges are entitled to 50 per cent of their last drawn salary as monthly pension.

Acting Chief Justice

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

- the office of Chief Justice of India is vacant; or
- the Chief Justice of India is temporarily absent; or
- the Chief Justice of India is unable to perform the duties of his office.

Ad hoc Judge

When there is a lack of quorum of the permanent judges to hold or continue any session of the Supreme Court, the Chief Justice of India can appoint a judge of a High Court as an ad hoc judge of the Supreme Court for a temporary period. He can do so only after consultation with the chief justice of the High Court concerned and with the previous consent of the president. The judge so appointed should be qualified for appointment as a judge of the Supreme Court. It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his office. While so attending, he enjoys all the jurisdiction, powers and privileges (and discharges the duties) of a judge of the Supreme Court.

Retired Judges

At any time, the chief justice of India can request a retired judge of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period. He can do so only with the previous consent of the president and also of the person to be so appointed. Such a judge is entitled to such allowances as the president may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of Supreme Court. But, he will not otherwise be deemed to be a judge of the Supreme Court.

Seat of Supreme Court

The Constitution declares Delhi as the seat of the Supreme Court. But, it also authorises the chief justice of India to appoint other place or places as seat of the Supreme Court. He can take decision in this regard only with the approval of the President. This provision is only optional and not compulsory. This means that no court can give any direction either to the President or to the Chief Justice to appoint any other place as a seat of the Supreme Court.

Procedure of the Court

The Supreme Court can, with the approval of the president, make rules for regulating generally the practice and procedure of the Court. The Constitutional cases or references made by the President under Article 143 are decided by a Bench consisting of at least five judges. All other cases are

usually decided by a bench consisting of not less than three judges. The judgements are delivered by the open court. All judgements are by majority vote but if differing, then judges can give dissenting judgements or opinions.

Independence of Supreme Court

The Supreme Court has been assigned a very significant role in the Indian democratic political system. It is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution. Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament). It should be allowed to do justice without fear or favour.

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

Mode of Appointment The judges of the Supreme Court are appointed by the Pre-sident (which means the cabinet) in consultation with the members of the judiciary itself (ie, judges of the Supreme Court and the high courts). This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.

Security of Tenure The judges of the Supreme Court are provided with the Security of Tenure. They can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the President, though they are appointed by him. This is obvious from the fact that no judge of the Supreme Court has been removed (or impeached) so far.

Fixed Service Conditions The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be changed to their disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of the Supreme Court remain same during their term of Office.

Expenses Charged on Consolidated Fund The salaries, allowances and pensions of the judges and the staff as well as all the administrative expenses of the Supreme Court are charged on the Consolidated Fund of India. Thus, they are non-votable by the Parliament (though they can be discussed by it).

Conduct of Judges cannot be Discussed The Constitution prohibits any discussion in Parliament or in a State Legislature with respect to the conduct of the judges of the Supreme Court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

Ban on Practice after Retirement The retired judges of the Supreme Court are prohibited from pleading or acting in any Court or before any authority within the territory of India. This ensures that they do not favour any one in the hope of future favour.

Power to Punish for its Contempt The Supreme Court can punish any person for its contempt. Thus, its actions and decisions cannot be criticized and opposed by anybody. This power is vested in

the Supreme Court to maintain its authority, dignity and honour.

Freedom to Appoint its Staff The Chief Justice of India can appoint officers and servants of the Supreme Court without any interference from the executive. He can also prescribe their conditions of service.

Its Jurisdiction cannot be Curtailed The Parliament is not authorised to curtail the jurisdiction and powers of the Supreme Court. The Constitution has guaranteed to the Supreme Court, jurisdiction of various kinds. However, the Parliament can extend the same.

Separation from Executive The Constitution directs the State to take steps to separate the Judiciary from the Executive in the public services. This means that the executive authorities should not possess the judicial powers. Consequently, upon its implementation, the role of executive authorities in judicial administration came to an end.[7]

Jurisdiction and Powers of Supreme Court

The Constitution has conferred a very extensive jurisdiction and vast powers on the Supreme Court. It is not only a Federal Court like the American Supreme Court but also a final court of appeal like the British House of Lords (the Upper House of the British Parliament). It is also the final interpreter and guardian of the Constitution and guarantor of the fundamental rights of the citizens. Further, it has advisory and supervisory powers. The jurisdiction and powers of the Supreme Court can be classified into the following:

Original Jurisdiction.
Writ Jurisdiction.
Appellate Jurisdiction.
Advisory Jurisdiction.
A Court of Record.
Power of Judicial Review.
Other Powers.

Original Jurisdiction

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

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

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

With regard to the exclusive original jurisdiction of the Supreme Court, two points should be noted. One, the dispute must involve a question (whether of law or fact) on which the existence or extent of a legal right depends. Thus, the questions of political nature are excluded from it. Two, any suit brought before the Supreme Court by a private citizen against the Centre or a state cannot be entertained under this.

Further, this jurisdiction of the Supreme Court does not extend to the following:

A dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement, sanad or
other similar instrument.
A dispute arising out of any treaty, agreement, etc., which specifically provides that the said jurisdiction does not extent to such a dispute.
Inter-state water disputes.
Matters referred to the Finance Commission.
Adjustment of certain expenses and pensions between the Centre and the states.
Ordinary dispute of Commercial nature between the Centre and the states.
Recovery of damages by a state against the Centre.

In 1961, the first suit, under the original jurisdiction of the Supreme Court, was brought by West Bengal against the Centre. The State Government challenged the Constitutional validity of the Coal Bearing Areas (Acquisition and Development) Act, 1957, passed by the Parliament. However, the Supreme Court dismissed the suit by upholding the validity of the Act.

