

# INDIAN POLITY

## I. Basics of Indian Constitution

**1. Introduction:** The Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers, and duties of government institutions, and sets out fundamental rights, directive principles, and the duties of citizens. It is the longest written constitution of any sovereign country in the world, containing 448 articles in 25 parts, 12 schedules and 97 amendments. Besides the English version, there is an official Hindi translation.

The Constitution of a country sets out the fundamental canons of governance to be followed in that country and also delineates the division of power, privileges and responsibilities between different organs of government. The Indian Constitution, prepared after hectic deliberations by the Constituent Assembly, is possibly the lengthiest document of its kind in the world and has far more detailed provisions than any other comparable document. The tradition of having a written constitution started with the USA, *which had adopted the first-ever written constitution* in the world, after the end of the Civil War there in 1776. Much water has flown down the Ganges since. Still, England *does not* have a written constitution till date. The British judiciary and other parts of the polity work on the basis of conventions that have been evolved after centuries of collective experience.

The Indian Constitution is the outcome of the debate, deliberations and research of a sovereign Constituent Assembly. Various Subject Committees like the Committee On Fundamental Rights and Union Constitution Committee had submitted their respective proposals and after a general discussion on all the proposals, a Drafting Committee chaired by Dr. BR Ambedkar was appointed. The Drafting Committee had the full authority to add, modify or delete any of the proposals submitted by the committees. The finalized draft of the Indian Constitution got the signature of the President of the Constituent Assembly, Dr. Rajender Prasad on Nov 26, 1949, which is referred to as the *Date of Passing*. Since the Constituent Assembly, which finalized the Constitution was duly elected by means of indirect election by the people of India, *The Constitution of India derives its authority from the people of India*. The Constitution was thus enacted by the Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950. The date 26 January was chosen to commemorate the Purna Swaraj declaration of independence of 1930. With its adoption, the Union of India officially became the modern and contemporary Republic of India and it replaced the Government of India Act 1935 as the country's fundamental governing document

The Indian Constitution has borrowed heavily from other constitutions of the world and can be called a "beautiful patchwork". India could not have afforded to experiment with something entirely new at a crucial juncture in its history. So the founding fathers of the Indian Constitution preferred to rely on the time-tested value of experience elsewhere and adopted those provisions which had proved to be successful and workable in other countries. Some of the prominent features which have been borrowed are as under.

Feature	Source / Inspiration
1. Fundamental Rights	USA
2. The Parliamentary System of Government	UK
3. Directive Principles of State Policy	Ireland (Eire)
4. Emergency Provisions	Germany (Third Reich)
5. Amendment Procedure	South Africa
6. Permeable To The Constitution of India	France
7. Federal Model of Governance	Canada

## 2. Salient Features of Constitution:

1. It is the longest written constitution in the world.
2. It proclaims India a Sovereign Democratic Republic.
3. Fundamental Rights are guaranteed to all citizens of India.
4. Directive Principles of State Policy are incorporated.
5. It established the parliamentary system of government, *i.e.*, the President of the Union is the constitutional head, the Council of Ministers or the Union Cabinet is the real executive and is responsible to the Lok Sabha.
6. It is federal in form (in normal times) but unitary in spirit (in emergencies).
7. It is neither too rigid (as some provisions can be amended by a simple majority) nor flexible (as some provisions require special majority for amendment).
8. It declares India a secular state.
9. It guarantees single citizenship to all citizens.
10. It introduced adult franchise, *i.e.*, every adult above 18 years has the right to vote and the system of joint electorates.
11. It established an independent judiciary; the Supreme Court acts as a guardian of the Constitution in place of the Privy Council.

**3. Structure:** The Constitution, in its current form, consists of a preamble, 22 parts containing 448 articles, 12 schedules, 2 appendices and 97 amendments to date (latest being related to co-operative societies in 2012).

**The Preamble:** The draft of the Preamble was prepared by Jawaharlal Nehru and is based on the American model. The 42nd Amendment added the words ``Secular and Socialist'' and now the preamble reads as follows.

''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, November 26, 1949, do hereby adopt, enact and give to ourselves this constitution”.

The Preamble is, technically, *not* a part of the Constitution (and this has been confirmed by the SC also), but it contains the basic philosophy of the whole Constitution and the ideals of the constitution-makers. It can be used by the Courts to help them in interpretation of the Constitution in certain matters where the Constitution itself is silent.

**Parts:** The individual Articles of the Constitution are grouped together into the following Parts:

**Preamble**

**Part I** – Union and its Territory

**Part II**– Citizenship.

**Part III** – Fundamental Rights.

**Part IV**<sup>1</sup> – Directive Principles of State Policy

**Part IVA** – Fundamental Duties.

**Part V** – The Union.

**Part VI** – The States.

**Part VII** – States in the B part of the First schedule(*Repealed*).

**Part VIII**– The Union Territories

**Part IX** – The Panchayats.

**Part IXA** – The Municipalities.

**Part IXB** – The Cooperative Societies

**Part X** – The scheduled and Tribal Areas

**Part XI** – Relations between the Union and the States.

**Part XII** – Finance, Property, Contracts and Suits

**Part XIII** – Trade and Commerce within the territory of India

**Part XIV** – Services Under the Union, the States.

**Part XIVA** – Tribunals.

**Part XV** – Elections

**Part XVI** – Special Provisions Relating to certain Classes.

**Part XVII** – Languages

**Part XVIII** – Emergency Provisions

**Part XIX** – Miscellaneous

**Part XX** – Amendment of the Constitution

**Part XXI** – Temporary, Transitional and Special Provisions

**Part XXII** – Short title, date of commencement, Authoritative text in Hindi and Repeals

## Articles of the Constitution

Part	Article	Deals with
<b>Part I</b>	Articles 1-4	Territory of India,, admission,, establishment or formation of new states
<b>Part II</b>	Articles 5-11	Citizenship
<b>Part III</b>	Articles 12-35	Fundamental Rights
<b>Part IV</b>	Articles 36-51	Directive Principles of State Policy
<b>Part IV A</b>	Article 51-A	Duties of a citizen of India. It was added by the 42nd Amendment in 1976
<b>Part V</b>	Articles 52-151	Government at the Union level
<b>Part VI</b>	Articles 152-237	Government at the State level
<b>Part VII</b>	Article 238	Deals with states in Part B of the First Schedule. It was repealed by 7th Amendment in 1956
<b>Part VIII</b>	Articles 239-241	Administration of Union Territories
<b>Part IX</b>	Article 242-243	Territories in Part D of the First Schedule and other territories. It was repealed by 7th Amendment in 1956
<b>Part X</b>	Articles 244-244 A	Scheduled and tribal areas
<b>Part XI</b>	Articles 245-263	Relations between the Union and States
<b>Part XII</b>	Articles 264-300	Finance,, property,, contracts and suits
<b>Part XIII</b>	Articles 301-307	Trade,, commerce and travel within the territory of India
<b>Part XIV</b>	Articles 308-323	Services under the Union and States
<b>Part XIV-A</b>	Articles 323A-323B	Added by the 42nd Amendment in 1976 and deals with administrative tribunals to hear disputes and other complaints
<b>Part XV</b>	Articles 324-329	Election and Election Commission
<b>Part XVI</b>	Articles 330-342	Special provision to certain classes ST/SC and Anglo Indians
<b>Part XVII</b>	Articles 343-351	Official languages
<b>Part XVIII</b>	Articles 352-360	Emergency provisions
<b>Part XIX</b>	Articles 361-367	Miscellaneous provision regarding exemption of the President and governors from criminal proceedings
<b>Part XX</b>	Article 368	Amendment of Constitution
<b>Part XXI</b>	Articles 369-392	Temporary,, transitional and special provisions
<b>Part XXII</b>	Articles 393-395	Short title, commencement and repeal of the Constitution

**Schedules:** Schedules are lists in the Constitution that categorize and tabulate bureaucratic activity and policy of the Government.

**First Schedule** (Articles 1 and 4)- This lists the states and territories of India, lists any changes to their borders and the laws used to make that change.

**Second Schedule** (Articles 59, 65, 75, 97, 125, 148, 158, 164, 186 and 221)- – This lists the salaries of officials holding public office, judges, and Comptroller and Auditor-General of India.

