(1)
INTRODUCTION TO CONSTITUTION OF INDIA

INTRODUCTION:

- This subject will provide information about the working of our constitution, different institutions of the government and their relationship with each other.
- We will learn the meaning of a constitution; a brief idea on our constitution; and the need of a constitution.

WHAT IS A CONSTITUTION?

- Constitution is a document which consists of a number of articles about the state, specifying how the state is to be constituted and what rules it should follow.
- Constitution of India is the supreme law of our country.
- It establishes the structure, procedures, powers and duties of the government and spells out the Fundamental Rights, Directive Principles of State Policy and Duties of citizens.

CONSTITUTION OF INDIA…

- Constitution of India was passed by the Constituent Assembly on 26th November 1949 and it came into effect on 26th January 1950.
- Constitution of India declares the Union of India to be a sovereign, socialist, secular, democratic republic, assuring its citizens of justice, equality and liberty and to promote among them all fraternity.
- It is the longest written constitution in the world which contained 395 articles, 22 parts and 8 schedules at the time of commencement.
- There are 1,17,369 words in the English version. Besides the English version, there is an official Hindi translation of our constitution.

CONSTITUTION OF INDIA…

- Dr. Bhimrao Ramji Ambedkar was the Chairman of the Constitution Drafting Committee who was the Chief Architect of Indian Constitution.
- Major part of India was under British rule from 1858 to 1947.
- In this period there was the freedom movement to gain independence from the foreign rule.
- The movement ended in the formation of India and Pakistan on 15th August 1947.
- Then we start to govern our country ourselves according to our own constitution from 26th January 1950.

WHY DO WE NEED A CONSTITUTION?

1. A constitution provides a set of basic rules which allow for minimum co-ordination among members of a society.
2. It specifies who has the power to make decisions in the society. It decides how the government will be constituted.
3. Constitution sets some limits on the power of government.

- Fundamental rights are possessed by the citizens of our country. No government is allowed to violate such rights.
- Constitution protects the fundamental rights of citizens.
- Citizens are protected from being arrested arbitrarily and for no reason. This is one limitation on the power of government.
- Citizens have the right to freedom of speech, freedom of conscience, freedom of association, freedom to conduct a trade or business etc.

CONSTITUTION OF INDIA…

- But these rights can be limited during national emergency and under certain circumstances, these rights may be withdrawn.

4. A constitution enables the government to fulfill the aspirations of a society and create conditions for a just society.

These are some of the needs for which most countries have a constitution.

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(2)
HISTORICAL PERSPECTIVES OF THE CONSTITUTION OF INDIA
‘OR’
EVOLUTION OF THE CONSTITUTION OF INDIA

HISTORICAL PERSPECTIVES OF CONSTITUTION…

The constitution of India has been evolved as follows:

1) ACTS OF BRITISH PARLIAMENT BEFORE 1935:

- After the Indian Rebellion of 1857, the British parliament took over the reign of India from the British East India Company, and British India came under the direct rule of the British crown.
- The British parliament passed the **Government of India Act of 1858** to this effect, which set up the structure of British Government in India.
- It established the office of the Secretary of State for India in England.
- The British parliament would exercise its rule through the Secretary of State for India.

HISTORICAL PERSPECTIVES OF CONSTITUTION…

- The Secretary of State for India was aided by an Executive Council in India.
- This council consisted of high officials of the British Government.
- The **India Councils Act of 1861** provided for a Legislative Council.
- The Legislative Council consisted of the members of the Executive Council and non- official members.
- The **India Councils Act of 1892** established provincial Legislatures and increased the powers of the Legislative Council.
- These acts increased the representation of Indians in the government but it was limited in its powers. The **Government of India Acts 1909 and 1919** further expanded the participation of Indians in the government.

2) GOVERNMENT OF INDIA ACT 1935:

- The provisions of this Act was never implemented fully but it had a great impact on the Constitution of India.
- Many key features of our constitution are directly taken from this Act.
- The federal structure of government, provincial autonomy, bicameral legislature consisting of a federal assembly and a council of states, separation of legislative power between centre and provinces are some of the provisions of the Government of India Act 1935 which are present in our Constitution.

3) THE CABINET MISSION PLAN:

- In 1946, at the initiative of British Prime Minister Clement Attlee, a Cabinet Mission for India was formulated.
- Its objective was to discuss and finalise plans for the transfer of power from British Government to Indian leadership.
- The Cabinet Mission discussed the framework of the constitution and laid down the procedure to be followed by the Constitution Drafting Committee.
- Elections for the British Indian provinces were completed by August 1946. The Constituent Assembly first met and began to work on 9th December 1946.

4) INDIAN INDEPENDENCE ACT 1947:

- The Indian Independence Act came into force on 18th July 1947.
- According to this Act, the British India was divided into two countries namely, India and Pakistan.
- The Constituent Assembly was also divided into two for the separate countries.
- The Act relieved the British parliament of any further rights towards India or Pakistan and granted sovereignty over the lands to the respective Constituent Assemblies.
- When the Constitution of India came into force on 26th January 1950, India became a Sovereign Democratic Republic.

5) CONSTITUENT ASSEMBLY:

- The constitution was drafted by the Constitution Drafting Committee on behalf of the Constituent Assembly.
- Jawaharlal Nehru, C. Rajgopalchari, Rajendra Prasad, Sardar Vallabhbhai Patel, Maulana Abul Kalam Azad, Shyam Prasad Mukherjee and Nalini Ranjan Ghosh were some important figures in the Constituent Assembly.
- Rajendra Prasad was elected President of the Constituent Assembly.

6) DRAFTING OF THE CONSTITUTION: On 14th August 1947, the Constituent Assembly proposed for forming various committees like Fundamental Rights Committee, the Union Powers Committee and Union Constitution Committee. On 29th August 1947 the Constituent Assembly appointed Dr. Ambedkar as the Chairman and six others as the members of the Constitution Drafting Committee.

HISTORICAL PERSPECTIVES OF CONSTITUTION…

- A draft Constitution was submitted by the Drafting Committee to the Constituent Assembly on 4th November 1949.
- Then the Constituent Assembly met for several days before adopting the Constitution.
- After many deliberations and some modifications the members of the Constituent Assembly signed two hand written copies of the document (one each in Hind and English) on 24th January 1950.
- On 26th January 1950, Constitution of India became the law of all the Indian lands.
- The constitution consists of a preamble, 25 parts containing 448 articles, 12 schedules, and more than 101 amendments till today.

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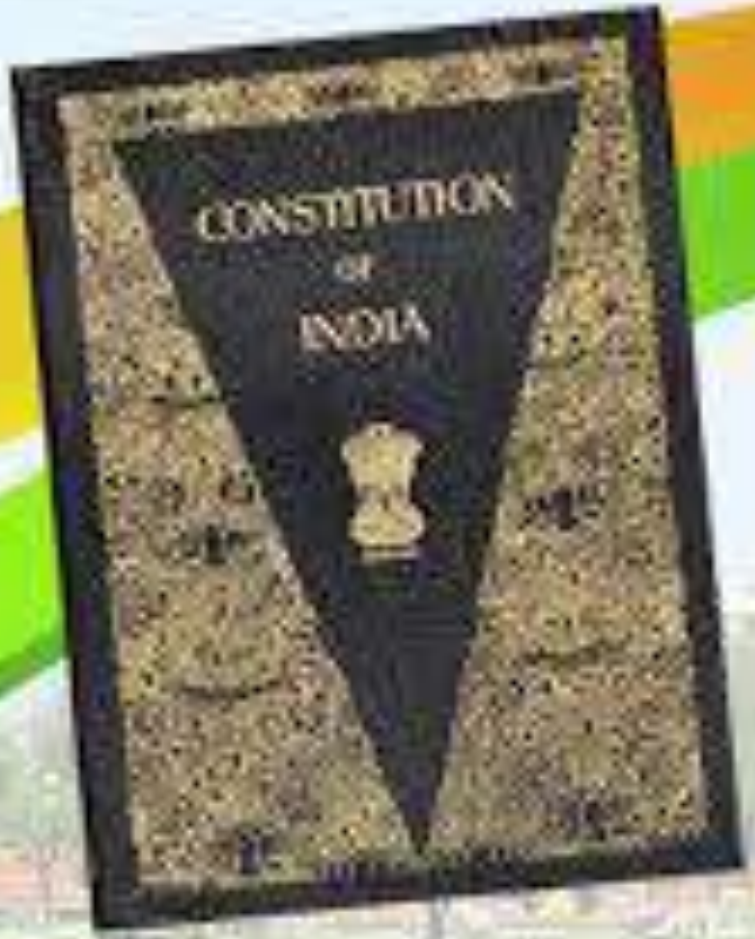

Salient features of
INDIAN
CONSTITUTION

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SALIENT FEATURES OF INDIAN CONSTITUTION:

Following features of Indian constitution distinguish it from other constitutions.

1. LENGTHIEST WRITTEN CONSTITUTION:

- The constitution of India is the lengthiest of all the written constitutions of the world.
- Originally, Indian constitution contained a preamble, 395 Articles, 22 parts and 8 schedules. Presently after various amendments it consists of a preamble, 448 Articles, 25 parts and 12 schedules. Following four factors have contributed to the elephantine size of our constitution.

i)Geographical factors, i.e., the vastness of the country and its diversity. ii) Historical factors, e.g., the influence of the Government of India Act, 1935, which was bulky. (iii) Single constitution for both the centre and the states (iv) Dominance of legal luminaries in the constituent Assembly.

SALIENT FEATURES OF THE INDIAN CONSTITUTION…

2. DRAWN FROM VARIOUS SOURCES:

- The constitution of India has borrowed most of its provisions from other constitutions as well as from the Government of India Act 1935.
- Fundamental Rights and Directive Principles of State Policy are derived from the American and Irish constitutions respectively.
- The Principle of Cabinet Government and the relations between the Executive and the Legislature have been drawn from the British Constitution.
- The other provisions of the constitution have been drawn from the constitutions of Australia, Canada, France, Germany, Japan, South Africa, USSR and so on.
- The Emergency Powers, Federal Scheme, Governors, Judiciary, Public Service Commissions and most of the administrative details are drawn from Government of India Act 1935.

SALIENT FEATURES OF THE INDIAN CONSTITUTION…

3. BOTH RIGID AND FLEXIBLE:

- The constitution of India is neither rigid nor flexible but a synthesis of both.
- Article 368 provides for following types of amendments:

i) Some provisions can be amended by a special majority of the parliament, i.e., a two third majority of the members of each house present and voting, and a majority (that is more than 50 percent), of the total membership of each house.

ii) Some other provisions can be amended by a special majority of the parliament and with the approval by half of the total states in simple majority.

- At the same time, some provisions of the constitution can be amended by a simple majority of the parliament.

SALIENT FEATURES OF THE INDIAN CONSTITUTION…

4. FEDERAL SYSTEM WITH UNITARY BIAS:

- The constitution of India establishes a federal system of government which contains all the features of a federation, viz., two governments, 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 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.

5.PARLIAMENTARY FROM OF GOVERNMENT:

- The constitution of India has opted for the British parliamentary system of Government.
- The constitution establishes the parliamentary system not only at the centre but also in the states.
- Some of the features of parliamentary government in India are:

i)Presence of nominal and real executives;

ii) Majority party rule,

iii) Collective responsibility of the executive to the legislature,

iv) Membership of the ministers in the legislature,

v) Leadership of the prime minister or the chief minister,

vi) Dissolution of the lower house (Lok Sabha or Legislative Assembly)

6. INTEGRATED AND INDEPENDENT JUDICIARY:

- The Indian Constitution establishes a judicial system which is integrated as well as independent. The supreme court is at the top of the integrated judicial system.
- Below it, there are high courts at the state level and under a high court, there will be district courts and other lower courts. This single system of courts enforces both the central laws as well as the state laws.
- The supreme court is the highest court of appeal and it is the guarantor of the fundamental rights of the citizens. It is the guardian of the constitution. The constitution has made various provisions to ensure the independence of judiciary.

7. FUNDAMENTAL RIGHTS:

- Indian constitution guarantees six fundamental rights to all the citizens such as Right to Equality, Right to Freedom, Right against Exploitation, Right to freedom of Religion, Cultural and Educational Rights, and Right to Constitutional Remedies.
- The fundamental rights are meant for promoting political democracy. These are the limitations on 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 supreme court which can issue the writs of habeas corpus, mandamus, prohibition, certiorari and quo warranto for the restoration of his rights.
- Fundamental rights are also subject to reasonable restrictions. They can be curtailed by the parliament through a constitutional amendment act and can also be suspended during a national emergency.

8. DIRECTIVE PRINCIPLES OF STATE POLICY:

- The Directive Principles of State Policy is a 'novel feature' of the Indian Constitution which has been taken from the Irish Constitution. They seek to establish a 'welfare state' in India.
- These are not enforceable by the courts for their violation.
- The philosophy behind the Directive Principles of State Policy is that the central and state governments should follow these principles while they frame their policies.

9. FUNDAMENTAL DUTIES:

- The fundamental duties were added during the internal emergency (1975-77). These are namely, to respect the constitution, national flag and national anthem; to protect the sovereignty, unity and integrity of the country; to promote the spirit of brotherhood amongst all the people; to preserve our rich heritage and so on. It is a reminder to citizens that while enjoying their rights they should be conscious about their duties.

SALIENT FEATURES OF THE INDIAN CONSTITUTION…

10. A SECULAR STATE:

- The constitution of India stands for a secular state. There is no official or state religion in India.
- Being a secular state, India treats all its citizens alike and give them equal opportunities.
- India guarantees, constitutionally, freedom of religion to all persons.
- No discrimination can be made on the basis of religion, faith, caste, colour and sex. Every citizen is equal before law.
- It guarantees right to religious minorities to maintain their own language and to establish educational institutions of their choice.

11. 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 by the 61st constitutional Amendment Act of 1988.
- The introduction of universal adult franchise by the constitution-makers was 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 men and upholds the principle of equality.

12. SINGLE CITIZENSHIP:

- Indian constitution provides for a single citizenship, that is the Indian citizenship.
- In countries like U.S.A, each person is not only a citizen of USA but also a citizen of the particular state to which he belongs.
- 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.

13. EMERGENCY PROVISIONS:

- Our constitution contains emergency provisions to enable the President to safe guard the sovereignty, unity, integrity and security of the country, the democratic political system and the constitution.
- There are three types of emergencies: National emergency, State emergency and Financial emergency .
- 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 an 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.

14. THREE-TIER GOVERNMENT:

- Originally, the Indian constitution provided for dual government, i.e., central and state governments.
- Later, by constitutional Amendment we have added a third-tier of government, i.e., Local government.
- The 73rd and 74th Amendment Acts of 1992 gave constitutional recognition to the panchayats (rural local governments) and municipalities (urban local governments).

CRITICISMS OF THE CONSTITUTION:

1. A BORROWED CONSTITUTION:

- The critics described Indian constitution as a ‘borrowed constitution’ or a ‘bag of borrowings’ or a ‘hotch-potch’ constitution’ or a ‘patch work’ of several documents of the world constitutions.
- Parliamentary form of government is borrowed from the British constitution while federalism and judicial review is borrowed from the US constitution.
- This criticism is unfair because, the framers of the constitution modified the features borrowed from other constitutions for our suitability and avoided their faults.
- So, if it is a ‘patch work’ it is a ‘beautiful patch work’.

CRITICISMS OF THE CONSTITUTION…

2. ELEPHANTINE SIZE:

- The constitution of India is criticised as the lengthiest and detailed constitutional document.
- According to Sir Ivor Jennings, a British constitutionalist, the provisions borrowed for Indian constitution were not well selected for which it was too long and complicated.

3. PARADISE OF THE LAWYERS:

- According to critics, the Indian constitution is too legalistic and very complicated.
- They opined that the legal language adopted in the constitution makes it complex.
- Sir Ivor Jennings called it a “Lawyer’s paradise”
- Only experienced lawyers can understand the implications of the legal language.

CRITICISMS OF THE CONSTITUTION…

4. UN-INDIAN 'or' ANTI-INDIAN:

- According to the critics, the Indian Constitution is 'un-Indian' or 'anti-Indian' because it does not reflect the political traditions and the spirit of India. They said that the foreign nature of the constitution makes it unsuitable to the Indian situation.
- In this context, a member of the Constituent Assembly, commented, "We wanted the music of veena or sitar, but here we have the music of an English band.

5. A CARBON COPY OF THE GOVERNMENT OF INDIA ACT 1935:

- The critics said that the framers of the constitution have included a large number of provisions of the Government of India Act, 1935 in our constitution.
- Hence, they called the constitution as a carbon copy of the Government of India Act. 1935 or an amended version of the Govt. of India Act. 1935.

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(4)
THE PREAMBLE OF INDIAN CONSTITUTION

INTRODUCTION:

- The term ‘preamble’ refers to the introduction or preface to the constitution.
- It contains the summary of the constitution.
- The preamble has been amended only once by the 42nd Constitutional Amendment Act,1976, and three words: socialist, secular and integrity have been added.

Preamble of Constitution:

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.

FEATURES OF THE PREAMBLE:

- The preamble reveals the following four important features:

1. Source of authority of the Constitution:

- The preamble states that the Constitution derives its authority from the people of India.

2. Nature of India State:

- It declares India is a sovereign, socialist, secular, democratic republic.

3. Objectives of the constitution:

- It specifies justice, liberty, equality and fraternity as the objectives.

4. Date of adoption of the constitution:

- It specifies 26th November 1949 as the date.

KEY WORDS IN PREAMBLE:

1. **SOVEREIGN:** The word 'sovereign' implies that India is neither dependent on any country nor a dominion of any other nation, but an independent state.

- There is no authority above it. It is free to conduct its internal and external affairs.
- Being a sovereign state, India can either acquire a foreign territory or surrender a part of its territory to a foreign state.

2. **SOCIALIST:** Indian socialism is a 'democratic socialism'/ 'state socialism' and not a 'communistic socialism'.

- Communistic socialism involves nationalisation of all means of production and distribution and the abolition of private property but in our democratic socialism, there is 'mixed economy' where both public and private sector co-exist. It aims to end poverty, ignorance, disease and inequality of opportunity.

PREAMBLE OF INDIAN CONSTITUTION…

3. SECULAR:

- The term 'secular' was added by the 42nd constitutional Amendment Act of 1976.
- There is a right to freedom of religion in our constitution. The Indian constitution represents the positive concept of secularism, i.e., all religions in our country have the same status and support from the state.

4. DEMOCRATIC:

- In democracy, supreme power is possessed by the people.
- Democracy is of two types: Direct and Indirect. In direct democracy, the people exercise their supreme power directly as in the case of Switzerland.

PREAMBLE OF INDIAN CONSTITUTION…

- There are four tools of direct democracy, namely, Referendum, Initiative, Recall and Plebiscite.
- In indirect democracy, the representatives are elected by the people. The elected representative exercise the power and they carry on the government and make laws.
- Indirect democracy is also known as representative democracy which is of two kinds: Parliamentary and Presidential.
- The Indian constitution provides for Parliamentary Democracy. In this democracy, the Executive is responsible to the Legislature for all its policies and actions.
- Universal adult franchise, periodic elections, rule of law, independence of judiciary, and absence of discrimination are our democratic features.

PREAMBLE OF INDIAN CONSTITUTION…

5. **REPUBLIC:** In a democracy the organisational structure can be classified into two categories: Monarchy and Republic.