Writ Jurisdiction

The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens. The Supreme Court is empowered to issue writs including *habeas corpus*, *mandamus*, prohibition, *quo-warrento* and *certiorari* for the enforcement of the fundamental rights of an aggrieved citizen. In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. However, the writ jurisdiction of the Supreme Court is not exclusive. The high courts are also empowered to issue writs for the enforcement of the Fundamental Rights. It means, when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.

Therefore, the original jurisdiction of the Supreme Court with regard to federal disputes is different from its original jurisdiction with regard to disputes relating to fundamental rights. In the first case, it is exclusive and in the second case, it is concurrent with high courts jurisdiction. Moreover, the parties involved in the first case are units of the federation (Centre and states) while the dispute in the second case is between a citizen and the Government (Central or state).

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

Appellate Jurisdiction

As mentioned earlier, the Supreme Court has not only succeeded the Federal Court of India but also replaced the British Privy Council as the highest court of appeal. The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:

Appeals in constitutional matters.
Appeals in civil matters.
Appeals in criminal matters.
Appeals by special leave.

Constitutional Matters In the constitutional cases, an appeal can be made to the Supreme Court against the judgement of a high court if the high court certifies that the case involves a substantial question of law that requires the interpretation of the Constitution. Based on the certificate, the party in the case can appeal to the Supreme Court on the ground that the question has been wrongly decided.

Civil Matters In civil cases, an appeal lies to the Supreme Court from any judgement of a high court if the high court certifies—

that the case involves a substantial question of law of general importance; and
that the question needs to be decided by the Supreme Court.

Originally, only those civil cases that involved a sum of `20,000 could be appealed before the Supreme Court. But this monetary limit was removed by the 30th Constitutional Amendment Act of 1972.

Criminal Matters The Supreme Court hears appeals against the judgement in a criminal proceeding of a high court if the high court—

has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

has taken before itself any case from any subordinate court and convicted the accused person and

sentenced him to death; or

certifies that the case is a fit one for appeal to the Supreme Court.

In the first two cases, an appeal lies to the Supreme Court as a matter of right (ie, without any certificate of the high court). But if the high court has reversed the order of conviction and has ordered the acquittal of the accused, there is no right to appeal to the Supreme Court.

In 1970, the Parliament had enlarged the Criminal Appellate Jurisdiction of the Supreme Court. Accordingly, an appeal lies to the Supreme Court from the judgement of a high court if the high court:

has on appeal, reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or for ten years; or

has taken before itself any case from any subordinate court and convicted the accused person and

sentenced him to imprisonment for life or for ten years.

Further, the appellate jurisdiction of the Supreme Court extends to all civil and criminal cases in which the Federal Court of India had jurisdiction to hear appeals from the high court but which are not covered under the civil and criminal appellate jurisdiction of the Supreme Court mentioned above.

Appeal by Special Leave

The Supreme Court is authorized to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court martial). This provision contains the four aspects as under:

It is a discretionary power and hence, cannot be claimed as a matter of right.

It can be granted in any judgement whether final or interlocutory.

It may be related to any matter—constitutional, civil, criminal, income-tax, labour, revenue, advocates, etc.

It can be granted against any court or tribunal and not necessarily against a high court (of course,

except a military court).

Thus, the scope of this provision is very wide and it vests the Supreme Court with a plenary jurisdiction to hear appeals. On the exercise of this power, the Supreme Court itself held that 'being an exceptional and overriding power, it has to be exercised sparingly and with caution and only in special extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule'.

Advisory Jurisdiction

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

On any question of law or fact of public importance which has arisen or which is likely to arise.

On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, sanad

or other similar instruments.

In the first case, the Supreme Court may tender or may refuse to tender its opinion to the president. But, in the second case, the Supreme Court 'must' tender its opinion to the president. In both the cases, the opinion expressed by the Supreme Court is only advisory and not a judicial pronouncement. Hence, it is not binding on the president; he may follow or may not follow the

opinion. However, it facilitates the government to have an authoritative legal opinion on a matter to be decided by it.

So far (2013), the President has made fifteen references to the Supreme Court under its advisory jurisdiction (also known as consultative jurisdiction). These are mentioned below in the chronological order.

Delhi Laws Act in 1951
Kerala Education Bill in 1958
Berubari Union in 1960
Sea Customs Act in 1963
Keshav Singh's case relating to the privileges of the Legislature in 1964
Presidential Election in 1974
Special Courts Bill in 1978
Jammu and Kashmir Resettlement Act in 1982
Cauvery Water Disputes Tribunal in 1992
Rama Janma Bhumi case in 1993
Consultation process to be adopted by the chief justice of India in 1998
Legislative competence of the Centre and States on the subject of natural gas and liquefied natural gas in 2001The constitutional validity of the Election Commission's decision on deferring the Gujarat Assembly Elections in 2002Punjab Termination of Agreements Act in 20042G spectrum case verdict and the mandatory auctioning of natural resources across all sectors in 2012

A Court of Record

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

The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court. They are recognized as legal precedents and legal references.It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to `2,000 or with both. In 1991, the Supreme Court has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country.

Contempt of court may be civil or criminal. Civil contempt means willful disobedience to any judgement, order, writ or other process of a court or willful breach of an undertaking given to a court. Criminal contempt means the publication of any matter or doing an act which—**(i)** scandalizes or lowers the authority of a court; or **(ii)** prejudices or interferes with the due course of a judicial proceeding; or **(iii)** interferes or obstructs the administration of justice in any other manner.