**Third Schedule** (Articles 75, 99, 124, 148, 164, 188 and 219)—Forms of Oaths – This lists the oaths of offices for elected officials and judges.

**Fourth Schedule** (Articles 4 and 80) – This details the allocation of seats in the *Rajya Sabha* (the upper house of Parliament) per State or Union Territory.

**Fifth Schedule** (Article 244) – This provides for the administration and control of Scheduled Areas and Scheduled Tribes (areas and tribes needing special protection due to disadvantageous conditions).

**Sixth Schedule** (Articles 244 and 275)— Provisions for the administration of tribal areas in Assam, Meghalaya, Tripura, and Mizoram.

**Seventh Schedule** (Article 246)—The union (central government), state, and concurrent lists of responsibilities.

**Eighth Schedule** (Articles 344 and 351)—The official languages.

**Ninth Schedule** (Article 31-B) – Originally Articles mentioned here were immune from judicial review on the ground that they violated fundamental rights. but in a landmark judgement in 2007, the Supreme Court of India held in *I.R. Coelho v. State of Tamil Nadu* and others that laws included in the 9th schedule can be subject to judicial review if they violated the fundamental rights guaranteed under Article 14, 15, 19, 21 or the basic structure of the Constitution

**Tenth Schedule** (Articles 102 and 191)—"Anti-defection" provisions for Members of Parliament and Members of the State Legislatures.

**Eleventh Schedule** (Article 243-G)—*Panchayat Raj* (rural local government)

**Twelfth Schedule** (Article 243-W)—Municipalities (urban local government).

## II. The Federal System & Territory Of The Union

### 1. The Federal System:

Article 1 of the Indian Constitution describes India as a "Union of States". The term "Union" implies that

I. The Indian federation is *not* the result of a voluntary agreement by the states themselves. As is well known, after India's independence, more than 550 states were integrated into the Union of India by the then Home Minister, Sardar Vallabh Bhai Patel, leading to his being branded as the "Iron Man of India". So their inclusion in India is purely involuntary.

II. The components of the Indian Union have no freedom to secede from it. (unlike the erstwhile USSR or the present-day USA where such freedom was/is vested in the states).

The Indian federal system is unique in the sense that in spite of its being a federal set-up, it still does not have many features characteristic of a typical federal set-up (like the USA). In general, the Indian set-up has been mostly described as *quasi-federal* or *semi-federal* due to the fact that the balance of power tilts heavily in favour of the Centre i.e. the states enjoy comparatively lesser powers in most spheres as compared with the Centre. Some of the noteworthy points of difference, which illustrate the predominant role of the Centre Vs. States are as follows.

I. The States in India do not have any separate constitution of their own (except Jammu and Kashmir which has a separate constitution as per the special agreement signed at the time of its accession to India). They derive their authority from the same Constitution of India.

II. The States are dependent on the Centre for grants-in-aid and plan assistance to meet their development expenditures. The taxes collected by the States are not wholly appropriated by them, but they are *distributed* among the States as per the *Finance Commission recommendations*.

III. The States do not have any say in the matter of Constitutional amendments (except for a few instances where their consultation may be obtained by the President or in certain special matters where at least half of the States must ratify the legislation after being passed by the Parliament))

IV. The Centre can alter, modify or change the boundaries, area or name of any state.

V. There is no separate citizenship of a state (Single citizenship prevails in India whichever state a person is living in India) unlike the US where every state has a separate citizenship apart from the Union Citizenship (Double Citizenship).

VI. The President may assume all executive and legislative powers of any state if he is satisfied that the government of a state cannot be carried out according constitutional provisions (Art. 356)

## **2. Territory of the Union**

The territory of India comprises the entire geographical territory over which the sovereignty of India, for the time being, prevails. On the other hand, the Union of India includes only those component units, i.e., the states, which share power with the Centre. The UTs are centrally administered areas governed by the President acting through an Administrator appointed by him. As on date, the territory of India consists of 28 states, 6 UTs and 1 National Capital Territory of Delhi (NCT- Delhi is neither a full state nor a UT).

India is a federal constitutional republic governed under a parliamentary system consisting of 28 states and 7 union territories. All states, as well as the union territories of Pondicherry and the National Capital Territory of Delhi, have elected legislatures and governments, both patterned on the Westminster model. The remaining five union territories are directly ruled by the centre through appointed administrators. In 1956, under the States Reorganisation Act, states were reorganised on a linguistic basis. Since then, their structure has remained largely unchanged. Each state or union territory is further divided into administrative districts.

The state and union territory capitals are sorted according to the administrative, legislative and judicial capitals. The administrative capital is where the executive government offices are located, the legislative capital is where the state assembly convenes, and the judicial capital is the location of the state or territorial High Courts of India.

The States Reorganization Act, 1956 reorganized the boundaries of different Indian States in order to meet local and linguistic demands. Interestingly, the Union Parliament can by passing a resolution in both Houses of Parliament.

1. form a new state
2. increase the area of any state
3. diminish the area of any state
4. alter the boundaries of any state
5. or alter the name of any state (Art. 4)

Making use of this provision, several landmark changes have been brought about in the political composition of the Indian territory, some of which are found in the table below.

ACT/LEGISLATION	CHANGE
1. States Reorganization Act, 1956	Andhra, Kerala formed (Andhra-first state on linguistic basis)
2. Bombay Reorganization Act, 1960	Gujarat, Maharashtra born as new states
3. The Panjab Reorganization Act, 1966	Panjab, Haryana and Chandigarh created
4. Mysore State Act, 1973	The name Mysore changed to Karnataka
5. State of Mizoram Act, 1986	Mizoram, earlier a UT, made a State
6. State of Arunachal Pradesh Act, 1986	Arunachal Pradesh elevated to statehood
7. Goa, Daman and Diu Reorganization Act, 1987	Goa made a state

### III. Fundamental Rights & Duties, Directive Principles of State Policy

**1. Fundamental Rights:** The Constitution of India embodies a number (six) of Fundamental Rights in Part III of the Constitution to act as limitations on the Executive (government) as well as legislative powers (law-making). Though these rights are modelled on the US pattern, the Indian Constitution makes a compromise between the principles of Parliamentary Sovereignty and Judicial Supremacy. In the US, the American President enjoys the power to nullify any decision made by the Federal Court while in the UK, whatever the Parliament says, is law. The Indian Constitution is a *via-media* between these two extremes.

These fundamental rights help not only in protection but also the prevention of gross violations of human rights. They emphasize on the fundamental unity of India by guaranteeing to all citizens the access and use of the same facilities, irrespective of background. Some fundamental rights apply for persons of any nationality whereas others are available only to the citizens of India. The right to life and personal liberty is available to all people and so is the right to freedom of religion. On the other hand, freedoms of speech and expression and freedom to reside and settle in any part of the country are reserved to citizens alone, including non-resident Indian citizens. The right to equality in matters of public employment cannot be conferred to overseas citizens of India.

Fundamental rights primarily protect individuals from any arbitrary state actions, but some rights are enforceable against individuals. For instance, the Constitution abolishes untouchability and also prohibits *begar*. These provisions act as a check both on state action as well as the action of private individuals. However, these rights are not absolute or uncontrolled and are subject to reasonable restrictions as necessary for the protection of general welfare. They can also be selectively curtailed. The Supreme Court has ruled that all provisions of the Constitution, including fundamental rights can be amended. However, the Parliament cannot alter the basic structure of the constitution. Features such as secularism and democracy fall under this category. Since the fundamental rights can only be altered by a constitutional amendment, their inclusion is a check not only on the executive branch, but also on the Parliament and state legislatures.

A state of national emergency has an adverse effect on these rights. Under such a state, the rights conferred by Article 19 (freedoms of speech, assembly and movement, etc.) remain suspended. Hence, in such a situation, the legislature may make laws which go against the rights given in Article 19. Also, the President may by order suspend the right to move court for the enforcement of other rights as well.

**Right to equality:** Right to equality is an important right provided for in Articles 14, 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights and liberties, and guarantees the following:

**Equality before law:** Article 14 of the constitution guarantees that all citizens shall be equally protected by the laws of the country. It means that the State cannot discriminate any of the Indian citizens on the basis of their caste, creed, colour, sex, gender, religion or place of birth.

