

MKLIVE

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- ❖ **various**

Constitution

1. set of rules made for the smooth functioning of the country's governance system
2. primary law of the country

constitutionalism

1. governing according to the constitution
2. Government bound by the limits of the constitution
3. Mere existence of a constitution is not a guarantee of constitutionalism
4. constitutionalism the end and the constitution the means

constitutional government

- Government limited, controlled and restricted by law/constitution
- Merely having a constitution in the country is not a constitutional government.
- effective restriction on the power(s) of the state in the interest of individual liberty
- Fundamental Rights, Article 32 and Article 226 etc.

Article: Rules-laws written in the constitution

- set of binding rules made consistent with the constitution
- Constitution consists of articles while laws have sections.
- law must conform to the article
- rule must conform to law
- bye-law or exchange required to conform to the rule

Constitutional: mentioned in the constitution

Non-constitutional: Compatible with the constitution but not mentioned in the constitution

Statutory: Law passed by Parliament or Legislature

unconstitutional : against the constitution

State

- population
- fixed geographic area

- organized government
- sovereignty

difference between nation and state

- State a legal concept
- Whereas nation is a mental, imaginary and emotional concept.

Decision

- Security
- Development
- Justice

Government

Literal meaning: order or command; The process of issuing binding rules to create peace and order among the citizens living in a country or region is called governance.

Administration

The origin of the word administration due to the prefix 'P' in the word governance; 'Pra' means to rule in a specific way; In the modern sense, administration is the process of implementing the policies, plans and laws made by the government.

good governance

Creating and implementing policies for the welfare and development of the citizens in a better way by the government → Good governance

e-governance

Implementing government schemes and policies in a digital way → E-Governance

smart governance

Better policies designed and implemented to benefit more and more people through less resources come under smart governance.

sovereignty

- complete independence of a country from any external power or control of another country
- Independent operation of internal and external system of the country
- Sovereignty is not affected by India's membership of any international organization.
- For example, India's membership of the Commonwealth of Nations, a group of British colonial countries, has been criticized on the grounds that the head of this group is always the British monarch. Therefore, membership of the Commonwealth limits Indian sovereignty.
- Responding to this, Pt. Jawaharlal Nehru had said that 'this is an agreement made by India of free will, which can be voluntarily abandoned by India at any time'.

socialist

- Theoretically, socialism refers to state control over the means of production and distribution.
- 42nd Constitutional Amendment Act, 1976 → The word socialism in the Preamble
- D.S. Nakra vs Union of India (1983) → Indian socialism means ending poverty, hunger, neglect, inequality of opportunity etc.
- Democratic Socialism in India i.e. both private and public sector control over the means of production and distribution
- Character of Indian Socialism More towards Gandhian Socialism → Ending deprivation, neglect and inequality of opportunities

secularism

- Preamble → 42nd Constitution Amendment Act, 1976
- India has no religion
- Equal treatment by the government towards all religions

- No discrimination against any person on the basis of religion
- Government neutral in matters of religion
- Aruna Roy vs. Union of India (2002): The state should play an active role rather than being neutral in order to establish mutual harmony and fundamental unity among different religions.
- However, secularism was added to the Preamble of the Indian Constitution through the 42nd Constitutional Amendment Act, 1976. But this does not mean that India was not secular before this.
- In fact, the provisions mentioned under Article 15, Article 16, Article 25 to 28 and Article 325 etc. automatically explain the secular image of India.
- Through the 42nd Constitutional Amendment, only an attempt has been made to make this image more clear.

Democracy

- Government of the people by the people for the people
- Concept related to overall intellectual development of citizens
- Direct Democracy: Electing their own representatives by the public, eg MP, MLA
- Indirect Democracy: Election of supreme power by the representatives elected by the public, such as the President
- Although both types of democracy exist in India, but officially India is a country of indirect democracy.
- The reasoning behind this is that in the Constitution, the President has been considered as the head of the executive in India.
- The election of the President is done by the representatives elected by the people and not by voting directly by the people.

Right

- Socially accepted and legally recognized claims which are basic and indispensable for the all round development of a person.

fundamental right

- Rights provided under Part III of the Indian Constitution, whose violation can be claimed directly in the Supreme Court or High Court.

constitutional right

- rights mentioned in the constitution
- Like- fundamental rights;
- All fundamental rights are constitutional rights, but all constitutional rights are not fundamental rights;
- property rights

Legal Rights

- rights conferred on a person by making rules by the legislature
- Like- right to buy from public shops
- All fundamental and constitutional rights are legal rights, but all legal rights are not fundamental or constitutional rights.

civil rights

claims or rights derived from being a citizen of a country i.e. a legally recognized person

human rights

Rights derived from being a human being, which do not include any conditions like citizenship or geographical boundaries of the nation

Duty

- Responsibilities of a person as a citizen of a country or state
- Mostly moral in nature of duties but some duties are also legal.
- For example, it is a moral duty to protect the environment, but it is a legal duty to respect the national flag.

Legislature

body that makes laws; Parliament or State Legislature

executive

body that enforces laws made by the legislature (parliament or state legislature)

Judiciary

body that administers justice according to the laws made by the legislature and implemented by the executive

judicial review

Judiciary's power to examine the constitutional validity of laws made by the legislature and enforced by the executive

basic structure

- Basic provisions of the constitution which cannot be amended or abolished by the legislature.
- Because this can destroy the basic spirit of the constitution.
- Like- democracy, republic etc.

Equality

- general meaning of likeness
- For example, all men should be equal and all should get equal pay.
- But this is not possible in practice, nature has made everyone different from the point of view of color-form, shape-type, physical appearance, intellectual ability etc. Therefore, all the individuals in the society cannot be made equal.

Parity

- a political ideology of the modern era
- Origin Originally from the French Revolution of 1789
- John Locke first propounded the principle of equality scientifically in the 17th century.

- Equality means equal conditions in which different types of unequal individuals reside.
- There should be no privileged class in the society, everyone has equal opportunities for development

Fundamentals of equity

- equal treatment of people in similar circumstances
- equal opportunity for everyone to develop
- No discrimination on the basis of caste, religion, language, race, gender etc.
- All equal in terms of human dignity and rights
- The dignity of a peon is also equal to that of a District Magistrate.
- Special efforts can be made by the state for a particular class on rational and equitable grounds → Affirmative Action / Reservation

Power separation

- Propounded by the French thinker Montesquieu in the 18th century
- The powers of the three organs of governance are not vested in one organ but in different organs.
- Horizontal distribution of powers between similar levels of government (legislature, executive and judiciary)

separation of powers

- Division of powers between the centre, state and local bodies
- Comparatively, the center has the most and the local bodies have relatively less powers.
- Seventh Schedule of the Constitution

separation of powers

- Center stage
- state level

- local level

power balance

- At the top level of governance, neither any part should get excessive power that it becomes autocratic, nor should it be so weak that it becomes unable to discharge its responsibilities.
- Also proper control of all the three organs on each other so that they can exercise their powers within the constitutional scope.

unitary system

- All powers vested in the Centre;
- State or union units discharge their responsibilities as per the instructions of the center

federal system

- clear division of powers between the Center and the States;
- both independent in their respective jurisdictions

federation

- The union is the result of an agreement between the states and the states can secede from the union whenever they want.
- eg. America

union

- The union is not the result of any agreement between the states and the states have no right to secede from the union.

unitary system

- power center
- single constitution
- single citizenship
- Interstate and Regional Councils

- integrated judiciary
- Governor appointed by the President
- unequal representation of states in the upper house
- dependence of the states on the center

Federal system

- supremacy of constitution
- written constitution
- rigid constitution
- separation of powers
- supremacy of judiciary
- bicameral legislature

cooperative federalism

- Exponent: A. H. Birch (1955)
- Book: 'Federalism, Finance and Social Legislation'
- In cooperative federalism though the division of powers between the center and the states; But both do not work separately but work as each other's helper and complement.

cooperative federalism

- Cooperation and coordination between the Center and the States
- Decisive role of the Center in special circumstances
- provision of central funds to the states
- body for dialogue between center and states

Difference between union and center

- The word center is not used anywhere in the Indian constitution, but the word union is used

- Subordinate status of the states to the center while the feeling of co-operation and co-ordination between the different states and the central government in the union
- The 'centre' indicates a point in the middle of a circle, while the 'union' is the entire circle.

historical background

- Establishment of the East India Company in 1600 + 15-year trade permission from Queen Elizabeth I
- Diwani of Bengal, Bihar, Orissa in 1765
- Regulating Act of 1773
- Trade monopoly ended completely in 1833
- Government of India Act of 1858
- All India National Congress in 1885
- In 1934 M.N. Roy's first formal demand for a Constituent Assembly
- Formation of the Constituent Assembly in 1946
- Constitution came into force on January 26, 1950

Company rule (1773 to 1858)

- Regulating Act of 1773
- Bengal Judiciary Act, 1781
- Pitt's India Act of 1784
- Charter Act of 1813
- Charter Act of 1833
- Charter Act of 1853

Crown rule (1858 to 1947)

- Government of India Act, 1858
- Indian Councils Act, 1861
- Indian Councils Act, 1892

- Council of India Act, 1909
- Government of India Act, 1919
- Government of India Act, 1935
- Government of India Act, 1947
- Crown rule (1858 to 1947)

Regulating Act of 1773

- Governor General of Bengal ⇒ Warren Hastings First Governor General of Bengal
- Four-man council for assistance (Barwell, Clavering, Francis, and Manson)
- Establishment of Supreme Court at Calcutta (one Chief Justice + 3 other judges)
- Chief Justice Sir Elias Impey + three other judges Chambers, Lymester and Hyde
- Restrictions on private business of employees of the company
- taking a gift or a bribe is a punishable offense

Bengal Judiciary Act, 1781

- Regulating Act (1773) passed to remove defects
- This act is also known as the Settlement Act.
- The employees of the Company cannot be held liable in a court of law for any act done as a Government servant.
- The cases of Hindus will be decided according to Hindu laws and the cases of Muslims will be decided according to Islamic laws.

Pitt's India Act of 1784

- Separation of business and political functions of the company
- Constitution of Board of Control - control over political affairs
- Court of Directors - control over business activities

- For the first time, the area under the Company was called the British possession.
- It was clearly declared that the policy of expansion of the state in India was against the policy of the British nation.

In the colonial period in India, only two Acts explicitly rejected the policy of expansion of the empire by the British Government.

1. Pitt's India Act, 1784
2. Government of India Act, 1858

Charter Act of 1813

- Abolition of the Company's trade monopoly, except for trade with tea and China.
- The British company will spend one lakh rupees every year for the spread of literature and science.
- Freedom to practice Christianity in India

Charter Act of 1833

- Governor General of Bengal now Governor General of India
- William Bentinck 1st Governor General of India
- complete abolition of the company's trade monopoly
- Provision to end discrimination against Indians on the basis of religion, race, caste and color
- centralization in administrative matters

Charter Act of 1853

- Separation of legislative and administrative functions of the Governor General's Council for the first time
- Formation of new Central Legislative Council for Governor General
- Commencement of open recruitment competition for the selection of civil servants

- Local representation (Bengal, Madras, Bombay and Agra) in the Central Legislative Council for the first time

Government of India Act 1858

- The designation of the Governor General is now the Viceroy of India.
- Lord Canning first viceroy of India
- Dual system of Board of Control and Court of Directors ended
- Creation of a new post of Secretary of State for India (a member of the British cabinet)
- Formation of a 15-member council to assist the Secretary of India

Indian Council Act of 1861

- The process of involving Indians in law making started
- Three Indians nominated by the Viceroy in 1862
- Raja of Banaras, Maharaja of Patiala and Sir Dinkar Rao
- introduction of decentralization
- The Viceroy was allowed to issue ordinances without the recommendation of his council (six months).

act of 1892

- Members of the Legislative Council have the right to debate the budget and ask questions
- Accepting the principle of indirect election of states in the Legislative Council

Council of India Act, 1909 (Morley-Minto Reforms)

- In the Legislative Councils, the members have the right to ask supplementary questions and give their opinion regarding the budget.
- Decision to include an Indian in the Viceroy's Council (Executive) for the first time

- This is an important provision because the Act of 1861 decided to include Indians in the legislature.
- Whereas by the Act of 1909, the process of including Indians in the executive
- introduction of communal electorate for muslims

Government of India Act of 1919 (Montague-Chelmsford)

- Right to vote on the basis of education, property and tax
- Communal elections for Sikhs, Indian Christians, Anglo-Indians
- Establishment of partially responsible government in the provinces by direct election
- Provision for formation of Public Service Commission
- The budget of the states is separate from the center
- Dual rule in Provincial Legislatures i.e. transferred and reserved subjects
- The subjects which were given to the provinces were again divided into transferred subjects and reserved subjects.
- The governance of the transferred subjects was in the hands of the Governor (present day Governor).
- The governor used to make rules on these subjects with the help of his council legislature.
- On the other hand, the powers in respect of reserved subjects are with the Governor only.
- But he used to make rules on these subjects with the help of his executive.

Government of India Act of 1935

- Provision for establishment of All India Union
- division of powers between the center and the states in writing
- End of diarchy in the provinces while diarchy system started in the center
- Establishment of responsible government in the provinces
- bicameral legislature in provinces

Government of India Act, 1947

- The viceroy of the center while the governors of the states were declared the constitutional head of the state
- The Constitutional Head will act on the aid and advice of the Council of Ministers
- Declaration of the end of British sovereignty over India
- Provision for formation of two sovereign states namely India and Pakistan

2. Making of the Constitution

Demand for Constituent Assembly

- The first demand was made in 1934 by the leader of the leftist movement M.N. Roy
- For the first time in 1935, the Congress formally demanded a Constituent Assembly.
- Accepted by the British government through the August offer of 1940
- Muslim League's demand for two Constituent Assemblies was rejected by the Cabinet Mission in 1942.

Cabinet Mission, 1946

Peethic Lawrence, Sir Stafford Cripps and Alexander

- Framing the Constitutional Reforms in India
- setting up a provisional government at the center

Formation of Constituent Assembly on the basis of Cabinet Mission

- Determination of the number of members of the Constituent Assembly on the basis of population
- a system of electing one representative per million people
- Arrangement for nominating representatives from the princely states on the same basis

Initial formation of the Constituent Assembly

- Elections to provincial legislatures in December 1946 on the basis of the plan
- Congress will get a majority of about 70% of the seats.
- Seeing the weak position, the Muslim League decided to boycott the Constituent Assembly.
- The members of the Constituent Assembly were elected by the provincial legislatures.
- Constituent Assembly total 389 members
- According to the 1947 Act, the members of the Muslim League were excluded from the Constituent Assembly.

Final formation of the Constituent Assembly

total 324 members

- 235 members representatives of the British provinces
- 89 members from princely states

Hyderabad is a princely state whose representatives are not included in the Constituent Assembly.

Two major changes in the status of the Constituent Assembly by the Indian Independence Act, 1947

- Made the Constituent Assembly completely sovereign
- The Constituent Assembly also became the central legislature of India.

functioning of the Constituent Assembly

- Temporary President: Sachchidanand Sinha
- Permanent President: Dr. Rajendra Prasad
- Dr. H. C. Mukherjee and V. T. Krishnamachari, the two Vice Presidents of the Sabha
- The functioning of the Constituent Assembly is basically based on the objective resolution.

- Introduced in the Constituent Assembly by Pandit Nehru on 13 December 1946; Approved 22 January 1947
- The Objective Resolution later took the form of Preamble.

Grenville Austin pointed out that the approach of the Constituent Assembly of India was based on three principles-

1. unanimity
2. Adjustment
3. selection with change

1. Unanimity

The approach of the Constituent Assembly was mainly based on the principle of unanimity. Unanimous means that whatever decisions are taken, they are either taken unanimously or almost unanimously.