However, innocent publication and distribution of some matter, fair and accurate report of judicial proceedings, fair and reasonable criticism of judicial acts and comment on the administrative side of the judiciary do not amount to contempt of court.

Power of Judicial Review

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

Judicial review is needed for the following reasons:

To uphold the principle of the supremacy of the Constitution.
To maintain federal equilibrium (balance between Centre and states).

To protect the fundamental rights of the citizens.

The Supreme Court used the power of judicial review in various cases, as for example, the *Golaknath* case (1967), the *Bank Nationalisat-ion* case (1970), the *Privy Purses Abolition* case (1971), the *Kesavananda Bharati* case (1973), the *Minerva Mills* case (1980) and so on.

Though the phrase 'Judicial Review' has nowhere been used in the Constitution, the provisions of several articles explicitly confer the power of judicial review on the Supreme Court. The constitutional validity of a legislative enactment or an executive order can be challenged in the Supreme Court on the following three grounds:

it infringes the Fundamental Rights (Part III),

it is outside the competence of the authority which has framed it, and

it is repugnant to the constitutional provisions.

From the above, it is clear that the scope of judicial review in India is narrower than that of what exists in USA, though the American Constitution does not explicitly mention the concept of judicial review in any of its provisions. This is because, the American Constitution provides for 'due process of law' against that of 'procedure established by law' which is contained in the Indian Constitution. The difference between the two is : 'The due process of law gives wide scope to the Supreme Court to grant protection to the rights of its citizens. It can declare laws violative of these rights void not only on substantive grounds of being unlawful, but also on procedural grounds of being unreasonable. Our Supreme Court, while determining the constitutionality of a law, however examines only the substantive question i.e., whether the law is within the powers of the authority concerned or not. It is not expected to go into the question of its reasonableness, suitability or policy implications.'

The exercise of wide power of judicial review by the American Supreme Court in the name of 'due process of law' clause has made the critics to describe it as a 'third chamber' of the Legislature, a super-legislature, the arbiter of social policy and so on. This American principle of judicial supremacy is also recognized in our constitutional system, but to a limited extent. Nor do we fully follow the British Principle of parliamentary supremacy. There are many limitations on the sovereignty of Parliament in our country, like the written character of the Constitution, the federalism with division of powers, the Fundamental Rights and the judicial review. In effect, what exists in India is a synthesis of both, that is, the American principle of judicial supremacy and the British principle of parliamentary supremacy.

Other Powers

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

It decides the disputes regarding the election of the president and the vice-president. In this regard,

it has the original, exclusive and final authority.

It enquires into the conduct and behaviour of the chairman and members of the Union Public

Service Commission on a reference made by the president. If it finds them guilty of misbehaviour, it can recommend to the president for their removal. The advice tendered by the Supreme Court in this regard is binding on the President.It has power to review its own judgement or order. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare. In brief, the Supreme Court is a self-correcting agency. For example, in the *Kesavananda Bharati* case (1973), the Supreme Court departed from its previous judgement in the *Golak Nath* case (1967).It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court.Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the

Supreme Court.It is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the Constitution and the verbiage used in the Constitution.It has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country.

The Supreme Court's jurisdiction and powers with respect to matters in the Union list can be enlarged by the Parliament. Further, its jurisdiction and powers with respect to other matters can be enlarged by a special agreement of the Centre and the states.

Supreme Court Advocates

Three categories of Advocates are entitled to practice law before the Supreme Court. They are:

Senior Advocates These are Advocates who are designated as Senior Advocates by the Supreme Court of India or by any High Court. The Court can designate any Advocate, with his consent, as Senior Advocate if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction. A Senior Advocate is not entitled to appear without an Advocate-on-Record in the Supreme Court or without a junior in any other court or tribunal in India. He is also not entitled to accept instructions to draw pleadings or affidavits, advice on evidence or do any drafting work of an analogous kind in any court or tribunal in India or undertake conveyancing work of any kind whatsoever but this prohibition shall not extend to settling any such matter as aforesaid in consultation with a junior.

Advocates-on-Record Only these advocates are entitled to file any matter or document before the Supreme Court. They can also file an appearance or act for a party in the Supreme Court.

Other Advocates These are advocates whose names are entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 and they can appear and argue any matter on behalf of a party in the Supreme Court but they are not entitled to file any document or matter before the Court.

High Court:

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

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

The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorized the Parliament to establish a common high court for two or more states or for two or more states and a union territory. The territorial jurisdiction of a high court is co-terminus with the territory of a state. Similarly, the territorial jurisdiction of a common high court is co-terminus with the territories of the concerned states and union territory.

At present, there are 24 high courts in the country[2]. Out of them, three are common high courts. Delhi is the only union territory that has a high court of its own (since 1966). The other union territories fall under the jurisdiction of different state high courts. The Parliament can extend the jurisdiction of a high court to any union territory or exclude the jurisdiction of a high court from any union territory.

The name, year of establishment, territorial jurisdiction and seat (with bench or benches) of all the 24 high courts are mentioned in Table 30.1 at the end of this chapter.

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

Organization of High Court

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

Judges

Appointment of Judges

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

In the *Second Judges* case (1993), the Supreme Court ruled that no appointment of a judge of the high court can be made, unless it is in conformity with the opinion of the chief justice of India. In the *Third Judges* case (1998), the Supreme Court opined that in case of the appointment of high court judges, the chief justice of India should consult collegiums of two senior-most judges of the Supreme Court. Thus, the sole opinion of the chief justice of India alone does not constitute the 'consultation' process.