- In a monarchy, the head of the state (usually king or queen) enjoys a hierarchy position, that is he/she comes into office through succession, e.g., Britain.
- In a republic, the head of the state is always elected directly or indirectly for a fixed period, e.g, USA.
- 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.
- A republic also means two more things:

i) vesting of political sovereignty in the people and not in a single individual like a king;

ii) all public offices are opened to every citizen without any discrimination

PREAMBLE OF INDIAN CONSTITUTION…

6. JUSTICE:

- The term 'justice' in the preamble implies social justice, economic justice and political justice which are secured through various provisions of Fundamental Rights and Directive Principles of State policy.
- **Social justice** denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on.
- **Economic justice** denotes the non-discrimination between people on the basis of economic factors.
- It involves the elimination of glaring inequalities in wealth, income and property.
- **Political justice** implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government.

PREAMBLE OF INDIAN CONSTITUTION…

7. LIBERTY:

- The term ‘liberty’ means the absence of control on the activities of individuals.
- It also means providing opportunities for the development of individual personalities.
- The preamble secures liberty of thought, expression, belief, faith and worship to all citizens of India through fundamental rights which are enforceable in court of law, in case of violation.
- Liberty is very essential for the successful functioning of Indian democratic system.
- However, liberty does not mean ‘license’ to do what one likes, and has to be enjoyed within the limitations mentioned in the constitution.

8. EQUALITY:

- The term 'equality' means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.
- The preamble secures equality of status and opportunity to all citizens of India. There are civic equality, political equality and economic equality.
- To ensure **civic equality**, the following provisions are there in the fundamental Rights:

i) Equality before law

ii) No discrimination on grounds of religion, race, caste sex or people of birth.

iii) Equality of opportunity in matters of public employment.

iv) Abolition of untouchability v) Abolition of titles.

PREAMBLE OF INDIAN CONSTITUTION…

- There are two provisions in the constitution to achieve **political equality**:

i) No one is ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex.

ii) Elections to the Loksabha and the state assemblies are on the basis of adult suffrage.

- The Directive Principles of State Policy secures equal right to an adequate means of livelihood and equal pay for equal work to men and women. This is to achieve **economic equality.**

9. FRATERNITY: It means a sense of brotherhood. The constitution promotes this feeling of fraternity by the system of single citizenship.

- Also, according to the Fundamental Duties, it is the duty of every citizen to promote harmony and brotherhood among us.
- The preamble declares that fraternity has to assure the dignity of the individual and the unity and integrity of the nation.

SIGNIFICANCE OF THE PREAMBLE:

- The preamble represents the basic philosophy on which the constitution of India is based.
- It contains the noble vision of the Constituent Assembly.
- It reflects the dreams and ambitions of the founding fathers of our constitution.
- Preamble of our constitution is the horoscope of our sovereign democratic republic.
- It is the most precious part of our constitution.
- It is the soul of our constitution and a key to our constitution.
- Preamble is the yardstick with which one can measure the worth of our constitution.

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FUNDAMENTAL RIGHTS

FUNDAMENTAL RIGHTS:

- The fundamental Rights are in Part - III of Indian constitution from Articles 12 to 35.
- The fundamental rights are guaranteed by the constitution to all persons without any discrimination.
- They prevent an authoritarian and despotic rule in the country, and protect the liberties and freedoms of the people.
- The fundamental Rights are named so because they are guaranteed and protected by the constitution and also they are essential for the all-round development (material, intellectual, moral and spiritual) of the individuals.
- Originally, there were seven Fundamental Rights:

1. Right to Equality (Articles 14-18)
2. Right to Freedom (Articles 19-22)
3. Right against Exploitation (Articles 23-24)

FUNDAMENTAL RIGHTS…

4. Right to Freedom of Religion (Articles 25-28)
5. Cultural and Educational Rights (Articles 29-30)
6. Right to Property (Article-31)
7. 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 and became a Legal Right.
- So, at present, there are only six Fundamental Rights.

1. RIGHT TO EQUALITY:

- Articles 14 to 18 of the constitution describe Right to Equality.
- It is the foundation of all other rights and liberties, and guarantees the following:

FUNDAMENTAL RIGHTS…

i) 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 can not discriminate against a citizen on the basis of caste, creed, colour, sex, religion or place of birth.

ii) SOCIAL EQUALITY AND EQUAL ACCESS TO PUBLIC AREAS:

- Article 15 of the constitution states that 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 the advancements of women and children, socially or educationally backward class, scheduled castes or scheduled tribes.

FUNDAMENTAL RIGHTS…

iii) EQUALITY IN MATTERS OF PUBLIC EMPLOYMENT:

- Article 16 of the constitution states that the state can not discriminate against any one in the matters of employment.
- All citizens can apply for government jobs. There are some exceptions.
- The state may reserve posts for the upliftment of backward classes.

iv) ABOLITION OF UNTOUCHABILITY:

- Article 17 of the constitution abolishes the practice of untouchability.
- Practice of untouchability is an offence and anyone doing so is punishable by law.
- There is also the provision of penalties for preventing a person from entering a place of worship or from taking water from a tank or a well.

FUNDAMENTAL RIGHTS…

v) 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, Khan Bahadurs, etc. in India which were also abolished.
- However, military and academic distinctions can be conferred on the citizens of India.
- The awards of Bharat Ratna and Padma Vibhushan can not be used by the recipient as a title.

2. RIGHT TO FREEDOM:

- It is described in articles 19 to 22 of our constitution.
- The right to freedom in Article 19 guarantees the following six freedoms:

i) Freedom of speech and expression enable an individual to participate in public activities but reasonable restrictions can be imposed in the interest of public order, security of state, decency or morality.

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

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

FUNDAMENTAL RIGHTS…

iv) Freedom to move freely throughout India but reasonable restrictions can be imposed in the interest of the public.

v) Freedom to reside and settle in any part of India which is also subject to reasonable restrictions in the interest of general public.

vi) Freedom to practise any profession or to carry on any occupation/trade/business on which the state may impose reasonable restrictions in the interest of general public.

- Thus, there is no right to carry on a business which is dangerous or immoral.
- According to Article 20, no one can be awarded punishment which is more than what our law prescribes.
- According to Article 21, a person's life and personal liberty can only be disputed if that person has committed a crime.

FUNDAMENTAL RIGHTS…

- However, the right to life does not include the right to die and hence, suicide or an attempt to suicide is an offence.
- The right to primary education is a part of the right to freedom for which the state provides free and compulsory education to children from six to fourteen years of age.
- According to Article 22 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 and the person has to be brought before the magistrate within 24 hours.
- The government restricts these freedoms in the interest of the independence, sovereignty and integrity of India.
- These freedoms are also automatically suspended during emergency.

FUNDAMENTAL RIGHTS…

3. RIGHT AGAINST EXPLOITATION:

- Articles 23 and 24 describe the right against exploitation.
- The abolition of trafficking in human beings and forced labour and abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines are explained in these articles.
- Child labour is considered as gross violation of the spirit and provisions of the constitution.

4. RIGHT TO FREEDOM OF RELIGION:

- Right to freedom of religion has been covered in Articles 25 to 28.
- This right provides religious freedom to all citizens of India.
- The objective of this right is to maintain the principle of secularism in India.

FUNDAMENTAL RIGHTS…

- 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 propagate any religion of their choice.
- Religious communities can set up charitable institutions of their own but it can also be restricted in the greater interest of the society.
- No person shall be compelled to pay taxes for the promotion of a particular religion.
- A state run institution can not impart education which is pro-religion.

5. CULTURAL AND EDUCATIONAL RIGHTS:

- India is a country of many languages, religions, and cultures for which Indian constitution provides special measures to protect our cultural and educational rights.
- Any community which has a language and a script of its own has the right to conserve and develop them.
- No one can be discriminated for admission in state or state-aided institutions.
- Any minority or religious community can set up and administer its educational institutions to preserve and develop their own culture.
- In granting aid to institutions, the state can not discriminate against any institution on the basis of the fact that it is run by a minority community. But in case of maladministration, the state can interfere.

FUNDAMENTAL RIGHTS…

6. RIGHT TO CONSTITUTIONAL REMEDIES:

- Right to constitutional remedies empowers the citizens to move to 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 law of the country.
- If the court finds that it is not, the person will have to be freed. The court can issue various kinds of writs to safeguard the citizen's fundamental rights. When a national emergency is declared, fundamental rights are suspended by the central government. ---

CRITICISM OF FUNDAMENTAL RIGHTS:

The fundamental rights have been criticised as follows:

1. EXCESSIVE LIMITATIONS:

- Fundamental rights 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 hand.

2. NO CLARITY:

- Fundamental Rights are stated in a vague, indefinite and ambiguous manner.
- The various words used in describing the fundamental rights like ‘public order’, ‘minorities’, ‘reasonable restrictions’ ‘public interest’ and so on are not clearly defined.

CRITICISM OF FUNDAMENTAL RIGHTS…

- 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.

3. NO PERMANENCY:

- Fundamental Rights are not untouchable or unchallengeable as the parliament can curtail or abolish them, 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.

4. SUSPENSION DURING EMERGENCY:

- The suspension of fundamental rights during the operation of national emergency is another stain on the effectiveness of these rights.

CRITICISM OF FUNDAMENTAL RIGHTS…

- This provision cuts the roots of democratic system in the country.
- According to the critics, the fundamental Rights should be enjoyable in all situations: Emergency or No Emergency.

5. EXPENSIVE REMEDY:

- The judiciary protects the fundamental rights against the interference of the legislatures and executives.
- However, the judicial process is too expensive and obstructs the common man from getting his rights enforced through the courts.
- Hence, the critics say that the right to constitutional remedies help mainly the rich people.

SIGNIFICANCE OF FUNDAMENTAL RIGHTS:

- In spite of the above criticism, the fundamental rights are significant in the following respects:

1. Fundamental Rights constitute the foundation of democratic system in our country.
2. They provide necessary conditions for the protection of our people.
3. They serve as a safeguard of individual liberty.
4. They facilitate the establishment of rule of law in the country.
5. They protect the interest of minorities and weaker sections of society.
6. They strengthen the secular structure of our country.
7. They check the absolute power of the government.

SIGNIFICANCE OF FUNDAMENTAL RIGHTS…

8. They lay down the foundation stone of social equality and social justice.
9. They ensure the dignity and respect of individuals.
10. They facilitate the participation of people in the political and administrative process.

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INDIAN

Fundamental Duties

FUNDAMENTAL DUTIES AND ITS LEGAL STATUS:

- The rights and duties of the citizens are correlative and inseparable.
- The original constitution contained only the fundamental rights and not the fundamental duties.
- 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 Policy.
- Later by the 42nd Constitutional Amendment Act, 1976, ten fundamental duties of citizens were added in the constitution as Article 51 A in Part-IV A .
- In 2002, one more fundamental duty was added by the 86th Constitutional Amendment Act.

FUNDAMENTAL DUTIES AND ITS LEGAL STATUS…

- The fundamental duties in the Indian constitution are inspired by the constitution of former USSR.
- Most of the constitutions of democratic countries like Australia, Canada, France, Germany and USA do not contain a list of duties of citizens.
- Other than Indian constitution, Japanese constitution is the only democratic constitution in the world contain a list of duties of citizens.
- The socialist countries give equal importance to fundamental rights and duties of their citizens.
- The necessity of fundamental duties was felt during the operation of the internal emergency (1975-1977).
- Sardar Swaran Singh Committee recommended the inclusion of Fundamental Duties in the constitution.

LIST OF FUNDAMENTAL DUTIES:

- The fundamental duties are expected to follow by the citizens as a code of conduct in their actions.
- According to Article 51 A, it shall be the duty of every citizen of India:

1) To abide by the constitution and respect its ideals and institutions, the National flag and the National anthem;
2) To cherish and follow the noble ideals that inspired the national struggle for freedom;
3) To uphold and protect the sovereignty, unity and integrity of India;
4) To defend the country and render national service when called upon to do;
5) To promote harmony and spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional diversities and give up practices derogatory to the dignity of woman;

LIST OF FUNDAMENTAL DUTIES…

6) To value and preserve the rich heritage of the country's composite culture;

7) To protect and improve the natural environment including forests, lakes, rivers and wild life and to have kindness for living creatures;

8) To develop scientific temper, humanism and the spirit of inquiry and reform;

9) To safeguard public property and to renounce violence;

10) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of effort and achievement; and

11) To provide opportunities for education to each child between the age of six and fourteen years.

FEATURES OF THE FUNDAMENTAL DUTIES:

1) Some of the fundamental duties are moral duties while others are civic duties.

- For instance, appreciating noble ideals of freedom struggle is a moral teaching and respecting the constitution, National Flag and National Anthem is a civic duty.

2) Fundamental duties refer to such values which have been a part of the Indian tradition, mythology, religions and practices.

- In other words, they contain a codification of tasks integral to the Indian way of life.

3) The fundamental duties are confined to Indian citizens only and do not extend to foreigners but certain fundamental rights are extended to all persons whether Indian citizens or foreigners.

FEATURES OF FUNDAMENTAL DUTIES …

4) Fundamental duties are non-justiciable.

- The constitution does not provide for their direct enforcement by the courts.
- There is no legal sanction against their violation.
- However, the parliament is free to enforce them by suitable legislation.

CRITICISM OF FUNDAMENTAL DUTIES:

The Fundamental Duties have been criticised on the following grounds:

1. The list of fundamental duties does not cover many other duties like casting vote, paying taxes, family planning and so on.
2. Some of the fundamental duties are vague, ambiguous and difficult to be understood by the common man.

   For example, different interpretation can be given to the phrases like 'noble ideals', 'composite culture', 'scientific temper' and so on.
3. Fundamental duties have been described by the critics as a moral teachings due to their non-justiciable character.
4. The critics said that the inclusion of fundamental duties as an addition to Part-IV of the constitution has reduced their value and significance. Fundamental Duties should have been added after Part-III so as to keep them at par with Fundamental Rights.

SIGNIFICANCE OF FUNDAMENTAL DUTIES:

- In spite of criticisms, the fundamental duties are significant from the following perspectives:

1. Fundamental duties 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.
2. Fundamental duties serve as a warning against the anti-national and anti-social activities like burning the national flag, destroying public property and so on.
3. Fundamental duties 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.

SIGNIFICANCE OF FUNDAMENTAL DUTIES…

4. Fundamental duties are enforceable by law.

- Hence, the Parliament can impose appropriate punishment for failure to fulfill any of the fundamental duties.
- Indira Gandhi, the then Prime Minister, justified the inclusion of Fundamental Duties in the constitution and argued that their inclusion would help to strengthen our democracy.
- She also said that people should be conscious of their duties equally as they are conscious of their rights.

Directive Principles of State Policy [DPSP]

सत्यमेव जयते

DIRECTIVE PRINCIPLES OF STATE POLICY:

- The Directive Principles of State Policy are enumerated in Part-IV of the constitution from Articles 36 to 51.
- The framers of the constitution borrowed this idea from the Irish Constitution.
- The Directive Principles of State Policy along with the Fundamental Rights contain the philosophy of the constitution and is the soul of the constitution.

FEATURES OF THE DIRECTIVE PRINCIPLES OF STATE POLICY:

1. Directive Principles of State Policy denotes the ideals that the state should keep in mind while formulating policies and enacting laws.

- These are constitutional recommendations to the state in legislative, executive and administrative matters.

FEATURES OF THE DPSP…

2. The Directive Principles of State Policy is similar to the 'Instrument of Instructions' specified in the Government of India Act of 1935.

- Instrument of instructions were issued to the Governor - General and to the Governors by the British Government under Government of India Act 1935 but Directive Principles of State Policy are the instructions to the Legislature and the Executive.

3. The Directive Principles of State Policy constitute a complete economic, social and political programme for a modern democratic state.

- They aim at realising the high ideals of justice, liberty, equality and fraternity. They represent the concept of a welfare state.
- In brief, they seek to establish economic and social democracy in the country.

FEATURES OF DPSP…

4. The Directive Principles of State Policy is non-justiciable in nature.

- It means they are not legally enforceable by the courts for their violation.
- Therefore, the Central Government, State Governments and Local Governments can not be compelled to implement them.
- Nevertheless, Article 37 says it shall be the duty of the state to apply these principles in making laws.

CLASSIFICATION OF THE DIRECTIVE PRINCIPLES OF STATE POLICY:

- The constitution does not contain any classification of Directive Principles of State Policy.
- However, on the basis of their content and direction they can be classified into following three categories:

CLASSIFICATION OF DPSP…

1. SOCIALISTIC PRINCIPLES:

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

i) To promote the welfare of the people by securing a social order infused by social justice, economic justice and political justice and to minimise inequalities in income, status, facilities and opportunities (Article 38).

ii) To secure:

a) The right to adequate means of livelihood to 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;

CLASSIFICATION OF DPSP…

e) Preservation of the health and strength of workers and children against forcible abuse;

f) Opportunities for healthy development of children (Article39)

iii) To promote equal justice and to provide free legal aid to the poor (Article 39-A)

iv) To secure the right to work, to education and to public assistance in case of unemployment (Article 41)

v) To make provision for just and humane conditions of work and maternity relief (Article 42)

vi) To secure a living wage, a decent standard of life and social and cultural opportunities for all workers.(Article-43)

vii) To take steps to secure the participation of workers in the management of industries (Article 43 A)

viii) To raise the level of nutrition and the standard of living of people and to improve public health (Article 47) ---

CLASSIFICATION OF DPSP…

2. GANDHIAN PRINCIPLES:

- These principles are based on Gandhian ideology.
- In order to fulfill the dreams of Gandhi, some of his ideas were included as Directive Principles of State Policy.
- Gandhian Principles require the state:

i) To organise village panchayats and provide them with necessary powers and authority to enable them to function as units of self government.(Article 40)

ii) To promote cottage industries on an individual or cooperation basis in rural areas (Article 43)

iii) To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.(Article 43 B)

CLASSIFICATION OF DPSP…

iv) 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)

v) To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47)

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

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3. LIBERAL-INTELLECTUAL PRINCIPLES:

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

i) To secure for all citizens a uniform civil code throughout the country. (Article 44)

CLASSIFICATION OF DPSP…

ii) To provide early childhood care and education for all children until they complete the age of six years.(Article 45)

iii) To organise agriculture and animal husbandry on modern and scientific lines. (Article 48)

iv) To protect and improve the environment and to safeguard forests and wild life.(Article 48 A)

v) To protect monuments, places and objects of artistic or historic interests which are declared to be of national importance (Article49)

vi) To separate the judiciary from the executive in the public services of the state (Article 50)

vii) To promote international peace and security and maintain just and honourable relation between nations; to promote respect for international law and treaty obligations, and to encourage settlement of international disputes by negotiation.(Article 51) ---

SANCTION BEHIND DIRECTIVE PRINCIPLES OF STATE POLICY:

- The Directive Principles of State Policy are non-justiciable in character.
- But the constitution makes it clear 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.
- Thus, they impose a moral obligation on the state authorities for their application, but the force behind them is political opinion.
- The framers of the constitution made the Directive Principles of State Policy non-justiciable and legally non-enforceable because:

i) The country did not possess sufficient financial resources to implement them.

ii) The presence of vast diversity and backwardness in the country would stand in the way of their implementation.

SANCTION BEHIND DPSP…

iii) The newly born independent Indian state with its many pre-occupations might be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them.

CRITICISM OF THE DIRECTIVE PRINCIPLES OF STATE POLICY: The Directive Principles of State Policy has been criticised on the following grounds:

i) NO LEGAL FORCE:

- The Directive Principles of State Policy has been criticised mainly because of their non-justiciable character.

ii) ILLOGICALLY ARRANGED:

- The Directive Principles of State Policy is neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital economic and social questions.

CRITICISM OF DPSP…

iii) CONSERVATIVE:

- The Directive Principles of State Policy is based on the political philosophy of the 19th century England. Probably this is entirely outdated in 21st century India.

iv) CONSTITUTIONAL CONFLICT:

- The Directive Principles of State Policy may lead to a constitutional conflict (a) between the centre and the states, (b) between the President and the Prime Minister, and

(c) between the Governor and the Chief Minister. For example, the centre can give directions to the states with regard to the implementation of these principles, and in case of non-compliance, can dismiss the state government.