**Social equality and equal access to public areas:** Article 15 of the constitution states that no person shall be discriminated on the basis of caste, colour, language etc. Every person shall have equal access to public places like public parks, museums, wells, bathing ghats and temples etc. However, the State may make any special provision for women and children. Special provisions may be made for the advancements of any socially or educationally backward class or scheduled castes or scheduled tribes.

**Equality in matters of public employment:** Article 16 of the constitution lays down that the State cannot discriminate against anyone in the matters of employment. All citizens can apply for government jobs. There are some exceptions. The Parliament may enact a law stating that certain jobs can only be filled by applicants who are domiciled in the area. This may be meant for posts that require knowledge of the locality and language of the area. The State may also reserve posts for members of backward classes, scheduled castes or scheduled tribes which are not adequately represented in the services under the State to bring up the weaker sections of the society. Also, there a law may be passed which requires that the holder of an office of any religious institution shall also be a person professing that particular religion. According to the *Citizenship (Amendment) Bill, 2003*, this right shall not be conferred to OverseascitizensofIndia.

**Abolition of untouchability:** Article 17 of the constitution abolishes the practice of untouchability. Practice of untouchability is an offense and anyone doing so is punishable by law. The *Untouchability Offences Act of 1955* (renamed to *Protection of Civil Rights Act* in 1976) provided penalties for preventing a person from entering a place of worship or from taking water from a tank or well.

**Abolition of Titles:** Article 18 of the constitution prohibits the State from conferring any titles. Citizens of India cannot accept titles from a foreign State. The British government had created an aristocratic class known as *Rai Bahadurs* and *Khan Bahadurs* in India — these titles were also abolished. However, Military and academic distinctions can be conferred on the citizens of India. The awards of BharatRatna and PadmaVibhushan cannot be used by the recipient as a title and do not, accordingly, come within the constitutional prohibition". The Supreme Court, on 15 December 1995, upheld the validity of such awards.

**Right to freedom:** The Constitution of India contains the right to freedom, given in articles 19, 20, 21 and 22, with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. The right to freedom in Article 19 guarantees the following six freedoms:

Freedom of speech and expression, which enable an individual to participate in public activities. The phrase, "freedom of press" has not been used in Article 19, but freedom of expression includes freedom of press. Reasonable restrictions can be imposed in the interest of public order, security of State, decency or morality.

Freedom to assemble peacefully without arms, on which the State can impose reasonable restrictions in the interest of public order and the sovereignty and integrity of India.

Freedom to form associations or unions on which the State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.

Freedom to move freely throughout the territory of India though reasonable restrictions can be imposed on this right in the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics.

Freedom to reside and settle in any part of the territory of India which is also subject to reasonable restrictions by the State in the interest of the general public or for the protection of the scheduled tribes because certain safeguards as are envisaged here seem to be justified to protect indigenous and tribal peoples from exploitation and coercion. Article 370 restricts citizens from other Indian states and Kashmiri women who marry men from other states from purchasing land or property in Jammu & Kashmir.

Freedom to practice any profession or to carry on any occupation, trade or business on which the State may impose reasonable restrictions in the interest of the general public. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practicing any profession or carrying on any trade.

The constitution guarantees the right to life and personal liberty, which in turn cites specific provisions in which these rights are applied and enforced:

Protection with respect to conviction for offences is guaranteed in the right to life and personal liberty. According to Article 20, no one can be awarded punishment which is more than what the law of the land prescribes at that time. This legal axiom is based on the principle that no criminal law can be made retrospective, that is, for an act to become an offence, the essential condition is that it should have been an offence legally at the time of committing it. Moreover, no person accused of any offence shall be compelled to be a witness against himself. "Compulsion" in this article refers to what in law is called "Duress" (injury, beating or unlawful imprisonment to make a person do something that he does not want to do). This article is known as a safeguard against self incrimination. The other principle enshrined in this article is known as the principle of double jeopardy, that is, no person can be convicted twice for the same offence, which has been derived from Anglo Saxon law. This principle was first established in the Magna Carta.

Protection of life and personal liberty is also stated under right to life and personal liberty. Article 21 declares that no citizen can be denied his life and liberty except by law. This means that a person's life and personal liberty can only be disputed if that person has committed a crime. However, the right to life does not include the right to die, and hence, suicide or an attempt thereof, is an offence. (Attempted suicide being interpreted as a crime has seen many debates. The Supreme Court of India gave a landmark ruling in 1994. The court repealed section 309 of the Indian penal code, under which people attempting suicide could face prosecution and prison terms of up to one year. In 1996 however another Supreme Court ruling nullified the earlier one.) "Personal liberty" includes all the freedoms which are not included in Article 19 (that is, the six freedoms). The right to travel abroad is also covered under "personal liberty" in Article 21.

In 2002, through the 86th Amendment Act, Article 21(A) was incorporated. It made the right to primary education part of the right to freedom, stating that the State would provide free and compulsory education to children from six to fourteen years of age. Six years after an amendment was made in the Indian Constitution, the union cabinet cleared the Right to Education Bill in 2008. It is now soon to be tabled in Parliament for approval before it makes a fundamental right of every child to get free and compulsory education.

Rights of a person arrested under ordinary circumstances is laid down in the right to life and personal liberty. No one can be arrested without being told the grounds for his arrest. If arrested, the person has the right to defend himself by a lawyer of his choice. Also an arrested citizen has to be brought before the nearest magistrate within 24 hours. The rights of a person arrested under ordinary circumstances are not available to an enemy alien. They are also not available to persons detained under the *Preventive Detention Act*. Under preventive detention, the government can imprison a person for a maximum of three months. It means that if the government feels that a person being at liberty can be a threat to the law and order or to the unity and integrity of the nation, it can detain or arrest that person to prevent him from doing this possible harm. After three months such a case is brought before an advisory board for review.

The constitution also imposes restrictions on these rights. The government restricts these freedoms in the interest of the independence, sovereignty and integrity of India. In the interest of morality and public order, the government can also impose restrictions. However, the right to life and personal liberty cannot be suspended. The six freedoms are also automatically suspended or have restrictions imposed on them during a state of emergency.

**Right against exploitation:** The right against exploitation, given in Articles 23 and 24, provides for two provisions, namely the abolition of trafficking in human beings and *Begar* (forced labor), and abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. Child labour is considered a gross violation of the spirit and provisions of the constitution. *Begar*, practised in the past by landlords, has been declared a crime and is punishable by law. Trafficking in humans for the purpose of slave trade or prostitution is also prohibited by law. An exception is made in employment without payment for compulsory services for public purposes. Compulsory military conscription is covered by this provision.

Right to freedom of religion

Right to freedom of religion, covered in Articles 25, 26, 27 and 28, provides religious freedom to all citizens of India. The objective of this right is to sustain the principle of secularism in India. According to the Constitution, all religions are equal before the State and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice.

Religious communities can set up charitable institutions of their own. However, activities in such institutions which are not religious are performed according to the laws laid down by the government. Establishing a charitable institution can also be restricted in the interest of public order, morality and health. No person shall be compelled to pay taxes for the promotion of a particular religion. A State run institution cannot impart education that is pro-religion. Also, nothing in this article shall affect the operation of any existing law or prevent the State from making any further law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice, or providing for social welfare and reform.

**Cultural and educational rights:** As India is a country of many languages, religions, and cultures, the Constitution provides special measures, in Articles 29 and 30, to protect the rights of the minorities. Any community which has a language and a script of its own has the right to conserve and develop it. No citizen can be discriminated against for admission in State or State aided institutions. All minorities, religious or linguistic, can set up their own educational institutions to preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution on the basis of

the fact that it is administered by a minority institution. But the right to administer does not mean that the State can not interfere in case of maladministration. In a precedent-setting judgment in 1980, the Supreme Court held that the State can certainly take regulatory measures to promote the efficiency and excellence of educational standards. It can also issue guidelines for ensuring the security of the services of the teachers or other employees of the institution. In another landmark judgement delivered on 31 October 2002, the Supreme Court ruled that in case of aided minority institutions offering professional courses, admission could only be through a common entrance test conducted by State or a university. Even an unaided minority institution ought not to ignore the merit of the students for admission.