Qualifications of Judges

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

He should be a citizen of India.

(a) He should have held a judicial office in the territory of India for ten years; or

He should have been an advocate of a high court (or high courts in succession) for ten years.

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

Oath or Affirmation

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

to bear true faith and allegiance to the Constitution of India;

to uphold the sovereignty and integrity of India;

to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of

the office without fear or favour, affection or ill-will; and

to uphold the Constitution and the laws.

Tenure of Judges

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

He holds office until he attains the age of 62 years. Any questions regarding his age is to be decided by the president after consultation with the chief justice of India and the decision of the

President is final.

He can resign his office by writing to the president.

He can be removed from his office by the President on the recommendation of the Parliament. He vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.

Removal of Judges

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

The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of a high court by the process of impeachment:

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

From the above, it is clear that the procedure for the impeachment of a judge of a high court is the same as that for a judge of the Supreme Court.It is interesting to know that no judge of a high court has been impeached so far.

Salaries and Allowances

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

The retired chief justice and judges are entitled to 50% of their last drawn salary as monthly pension.

Transfer of Judges

The President can transfer a judge from one high court to another after consulting the Chief Justice of India. On transfer, he is entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament.

In 1977, the Supreme Court ruled that the transfer of high court judges could be resorted to only as an exceptional measure and only in public interest and not by way of punishment. Again in 1994, the

Supreme Court held that judicial review is necessary to check arbitrariness in transfer of judges. But, only the judge who is transferred can challenge it.

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

being transferred and the other receiving him). Thus, the sole opinion of the chief justice of India does not constitute the 'consultation' process.

Acting Chief Justice

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

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

Additional and Acting Judges

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

there is a temporary increase in the business of the high court; or
there are arrears of work in the high court.

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

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

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

Retired Judges

At any time, the chief justice of a high court of a state can request a retired judge of that high court or any other high court to act as a judge of the high court of that state for a temporary period. He can do so only with the previous consent of the President and also of the person to be so appointed. Such a judge is entitled to such allowances as the President may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of that high court. But, he will not otherwise be deemed to be a judge of that high court.

Independence of High Court

The independence of a high court is very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the legislature. It should be allowed to do justice without fear or favour. The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a high court.

Mode of Appointment The judges of a high court are appointed by the president (which means the cabinet) in consultation with the members of the judiciary itself (i.e., chief justice of India and the chief justice of the high court). This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.

Security of Tenure The judges of a high court are provided with the security of tenure. They can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the president, though they are appointed by him. This is obvious from the fact that no judge of a high court has been removed (or impeached) so far.

Fixed Service Conditions The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament. But, they cannot be changed to their disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of a high court remain same during their term of office.

Expenses Charged on Consolidated Fund The salaries and allowances of the judges, the salaries, allowances and pensions of the staff as well as the administrative expenses of a high court are

charged on the consolidated fund of the state. Thus, they are non-votable by the state legislature (though they can be discussed by it). It should be noted here that the pension of a high court judge is charged on the Consolidated Fund of India and not the state.

Conduct of Judges cannot be Discussed The Constitution prohibits any discussion in Parliament or in a state legislature with respect to the conduct of the judges of a high court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

Ban on Practice after Retirement The retired permanent judges of a high court are prohibited from pleading or acting in any court or before any authority in India except the Supreme Court and the other high courts. This ensures that they do not favour any one in the hope of future favour.

Power to Punish for its Contempt A high court can punish any person for its contempt. Thus, its actions and decisions cannot be criticized and opposed by anybody. This power is vested in a high court to maintain its authority, dignity and honour.

Freedom to Appoint its Staff The chief justice of a high court can appoint officers and servants of the high court without any interference from the executive. He can also prescribe their conditions of service.

Its Jurisdiction cannot be Curtailed The jurisdiction and powers of a high court in so far as they are specified in the Constitution cannot be curtailed both by the Parliament and the state legislature. But, in other respects, the jurisdiction and powers of a high court can be changed both by the parliament and the state legislature.

Separation from Executive The Constitution directs the state to take steps to separate the judiciary from the executive in public services. This means that the executive authorities should not possess the judicial powers. Consequent upon its implementation, the role of executive authorities in judicial administration came to an end.

Jurisdiction and Powers of High Court

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

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

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

- Original jurisdiction.
- Writ jurisdiction.
- Appellate jurisdiction.
- Supervisory jurisdiction.
- Control over subordinate courts.
- A court of record.
- Power of judicial review.

The present jurisdiction and powers of a high court are governed by (a) the constitutional provisions,

the Letters Patent, (c) the Acts of Parliament, (d) the Acts of State Legislature, (e) Indian Penal Code, 1860, (f) Criminal Procedure Code, 1973, and (g) Civil Procedure Code, 1908.

Original Jurisdiction

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

Matters of admirality, will, marriage, divorce, company laws and contempt of court.
Disputes relating to the election of members of Parliament and state legislatures.
Regarding revenue matter or an act ordered or done in revenue collection.
Enforcement of fundamental rights of citizens.
Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.
The four high courts (i.e., Calcutta, Bombay, Madras and Delhi High Courts) have original civil
Jurisdiction in cases of higher value.

Before 1973, the Calcutta, Bombay and Madras High Courts also had original criminal jurisdiction.

This was fully abolished by the Criminal Procedure Code, 1973.

Writ Jurisdiction

Article 226 of the Constitution empowers a high court to issue writs including *habeas corpus, mandamus, certiorari*, prohibition and *quo-warrento* for the enforcement of the fundamental rights of the citizens and for any other purpose. The phrase 'for any other purpose' refers to the enforcement of an ordinary legal right. The high court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction.