COMPARISON OF FUNDAMENTAL RIGHTS AND DPSP:

FUNDAMENTAL RIGHTS

i) Fundamental Rights are negative as they prohibit the state from doing certain things.

ii) Fundamental Rights are justiciable, that is, they are legally enforceable by the courts in case of their violation.

iii) Fundamental Rights aim at establishing political democracy in the country.

iv) Fundamental Rights have legal sanctions.

DIRECTIVE PRINCIPLES OF STATE POLICY

i) Directive Principles of State Policy is positive as it requires the state to do certain things.

ii) Directive Principles of State Policy is non-justiciable, that is, it is not legally enforceable by the courts for its violation.

iii) Directive Principles of State Policy aims at establishing social and economic democracy in the country.

iv) Directive Principles of State Policy has moral and political sanctions.

COMPARISON OF FUNDAMENTAL RIGHTS AND DPSP…

FUNDAMENTAL RIGHTS	DIRECTIVE PRINCIPLES OF STATE POLICY
v) Fundamental Rights promote the welfare of the individual. Hence, they are personal and individualistic.	v) Directive Principles of State Policy promotes welfare of the society. Hence, it is societarian and socialistic.
vi) Fundamental Rights do not require any legislation for their implementation. They are automatically enforced.	vi) Directive Principles of State Policy requires legislation for its implementation. It is not automatically enforced.
vii) The courts are bound to declare a law violative of any of the Fundamental Rights as unconstitutional and invalid.	vii) The courts can not declare a law violative of any of the Directive Principles of State Policy as unconstitutional and invalid.

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(8)
FEDERAL STRUCTURE
and
DISTRIBUTION
of
LEGISLATIVE and FINANCIAL POWERS
between
THE UNION and THE STATES

FEDERAL STRUCTURE:

- Government is classified as unitary and federal on the basis of relations between the national government and regional governments.
- A unitary government is one in which all the powers are vested in the national government and the regional governments (if exists) derive their authority from the national government.
- A federal government is one in which powers are divided between the national government and the regional governments and both operate in their respective jurisdictions independently.
- In a federal structure, the national government is known as the Federal Government and the regional government is known as the State Government or Provincial Government. Belgium, Britain, China, France, Italy, Japan, Norway, Spain, Sweden, and so on have the unitary structure of government while Argentina, Australia, Brazil, Canada, Russia, Switzerland, the U.S and so on have the federal structure of government.
- The features of the federal and unitary structures are mentioned below in a comparative manner.

COMPARISON BETWEEN FEDERAL & UNITARY STRUCTURES

FEDERAL STRUCTURE	UNITARY STRUCTURE
i) Dual government, that is, national government and state government.	i) Single government, that is, the national government which may create regional governments.
ii) Written constitution	ii) Constitution may be written like France or unwritten like Britain.
iii) Division of powers between the national and state governments.	iii) No division of powers. All powers are vested in the national government.
iv) Supremacy of the constitution	iv) Constitution may be supreme (Japan) or may not be supreme (Britain).
v) Rigid constitution.	v) Constitution may be rigid (France) or flexible (Britain).
vi) Independent judiciary	vi) Judiciary may be independent or may not be independent
vii) Bicameral legislature ---	vii) Legislature may be bicameral (Britain) or unicameral (China). ---

FEDERAL STRUCTURE…

- The term ‘federation’ is derived from a Latin word ‘foedus’ which means ‘treaty’ or ‘agreement’.
- Thus, a federation is a 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).
- The US is the first and the oldest federation in the world.
- The constitution of India provides for a federal system of government in our country. But the term ‘federation’ has no where been used in our constitution. Article - 1 of the constitution describes India is 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. Our federation is a union because it is indestructible.

FEDERAL FEATURES OF OUR CONSTITUTION:

- The federal features of the constitution of India are:

1) DUAL POLITY:

- The constitution of India establishes a dual polity consisting the union at the centre and the states at the periphery.
- Each is provided 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.

FEDERAL STRUCTURE…

2) WRITTEN CONSTITUTION:

- The constitution of India 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) 8 schedules but at present (2016), it consists of a preamble, 448 Articles (divided into 25 parts) and 12 schedules.
- It specifies the structure, organisation, powers and function 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.

3) DIVISION OF POWERS:

- The constitution of India divided the powers between the centre and the states in terms of the Union List, State List and Concurrent List in the 7th Schedule.

FEDERAL STRUCTURE…

- The Union List consists of 100 subjects, the State List 61 subjects and the Concurrent List 52 subjects.
- Both the centre and the states can make laws on the subjects of the Concurrent List, but in case of conflict, the central law prevails.
- The residuary subjects (i.e., which are not mentioned in any of the three lists) are given to the centre.

4) SUPREMACY OF THE CONSTITUTION:

- The constitution is the supreme law of the land.
- The laws enacted by the centre and the states must conform to the provisions of the constitution of India.
- Otherwise, they can be declared invalid by the Supreme Court or the High Courts through their power of Judicial Review.

FEDERAL STRUCTURE…

- Thus, the organs of the government (Legislative, Executive and Judicial) at both the levels must operate within the jurisdiction prescribed by the constitution.

5) 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 organisation) can be amended only by the joint action of the central and state governments.
- Such provisions can be amended by a special majority of the parliament and also an approval of half of the state legislatures.

6) INDEPENDENT JUDICIARY:

- The constitution of India 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 resolve 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.

7) 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 protects the interests of the states against the undue interference of the centre. ---

UNITARY FEATURES OF THE CONSTITUTION:

- Besides the federal features, Indian constitution also possesses the following unitary or non-federal features:

1) STRONG CENTRE:

- The division of powers is in favour of the centre and highly inequitable from the federal angle.

i. The union list contains more subjects than the state list.

ii. More important subjects have been included in the union list.

iii. Centre has overriding authority over the concurrent list.

iv. The residuary powers have also left with the centre;

- Thus, the constitution has made the centre very strong.

2) STATES NOT INDESTRUCTIBLE:

- The states in India have no right to territorial integrity.
- The parliament can by unilateral action can change the area, boundaries or name of any state.

UNITARY FEATURES…

- Moreover, it requires only a simple majority and not a special majority. Hence, the Indian Federation is 'an indestructible union of destructible states.'

3) SINGLE CONSTITUTION:

- Usually, in a federation, the states have the right to frame their own constitutions but in India no such power is given to the states.
- Both the centre and the states operate within a single constitution.

4) FIEXIBILITY OF THE CONSTITUTION:

- Constitutional amendment is less rigid than that of other federation. The bulk of the constitution can be amended by the unilateral action of the Parliament, either by simple majority or by special majority.
- Further, the power to initiate an amendment to the constitution lies only with the centre.

UNITARY FEATURES…

5) EMERGENCY PROVISIONS:

- There are three types of emergencies: National, State and Financial.
- During emergency, the central government becomes all powerful and the states will be in the total control of the centre. It converts the federal structure into a unitary during emergency.

6) SINGLE CITIZENSHIP:

- In spite of a dual polity, the constitution of India adopted the system of single citizenship.
- There is only Indian citizenship and no separate citizenship.
- All citizens enjoy the same rights all over the country.
- The other federal countries have dual citizenship, that is, national citizenship as well as state citizenship.

UNITARY FEATURES…

7) INTEGRATED JUDICIARY:

- The Indian constitution has established an integrated judicial system with the supreme court at the top and the state high courts below it.
- This single system of courts enforces both the central laws as well as the state laws.

8) ALL INDIA SERVICES:

- In India, the centre and the states have their separate public services.
- But, in addition, there are all India services (IAS, IPS and IFS) which are common to both the centre and the states.
- The members of these services are recruited and trained by the centre which also possess ultimate control over them.
- Thus, these services violate the principle of federalism.

UNITARY FEATURES…

9) INTEGRATED AUDIT MACHINERY:

- The Comptroller and Auditior General of India audits the accounts of not only the central government but also those of the states.
- But, his appointment and removal is done by the President without consulting the states.
- Hence, this office restricts the financial autonomy of the states.

10) PARLIAMENT'S AUTHORITY OVER STATE LIST:

- The Parliament is empowered to legislate on any subject of the state list if Rajya Sabha passes a resolution in the national interest.
- Especially, this can be done when there is no emergency.

UNITARY FEATURES…

11) APPOINTMENT OF GOVERNOR:

- The governor, who is the head of the state, is appointed by the President.
- He holds the office during the pleasure of the President.
- He also acts as an agent of the centre.
- Through him, the centre exercises control over the states.

12) INTEGRATED ELECTION MACHINERY:

- The Election Commission conducts elections not only to the central legislature but also to the state legislatures.
- But this body is constituted by the President and the states have no say in this matter.
- The President can remove any member of the Election Commission.

UNITARY FEATURES…

13) VETO OVER STATE BILLS:

- The governor is empowered to reserve certain types of bills passed by the state legislature for the consideration of the President.
- The President can withhold his assent to such bills not only in the first instance but also in the second instance.
- Thus, the President enjoys absolute veto over state bills.

CRITICAL EVALUATION OF THE FEDERAL SYSTEM:

- It is clear that Indian constitution has incorporated a large number of unitary or non-federal features.
- More power has been given to the centre for which the constitutional experts challenge the federal character of our constitution.

CRITICAL EVALUATION OF THE FEDERAL SYSTEM…

- Though our constitution has created a strong central government, it has not made the state governments weak and has not reduced them to the level of administrative agencies for the execution of policies of the central government.
- Indian federation is a new kind of federation to meet India's peculiar needs. ---

DISTRIBUTION OF POWERS BETWEEN THE UNION AND THE STATES:

- The constitution of India divides all Legislative, Executive and Financial powers between the centre and the states.
- However, there is no division of judicial power as the constitution has established an integrated judicial system to enforce both the central laws as well as the state laws.
- The centre-state relations can be studied under the following three heads:

DISTRIBUTION OF POWERS…

(A) LEGISLATIVE RELATIONS:

- Articles 245 to 255 of the constitution deal with the legislative relations between the centre and the states.
- There are following four aspects in the centre-state legislative relations:

1) Territorial Extent of Central and State Legislation:

- The constitution defines the territorial limits of the legislative powers vested in the centre and the states as follows:

i) The Parliament can make laws for the whole or any part of the territory of India.

ii) A state legislature can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable outside the state.

iii) The laws of parliament are also applicable to the Indian citizens and their property in any part of the world.

DISTRIBUTION OF POWERS…

- However, there are restrictions on the territorial jurisdiction of the Parliament which means the laws of Parliament are not applicable in the following areas:

i) The President can make regulations for the peace, progress and good government of the four union territories- the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu.

- A regulation made by the President has the same force and effect as an act of Parliament.
- The President may cancel or amend any act of Parliament in relation to these union territories.

ii) The governor may direct that an act of Parliament is not applicable to a scheduled area in the state or applicable with modifications.

DISTRIBUTION OF POWERS…

iii) The governor of Assam may direct that an act of Parliament is not applicable to the autonomous tribal districts.

- The President also enjoys the same power with respect to autonomous tribal districts of Meghalaya, Tripura and Mizoram.

2) Distribution of Legislative Subjects:

- The constitution provides Union List, State List and Concurrent List for the distribution of legislative subjects between the centre and the states.

i) The Parliament has exclusive powers to make laws with respect to any matters enumerated in the Union List.

- At present this list has 100 subjects like defence, banking, foreign affairs, currency, atomic energy, insurance, communication, inter-state trade and commerce, census audit and so on.

DISTRIBUTION OF POWERS…

ii) Normally, the state legislature has exclusive powers to make laws on 61 subjects enumerated in the State List like public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, theatres, gambling and so on.

iii) Both the Parliament and state legislature can make laws with respect to any matters enumerated in the Concurrent List.

- At present, this list has 52 subjects like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning, drugs, news papers, books and printing press and others.
- It is clear that the matters of national importance and the matters which require uniformity of legislation nationwide are included in the Union List.

DISTRIBUTION OF POWERS…

- The matters of regional and local importance are in the State List.
- The matters on which uniformity of legislation throughout the country is desirable but not essential are enumerated in the Concurrent List.

3) Parliamentary Legislation in the State Field:

- The scheme of distribution of legislative powers between the centre and the states is to be maintained in normal times.
- But in the following circumstances, Parliament can make laws on any matter enumerated in the state list.

i) When Rajya Sabha passes a Resolution

ii) During a National Emergency iii) When states make a request

iv) To implement international agreements

v) During President's rule.

DISTRIBUTION OF POWERS…

4) Centre's Control over State Legislation:

- Besides the parliament's power to legislate directly on the state subjects under the exceptional situations, the constitution empowers the centre to exercise control over the state legislative matters in the following ways:

i) The governor can reserve certain types of bills passed by the state legislature for the consideration of the President. The President enjoys absolute veto over them.

ii) Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the President (e.g., the bills imposing restrictions on the freedom of trade and commerce. **iii)** The President can direct the states to reserve money bills and other financial bills passed by the state legislature for his consideration during Financial Emergency. From the above, it is clear that the constitution has assigned a position of superiority to the centre in the legislative sphere.

DISTRIBUTION OF POWERS…

(B) EXECUTIVE/ADMINISTRATIVE RELATIONS:

- Articles 256 to 263 of the constitution deal with the administrative relations between the centre and the states.

1) Distribution of Executive Powers:

- The executive power of the centre extends to the subjects enumerated in the Union List and the executive power of the states extends to the subjects enumerated in the State List.
- The execution of the laws on the subjects enumerated in the Concurrent List is with the states except when the Parliament has directed otherwise.
- The constitution restricts the executive power of the states to give sufficient scope to the centre for exercising its executive power in an unrestricted manner.

DISTRIBUTION OF POWERS…

2) Centre's Directions to the states:

- The centre is also empowered to give directions to the states to exercise their executive power in the following matters:

i) The construction and maintenance of means of communication, which are of national or military importance, by the state.

ii) The measures to be taken for the protection of the railways within the state.

iii) The provision of adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups in the state.

iv) The drawing up and execution of the specified schemes for the welfare of the scheduled tribes in the state.

DISTRIBUTION OF POWERS…

3) Mutual Delegation of Function:

- The centre can not delegate its legislative powers to the states and a single state can not request the Parliament to make a law on a state subject.
- The distribution of executive powers in general follows the distribution of legislative powers.
- But, such a rigid division in the executive sphere may lead to occasional conflicts between the centre and the states.
- So, there is the provision for inter-government delegation of executive function to mitigate this rigidity.
- With the consent of the state government, the President entrusts any of the executive functions of the centre to that state.
- The state government can also delegate any of its executive functions to the central government but this mutual delegation may be conditional or unconditional.

DISTRIBUTION OF POWERS…

4) All India Services:

- The centre and the states have their separate public services called as the central services and the state services respectively.
- In addition, there are all India services: IAS, IPS and IFS.
- The members of these services occupy top positions under both the centre and the states but they are recruited and trained by the centre.
- These services are controlled jointly by the centre and the states but the ultimate control lies with the central government while the immediate control vests with the state government.

DISTRIBUTION OF POWERS…

5) Public Service Commissions:

- In the field of public service commissions, the Centre-State relations are as follows:

i) The chairman and members of a State Public Service Commission, though appointed by the governor of the state, can be removed only by the President.

ii) The Parliament can establish a Joint State Public Service Commission (JSPSC) for two or more states on the request of the state legislatures concerned. The chairman and the members of the JSPSC are appointed by the President.

iii) The Union Public Service Commission (UPSC) can serve the needs of a state on the request of the governor and with the approval of the President.

DISTRIBUTION OF POWERS…

6) Integrated Judicial System:

- The constitution of India established an integrated judicial system with the Supreme Court at the top and the state high courts below it.
- This single system of courts enforces both the central laws as well as the state laws. This is done to eliminate diversities in the remedial process.
- The judges of a state high court are appointed by the President in consultation with the Chief Justice of India and the Governor of the state.
- They can also be transferred by the President.
- The parliament can establish a common high court for two or more states, e. g., Maharastra and Goa or Punjab and Haryana.

DISTRIBUTION OF POWERS…

7) Relations during Emergencies:

i) During National Emergency the centre gives executive directions to the state governments which are under the complete control of the centre.

ii) When the State Emergency/President's rule is imposed in a state the President assumes all the functions of the state government and powers are vested in the Governor or any other Executive Authority in the state.

iii) During the operation of a Financial Emergency the centre can direct the states to observe certain financial principles and the President can give other necessary directions like the reduction of salaries of employees in the state and high court judges.

DISTRIBUTION OF POWERS…

8) Other Provisions:

- The centre exercises following control over the state administration:

i) It is the duty of the centre to protect every state against external aggression and internal disturbance. The centre has to ensure that the state governments are carried on in accordance with the provisions of the constitution.

ii) The governor of a state is appointed by the President. He holds office during the pleasure of the President and he is the constitutional head of the state.

- He acts as an agent of the centre in the state and submits periodical reports to the centre about the administration of the state.

iii) The State Election Commissioner, though appointed by the Governor of the state, can be removed only by the President.

DISTRIBUTION OF POWERS…

(c) FINANCIAL RELATIONS:

1) Allocation of Taxing Powers:

i) The Parliament has the power to impose taxes on the subjects enumerated in the Union List (which are 15 in number).

ii) The state legislature has exclusive power to impose taxes on the subjects enumerated in the State List (which are 20 in number).

iii) Both the Parliament and the state legislature can impose taxes on subjects enumerated in the Concurrent List (which are 3 in number)

iv) The residuary power of taxation is vested in Parliament. Under this provision, the Parliament has imposed Gift Tax, Wealth Tax and Expenditure Tax.

- The constitution provides power to impose and collect tax and the power to appropriate the proceeds of the tax. For example, the income tax is imposed and collected by the centre but its proceeds are distributed between the centre and the states.

DISTRIBUTION OF POWERS…

2) Distribution of Tax Revenues:

- The 10th Finance Commission recommended that out of the total income obtained from certain central taxes and duties, 29% should go to the states.
- This is known as the 'Alternative Scheme of Devolution'.

3) Distribution of Non-tax Revenues:

- The major sources of non-tax revenues of the centre are Post and Telegraphs, Railways, Banking, Broadcasting, Coinage and Currency, Central Public Sector Enterprises, etc.
- The major sources of non-tax revenues of the states are Irrigation, Forests, Fisheries, State Public Sector Enterprises, etc.

DISTRIBUTION OF POWERS…

4) Grant-in-aid to the States:

- The central government provides grants-in-aid to the states from the central resources.
- There are two types of grants-in-aid, viz, Statutory Grants and Discretionary Grants.
- As per Statutory Grants, Parliament gives grants to the states which are in need of financial assistance and not to every state.
- As per Discretionary Grants, both the centre and the states give any grants for any public purpose.
- Under, this provision, the centre makes grants to the states.

DISTRIBUTION OF POWERS…

5) Finance Commission:

- Article 280 provides for a Finance Commission which recommends following matters to the President:
  - The distribution of the proceeds of taxes to be shared between the centre and the states.
  - The principles which should govern the grants-in-aid to the states by the centre out of the Consolidated Fund of India.
  - The measures needed to increase the Consolidated Fund of a State to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the State Finance Commission.
  - Any other matter referred to it by the president in the interests of sound finance.