**Right to constitutional remedies:** Right to constitutional remedies empowers the citizens to move a court of law in case of any denial of the fundamental rights. For instance, in case of imprisonment, the citizen can ask the court to see if it is according to the provisions of the law of the country. If the court finds that it is not, the person will have to be freed. This procedure of asking the courts to preserve or safeguard the citizens' fundamental rights can be done in various ways. The courts can issue various kinds of *writs*. These writs are *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*. When a national or state emergency is declared, this right is suspended by the central government.

**Amendments:** Changes to the fundamental rights require a constitutional amendment which has to be passed by a special majority of both houses of Parliament. This means that an amendment requires the approval of two-thirds of the members present and voting. However, the number of members voting should not be less than the simple majority of the house — whether the Lok Sabha or Rajya Sabha.

The right to education at elementary level has been made one of the fundamental rights under the Eighty-Sixth Amendment of 2002.

**Right to property:** The Constitution originally provided for the right to property under Articles 19 and 31. Article 19 guaranteed to all citizens the right to acquire, hold and dispose of property. Article 31 provided that "no person shall be deprived of his property save by authority of law." It also provided that compensation would be paid to a person whose property has been taken for public purposes.

The provisions relating to the right to property were changed a number of times. The Forty-Forth Amendment of 1978 deleted the right to property from the list of fundamental rights<sup>1</sup> A new provision, Article 300-A, was added to the constitution which provided that "no person shall be deprived of his property save by authority of law". Thus if a legislature makes a law depriving a person of his property, there would be no obligation on the part of the State to pay anything as compensation. The aggrieved person shall have no right to move the court under Article 32. Thus, the right to property is no longer a fundamental right, though it is still a constitutional right. If the government appears to have acted unfairly, the action can be challenged in a court of law by citizens.

The liberalisation of the economy and the government's initiative to set up special economic zones has led to many protests by farmers and have led to calls for the reinstatement of the fundamental right to private property. The Supreme Court has sent a notice to the government questioning why the right should not be brought back but in 2010 the court rejected the PIL .As in 2007 the supreme court unanimously said that the fundamental rights are a basic structure of the constitution and cannot be removed or diluted.

**Right to Education:** Article 21A - On 1 April 2010, India joined a group of few countries in the world, with a historic law making education a fundamental right of every child coming into force. Making elementary education an entitlement for children in the 6-14 age group, the Right of Children to Free and Compulsory Education Act will directly benefit children who do not go to school at present.

Prime Minister Manmohan Singh announced the operationalisation of the Act. Children, who had either dropped out of schools or never been to any educational institution, will get elementary education as it will be binding on the part of the local and State governments to ensure that all children in the 6-14 age group get schooling. As per the Act, private educational institutions should reserve 25 per cent seats for children from the weaker sections of society. The Centre and the States have agreed to share the financial burden in the ratio of 55:45, while the Finance Commission has given Rs. 25,000 crore to the States for implementing the Act. The school management committee or the local authority will identify the drop-outs or out-of-school children aged above six and admit them in classes appropriate to their age after giving special training.

**2. Fundamental Duties:** The 42<sup>nd</sup> Amendment Act has introduced a set of 10 Fundamental Duties to be observed by all the citizens of India. Please note carefully that there is no constitutional provision for direct enforcement of these duties. The duties are

1. To abide by the Constitution and respect the National Flag and the National Anthem.
2. To cherish and follow the noble ideals which inspired our national struggle for freedom.
3. To protect the sovereignty, unity and integrity of India.
4. To defend the country
5. To promote brotherhood among the Indian people.
6. To preserve the rich heritage of our composite culture
7. To protect and improve the natural environment
8. To develop scientific temper and the spirit of enquiry
9. To safeguard public property
10. To strive towards excellence in all spheres of individual and collective activity.

**3. Directive Principles of state policy:** Contained in Part IV of the Indian Constitution, the directive principles are basic guidelines for the government to perform certain things and to achieve certain goals by these actions. Though they are non-justiciable in nature (cannot be enforced in a Court of Law), yet they are treated as fundamental canons in the governance of the country regardless of the political ideology of the party in power at the Centre.

Most of these aim at the establishment of the social and economic democracy described in the Preamble to the Constitution. Some of the more important directives and the extent of the progress made in implementing them is discussed below.

The directive under Art.39 has made one of the more remarkable progress stories so far as its implementation is concerned. It enjoins upon the State that it should try to ensure that ownership and control of material resources of the community are distributed so as to serve common good.

In pursuance of this goal, intermediaries or *zamindari* has been abolished and land reform laws have been enacted in many states to ensure that the agricultural land is not monopolized by a few people. Under the relevant laws, surplus land (beyond the permissible limit, which varies from state to state) is distributed among the landless labourers. Of course, it is another story that land reforms in India have not been very successful due to vested political interests and the unwillingness of the landlords to give surplus land to the government.

The directive in Art. 40 enjoins upon the government to have village *panchayats* as units of local self-government.

With the 73<sup>rd</sup> Amendment Act, this has become a reality, wherein all villages in the country are supposed to have *panchayats* and regular elections are conducted after every five years. It might be noted that the village *panchayats* enjoy both civic and judicial authorities to an extent.

Art. 45 contains a directive to the government to ensure Free Elementary Education upto 14 years of age. It has been made into a Fundamental Right, with the passage of the 93<sup>rd</sup> CAA by Parliament.

Art. 47 advises the enactment of prohibition of liquor and intoxicating drinks and drugs. Subsequent to this, many states have initiated some steps in this direction, but the results so far have not been very encouraging.

Art. 44 : Enjoins upon the State to have a common set of personal laws ( personal laws deal with topics like marriage, divorce, succession etc.) which at the moment are different for different religious communities. The issue has been pending for want of sufficient political will.

**IV. Procedure For Amendment:** The Indian Constitution is both flexible and rigid and contains many provisions to modify, add, delete or change it according to the changing needs and circumstances. An easier method has been prescribed for changing those provisions, which do not primarily affect the federal system. This has been done in two ways,

1. By providing that the changes in certain constitutional provisions shall not be deemed to be amendments.

2. Other provisions are changeable by following an amendment procedure described in Art. 368. (Even this has two categories)

- I. A Constitutional Amendment Bill may be initiated in either house of Parliament and can be passed in each house by following the procedure below:

1. A majority (more than 50%) of the total membership of the House must be present on the day of voting

2. And out of those present and voting, at least two-thirds must vote for the bill.

3. If the above two conditions are fulfilled, the bill is deemed to have been passed in the respective House. It goes to the other House thereafter, where the same procedure is repeated. Upon passage in both the Houses in this manner, the bill goes to the President for his assent. The bill becomes an act only after getting presidential assent.

- II. However, if an amendment bill seeks to make any changes to any of the following provisions namely
- The manner of Presidential elections.
  - Extent of Executive powers of the Union and the States.
  - The Supreme Courts and High Courts.
  - Distribution of legislative powers between the Union and the States.
  - Representation of the States in Parliament.

The amendment bill in such cases must be ratified by at least 50% of the State Legislatures before the bill goes for Presidential assent. The President cannot refuse assent to a Constitution Amendment Bill as is the provision in case of ordinary bills. Thus the President is *not* competent to veto any amendment bill presented to him for assent.

The States in India cannot initiate any bill for constitutional amendment. Notably, the procedure for a Joint Sitting of the Houses to resolve a deadlock between them in such cases, is not applicable to amendment bills. In essence, if one house passes an amendment bill and the other house does not, the bill lapses and will have to be introduced afresh in order to pass it.