The writ jurisdiction of the high court (under Article 226) is not exclusive but concurrent with the writ jurisdiction of the Supreme Court (under Article 32). It means, when the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly. However, the writ jurisdiction of the high court is wider than that of the Supreme Court. This is because, the Supreme Court can issue writs only for the enforcement of fundamental rights and not for any other purpose, that is, it does not extend to a case where the breach of an ordinary legal right is alleged.

In the *Chandra Kumar* case (1997), the Supreme Court ruled that the writ jurisdiction of both the high court and the Supreme Court constitute a part of the basic structure of the Constitution. Hence, it cannot be ousted or excluded even by way of an amendment to the Constitution.

Appellate Jurisdiction

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

Civil Matters The civil appellate jurisdiction of a high court is as follows:

First appeals from the orders and judgements of the district courts, additional district courts and other subordinate courts lie directly to the high court, on both questions of law and fact, if the amount exceeds the stipulated limit.Second appeals from the orders and judgements of the district court or other subordinate courts lie to the high court in the cases involving questions of law only (and not questions of fact).The Calcutta, Bombay and Madras High Courts have provision for intra-court appeals. When a single judge of the high court has decided a case (either under the original or appellate jurisdiction of the high court), an appeal from such a decision lies to the division bench of the same high court.Appeals from the decisions of the administrative and other tribunals lie to the division bench of the state high court. In 1997, the Supreme Court ruled that the tribunals are subject to the writ jurisdiction of the high courts. Consequently, it is not possible

for an aggrieved person to approach the Supreme Court directly against the decisions of the tribunals, without first going to the high courts.

Criminal Matters The criminal appellate jurisdiction of a high court is as follows:Appeals from the judgements of sessions court and additional sessions court lie to the high court if the sentence is one of imprisonment for more than seven years. It should also be noted here that a death sentence (popularly known as capital punishment) awarded by a sessions court or an additional sessions court should be confirmed by the high court before it can be executed, whether there is an appeal by the convicted person or not.

In some cases specified in various provisions of the Criminal Procedure Code (1973), the appeals from the judgements of the assistant sessions judge, metro-Politian magistrate or other magistrates (judicial) lie to the high court.

Supervisory Jurisdiction

A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals). Thus, it may—call for returns from them;make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;prescribe forms in which books, entries and accounts are to be kept by them; andsettle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

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

However, this power does not vest the high court with any unlimited authority over the subordinate courts and tribunals. It is an extraordinary power and hence has to be used most sparingly and only in appropriate cases. Usually, it is limited to, (i) excess of jurisdiction, (ii) gross violation of natural justice, (iii) error of law, (iv) disregard to the law of superior courts, (v) perverse findings, and (vi) manifest injustice.

Control over Subordinate Courts

In addition to its appellate jurisdiction and supervisory jurisdiction over the subordinate courts as mentioned above, a high court has an administrative control and other powers over them. These include the following:

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

A Court of Record

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

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

fine or with both.The expression 'contempt of court' has not been defined by the Constitution. However, the expression has been defined by the Contempt of Court Act of 1971. Under this, contempt of court may be civil or criminal. Civil contempt means willful disobedience to any judgement, order, writ or other process of a court or willful breach of an undertaking given to a court. Criminal contempt means the publication of any matter or doing an act which—(i) scandalizes or lowers the authority of a court; or (ii) prejudices or interferes with the due course of a judicial proceeding; or (iii) interferes or obstructs the administration of justice in any other manner.

However, innocent publication and distribution of some matter, fair and accurate report of judicial proceedings, fair and reasonable criticism of judicial acts and comment on the administrative side of the judiciary do not amount to contempt of court.

As a court of record, a high court also has the power to review and correct its own judgement or order or decision, even though no specific power of review is conferred on it by the Constitution. The Supreme Court, on the other hand, has been specifically conferred with the power of review by the constitution.

Power of Judicial Review

Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (*ultra-vires*), they can be declared as illegal, unconstitutional and invalid (null and viod) by the high court. Consequently, they cannot be enforced by the government.

Though the phrase 'judicial review' has no where been used in the Constitution, the provisions of Articles 13 and 226 explicitly confer the power of judicial review on a high court. The constitutional validity of a legislative enactment or an executive order can be challenged in a high court on the following three grounds:

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

The 42nd Amendment Act of 1976 curtailed the judicial review power of high court. It debarred the high courts from considering the constitutional validity of any central law. However, the 43rd Amendment Act of 1977 restored the original position

Election Commission :

The Election Commission is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections in the country. Article 324 of the Constitution provides that the power of superintendence, direction and control of elections to parliament, state legislatures, the office of president of India and the office of vice-president of India shall be vested in the election commission. Thus, the Election Commission is an all-India body in the sense that it is common to both the Central government and the state governments.

It must be noted here that the election commission is not concerned with the elections to panchayats and municipalities in the states. For this, the Constitution of India provides for a separate State Election Commission.

Composition

Article 324 of the Constitution has made the following provisions with regard to the composition of election commission:

The Election Commission shall consist of the chief election commissioner and such number of other election commissioners, if any, as the president may from time to time fix.

The president may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.