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TENSION AREAS IN CENTRE-STATE RELATIONS:

- The following issues create tensions and conflicts between the centre and the states:

1) Mode of appointment and dismissal of Governor;

2) Discriminatory and partisan role of Governor;

3) Imposition of President's Rule for partisan interests;

4) Deployment of Central Forces in the states to maintain law and order;

5) Reservation of State Bills for the consideration of the President;

6) Discrimination of financial allocations to the states;

7) Role of Planning Commission (NITI Aayogo) in approving state projects; 8) Management of All-India services (IAS, IPS and IFS); 9) Use of electronic media for political purposes; 10) Appointment of enquiry commissions against the Chief Ministers; 11) Sharing of finances (between Centre and States); and 12) Encroachment by the Centre on the State List. ---X---

(9)

UNION LEGISLATURE

THE UNION LEGISLATURE:

- The union legislature is called Parliament which occupies the central position in our democratic political system.
- Article 79 to 122 of the constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the Parliament(Lok Sabha and Rajya Sabha).

ORGANISATION OF PARLIAMENT:

- Our Parliament consists of President, Rajya Sabha and Lok Sabha.
- The Rajya Sabha/ the Council of States/Second Chamber/Upper House/House of Elders represents the states and union territories of India and the Lok Sabha/ the House of the People/ First Chamber/ Lower House/ Popular House represents the people of India as a whole.

- Though the President of India is not a member of either House of Parliament and does not sit in the Parliament to attend its meetings, he is an integral part of Parliament.
- This is because a bill passed by both the houses of Parliament cannot become law without the consent of the President.
- He also performs certain functions of the Parliament, e. g., he summons, pro-rogues both the Houses, dissolves the Lok Sabha, addresses both the Houses, issues ordinances when the Parliament is not in session and so on.

COMPOSITION OF THE PARLIAMENT:

- The composition of the Parliament has been discussed under the two following heads:

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.

1) REPRESENTATION OF STATES:

- The representatives of state in 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 Single Transferable Vote.**
- The seats are allotted to the states in the Rajya Sabha on the basis of population.

2) REPRESENTATION OF UNION TERRITORIES:

- The representatives of each union territory in the Rajya Sabha are indirectly elected by members of an electoral college specially constituted for the purpose.
- This election is also held in accordance with the System of Proportional Representation by Means of Single Transferable Vote.
- Out of the eight union territories, only Delhi, Jammu & Kashmir and Puducherry have representation in the Rajya Sabha.
- The populations of other five union territories are too small to have any representatives in the Rajya Sabha.

THE UNION LEGISLATURE…

3) 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 justification behind this principle of nomination is to provide eminent persons a place in the Rajya Sabha without going through the process of election.

COMPOSITION OF LOK SABHA:

- The maximum strength of the Lok Sabha is fixed at 552.Out of this, 530 members are the representatives of the states, 20 members are the representatives of the union territories and 2 members are 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.

THE UNION LEGISLATURE…

1) REPRESENTATION OF STATES:

- The representatives of states in the Lok Sabha are directly elected by the people from the constituencies in the states.
- The election is based on the principle of Universal Adult Franchise.
- Every Indian citizen who is 18 years of age or above and who is not disqualified under the provisions of the constitution or any law is eligible to vote at such election.

2) REPRESENTATION OF UNION TERRITORIES:

The representatives of Union territories in the Lok Sabha are also directly elected by the people from the constituencies in the union territories.

3) NOMINATED MEMBERS:

- The President can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Sabha.

DURATION OF RAJYA SABHA:

- The Rajya Sabha first constituted in 1952.
- It 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 nomination any number of times.
- The term of office of a member of the Rajya Sabha shall be six years.
- In the first batch, the term of members was decided by lottery as to who should retire.

DURATION OF LOK SABHA:

- The normal term of Lok Sabha is five years from the date of its first meeting after the general elections, after which it dissolves automatically.
- However, the President is authorised to dissolve the Lok Sabha at any time before the completion of five years and this can not be challenged in a court of law.
- Further, the term of Lok Sabha can be extended during the period of national emergency for any length of time.
- However, this extension can not continue beyond a period of six months after the emergency is ceased to operate.

THE UNION LEGISLATURE…

QUALIFICATIONS OF MEMBERS OF PARLIAMENT:

1) He must be a citizen of India.

2) He must be not less than 30 years of age in the case of Rajya Sabha and not less than 25 years of age in the case of Lok Sabha.

3) He must make an oath before the person authorised by the Election Commission to bear true faith on the constitution of India and to uphold the sovereignty and integrity of India.

4) He must posses other qualifications prescribed by the Parliament.

DISQUALIFICATIONS OF MEMBERS OF PARLIAMENT:

- A person shall be disqualified for being elected as a member of Parliament:

1) If he holds any office of profit under the government (except that of a minister or any other office exempted by Parliament)
2) If he is of unsound mind which declared by a court.
3) If he is a bankrupt.
4) If he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state.
5) If he is disqualified under any law made by Parliament.

SALARIES AND ALLOWANCES OF MP:

- Members of either House of Parliament are entitled to receive such salaries and allowances as may be determined by the Parliament. There is no provision of pension for MP in the constitution but Parliament has provided pension to the members.

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.
- There is 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 are also appointed.

SECRETARIAT OF PARLIAMENT:

- Each house of Parliament has separate secretarial staff of its own, though there can be some posts common to both the house.
- Their recruitment and service conditions are regulated by Parliament.
- The secretariat of each house is headed by a Secretary-General.
- He is a permanent officer and is appointed by the Presiding Officer of the house.

THE UNION LEGISLATURE…

LEADER OF THE HOUSE:

- In Lok Sabha, the 'Leader of the House' means the Prime Minister or a member of the Lok Sabha may be 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.
- He can also nominate a Deputy Leader of the House.
- The leader of the house in either house exercises direct influence on the conduct of business.

THE UNION LEGISLATURE…

LEADER OF THE OPPOSITION:

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

THE UNION LEGISLATURE…

WHIP:

- 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.
- His responsibility is to ensure the attendance of his party members in large numbers and secure their support in favour of or against a particular issue.
- He regulates and monitors their behaviour in the Parliament.
- The members are supposed to follow the directives given by the whip otherwise disciplinary action can be taken.

THE UNION LEGISLATURE…

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 can not 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,

  i) The Budget Session (February to May); ii) The Monsoon Session (July to September); and iii) The Winter Session (November to December).
- During a session, the House meets everyday to transact business.

THE UNION LEGISLATURE…

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 A.M to 1 P.M and Post Lunch Sitting from 2 P.M to 6 P.M.
- A sitting of Parliament can be terminated by adjournment or adjournment sine die or prorogation or dissolution (in case of Lok Sabha).
- An adjournment suspends the work in a sitting for a specified time, which may be hours, days or weeks.

THE UNION LEGISLATURE…

DISSOLUTION:

- Rajya Sabha, being a permanent House, is not subject to dissolution. Only, the Lok Sabha is subject to dissolution.
- 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:

i) Automatic dissolution, that is , on the expiry of its tenure of five years or the terms as extended during a National Emergency; or

ii) When the President decides to dissolve the house, which he is authorised to do so.

QUORUM IN PARLIAMENT:

- 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 quorum.

THE UNION LEGISLATURE…

VOTING IN PARLIAMENT:

- All matters 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 specially 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 UNION LEGISLATURE…

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 Houses, arrangements are made for simultaneous translation.

LEGISLATIVE PROCEDURE IN PARLIAMENT:

- The legislative procedure is identical in both the Houses of Parliament.
- Every bill has to pass through the same stages in each House.
- A bill is a proposal for legislation and it becomes an act or law when duly passed.

THE UNION LEGISLATURE…

- Bills introduced in Parliament are Public Bills/ Government Bills and Private Bills/Private Members Bills.
- Both are governed by the same procedure and pass through the same stages in the house.
- The following bills can be introduced in the Parliament:

i) Ordinary Bills, which are concerned with any matter other than financial subjects.

ii) Money Bills, which are concerned with the financial matters like taxation, public expenditure, etc.

iii) Financial Bills, which are also concerned with financial matters (but are different from money bills).

iv) Constitution Amendment Bills, which are concerned with the amendment of the provisions of the constitution.

- There are separate procedures for the enactment these bills.

JOINT SITTING OF TWO HOUSES:

- Joint sitting resolves a dead lock between the two houses over the passage of a bill.
- A deadlock may take place under any one of the following three situations after a bill has been passed by one house and transmitted to the other house:

i) If the bill is rejected by the other house;

ii) If the houses have finally disagreed as to the amendments to be made in the bill; or

iii) If more than six months have elapsed from the date of the receipt of the bill by the other house without the bill being passed by it.

THE UNION LEGISLATURE…

- In these three situations, the President can summon both the houses to meet in a joint sitting for the purpose of deliberating and voting on the bill.
- The provision of joint sitting is applicable to Ordinary Bills or Financial Bills only and not to Money Bills or Constitutional Amendment Bills.
- Incase of a Money Bill, the Lok Sabha has overriding powers, while a Constitutional Amendment Bill must be passed by each house separately.

BUDGET IN PARLIAMENT:

- Article 112 of the constitution deals with budget.
- Budget is a statement of the estimated receipts and expenditure of the Government of India in a financial year.

THE UNION LEGISLATURE…

- The budget contains i) Estimates of revenue and capital receipts, ii) Ways and means to raise the revenue, iii) Estimates of expenditure, and iv) Details of the actual receipts and expenditures of the closing financial year and the reasons for any deficit or surplus in that year. v) Economic and financial policy of the coming year, i.e. , 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.
- Railway Budget consists of estimates of receipts and expenditures of railway ministry and the General Budget consists of the estimates of receipts and expenditure of all the ministries of Government of India except the Railway Ministry. ---

POWERS AND FUNCTIONS OF PARLIAMENT/ ROLE OF PARLIAMENT :

- Parliament has a multifunctional role which are discussed under the following heads.

1) LEGISLATIVE POWERS AND FUNCTIONS:

- The primary function of Parliament is to make laws for the governance of the country.
- It has power to make laws on the 100 subjects enumerated in the Union List and on the Residuary Subjects.
- With regard to Concurrent List (which has 52 subjects), the Parliament has overriding powers, that is, the law of Parliament prevails over the law of the state legislature incase of a conflict between the two.
- Parliament can also make laws on the 61 subjects enumerated in the State List under certain abnormal circumstances.

POWERS AND FUNCTIONS OF PARLIAMENT…

- The Parliament makes laws in a skeleton form and authorises the Executive to make detailed rules and regulations.
- This is known as **Delegated Legislation/ Executive Legislation/Subordinate Legislation**.
- Such rules and regulations are placed before the Parliament for its examination.

2) EXECUTIVE POWERS AND FUNCTIONS:

- Executive is responsible to the Parliament for its policies and acts. Hence, the Parliament exercises control over the Executive.
- The ministers are collectively responsible to the Parliament in general and to the Lok Sabha in particular.
- Each minister is individually responsible for the efficient administration of his ministry.
- 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.

3) FINANCIAL POWERS AND FUNCTIONS:

- No tax can be levied or collected and no expenditure can be incurred by the Executive without the approval of Parliament. Hence, the budget is placed before the Parliament for its approval.
- The Parliament also scrutinises government spending and financial performance with the help of its financial committees (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.
- The budget is based on the **Principle of Annuality**, i.e., the Parliament grants money to the government for one financial year.

POWERS AND FUNCTIONS OF PARLIAMENT…

- 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.

4) CONSTITUENT POWERS AND FUNCTIONS:

- The Parliament can amend the constitution in three ways:

i) By Simple Majority; ii) by Special Majority; and iii) by Special Majority but with the consent of half of the state legislatures by Simple Majority)

- Simple Majority means a majority of the members present and voting in each house of Parliament.
- Special Majority means a majority is more than 50 percent 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.

POWERS AND FUNCTIONS OF PARLIAMENT…

- The power to initiate the process of the Amendment of the Constitution lies exclusively in the hands of 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.
- The Parliament can amend any provision of the constitution except the 'basic features' of the constitution.

5) JUDICIAL POWERS AND FUNCTIONS:

- The judicial powers and functions of the Parliament include the following:

i) It can impeach the President for the violation of the constitution.

ii) It can remove the Vice-President from his office.

POWERS AND FUNCTIONS OF PARLIAMENT…

iii) 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.

iv) It can punish its members or outsiders for the violation of its freedom or its disrespect.

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.

7) OTHER POWERS AND FUNCTIONS:

i) Parliament serves as the highest deliberative body in the country. It discusses various issues of national and international importance.

ii) It approves National, State and Financial Emergencies declared by the President.

iii) It can create or abolish the State Legislative Council on the recommendation of the concerned State Legislative Assembly.

iv) It can increase or decrease the area, alter the boundaries and change the names of states of the Indian Union.

v) 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.

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(10)
UNION EXECUTIVE

UNION EXECUTIVE:

- The organ of the government which implements and administers policy, rules and regulations made by the Legislature is called the Executive.
- 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 Union Council of Ministers and the Attorney General of India.

PRESIDENT 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.

ELIGIBILITY FOR ELECTION AS PRESIDENT:

- To be eligible for election as President one should fulfill the following qualifications:

i) He should be a citizen of India.

ii) He should have completed 35 years of age.

iii) He should be qualified for election as a member of the Lok Sabha.

iv) 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.

- A sitting President or Vice- President of the union, the Governor of any state and a Minister of the union or any state is not deemed to hold any office of profit and hence qualified as a presidential candidate.

ELIGIBILITY FOR ELECTION AS PRESIDENT…

- Further, the nomination of a candidate for election to the office of President must be subscribed by at least 50 electors as proposers and 50 electors as seconders.
- Every candidate has to make a security deposit of Rs. 15000/- in the Reserve Bank of India.
- The security deposit is liable to be forfeited in case the candidate fails to secure one-sixth of the votes polled.

ELECTION OF THE PRESIDENT:

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

i) The elected members of both the houses of Parliament.

ii) The elected members of the legislative assemblies of the states and

iii) The elected members of the legislative assemblies of the union territories of Delhi and Puducherry.

ELECTION OF THE PRESIDENT…

- The value of the vote of an MLA participated in the Presidential Election is determined as follows:

  Value of the vote of an MLA=[Total population of the state/Total number of elected members in the State Legislative Assembly] x (1/1000)

- The value of the vote of an MP participated in the presidential election is determined as follows:

  Value of the vote of an MP = (Total value of votes of all MLAs of all states/Total number of elected members of Parliament.

- The President's election is held in accordance with the **System of Proportional Representation by Means of Single Transferable Vote** and the voting is by secret ballot.
- This system ensures that successful candidate is retained by the absolute majority of votes.

ELECTION OF THE PRESIDENT…

- A candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes.
- The quota of votes is determined by dividing the total number of valid votes polled by dividing the number of candidates to be elected (here only one candidate is to be elected as the President) plus one and adding one to the quotient. The formula can be expressed as: **Electoral quota = [Total number of valid votes polled/1+1=(2)] +1**
- Each member of the electoral college is given only one ballot paper.
- The voter, while casting his vote, is required to indicate his preferences by making 1, 2, 3, 4, etc. against the names of candidates.
- This means that the voter can indicate as many preferences as there are candidates in the fray.

ELECTION OF THE PRESIDENT…

- In the first phase, the first preference votes are counted.
- Incase a candidate secures the required quota in this phase, he is declared elected.
- Otherwise, the process of transfer of votes is set in motion.
- The ballots of the candidate securing the least number of first preference votes are cancelled and his second preference votes are transferred in the first preference votes of other candidates.
- This process continues till a candidate secures the required quota.
- All doubts and disputes in connection with election of the President are inquired into and decided by the Supreme Count whose decision is final. ---

OATH 'OR' AFFIRMATION BY THE PRESIDENT:

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

i) To faithfully execute the office;

ii) To preserve, protect and defend the constitution and the law; and

iii) To devote himself to the service and well-being of the people of India.

- The oath of office to the President is administered by the Chief Justice of India and in his absence, the senior most judge of the Supreme Court available.
- Any other person acting as President or discharging the functions of the President also undertakes the similar oath.

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 charges. He may be elected for any number of times.

IMPEACHMENT OF PRESIDENT:

- The President can be removed from office by a process of impeachment for 'violation of the constitution'.
- The impeachment charges can be initiated by either house of the Parliament.

IMPEACHMENT OF PRESIDENT…

- 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 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 resolution is so passed.
- No President has so far been impeached.

POWERS AND FUNCTIONS OF THE PRESIDENT:

The powers and the functions of the President are:

1) EXECUTIVE POWERS:

- The executive powers and functions of the President are:

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

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

iii) He appoints the Prime Minister and other ministers. They hold office during his pleasure.

iv) He appoints Chief Election Commissioner and other Election Commissioners, the Chairman of Union Public Service Commission, the Auditor General of India, the Attorney General of India, the Governors of states, the Chairman and members of Finance Commission, and so on.

POWERS AND FUNCTIONS OF THE PRESIDENT…

v) He can seek any information relating to the administration of affairs of the union, and proposals for legislation from the Prime Minister.

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

vii) He can appoint an inter-state council to promote centre-state and inter-state cooperation.

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

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

POWERS AND FUNCTIONS OF THE PRESIDENT…

2) LEGISLATIVE POWERS:

- The President is an integral part of the Parliament and enjoys the following legislative powers:

i) He can summon or prorogue the Parliament and dissolve Lok Sabha.

- He can also summon a joint sitting of both the houses of Parliament, which is presided over by the Speaker of the Lok Sabha.

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

iii) 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.

POWERS AND FUNCTIONS OF THE PRESIDENT…

- 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.

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

v) He can nominate two members to the Lok Sabha from the Anglo-Indian community.

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

vii) His prior permission is needed to introduce certain types of bills in the Parliament, e.g., a bill involving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.

POWERS AND FUNCTIONS OF THE PRESIDENT…

viii) When a bill is sent to the President after it has been passed by the Parliament, he can:

a) Give assent to the bill, or

b) Refuse to give his assent to the bill, or

c) Return the bill (if it is not a money bill) for consideration of the Parliament.

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

ix) He can promulgate ordinance 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.

POWERS AND FUNCTIONS OF THE PRESIDENT…

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

xi) He can make regulations for the peace, progress and good government of certain union territories.

3) FINANCIAL POWERS:

- The financial powers and functions of the President are:

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

ii) He causes to be laid before the Parliament the Union Budget

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

iv) He can make advances out of the Contingency Fund of India to meet any unforeseen expenditure.

POWERS AND FUNCTIONS OF THE PRESIDENT…

v) He constitutes a Finance Commission after every five years to recommend the distribution of revenues between the centre and states.

4) JUDICIAL POWERS:

- The judicial powers and functions of the President are:

i) He appoints the Chief Justice and the judges of Supreme Court and High courts.

ii) 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.

iii) He can grant pardon, release, relief and reduction of punishment, or suspend, stop or substitute the sentence of any person convicted of any offence.

POWERS AND FUNCTIONS OF THE PRESIDENT…

5) 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.

6) 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.

POWERS AND FUNCTIONS OF THE PRESIDENT…

7) EMERGENCY POWERS:

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

i) National Emergency(Article 352);

ii) State Emergency/President's Rule (Article 356 & 365);

iii) Financial Emergency (Article 360)

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(11)

VICE-PRESIDENT

VICE- PRESIDENT:

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

QUALIFICATIONS:

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

i) He should be a citizen of India.

ii) He should have completed 35 years of age.

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

iv) 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.

QUALIFICATIONS…

- But a sitting President or Vice-President of the union, the governor of any state and minister for the union or any state is not deemed to hold any office of profit and hence qualified for being a candidate for Vice-President.
- Further, the nomination of a candidate for election to the office of Vice-President must be subscribed by at least 20 electors as proposers and 20 electors as seconders.
- Every candidate has to make a security deposit of Rs. 15,000 in the Reserve Bank of India.

ELECTION:

- The Vice-President is elected 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.

ELECTION…

- This electoral college is different from the electoral college for the election of the President in the following two respects:

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

ii) It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included).

- 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 Single Transferable Vote** and voting is by Secret Ballot.
- All doubts and disputes in connection with election of the Vice-President are inquired into and decided by the Supreme Court whose decision is final.