2. Adjustment

Adjustment refers to establishing coordination between two opposing ideologies. Some of the provisions of the constitution were adopted on the basis of the principle of adjustment.

3. Selection with Changes

- This principle was actually used in respect of those provisions which were adopted from the constitutions of other countries.
- Thus the approach of the members of the Constituent Assembly was based on the principle of 'choice with change' with respect to certain subjects. He Indianized various ideals and principles taken from foreign constitutions.

Constituent Assembly Committees

- Union Power Committee: Jawaharlal Nehru
- Provincial Constitution Committee: Sardar Vallabhbhai Patel
- Drafting Committee: Dr. BR Ambedkar

- Committee for States: Jawaharlal Nehru
- Steering Committee: Dr. Rajendra Prasad
- Committee on Basic Rights, Minorities and Tribals: Sardar Vallabhbhai Patel

factors that influenced the makers of the constitution

- historical background
- Personality and ideology of the members of the Constituent Assembly
- experiences of constitutions of different countries

There were three major ideas that influenced the makers of the Indian Constitution, on which the entire Constituent Assembly was unanimous.

1. establishment of socialism
2. Giving the center a more powerful role than the states
3. Adoption of concepts like democracy, equality, fair and adult franchise, secularism, freedom etc.

Influence of personality of constitution makers

The members of the Constituent Assembly can be mainly divided into four parts-

1. Gandhian ideology
2. Socialist ideology
3. Liberal ideology
4. unified ideology

Gandhian ideology

- Constitution of Panchayats
- Special provisions for the upliftment of backward classes
- personal freedom
- Promotion of rural and cottage industries through policy-directive elements

socialist ideology

- Evidence of Socialist Concept as Directive Principles of State Policy
- Social system based on socio-economic-political justice (Article 38)
- Equitable distribution of resources of production and distribution (Article 39)

liberal ideology

- The liberal approach had the greatest impact on the Indian Constitution.
- fundamental right
- religious freedom
- equal justice
- equality before law
- adult franchise

unified ideology

- Sardar Patel's most ardent supporter
- Priority to the unity and integrity of the nation
- Article 1
- establishment of a powerful center
- The Constituent Assembly of India studied the constitutions of 60 countries.
- Not only studied their constitutional provisions but also made a comparative study of the conditions of those countries and Indian conditions.
- It took 2 years 11 months 18 days to make the constitution of India.
- About 64 lakh rupees were spent in making the constitution of India.
- Dr. Ambedkar presented the final draft of the Constitution in the Constituent Assembly on November 4, 1948.
- This time the constitution was read for the first time.
- There was a general discussion on this in the assembly for 5 days.

- The consideration of the constitution started for the second time from 15 November 1948.
- In this, the constitution was considered section-wise.
- This work went on till 17 October 1949.
- During this period there were at least 7653 amendment proposals which were discussed in the Constituent Assembly.
- The consideration of the constitution started for the third time from 14 November 1949.
- In this, the draft resolution of the constitution was declared passed on 26 November 1949.
- It was signed by the Chairman and the members.
- Out of total 299 members in the House, 284 members were present on that day.

Sources of the Indian Constitution

Government of India Act, 1935

- Union System
- Judiciary
- Emergency Provision
- Governor's Office
- Public Service Commission
- Administrative Details

Britain

- Parliamentary system of government
- rule of law
- legislative process
- single citizenship
- cabinet system
- mandamus Writ

- parliamentary privilege
- bicameral legislature

America

- fundamental right
- independence of judiciary
- judicial review
- vice president
- Procedure for removal of Supreme Court and High Court judges
- impeachment of the president

constitution of canada

- federal system with a strong center
- vesting of residuary powers in the center
- Appointment of governors of states by the center
- advisory judgment of supreme court

constitution of ireland

- directive principles of state policy
- presidential election system
- Nomination of Rajya Sabha members

constitution of france

- Republic
- Liberty, Equality and Fraternity

constitution of south africa

- constitutional amendment process
- Election of members of Rajya Sabha

Why was the constitution implemented only on 26 January?

- Lahore Session of Congress in December, 1930

- Under the chairmanship of Pt. Jawaharlal Nehru
- Full independence resolution passed
- Decision to celebrate Complete Independence Day on January 26, 1931
- The central goal of the complete independence nationalist movement was set on this day.

In the constitution adopted on November 26, 1949

- Preface
- Article 395
- 8 schedules

Salient Features of the Constitution

- world's longest constitution
- good constitution
- received from different countries
- Rigid and Flexible System of Revision
- Combination of unitary and federal elements
- parliamentary system of government
- Integrated and Independent Judiciary
- Fundamental Rights, Directive Principles and Fundamental Duties
- Determining and Mentioning Centre-State Relations
- universal adult suffrage
- single citizenship
- emergency provision
- local government
- Special provisions for backward classes, scheduled castes, tribes

Schedules of Indian Constitution

1. About States and Union Territories
2. President, Vice President, Governor, Presiding Officer of Legislature

3. Oath
4. Allocation of seats in Rajya Sabha
5. Scheduled Area and Scheduled Tribe Area
6. Tribal Areas of Assam, Meghalaya, Tripura and Mizoram
7. division of powers only between the center and the states
8. languages
9. Land Reforms (First Amendment, 1951)
10. Defection (52nd Amendment, 1985)
11. Panchayat (73rd Amendment, 1992)
12. Municipality (74th Amendment, 1993)

preamble of the constitution

foreword

- nickname → introduction
- Constitutional Name → Preamble
- literal meaning → purpose

whose aim

- purpose of the framers of the constitution
- Purpose of the Indian Constitution

Means why the constitution has been made and what will be tried to achieve through this constitution?

- The functioning of the Constituent Assembly is basically based on the objective resolution.
- Introduced in the Constituent Assembly by Pandit Nehru on 13 December 1946
- Approved 22 January 1947
- The Objective Resolution later took the form of Preamble.

order of words in preface

We the People of India → Sovereign → Socialist → Secular → Democratic → Republic → Justice → Liberty → Equality → Unity and Integrity of the Nation → November 26, 1949 → Adopted, enacted and surrendered

The Preamble lays down three basic

- source of authority of the constitution
- Nature of Indian Polity
- purpose of the constitution

Four Basic Elements of Preamble

- Source of Rights in the Constitution: People of India
- Nature of India: Sovereign, Socialist, Secular, Democratic, Republic
- Objectives of the Constitution: Justice, Liberty, Equality and Fraternity
- Constitution came into force: 26 November 1949
- Berubari Sangh Case (1960): Preamble not a part of the Constitution
- Kesavananda Bharti case (1973): Preamble part of the Constitution
- LIC of India case (1995): The Preamble is an intrinsic part of the Constitution and the philosophy of the Indian Constitution
- Preamble is part of the constitution
- Modification possible without affecting the original structure
- Only One Amendment ⇒ 42nd Amendment ⇒ Socialism, Secular Integrity

union and its territory

- Article 1: India ie India 'Union of States'
- Article 2: Parliament has the power to reorganize the states
- Article 3: Mention of procedure regarding reorganization of states
- Article 4: Reorganization of States by Parliament through Ordinary Bill

Article 3

- Any bill regarding the reorganization of states is introduced in the Parliament only after the permission of the President.

- Vote of the concerned State Legislature before assent by the President
- Determination of the time limit for the vote of the State Legislature by the President
- The President is not bound to accept the views or recommendations of the State Legislature

States Reorganization Commission

- dar commission
- Dhar Commission
- JVP Committee
- Fazal Ali Commission

Reorganization of states not on the basis of language

- Dar Commission
- Dhar Commission (1948)
- JVP Committee (1948)

Fazal Ali Commission (1953)

basis of reorganization of states

- linguistic basis but not one state one language formula
- administrative basis
- cultural base
- economic base

citizenship

What is citizenship?

- does not include non-citizens
- To inculcate the spirit of nationalism among the citizens
- so that the welfare of its citizens is considered paramount by the state
- citizenship is an idea of denial
- Part : 2 Article 5 to 11

- single citizenship
- union list
- Parliament has the power to make laws regarding citizenship
- Originally these provisions were made for the time when the country was partitioned and the Constitution of India came into force.
- Citizenship rights of persons originally from Pakistan to India and persons migrating from India to Pakistan

Two principles of granting citizenship

- Jus Soli
- Jus Sanguinis
- citizenship by place of birth
- citizenship by blood relationship
- Motilal Nehru Committee, 1928 in favor
- racial idea ⇒ against ethos

Part : 2 Article 5 to 11

- Race
- Registration
- Naturalization
- coverage of area
- Birth

Methods of Renunciation of Citizenship in India

- Voluntary relinquishment: Relinquishment of Indian citizenship by will → Every minor child of that person also loses their Indian citizenship
- By dismissal: A person may be a citizen of only one country at a time; This provision does not apply when India is facing war.

- Deprived by Government: Violation of the Constitution / Citizenship obtained fraudulently / Out of India continuously for 7 years / Illegal trade or communication with the enemy during war

reason for people to renounce citizenship

People migrate from their countries for better employment and housing conditions and some migrate due to climate change or adverse political conditions in the country.

Citizenship (Amendment) Act, 2019

- Amendment to the Citizenship Act, 1955
- Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who came to India from Afghanistan, Bangladesh and Pakistan on or before December 31, 2014 are not illegal migrants
- According to the Global Wealth Migration Review, 2021-22, high-net-worth individuals around the world who renounce citizenship acquired at birth may do so because of rising crime rates or lack of business opportunities in the country.
- Other reasons include the safety of women and children, lifestyle factors such as climate and pollution, financial concerns including taxes, better health care for families and educational opportunities for children, and migration to escape oppressive regimes.

Overseas Citizenship of India (OCI)

- Launched in the year 2005 by Ministry of Home Affairs
- a person of Indian origin who became eligible to become a citizen of India after the 26th day of January, 1950; but has taken foreign citizenship after January 26, 1950
- Pakistan and Bangladesh are not in the definition of foreign

Benefits of OCI

- ease of passport
- bank account opening in india
- purchase of non-agricultural property
- driving license
- But no right to vote and government job
- No right to buy agricultural land

Persons of Indian Origin (PIO)

- person of Indian origin a person who is Indian by birth or descent but lives abroad
- Except Bangladesh, China, Afghanistan, Bhutan, Nepal, Pakistan and Sri Lanka
- 15 January 2015 = PIO card scheme has been merged with OCI.

Non Resident Indian

- Indian passport holder who resides in any other country for at least 183 days in a financial year and remains in India for the rest of the days
- NRIs have the right to vote
- Tax on income earned in India only

Pravasi Bhartiya Divas

- Every year on 9th January by the Government of India
- On this day (1915) Mahatma Gandhi returned home from South Africa.
- Celebration of this day started from the year 2003.
- Decision to organize Pravasi Bharatiya Divas once every two years from the year 2015

Importance

- To provide a platform to the overseas Indians to interact with the countrymen
- Connecting overseas Indians with Indian youth

fundamental right

- Part III The Magna Carta of the Indian Constitution
- The first written system of rights on a global scale under the Magnacarta by King John of England in 1215
- magna Latin word meaning great
- Carta Latin word meaning letter
- Emperor John's Magna Carta Originator of Fundamental Rights
- All rights included under the Bill of Rights in 1689
- In 1789, the first written fundamental rights were given by France, although they were called natural rights, not fundamental rights.
- After this, the fundamental rights were included in the American constitution as well.
- Fundamental rights in India are the most widespread and protected

Features of Fundamental Rights in Indian Context

- Gopalan v. State of Madras, 1950: Not Unlimited but Restricted on Reasonable Grounds
- Chiranjit Lal v. Union of India, 1951: Balancing Individual Interest and Social Interest
- Shamdasini v. Central Bank, 1952: Protection of Fundamental Rights against the State
- Golaknath v. State of Punjab, 1967: Natural and Irrevocable Rights
- Maneka Gandhi v. Union of India, 1978: The guarantor of the development of an individual's personality
- Prem Shankar v. Delhi Administration, 1980: Fundamental Rights as well as Human Rights
- M. Nagaraj v. Union of India, 2007: Constitutional Values Indispensable for a Free Society

Other Salient Features of Fundamental Rights in the Indian Context

- right of the state to impose reasonable restrictions
- both negative and positive
- amendable by parliament
- establishment of political democracy
- justifiable

Seven fundamental rights in the original Indian constitution

- Right to Equality (Articles 14-18)
- Right to Freedom (Articles 19-22)
- Right against Exploitation (Articles 23-24)
- Right to freedom of religion (Articles 25-28)
- Right to Culture and Education (Articles 29-30)
- Right to Constitutional Remedies (Article 32)

Samata treated the independent by teaching religion against exploitation

Equality ⇒ Right to Equality (Articles 14-18)

Swatantra ⇒ Right to Freedom (Articles 19-22)

Exploitation ⇒ Right against Exploitation (Article 23-24)

Religion ⇒ Right to Freedom of Religion (Articles 25-28)

Education ⇒ Right to Culture and Education (Articles 29-30)

Remedies ⇒ Right to Constitutional Remedies (Article 32)

Article 31: Right to Property

- 44th Constitutional Amendment Act, 1978
- with the aim of speeding up land reforms
- Constitutional Right under Article 300A

Fundamental Rights: Regarding citizens and non-citizens

- civilian only
- for all

- 15, 16, 19, 29, 30

Article 12

Article 12: Definition of State

- Parliament
- Government of India
- state legislature
- state government
- local authority

Article 12 and Judiciary

- Naresh v. State of Maharashtra (1967): The Supreme Court did not clearly state whether the Judiciary comes under the definition of the State under Article 12 or not?
- A. R. Antulay Vs. S. Nayak (1988): Does it matter whether the judiciary comes under the definition of the state or not? But the judiciary can.
- Current system: Judiciary is not in the definition of the state, but in spite of this, it is bound to protect the fundamental rights of the citizens and exercise its powers within the framework of the constitution.

'authority'

Ajay Hasia vs. Khalid Mujeeb (1981)

- Every group that gets salary from the government
- Power to issue judgments and make decisions binding
- power to impose fines

Article 13

- Parliament shall not make any law which violates the fundamental rights of the citizens.
- If Parliament makes any such law, it will be void to the extent it violates the fundamental rights.

- Amendment of the constitution not within the definition of law
- includes any custom, custom, rule and ordinance having the force of law

Article 13 not to have retrospective effect

Keshav Madhav v. State of Maharashtra (1951)

- Those laws which violate the fundamental rights in India before the constitution came into force, are not automatically void, but they will be considered void only when the Supreme Court or the High Court declares such laws as void.
- This means that laws like IPC, CRPC which were made before the constitution came into force and still exist today, any provision of these laws which is against part-3 or despite being against the constitution, will continue to be applicable, as long as The competent court does not declare it illegal.

principle of severability

Gopalan v. State of Madras (1950)

- If any law violates the fundamental rights, then the entire law should not be declared void, but only that part of the law which is against the fundamental rights should be declared void.
- The rest of the law, since it is not against the fundamental rights, will continue to exist.

principle of coverage

Bhikaji v. State of Madhya Pradesh (1955)

- In relation to those laws which were made before the formation of the constitution and are still in force
- Such laws existing before the constitution came into force or such parts of those laws which are still in force and have become void due to being against the fundamental rights, in fact they are not void or repealed.

- Such laws overshadow the fundamental rights and become ineffective.
- Over time, when that part becomes compatible with the fundamental rights or the constitution through constitutional amendment or amendment in those laws, then they become active and effective again.

Article 14

- Equality before law and equal protection of laws
- The State shall not deny to any person equality before the law or the equal protection of the laws

equality before law

- negative reference
- british concept
- lack of privilege in favor of any person
- equal treatment of all persons
- supremacy of law

equal protection of law

- american concept
- positive reference
- equal treatment under equal circumstances
- uniform application of the same law to all persons

Supreme Court's interpretation

- Article 14 does not apply where there is a different treatment between equals and unequals.
- accepted rational classification
- Classification discretion should be zero, not artificial
- A law made or enacted by the legislature or the executive does not confer unfettered powers on any officer to enforce that law.