As of January 2012, there have been 97 **amendments to the Constitution of India** since it was first enacted in 1950. Some of the important amendments are shown below:-

Constitutional Amendment Act(CAA)	PROVISIONS
1 <sup>st</sup> CAA'51	Restrictions imposed on Right to Speech and Expression
24 <sup>th</sup> CAA'71	Education shifted to the Concurrent List, Parliament has the power to amend any part of the Constitution
35 <sup>th</sup> CAA'75	Sikkim made an associate State of India
36 <sup>th</sup> CAA'75	Sikkim made a full state of India
42 <sup>nd</sup> CAA'76	Words <i>Socialist, Secular</i> added to the Preamble DPSPs were given priority over FRs Fundamental Duties were added
44 <sup>th</sup> CAA'78	Fundamental Right To Property Abolished
61 <sup>st</sup> CAA'89	Voting age lowered from 21 to 18 years
73 <sup>rd</sup> CAA'93	<i>Panchayati</i> Raj (Local Self-Government)
74 <sup>th</sup> CAA'93	Urban Local Bodies
84 <sup>th</sup> CAA'99	Women's Reservation Bill
93 <sup>rd</sup> CAA'02	Education made a Fundamental Right
97 <sup>th</sup> CAA'12	Added the words "or co-operative societies" after the word "or unions" in Article 19(1)(c) and insertion of article 43B i.e., Promotion of Co-operative Societies and added Part-IXB i.e., THE CO-OPERATIVE SOCIETIES

**The Basic Features Theory:** Until 1971, it was widely thought that since the Indian Constitution does not contain any mention of the provisions which can be amended under this article or not, any part of the Constitution was amendable provided it fulfilled the requirements laid down in Art. 368. But in the legendary *Keshvanand Bharati Vs. State of Kerala* Case, it was ruled (overruling its own judgment in the *Golak Nath* Case) by the SC that though not expressly mentioned, there are certain provisions in the

Constitution, which make up its "basic structure", and therefore are not changeable at all. This decision is widely known as the "basic features theory".

The basic features as spelt out by the SC are:

1. Sovereignty and territorial integrity of India
2. The federal system
3. Judicial Review
4. Parliamentary system of government

Strangely enough, fundamental rights have not been included in this theory. Consequently, in theory at least, it is competent for the Parliament to change or abolish any or all FRs contained in the Constitution. Very recently, secularism has been included in this list by the SC in the *BJP Ruled States Vs. Union of India Case*.

The above attempt of the SC to assert its authority was nullified by the 42<sup>nd</sup> AA which aimed at excluding all kinds of judicial review by the SC. Reacting to this, the SC ruled in the *Minerva Mills Case* that judicial review is one of the basic features and that it can not be taken away by any law. Summing up this complicated scenario, the net position is like this:

1. Any part of the Constitution is amendable according to Art. 368 provided it does not change any of the "basic features" mentioned above.
2. No Constituent Assembly needs to be convened nor any referendum needs to be conducted to make any amendment to the Constitution.

## **V. The Union Executive & The Union Council Of Ministers**

### **1. The Union Executive:**

**The President and the Vice-President:** At the head of the Union Executive stands the President of India, who is elected by indirect election i.e. by an electoral college, in accordance with the system of proportional representation by a single transferable vote.

This electoral college comprises

- A. Elected members of both Houses of Parliament
- B. Elected members of State Legislative Assemblies

### **Eligibility Conditions:**

In order to contest for Indian Presidency, a person must

1. be a citizen of India
2. have completed 35 years of age
3. be eligible election to the Lok Sabha
4. not hold any office of profit under the Government of India or any State Government or under any local or other authority subject to the control of Central/State Governments.

However, the sitting President or the Vice-President, the State Governor and a Minister at the Centre or in states are eligible to contest for presidential elections. The President is not a member of either House of

Parliament or any State Legislature, and if such a person becomes President, he will be deemed to have vacated his seat in that House the moment he assumes Presidential office.

His office tenure is 5 years from the date of assuming office, but he will be eligible for re-election. There is no bar on the number of times for which a person can become the President of India. However, his office may terminate before 5 years in case of

1. his resignation in writing which is addressed to the Vice-President of India
2. his removal by impeachment.

**Impeachment** (Art. 61): Impeachment is a semi-judicial procedure to remove the President of India. The President of India can be removed from office on one ground only i.e. violation of Constitution. The parliament may initiate a motion of impeachment in either House, which is then investigated by the other House.

1. A resolution of impeachment must be moved at least after 14 days of written notice, signed by at least one-fourths of the total members of that House.
2. The resolution is then discussed is passed by at least two-thirds of the total membership of the House.

The President has the right to defend himself during such investigations. If, subsequently, a resolution is passed by at least two-thirds of the total membership of the House in which it originated, it will have the effect of removing the President from his post with effect from the date of passing.

**Emoluments and Allowances:** The President gets a monthly salary of Rs. 150000/- only apart from an official residence for use (free of cost). He is also eligible for an annual pension, if he is not re-elected as President.

Normally, elections for choosing a new President are held before the expiry of the term of the outgoing President. Until a new President assumes charge, the outgoing President must continue to discharge his duties. In case of any vacancy in the President's office due to death, resignation, impeachment etc., the elections must be held within 6 months of occurrence of such a vacancy. In such cases, the Vice-President discharges his duties. Any dispute regarding Presidential election shall be decided by the Supreme Court of India, whose decision will be exclusive and final in this regard.

**Powers, Privileges, Duties:** The Constitution says that the all the executive powers of the Union are vested in the President, making him the Head of the Indian State. Executive functions are those, which are left after taking out legislative and judicial functions. But these powers are circumscribed by many provisions like

1. The executive powers are exercisable by the President, in accordance with the advice of his Council of Ministers (Art 74).
2. However, the President may send back any Cabinet resolution, asking the Cabinet to reconsider it. But if the resolution again comes back to him for his assent, it is obligatory for him to sign it. The right to send back any resolution to the Cabinet can be exercised only once. The net result is that the President cannot act at his discretion or "sweet will" except in certain marginal cases referred to by the Supreme Court.

## Different Powers:

**A. Administrative Powers:** The Indian President remains the formal Head of the Union Administration and as such, all executive functions of the Union are expressed to be taken in his name. Further, all officers of the Union shall be subordinate to him and

*"He will have a right to be informed of the affairs of the Union". (Art 78)*

Put simply, it means that he can ask for any file/document or information relating to the affairs of the Union.

The administrative power includes the power to appoint and remove certain high dignitaries of the State. The President enjoys the power to appoint

1. The Prime Minister
2. Other Central Ministers on PM's advice
3. The Attorney-General of India
4. The Comptroller and Auditor-General of India
5. Supreme Court Judges including the CJI
6. High Court Judges including the Chief Justice
7. The Governor of a State
8. The Finance Commission
9. The Union Public Service Commission and Joint Commission for a group of States
10. A special officer for SC/STs
11. A Commission on Scheduled Areas
12. A Commission on Official Languages
13. A special officer for Linguistic Minorities
14. The Chief Election Commissioner and other Election Commissioners
15. A Commission for Backward Classes

He is competent to remove

1. the Union Ministers (on the advice of the PM)
2. the Attorney-General of India
3. the Chairman or a member of the Union Public Service Commission on the report of the Supreme Court.
4. a Supreme Court/High Court Judge/Election Commissioner, on an address of Parliament.

**B. Military Powers:** The President is the Supreme Commander of the Armed Forces in India and as such, has the right to declare *war* or *peace* with any country. However, such powers are subject to parliamentary control.

**C. Diplomatic Powers:** The task of negotiating international treaties and agreements belongs to the President, who acts according to ministerial advice in such matters. This again is subject to ratification by the Parliament.

**D. Legislative Powers :** The President is component part of the Union Parliament (though not a member of either House) and enjoys the following legislative powers :

1. Summoning, Prorogation, Dissolution: The President has the power to summon (call) or prorogue (end the session) the Houses of Parliament and to dissolve the Lok Sabha.
2. He also enjoys the right to call a Joint Sitting of both the Houses to resolve a deadlock over any bill. (Art 108)
3. He addresses the first session after each general election and at the first session of each year.
4. He can nominate 12 members to the Rajya Sabha from persons with special achievements/experience in literature, science, art and social service. Similarly, he has the right to nominate 2 Anglo-Indians to the Lok Sabha, if he feels their representation is not sufficient.

It is obligatory to obtain Presidential sanction beforehand in case of certain bills like

1. a bill for forming a new state/change of state boundaries
2. a money bill
3. a bill affecting taxation in which states are also interested

A Bill becomes an Act only after getting Presidential assent. The President is competent to take any of the following steps if a Bill is presented to him for his assent:

- A. He may give assent to the Bill enabling it to become a law
- B. He may withhold his assent
- C. He may return the Bill for reconsideration (except Money Bills) to the Parliament. If the Bill is re-presented to him in this case after reconsideration, it is obligatory for him to give his assent to it.