OATH 'or' AFFIRMATION:

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

i) To bear true faith and allegiance to the constitution of India and

ii) To faithfully discharge the duties of his office.

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

TERM OF OFFICE:

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

TERM OF OFFICE…

- He can be removed by a resolution of the Rajya Sabha passed by a special majority and agreed to by the Lok Sabha.
- But, no such resolution can be moved unless at least 14 days' advance notice has been given.
- 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:

i) On the expiry of his tenure of five years ii) By his resignation iii) On his removal iv) By his death v) Otherwise, for example, when he becomes disqualified to hold office or when his election is declared invalid.

VACANCY IN OFFICE…

- When the vacancy is due to the end of the term of the sitting Vice-President, election to fill the vacancy must be held before the end of the term.
- If the office falls vacant by resignation, removal, death or otherwise, then election to fill the vacancy should be held as soon as possible after the occurrence of the vacancy.
- The newly-elected Vice-President remains in office for a full term of five years from the date he assumes charge of his office.

POWERS AND FUNCTIONS:

The functions of Vice-President are two-folds:

1) He acts as the ex-officio Chairman of Rajya Sabha.

- In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha.
- In this respect, he is similar to the American Vice-President who also acts as the Chairman of the Senate-the Upper House of the American Legislature.

POWERS AND FUNCTIONS…

2) He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise

- He can act as President only for a maximum period of six months within which a new President has to be elected.
- Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions which 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.

EMOLUMENTS:

- The constitution has not fixed any emoluments for the Vice-President in that capacity.
- He draws his regular salary in his capacity as the ex-officio Chairman of the Rajya Sabha.
- The Parliament has increased the salary of the Chairman of the Rajya Sabha and fixed it Rs. 3.5 lakhs per month.
- In addition, he is entitled to daily allowance, free furnished residence, medical, travel and other facilities.
- During any period when the Vice-President acts as President or discharges the functions of the President, he is not entitled to the salary or allowance payable to Chairman of Rajya Sabha, but the salary and allowances of the President.

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(12)

PRIME MINISTER

PRIME MINISTER:

- In our parliamentary system of government, the President is the nominal executive authority (dejure executive) and Prime Minister is the real executive authority (de facto executive).

APPOINTMENT OF THE PRIME MINISTER:

- Article 75 says that Prime Minister shall be appointed by the President.
- The President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister.
- But when no party has a clear majority in the Lok Sabha, then the President may exercise his personal discretion in the selection and appointment of the Prime Minister.
- In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month.

APPOINTMENT OF THE PRIME MINISTER…

- There is also one more situation when the President may have to exercise his individual judgement in the selection and appointment of the Prime Minister, that is, when the Prime Minister in office dies suddenly and there is no obvious successor.
- However, if, on the death of the Prime Minister, the ruling party elects a new leader, the President has no choice but to appoint him as Prime Minister.
- A person who is not a member of either House of Parliament can be appointed as Prime Minister for six months, within which, he should become a member of either House of Parliament; otherwise, he ceases to be the Prime Minister.

OATH:

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

i) To bear true faith and allegiance to the Constitution of India.

ii) To uphold the sovereignty and integrity of India.

iii) To faithfully and carefully discharge the duties of his office.

iv)To do right in accordance with the constitution and the law, without fear or favour, affection or ill will.

- In his oath of secrecy, the Prime Minister swears that he will not disclose any matter which is known to him as a union Minister.

TERM OF THE PRIME MINISTER:

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

SALARY AND ALLOWANCES OF THE PRIME MINISTER:

- The salary and allowances of the Prime Minister are determined by the Parliament from time to time.
- He gets the salary and allowances which are payable to a member of Parliament.
- Additionally, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities etc.

POWER AND FUNCTIONS OF THE PRIME MINISTER:

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

1) IN RELATION TO THE COUNCIL OF MINISTER:

The Prime Minister enjoys the following powers as head of the Union Council of Ministers:

i) He recommends persons who can be appointed as ministers by the President.

ii) He allocates and reshuffles various portfolios among the ministers.

iii) He can ask a minister to resign or advise the President to dismiss him in case of difference of opinion.

iv) He presides over the meeting of Council of Ministers and influences its decisions.

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

POWER AND FUNCTIONS OF THE PRIME MINISTER:

vi) He can bring about the collapse of the Council of Ministers by resigning from office.

- The resignation or death of the Prime Minister automatically dissolves the Council of Ministers but the resignation or death of any other minister merely creates a vacancy which the Prime Minister may or may not like to fill.

2) IN RELATION TO THE PRESIDENT:

i) The Prime Minister is the principal channel of communication between the President and the Council of Ministers.

- It is the duty of the Prime Minister to communicate all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation to the President.

POWER AND FUNCTIONS OF THE PRIME MINISTER:

ii) 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 Union Public Service Commission, Election Commissioners, Chairman and members of the Finance Commission and so on.

3) **IN RELATION TO PARLIAMENT:** As the leader of the Lok Sabha (Lower House) the Prime Minister enjoys the following powers:

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

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

iii) He announces government policies on the floor of the House.

POWER AND FUNCTIONS OF THE PRIME MINISTER:

4) OTHER POWERS & FUNCTIONS:

i) The Prime Minister is the Chairman of the Planning Commission (now NITI Aayog), National Development Council, National Integration Council, Inter State Council and National Water Resources Council.

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

iii) He is the chief spokesman of the Union Government.

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

v) He is leader of the party in power. vi) As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems.

Thus, the Prime Minister plays a very significant role in the political and administrative system of our country. ---

UNION COUNCIL OF MINISTERS:

- The Union Council of Ministers headed by the Prime Minister is the real executive authority in our politico-administrative system.
- Article 74 deals with the status of Council of Ministers while Article 75 deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.

NATURE OF ADVICE BY MINISTERS:

- The Council of Ministers with the Prime Minister aid and advise the President in the exercise of his functions.
- Further, the advice tendered by ministers to the President can not be enquired by any court.
- This implies the intimate and the confidential relationship between the President and the ministers.

NATURE OF ADVICE BY MINISTERS…

- Even after the dissolution of the Lok Sabha, the Council of Ministers does not cease to hold office.
- The President can not exercise the executive power without the aid and advice of the Council of Ministers.

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.

APPOINTMENT OF 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 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 House of which he is a member.

OATH OF COUNCIL OF MINISTERS:

- Before a minister enters upon his office, the President administers to him the oaths of office and secrecy.
- In his oath, the minister swears that he will not disclose any matter that is known to him as a union minister.

SALARY OF MINISTERS:

- The salaries and allowances of ministers are determined by the Parliament from time to time.
- A minister gets the salary and allowances which are payable to a member of Parliament.
- Additionally, he gets a sumptuary allowance, free accommodation, travelling allowance and medical facilities.

RESPONSIBILITY OF COUNCIL OF MINISTERS:

i) COLLECTIVE RESPONSIBILITY:

- The Council of Ministers is collectively responsible to the Lok Sabha. 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.
- The Council of Ministers can also advise the President to dissolve the Lok Sabha and call for fresh elections.

RESPONSIBILITY OF COUNCIL OF MINISTERS…

- 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 he has to resign. Several ministers have resigned in the past due to their differences with the Cabinet.

ii) INDIVIDUAL RESPONSIBILITY:

- Individual responsibility of the ministers means 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. Incase of a difference of opinion or dissatisfaction with the performance of minister, the Prime Minister can ask him to resign or advise the President to dismiss him.

COMPOSITION OF THE COUNCIL OF MINISTERS:

- 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.
- The Prime Minister is at the top of all these ministers. He is the supreme governing authority of the country.
- The cabinet ministers head the important ministries like home, defence, finance, external affairs and so forth.
- They are members of the cabinet, attend its meeting and play an important role in deciding policies.
- The Ministers of States can either be given independent charge of ministries/departments or can be attached to Cabinet Ministers.

COMPOSITION OF THE COUNCIL OF MINISTERS…

- Incase of attachment to the Cabinet Ministers they work under the supervision and guidance of the Cabinet Ministers.
- In case of independent charge, they perform the same functions and exercise the same powers in relation to their ministries as Cabinet Ministers do.
- However, they are not members of the Cabinet and do not attend the Cabinet meeting unless specially invited.
- Next in rank are the Deputy Ministers. They are not given independent charge of ministries.
- They are attached to the Cabinet Ministers or Ministers of State and assist them in their administrative, political and parliamentary duties.
- They are not members of the Cabinet and do not attend Cabinet meetings.

DISTINCTION BETWEEN COUNCIL OF MINISTERS AND CABINET:

COUNCIL OF MINISTERS	CABINET
1) It is a wider body consisting of 60 to 70 ministers.	1) It is a smaller body consisting of 15 to 20 ministers.
2) It includes cabinet ministers, ministers of state and deputy ministers.	2) It includes the cabinet ministers only. Thus, it is a part of the council of ministers.
3) It does not meet, as a body, to transact government business. It has no collective functions.	3) It meets, as a body, frequently and usually once in a week to deliberate and take decisions regarding the transaction of government business. Thus, it has collective functions.
4) It is vested with all powers, but in theory.	4) It exercises, in practice, the powers of Council of Ministers.
5) Its functions are determined by the Cabinet.	5) It directs the Council of Ministers by taking policy decisions which are binding on all ministers.
6) It implements the decisions taken by the Cabinet.	6) It supervises the implementation of its decisions by the Council of Ministers.

ROLE OF UNION CABINET:

i) It is the highest decision-making authority in our politico-administrative system.

ii) It is the chief policy formulating body of the Central Government.

iii) It is the supreme executive authority of the Central Government.

iv) It is the chief coordinator of central administration.

v) It is an advisory body to the President and its advice is binding on him.

vi) It is the Chief Crisis Manager and thus deals with all emergency situations.

vii) It deals with all major legislative and financial matters.

viii) It deals with all foreign policies and foreign affairs.

ix) It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

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(13)
STATE GOVERNMENT

THE STATE LEGISLATURE:

- Part- VI of our constitution deals with the state governments.
- Article 168 to 212 of the constitution deal with the organisation, composition, duration, officers, procedures, privileges, power and so on of the state legislature.

ORGANISATION OF STATE LEGISLATURE:

- There is no uniformity in the organisation of state legislature.
- At present, only six states (Andhra Pradesh, Bihar, Karnataka, Maharastra, Telengana, and Uttar Pradesh) have bicameral system. In such states, the State Legislature consists of the Governor, the Legislative Council and the Legislative Assembly.
- Other twenty-two states have unicameral system which consists of the Governor and the Legislative Assembly.

ORGANISATION OF STATE LEGISLATURE…

- The Legislative Council/Vidhan Parishad/ Second Chamber/House of Elders is the Upper House, while the Legislative Assembly /Vidhan Sabha/First Chamber/ Popular House is the Lower House.
- The Parliament can abolish or create Legislative Council if the Legislative Assembly of the concerned state passes a resolution by a special majority (a majority of the total membership of the assembly and a majority of not less than two-thirds of the members of the assembly present and voting).

COMPOSITION OF STATE LEGISLATIVE ASSEMBLY:

STRENGTH: The Legislative Assembly consists of representatives directly elected by the people on the basis of Universal Adult Franchise.

- Its strength varies from 60 to 500 depending on the population size of the state.
- However, in case of certain states, the strength of the Legislative Assembly is also less than 60.

COMPOSITION OF STATE LEGISLATIVE ASSEMBLY..

NOMINATED MEMBER: The Governor can nominate one member from the Anglo- India community, if the community is not adequately represented in the assembly.

TERRITORIAL CONSTITUENCIES:

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

RESERVATION OF SCs and STs:

- The constitution provided for the reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assembly of each state on the basis of population ratios.
- Originally, this reservation was to operate for ten years, i.e., up to 1960. But this has been extended continuously since then by 10 years each time.

COMPOSITION OF STATE LEGISLATIVE COUNCIL:

STRENGTH:

- The members of the Legislative Council are indirectly elected.
- The maximum strength of the council is fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 40.
- It means that the size of the council depends on the size of the assembly of the concerned state.
- This is done to ensure the predominance of the directly elected house, i.e., State Legislative Assembly, in the legislative affairs of the state.
- Though the constitution has fixed the maximum and the minimum limits, the actual strength of a Council is fixed by Parliament.

COMPOSITION OF STATE LEGISLATIVE COUNCIL…

MANNER OF ELECTION:

- Of the total number of members of a Legislative council:

i) 1/3 are elected by the members of local bodies in the state like municipalities, district boards, etc.

ii) 1/12 are elected by graduates of three years standing and residing within the state.

iii) 1/12 are elected by the teachers of three years standing in the state, not lower in standard than secondary school.

iv) 1/3 are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and

v) The remainder are nominated by the governor from amongst persons who have a special knowledge or practical experience of literature, science, art, cooperative movement and social service.

COMPOSITION OF STATE LEGISLATIVE COUNCIL…

- Thus, 5/6 of the total number of members of a Legislative Council are indirectly elected and 1/6 are nominated by the Governor.
- The members are elected in accordance with the **System of Proportional Representation by Means of a Single Transferable Vote.**

DURATION OF STATE LEGISLATIVE ASSEMBLY:

- The normal term of State Legislative Assembly is five years from the date of its first meeting after the general election.
- After five years the State Legislative Assembly will be automatically dissolved.
- However, the Governor is authorised to dissolve the State Legislative Assembly at any time (i.e., even before the completion of five years) to pave the way for fresh elections.

DURATION OF STATE LEGISLATIVE ASSEMBLY…

- Further, the term of the State Legislative Assembly can be extended during the period of National Emergency by a law of Parliament for one year at a time (for any length of time). However, this extension can not continue beyond a period of six months after the emergency has ceased to operate.

DURATION OF STATE LEGISLATIVE COUNCIL:

- The State Legislative Council is a continuing chamber, i.e., it is a permanent body and is not subject to dissolution.
- But one –third of its members retire every second year.
- A member continues for six years.
- The vacant seats are filled up by fresh elections and nominations (by Governor) at the beginning of every third year.
- The retiring members are also eligible for re-election and renomination any number of times.

QUALIFICATIONS FOR MEMBERSHIP OF STATE LEGISLATURE:

i. He must be a citizen of India.

ii. He must make an oath before the person authorised by the Election Commission to bear true faith and allegiance to the constitution and to uphold the sovereignty and integrity of India.

iii. He must be not less than 30 years of age in the case of Legislative Council and not less than 25 years of age in the case of Legislative Assembly.

iv. He must possess other qualifications prescribed by the Parliament.

DISQUALIFICATIONS FOR MEMBERSHIP OF STATE LEGISLATURE:

- A person shall be disqualified for being a member of the State Legislative Assembly or State Legislative Council:

i) 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)

ii) If he is of unsound mind and stands so declared by a court.

iii) If he is an insolvent.

iv) If he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state.

v) If he is so disqualified under any law made by Parliament.

vi) A person shall be disqualified for being a member of either house of state legislature if he is so disqualified on the ground of defection under the provision of the Tenth Schedule of the constitution.

OATH 'or' AFFIRMATION:

- Every member of either house of State Legislature, before taking his seat in the house has to make an oath before the Governor or some person appointed by him for this purpose.
- In this oath, a member of the State Legislature swears:

i) To bear true faith and allegiance to the constitution of India;

ii) To uphold the sovereignty and integrity of India; and

iii) To faithfully discharge the duty of his office.

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.

PRESIDING OFFICERS OF STATE LEGISLATURE…

- A panel of Chairman for the Legislative Assembly and a panel of Vice-Chairman for the Legislative Council are also appointed.
- The panel of Chairmen and the panel of Vice-Chairmen are nominated by the Speaker of the Assembly and the Chairman of the Council respectively.
- The Speaker and the Deputy Speaker of Legislative Assembly are elected by the assembly itself from amongst its members.
- But the Deputy Speaker is elected after the election of the Speaker has taken place.
- The Deputy Chairman of the Legislative Council are elected by the Legislative Council itself from amongst its members.

QUORUM:

- Quorum is the minimum number of members required to be present in the either house of the State Legislature 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 Presiding Officer either to adjourn the house or to suspend the meeting until there is a quorum.
- The Governor from time to time summons each house of the State Legislature to meet.
- The maximum gap between the two sessions of State Legislature can not be more than six months, i.e., the State Legislature should meet at least twice a year.
- A session of the State Legislature consists of many sittings.

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 specially mentioned in the constitution like removal of the Speaker of the assembly, removal of the Chairman of the Legislative Council and so on require special majority, not ordinary majority.
- The Presiding Officer 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 mother-tongue.

FUNCTIONS AND POWERS OF STATE LEGISLATIVE ASSEMBLY:

- In a real sense, the State Legislature means its Legislative Assembly.
- State Legislative Assembly has the following important functions and powers:

i) It can make laws on any subject provided in the State List. It can also make a law on a subject in the Concurrent List but it should not come in conflict with a law already made by the Parliament.

ii) It has the control over the Council of Ministers. Its members may ask questions to the ministers, introduce a resolution and may pass a vote to dismiss the state government.

- The ministry is collectively responsible to the Assembly.
- The defeat of the ministry in the Assembly amounts to the passing of a vote of no-confidence against it.

FUNCTIONS AND POWER OF STATE LEGISLATIVE ASSEMBLY…

iii) It controls the finances of the state. A money bill can originate in the Legislative Assembly.

- A money bill is treated as passed by the Legislative Council after a lapse of 14 days after reference made to Legislative Council by the Legislative Assembly.
- No tax can be imposed or withdrawn without the approval of the Legislative Assembly.

iv) The State Legislative Assembly elects its own Speaker and Deputy Speaker and may remove them by a Vote of No-Confidence.

- It takes part in the election of the President of India.
- It considers reports submitted by various independent agencies like the State Public Service Commission, Auditor-General and others.

FUNCTIONS AND POWER OF STATE LEGISLATIVE ASSEMBLY…

v) It has constituent powers too. According to Article 368, a bill of Constitutional Amendment first passed by the Parliament shall be referred to the states for approval.

- The Legislative Assembly has to give its verdict by passing a resolution by its simple majority showing approval or disapproval of the said bill.
- The President shall refer to the Legislative Assembly of the concerned state a bill desiring change in its boundary lines for obtaining its views in this regard before he recommends that such a bill be introduced in the Parliament.
- The State Legislative Assembly is thus the popular and more powerful chamber of the State Legislature.

FUNCTIONS AND POWERS OF THE LEGISLATIVE COUNCIL:

- The legislative council plays a more advisory role. A bill other than a money bill, may originate in the State Legislative Council.
- Over legislative matters, Legislative Council has only a suspensive veto for a maximum period of four months.
- Over financial matters, its powers are not absolute.
- The Legislative Council may detain a Money Bill only for period of fourteen days.
- There is no provision for a joint sitting of Legislative Assembly and the Legislative Council to resolve a deadlock between them, over the legislative matters, if any.
- Thus, the Legislative Council is only a subordinate component of the Legislature. ---X---

(14)
STATE EXECUTIVE

STATE EXECUTIVE:

- Article 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.
- The Governor is the Chief Executive Head of the state. He is the nominal executive head (titular or constitutional head.)
- The Governor also acts as an agent of the Central Government.
- Therefore, the office of a Governor has a dual role.
- Usually, there is one Governor for each state, but if required the same person may act as a Governor for two or more states.

APPOINTMENT OF GOVERNOR:

- The Governor is appointed by the President. In a way, he is a nominee of the Central Government.
- The office of the Governor is an independent constitutional office and is not under the control of or subordinate to the Central Government.
- The constitution lays down only two qualifications for the appointment of a person as a governor. These are:

i) He should be a citizen of India.

ii) He should have completed the age of 35 years.

- Additionally, two conventions have also developed in this regard over the years.
- First, he should not belong to the state where he is appointed, so that he is free from local politics.