- That is, the law can be enforced to the same extent and to the same extent, to which extent or extent the competent authority has been empowered to enforce it.
- In other words, applying the law in an indiscriminate or unbridled manner violates Article 14.

Article 15

- Prohibition of discrimination on grounds of religion, race, caste, sex, place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

15(2): No citizen on grounds only of religion, race, caste, sex, place of birth or any of the-

(a) Admission to shops, public restaurants, hotels and places of public entertainment

(b) not subject to any disqualification, liability, restriction or condition in respect of the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated for the use of the general public Will happen.

(3) Special provisions may be made by the State for women and children.

(4) State can make special provision for socially and educationally backward classes and SC/ST. First Constitution Amendment Act, 1951

(5) The State may make provision for reservation in government and private educational institutions for the socially and educationally backward classes and the OBCs. 93rd Constitutional Amendment Act, 2005

(6) The state can make special provisions for the advancement of economically backward classes, as well as provide them reservation for admission in

government and private educational institutions. But this type of reservation should not exceed ten percent. 103rd Constitution Amendment Act, 2019

the explanation

Economically backward class in terms of Article 15 and Article 16 shall be such as may be classified by the State from time to time by law on the basis of family income, economic disadvantage and other indicators.

Article 16

(1) Equality of opportunity for all citizens in the matter of public employment under the State

(2) No person shall be discriminated against by the State in respect of Government employment on grounds only of religion, race, caste, sex, origin, place of birth, residence or any of them

(3) The State may, by law, add the condition of 'residence' to any Government service.

(4) Provision of reservation for 'backward classes' on the basis of inadequate representation in state government services

(4A) The State may provide reservation in promotion in Government services for SC & ST. 77th Constitutional Amendment Act, 1995

(4B) The rule of carry forward in relation to reservation, the limit of 50 percent of reservation will not be applicable in this regard i.e. carry forward reservation will be considered as separate. 81st Constitutional Amendment Act, 2000

(5) The State may impose a condition regarding the appointment of a person to any post in a religious institution, belonging to a particular religion.

(6) The State may make provision for reservation of maximum ten percent in government jobs for the economically backward classes. 103rd Constitution Amendment Act, 2019

Valsamma Pal v. Cochin University (1996)

If a woman or man of a higher caste marries a woman or man of a backward caste, the upper caste man or woman will not get the benefit of reservation, nor will the woman or man of the backward class be deprived of reservation.

Transgender Rights Protection Council v. Union of India (2016)

- The word 'gender' mentioned in Article 14, 15 and Article 16 does not mean only male or female, it also includes transgender.
- The scope of 'gender' cannot be tested only on the basis of biological sex, but it also includes people who consider themselves neither male nor female or they are not so naturally.

Entry of women in Sabarimala temple

Supreme Court (2020) → Women of all ages are allowed to enter the temple

Article 17

- no untouchability with any person
- such behavior punishable by law

Untouchability (Offences) Act, 1955

- Provision to punish those who practice untouchability in any form
- came into force with effect from 1st June, 1955,
- But based on the recommendations of the Elaya Perumal Committee constituted in 1965, amendments were made in 1976.
- The name was changed to the Protection of Civil Rights Act, 1955.

Article 18

- end of titles
- No title awarded by the state other than a military or military honor
- No title shall be accepted by any citizen of India from any other country without the permission of the President

Article 19

Article 19(1)

- freedom of thought and expression
- Freedom to assemble and assemble peacefully without arms
- Freedom to form associations or unions or co-operative societies (97th Constitutional Amendment, 2011)
- Freedom of movement in any region of the country
- Freedom to reside in any region of the country
- Freedom to run any business and livelihood
- There is no mention about acquisition or disposal of property in Article 19.
- Only freedom to work for earning livelihood is mentioned.

Article 19 not absolute

- India's sovereignty and integrity
- state security
- friendly relations with foreign states
- public order
- ethics
- contempt of court
- defamation
- abetment of a crime

Delhi Shaheen Bagh Case (2020)

Public places or public places cannot be occupied to protest.

strike and shutdown

Kerala High Court → In the case of Bharat Kumar (1997)

- Right to strike is a fundamental right under Article 19, but prohibited illegal acts

- The right to strike depends on the discretion of a person to express his desire not to do any work in protest against the state or the government.
- But the right to stop is a negative expression, in which other persons are forced not to do something by force.

Article 20

1. Conviction only once for a crime (double jeopardy or protection from double prosecution)
2. Punishment will be given according to the law in force at the time of the crime.
3. No person shall be compelled to testify against himself in a court of law.

punishment according to the law in force at the time of the commission of the offense

This provision is applicable only in respect of criminal cases and not in respect of civil cases i.e. in civil cases the person can be punished as per the new law.

Some Latin words with reference to fundamental rights

- Audi Alterum Partem: The other side should also be heard ⇒ Fair hearing
- Non Bis In Idem: A convicted person cannot be prosecuted again for the same case.
- Autrefva aquit: Punishment for one offense only once
- Autrefwa Convict: No trial in different courts for the same offense

Article 21

No person can be deprived of his life and personal liberty except according to procedure established by law

procedure established by law & due process of law

- The process established by law means the system established in writing by the constitution or other laws consistent with the constitution.

- On the other hand, due process of law refers to the system established by the court, whose conclusion or basic sense the judge receives during the hearing of a case.

Gopalan v. State of Madras, 1950

- The law made by the legislature to deprive a person of his life and bodily liberty must be reasonable,
- Along with this, that law should also be implemented in a logical manner by the executive.
- Shripati Dubal v. Maharashtra (1987): Suicide Violates Article 21
- Gyan Kaur v. State of Punjab (1996): Article 21 Right to live with human dignity
- Aruna Shanbaug v. Union of India (2011): Right to euthanasia not covered under Article 21
- Gopalan v. State of Madras, 1950: Article 21 protection against both the legislature and the executive
- National Human Rights Commission v. State of Arunachal Pradesh, 1996: Article 21 provides for both citizens and non-citizens
- Malik Singh v. State of Punjab, 1981: Article 21 also includes right to privacy
- People's Union for Civil Liberties v. Union of India, 1997: Phone Tapping Violates Right to Privacy
- Satwant Singh v. Assistant Passport Officer, New Delhi, 1967: Right to travel abroad in Article 21
- Francis Corelli v. Union of India, 1981: Right to live with human dignity
- Mohini Jain v. State of Karnataka, 1992: Right to Elementary Education
- S. P. Mehta v. Union of India, 1986: Right to a Clean Environment
- Subhash Kumar v. State of Bihar, 1991: Right to enjoy pollution free water and air

- Visakha v. State of Rajasthan, 1997: Directives relating to the safety of women at the workplace
- Naz Foundation v. Government of National Capital Territory of Delhi, 2009: Constitutional recognition of same-sex relationships between two adults, struck down the part of Section 377 that criminalized same-sex relationships, holding them to be contrary to Articles 14, 15 and 21.
- Shreya Singhal vs. Union of India, 2015: Section 66A of the IT Act (freedom of thought and expression on social media) against freedom of thought and expression in Article 19; Because section 66A gives unlimited freedom
- Shayra Bano v. Union of India, 2017: Triple Talaq illegal

Other important rights under Article 21

- Right to marry by mutual consent with the man or woman of one's choice
- right to speedy trial
- Right of working women to protection from sexual exploitation
- Right to cremation of unclaimed dead with dignity and decency
- Right to rehabilitation of beggars
- Right to be protected from smoking
- Right of students to protection from ragging
- Right to maintain women's dignity in beauty pageants
- right to power
- Right to protection from handcuffs, fetters and solitary confinement
- right to sleep

Article 21(A)

- The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine

86वां संशोधन अधिनियम, 2002

अनुच्छेद 22

- protection from detention and arrest
- right to know the reason for the arrest
- right to consult a lawyer
- Right to appear before Magistrate within 24 hours
- Article 22 also provides protection to persons who are under house arrest.
- To detain means to take into custody before committing a crime, so that the person cannot commit that potential crime.
- No person can be kept under house arrest by the State for more than 3 months.
- If for some reason the detention is to be done for more than 3 months, then for this the formation of an advisory board, in which some judges of the High Court will be there.
- That person will be kept in custody for more than 3 months only if this board advises otherwise

Article 23

- Prohibition of Human Trafficking and Forced Labor
- Exception: The State may take compulsory service for public purposes,
- Example ⇒ Social Service

Article 24

- The State shall not employ children below the age of 14 years in any factory, mine or other hazardous activities.
- This restriction does not apply with respect to actions that do not cause harm.

Article 25

Freedom of all individuals to profess, practice and express religion

two clarifications

- Freedom for Sikhs to wear saber
- The word 'Hindu' also includes Sikhs, Jains and Buddhists.

Article 26

- Freedom of each community to manage its religious activities
- For example, buying or selling any movable or immovable property in relation to religious works.

Article 27

- State cannot impose any tax on any person for promoting any particular religion.
- It also means that the state cannot impose taxes on the basis of religion.

Article 28

- Freedom of religious and linguistic minorities to open and manage schools
- Any minority group can run an educational institution of their choice and the government will not discriminate in any way in giving grants to them.

Article 29

Right of religious & linguistic minorities to preserve their dialect, language script, culture

Article 30

- धार्मिक एवं भाषाई अल्पसंख्यकों को विद्यालय खोलने एवं उनका प्रबंधन करने की स्वतंत्रता
- कोई भी अल्पसंख्यक वर्ग अपनी पसंद की शैक्षणिक संस्था चला सकता है और सरकार उसे अनुदान देने में किसी भी तरह का भेदभाव नहीं करेगी

Article 31(A) & Article 31(C)

- As per Articles 31(a) and 31(c) no law made by Parliament to carry out the provisions contained in Article 39(b) and Article 39(c) can be challenged merely on the ground that it Violates Article 14 and Article 19.
- However, if any fundamental right other than Article 14 or Article 19 is violated, the court can declare that law void.
- For example, if any such law of the State violates Article 14 as well as Article 15, then that law will be void.
- According to Article 39(b), the state shall ensure the allocation of material resources in such a way that it benefits every section of the society.
- According to Article 39(c), the state will conduct its economy in such a way that the resources of production and distribution are not controlled by any one section of the society, but all the sections of the society have proper control.

Article 32

- right to constitutional remedies
- Dr. Ambedkar → An article without which the constitution is meaningless, it is the soul and heart of the constitution.
- Power of Supreme Court to issue 5 types of writs for enforcement of fundamental rights
 1. habeas corpus
 2. mandate
 3. Prohibition
 4. inducement
 5. authorization query

habeas corpus

- Literal meaning: you have body
- against forcible detention of a person
- Can be issued against public authorities or individual and both.

Mandamus

- we order
- Not issued against private person, private body, President or Governor

Prohibition

- issued against a judicial or quasi-judicial body
- restraining a subordinate court from encroaching upon its jurisdiction

Certiorari

- issued against a judicial or quasi-judicial body
- Writ of prohibition is issued when a proceeding is in progress, whereas writ of prohibition is issued for the purpose of ending the judgment after the proceedings are over.

Quo Warranto

- 'What is your authority?'
- Issued against a person holding a public office

Difference between writ jurisdiction of Supreme Court and High Court

- The Supreme Court can issue writs only in case of violation of fundamental rights.
- High Court for any other purpose
- Effect of writ jurisdiction of Supreme Court throughout India
- Extension of writ jurisdiction of the High Court to the limits of the State concerned
- SC can issue Prohibition and Prohibition writs against HC, but HC cannot against SC

Article 33

Power of Parliament to reasonably restrict the fundamental rights of the armed forces, paramilitary forces, police forces, intelligence agencies and others.

Notes

Martial law is invoked in exceptional circumstances such as war, disturbance, riot or violation of law etc.

Article 34

- Power of Parliament to impose restrictions on fundamental rights when martial law is in force
- Objective: To maintain discipline and proper functioning of the Armed Forces.

Article 35

- Parliament alone has power to legislate to give effect to the fundamental rights
- Empowering Supreme Court and High Courts to issue directions, orders, writs for enforcement of fundamental rights

fundamental rights and emergency

- Article 358: If national emergency is implemented only on the basis of war or external aggression, then the implementation of Article 19 is automatically suspended.
- Article 359: During National Emergency, the President can suspend the enforcement of any fundamental right except Article 20 and Article 21.

Directive principles of state policy

Directive principles

- Part 4: Articles 36 to 51
- Concept of the Irish Constitution
- Establishment of social and economic democracy
- non-justiciable
- Ethical Instructions for Governments

- Grenville Austin has described the Directive Principles as motivated by the objective of furthering the development of social exclusion.
- Grenville Austin has described the Directive Principles as motivated by the objective of furthering the development of social exclusion.
- Article 36: Definition of State
- Article 37: It is not legally binding on the government to implement the Directive Principles of Policy, but it must be morally
- Article 38: The State shall endeavor to establish a social order based on justice for social, economic and political welfare.
- Article 39: : Equal opportunities for living for men and women, equal pay for equal work, equal distribution of wealth and means of production in the society
- Article 39A: Equal and free legal aid to all
- Article 40: The state will make efforts for the formation of village panchayats
- Article 41: The state will try to ensure public assistance in conditions of deprivation like work, education as well as old age, illness
- Article 42: Equitable work and maternity relief
- Article 43: The state will try to secure the minimum wages and the interests of the workers
- Article 43 A: Efforts for the participation of workers in the management of industries
- Article 44: The State shall endeavor to adopt a Uniform Civil Code
- Article 45: The State shall endeavor to provide free and compulsory education to all children until they complete the age of 14 years
- Article 46: Protection of the interests of weaker sections of the society and SC, ST
- Article 47: The state will endeavor to provide high level of nutrition to the people and public health

- Article 48: Responsibilities of the state in the direction of agriculture and animal husbandry
- Article 48A: Protection of environment and protection of wildlife etc.
- Article 49: Protection of monuments etc. of national importance
- Article 50: Separation of Executive - Judiciary
- Article 51: The state will endeavor to promote international peace

42nd Constitutional Amendment, 1976

- Article 39A
- Article 43A
- Article 48A

44th Constitutional Amendment, 1978

Article 38 (1): Efforts by the state to promote public welfare

97th Amendment Act, 2011

Article 43B

Fundamental Rights and Directive Principles

Minerva Mills v. Union of India (1980)

- both complement each other
- The aim of both is to establish social, economic and political democracy.

fundamental duty

fundamental duty

- Concept of the Constitution of the Soviet Union
- Sardar Swaran Singh Committee (1976)
- 42nd Constitutional Amendment Act, 1976
- Part 4A: Article 51(A)
- non binding
- Verma Committee (1999): Recommendation to make binding

- follow the constitution
- Following the ideals of the national movement
- Defense of India's sovereignty, unity, integrity
- defense of the country
- brotherhood for all
- Understand the importance of the glorious tradition of Samasik (mixed) culture and its preservation
- protect the natural environment
- scientific approach
- protect public property
- Striving for excellence in all areas
- Primary education for children of 6 to 14 years (86th amendment, 2002)

constitutional amendment

- part 20
- Article 368
- Concept of the Constitution of South Africa

Constitution-amendment process under the Indian Constitution

- special majority
- Special majority + permission of half the states
- Constitution amendment bill introduced in either house of the parliament
- Prior approval of the President is not necessary to introduce amendment bill.
- The amendment bill cannot be presented in the State Legislature, that is, the process of amending the Constitution cannot be initiated by the State Legislatures.
- The constitution amendment bill is required to be passed by both the houses of the parliament separately.
- No provision for joint meeting in case of deadlock

- The President is bound to give assent to the amendment bill after it is passed by the Parliament. (Cannot return for reconsideration)
- In cases where the vote of the State Legislatures will be sought, a simple majority of each State Legislature will be required.
- At least half of the State Legislatures shall be put to vote only in respect of those Constitutional Amendment Bills which affect the federal structure of the Constitution.