The above is true of ordinary bills (bills except Money and Amendment Bills).

The President of India *cannot refuse* to sign a bill. At the most, he can withhold his assent from the bill, which is the equivalent of not approving a Bill. Also, there is no time-limit prescribed for him to give his assent to a Bill. Theoretically speaking, he may keep the Bill in his pocket for an indefinite time. An example in this regard is Mr. Zail Singh's, who kept the Postal Amendment Bill with him and it lapsed without his approval once he retired from office. This type of veto power is known as "Pocket Veto". In case of sending back the Bill for re-consideration, if the Bill again comes back to him, the only effect of sending back the bill is suspending the process of assent for some days. This is referred to as "Suspensive Veto".

**Ordinance-Making Power:** The President enjoys the power to issue an ordinance at a time, when the Parliament is not in session. An ordinance, for all practical purposes, has the effect of a normal law passed by the Parliament. This power is exercised by him on Cabinet advice. The ordinance issued by the President must be passed by the Parliament within 6 weeks of reassembly otherwise it will cease to be in operation. (Art 123)

**The Pardoning Powers:** He can grant pardon, reprieve, respite, suspension, remission or commutation in punishment in cases where death sentence is awarded by the Courts (even by a Court-Martial). He is the only authority for pardoning a death sentence.

### Miscellaneous Powers:

1. Power to draw up and notify the lists of Scheduled Castes and Scheduled Tribes for each state separately and UTs.
2. To refer any matter to the Supreme Court for its advice (Art. 143)

### Emergency Powers (Part XVIII)

Three types of emergency have been prescribed under the Constitution to deal with exigencies.

The President can

A. declare a "Proclamation of Emergency" due to *threat to the security of India or any part of it*. It can be imposed even in the anticipation of such a threat. The proclamation of emergency must be passed by both Houses with special majority within one month of its issuance. It can last for six months by passing each such resolution by the requisite majority.

*Because of war, external attack or armed rebellion. (Art.352)*. An example is the infamous emergency imposed in 1975 by Mrs. Indira Gandhi. Please note that whenever the word "Emergency" alone is used, it refers to the National Emergency.

During such an Emergency, the Union can direct the States to perform their Executive functions in the manner specified by it, thus bringing the States under the complete control of the Union (without suspending it). During such times, the Parliament will be authorized to make laws in respect of the State List also (which it normally does not do). Whenever a proclamation of emergency is issued, the rights granted by Art. 19 are immediately suspended. Any other FR can be suspended depending on a special presidential order *except* the Right To Life. But since the emergency order has to be ultimately approved by the Parliament and it is within its right to disapprove it, the *final authority* to suspend any FR in India remains the Indian Parliament.

B. *proclaim a state emergency (Art 356) due to breakdown of governmental machinery in any state* if he is satisfied that the government there cannot be carried out according to Constitutional provisions. Such breakdown may occur due to a political deadlock (as in UP where no government could be formed even after election owing to a hung assembly) or failure of the state government to comply with directions of the Union.

In such cases, the President suspends the assembly of that state and rules the state through the Governor, who is his nominee. That is why this is popularly known as the "President's Rule". It has been applied more than 106 times till date. In such cases, the President may assume to himself any or all of the powers of the State Legislature. Normally, it is imposed for two months initially, and is to be approved by the Parliament. This duration can be extended, however, by six months each upto maximum of three years by passing resolutions in the Parliament.

C. declare a Financial Emergency under Art. 360 if he feels that the creditworthiness of India or any part of it is in danger. The objective of such an emergency is to maintain financial stability of India by controlling the expenditures and by reducing the salaries of all government servants. Such an emergency has never been imposed so far.

**2. The Union Council of Ministers:** While the Prime Minister is selected by the President, all other ministers are appointed by him on the advice of the Prime Minister. While selecting a Prime Minister, the President is restricted to the leader of the majority party at the Centre or the person who is in a position to form a government and prove his majority later on. The allocation of portfolios to the Ministers is also done by the President as per the Prime Ministerial advice.

The PM is at the head of the Council of Ministers and the Council *cannot* continue to exist in the event of resignation or death of the Prime Minister.

The term Council of Minister refers to all the Ministers, whether Cabinet, State or Deputy Ministers. In reality, there is no classification of ministers in our Constitution. All this done has been following the British practice in this regard.

The Council of Ministers is collectively responsible to the Loksabha (Art 75). Theoretically, if a no-trust motion is passed against even one of the ministers in the Parliament, the whole Council is supposed to resign as a consequence (which has not taken place so far).

The entire Council of Ministers seldom meets as a single body. It is the Cabinet, an inner group within the Council, which takes all major decisions and which shapes the government policy. While Cabinet Ministers can attend all Cabinet meetings as a matter of right, the Deputy Ministers and Ministers of State can come to the meeting only if they are invited.

Ministers may be chosen from either House of Parliament and a minister, who is member of one house, has a right to speak and participate in the proceedings of the other House, but he cannot vote there. A person who is not a member of either, can be appointed a minister, but he must get elected to either House of Parliament *within 6 months* of his appointment.

## **VI. The Attorney and Comptroller & Auditor-General Of India**

**1. The Attorney General of India:** The Attorney-General of India is the first law officer of the GOI and he is expected to give advice on legal matters referred to him by the President. He also represents and defends the cases against the GOI in different Courts. The AGI is possibly the only person under the Indian system who can take part in the proceedings of the Parliament or any parliamentary committee, but cannot vote.

The AGI is appointed by the President and holds office at the latter's pleasure. A person, in order to be appointed the AGI, must have the qualifications, which are required of an SC Judge. He receives a monthly retainer.

**2. The Comptroller And Auditor-General:** The CAG performs the duties of

1. auditing and reporting on all expenditures from the Consolidated Fund of India and the Contingency Fund of India and of each state to determine whether the expenditure has been as per law.

2. auditing and reporting on all trading, manufacturing, profit and loss account etc. kept by any department of the Union or a State.

The CAG report is kept before the Parliament and is examined by the Public Accounts Committee of Parliament, which brings to the notice of Parliament any discrepancies found by it.

To be appointed by the President, the CAG will have a normal term of office for 6 years or until 65 years of age, whichever is earlier. However, he may resign any time by writing to the President. Otherwise, the only grounds and mode for his removal are the same as that of an SC Judge i.e. on impeachment by an address of Parliament.

**3. Public Accounts Committee:** This Committee examines the Appropriation Accounts and report of the Comptroller and Auditor General of India so that the irregularities noticed by the CAG may be discussed by the House and remedial steps taken. It investigates whether the money is legally distributed for its intended purpose or not.

### **VIII. The Union Legislature:** *Comprises the President, the Lok Sabha and the Rajyasabha.*

**1. The Lok Sabha:** Has a mixed composition with a total sanctioned strength of 550 elected members (530 from States and 20 at the most from UTs). A maximum of 2 members from the Anglo-Indian community may be nominated to the Lok Sabha by the President if he feels that they are not sufficiently represented.

Members of the Lok Sabha are elected by an electoral college of all adult citizens (of not less 18 years and who is not disqualified for non-residence, unsoundness of mind, crime or corrupt or illegal practices- Universal Adult Franchise –Art. 326). The normal duration of a Lok Sabha is 5 years, unless dissolved earlier by the President. The duration can be increased by a maximum of 1 year at a time only during an Emergency.

**2. The Speaker:** The Speaker is the person who presides over the Lok Sabha sittings. Soon after its formation, the new Lok Sabha chooses its Speaker and the Deputy Speaker. Since the newly –constituted Lok Sabha is yet to elect a Speaker who can administer the oath of office and secrecy to all the new MPs, the House normally elects a Pro Tem (sort of temporary) Speaker to conduct the business during that time. The Speaker conducts the business of the House as per the Rules of Business. The Speaker may cease to be so

1. if he loses the Lok Sabha membership for some reason
2. if he submits his resignation in writing to the Deputy Speaker and vice-versa.
3. If he is removed from the post by a Lok Sabha resolution supported by a majority all the members of the House.