APPOINTMENT OF GOVERNOR…

- Second, while appointing the Governor, the President has to consult the Chief Minister of the state concerned, so that smooth functioning of the constitutional machinery in the state is ensured.

CONDITIONS OF GOVERNOR'S OFFICE:

i) He should not be a member of either house of the Parliament or a house of State Legislature. If any such person is appointed as Governor, he has to vacate his seat in that House before assuming the office of the Governor.

ii) He should not hold any office of profit.

iii) He is entitled to use his official residence (the Raj Bhavan) without payment of rent.

iv) He gets emoluments, allowances and privileges as determined by the Parliament.

CONDITIONS OF GOVERNOR'S OFFICE:

v) When the same person is appointed as the Governor of two or more states, the emoluments and allowances payable to him are shard by the states as decided by the President.

vi) His emoluments and allowances can not be reduced during his term of office.

OATH 'OR' AFFIRMATION BY THE GOVERNOR :

- Before entering upon his office, Governor has to take an oath. In his oath, the governor swears:

i) To faithfully execute the office;

ii) To preserve, protect and defend the constitution and the law;

iii) To devote himself to the service and well-being of the people of the state.

OATH 'OR' AFFIRMATION BY THE GOVERNOR…

- 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.

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 Governor has no security of tenure and no fixed term of office.

TERM OF GOVERNOR'S OFFICE…

- He may be removed by the President at any time.
- 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 can not be an **interregnum**.
- In case of the death of a sitting Governor, the Chief Justice of the concerned State High Court may be appointed by the President temporarily to discharge the functions of the Governor of that state.

POWERS AND FUNCTIONS OF GOVERNOR:

1) EXECUTIVE POWERS:

i) All executive actions of the government of a state are formally taken in his name.

ii) He can make rules for more convenient transaction of the business of a state government.

iii) He appoints the Chief Minister and other ministers. They also hold office during his pleasure.

iv) He appoints the Advocate General of a state and determines his remuneration. The Advocate General holds the office during the pleasure of the Governor.

v) He appoints the State Election Commissioner and determines his conditions of service and tenure of office. However, the State Election Commissioner can be removed as a judge of a High Court is removed.

POWERS AND FUNCTIONS OF GOVERNOR…

vi) 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.

vii) He can seek any information relating to the administration of the state and proposals for legislation from the Chief Minister.

viii) He can recommend the imposition of State Emergency in the state to the President. During this period, the Governor enjoys extensive executive powers as an agent of the President.

ix) He acts as the Chancellor of universities in the state. He also appoints the Vice-Chancellors of universities in the state.

POWERS AND FUNCTIONS OF GOVERNOR…

2) **LEGISLATIVE POWERS:** A Governor is an integral part of the State Legislature. In that capacity, he has the following legislative powers and functions:

i) He can summon or prorogue the State Legislature and dissolve the State Legislative Assembly.

ii) He can address the State Legislature at the commencement of the first session after each general election and first session of each year.

iii) He can send messages to the house or houses of the State Legislature, with respect to a bill pending in the legislature.

iv) 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 Legislative Council to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.

POWERS AND FUNCTIONS OF GOVERNOR…

v) 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.

vi) He can nominate one member to the State Legislative Assembly from the Anglo-Indian Community.

vii) He decides on the question of disqualification of members of the State Legislature in consultation with the Election Commission.

viii) 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.

POWERS AND FUNCTIONS OF GOVERNOR…

ix) 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 any time.

x) When a bill is sent to the Governor after it is passed by the 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 at 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 if the bill passed by the State Legislature endangers the position of the High Court or the bill is against the provisions of the Constitution or opposed to the Directive Principles of State Policy or against the interest of the country.

POWERS AND FUNCTIONS OF GOVERNOR…

3) FINANCIAL POWERS:

- The financial powers and functions of the Governor are:

i) He sees that the Annual Budget is laid before the State Legislature.

ii) Money bills can be introduced in the State Legislature only with his prior recommendation.

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

iv) He can make advances out of the Contingency Fund of the State to meet any unforeseen expenditure.

v) He constitutes a Finance Commission after every five years to review the financial position of the panchayats and municipalities.

POWERS AND FUNCTIONS OF GOVERNOR…

4) JUDICIAL POWERS:

i) He is consulted by the President while appointing the judges of the concerned State High Court.

ii) He makes appointments, postings and promotions of the District Judges in consultations with the High Court.

iii) He also appoints persons to the Judicial Service of the state in consultation with the High Court and the State Public Service Commission.

iv) He can pardon, acquit, relieve, remit, suspend or convert the punishment of any person.

- He can not pardon a death sentence. This power lies with the President only.

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CHIEF MINISTER:

- 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 Governor appoints the leader of the majority party or coalition in the state legislative assembly as the Chief Minister and ask him to seek a vote of confidence in the house within a month.

APPOINTMENT OF CHIEF MINISTER…

- The Governor may exercise his individual judgement in the selection and appointment of the Chief Minister when the Chief Minister in office dies suddenly.
- 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 Governor first appoints him as the Chief Minister and then ask him to prove his majority in the Legislative Assembly within a reasonable period.
- A person who is not a member of the State Legislature can be appointed as the Chief Minister for six months, within which time, he should be elected to the State Legislature, failing which he ceases to be the Chief Minister.

OATH BY THE CHIEF MINISTER:

- 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 Ministers swears:

i) To bear true faith and allegiance to the constitution of India,

ii) To uphold the sovereignty and integrity of India,

iii) To faithfully discharge the duties of his office, and

iv) To do right to all people in accordance with the constitution and law.

- In his oath of secrecy, the Chief Minister swears that he will not directly or indirectly reveal to any person(s) any matter.

TERM OF CHIEF 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 can not 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.

SALARY & ALLOWANCES:

- The salary and allowances of the Chief Minister are determined by the State Legislature.
- In addition to the salary and allowances, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc.

POWERS AND FUNCTIONS OF CHIEF MINISTER:

1) IN RELATION TO COUNCIL OF MINISTERS:

i) The Governor appoints only those persons as ministers who are recommended by the Chief Minister.

ii) He allocates and reshuffles the portfolios among the ministers.

iii) He can ask a minister to resign or advise the Governor to dismiss him in case of difference of opinion.

iv) He presides over the meeting of the Council of Ministers and influences its decisions.

v) He guides, directs, controls and coordinates the activities of all the ministers. vi) As 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 fill.

POWERS AND FUNCTIONS OF CHIEF MINISTER…

2) IN RELATION TO THE GOVERNOR:

i) 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.

ii) He is the principal channel of communication between the Governor and the Council of Ministers

iii) He communicates all decisions of the Council of Ministers to the Governor.

iv) It is the duty of the Chief Minister to furnish such information relating to the administration of the state and proposal for legislation as the Governor calls for.

POWERS AND FUNCTIONS OF CHIEF MINISTER…

3) IN RELATION TO STATE LEGISLATURE:

i) He advises the Governor with regard to the summoning and proroguing of the sessions of the State Legislature.

ii) He can recommend the dissolution of the Legislative Assembly to the Governor at any time.

iii) He announces the government policies on the floor of the house.

4) OTHER POWERS and FUNCTIONS:

i) He is the Chairman of the State Planning Board.

ii) He is a member of the Inter-State Council and the National Development Council, both headed by the Prime Minister.

iii) He is the Crisis Manager at the political level during emergencies.

iv) As a leader of the state he meets various sections of the people and receives memoranda from them regarding their problems, and so on. Thus, he plays a very significant and highly crucial role in the state administration. ---x---

STATE COUNCIL OF MINISTERS:

- The Council of Ministers headed by the Chief Minister is the real executive authority in the politico-administrative system of a state.

CONSTITUTIONAL PROVISIONS:

i) 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.

ii) The advice tendered by ministers to the Governor shall not be inquired into in any court.

iii) 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.

iv) The total number of ministers, including the Chief Minister, shall not exceed 15 percent 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.

CONSTITUTIONAL PROVISIONS…

v) The ministers shall hold office during the pleasure of the Governor.

vi) The Council of Ministers shall be collectively responsible to the State Legislative Assembly.

vii) The Governor shall administer the oaths of office and secrecy to a minister.

viii) A minister who is not a member of the State Legislature for any period of six consecutive months shall cease to be a minister.

ix) The salaries and allowances of ministers shall be determined by the State Legislature.

x) All executive actions of the state government shall be taken in the name of the Governor.

CONSTITUTIONAL PROVISIONS…

xi) It is the duty of the Chief Minister to communicate all decisions of the Council of Ministers relating to the administration of the state and proposals for legislation to the Governor.

xii) Every minister shall have the right to speak and take part in the proceedings of the Legislative Assembly/ Legislative Council and any committee of the State Legislature.

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.

APPOINTMENT OF MINISTERS…

- But, there should be a Tribal Welfare Minister in Chhatishgarh, Madhya Pradesh and Odisha.
- Usually the members of the State Legislature 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 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.

NATURE OF ADVICE BY MINISTERS:

- Article 163 provides for a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions except the discretionary ones.
- The nature of advice tendered by ministers to the Governor can not be enquired by any court.
- This provision emphasises the intimate and confidential relationship between the Governor and the minister.
- A Council of Ministers must always exist to advise the Governor, even after the dissolution of the State Legislative Assembly or resignation of a Council of Ministers.
- Hence, the existing ministry may continue in the office until its successor assumes charge.

OATH 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:

i) To bear true faith and allegiance to the constitution of India,

ii) To uphold the sovereignty and integrity of India,

iii) To faithfully and carefully discharge the duties of his office, and

iv) To do right to all people in accordance with the constitution and law, without fear and favour, affection or ill-will.

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

SALARY OF MINISTERS:

- 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.

COLLECTIVE RESPONSIBILITY OF MINISTERS:

- 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.

COLLECTIVE RESPONSIBILITY OF MINISTERS…

- 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.
- Alternatively, the Council of Ministers can advise the Governor to dissolve the Legislative Assembly and call for fresh elections.
- The principle of collective responsibility also means that the Cabinet decisions bind all Cabinet ministers and other ministers even if they differ in the Cabinet meeting.
- It is the duty of every minister to stand by the Cabinet decision and support them both within and outside the State Legislature.

COLLECTIVE RESPONSIBILITY OF MINISTERS…

- 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.

INDIVIDUAL RESPONSIBILITY OF MINISTER:

- Article 164 also contains the principle of individual responsibility of a minister.
- 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.

INDIVIDUAL RESPONSIBILITY OF MINISTER…

- But, the Governor can remove a minister only on the advice of the Chief Minister.
- Incase of difference of opinion or dissatisfaction with the performance of a minister, the Chief Minister can ask him to resign or advise the Governor to dismiss him.
- By exercising this power, the Chief Minister can ensure the realisation of the rule of collective responsibility.

COMPOSITION OF THE STATE COUNCIL OF MINISTERS:

- The Chief Minister determines the size of the State Council of Ministers according to the exigencies of time and requirements of the situation.
- The Council of Ministers consists of three categories of ministers, namely, Cabinet Ministers, Ministers of State and Deputy Ministers.

COMPOSITION OF THE COUNCIL OF MINISTERS…

- The Chief Minister is the 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.
- They are members of the Cabinet, attend its meetings and play an important role in deciding policies.
- 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.

COMPOSITION OF THE COUNCIL OF MINISTERS…

- Next in rank are the Deputy ministers who 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. The Deputy Chief Minister is appointed mostly for local political reasons.

STATE CABINET:

- Cabinet is a smaller body which 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 which performs the following functions:

STATE CABINET…

i) It is the highest decision making authority in the politico-administrative system of a state.

ii) It is the chief policy formulating body of the state government.

iii) It is the supreme executive authority of the state government.

iv) It is the chief coordinator of the state administration.

v) It is an advisory body to the Governor.

vi) It is the chief crisis manager and thus deals with all emergency situations.

vii) It deals with all major legislative and financial matters.

viii) It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

CABINET COMMITTEES:

- The Cabinet works through various committees called Cabinet Committees which are Standing Committee and Adhoc Committee.
- The Standing Cabinet Committee is of a permanent nature but the Adhoc Cabinet Committee is of a temporary nature.
- These committees are set up by the Chief Minister according to the exigencies of time and requirement of the situation.
- These committees not only sort out issues and formulate proposals for the consideration of the Cabinet but also take decisions.
- However, the Cabinet can review the decisions of various Cabinet Committee.

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(15)
AMENDMENT OF THE CONSTITUTION

AMENDMENT OF THE CONSTITUTION:

- The constitution of India provides for its amendment in order to adjust itself to the changing conditions and needs.
- Article 368 of the constitution deals with the powers of Parliament to amend the constitution and its procedure but, the Parliament can not amend the basic structure of the constitution.

PROCEDURE FOR AMENDMENT:

- The procedure for the amendment of the constitution is as follows:

i) An amendment of the constitution can be initiated by the introduction of a bill in either house of the Parliament and not in the State Legislatures.

ii) The bill can be introduced either by a minister or by a private member and does not require prior permission of the President.

PROCEDURE FOR AMENDMENT…

iii) The bill must be passed in each house by a special majority, that is, a majority of the total membership of the house and a majority of two-thirds of the members of the house present and voting.

iv) 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.

v) If the bill seeks to amend the federal provisions of the constitution, it must also be approved by the State Legislatures of half of the states by a simple majority, that is, a majority of the members of the house present and voting.

vi) After duly passed by both the houses of Parliament and approved by the State Legislatures, the bill is presented to the President for assent.

PROCEDURE FOR AMENDMENT…

vii) 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.

viii) After the President's assent, the bill becomes a Constitutional Amendment Act. and the constitution stands amended. ---

TYPES OF AMENDMENT:

- Constitution can be amended in following three ways:

1. AMENDMENT BY SIMPLE MAJORITY OF THE PARLIAMENT:

- The following provisions in the constitution can be amended by a simple majority of the two houses of Parliament:

i) Establishment of new states.

ii) Formation of new states and alteration of areas, boundaries or names of existing states.

TYPES OF AMENDMENT…

iii) Abolition or creation of Legislative Councils in states.

iv) Emoluments, allowances, privileges and so on of the President, the Governors, the Speaker, Judges, etc.

v) Quorum in Parliament

vi) Salaries and allowances of the members of Parliament.

vii) Procedure in Parliament

viii) Privileges of the Parliament, its members and its committees.

ix) Use of English language in Parliament

x) Citizenship acquisition and termination xii) Conferment of more jurisdiction on the Supreme Court

xiii) Elections to Parliament and State Legislatures

xiv) Delimitation of constituencies

xv) Union territories

xvi) Use of official language

2. AMENDMENT BY SPECIAL MAJORITY OF THE PARLIAMENT:

- The majority of the provisions in the constitution need to be amended by a special majority of the Parliament, that is, a majority (that is more than 50 percent) of the total membership of each house and a majority of two-thirds of the members of each house present and voting.
- The 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.

3. AMENDMENT BY SPECIAL MAJORITY OF PARLIAMENT AND CONSENT OF STATES: Those provisions of the constitution which are related to the Federal Structure 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.

AMENDMENT BY SPECIAL MAJORITY OF PARLIAMENT AND CONSENT OF STATES…

- 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:

i) Election of the President and its manner.

ii) Extent of the executive power of the union and the states

iii) Supreme Court and High Courts

iv) Distribution of legislative powers between the union and states

v) Any of the matters in seventh schedule

vi) Representation of states in Parliament

vii) Power of Parliament to amend the constitution and its procedure (Article 368 itself)

AMENDMENT BY SPECIAL MAJORITY OF PARLIAMENT AND CONSENT OF STATES…

- The amendment procedure of Indian constitution has been criticised.
- Despite the criticisms the amendment process has proved to be simple and easy and has succeeded in meeting the changed needs and conditions.
- The procedure is also not so flexible as to allow the ruling parties to change it according to their whims.
- Nor is it so rigid as to be incapable of adopting itself to the changing needs.
- Constitution of India strikes a good balance between flexibility and rigidity.

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EMERGENCY PROVISIONS

EMERGENCY PROVISIONS:

- The emergency provisions are in Part-XVIII of the constitution, from Articles 352 to 360 which enable the Central Government to meet any abnormal situation effectively.
- The reason behind these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the constitution.
- During an Emergency, the Central Government becomes all powerful and the States go in to 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. The constitution specifies following three types of emergencies:

1) NATIONAL EMERGENCY:

GROUNDS OF DECLARATION: Under Article 352, the President can declare a National Emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.

- The President can declare a National Emergency even before the actual occurrence of war or external aggression or armed rebellion, if he is satisfied that there is imminent danger.
- When a national emergency is declared on the ground of 'war' or 'external aggression', it is known as 'External Emergency'. On the other hand it is declared on the ground of 'armed rebellion', it is known as 'Internal Emergency'.
- A proclamation of National Emergency may be applicable to the entire country or a part of it.
- The President can declare a National Emergency only after receiving a written recommendation from the Cabinet and not merely on the advice of the Prime Minister.

PARLIAMENTARY APPROVAL AND DURATION:

- The proclamation of emergency must be approved by both the houses of Parliament within one month from the date of its issue.
- However, if the declaration of emergency is issued at a time when the Lok Sabha has been dissolved or dissolution of the Lok Sabha takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
- If approved by both the houses of Parliament, the emergency continues for six months, and can be extended to an indefinite period with an approval of the Parliament for every six months. Every resolution approving the declaration of emergency or its continuance must be passed by either house of Parliament by a special majority.

CANCELATION OF PROCLAMATION:

- A declaration of emergency may be canceled by the President at any time by a subsequent declaration. Such a declaration does not require the parliamentary approval.
- Further, the President must cancel a declaration if the Lok Sabha passes a resolution disapproving its continuation.
- A resolution of disapproval is different from a resolution approving the continuation of a declaration of National Emergency in the following two respects:

i) A resolution of disapproval to National Emergency is required to be passed by the Lok Sabha only, while continuation of National Emergency needs to be passed by both Lok Sabha and Rajya Sabha.

ii) A resolution of disapproval to National Emergency is to be adopted by a Simple Majority only, while continuation of National Emergency needs to be adopted by a Special Majority.

EFFECTS OF NATIONAL EMERGENCY:

(A)EFFECT ON THE CENTRE-STATE RELATIONS:

i) EXECUTIVE: In normal times, the centre can give executive directions to state only on certain specified matters but during a National Emergency, the centre gives executive directions to a state on any matter.

- Thus, the state governments are under the complete control of the centre, though they are not suspended.

ii) LEGISLATIVE: During a National Emergency, the Parliament is empowered to make laws on any subject mentioned in the State List.

- The constitution becomes unitary rather than federal during National Emergency. The laws made by the Parliament on the state subjects during a National Emergency becomes inoperative six months after the emergency has ceased to operate.
- During National Emergency, the President can issue ordinances on the state subject, if the Parliament is not in session.

EFFECT ON THE CENTRE-STATE RELATIONS…

iii) FINANCIAL: During the National Emergency, the President can modify the distribution of revenues between the centre and the states. Such modifications continue till the end of the financial year in which the emergency ceases to operate.

(B) EFFECT ON THE LIFE OF THE LOK SABHA AND STATE ASSEMBLY: During National Emergency, the life of the Lok Sabha may be extended for any length of time beyond its normal term (five years). The extension will be for one year at a time.

- Similarly, Parliament may extend the normal tenure of a State Legislative Assembly (five years) by one year each time (for any length of time) during a National Emergency.

(C) EFFECT ON THE FUNDAMENTAL RIGHTS:

- During National Emergency, the fundamental rights under Article 19 are automatically suspended.
- When the National Emergency ceases to operate, Article 19 automatically revives and comes into force.
- The legislative and executive actions taken during the National Emergency can not be challenged even after the emergency ceases to operate.
- The President can not suspend the fundamental rights like the Right to protection in respect of conviction for offences (Article 20) and the Right to life and personal liberty (Article 21) even during emergency.