Basic Structure

Basic Framework and Judicial Review

- Article 13
- Article 368
- Supreme Court
- judicial review

Shankari Prasad v. Union of India, 1951: Amendment of Fundamental Rights

Sajjan Singh v. State of Rajasthan, 1965: Amendment of Fundamental Rights

Golaknath v. State of Punjab, 1967: No amendment of fundamental rights

Kesavananda Bharati v. State of Kerala, 1973: Concept of Basic Structure

Minerva Mills v. Union of India, 1980: Judicial Review

Vamana Rao v. Union of India, 1981: Ninth Schedule subject to judicial review

emergency provision

adopted from the constitution of Germany

Part 18: Articles 352 to 360

- Article 352
- Article 356
- Article 360
- national emergency

- constitutional emergency
- financial emergency

Article 352

- Nickname: National Emergency
- Three Grounds: War, External Aggression or Armed Rebellion
- 44th Amendment (1978) → Armed rebellion instead of internal disturbance
- Proclamation of emergency only on the written recommendation of the cabinet
- Proclamation of emergency needs to be supported by the Parliament by a special majority within one month
- Emergency continues for 6 months at a time
- the exercise of the executive powers of the state by the union
- Parliament has the power to make laws on the subjects of the State List
- Financial relations between the Center and the States suspended
- Extension of term of Lok Sabha/Vidhan Sabha for one year at a time
- Fundamental rights given in Article 19 automatically suspended (Article 358)
- While the President can suspend other fundamental rights except Articles 20 and 21 (Article 359)

38th Constitutional Amendment, 1975

- The proclamation of emergency made by the President under Article 352 was taken out of the purview of judicial review.

44th Constitutional Amendment, 1978

- In Article 352, the word 'internal disturbance' was removed and 'armed rebellion' was added.
- System of declaring national emergency by the President only on the basis of written recommendation of the cabinet

- emergency under judicial review

Till now national emergency has been implemented three times.

1. October 1962 to January 1968 - Due to Chinese invasion of NEFA (North-East Frontier Agency) region of Arunachal Pradesh in 1962
 2. Causes of Pakistan's undeclared war against India from December 1971 to March 1975
 3. On the grounds of internal disturbance from June 1975 to March 1977
- Article 352 is the only article of the constitution where the word cabinet is mentioned.
 - Use of the word Council of Ministers in other places
 - We will study the difference between Cabinet and Council of Ministers later in this class.

Article 356

- Common Name: President's Rule
- If the President feels or finds through the report of the Governor that the constitutional machinery has failed in a state, then constitutional emergency is applicable.
- The approval of the Parliament is necessary for the declaration of constitutional emergency within two months, otherwise such declaration automatically expires after two months.
- During constitutional emergency, the Union gets powers on the subjects of the State List;
- Constitutional emergency implemented for 6 months after getting the permission of the Parliament;

Under what circumstances President's rule can be imposed?

1. When the constitutional machinery of the state fails completely
2. The state government should not fulfill its constitutional obligations

3. No party or alliance should get majority after assembly elections
4. assembly could not elect the chief minister
5. the largest party should refuse to form the government
6. Ruling coalition breaks down and government loses majority

Dissolution of the Legislative Assembly is not the right to impose President's rule.

44th Constitutional Amendment, 1978

- The three-year limit on President's rule under Article 356 was abolished.
- Along with this, a provision was made that the President can remain in force in a state for a maximum period of one year.
- President's rule will not be implemented after three years under any circumstances.

Two conditions for extending the period of one year

1. When Emergency is in force under Article 352
2. The Election Commission should certify that it is not possible to hold elections in the state at present.

S. R. Bommai v. Union of India (1994)

- Review of any type of emergency by the court
- Emergency ended arbitrarily on illogical or narrow political grounds, even by the courts.
- Along with this, the state council of ministers dissolved by the center was also reinstated by the court.
- President's rule in India more than 100 times in different states so far
- Maximum 10 times in Manipur and 9 times in Uttar Pradesh

Article 360

- financial emergency
- suspension of financial relations between the center and the states
- Effective and unilateral powers with respect to finance to the Center

- Deduction in salary of any employee or officer holding public office (including courts)
- Financial emergency has not been implemented even once in India.

parliamentary and presidential systems of government

Parliamentary System / Cabinet Government

Features of parliamentary system

- Dual Executive → Nominal and Real
- Formation of Council of Ministers by the majority party
- council of ministers collectively responsible to the legislature
- dual membership of the legislature and the executive

Features of parliamentary system

- Cooperation in Legislature and Executive
- responsible government
- Stop the despotic tendencies of the executive
- system of alternative government
- political uniformity

disadvantages of parliamentary system

- unstable government
- uncertainty of policies
- Autocracy of the cabinet (in case of clear majority)
- against separation of powers
- defection problem

Why was the parliamentary system adopted in India?

- huge population of india
- prioritizing responsible government
- experience of parliamentary system

Difference between parliamentary system of India and Britain

Britain

- monarchy
- supremacy of parliament
- Membership of the lower house is mandatory for the prime minister
- titular role of emperor

India

- Republic
- supremacy of constitution
- Membership of the Parliament (either of the two houses) is mandatory for the Prime Minister.
- some discretionary powers of the President

Kesavananda Bharati v. State of Kerala, 1973

Parliamentary form of government part of the basic structure of the constitution

presidential system

Features of presidential system

- single executive
- Separate election of legislature and executive
- Council of Ministers responsible to the public
- Single membership of the legislature/executive

Features of presidential system

- fixed tenure
- stable government
- certainty in policies
- Wide opportunities for formation of executive

demerits of presidential system

- उत्तरदायित्व का अभाव
- कार्यपालिका-विधायिका में समन्वय का अभाव
- राष्ट्रपति की निरंकुशता का भय

parliamentary and presidential systems of government

Centre-State Relations

1. seventh schedule
2. part 11
 - legislative relationship
 - administrative relations
 - financial relationship
3. Article 245 to Article 293

Article 246(1) : Union List (100) : Parliament

Article 246(2) : Concurrent List (52) : Both

Article 246 (3) : State List (61) : States

Article 248 : Residuary : Parliament

Under the 42nd Constitutional Amendment Act, 1976, 5 subjects were transferred from the State List to the Concurrent List.

- Education
- Forest
- measurement
- protection of wildlife and birds
- administration of justice
- Only one list for the division of power between the Center and the States in the US Constitution
- While the Constitution of Australia mentions two lists of the separation of powers

Why more powers to the Centre?

- historical basis
- unity and integrity of the country
- Experience of integration of princely states
- Strong center necessary for national development
- Establish policy and administrative uniformity

Union of India vs. Mohd. Aslam case, 2011

- In the federal system of India, the states are also equal partners with the center.
- Therefore, its administrative power cannot be used arbitrarily by the center.

Centre-State Legislative Relations

- Article 249: Power of Parliament to legislate for one year on a subject in the State List of Central Importance
- Article 250: Power of Parliament to legislate on the subject of the State List in National Emergency (for any State of India)
- Article 252: Power of Parliament to legislate on the subject of the State List on the request of two or more states
- Article 253: Power of Parliament to legislate on subjects in the State List to comply with international treaty or law
- Article 254: In the event of a conflict between a Central and a State law on a subject in the Concurrent List, the Central law shall prevail and the law made by the State Legislature shall be void to the extent of the conflict.
- Article 254 (2) → If there is a deadlock between the laws of the Parliament and the State Legislature regarding the Concurrent List, but the law of the State Legislature is approved by the President, then the law of the State Legislature will prevail.
- However, if the Parliament wishes, it can amend or repeal (cancel) this law made by the State Legislature.

Centre-State Administrative Relations

- Article 256 to 263
- Unlike the legislative provisions in the constitution, there is no clear mention of administrative relations.
- Article 256: Use of state executive power as an aid to the implementation of parliamentary laws
- Article 257: Exercise of the executive power of the state in such a way that it does not obstruct the powers of the central executive
- Article 258: Handing over the functions of the Central Executive to the State with the consent of the State Government
- Article 260: By agreement, the central executive can exercise the executive powers of another country in relation to that country
- Article 260: By agreement, the central executive can exercise the executive powers of another country in relation to that country
- Article 261: Confidence will be given in the public work done by the Central Government and the State Governments throughout the country → Relations between the governments and the people of the country
- Article 262: Power of Parliament to make laws for settlement of inter-state river water disputes + cannot be challenged in court
- Article 263: Power of the President to form an Inter-State Council to remove tension and deadlock between various states and the Center and the states

Centre-State Administrative Relations: Other Provisions

- Article 155: Appointment of the Governor by the President
- Article 365: Failure of the State to implement the directions of the Central Executive means failure of the constitutional machinery in that State

Centre-State Financial Relations

- Article 266: Establishment of Public Account

- Article 267: Establishment of Contingency Fund for the Central Government and each State Government
- Article 268: Stamp duty levied and collected by the center but it will be handed over to the concerned state
- Article 269: The central government will levy tax on the purchase and sale of goods but will hand it over to the state government
- According to Article 269A, GST on inter-state trade will be levied by the Central Government and the collected money will be divided among themselves according to the arrangements made by the Central and State GST Councils.
- Article 270: All remaining taxes of the Union List will be levied and collected by the Center and will be divided between the Center and the States according to the recommendations of the Finance Commission.
- Article 271: Parliament has the power to impose surcharge which will be in addition to GST.
- Article 273: The Central Government can impose a duty on the export of jute and will hand over the amount received from that duty as a grant to the jute producing states.
- Article 274: Before bringing any bill affecting the financial interests of the state in the Parliament, the permission of the President has to be taken.
- Article 282: Grants by the Center to the states for public welfare activities

Finance Commission

- Article 280
- Appointment: After every 5 years by the President
- Major functions: Suggestions for determining the financial relations between the Center and the States and giving suggestions regarding the distribution of taxes between the Center and the States.
- Composition : (1 + 4)

- Advisory nature of recommendations
- The Finance Commission will submit its report to the President

union executive

- union executive
- part 5
- Article 52 to 123

type of executive

- nominal executive
- real executive

Who's who in the executive of the union?

President

- vice president
- Prime Minister
- Council of Ministers
- Attorney-General of India
- comptroller and auditor general

Article 52

India will have a President

Article 53

The executive powers of the Union are vested in the President

Article 54

presidential electoral college

Article 55

method of election of president

presidential electoral college

- elected members of both houses of parliament
- elected members of state assemblies
- Elected members of the Delhi and Puducherry Legislative Assemblies
- Assembly in Jammu and Kashmir also, but so far no amendment has been made in Article 54 in this regard.

Who does not participate in the election of the President

- Nominated Members of Lok Sabha and Rajya Sabha
- Nominated Members of the State Legislature
- All members of the State Legislative Council

method of election of president

- proportional representation system
- single transferable vote system
- secret ballot

Article 57

Re-eligibility for President i.e. a person can be elected to the office of President any number of times

Article 58: Conditions for the office of the President

- Indian citizenship
- 35 years old
- Eligibility to be elected as a member of the Lok Sabha
- not hold an office of profit

Article 59: Disqualification for the office of the President

- don't be mentally bankrupt
- not hold office of profit
- not disqualified under any law made by parliament
- 50 proposers for the candidature of the President
- The motion must also be supported by at least 50 members.

- The proposer and seconder must be part of the President's electoral college
- A voter cannot propose or second the nomination of more than one candidate
- Article 71: Hearing of any dispute arising in connection with the election of the President only in the Supreme Court
- Article 71(4) provides that the election of the President cannot be declared invalid because of any vacancy in the Electoral College. (11th Constitutional Amendment, 1960)
- The Supreme Court in Dr. Khare v. Election Commission of India (1958) held that the election of the President can be challenged in a court of law only by a person who is part of the presidential electoral college.

Article 60

- Oath to the President by the Chief Justice
- Senior Judge of the Supreme Court in the absence of the Chief Justice

Article 62

The election of the President should be done before the completion of the term of the current President.

Draupadi Murmu

- Born: 20 June 1958
- Baidaposi village in Mayurbhanj district of Odisha
- Before joining politics, she worked as a general clerk and teacher.
- First woman to hold the post of Governor of Jharkhand State
- First tribal (Santhal) woman to become a full-time governor of any Indian state
- Awarded Neelkanth Award as Best Legislator by Odisha Legislative Assembly in the year 2007

impeachment to remove the president

- Article 56: Provision of impeachment to remove the President from office → Violation of the Constitution the only basis
- Article 61: Process of impeachment → Passing separate resolutions by two-thirds majority of the total members of both houses.
- 14 days prior written notice to the President
- motion of impeachment in either house of parliament
- At least 25 percent or 1/4th members of that House must have the support of the House to bring the motion of impeachment.
- The President can be removed from office by passing separate resolutions by both the Houses of Parliament by a majority of their total members.

powers of the president

- Executive Powers
- judicial powers
- military powers
- diplomatic powers
- legislative powers
- financial powers
- emergency powers

executive powers of the president

- The executive powers of the Union are vested in the President: Article 53
- All proceedings of the Government of India in the name of the President: Article 77
- Appointment of Prime Minister and other Ministers: Article 75
- Allocation of Ministries: Article 77(3)
- Personal responsibility of ministers to the President: Article 77 (2)

appointment by the President

- Prime Minister & Union Council of Ministers
- Supreme Court and High Court Judges
- Governor
- comptroller and auditor general of india
- Chief Election Commissioner and other Election Commissioners
- Attorney-General of India
- Chairman and Members of the Union Public Service Commission
- Chairman and Members of the Finance Commission
- Chairman and members of Backward Classes Commission
- Chairman and Members of Minorities Commission
- Chairman and members of Linguistic Commission
- Ambassador of India

Legislative Powers of the President

- President integral part of Parliament (Article 79)
- Power to summon, prorogue and dissolve the Lok Sabha
- Nomination of 12 members in Rajya Sabha
- Power to call for information from the Prime Minister in respect of legislative and administrative matters (Article 78)
- power to call a joint sitting of parliament
- Article 86 (1): The President can address either House of the Parliament or both the Houses simultaneously and for this he can require the presence of all the MPs in the House.
- Article 86 (2): Power to give instructions to Parliament regarding pending bills → The House will consider the message sent by the President in this way as soon as possible
- Article 86 (2): The President can send a message to either House regarding a bill pending in Parliament. The message so sent by the

President shall be considered expeditiously by that House at its convenience.

- Article 103: Disqualification of a Member of Parliament to be finally determined by the President (consultation with the Election Commission of India)

Ordinance

- When both the Houses of the Parliament are not in session + such circumstances arise on which immediate action is necessary
- If approved by the Parliament, the ordinance takes the form of a law, otherwise it automatically expires after 6 months.
- Ordinance can be issued only on those subjects on which the Parliament has the right to make laws.
- Article 213: Power of the Governor to issue ordinance
- Ordinance can be issued even when only one house of Parliament is in session.
- Under Article 13 the word law includes 'Ordinance'
- Cooper v. Union of India, 1970: Ordinance issued by the President should not be unreasonable & Ordinance subject to judicial review

Veto power of the President (Article 111)

- absolute veto
- suspensory veto
- pocket veto
- withhold judgment
- return for reconsideration
- reserve acceptance

The President is bound to give his assent to the Constitution Amendment Bill.

absolute veto

- The President withholds any bill passed by the Parliament, due to which the bill lapses and cannot become a law.
- eg. In 1954, the then President Dr. Rajendra Prasad had reserved the PEPSU Bill for his assent.

pocket veto

- Article 111 does not set a time limit for the President to give his assent to a bill.
- On this basis, the President reserves a bill indefinitely for his assent.
- For example, in 1986, the then President Giani Zail Singh exercised this power in connection with the Indian Postal Amendment Act.

suspensory veto

- The President can return any bill passed by the Parliament to the Parliament for reconsideration.
- However, the President is bound to give his assent to the bill if the bill is passed by the Parliament again in the same or amended form.

special veto

- This veto power is not with the Indian President; to the US President
- This veto means that the President can indefinitely stall a bill for his assent.
- But if the legislature again passes that bill with its special majority, then the President is bound to give his assent to that bill.