Normally, the Speaker exercises the *casting vote* in case of a tie over a bill in the House.

Besides, the LS Speaker presides over a Joint Sitting of both the Houses. The Speaker also ratifies a bill as Money Bill and his decision in this matter is final. During a vacancy in the office of the LS Speaker, the Deputy Speaker performs his duties. After the first General Elections in 1951, GV Mavlankar became the *first* Speaker of the Lok Sabha.

**3. The Rajyasabha:** It is a permanent House (cannot be dissolved) with a member having a term of 6 years. One-thirds of its members retire after every two years. Consequently, there will be an election of one-thirds of the Rajyasabha at the beginning of every 3<sup>rd</sup> year.

It is the duty of the President to summon both Houses of Parliament at such intervals that not more than 6 months elapse between two successive sessions.

The Vice-President of India is the ex-office Chairman of the Rajyasabha. During his absence, the Deputy Chairman discharges his duties in the House.

#### **4. Legislative Procedures**

**For Bills Other Than Money Bills:** May be introduced in either House by a Minister or a private member. A private member has to seek prior permission of the House before introducing the Bill, which is normally given. After introduction in the House, the Bill is discussed by the House and is thereafter put to vote. In case of bills other than Money Bills, a simple majority is required to pass them (at least 50 percent of those present and voting in the House must approve it.)

After being passed in this manner in one House, Bill goes to the other House. Upon receipt in the other House, it undergoes all the stages again as it has in the earlier House. The other House may subsequently

1. reject the Bill altogether
2. pass the Bill with amendments. If on return to the originating House, the amendments are accepted by it, the Bill goes to the President for his assent. However, if the originating House does not agree to the amendments proposed by the other House, there is a deadlock and the provision of a Joint Sitting may be applied in such cases.
3. may take no action on it. If more than 6 months elapse in this manner, a Joint Sitting may be summoned by the President.

Though in most spheres, the LS and the RS are equal in the matter of their rights, there are certain special privileges enjoyed by the LS and the RS separately. For example,

1. only the Rajyasabha can recommend the creation of one or more All-India Services.
2. Only the Rajyasabha can pass a resolution to enable the Parliament to make a law on any thing contained in the State List.

Similarly, the Loksabha enjoys certain special powers like the unique ability to introduce a money bill and its dominant role in passing it.

**Money Bills:** A Bill is defined as a Money Bill if it contains any of the following provisions *ONLY*:

- A. imposition, abolition, reduction, alteration, remission or regulation of any tax
- B. taking out/depositing money from/into the Consolidated Fund/ Contingency Fund of India (Art. 110)

On the other hand, a Financial Bill is a Bill which deals with taxation plus some other provisions. That is why the Annual Budget is known as the Annual Finance Bill because it contains many provisions apart from those related to taxes.

A Money Bill can be introduced only in the Lok Sabha on the recommendations of the President. The decision of the Speaker of the LS is final in certifying whether a Bill is a Money Bill or not. The Rajyasabha cannot initiate a Money Bill nor can it reject or amend it after passage by the Lok Sabha. The Rajyasabha must return a Money Bill within 14 days of receipt, after which the Lok Sabha may accept any of its recommendations. In case the RS recommendations are accepted by the LS, the Bill will be deemed to have been passed by both the Houses. In case the LS does not accept the RS recommendations, the Bill will be deemed to have been passed by both the Houses.

If the RS does not return the Bill within 14 days of its receipt, it will be deemed to have been passed.

The net result is that the RS does not have much say in matters of Money or Finance Bills. For example, in case of Annual Budget, the Rajyasabha can discuss it or propose amendments to it but it is not obligatory for the LS to accept them.

The President is bound to give his assent to a Money Bill so passed in the first instance itself and cannot withhold his assent or send it back to Parliament.

In the Lok Sabha, estimates of expenditures are submitted in the form of Demands-For-Grants on particular heads and are followed by a vote of the House on each of those heads. After voting, the grants so made by the LS and the expenditures charged on the Consolidated Fund of India (which are non-votable like the salaries of SC./HC Judges, President's salary and other office expenses) are included in an Appropriation Bill, providing legal authority for drawing money from the Consolidated Fund of India.

**VIII. The State Executive:** Our Constitution provides for a federal set-up and contains provisions for the administration of the Union and the State governments. The procedure laid down for the governance of the States is equally applicable to all, except Jammu and Kashmir.

**1. The Governor:** The State Governor is largely parallel to the Union President in matters of his role in the legislative and executive process. The Governor, appointed by the President, holds office at the President's pleasure and enjoys the formal executive authority in a state. Any Indian Citizen above 35 years of age is eligible for Governorship, but he must not hold any office of profit, nor he be a member of the Union or a State Legislature. The powers of appointment to the State Council of Ministers, the Advocate-General, recommending Money- Bills etc. enjoyed by the Governor are largely analogous to those held by the President at the Centre.

The normal office term of a Governor is 5 years, terminable earlier by resignation to the President or dismissal by the President.

**Salary, Allowances:** The Governor gets a monthly salary plus an official residence free of cost and other allowances and privileges as per law.

**2. The State Legislature:** Some of the states are unicameral i.e. have got only the State Legislative Assembly. In some others, apart from it, there is a State Legislative Council e.g. Bihar, Jammu and Kashmir. The SLC is largely analogous to the Rajyasabha while the State Legislative Assembly is the equivalent of the Rajyasabha.

**3. Special Status of J&K:** Under Art. 370, the State of Jammu and Kashmir enjoys certain special privileges as compared to other States in the Union e.g.

1. J&K has its separate State Constitution which no other state in India has.
2. No Constitutional Amendment Act passed by the Parliament is applicable to J&K unless it is extended so by a Presidential order
3. The President's rule (Art.356) cannot be applied in J and K.
4. No proclamation under Art.352 (National Emergency) can be applied to J&K, without the concurrence of the State Government.
5. The Directive Principles of State Policy do not apply to J&K and the Fundamental Right To Property still exists in the State.

**IX. The Indian Judicial System:** The Supreme Court of India sits at the apex of the judicial system in India and the Parliament is competent to make any changes regarding its constitution, jurisdiction and the salaries payable to its judges. The Supreme Court comprises a Chief Justice of India and 25 other Judges. Besides, the CJI, with presidential consent, can request a retired SC Judge to act as a Temporary Judge in case of lack of quorum.

#### **Qualifications and Tenures of Judges**

A person, in order to be appointed an SC Judge must

1. be a citizen of India
2. Be either a distinguished jurist or have at least 10 years' High Court practice as an advocate OR
3. have been a High Court Judge for at least 5 years.

No minimum age nor any fixed tenure has been prescribed. An SC Judge may cease to be so

1. on attaining the age of 65 years
2. by sending his resignation to the President
3. being impeached

The only grounds upon which an SC Judge can be removed are:

*A. proven misbehaviour*

*B. incapacity*

An SC Judge gets a monthly salary of Rs. 90,000/- plus an official residence free of cost while the CJI receives a monthly salary of Rs.1,00,000/-, apart from an official residence free of cost. The Constitution secures the independence of the SC judges by several means, i.e.

1. In matters of appointments to the SC, the President is required to consult, apart from his Council, the CJI. It has been recently ruled by the SC that consultation here means that the advice so given by the CJI is binding on the government and it cannot supersede the advice so made by the CJI.
2. They cannot be removed except on a Joint Address by both chambers on specified grounds.
3. That the SC Judges' salaries cannot be changed to their disadvantage during their tenure.

4. That no SC judge shall act or plead in any Court in India after retirement.

**Jurisdiction:** The SC enjoys an overriding power to entertain appeal, without any limitation upon its discretion. An appeal to the Supreme Court lies not only from the decision of any lower Courts within India, but also from the decisions of any tribunal in India.

**As A Federal Court:** Art 131 gives the Supreme Court exclusive power to decide on disputes between the Union and the States or between two or more States. Since such a case will always go to the Supreme Court only, this is known as the original jurisdiction of the SC. Only certain classes of disputes are excluded from this category i.e. a dispute arising out of interference with inter-state water supplies, matters referred to the Finance Commission.