2) STATE EMERGENCY/PRESIDENT'S RULE/ CONSTITUTIONAL EMERGENCY:

Grounds of Imposition:

- The Central Government takes over a State Government under Article 356 in case of failure of constitutional machinery in the State which is known as 'State Emergency'.
- This can be declared under the following grounds:

i) If the President is satisfied that a situation has arisen in which the state government can not be carried on according to the provisions of the constitution.

- The President can act either on a report of the Governor of the state or without the Governor's report.

ii) Whenever a state fails to comply with any direction from the centre.

PARLIAMENTARY APPROVAL AND DURATION:

- President's Rule must be approved by both the houses of Parliament within two months from the date of its issue.
- If approved by both the houses of Parliament, the President's Rule continues for six months.
- It can be extended for a maximum period of three years with the approval of the Parliament, every six months.
- Every resolution approving the declaration of President's Rule or its continuation can be passed by either house of Parliament only by a simple majority.
- A declaration of President's Rule may be cancelled by the President at any time by a subsequent declaration. Such a declaration does not require the parliamentary approval.

CONSEQENCES OF STATE EMERGENCY :

i)The President takes up the functions of the State Government.

ii) The powers of the State Legislature are to be exercised by the Parliament.

iii) The President dismisses the State Council of Ministers headed by the Chief Minister.

- The Governor carries on the state administration with the help of the Chief Secretary of the state or the advisor appointed by the President.
- The President either suspends or dissolves the State Legislative Assembly and passes the state legislative bills and the state budget.

3) FINANCIAL EMERGENCY:

- Article 360 empowers the President to declare a Financial Emergency if he feels that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.

PARLIAMENTARY APPROVAL and DURATION:

- A declaration of financial emergency must be approved by both the houses of Parliament within two months from the date of issue.
- However, if the declaration of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha.
- Once approved by both the houses of Parliament, the Financial Emergency continues indefinitely till it is cancelled. Repeated parliamentary approval is not required for its continuation.

PARLIAMENTARY APPROVAL and DURATION…

- A resolution approving the declaration of Financial Emergency can be passed by either house of Parliament only by a simple majority.
- A proclamation of Financial Emergency may be cancelled by the President any time by a subsequent declaration. Such a declaration does not require the parliamentary approval.

EFFECTS OF FINANCIAL EMERGENCY:

i) The President may direct to reduce salaries and allowances of all persons serving the state and the union, and the judges of the Supreme Court and the High Court. The President may reserve all money bills and financial bills for his consideration after they are passed by the State Legislature.

- Thus, during Financial Emergency, the centre has full control over the States in financial matters.
- No financial emergency has been declared so far.

CRITICISM OF THE EMERGENCY PROVISIONS:

- Emergency provisions are criticised on the following grounds:

i) The federal character of the constitution is destroyed and the Union becomes all powerful.

ii) The powers of the Union and the States are in the hands of the Union Executive.

iii) The President becomes a dictator.

iv) The financial autonomy of the State is abolished.

v) Fundamental Rights become meaningless and the democratic foundation of the constitution is destroyed.

- While protecting the emergency provisions, Dr. B. R. Ambedkar also accepted the possibility of their misuse.

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(17)

SCHEME OF THE FUNDAMENTAL RIGHT TO EQUALITY

SCHEME OF THE RIGHT TO EQUALITY:

- Articles 14 to 19 of Indian constitution deal with the Right to Equality. The Scheme of the Fundamental Right to Equality is explained as follows:

1. EQUALITY BEFORE LAW AND EQUAL PROTECTION OF LAW:

- Article 14 says that the state shall not deny to any person equality before the law and the equal protection of the laws within the territory of India. This provision is granted to all citizens or foreigners.
- Moreover, the word 'person' also includes legal persons, viz, statutory corporations, companies, registered societies, etc.
- Equality before Law implies:

(a) Absence of any special privileges in favour of any person,

(b) Equal subjection of all persons to the law administered by courts, and

(c) No person is above the law.

SCHEME OF THE RIGHT TO EQUALITY…

- On the other hand, Equal Protection of Law implies:

(a) Equality of treatment under equal circumstances,

(b) Similar application of the same laws to all persons who are similarly situated, and

(c) The like should be treated alike without any discrimination.

Rule of Law:

- The 'Equality before Law' is an element of 'Rule of Law'. Rule of Law has the following aspects:

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

b) Equal subjection of all citizens to the ordinary law administered by the courts.

- The Supreme Court held that the 'Rule of Law' as mentioned in Article 14 is a 'basic feature' of the constitution. Hence, it can not be destroyed by an amendment.

SCHEME OF THE RIGHT TO EQUALITY…

Exceptions to Equality:

a) The President of India and the Governors enjoy the following immunities (Article 361):

- 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 civil or criminal proceedings shall be instituted or continued against the President or the Governor 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.

b) No member of Parliament and member of State Legislature in any court in respect of anything said or any vote given by him in Parliament or any committee there of (Article-105).

SCHEME OF THE RIGHT TO EQUALITY…

c) The foreign rulers, ambassadors and diplomats enjoy immunity from criminal and civil proceedings.

d) The UNO and its agencies enjoy the diplomatic immunity.

2. 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 word 'only' implies that discrimination on other grounds is not prohibited.
- Citizen cannot be restricted on the basis of religion, race, caste, sex, or place of birth with regard to access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads, places and public resort maintained by state funds or dedicated to the use of general public.

SCHEME OF THE RIGHT TO EQUALITY…

Exceptions to the General Rule of Non-Discrimination:

a) The state can make special provision for women and children, e.g., reservation of seats for women in local bodies or provision of free education for children.

b) The state can make special provision for the advancement of Socially and Educationally Backward Classes or for the Scheduled Castes and Scheduled Tribes, e.g., reservation of seats or fee concessions in educational institutions, except the minority educational institutions.

3. EQUALITY OF OPPORTUNITY IN PUBLIC EMPLOYMENT: Article 16 provides for equality of opportunity for all citizens in matters of employment. No citizen can be discriminated against or be ineligible for any employment on grounds of only religion, race, caste, sex, descent, place of birth or residence.

Exception: The state can reserve posts in favour of any backward class that is not adequately represented in the state services.

SCHEME OF THE RIGHT TO EQUALITY…

4. ABOLITION OF UNTOUCHABILITY:

- Article 17 abolishes ‘untouchability’and forbids its practice in any form.
- Untouchability shall be an offence which is punishable in accordance with law. In 1976, the Untouchability (Offences) Act, 1955, has been 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 due to abolition of untouchability.
- The term ‘untouchability’ has not been defined either in the constitution or in the Act.
- It refers to the social disabilities imposed on certain classes of persons by reason of their birth in certain castes.

SCHEME OF THE RIGHT TO EQUALITY…

- 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 up to Rs. 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 activities as offences:

a) Preventing any person from entering any place of public worship or from worshipping there in;

b) Justifying untouchability on traditional, religious, philosophical or other grounds;

c) Denying access to any shop, hotel or places of public entertainment;

SCHEME OF THE RIGHT TO EQUALITY…

d) Insulting a person belonging to Scheduled Caste on the ground of untouchability;

e) Refusing to admit persons in hospitals, educational institutions or hostels established for public benefit;

f) Preaching untouchability directly or indirectly; and

g) Refusing to sell goods or render services to any person.

- It is the constitutional obligation of the state to take necessary action to ensure that Right under Article 17 is not violated.

5. ABOLITION OF TITLES:

- Article 18 abolishes titles and makes following provisions in this regard:

a) It prohibits the state from conferring any title (except a military or academic distinction) on anybody, whether a citizen or a foreigner.

SCHEME OF THE RIGHT TO EQUALITY…

b) It prohibits a citizen of India from accepting any title from any foreign state.

c) A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the President.

d) No citizen or foreigner holding any office of profit or trust under the state can not accept any presentation or emolument from any foreign state without the consent of the President.

- From the above, it is clear that the hereditary titles of nobility like Maharaja, Raj Bahadur, Rai Bahadur, Rai Saheb, Dewan Bahadur, etc. which were conferred by colonial states are banned by Article 18 as these are against the principles of equal status of all.

SCHEME OF THE RIGHT TO EQUALITY…

- In 1996, the Supreme Court upheld the constitutional validity of the National Awards: Bharat Ratna, Padma Vibhusana, Padma Bhusan and Padma Sri.
- It ruled that these awards do not amount to ‘titles’ within the meaning of Article 18 that prohibits only heredity titles of nobility. Therefore, they are not violative of Article 18 .
- However, it is the rule that they should not be used as suffixes or prefixes to the names of awardees. Otherwise, they will forfeit the awards.

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(18)

SCHEME OF THE FUNDAMENTAL RIGHT TO CERTAIN FREEDOM UNDER ARTICLE 19

SCHEME OF THE RIGHT TO FREEDOM:

- The right to freedom in Article 19 guarantees the six freedoms to the citizens of India. These six rights are protected against only state action and not private individuals.
- Moreover, these rights are available only to the citizens and to the shareholders of a company but not to the foreigners or legal persons like companies or corporations, etc.
- The state can impose 'reasonable' restrictions on the enjoyment of these six rights only on certain grounds. All such rights are explained in detail as follows:

i. 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 freedom of speech and expression includes the following:

a) Right to propagate one's views as well as views of others.

SCHEME OF THE RIGHT TO FREEDOM…

b) Freedom of the press. c) Freedom of commercial advertisement.

d) Right against tapping of telephonic conversation.

e) Right to telecast.

f) Right against bandh called by a political party or organisation.

g) Right to know about government activities. h) Freedom of silence

i) Right against imposition of pre-censorship on a news paper.

j) Right to demonstration or picketing but not right to strike.

- The state can impose reasonable restrictions on the freedom of speech and expression on the grounds of sovereignty and integrity of India, security of the state, public order, decency or morality, contempt of court, defamation, and encouragement to an offence.

SCHEME OF THE RIGHT TO FREEDOM…

ii. FREEDOM OF ASSEMBLY:

- Every citizen has the right to assemble peacefully and without arms. It includes the right to hold public meetings, demonstrations and take out processions 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.

SCHEME OF THE RIGHT TO FREEDOM…

- Under Section 144 of Criminal Procedure Code, a magistrate can restrain an assembly, meeting or procession if there is a risk of obstruction, danger to human life, health or safety or a disturbance of the public tranquillity or a riot or any attack.
- Under Section 141 of the Indian Penal Code, as assembly of five or more persons becomes unlawful if the object is

(a) to restrict the execution of any law or legal process;

(b) to forcibly occupy the property of some persons;

(c) to commit any mischief;

(d) to force some person to do an illegal act; and

(e) to threaten the government or its officials on exercising lawful powers.

SCHEME OF THE RIGHT TO FREEDOM…

iii. FREEDOM OF ASSOCIATION:

- All citizens have the right to form and continue with associations or unions or cooperative societies. It includes the right to form political parties, companies, partnership firms, societies, clubs, organisations, trade unions or any body of persons.
- Further, it covers the negative right of not to form or join an association or union.
- Reasonable restrictions can be imposed on the exercise of this right by the state on the grounds of sovereignty and integrity of India, public order and morality.
- However, the right to obtain recognition of the association is not a fundamental right.
- The Supreme Court held that the trade unions have no right to effective bargaining or right to strike or right to declare a lock-out.

SCHEME OF THE RIGHT TO FREEDOM…

iv. FREEDOM OF MOVEMENT: Every citizen can move freely throughout the territory of the country. He can move freely from one place to another. On the grounds of interests of general public and the protection of interests of scheduled tribe reasonable restrictions will be imposed on this freedom.

- The entry of outsiders in tribal areas is restricted to protect their culture, language, customs, manners and to safeguard their occupation and properties against exploitation.
- The freedom of movement of prostitutes and persons affected by AIDS can be restricted on the ground of public health and in the interest of public morals.
- The freedom of movement implies right to move inside the country, right to move out of the country and right to come back to the country. Article 19 protects only the right to move inside the country.

SCHEME OF THE RIGHT TO FREEDOM…

v. FREEDOM OF RESIDENCE: Every citizen has the right to reside and settle temporarily or permanently in any part of the territory of the country.

- This right is intended to remove internal barriers within the country. This promotes nationalism and avoids narrow mindedness.
- The state imposes restrictions in the interest of general public and the protection of scheduled tribes.
- The right of outsiders to reside and settle in tribal areas is restricted to protect the culture, language, customs and manners of scheduled tribes and safeguard their traditional vocation and properties against exploitation.
- In many parts of the country, the tribals have been permitted to regulate their property rights in accordance with their customary rules and laws.

SCHEME OF THE RIGHT TO FREEDOM…

vi. FREEDOM OF PROFESSION: Citizens have the right to practise any profession or to carry on any occupation, trade or business for earning their livelihoods.

- 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 practising any profession or carrying on any occupation, trade or business.
- Thus, no objection can be made when the state carries on a trade, business, industry or service as a monopoly. The state is not required to justify its monopoly.
- This right does not include the right to carry on a profession/ business/trade/ occupation that is immoral or dangerous. The state can prohibit these or regulate them through licensing.

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(19)
SCOPE OF THE RIGHT TO LIFE AND PERSONAL LIBERTY UNDER ARTICLE 21

SCOPE OF THE RIGHT TO LIFE AND PERSONAL LIBERTY UNDER ARTICLE 21

- Article 21 declares that the state can deprive the right to life and personal liberty of a person based on a law.
- This right is available to both citizens and non-citizens.
- The protection under Article 21 is against arbitrary executive action and against arbitrary legislative action.
- 'Right to life' is not merely confined to animal existence but it includes the right to live with human dignity and all those aspects of life which make a man's life meaningful, complete and worth living.
- 'Personal Liberty' covers a variety of rights which are enjoyed by a man. Supreme Court has declared the following rights as part of Article-21:

1) Right to live with human dignity

RIGHT TO LIFE AND PERSONAL LIBERTY UNDER ARTICLE 21…

2) Right to decent environment including pollution free water and air and protection against hazardous industries.
3) Right to livelihood
4) Right to privacy
5) Right to shelter
6) Right to health
7) Right to free education up to 14 years of age
8) Right to free legal aid
9) Right against solitary confinement
10) Right to speedy trial
11) Right against handcuffing
12) Right against inhuman treatment
13) Right against delayed execution

RIGHT TO LIFE AND PERSONAL LIBERTY UNDER ARTICLE 21…

14) Right to travel abroad
15) Right against bonded labour
16) Right against custodial harassment
17) Right to emergency medical aid
18) Right to timely medical treatment in government hospital
19) Right not to be driven out of a state
20) Right to fair trial
21) Right of prisoner to have necessities of life
22) Right of women to be treated with decency and dignity
23) Right against public hanging
24) Right to hearing
25) Right to information
26) Right to reputation
27) Right to appeal from judgement of conviction

RIGHT TO LIFE AND PERSONAL LIBERTY UNDER ARTICLE 21…

28) Right to social security and protection of the family

29) Right to social and economic justice and empowerment

30) Right against bar fetters

31) Right to appropriate life insurance policy

32) Right to sleep

33) Right to freedom from noise pollution

34) Right to electricity

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.
- This provision makes only elementary education a Fundamental Right and not higher or professional education.

RIGHT TO LIFE AND PERSONAL LIBERTY UNDER ARTICLE 21…

- 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'.
- Before this amendment, it was a part of Directive Principles of State Policy for which it was not enforceable by the courts.
- Now, the state provides early childhood care and education for all children until they complete the age of six years'.
- It also added a new fundamental duty under Article 51 A that reads – It is the duty of every citizen of India to provide opportunities for education to his child or ward between the age of six and fourteen years.
- This legislation has been made with a belief that the values of equality, social justice, democracy and the creation of a just and humane society can be achieved through the provision of elementary education to all. ---X---

(20)

LOCAL SELF GOVERNMENT

PANCHAYATI RAJ (RURAL LOCAL SELF GOVT.):

- Panchayatiraj has been established to build democracy at the grass root level and entrusted with rural development.
- It got constitutional status through the 73rd constitutional Amendment Act. of 1992.

73rd AMENDMENT Act. of 1992: According to this Act the state governments are to adopt the new Panchayati Raj system. The provisions of this Act are grouped as compulsory and voluntary.

- The compulsory/mandatory/obligatory provisions of the Act are to be included in the state laws and create new panchayati raj system whereas the voluntary provisions are at the discretion of the states. While adopting the voluntary provisions of the Act, the states have to consider the local geographical factors, political factors, administrative factors, and other factors.

FEATURES OF THE Act:

- The salient features of the Act are:

GRAM SABHA:

- A panchayat consists of a number of villages. The Act provides for a Gram Sabha in a village or a group of villages as the foundation of the panchayati raj system.
- It is a body consisting of all voters of a village. Gram Sabha is a village assembly.
- It exercises such powers and performs 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, panchayatas at the village, intermediate and district levels. This Act brings uniformity in the structure of panchayati raj throughout the country.

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 among the elected members. However, the chairperson of a panchayat at the village level shall be elected in the manner as the State Legislature determines.

RESERVATION OF SEATS:

- This Act provides for the reservation of seats for Scheduled Castes (SCs) and Schedule Tribes (STs) 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.

RESERVATION OF SEATS…

- 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 woman belonging to SCs and STs). The Act also authorises the Legislature of a state to make provision for reservation of seats 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 (i) before the expiry of its duration of five years; or (ii) in case of dissolution, before the expiry of a period of six months from the date of its dissolution.
- But, where the remainder of the period is less than six months, it shall not be necessary to hold election for constituting the new panchayat for such period.

DISQUALIFICATIONS:

- A person shall be disqualified for being a member of panchayat if he is so disqualified 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 which is headed by a State Election Commissioner who is appointed by the Governor.

- The State Legislature makes provisions with respect to all matters relating to panchayat elections.

POWERS AND FUNCTIONS OF PANCHAYAT:

- The State Legislature empowers the panchayats to function as institutions of self-government.
- There will be decentralization of powers and responsibilities upon panchayats to prepare plans for economic development and social justice; and the implementation of schemes for economic development and social justice as entrusted to them.

FINANCES:

- The State Legislature authorises a panchayat to levy and collect taxes, duties, tolls and fees.
- The State Legislature provides grant-in-aid to the panchayats from the Consolidated Fund of the state.
- The State Legislature credits all money of the panchayats to the fund which is constituted in the panchayat level.

POWERS AND FUNCTIONSOF PANCHAYAT…

FINANCE COMMISSION:

- After every five years, the Governor of a state shall constitute the Finance Commission to review the financial position of the panchayats.
- The Finance Commission shall make the following recommendations to the Governor:

i) The principles that should govern the distribution of net proceeds of the taxes, duties, tolls and fees (levied by the state) between the state and panchayats.

ii) Taxes, duties, tolls and fees which may be assigned to the panchayats.

iii) The principles which should govern the grants-in-aid to the panchayats from the Consolidate Fund of the state.

iv) The measures needed to improve the financial position of the panchayats.

v) Any other matter referred to it by the Governor in the interests of sound finance of the panchayats.

POWERS AND FUNCTIONSOF PANCHAYAT…

AUDIT OF ACCOUNTS:

- The State Legislature makes provisions with respect to the maintenance of accounts by the panchayats and the auditing of such accounts.

COMPULSORY /OBLIGATORY/MANDATORY PROVISIONS OF 73rd CONSTITUTIONAL AMENDMENT-Act, 1992 :

i. Organisation of Gram Sabha in a village or group of villages.

ii. Establishment of Panchayats at the village, intermediate and district levels.

iii. Direct elections to seats in panchayats at the village, intermediate and district levels.

iv. Indirect elections to the post of chairperson of panchayats at the intermediate and district levels.