Exceptions to the Veto Power of the President

- The President cannot return a Money Bill for reconsideration, although the President can withhold his assent to that Bill.
- constitution amendment bill no veto power

article 200

When a bill passed by the State Legislature is brought before the Governor for approval, then under Article 200 the Governor has four options

1. can give his assent to the bill
2. can reserve his assent to the bill
3. May return the bill (if not a money bill) for reconsideration of the state legislature.
4. He can reserve the bill for the consideration of the President.

When a Bill is reserved by the Governor for the assent of the President and is sent to the President, the President has three options in respect of State Bills.

1. give assent to the bill
2. reserve your assent to the bill
3. If it is not a money bill, the bill is returned to the state legislature for reconsideration.

NOTE

If a bill is sent by the President to the state assembly for reconsideration and the state assembly passes that bill again and sends it to the President, even then the President is not bound to give his assent to that bill.

Financial powers of the president

- Money bill introduced in the parliament only with the prior approval of the president
- No demand for grant without the recommendation of the President
- Only the President gets the budget placed in the Parliament
- Provision for advance payment from Contingency Fund of India
- Constitution of Finance Commission under Article 280

Judicial Powers of the President (Article 72)

- Commutation: changing the nature of the punishment
- Remission: reducing the term of punishment
- Respite: Remission of sentence due to special circumstances
- Reprieve: To postpone a punishment for some time

- Pardon: To forgive completely
- The governor does not have the right to pardon the death penalty completely.
- clemency
- This process starts with the filing of a mercy petition with the President under Article 72.
- After this, it is sent to the Ministry of Home Affairs for consideration of the petition.
- The petition is sent back to the President after consultation on the recommendation of the Home Minister.
- No time limit has been fixed for giving decision on mercy petition.

Maru Ram v. Union of India (1980)

- The power under Article 72 is to be exercised on the advice of the Council of Ministers and not by the President in his discretion
- The power of pardon cannot be used in an uncontrolled and arbitrary manner.
- No person can claim pardon as a matter of right

diplomatic powers of the president

- International treaties and agreements in the name of the President
- Appointment of diplomats, ambassadors and high commissioners
- Representation of India at International Forums

discretionary powers of the president

- In the event of no party getting a clear majority in the Lok Sabha
- when the council of ministers submits the resignation
- When a motion of no confidence is passed against the Council of Ministers in the Lok Sabha

- When the council of ministers gives any advice which is against the constitution

vice president

- Provisions regarding Vice President from Article 63 to Article 70
- Article 63: Provision for a Vice President for India
- Vice President after the President in order of seniority
- Like America, in India also the Vice President is the ex-officio Chairman of the Upper House of the Central Legislature i.e. Rajya Sabha (Article 64).
- In the event of a vacancy in the office of the President, the Vice-President shall act as the President (Article 65).

Qualification (Article 66)

- Indian citizenship
- Minimum age 35 years
- be eligible to become a member of the Rajya Sabha
- not hold office of profit
- not be a member of either House of Parliament or State Legislature

Election

- by members of both houses of parliament
- Proportional Representation System and Single Transferable Vote System
- Initially by a joint sitting of both the Houses of Parliament > 11th Amendment, 1961
- Included in the Lok Sabha electoral college → Because in the absence of the President, the Vice President discharges the duties of the President.
- Tenure: 5 years (Article 67)
- shall, notwithstanding the expiration of his term of office, continue to hold office until his successor enters upon office
- resignation to the president

- Removal from office (Article 67): By two-thirds majority of the total members of the Rajya Sabha + support by the Lok Sabha as well (simple majority)
- Motion to remove from office only in Rajya Sabha
- Two main functions of the Vice President: Presiding over the Rajya Sabha & Continuity of the office of the President

Prime Minister and Council of Ministers

parliamentary system

- Nominal Executive : President
- Real Executive : PM
- citizen
- voter
- admin
- ruling majority party
- Prime Minister
- cabinet
- A Council of Ministers to aid and advise the President (Article 74)
- The President will act according to the advice of the Council of Ministers, but can return the advice of the Council of Ministers for reconsideration only once.
- Article 75: The Prime Minister is appointed by the President and other ministers are appointed by the President on the advice of the Prime Minister
- No person can be a minister for a maximum of 6 months without being a member of the Parliament.
- Council of Ministers The number of members of the Council of Ministers including the Prime Minister does not exceed 15 percent of the total strength of the Lok Sabha (91st Constitutional Amendment Act, 2003)

- Council of Ministers collectively responsible to the Lok Sabha
- Ministers personally responsible to the President

Functions and Powers of the Prime Minister

- real executive
- constitution of council of ministers
- role as head of government
- Allocation of portfolios among ministers
- Operation and coordination of the Council of Ministers
- Leader of the Lok Sabha

Functions and Powers of the Council of Ministers

- maker of national policies
- administration of the whole country
- regulation of the wealth of the whole nation
- enforcement of law and maintenance of order
- Preparation of Bill and introduction in Parliament
- promulgate ordinance in the name of the President

There are three categories of ministers in the Council of Ministers.

- Cabinet Minister
- state Minister
- vice Minister

Cabinet

- Cabinet (Cabinet) Formulation of important national policies and the highest organ of coordination in the government
- Size of Council of Ministers = Cabinet Minister + Minister of State + Parliamentary Secretary
- The cabinet decides on policies and monitors their implementation.

- There is no mention of the cabinet in the constitution before the 44th amendment, 1978.
- Article 352 (3): The only article in which the word cabinet is mentioned

state Minister

- independent charge of departments or assistant to a cabinet minister
- Any specific work related to the ministry can be assigned
- not a member of the cabinet; specially invited for any work related to the ministry

vice Minister

- Appointed to assist cabinet or ministers of state in administrative and parliamentary work
- No participation in cabinet meeting
- The concept of deputy minister is not used in India
- Cabinet (Cabinet) Formulation of important national policies and the highest organ of coordination in the government
- Size of Council of Ministers = Cabinet Minister + Minister of State + Parliamentary Secretary
- The cabinet decides on policies and monitors their implementation.
- There is no mention of the cabinet in the constitution before the 44th amendment, 1978.
- Article 352 (3): The only article in which the word cabinet is mentioned

attorney general

- Article 76 & Article 165 → Advocate General
- Appointment: By the President
- Qualification required to be appointed as a judge of the Supreme Court
- Tenure: During the pleasure of the President
- Function: Advocate and legal expert of the Government of India

- right to participate in the proceedings of the parliament but not to vote
- Right to be heard in any court in India

comptroller and auditor general of india

- Articles 148 to 151 in Part V
- Appointment: By the President
- There is no provision in the constitution regarding the qualification of the CAG.
- Tenure: 6 years or maximum age of 65 years
- Can be removed from office by the same procedure as a judge of the Supreme Court (proved misbehavior and incapacity)]
- CAG is the only post of the executive of the Union which is not at the pleasure of the President.
- Not holding any post under the Government after the expiry of the term

main work

- Checking of accounts of Central and State Governments (Consolidated Fund + Contingency Fund)
- Examination of income-expenditure of all bodies funded by governments
- CAG as a guide, friend and advisor to the Public Accounts Committee of Parliament
- The audit report of the CAG is submitted to the Public Accounts Committee.

Parliament = Legislature

- Lok Sabha
- Rajya Sabha
- President
- Assembly
- legislative council

- Governor

Rajya Sabha

- house of representatives of the states
- Permanent House, tenure 6 years
- 1/3 members of the Rajya Sabha retire after every two years and $\frac{1}{3}$ members take office in their place.
- Maximum members 250
- 12 nominated members: on the basis of literature, art, science and social service
- Election: by the members of the State Legislative Assembly on the basis of the system of proportional representation by the single transferable vote system

Lok Sabha

- representative house of the people
- a temporary house
- Maximum number of members 550
- direct election
- tenure 5 years
- In case of emergency, the tenure of the Lok Sabha is extended for one year at a time.
- 42nd Constitutional Amendment Act → The term of the Lok Sabha was increased from 5 years to 6 years,
- But it was again reduced to 5 years by the 44th Constitutional Amendment Act.
- At present all the constituencies of Lok Sabha are under single member constituency.
- This means that only one person can be elected to the Lok Sabha from one constituency, not more than one.

Qualification of members

- Minimum age for Lok Sabha and Rajya Sabha is 25 and 30 years respectively
- Indian citizenship
- registered as a voter in the electoral roll
- Other statutory qualifications prescribed by Parliament

disqualifications of members

According to Article 102, a person shall be disqualified for being elected as a member of Lok Sabha or Rajya Sabha-

- if he holds any office of profit under the Government of India or the Government of a State, or
- if a court in India declares that person to be of unsound mind, or
- if that person is declared an insolvent, or
- If he is not a citizen of India or voluntarily acquires the citizenship of any other country

other key points

- Interval of not more than 6 months between two sessions of Parliament
- President has the power to prorogue both the Houses and dissolve the Lok Sabha
- Only the presiding officers have the right to adjourn both the Houses.
- Article 89 and Article 93 make provisions regarding the presiding officers of Rajya Sabha and Lok Sabha respectively.
- The Presiding Officer can only have a casting vote

Sessions, Prorogation and Dissolution of Parliament (Article 85)

Sessions

Interval of not more than 6 months between two sessions of Parliament

Prorogation

- Unlike an adjournment, a prorogation ends the session of the House along with the meeting.
- by the President of India

Adjournment

- suspension of business at a meeting for a specified period of time
- Adjournment can be for few hours, days, weeks
- When the meeting ends without any definite time/date being fixed for the next meeting then → Adjournment sine die
- Adjournment and the power of adjournment sine die with the Presiding Officer of the House (Speaker or Chairman)

Dissolution

- The President can dissolve the Lok Sabha, but not the Rajya Sabha
- Dissolution means that if the Lok Sabha is dissolved, fresh elections will be held for the Lok Sabha.
- While prorogation means that the proceedings of a session of the Lok Sabha will come to an end, it does not require fresh elections.
- Prorogation of both Houses of Parliament, but dissolution of only Lok Sabha

Effect on Bills pending in Parliament due to prorogation

- Pending bill not consummated due to prorogation of the House
- A bill pending in the Rajya Sabha, which has not been passed by the Lok Sabha, does not lapse in the event of dissolution of the Lok Sabha.
- But a bill which is pending in the Lok Sabha and which has not yet been passed by the Rajya Sabha lapses with the dissolution of the Lok Sabha.
- If the Lok Sabha has passed a bill and that bill is pending in the Rajya Sabha, then that bill also expires with the dissolution of the Lok Sabha.

Presiding Officer

- Provisions in Article 89 and Article 93 regarding Presiding Officers of Rajya Sabha and Lok Sabha respectively
- The Presiding Officer can only have a casting vote
- The Speaker of the Lok Sabha can be removed from office by the Lok Sabha by its special majority.
- The Presiding Officer of the Rajya Sabha, that is, the Vice-President, can be removed from office by a special majority of the Rajya Sabha and by a simple majority of the Lok Sabha.
- Article 94: Even after the term of the Lok Sabha expires, the Speaker of the Lok Sabha shall not remain vacant until the next Lok Sabha elects its Speaker.
- This provision applies only to the Speaker of the Lok Sabha and not to the Deputy Speaker of the Lok Sabha.

Parliamentary privilege

- Parliamentary Privileges → Special rights, immunities and exemptions enjoyed by both Houses of Parliament, their committees and their members
- Objective: To protect the dignity, freedom and autonomy of the Parliament, so that the MPs can properly represent the interests of the people in the House without any fear
- Article 105
- Classification of Privileges → Individual Rights and Collective Rights

collective rights

- Prohibition on publication of reports, debates, proceedings etc. of the House by others
- punishment for contempt of house
- Expulsion of members including outsiders from proceedings
- hold secret meetings on special matters

- Prohibition of Courts to inquire into proceedings of Parliament

individual rights

- Immunity to members from arrest in civil cases during the session of the House, forty days before the commencement of the session and forty days after the end of the session
- No member can be arrested within the precincts of the Parliament without the permission of that House
- Freedom of expression

Quorum

- Quorum of Parliament: Minimum 10% members
- In the absence of a quorum, the presiding officer adjourns the proceedings of that House until the quorum is complete.
- Article 105 provides privileges to the members of the Parliament, no judicial proceedings against anything said or the vote given by the MPs in the House

Bill Type-1

- government bill
- private bill

Government bill

- can only be introduced by the minister
- Shows the policies of the government (the ruling party)
- It is expected to be passed by the Parliament
- Must have seven days' notice to appear in Parliament

Private bill

- is introduced by any member other than the minister
- Represents the views of the opposition parties on public issues
- little hope of passage in parliament

- There should be one month's notice to introduce in Parliament
- The last time a private member's bill was passed by both the Houses was in 1970.
- It was the 'Supreme Court (Extension of Criminal Appellate Jurisdiction) Act, 1968'.

Some other private bills that became law-

- Lok Sabha Proceedings (Protection of Publication) Act, 1956
- Salaries and Allowances of Members of Parliament (Amendment) Act, 1964
- Indian Penal Code (Amendment) Act, 1967

Bill Type-2

- ordinary bill
- Money Bill
- constitutional amendment

ordinary bill

- can be introduced in either house of the parliament
- Can be introduced by members other than a minister
- does not require the recommendation of the President
- Rajya Sabha can stop for a maximum of 6 months
- Provision for joint meeting after 6 months
- Can be accepted/rejected/sent for reconsideration by the President

joint meeting

- Provision of joint sitting in Article 108
- Presided over by the Speaker of the Lok Sabha or the Deputy Speaker of the Lok Sabha
- Joint sitting only in respect of ordinary bills
- No joint sitting regarding Money Bill or Constitution Amendment Bill

- Bill will be passed by simple majority

constitution amendment bill

Money Bill (Article-110)

Article 110

The definition of money bill mainly includes the imposition, removal, reduction or increase of taxes and the borrowing or lending of money by the Government of India.

Article 109

- Money bill can be introduced only in the Lok Sabha
- Rajya Sabha can stop money bill only for 14 days
- Money Bill will be determined by the Speaker of the Lok Sabha
- The Lok Sabha is not bound to accept the recommendations of the Rajya Sabha with respect to the Money Bill.

A Bill shall not be deemed to be a Money Bill if it

- imposes fine
- Levy, remit, reduction or increase of any tax for local purposes by any local authority or body
- When a dispute arises as to whether a Bill is a Money Bill or not, the decision of the Speaker of the Lok Sabha is final.
- This decision of the Speaker cannot be challenged in the court.
- After being passed in the Lok Sabha, it is sent for the consideration of the Rajya Sabha.
- He has to give approval within 14 days otherwise it is considered to be passed by the Rajya Sabha.
- It is not necessary for the Lok Sabha to accept the recommendations of the Rajya Sabha.

Finance bill

Types of Finance Bill

1. Finance Bill - 1 : Article 117 (1)
2. Finance Bill - 2 : Article 117 (3)
 - Finance Bill-1 is related to the subjects included in Article 110 as well as other subjects.
 - The Finance Bill covers all those subjects, which are directly related to matters related to finance.
 - For example, the expenditure of the government or the expenditure related to the revenue of the government.