The conditions of service and tenure of office of the election commissioners and the regional commissioners shall be determined by the president.Since its inception in 1950 and till 15 October 1989, the election commission functioned as a single member body consisting of the Chief Election Commissioner. On 16 October 1989, the president appointed two more election commissioners to cope with the increased work of the election commission on account of lowering of the voting age from 21 to 18 years.[2] Thereafter, the Election Commission functioned as a multimember body consisting of three election commissioners. However, the two posts of election commissioners were abolished in January 1990 and the Election Commission was reverted to the earlier position. Again in October 1993, the president appointed two more election commissioners. Since then and till today, the Election Commission has been functioning as a multi-member body consisting of three election commissioners.The chief election commissioner and the two other election commissioners have equal powers and receive equal salary, allowances and other perquisites, which are similar to those of a judge of the Supreme Court.[3] In case of difference of opinion amongst the Chief Election Commissioner and/or two other election commissioners, the matter is decided by the Commission by majority.They hold office for a term of six years or until they attain the age of 65 years, whichever is earlier.They can resign at any time or can also be removed before the expiry of their term.

Independence

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

The chief election commissioner is provided with the security of tenure. He cannot be removed from his office except in same manner and on the same grounds as a judge of the Supreme Court. In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehaviour or incapacity. Thus, he does not hold his office till the pleasure of the president, though he is appointed by him.The service conditions of the chief election commissioner cannot be varied to his disadvantage after his appointment.Any other election commissioner or a regional commissioner cannot be removed from office except on the recommendation of the chief election commissioner.Though the constitution has sought to safeguard and ensure the independence and impartiality of the Election Commission, some flaws can be noted, viz.,The Constitution has not prescribed the qualifications (legal, educational, administrative or judicial) of the members of the Election Commission.The Constitution has not specified the term of the members of the Election Commission.The Constitution has not debarred the retiring election commissioners from any further appointment by the government.

Powers and Functions

The powers and functions of the Election Commission with regard to elections to the Parliament, state legislatures and offices of President and Vice-President can be classified into three tegories, viz,Administrative Advisory Quasi-Judicial To determine the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.To prepare and periodically revise electoral rolls and to register all eligible voters.

To notify the dates and schedules of elections and to scrutinize nomination papers.To grant recognition to political parties and allot election symbols to them.To act as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to

them.To appoint officers for inquiring into disputes relating to electoral arrangements.To determine the code of conduct to be observed by the parties and the candidates at the time of elections.To prepare a roster for publicity of the policies of the political parties on radio and TV in times of elections.To advise the president on matters relating to the disqualifications of the members of Parliament.To advise the governor on matters relating to the disqualifications of the members of state legislature.To cancel polls in the event of rigging, booth capturing, violence and other irregularities.To request the president or the governor for requisitioning the staff necessary for conducting elections.To supervise the machinery of elections throughout the country to ensure free and fair elections.To advise the president whether elections can be held in a state under president's rule in order to extend the period of emergency after one year.To register political parties for the purpose of elections and grant them the status of national or state parties on the basis of their poll performance[5].The Election Commission is assisted by deputy election commissioners. They are drawn from the civil service and appointed by the commission with tenure system. They are assisted, in turn, by the secretaries, joint secretaries, deputy secretaries and under secretaries posted in the secretariat of the commission.

At the state level, the Election Commission is assisted by the chief electoral officer who is appointed by the chief election commissioner in consultation with the state government. Below this, at the district level, the collector acts as the district returning officer. He appoints a returning officer for every constituency in the district and presiding officer for every polling booth in the constituency.

Electoral System

Articles 324 to 329 in Part XV of the Constitution make the following provisions with regard to the electoral system in our country:

The Constitution (Article 324) provides for an independent Election Commission in order to ensure free and fair elections in the country. The power of super-tendence, direction and conduct of elections to the Parliament, the state legislatures, the office of the President and the office of the Vice-President is vested in the Commission. At present, the commission consists of a chief election commissioner and two election commissioners[2].

There is to be only one general electoral roll for every territorial constituency for election to the Parliament and the state legislatures. Thus, the Constitution has abolished the system of communal representation and separate electorates which led to the partition of the country.

No person is to be ineligible for inclusion in the electoral roll on grounds only of religion, race, caste, sex or any of them. Further, no person can claim to be included in any special electoral roll for any constituency on grounds only of religion, race, caste or sex or any of them. Thus, the Constitution has accorded equality to every citizen in the matter of electoral franchise.

The elections to the Lok Sabha and the state assemblies are to be on the basis of adult franchise. Thus, every person who is a citizen of India and who is 18 years of age, is entitled to vote at the election provided he is not disqualified under the provisions of the Constitution or any law made by the appropriate legislature (Parliament or state legislature) on the ground of non-residence, unsound mind, crime or corrupt or illegal practice[4].

Parliament may make provision with respect to all matters relating to elections to the Parliament and the state legislatures including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing their due constitution. In exercise of this power, the Parliament has enacted the following laws:

Representation of the People Act of 1950 which provides for the qualifications of voters, preparation of electoral rolls, delimitation of constituencies, allocation of seats in the Parliament and state legislatures and so on.

Representation of the People Act of 1951 which provides for the actual conduct of elections and deals with administrative machinery for conducting elections, the poll, election offences, election disputes, by-elections, registration of political parties and so on.Delimitation Commission Act of 1952 which provides for the readjustment of seats, delimitation and reservation of territorial constituencies and other related matters.

The state legislatures can also make provision with respect to all matters relating to elections to the state legislatures including the preparation of electoral rolls and all other matters necessary for securing their due constitution. But, they can make provision for only those matters which are not covered by the Parliament. In other words, they can only supplement the parliamentary law and cannot override it.

The Constitution declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court. Consequently, the orders issued by the Delimitation Commission become final and cannot be challenged in any court.

The Constitution lays down that no election to the Parliament or the state legislature is to be questioned except by an election petition presented to such authority and in such manner as provided by the appropriate legislature. Since 1966, the election petitions are triable by high courts alone. But, the appellate jurisdiction lies with the Supreme Court alone.