COMPULSORY PROVISIONS OF 73rd CONSTITUTIONAL AMENDMENT-Act, 1992 :

v. 21 years to be the minimum age for contesting elections to panchayats.

vi. Reservation of seats (both members and chairpersons) for SCs and STs in panchayats at all three levels.

vii. Reservation of one third seats (both members and chairpersons) for woman in panchayats at all three levels.

viii. Fixing tenure of five years for panchayats at all levels and holding fresh elections within six months if these are dissolved.

ix. Establishment of a State Election Commission for conducting elections to the panchayats.

x. Constitution of a State Finance Commission after every five years to review the financial position of the panchayats.

VOLUNTARY/DISCRETIONARY/OPTIONAL PROVISIONS OF 73rd CONSTITUTIONAL AMENDMENT Act, 1992 :

i. Giving representation to members of the Parliament and the State Legislature in the panchayats at different levels falling within their constituencies.

ii. Reservation of seats (both members and chairpersons) for backward classes in panchayats at any level.

iii. Granting powers and authority to the panchayats to make them autonomous bodies.

iv. Transfer of powers and responsibilities to panchyats to prepare plans for economic development and social justice.

v. Granting financial powers to the panchayats to levy, collect and appropriate taxes, duties, tolls and fees.

REASONS FOR INEFFECTIVE PERFORMANCE:

i. Lack of Adequate Devolution: Many states have not taken adequate steps to transfer 3 Fs (i.e., Functions, Funds and Functionaries) to the PRIs to enable them to discharge their function.

- Some states have also not implemented the steps recommended by State Finance Commissions to ensure the fiscal viability of the PRIs.

ii. Excessive Control by Bureaucracy: In some states, the Gram Panchayats have been placed in a position of subordination.

- Hence, the Gram Panchayat Sarpanches have to spend a lot of time visiting Block offices for funds and technical approval.
- These inter actions with the Block office staff alter the role of Sarpanches as elected representatives.

REASONS FOR INEFFECTIVE PERFORMANCE…

iii. Reluctance to use Fiscal Powers:

- An important power transferred to Gram Panchayat is the right to levy tax on property, business, markets, fairs and also for services provided, like street lighting or public toilets, etc.
- Very few panchayats use their fiscal power to levy and collect taxes.
- The panchayat heads argue that it is difficult to levy taxes in their constituencies, especially when they live in the community.

iv. Poor Infrastructure:

- A large number of elected representatives of PRIs are semi-literate or illiterate and know little about their roles and responsibilities, programmes, procedures, systems.
- Due to lack of good, relevant and periodic training, they are not able to perform their functions properly.

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MUNICIPALITIES (URBAN LOCAL SELF GOVT.):

- The system of urban local self government got constitutional status through the **74th CONSTITUTIONAL AMENDMENT Act. 1992**.
- The state governments are to adopt the new system of municipalities according to this Act which aims at strengthening the urban local self governments.

TYPES OF MUNICIPALITIES:

- According to this Act there are three types of municipalities in every state:

i. **NAGAR PANCHAYAT**: This is meant for a transitional area, that is, an area in transition from a rural area to urban area.

ii. **MUNICIPAL COUNCIL**: A Municipal Council is meant for a smaller urban area.

iii. **MUNICIPAL CORPORATION**: A municipal Corporation is meant for a larger urban area.

COMPOSITION OF MUNICIPALITY:

- All the members of a municipality shall be elected directly by the people of the municipal area. For this purpose, each municipal area is divided into territorial constituencies which are known as wards.
- The State Legislature provides the manner of election of the Chairperson of a municipality.
- It also provides for the representation of the following persons in a municipality.

i. Persons having special knowledge or experience in municipal administration without the right to vote in the meetings of municipality.

ii. The members of the Lok Sabha and the State Legislative Assembly representing constituencies which comprises wholly or partly the municipal area.

iii. The members of the Rajya Sabha and the State Legislative Council registered as electors within the municipal area.

WARD COMMITTEES:

- Ward committee consists of one or more wards within the territorial area of a municipality having population of three lakh or more.
- The State Legislature makes provision for the composition, constitution and the territorial area of a ward committee and how the seats in a ward committee shall be filled.

RESERVATION OF SEATS:

- The Act reserves 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 reserves not less than one-third of the total number of seats for women. It also reserves seats in favour of backward classes.

DURATION OF MUNICIPALITIES:

- The Act provides for a five-year term 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 before the expiry of its duration of five years; or 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 a member of a municipality if he is so disqualified under any law for the purposes of elections to the Legislature of the State concerned. 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 the preparation of electoral rolls and the conduct of elections of the municipalities shall be vested in the State Election Commission. The State Legislature makes all provisions relating to municipality election.

POWERS AND FUNCTIONS OF MUNICIPALITIES: The State Legislature empowers the municipalities to function as institutions of self-government.

- Accordingly, municipalities are empowered to prepare and implement plans for economic development and social justice .

FINANCES: The State Legislature authorises a municipality to levy, collect and appropriate taxes, duties, tolls and fees.

- It provides grant-in-aid to the municipality from the Consolidated Fund of the State.
- It also provides for constitution of funds for crediting all money of the municipality.

FINANCE COMMISSION:

- The Finance Commission shall review the financial position of municipalities and make following recommendation to the Governor:

i. The principles which should govern: a) the distribution between the state and municipalities, the net proceeds of the taxes, duties, tolls and fees levied by the state. b) the determination of the taxes, duties, tolls and fees which may be assigned to the municipalities.

ii) The measures needed to improve the financial position of the municipalities.

iii) Any other matter referred to it by the Governor in the interest of sound finance of municipalities

- The Governor shall place the recommendations of the Finance Commission along with the action taken report before the State Legislature.

AUDIT OF ACCOUNTS:

- The State Legislature makes provisions with respect to the maintenance of accounts by municipalities and the auditing of such accounts.

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(21)
THE INDIAN JUDICIAL SYSTEM: THE SUPREME COURT

THE SUPREME COURT:

- Indian constitution has established an integrated judicial system with the Supreme Court at the top and High Courts below it.
- 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 Central Laws and State Laws.
- The Supreme Court of India was inaugurated on 28th January 1950. Article 124 to 147 in Part-V of the constitution deal with the Supreme Court.

APPOINTMENT OF THE SUPREME COURT JUDGES:

- The Chief Justice is appointed by the President. It is the practice to appoint the senior most judge of the Supreme Court as the Chief Justice of Supreme Court.
- The judges of the Supreme Court are appointed by the President after consultation with the Chief Justice

QUALIFICATIONS OF JUDGES:

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

i. He should be citizen of India.

ii. (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; or

(c) He should be a distinguished jurist in the opinion of the President.

OATH 'or' AFFIRMATION:

- A judge of the Supreme Court, before assuming his office, has to take an oath before the President, or some person appointed by him for this purpose.
- In his oath, he swears:

i. To bear true faith and allegiance to the constitution of India;

ii. To uphold the sovereignty and integrity of India;

OATH…

iii. 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

iv. 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:

i. He holds the office until he attains the age of 65 years.

ii. He can resign his office by writing to the President.

iii. He can be removed from his office by the President on recommendation of the Parliament.

REMOVAL OF JUDGES:

- A judge of the Supreme Court can be removed from his office by an order of the President.
- The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.
- The address must be supported by a special majority of each house of Parliament (i.e., a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting).
- The grounds of removal may be proved misbehaviour or incapacity. The **Judges Enquiry Act, 1968**, regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment. No judge has been impeached so far.

SALARIES & ALLOWANCES OF THE JUDGES:

- The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament.
- These can not be changed to their disadvantage after their appointment except during a financial emergency.
- 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.

ACTING CHIEF JUSTICE:

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

i. The office of the Chief Justice of India is vacant; 'or'

ii. The Chief Justice of India is temporarily absent; 'or'

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

SEAT OF THE 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 as seat of the Supreme Court.
- He can take decision in this regard only with the approval of the President.

PROCEDURE OF SUPREME COURT:

- With the approval of the President, the Supreme Court can make rules for regulating 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.

INDEPENDENCE OF SUPREME COURT:

- The Supreme Court has been assigned a significant role in our 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 essential for the effective discharge of its duties.
- It should be free from the encroachments, pressures and interferences of the Executive and the Legislature.
- It should be allowed to do justice without fear or favour.
- The constitution has made the following provisions to ensure the independent and impartial functioning of the Supreme Court:

INDEPENDENCE OF SUPREME COURT…

i. MODE OF APPOINTMENT:

- The judges of the Supreme Court are appointed by the President in consultation with the Chief Justice of the Supreme Court and High Courts. This provision curtails the absolute discretion of the Executive. The judicial appointments are not based on any political or practical consideration.

ii. SECURITY OF TENURE:

- The judges of the Supreme Court are provided with the security of tenure.
- They can be removed from office 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.
- No judge of the Supreme Court has been removed so far.

INDEPENDENCE OF SUPREME COURT…

iii. 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.
- These can not 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.

iv. 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)

INDEPENDENCE OF SUPREME COURT…

V. CONDUCT OF JUDGES CAN NOT 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.

vi. 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.

INDEPENDENCE OF SUPREME COURT…

vii. POWER TO PUNISH FOR ITS CONTEMPT:

- The Supreme Court can punish any person for its contempt.
- Thus, its actions and decisions can not be criticised and opposed by any body.
- This power is vested in the Supreme Court to maintain its authority, dignity and honour.

viii. 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.

ix. ITS JURISDICTION CANNOT BE CURTAILED:

- The constitution has guaranteed various kinds of jurisdiction to the Supreme Court. However, the Parliament can extend the same.
- But the Parliament is not authorised to curtail the jurisdiction and powers of the Supreme Court.

x. 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 the executive authorities in the judicial administration came to an end.

JURISDICTION & POWERS OF SUPREME COURT:

- The constitution has conferred various kinds of jurisdiction and vast powers on the Supreme Court.
- It is not only a federal court but also a final court. 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 Supreme Court of India has more powers than any other Supreme Court of the world.
- The jurisdiction and powers of the Supreme Court are:

1. ORIGINAL JURISDICTION:

- As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation like

a) the Centre and one 'or' more states; 'or'

b) the Centre and any state or states on one side and one or more states on the other; or

c) between two or more states.

JURISDICTION & POWERS OF SUPREME COURT...

- In such 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 ways of appeal.
- In the original jurisdiction, following two points should be noted.

a) The dispute must involve a question related to law and the question of political nature are excluded from it.

b) Any suit brought before the Supreme Court by a citizen against the Centre or a state can not be entertained under this.

JURISDICTION & POWERS OF SUPREME COURT…

2. WRIT JURISDICTION:

- The Supreme Court is 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-warranto 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.
- The High Courts are also empowered to issue writs for the enforcement of the fundamental rights.
- The Supreme Court issues writs only for the enforcement of fundamental rights and not for other purposes but the High Court issues writs not only for the enforcement of the fundamental rights but also for other purposes.

JURISDICTION & POWERS OF SUPREME COURT…

3. APPELLATE JURISDICTION:

- The Supreme Court is primarily a court of appeal and hears appeal against the judgements of the lower courts. It enjoys the following appellate jurisdiction:

a) 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 requires the interpretation of the constitution.

b) CIVIL MATTERS:

- In civil cases, one can appeal to the Supreme Court from any judgement of a High Court if the High Court certifies that the case involves a law of general importance and it is to be decided by the Supreme Court.

JURISDICTION & POWERS OF SUPREME COURT…

c) CRIMINAL MATTERS:

- The Supreme Court hears appeals against the judgement in a criminal proceeding of a High Court if the High Court :

i. has on appeal reversed an order of acquittal of an accused person and sentenced him to death; 'or'

ii. has taken any case from any subordinate court and convicted the accused person and sentenced him to death; or

iii. certifies that the case is a fit one for appeal to the Supreme Court.

d) Appeal by Special Leave:

- It means one can appeal the Supreme Court from any judgement in any matter passed by any court or tribunal in the country except military tribunal and court martial.
- It may be related to any matter like constitutional, criminal, income-tax, labour, revenue, advocates, etc.

JURISDICTION & POWERS OF SUPREME COURT…

4. ADVISORY JURISDICTION 'or' CONSULTATIVE JURISDICTION:

- Article 143 of our constitution authorises the President to seek the opinion of the Supreme Court in following matters:

a) On any question of law or fact of public importance which has arisen or which is likely to arise.

b) On any dispute arising out of any pre-constitution treaty, agreement, sanand or other similar instruments.

- In the first case, the Supreme Court may tender or may refuse to tender its opinion 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 may be followed or may not be followed by the President. However, it is an authoritative legal opinion on a matter going to be decided.

JURISDICTION & POWERS OF SUPREME COURT...

5. A COURT OF RECORD: As a Court of Record, the Supreme Court has two powers:

i) The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records can not be questioned when produced before any court. These are legal references.

ii) It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to Rs. 2,000/- or with both.

6. POWER OF JUDICIAL REVIEW:

- Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactment and executive orders of both the Central and State Governments.
- On examination, if these are found to be violative of the constitution, these will be declared as illegal, unconstitutional and invalid by the Supreme Court. Consequently, these can not be enforced by the Government.

JURISDICTION & POWERS OF SUPREME COURT...

7. OTHER POWERS:

i) The Supreme Court decides the disputes regarding the election of the President and Vice-President. In this regard, it has the original, exclusive and final authority.

ii) It enquires into the conduct and behaviour of the Chairman and Members of Union Public Service Commission on a reference made by the President.

- If it finds them guilty of misbehaviour, it can recommend for their removal to the President. The advice tendered by the Supreme Court in this regard is binding on the President.

iii) The Supreme Court 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**.

JURISDICTION & POWERS OF SUPREME COURT...

iv) 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.

v) Its law is binding on all courts in India. Its order is enforceable throughout the country.

vi) It is the ultimate interpreter of the constitution. It can give final version of the provisions of the constitution and verbiage used in the constitution.

vii) The Supreme Court has power of judicial superintendence and control over all the courts and tribunals functioning in India.

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(22)

THE HIGH COURT

INTRODUCTION:

- In the integrated judicial system of India, the High Court operates below the Supreme Court but above the Subordinate Courts.
- The High Court occupies the top position in the judicial administration of a state.
- Article 214 to 231 in Part-VI of the constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the High Courts.

ORGANISATION OF HIGH COURT:

- Every High Court consists of Chief Justice and other judges. The President determines the strength of a High Court from time to time depending upon the workload.

Appointment of Judges:

- The Chief Justice and other judges of a High Court are appointed by the President after consultation with the Chief Justice of Supreme Court of India and the Governor of the concerned state.

ORGANISATION OF HIGH COURT…

Qualifications of Judges:

- A person, to be appointed as a judge of a High Court, should have the following qualifications:

i) He should be a citizen of India.

ii) He should have held a judicial office in India for ten years or he should have been an advocate of a High Court (or High Courts in succession) for ten years.

- The constitution has not prescribed a minimum age for appointment as a judge of a High Court.

Oath of Judges:

- Before entering upon the office, a person, who is appointed as a judge, has to make an oath before the Governor of the state or some person appointed by him for this purpose.

ORGANISATION OF HIGH COURT…

- In his oath, a judge of a High Court swears:

i) to bear true faith and allegiance to the constitution of India;

ii) to uphold sovereignty and integrity of India;

iii) 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

iv) to uphold the constitution and the law.

Tenure of Judges:

- A judge of a High Court holds office until he attains the age of 62 years.
- He can resign 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.

ORGANISATION OF 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 for such removal.
- The address must be supported by a special majority of each House of the 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.

ORGANISATION OF HIGH COURT…

PROCEDURE FOR IMPEACHMENT OF A JUDGE:

- The Judges Enquiry Act, 1968, regulates the procedure relating to the removal of a judge of a High Court/Supreme Court by the process of impeachment.
- A removal motion signed by 100 members (in the Lok Sabha) or 50 members (in the 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 (The Chief Justice/a judge of the Supreme Court, a Chief Justice of High Court and a distinguished jurist) to investigate into the charges.

ORGANISATION OF HIGH COURT…

- If the Committee finds the judge to be guilty of misbehaviour or suffering from 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.
- No judge of a High Court/Supreme Court has been impeached so far.

Salaries and Allowances of Judges:

- The salaries, allowances, privileges, leave and pension of the judges of a High Court are determined from time to time by the Parliament.

ORGANISATION OF HIGH COURT…

- These can not be changed to their disadvantage after their appointment except during a Financial Emergency.
- 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 compensatory allowance in addition to his salary.

ORGANISATION OF HIGH COURT…

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 the 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 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. However, the additional judge cannot hold office after 62 years of age.

INDEPENDENCE OF THE 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 pressures and interferences of the Executive 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:

i. Mode of Appointment:

- The judges of a High Court are appointed by the President in consultation with the Chief Justice of the Supreme Court and the Chief Justice of High Court. This provision curtails the absolute discretion of the Executive

INDEPENDENCE OF THE HIGH COURT…

ii. Security of Tenure:

- The judges of a High Court are provided with the security of tenure.
- They can be removed from the 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.
- So far, no judges of a High Court has been removed.

iii. 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.

INDEPENDENCE OF THE HIGH COURT…

- 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 .

iv. Expenses charged on Consolidated Fund:

- The salaries, allowances and pension of the judges, the salaries, allowances and pension of the staff as well as the administrative expenses of a High Court are charged on the Consolidated Fund of the state.
- Thus, these are non-votable by the State Legislature though these can be discussed by it.

iv. Conduct of Judges can not be discussed:

- The constitution prohibits any discussion in Parliament or in State Legislature with respect to the conduct of the judges except when an impeachment motion is under consideration.

INDEPENDENCE OF THE HIGH COURT…

vi. 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.

vii. Power to punish for its contempt:

- A High Court can punish any person for its contempt.
- Thus, its actions and decisions can not be criticised and opposed by anybody.
- This power is vested in a High Court to maintain its authority, dignity and honour.

INDEPENDENCE OF THE HIGH COURT…

viii. 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 also prescribes their conditions of service.

ix. 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 come to an end.

JURISDICTION & POWERS OF HIGH COURT:

- The High Court enjoys the following jurisdiction and powers:

i. 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 will, marriage, divorce, company laws and contempt of court.
- Disputes relating to the election of Members of Parliament and State Legislature.
- 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.

JURISDICTION & POWERS OF HIGH COURT…

ii. Writ Jurisdiction:

- Article 226 of the constitution empowers a High Court to issue writs including Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo-warranto for the enforcement of the Fundamental Rights of the citizens and for other purpose like enforcement of an ordinary legal right.
- When the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either to the High Court or to 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.

JURISDICTION & POWERS OF HIGH COURT…

iii. Appellate Jurisdiction:

- A High Court is primarily a court of appeal. It has 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.

iv. Supervisory Jurisdiction:

- A High Court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts). Thus, it may:

a) call for returns from them;

b) make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;

c) prescribe forms in which books, entries and accounts are to be kept by them; and d) settle the fees payable to the sheriff, clerks, officers and legal practitioners.

JURISDICTION & POWERS OF HIGH COURT…

V. Control over Subordinate Courts:

- High Court is consulted by the Governor in 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 question of law that requires the interpretation of the constitution.
- It can 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.

JURISDICTION & POWERS OF HIGH COURT…

vi. 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 cannot be questioned when produced before any subordinate court. These are recognised as legal references.
- It has power to punish for contempt of court, either with simple imprisonment or with fine or with both.

vii. 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 Govts.
- On examination, if they are found to be violative of the constitution, they can be declared as illegal, unconstitutional and invalid by the High Court.

JURISDICTION & POWERS OF HIGH COURT…

- The constitutional validity of a legislative enactment or an executive order can be challenged in a High Court if it infringes the fundamental rights ‘or’ if it is outside the competence of the authority which has framed it, ‘or’ it is opposed to the constitutional provisions.

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