Finance Bill-1 → Article 117 (1)

- money bill provisions
- provisions relating to ordinary bills

Finance Bill-1

- All matters mentioned in Money Bill in Finance Bill-1 and also other matters of common law
- tabled in the Lok Sabha only
- Introduced only on the recommendation of the President
- Joint meeting on Finance Bill-1
- Veto power to the President on Finance Bill-1 as in normal Bills

Finance Bill-2 → Article 117 (3)

- No matter relating to article 110
- but other money matters are involved

Finance Bill-2

- Nothing to do with money bill matters included in article 110
- But it includes other financial matters such as expenditure charged on the Consolidated Fund.
- introduced in either house of parliament

- passed as an ordinary bill

Difference between Money Bill and Finance Bill

Money Bill

- Procedure for passing in Article 109
- Subjects included in Article 110 only
- Introduced only in Lok Sabha
- President's prior approval required
- No provision for joint sitting
- Rajya Sabha can stop for a maximum of 14 days
- President bound to allow
- finance bill
- Procedure for passing in Article 117
- Subjects included in Article 110 and certain other matters
- every money bill finance bill
- introduced in either house
- prior approval of the President is not necessary
- passed by both houses
- joint meeting can be called
- President not bound to give permission
- A document detailing the income and expenditure of the government
- Account of income and expenditure of the government for 3 years
- What was the income and expenditure of the government last year, how much is it in the current year and what is expected to be the 'income and expenditure' of the next year?
- Article 112 Budget: Annual Financial Statement
- The President gets the budget placed before both the Houses of the Parliament
- Details about income and expenditure of the government

The estimated expenditure in the budget is shown in two parts-

- Expenditure charged on the Consolidated Fund → Parliament can only discuss but not vote
- Expenditure to be made from the Consolidated Fund can be both discussed and voted on

Expenditure charged on the Consolidated Fund of India

- Salaries and allowances of the Chairman and Deputy Chairman of Rajya Sabha and the Speaker and Deputy Speaker of Lok Sabha.
- Government of India loan and interest thereon
- High Court Judge's pension only from the Consolidated Fund of India, salary allowances from the State Fund.
- Salary, Allowances and Pension of Comptroller and Auditor General of India
- demand for funds in the budget in the form of demand for grants
- Demand for grants only in Lok Sabha
- President's permission is necessary before presenting the demand for grant.
- Demand for Grant passed by Parliament → Appropriation Bill (Article 114)
- No amendment in the Appropriation Bill
- Rajya Sabha does not have any special power regarding the budget
- But it is mandatory for the Appropriation Bill to be passed by both the Houses of the Parliament.

Appropriation Bill (Article 114)

- The Appropriation Bill is introduced in the Lok Sabha after discussion on the Budget proposals and Demands for Grants.
- The expenditure charged on the Consolidated Fund of India and the expenditure to be made on the Consolidated Fund of India, which are

placed before the Lok Sabha in the form of demands for grants, together form a bill called an Appropriation Bill.

- Only those demands for grants are included in the Appropriation Bill, which are accepted or amended by the Lok Sabha.

Difference between Appropriation Bill and Finance Bill

- A Finance Bill contains provisions relating to the financing of government expenditure, while an Appropriation Bill specifies the amount and purpose of withdrawal of funds.
- Both the Appropriation and Finance Bills are classified as Money Bills, which do not require the express consent of the Rajya Sabha.
- Rajya Sabha merely discusses it and returns it.

interim budget

- In the interim budget, apart from expenditure, the central government also presents details of revenue.
- In the year when the Lok Sabha elections are held, the government presents an interim budget. The government formed after the elections presents a full budget.
- Policy Cut Proposal: Under this, a demand is made to reduce the proposed grant for the ministry in the budget to Re.
- Economic Cut Motion: To reduce the amount of the proposed grant
- Token cut proposal: Not opposing any 'demand for grants' in the proposed budget, but expressing symbolic dissatisfaction with the working style of the central government
- Vote on Account: Grant of advance permission by the Lok Sabha to the government to spend without passing the budget
- Grant-in-aid: Providing money to the government for a contingency
- Exception Grant: Any expenditure which is not mentioned in the budget but later the government has to spend due to circumstances.

- Question Hour: The first hour of the sitting of the Parliament
- Starred Questions: Oral Answer, Supplemental Questions
- Unstarred Questions: Written answer, no supplementary questions
- Short Notice Questions: Oral Answers, Supplementary Questions relating to urgent public importance
- Zero Hour: 12 noon to 1 pm, asking questions without permission or prior notice
- Half an Hour Discussion: Clarification regarding answer to Starred/Unstarred Question
- Short Duration Discussion: To draw the attention of the House to a question of public importance
- Calling Attention Motion: To call the attention of a minister to a matter of urgent public importance
- Adjournment Motion: To discuss any serious and important problem of the country or to debate on a very important question of public importance, other daily activities are stopped

process of passing a bill in parliament

1. Introduction of the Bill and First Reading

- According to article 107, an ordinary bill, other than a money or financial bill, can be introduced in either house by any member.
- The member who introduces the bill has to give one month's advance notice to the Speaker or the Chairman of the House.
- The Speaker then fixes the date for the introduction of the Bill. The Bill is introduced as per the date fixed.

2. Second reading

On a fixed date for the second reading, the mover of the Bill may move any one of the following motions-

- Bill to be taken up for immediate consideration in the House
- refer the bill to a committee of the house
- The bill should be sent to a joint committee of both the houses
- The bill should be published to know public opinion
- Usually the bill is sent to the committee of the house.
- After the report is received from the committee, the house debates and votes on each article of the bill based on the report of the committee.
- Members of the House can introduce amendment motion, it is under the jurisdiction of the Speaker to accept or reject the amendment motion.

3. Third reading

- In the third reading, the bill is passed in its entirety.
- In this reading, there is no detailed debate and no amendments are moved.
- If the majority of those present and voting collectively accept the bill, then the speaker declares the bill to be passed on behalf of the house.
- The bill is then sent to the other house, where the bill passes through almost identical stages.
- Finally, the bill is sent for the recommendation of the President and after the signature of the President, the bill acquires the status of an Act.

special powers

specific powers of lok sabha

- Money Bill introduced only in Lok Sabha
- No confidence motion only in Lok Sabha
- Effective position of Lok Sabha in joint sitting

specific powers of rajya sabha

- Declaring a subject in the State List to be of national importance
- Creation of All India Service

- Initiating the process of removing the Vice President from office

Criticism of Rajya Sabha

- Small states not adequately represented
- faulty electoral system
- Back Door of Parliament
- insufficient constitutional powers
- unnecessary economic pressure on the country
- house driven by political interests

Arguments in favor of Rajya Sabha

- specialized knowledge
- opportunity for reconsideration of bills
- continuity of governance
- representation to the states

Parliamentary committees

Types of Parliamentary Committees

- standing committees
- temporary committees

estimates committee

- largest committee
- The committee was constituted in 1950 on the recommendation of the then Finance Minister John Mathai.
- 30 members of the Lok Sabha
- No member from Rajya Sabha
- Ministers do not take committee members
- Election of members from Lok Sabha by single transferable vote system
- Tenure of members 1 year
- Chairman of the Committee nominated by the Speaker of the Lok Sabha

- The committee examines the estimates of the expenditure of the funds received by the government through the Parliament.
- What alternative measures or policies can be adopted in the context of administrative efficiency and economy, the committee suggests?

Public accounts committee

- Formed in the year 1921 through the Government of India Act, 1919
- The first Public Accounts Committee of independent India was constituted in April, 1950.
- Total 22 members (15 members of Lok Sabha and 7 members of Rajya Sabha)
- Election of members from Lok Sabha by single transferable vote system
- No minister of the central government should be included as a member of this committee.
- Speaker appointed by the Speaker of the Lok Sabha
- The chairman of the committee is a member of the opposition, which has become a tradition since 1967.
- The object of the committee is to ensure whether the money has been spent in an authorized manner and for the purpose for which it was provided.
- The committee examines the audit related reports given by the Comptroller and Auditor General of India (CAG) of India.

Public Accounts Committee + Estimates Committee = 'Twin Sister'

- Because the functions of both the committees complement each other.
- Where the Estimates Committee works on estimates of public i.e. government expenditure,
- On the other hand, the Public Accounts Committee mainly examines the accounts showing the expenditure of the amounts provided by the House for the expenditure of the Government of India.

Public undertaking committee

- Establishment of Public Undertakings Committee for the first time in 1964
- Thus, this committee is the last of the three financial committees of the Parliament to be constituted.
- Total 22 members (15 members of Lok Sabha and 7 members of Rajya Sabha)
- In the context of the Lok Sabha, the members of the Committee are elected from among the Lok Sabha by the method of single transferable vote.
- While the members of the Rajya Sabha are nominated by the presiding authority
- The chairman of the committee is nominated by the speaker of the Lok Sabha.
- No Union Minister is included as a member in the committee
- The main functions of the committee are to examine the reports and accounts of government undertakings and the reports of the CAG on them.

Committee on Welfare of SC-ST

- There are a total of 30 members, out of which 20 are from the Lok Sabha and 10 from the Rajya Sabha.
- In the context of the Lok Sabha, the members of the Committee are elected from among the Lok Sabha by the method of single transferable vote.
- While the members of the Rajya Sabha are nominated by the presiding authority
- The chairman of the committee is nominated by the speaker of the Lok Sabha.
- No Union Minister is included as a member in the committee

- This committee considers all those matters related to the welfare of Scheduled Castes and Scheduled Tribes which come under the jurisdiction of the Central Government.
- The Committee also reviews the annual reports submitted by the Scheduled Castes Commission and the Scheduled Tribes Commission to the Parliament through the President.

business advisory committee

- The committee was first formed in 1952
- Separate business advisory committees of both the houses of the parliament
- constituted by the Presiding Officers
- There are 15 members in this committee of Lok Sabha while 11 members in the Business Advisory Committee of Rajya Sabha.
- presiding authority chairman of the committee
- The main function of the committee is to recommend that how much time should be fixed for disposal of legislative and other works in the Parliament?

Privileges Committee

- The committee was first formed in 1950
- Initially appointment of 10 members in the committee,
- But later from the year 1955 the number of members of the committee was increased to 15 to give adequate representation to various parties.
- The Committee of Privileges is constituted by the Speaker of the Lok Sabha in both the Houses of the Parliament.
- The Committee of Privileges is entrusted with the task of investigating any matter relating to the violation of individual privileges of a Member of Parliament or the collective privileges of the House.

Subordinate legislative committee

- The committee was first formed in 1953
- Maximum 15 members in the committee
- nominated by the presiding officer
- No minister is a member of this committee
- This committee is separate for each house.
- The main function of the committee is to check whether work is being done within the constitutional scope in relation to delegated legislation or not?

Temporary committees or ad hoc committees

inquiry committees

- to investigate a recent incident

advisory committees

- to discuss a particular bill

Parliamentary forum

Structure

- Maximum Members: 31 (21 Lok Sabha + 10 Rajya Sabha)
- Tenure: Based on the membership of the House of the members
- President of all forums: Speaker of the Lok Sabha
- But the Chairman of the Rajya Sabha is the Chairman of the Forum on Population and Public Health.
- Objective: To provide a platform to the policy makers for high level discussions on a particular topic

Presently 8 parliamentary forums are working

- Parliamentary Forum on Water Conservation and Management
- Parliamentary Forum on Youth
- Parliamentary Forum on Children

- Parliamentary Forum on Population and Public Health
- Parliamentary Forum on Global Warming and Climate Change
- Parliamentary Forum on Disaster Management
- Parliamentary Forum on Millennium Development Goals
- India's First Parliamentary Forum ⇒ Water Conservation and Management, 2005

Parliamentary group

- An autonomous body, established by a resolution of the Constituent Assembly in 1949

structure

- Speaker: Speaker of the Lok Sabha
- Deputy Speaker: Deputy Speaker of the Lok Sabha and Deputy Chairman of the Rajya Sabha
- Member: Member of both the Houses, former Member of Parliament

State Legislative Legislature

- Article 168 → One Legislature for each State
- consisting of the governor + one or two houses of the legislature
- Legislative Councils in Bihar, Karnataka, Maharashtra, Telangana and Uttar Pradesh
- Recently Andhra Pradesh Legislative Council abolished; Legislative council in J&K also before becoming a UT

Qualification of the members of the Legislative Assembly

- be a citizen of India
- Minimum age 25 years
- He shall possess such other qualifications as the Parliament may, by law, determine.

- Article 170 → Maximum number of members of state assembly 500 and minimum number 60
- For sparsely populated states like Sikkim and Goa, the minimum number is 30.
- Reservation for SC & ST on the basis of proportion of population
- Direct election by the public & tenure 5 years
- Under Article 352, the Parliament can extend the term of the state assembly for one year at a time by enacting an emergency law.
- but in any case not more than 6 months after the emergency is over
- Quorum → 1/10th part
- Assembly Speaker → All provisions same as Lok Sabha Speaker
- Deputy Speaker of the Legislative Assembly → All provisions similar to the Deputy Speaker of the Lok Sabha
- Assembly Speaker ⇒ All provisions same as Lok Sabha Speaker
- Assembly Speaker ⇒ All provisions same as Lok Sabha Deputy Speaker

Powers of the State Legislature

- Legislation on subjects in the State List and Concurrent List
- exercise control over the council of ministers of the state
- No-confidence motion against the State Council of Ministers
- The same powers are vested in the Lok Sabha at the Center.
- In states where the Legislature is unicameral, all the powers of the Legislature are exercised by the Legislature.
- In states where the legislature is bicameral, the assembly is more effective

Legislative Assembly

- Article 169 → Constitution of the Legislative Council
- Parliament by passing a resolution by the Legislative Assembly with a two-thirds majority of its total members

- Constitution of Legislative Council by passing resolution by Parliament with simple majority
- The Parliament has the power to form the Legislative Council, but the initiative by the Legislative Assembly is necessary.
- The number of members of the Legislative Council does not exceed 1/3 of the strength of the Legislative Assembly
- But at the same time, in any case, the number of members of the Legislative Council shall not be less than 40.
- Minimum age 30 years
- Tenure of members 6 years
- Election on the basis of proportional representation by single transferable vote system
- indirect election by the people through a wider electoral college
- Electoral college = 1/3 part of the assembly
- Electoral college of local bodies = 1/3 part
- Nominated by the Governor (Literature, Science, Art, Co-operative Movement, Social Service) = 1/6
- Electoral college of graduates (above three years) = 1/12 part
- Electoral college of teachers (more than three years) = 1/12 part

Legislative Council → Article 173: Qualification

- be a citizen of India
- Must be at least 30 years of age
- Must not be mentally incapacitated and insolvent
- The name should be in the voter list of the constituency from where he is contesting
- The person to be nominated by the governor should be a resident of the concerned state

Powers of State Legislative Council

- Power of the Legislative Council to keep the Ordinary Bill pending only for a maximum period of 3 months
- advisory role
- Power to keep the bill pending for a maximum of 1 month on re-passing, otherwise the bill will be automatically passed
- Power to keep money bill pending for 14 days only
- Almost the same powers and status as the upper house at the center

state executive

- Part 6 ⇒ Articles 153 to 167
- Article 153: One governor for each state, but only one governor for two or more states
- Article 155: Appointment of the Governor by the President
- In practice, like other key appointments, the Governor is also appointed by the President on the recommendation of the Union Council of Ministers headed by the Prime Minister.