Article 323 B empowers the appropriate legislature (Parliament or state legislature) to establish a tribunal for the adjudication of election disputes. It also provides for the exclusion of the jurisdiction of all courts (except the special leave appeal jurisdiction of the Supreme Court) in such disputes. So far, no such tribunal has been established. It must be noted here that in *Chandra Kumar* case (1997), the Supreme Court declared this provision as unconstitutional. Consequently, if at any time an election tribunal is established, an appeal from its decision lies to the high court.

Besides the three laws (mentioned above), the other laws and rules in respect of elections are:

Presidential and Vice-Presidential Elections Act, 1952.

Government of Union Territories Act, 1963.

Government of the National Capital Territory of Delhi Act, 1991.

Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991.Prohibition of Simultaneous Membership Rules, 1950.

Registration of Electors Rules, 1960. Conduct of Elections Rules, 1961.

Further, the Election Commission has issued the Election Symbols (Reservation and Allotment)Order, 1968. It is concerned with the registration and recognition of political parties, allotment of symbols and settlement of disputes among them.

Election Machinery

Election Commission of India (ECI) Under Article 324 of the Constitution of India, the Election Commission of India is vested with the power of superintendence, direction and control of conducting the elections to the Lok Sabha and State Legislative Assemblies. The Election Commission of India is a three-member body, with one Chief Election Commissioner and two Election Commissioners. The President of India appoints the Chief Election Commissioner and the Election Commissioners.

Chief Electoral Officer (CEO) The Chief Electoral Officer of a state/ Union Territory is authorised to supervise the election work in the state/Union Territory subject to the overall superintendence, direction and control of the Election Commission. The Election Commission of India nominates or designates an Officer of the Government of the state / Union Territory as the Chief Electoral Officer in consultation with that State Government / Union Territory Administration.

District Election Officer (DEO) Subject to the superintendence, direction and control of the Chief Electoral Officer, the District Election Officer supervises the election work of a district. The Election Commission of India nominates or designates an officer of the state Government as the District Election Officer in consultation with the state government.

Returning Officer (RO) The Returning Officer of a Parliamentary or assembly constituency is responsible for the conduct of elections in the Parliamentary or assembly constituency concerned. The Election Commission of India nominates or designates an officer of the Government or a local authority as the Returning Officer for each of the assembly and parliamentary constituencies in consultation with the State Government / Union Territory Administration. In addition, the Election Commission of India also appoints one or more Assistant Returning Officers for each of the assembly and Parliamentary constituencies to assist the Returning Officer in the performance of his functions in connection with the conduct of elections.

Electoral Registration Officer (ERO) The Electoral Registration Officer is responsible for the preparation of electoral rolls for a Parliamentary / assembly constituency. The Election Commission of India, in consultation with the state / UT government, appoints an officer of the government or the local authorities as the Electoral Registration Officer. In addition, the Election Commission of India also appoints one or more Assistant Electoral Registration Officers to assist the Electoral Registration Officer in the performance of his functions in the matter of preparation / revision of electoral rolls.

Presiding Officer The Presiding Officer with the assistance of polling officers conducts the poll at a polling station. The District Election Officer appoints the Presiding Officers and the Polling Officers. In the case of Union Territories, such appointments are made by the Returning Officers.

Observers The Election Commission of India nominates officers of Government as Observers (General Observers and Election Expenditure Observers) for Parliamentary and assembly constituencies. They perform such functions as are entrusted to them by the Commission. They report directly to the Commission.

ELECTION PROCESS

Time of Elections Elections for the Lok Sabha and every state Legislative Assembly have to take place every five years, unless called earlier. The President can dissolve Lok Sabha and call a General Election before five years is up, if the Government can no longer command the confidence of the Lok Sabha, and if there is no alternative government available to take over.

Schedule of Elections When the five-year limit is up, or the legislature has been dissolved and new elections have been called, the Election Commission puts into effect the machinery for holding an election. The Constitution states that there can be no longer than six months between the last session of the dissolved Lok Sabha and the recalling of the new House, so elections have to be concluded before then.

The Commission normally announces the schedule of elections in a major press conference a few weeks before the formal process is set in motion. The Model Code of Conduct for guidance of candidates and political parties comes immediately into effect after such announcement.

The formal process for the elections starts with the Notification or Notifications calling upon the electorate to elect Members of a House. As soon as Notifications are issued, candidates can start filing their nominations in the constituencies from where they wish to contest. These are scrutinized by the Returning Officer of the constituency concerned after the last date for the same is over after about a week. The validly nominated candidates can withdraw from the contest within two days from the date of scrutiny. Contesting candidates get at least two weeks for political campaign before the actual date of poll.

On account of the vast magnitude of operations and the massive size of the electorate, polling is held on a number of days for the national elections. A separate date for counting is fixed and the results declared for each constituency by the concerned Returning Officer.

The Commission compiles the complete list of members elected and issues an appropriate Notification for the due constitution of the House. With this, the process of elections is complete and the President, in case of the Lok Sabha, and the Governors of the concerned states, in case of State Assemblies, can then convene their respective Houses to hold their sessions.