**As A Court of Appeal:** An appeal to the SC always lies if a death sentence has been given to a person by any of the lower courts/tribunals. But appeals to the SC in civil cases decided by an HC will be entertained only if the case involves an important question of law and constitutional interpretation and is certified so by the HC concerned. Of course, the SC enjoys unlimited power of judicial review by means of its Special Leave Petition, to hear any case arising from any Court / Tribunal within India, except Military Tribunals.

**Advisory Jurisdiction:** Under Art. 143, the Supreme Court can give its advice on any matter referred to it by the President. However, it is to be noted once a presidential reference is made to the SC on an issue, it is not binding on the SC to give its advice nor is it binding on the GOI to accept such advice. A case in point is the presidential reference to the SC on the Ayodhya dispute. In this case, the SC had declined to give any advice, saying that it was a purely political question.

**As A Guarantor of The Constitution:** The Supreme Court is the final interpreter the Constitution and Other laws. It tries to ensure adherence to both and thus acts a guarantor of individual rights in India granted by the law and the Constitution.

**The high Courts:** A High Court stands at the head of the judiciary in each state. But the Parliament has the power to establish a common High Court for two or more states (like the common HC for the North-Eastern states). A High Court comprises a Chief Justice and a number of other Judges, as may be decided by the President.

The HC enjoys the jurisdiction over the territorial limits of the state and has the power of superintendence and control over all Courts and Tribunals in that area.

In order to be appointed an HC Judge, a person must

1. be an Indian citizen
2. not be above 62 years of age
3. have held a judicial office in India OR
4. have been an advocate of an HC or of two more such courts in succession

In appointing HC Judges, the President shall consult the CJI, the State Governor (and also the CJ of the State HC in case a judge other than the CJ is to be appointed) an HC Judge holds office till 62 years of age. However, the Judge may vacate his post

1. by resignation in writing to the President
2. on appointment as an SC Judge
3. by impeachment in Parliament.

The mode of removal of both SC and HC Judges is the same i.e. impeachment by Parliament and both hold office during "good behaviour". Both categories of Judges, in addition to a monthly salary, are entitled to the use of an official residence, free of cost.

**X. The Finance Commission:** A Finance Commission will be appointed by the President every five years (Art. 280) to report on the distribution of financial resources between the Union and the States. It is the duty of the FC to report on the

1. allocation of divisible tax resources between the Centre and the States.
2. the principles which should govern the grants-in-aid of the States' revenues out of the Consolidated Fund of India.
3. any other matter referred to the Commission by the President.

**XI. The Union and State Public Service Commissions:** There is a Union Public Service Commission to conduct examinations for appointment to Union posts, advise on any matters referred to it by the President, transfers/promotions and other service matters. The number of the UPSC members is decided by the President.

The Commission members shall hold office for 6 years from the date of appointment. Sufficient provisions have been made to guard the independence of the UPSC. For example, a UPSC member can be removed by the President only on the report of the SC, which will conduct an enquiry into the case. The UPSC presents an annual report to the government on its functioning and this report is tabled in the parliament. Please note that the work of the Commission is purely advisory and the government may refuse to implement the recommendations for appointments made by the UPSC, for which it has give reasons. The *final* appointing authority for the All-India Services is the President.

In each state, there is a State Public Service Commission, appointments to which are made by the Governor concerned. A Joint Commission may also be constituted by the President on the states' request.

**XII. Elections in India:** The Indian Constitution does not describe the details of the election process, it prescribes only essential guidelines, the rest is left to legislation. In India, the general principle of elections is Universal Adult Franchise i.e. every citizen who is 18+ years of age is entitled to vote for Lok Sabha elections regardless of any consideration of caste, color, creed, sex, place of residence and the like. (provided he has not been disqualified otherwise on grounds of non-residence, crime, unsoundness of mind, corrupt or illegal practices)

In pursuance of the authority granted by the Constitution, the Representation of People's Act-1951 and the Delimitation Commission Act-1962 have been enacted, which describe in detail the electoral process to be followed in elections and the mode of formation of electoral constituencies. All electoral disputes connected with LS/RS elections are challengeable only in a High Court by means of an Election Petition,

with an appeal to the Supreme Court while the disputes concerning any Presidential elections can be taken to the Supreme Court only.

The Constitution provides for an Election Commission consisting of a Chief Election Commissioner and other Election Commissioners, as may be decided by the President from time to time (Art 324). The Election Commission is charged with the duty of conducting, supervising and controlling the entire machinery and the procedure for elections to Parliament, State Legislative Assemblies, offices of President and Vice-President of India. The CEC cannot be removed from his post except in a manner similar to an SC Judge i.e. proved misbehaviour/incapacity. The other Commissioners may be removed by the President on the CEC's recommendation.

The election process regarding the Lok Sabha elections is initiated on the recommendations of the *Home Ministry*. A specified period is given for filing nomination, which must be supported by at least 10 electors. A security deposit is also to be given with the Returning Officer of the constituency, which is forfeited if the candidate fails to get at least one-sixth of total valid votes polled in that election. The results are declared by the Returning Officer of the constituency concerned. The results can, however, be withheld by the EC in cases

1. where the constituency has been identified as being communally sensitive
2. the victory margin between two topmost competing candidates is less than 5 percent of valid votes polled

Recounting may be ordered in such cases by the EC.

The EC also performs the task of recognizing political parties. Around 43 recognized political parties exist in India, which may be either of the two types:

1. National parties are those parties, which secure a minimum of 5% total votes in any previous Lok Sabha elections OR 5 percent votes in at least 4 State Assembly Elections e.g. the Congress, the BJP.
2. All other parties which do not fulfill the above criteria are classified as regional parties e.g. Akali Dal, Muslim league, Revolutionary Socialist Party.

Notably, the increase or decrease in the no. of districts in any state has no impact on the number of Lok Sabha constituencies which is fixed by the Delimitation Commission. For instance, the current no. of seats is based on the 1971 Census Report. The number of LS of seats has now been frozen till 2026 in deference to requests by some states.

### **XIII. Some Important Political Terms**

**1. Lameduck Government:** Is defined as that government which has lost the motion of no-confidence in the Lok Sabha and does not have the constitutional authority to run the government. Still on being asked by the President, such a government has to continue until alternative arrangements are made. Such a government is referred to as a lameduck government.

**2. Left Parties:** Are those parties that adopt a radical political ideology. For instance, the CPI, CPI(M) and RSP etc.

**3. Right Parties:** Are defined as those parties which adopt a politically conservative ideology e.g. the BJP, Shiv Sena etc.

**4. Centrist Parties:** Are those which adopt a political position which is a via media between the leftist and the rightist political ideologies.

**5. Cut Motion:** A motion moved to effect a cut in the Annual Budget. If an insignificant cut is proposed, such a motion is known as a token cut-motion. It has great political significance because if it is carried through in the Parliament, the government is under moral obligation to resign as a consequence.

**6. Zero Hour:** That time during parliamentary proceedings in the day when any matter of urgent national importance without any prior notice.

**7. Starred Question:** Those the answers to which are given orally by the Minister concerned in the Parliament.

**8. Unstarred Questions:** The answers to which are given in writing in Parliament by the Minister concerned.

**9. Vote-On–Account:** Is passed without discussions pending final approval by the Parliament if money is required urgently.

**10. Guillotine:** A motion is said to be guillotined if it is passed without any discussion on it in parliament in view of urgency of the issue under question.

**11. Filibuster:** Is a person who, in order to block the passage of a bill in Parliament, makes a long speech just before voting is going to take place. This term has British origins. Such a person and such a speech, both are referred to as filibuster.

**12. Whip:** A whip is a person who regulates the presence and conduct of the members of a particular political party in Parliament. He is supposed to ensure their presence and voting on particular days and in a particular manner. Before voting on any matter in Parliament, an order is issued by the whip to all party MPs. Such an order is also known as a whip. Under the provisions of the Anti-Defection Law, violating a party whip can attract disqualification from Parliament. However, as per current provisions, which are likely to undergo drastic change in future, party splits (i.e. if one-thirds or more legislators from a particular party leave it and join another one) are not termed as defections and do not attract penal provisions.