Appointment of Governor and Approach of the Constituent Assembly

1. Election of the Governor on the basis of direct voting by the people of the state
2. Appointment of the Governor by the President from a panel suggested by the State Legislature
3. Election of the Governor by the State Legislature on the basis of proportional representation system
4. Appointment of Governor by the President
 - Note: India follows the Canadian Constitution regarding the appointment of the Governor by the President.
 - Article 156: Tenure 5 years + till the pleasure of the President + resignation to the President
 - Article 157: Only citizenship of India and 35 years of age

- Article 158: MLA or MP not appointed to the post of governor + no office of profit
- Article 158: Salary from the Consolidated Fund of the State
- Article 159: Oath before the Chief Justice or other senior most judge of the High Court
- Article 154: Executive powers of the state vested in the Governor
- Article 166: All executive proceedings of the state in the name of the Governor
- Article 164: Appointment of the Chief Minister and other ministers by the Governor
- Article 164: Personal responsibility of ministers to the governor
- Article 166: Allocation of ministries among ministers by the Governor
- Governor's role in appointment of ministers and allocation of ministries is formal.
- Vice-Chancellors of universities are also appointed by the Governor as Chancellor
- Governor integral part of State Legislature (Article 168)
- Article 174: Power to summon, prorogue and dissolve the Legislative Assembly & there is no gap of more than 6 months between two sessions of the Legislature
- Article 175: Power to address the State Legislature
- Article 176: Power to address the State Legislature

anti defection law

Defection law

- 52 Constitution Amendment Act, 1985
- tenth schedule

When is disqualification on the ground of defection

- An MLA or MP voluntarily renounces the membership of the political party whose seat he has won in the House, or
- Absent from the House at the time of voting or voting contrary to the directions of his party, or
- Independent member joins any political party after winning the election; Or
- a nominated member joins a political party six months after his nomination;

91st Constitution Amendment Act, 2003

- If two-thirds of the members of a political party form a new party, or
- If he joins any other political party, he cannot be disqualified on the basis of anti-defection law.
- The size of the Council of Ministers shall not exceed 15% of the total membership of the Lok Sabha including the Prime Minister.
- In relation to states, the number of members of the Council of Ministers, including the Chief Minister, is a minimum of 12 members.
- If an MP or MLA loses his membership on the ground of defection, he will also be ineligible to hold ministerial post.

Who will decide the disqualification?

- Under the anti-defection law, the power to determine the disqualification of a member is given to the Speaker of the Legislative Assembly/Lok Sabha.
- The decision given by the Speaker of the House regarding defection can be challenged in the court (Judgment of Supreme Court in Kihoto-Holohan case, 1992)
- But there is no mention of a clear time period for the Speaker to determine the disqualification of a member.
- Giving this power to the Speaker is also the reason for political deadlock at present.
- Since the Speaker also usually belongs to the ruling party, the impartiality of the decision given by the Speaker is questionable.

- The present Vice President of India has also accepted this fact.

Judiciary

Three tier judicial system

1. Supreme court
 2. high Court
 3. Subordinate Courts
- Supreme Court → Part 5 → Chapter 4 → Article 124 to 147
 - Article 124 → Judicial powers of the Union exclusively vested in the Supreme Court
 - Unified Judiciary in India unlike America
 - Concept of Integrated Judiciary adopted from the Act of 1935
 - Establishment of Supreme Court in Calcutta under Regulating Act of 1773
 - Constitution of Federal Court in the country under the Act of 1935
 - Transfer from Calcutta to Delhi in 1950
 - The Supreme Court of independent India was inaugurated on 28 January 1950 in New Delhi.
 - The Privy Council of Britain was replaced by the Supreme Court, which was the country's highest appellate court before independence.
 - Originally a total of 8 judges (including a Chief Justice) for the Supreme Court
 - At present there are 34 judges (including the Chief Justice)
 - First Chief Justice of the Supreme Court in 1773-74: Lord Impey
 - First Chief Justice of Independent India: H.J. Virgo
 - Present Chief Justice of Supreme Court: D.Y. Chandrachud (50th Chief Justice)

Need for an independent judiciary in India

- For the smooth implementation of democratic governance
- to interpret the constitution

- To ensure the supremacy of the constitution
- to protect fundamental rights
- to ensure the rule of law
- For checks and balances in terms of powers (legislature, executive, judiciary)
- Due to the federal system, for the settlement of disputes between the center and the states

Provisions to ensure independence of Judiciary in India

- Fixedness of tenure (SC → 65 years; HC → 62 years)
- Removal from office by special majority on the ground of proved misbehavior and incapacity
- judges' salaries charged on the consolidated fund
- Prohibition on debating the conduct of a judge in the legislature
- Appointment of judges on the basis of collegium system
- Prohibition on practicing of judges after retirement

Eligibility for appointment as a judge of the Supreme Court

- has been, for at least 5 years, a Judge of a High Court, or
- has been an advocate of a High Court for at least 10 years, or
- be an expert in the law in the opinion of the President
- no minimum age qualification
- In the context of the High Court, there is no provision for the appointment of a legal expert as a judge.
- Other judges of the Supreme Court are appointed by the President on the basis of collegium system.
- Collegium System: Chief Justice of Supreme Court + 4 other senior most judges: Decision on the basis of majority, President bound to accept the decision of the Collegium

- The judges of the High Court are also appointed by the President after consultation with the Chief Justice of the Supreme Court and the Governor of the State concerned.

99th Constitutional Amendment Act, 2014

- Provision for constitution of National Judicial Appointments Commission
- Amendment of Article 124(2)
- Article 124(2) deals with the appointment of judges of the Supreme Court
- Provision for constitution of National Judicial Appointments Commission in relation to the appointment of Supreme Court and High Court judges
- Taking suo moto cognizance of this matter, the Supreme Court declared this amendment act void on the basis of violation of the basic structure of the constitution.
- The tradition has been established in India that when the post of Chief Justice of the Supreme Court becomes vacant, the senior most of the working judges of the Supreme Court is appointed as the Chief Justice.
- In the year 1973, in violation of this tradition, Shri Ajit Nath Ray was appointed as the Chief Justice of India by encroaching on the seniority of the three working judges.
- Among the judges of the Supreme Court, Justices Mr. Shelat, Mr. Grover and Mr. Hegde, who were above Mr. Ajit Nath Ray in the order of seniority, had resigned in protest against the encroachment on their seniority.
- The appointment of Mr. H.M. Baig after Mr. Ajit Nath Ray was also not in accordance with the convention of seniority.
- In this appointment Shri H.R. Khanna's seniority was violated.
- Mr. Khanna had resigned from the post of judge in protest against this.
- Apart from the above two exceptions, the seniority of the sitting judges has been respected in the appointment of the Chief Justice of India.

- The Supreme Court has made it clear through one of its decisions that only the senior most judge will be appointed as the Chief Justice of the Supreme Court.

Removal of a judge of the Supreme Court

- Article 124(4)
- On the ground of proved misbehavior or incapacity (not defined in the constitution)
- He can be removed from office by the President by passing a resolution passed by both the Houses of the Parliament separately by a majority of its total members and by a majority of 2/3rd members present and voting.

Judges Inquiry Act (1968)

- Procedure regarding removal of Supreme Court judges
- The motion to remove a judge must be signed by 100 members in the Lok Sabha and 50 in the Rajya Sabha.
- The motion is submitted to the Presiding Officer, who may accept or reject it.
- If the motion is accepted, a committee of three members will be constituted by the Presiding Officer to inquire into the allegations against the judge.
- These three members include the Chief Justice or any other judge of the Supreme Court, the Chief Justice of a High Court and an eminent legal expert.
- If the committee finds the judge impeached, further action is taken on the motion by the House.
- If both the Houses pass the separate resolution with a special majority and the President signs it, then the judge concerned is deemed to have been removed from office.
- So far no Supreme Court judge has been removed from office by the above process in India.

- So far only once a motion was moved in the Lok Sabha alleging misconduct regarding the removal of Supreme Court Judge Mr. Ramaswamy.
- But that proposal could not be introduced in the Lok Sabha. After this, Justice Ramaswamy had automatically resigned from his post.

ad hoc judge

- When there is lack of quorum of permanent judges for holding or continuing any session of the Supreme Court
- The Chief Justice of India can appoint a High Court judge as ad hoc judge of the Supreme Court for a temporary period.
- He can do so only after consultation with the Chief Justice of the High Court concerned and with the full consent of the President.

retired judge

- The Chief Justice of India may at any time request a retired Supreme Court judge or a retired High Court judge to act as a judge of the Supreme Court for a temporary period.
- This can be done only with the prior consent of the person to be appointed and the President.
- The power to increase the number of judges in the Supreme Court of India is vested in the Parliament

Powers of the Supreme Court

- Article 131 → Original Jurisdiction of Supreme Court → Hearing of disputes between center and states or two or more states only by Supreme Court
- In a constitutional matter (Article 132), an appeal can be made to the Supreme Court on any decision of the High Court, whether it is related to any of the civil (civil) or criminal proceedings.

- Any civil case involving a question of general importance of law (Article 133) or
- Any criminal case in which a person has been sentenced to death by the High Court, reversing the decision of the subordinate court (Article 134)
- So these types of cases can be directly heard by the Supreme Court.
- Article 137: The Supreme Court can review the decisions given by the High Court.
- Article 141: The decision given by the Supreme Court will be accepted as law in the whole of India and all the courts will be able to decide on the basis of that decision.
- Article 143: The President can consult the Supreme Court on constitutional matters. The President shall not be bound to accept the advice.
- Article 129 → Supreme Court as a court of record → means the decision given by it cannot be challenged in any court
- Article 32: Writ Jurisdiction → Power to issue 5 types of writs to the Supreme Court for enforcement of fundamental rights → Habeas corpus, Mandamus, Prohibition, Quo Warranto, Certiorari

judicial review

- The power of judicial review by the Supreme Court of India through the combined effect of Article 13 and Article 32
- Under Article 132, the Supreme Court has the power to interpret the Constitution of India as well as to interpret the law.
- Similarly, Article 228 also empowers the High Courts of the states to interpret the law.

In order of judicial review, the Supreme Court examines 5 things-

1. Violation of fundamental rights by any law passed by the Parliament
2. Violation of procedure established by the Constitution

3. Violation of jurisdictional limit by Parliament
4. Violation of other provisions of the constitution
5. Violation of the rule of law and the supremacy of the Constitution

judicial activism

- Judicial activism refers to the role of the court under which it orders the legislature and the executive to follow their constitutional obligations.
- In India, the concept of judicial activism was developed through Public Interest Litigation in the mid-70s.
- Justice V.R. Krishna Iyer, P.N. Bhagwati, Justice O. Chinnappa Reddy and Justice D.A. Desai

Public interest litigation

- Not defined in Indian Constitution or any law
- There is no such example at the international level.
- fundamental concept of india
- PIL Provision for trial to protect public interest
- It is not necessary that the aggrieved party himself should go to the court.
- Filed in favor of the victim by any citizen or by the Court itself

judicial restraint

- Judicial restraint is a principle of judicial interpretation that encourages judges to limit the exercise of their own powers.
- It stresses that unless laws are clearly unconstitutional, judges should refrain from striking them down.
- Courts should interpret the law and should not interfere in policy-making.

high Court

- Articles 214 to 231 in Part VI constitute the constitution, independence, jurisdiction, powers, procedures etc. of the High Courts.

- Provision for a High Court for each State under Article 214 of the Constitution
- 7th Constitutional Amendment Act 1956 → Parliament can establish a single High Court for two or more states
- The jurisdiction of the High Court can also be extended to the Union Territories.
- 25 High Courts in the country
- four of these common high courts
- Delhi is the only Union Territory with its own High Court (since 1966).
- Other Union Territories come under the jurisdiction of High Courts of different States.
- Article 217 Appointment of the Chief Justice of a High Court by the President after consultation with the Chief Justice of India and the Governor of that State
- For the appointment of other judges, the President consults the Chief Justice of that court.
- Similarly, if the appointment of judges to a common High Court of two or more states is made after consultation with the governors of all the states concerned,
- In the Third Judges case, 1998, the Supreme Court held that the Chief Justice of the Supreme Court should consult the two senior-most judges in the appointment of High Court judges.

Qualifications of judges

- citizen of india
- 10 years experience in the judicial work of India, or advocate for 10 years continuously in a High Court
- There is no minimum age limit prescribed in the Constitution for the appointment of a High Court Judge.

- There is no provision in the constitution to appoint a legal expert as a judge of the High Court like the Supreme Court.

Oath

- Oath of Judges under Article 219
- before the Governor or any other person appointed by him in this behalf

Tenure of judges

- The tenure of High Court judges is not fixed in the constitution.
- in office till the age of 62 years
- In case of any dispute regarding age, the President shall consult the Chief Justice of India before giving his decision; The decision of the President is final in this regard
- resignation to the president
- Article 218 → The way a judge of the Supreme Court is removed, in the same way the judges of the High Court will also be removed.
- Under Article 222, the President can transfer a judge from one High Court to another High Court after consultation with the Chief Justice of India.
- Entitled to such allowances in addition to pay on transfer as may be prescribed by Parliament.
- In 1977, the Supreme Court ordered that the transfer of judges should be done only as an exception and keeping public welfare in mind, and not as a punishment.

Powers of High Court

- original jurisdiction of high court
- contempt of court
- Disputes relating to election of Members of Parliament and Members of State Legislatures
- enforcement of fundamental rights of citizens

- In cases transferred from subordinate courts relating to the interpretation of the Constitution

Appellate jurisdiction

- The orders and judgments of District Courts and other subordinate courts can be brought directly to the High Court for first appeal.
- Against orders and judgments of District Courts and other subordinate courts, in which question of interpretation of law is involved
- Appeal against the decisions of administrative and other tribunals
- An appeal can be made to the High Court when a subordinate court has sentenced a person to seven years or more in a case

Control over subordinate courts

- Consultation with the Governor in the appointment and promotion of District Judges and appointments to the State Judicial Service.
- Can withdraw a case pending in a subordinate court, if it involves a substantial question of law and requires interpretation of the Constitution.

Court of Record (Article 215)

As a court of record, a High Court has the power to review and rectify its own order or judgment passed in respect of a matter.

Subordinate Courts

- Part VI: Articles 233 to 237
- Constituted under High Court and by State Act
- Appointment and promotion of District Judge by the Governor in consultation with the Chief Justice of the High Court of the State

Qualification for appointment as District Judge

- has for at least 7 years been an advocate of a court of law, or
- not hold an office of profit under the Central or State Government, or
- the High Court has recommended his appointment, or

Subordinate Courts ⇒ District Courts (Civil + Criminal)

- subordinate court for civil matters
- subordinate court for criminal cases
- court of munsif judge for civil cases
- court of judicial magistrate for criminal cases

Structure and jurisdiction

- Determination of jurisdiction and conditions of subordinate courts by state law act; But their nature is different in different states.
- The highest judicial officer of the district District Judge → original and appellate jurisdiction in civil and criminal cases
- When the District Judge hears civil cases, he is called District Judge and when he hears criminal cases, he is called Sessions Judge.

local body

- Part 9 ⇒ Panchayats ⇒ 73rd Constitutional Amendment Act, 1993 ⇒ 11th Schedule ⇒ 29 Subjects
- Part 10 ⇒ Municipalities ⇒ 74th Constitutional Amendment Act ⇒ 12th Schedule ⇒ 18 Subjects
- Recommendation of Balambat Rai Mehta Committee: 73rd Constitutional Amendment Act

Importance of local government

- Foundation of Democracy & School of Democracy
- Opportunity for citizens to participate directly in the formulation and implementation of policies
- Awareness among citizens towards public sector through local government
- Efficient management of local subjects by local government
- Best tool for political education
- public cooperation in government works

- Ensuring the participation of the last person of the society in governance

Salient Features of 73rd Constitutional Amendment Act

- Part 9 → Panchayats → 73rd Constitutional Amendment Act, 1993 → 11th Schedule → 29 Subjects
- Establishment of three-tier panchayats: Gram Panchayat, Panchayat Samiti, Zilla Parishad
- State with less than 20 lakh population exempted from formation of intermediate unit
- Provision for formation of Gram Sabha: Minimum adult population 200
- Twice meeting, 15 days prior notice
- President: Mukhiya or Sarpanch
- Members: Every adult registered as a voter over the age of 18
- Gram Pradhan has the right to call a meeting
- Reservation of seats for SC and ST in proportion to population
- Out of total seats reserved for SC and ST, 1/3 seats for women of SC and ST
- One-third reservation is mandatory for SC, ST and women in the context of the post of Panchayat president,
- Discretionary power of State Legislature to provide reservation for OBC category
- State Legislature Law → Reservation for OBC as well

Tenure

- maximum 5 years
- The state can enact a law and provide for the grounds on which a panchayat can be dissolved prematurely.
- Election before the end of the prescribed 5 year term
- If a Panchayat is dissolved prematurely, it is mandatory to conduct elections within 6 months.