Oath or Affirmation It is necessary for a candidate to make and subscribe an oath or affirmation before an officer authorized by the Election Commission. For any particular election, the authorised persons are, principally, the Returning Officer and the Assistant Returning Officer for the constituency. In the case of a candidate confined in a prison or under preventive detention, the superintendent of the prison or commandant of the detention camp in which he is so confined or is under such detention is authorised to administer the oath. And in the case of a candidate confined to bed in a hospital or elsewhere owing to illness or any other cause, the medical superintendent in charge of the hospital or the medical practitioner attending on him is similarly authorised. If a candidate is outside India, the Indian Ambassador or High Commissioner or diplomatic consular authorised by him can also administer oath/affirmation. The candidate, in person, is required to make the oath or affirmation immediately after presenting his nomination papers and in any case not later than the day previous to the date of the scrutiny.

Election Campaign The campaign is the period when the political parties put forward their candidates and arguments with which they hope to persuade people to vote for their candidates and parties. Candidates are given a week to put forward their nominations. These are scrutinized by the Returning Officers and if not found to be in order can be rejected after a summary hearing. Validly nominated candidates can withdraw within two days after nominations have been scrutinized. The official campaign lasts at least two weeks from the drawing up of the list of nominated candidates, and officially ends 48 hours before polling closes.

During the election campaign, the political parties and contesting candidates are expected to abide by a Model Code of Conduct evolved by the Election Commission on the basis of a consensus among political parties. The model code lays down broad guidelines as to how the political parties and candidates should conduct themselves during the election campaign. It is intended to maintain the election campaign on healthy lines, avoid clashes and conflicts between political parties or their supporters and to ensure peace and order during the campaign period and thereafter, until the results are declared. The model code also prescribes guidelines for the ruling party either at the Centre or in the state to ensure that a level field is maintained and that no cause is given for any complaint that the ruling party has used its official position for the purposes of its election campaign.

Once an election has been called, parties issue manifestos detailing the programmes they wish to implement if elected to government, the strengths of their leaders, and the failures of opposing parties and their leaders. Slogans are used to popularize and identify parties and issues, and pamphlets and posters distributed to the electorate. Rallies and meetings where the candidates try to persuade, cajole and enthuse supporters, and denigrate opponents, are held throughout the constituencies. Personal appeals and promises of reform are made, with candidates travelling the length and breadth of the constituency to try to influence as many potential supporters as possible.

Polling Days Polling is normally held on a number of different days in different constituencies, to enable the security forces and those monitoring the election to keep law and order and ensure that voting during the election is fair.

Ballot Papers and Symbols After nomination of candidates is complete, a list of competing candidates is prepared by the Returning Officer, and ballot papers are printed. Ballot papers are printed with the names of the candidates (in languages set by the Election Commission) and the

symbols allotted to each of the candidates. Candidates of recognized parties are allotted their party symbols.

Voting Procedure Voting is by secret ballot. Polling stations are usually set up in public institutions, such as schools and community halls. To enable as many electors as possible to vote, the officials of the Election Commission try to ensure that there is a polling station within two kilometers of every voter, and that no polling stations should have to deal with more than 1500 voters. Each polling station is open for at least eight hours on the day of the election.

On entering the polling station, the elector is checked against the electoral roll[12], and allocated a ballot paper. The elector votes by marking the ballot paper with a rubber stamp on or near the symbol of the candidate of his choice, inside a screened compartment in the polling station. The voter then folds the ballot paper and inserts it in a common ballot box which is kept in full view of the Presiding Officer and polling agents of the candidates. This marking system eliminates the possibility of ballot papers being surreptitiously taken out of the polling station or not being put in the ballot box.

Since 1998, the Commission has increasingly used Electronic Voting Machines (EMVs) instead of ballot boxes. In 2003, all state elections and by elections were held using EVMs. Encouraged by this, the Commission took a historic decision to use only EVMs for the Lok Sabha election in 2004. More than 1 million EVMs were used in this election.

Electronic Voting Machine An Electronic Voting Machine (EVM) is a simple electronic device used to record votes in place of ballot papers and boxes which were used earlier in conventional voting system. The advantages of the EVM over the traditional ballot paper / ballot box system are given here:

It eliminates the possibility of invalid and doubtful votes which, in many cases, are the root causes of controversies and election petitions.It makes the process of counting of votes much faster than the conventional system.It reduces to a great extent the quantity of paper used thus saving a large number of trees making the process eco-friendly.

It reduces cost of printing (almost nil) as only one sheet of ballot paper is required for each Polling Station.**Supervising Elections** The Election Commission appoints a large number of Observers to ensure that the campaign is conducted fairly, and that people are free to vote as they choose. Election expenditure Observers keeps a check on the amount that each candidate and party spends on the election.

Counting of Votes After the polling has finished, the votes are counted under the supervision of Returning Officers and Observers appointed by the Election Commission. After the counting of votes is over, the Returning Officer declares the name of the candidate, to whom the largest number of votes have been given, as the winner and as having been returned by the constituency to the concerned House.

Elections to the Lok Sabha are carried out using a first-past-the-post electoral system. The country is split up into separate geographical areas, known as constituencies, and the electors can cast one vote each for a candidate, the winner being the candidate who gets the maximum votes.

Elections to the State Assemblies are carried out in the same manner as for the Lok Sabha election, with the states and union territories divided into single-member constituencies, and the first-past-the-post electoral system used.

Media Coverage In order to bring as much transparency as possible to the electoral process, the media are encouraged and provided with facilities to cover the election, although subject to maintaining the secrecy of the vote. Media persons are given special passes to enter polling stations to cover the poll process and the counting halls during the actual counting of votes.

Election Petitions Any elector or candidate can file an election petition if he or she thinks there has been malpractice during the election. An election petition is not an ordinary civil suit, but

treated as a contest in which the whole constituency is involved. Election petitions are tried by the High Court of the state involved, and if upheld can even lead to the restaging of the election in that constituency.