- Interim election is not necessary if the period of less than 6 months before the completion of the fixed tenure of that panchayat after its dissolution
- If elections are held in an interim manner, the term of that panchayat will not be 5 years, but as much time as was left in the period of 5 years.
- Provisions relating to disqualification: State Legislature by law

Provision for constitution of Finance Commission

- every 5 years by the governor
- To review the financial condition of Panchayati Raj Institutions + give recommendations regarding the distribution of funds between the state and local bodies

Salient Features of 74th Constitutional Amendment Act

- Constitutional status to urban bodies
- Part 9A → Municipalities
- 12th schedule → 18 subjects
- Provision for establishment of three-tier municipal bodies → Nagar Panchayat, Municipal Council, Municipal Corporation
- Each constituency will be divided into wards
- Representatives from these wards will be elected for the municipal body by direct election.
- Provision for constitution of ward committees in municipal bodies with population of 3 lakh or more
- Reservation and tenure related provisions similar to Panchayats
- State Legislature can provide the right to levy tax by making law.
- Provision for constitution of Finance Commission

District Planning Committee

- Village Level / City Ward
- Tehsil/Block level

- state government
- central government
- District Planning Committee
- In 1957, the Balwant Rai Mehta Committee suggested the establishment of three-tier Panchayati Raj institutions for rural development.
- On October 2, 1959, the three-tier Panchayati Raj Institution was started from Nagaur district of Rajasthan.
- In 1977, the Ashok Mehta Committee again proposed the establishment of Panchayati Raj Institutions.
- Ale. M. Singhvi Committee (1985) first recommended to provide constitutional status to Panchayati Raj Institutions.
- In 1989, during the Prime Ministership of Rajiv Gandhi, the 64th Constitutional Amendment Bill was presented in the Parliament to give constitutional status to the Panchayati Raj Institutions, but it could not be passed by the Rajya Sabha.
- Again in 1990, the 74th Constitutional Amendment Bill was presented, but this too could not be passed.
- Balwant Rai Mehta (1957)
- Ashok Mehta Committee (1977)
- Hanumantha Rao Committee (1983)
- GVK Rao Committee (1985)
- LM Singhvi Committee (1986)
- Sarkaria Commission on Centre-State Relations (1988)
- P.K. Thungon Committee (1989)
- Harlal Singh Kharrar Committee (1990)
- GVK Rao Committee (1985)

Constitutional commission

Union Public Service Commission

- Part 14: Articles 315 to 323
- First indirect effort towards the establishment of Public Service Commission → Charter Act (1853) → Open competition system started for recruitment and selection of civil services
- Government of India Act, 1919 → Provision for formation of Public Service Commission (1926)
- Article 315 → Center + State + Joint Commission
- Constitution of Joint Public Service Commission for two or more states by the Parliament (on the request of the concerned states)

Why constitutional status to UPSC?

- So that the recruitment of qualified officers without any pressure
- Paves the way for development through effective implementation of policies in India through administrative machinery

Structure

- UPSC: Appointment of Chairman and other members by the President
- As far as possible half of the members of every Public Service Commission shall be persons who have held any administrative post under the Government of India or the Government of a State for at least 10 years.
- UPSC ⇒ Tenure 6 years or 65 years of age
- SPSC / JPSC ⇒ Tenure 6 years or 62 years of age
- Resignation to the President/Governor
- A member of the UPSC can be removed from office by the President on grounds of misconduct.
- But he will be removed from the post only after the investigation of this type of misconduct by the Supreme Court and on the recommendation of the Supreme Court.
- The Supreme Court can also investigate the misconduct of the members of the State Public Service Commission or the Joint Public Service

Commission, but the final power to remove them from the post rests with the Governor.

- Bankruptcy/Physical incapacity/office of profit can be removed from office without Supreme Court inquiry.
- There is no minimum number of members mentioned in the constitution for commissions.
- The President/Governor has the power to determine the service-conditions, number of members etc. of the members of the Commission.
- UPSC is consulted on matters relating to the manner of appointment to civil services and civil posts
- The advice of the commission is not binding on the center, but the central government has to tell in the parliament why it did not accept the recommendation of the commission.
- Union Public Service Commission Annual Report to the President ⇒ The President presents this report to both the Houses of the Parliament

Election Commission

- Part 15 → Article 324 to 329
- Established on January 25, 1950
- Appointment: By the President
- Major functions: Conducting elections to the President, Vice President, Parliament and State Legislatures and preparing electoral rolls
- Structure: Not clear in the constitution, currently three-member
- The commission takes decisions on the basis of majority and all the three members have equal status and powers.
- Tenure: Not prescribed in the constitution
- 6 years or 65 years of age as per parliamentary law
- Salary charged on Consolidated Fund of India

- Before the general elections to the Lok Sabha in 1989, the President appointed two Election Commissioners for the first time.
- The newly formed government abolished the post of election commissioners only after the elections.
- Again in 1993, the Congress government created the post of two election commissioners, which continues till date.
- The newly appointed two members also have the same rights and status as the Chief Election Commissioner.
- In case of difference of opinion, the commission will decide by majority and the decision of majority will be final.
- Removal: Can be removed from office by the Parliament in the same way as a judge of the Supreme Court i.e. on the ground of proved misbehavior and incapacity by passing a special majority resolution by both the Houses of the Parliament.
- First Chief Election Commissioner: Sukumar Sen
- At present Chief Election Commissioner Sushil Chandra

National Commission for Scheduled Castes & National Commission for Scheduled Tribes

- Article 338 → National Scheduled Castes and Scheduled Tribes Commission (65th Constitutional Amendment Act, 1990)
- 89th Amendment Act, 2003 → Article 338 & Article 338A
- Article 338A → National Commission for Scheduled Tribes
- Article 338 → National Commission for Scheduled Castes

Structure

- Consists of a Chairman, a Vice-Chairman and three full-time members (including one woman member)
- appointment by the President
- President has the power to determine the terms and conditions of service

- Tenure: Three years

Main work

- To make recommendations for the welfare of SC and ST and protection of their rights
- To monitor issues related to SC & ST constitutional protection and review their implementation
- Hearing cases infringing on the interests of SC & ST
- issue a summons to a person to appear before himself
- The Commission will be consulted on all important policy issues affecting SC & ST by the Central or State Government
- The government is not bound to accept the recommendations of the commission, but it is mandatory to consult the commission.
- The Commission shall submit annually a report to the President regarding the discharge of its duties.
- The President will cause the report to be placed before both the Houses of Parliament.
- If the report of the commission is related to any state government, then the above work is done by the governor with reference to the state legislature.

National Backward Classes Commission

- Constituted under the National Commission for Backward Classes Act, 1993
- Constitutional Status by 102nd Constitutional Amendment Act, 2018
- Parental Ministry ⇒ Union Ministry of Social Justice and Empowerment
- Target Group ⇒ Socially and Educationally Backward Classes

Structure

- Five members in the commission: President, Vice President and three other members

- appointment by the president
- The terms of service and tenure of office of the Chairman, Vice-Chairman and other members are determined by the President.

Benefits of getting constitutional status

- having the same powers as a civil court
- Matters related to OBC directly on the table of Parliament
- It is difficult for the elected government to ignore the demands of the commission.
- Paving the way for the welfare of OBC

Special Officer for Linguistic Minorities

- 7th Constitutional Amendment Act, 1956
- Part 17 ⇒ Article 350B
- Appointment: By the President
- Purpose: Advising and protecting the interests of linguistic minorities

Finance Commission

- Article 280
- Constitution of Finance Commission by the President at the end of every 5 years
- Constitution by the President even before the period of 5 years
- Finance Commission (15th): Nand Kishore Singh
- Composition of the Finance Commission: (1 + 4), appointed by the President
- To make recommendations regarding the distribution of taxes between the Center and the States and the grants given by the Center to the States.
- Advisory nature of recommendations
- Commission reports to the President

- Explanation of the recommendations of the President's Commission and the action taken by the Central Government on those recommendations before both the Houses of the Parliament
- Chairman of the first Finance Commission: K. C. Niyogi
- No official announcement yet about new Finance Commission chairman
- The Union Government approved the constitution of the 15th Finance Commission in November, 2017.
- NK Singh was appointed chairman of the 15th Finance Commission.
- The tenure of the 15th Finance Commission is from 2020-25.
- The recommendations of the 14th Finance Commission were valid till the financial year 2019-20.
- Duration of 15th Finance Commission 1st April 2020 to 31st March 2025
- But due to the formation of two new Union Territories, the first report was prepared as Annual Report (2020-21) and its recommendations were placed on the table of Parliament on February 1, 2020.

non-constitutional commission

National Human Rights Commission

- On December 10, 1948, the United Nations General Assembly made the Universal Declaration of Human Rights → Mention of rights such as personal dignity, gender equality, socio-economic-political equality and freedom
- India was a signatory to the United Nations Charter on Human Rights in 1948.
- But institutional efforts regarding human rights started in 1993.
- Human Rights Protection Act, 1993
- Provision for establishment of human rights commissions at central and state level
- statutory body

- NHRC Chairperson and Members are appointed by the President based on the recommendations of a high-level committee headed by the Prime Minister
- High-Level Committee: Prime Minister + Speaker of Lok Sabha + Deputy Chairman of Rajya Sabha + Chief Leader of Opposition in both Houses of Parliament + Union Home Minister
- The National Human Rights Commission is a five-member body, consisting of a chairman and 4 other members.
- President ⇒ Retired Chief or other Justice of the Supreme Court
- chief justice or other judge of a high court
- 3 such members who have extensive knowledge or practical experience in relation to human rights. Must have at least one female member
- Ex-Officio Member ⇒ Chairman of National Commission for Minorities, National Commission for Scheduled Castes, National Commission for Scheduled Tribes and National Commission for Women
- Tenure: 3 years or 70 years of age
- Chairman and members of the commission though eligible for re-appointment in the commission
- After the expiry of the tenure, cannot hold any other post under the Central or State Government.
- Commission to determine its own procedure
- The Commission annually presents a report to the President regarding the discharge of its responsibilities and recommendations.
- The report of the Commission is presented by the President to both the Houses of the Parliament.

central vigilance commission

- Established in 1964

- Of. Based on the recommendations of the Anti-Corruption Committee headed by Santhanam
- Initially established by order of the government
- Central Vigilance Act, 2003 ⇒ Statutory Status
- Structure: Headed by a Central Vigilance Commissioner + Two other Vigilance Commissioners
- Appointment: by the President on the basis of the recommendations of a three-member committee headed by the Prime Minister
- Committee: Prime Minister + Union Home Minister + Leader of the Opposition in the Lok Sabha
- Tenure of Chairperson and Members 4 years or 65 years of age
- Chairman and members are eligible for re-appointment, but cannot hold any other post under the Central or State Government after the expiry of their term.
- CVC is not under any ministry or department.
- It is an independent body answerable only to the Parliament.
- CVC an advisory body
- No judicial power, the commission has neither the power to punish any criminal nor the power to register any case against the accused of corruption
- No investigating agency, CBI or Chief Vigilance Officers (CVOs) in government offices get the matter investigated.

Lokpal and Lokayukta

- Established through the Lokpal and Lokayuktas Act, 2013
- statutory body
- Inspired by the Swedish ombudsman concept
- Guyana was the first developing country to adopt this concept.

- The concept of Ombudsman in India introduced by Union Law Minister Kumar Sen
- The first use of the words Lokpal and Lokayukta was in L. by M. Singhvi
- The establishment of such institutions was recommended by the first Administrative Reforms Commission (1966).
- Lokpal Bill passed for the first time in 1968, but lapsed due to dissolution of Lok Sabha
- Recommendation for the formation of Lokpal by the Second Administrative Reforms Commission (2002)
- Constitution of a Group of Ministers under the chairmanship of Pranab Mukherjee to give recommendations on the proposal of the Lokpal Bill (2011)
- In 2013, the Lokpal Bill was passed by the Parliament with the effect of a massive mass movement by civil society.
- Act came into force from January 16, 2014

Structure of Lokpal

- a chairman and 8 other members
- Chairman: Retired Chief Justice of the Supreme Court or any other judge
- Such a person can be appointed on the post of Chairman who has at least 25 years of experience in administration or management.
- Out of the other 8 members, 4 members should be from judicial background, while 4 members should be from SC, ST, OBC or women category.
- Tenure of chairman and members 5 years or 70 years of age
- Appointment of the chairman and members on the basis of the recommendations of the selection committee constituted by the President under the chairmanship of the Prime Minister

- Selection Committee: Speaker of the Lok Sabha, Leader of the Opposition in the Lok Sabha or the leader of the largest opposition party, Chief Justice of India, a legal expert
- 100 Members of Parliament submit a petition with their signatures to the President for the removal of the Chairperson and members of the Lokpal.
- The President brings this petition to the notice of the Supreme Court, the Supreme Court investigates the matter and finds the allegation true, then the written order of the President removes him from office.

Jurisdiction and Powers of Lokpal

- The jurisdiction of the Lokpal includes the Prime Minister, Ministers, Members of Parliament, Group A, B, C and D officers and officers of the Central Government.
- The Lokpal's jurisdiction over the Prime Minister will be limited to allegations of corruption not related to international relations, security, public order, atomic energy and space.
- There is a provision under the Lokpal Act that all public servants should publicly declare their total assets and that of their dependents.
- It has the power to investigate and give directions to the CBI.
- Lokpal has the same powers as a civil court

Central Information Commission

- Established in : 2005 under RTI Act, 2005
- Nodal Department: Department of Personnel & Training
- Composition: One Chief Information Commissioner and not more than ten Information Commissioners
- Appointment: By the President, based on the recommendations of a three-member committee headed by the Prime Minister (Prime Minister + Leader of the Opposition in Lok Sabha + Union Minister nominated by the Prime Minister)

- Tenure: 5 years or 65 years of age.
- But the Right to Information (Amendment) Act, 2019 → the tenure of the chairman and members of the commission is determined by the central government
- The chairman and members of the commission, however, are not eligible for re-appointment in the commission.
- The main function of the commission is to provide the information sought by the people under the RTI Act, 2005 within the prescribed limit.
- Tenure: 5 years or 65 years of age.
- But the Right to Information (Amendment) Act, 2019 → the tenure of the chairman and members of the commission is determined by the central government
- The chairman and members of the commission, however, are not eligible for re-appointment in the commission.
- The main function of the commission is to provide the information sought by the people under the RTI Act, 2005 within the prescribed limit.
- The main objective of the commission is to incorporate transparency and fairness in the matters of governance and administration.
- The decisions of the Commission are binding and can be appealed against only in the High Court or the Supreme Court.

Central Bureau of Investigation (CBI)

- Formal beginning: Delhi Special Police Establishment Act, 1946 → To investigate allegations of corruption in various departments of the Government of India
- In 1963, he was also entrusted with the responsibility of investigating serious crimes.
- CBI functions under the Department of Personnel, Ministry of Personnel, Pensions and Public Grievances.

Policy commission

- Formation : January 1, 2015
- Predecessor : Planning Commission
- Chairman: Prime Minister
- Vice President: Appointed by the Prime Minister
- Governing Council: Chief Ministers of all States and Lieutenant Governors of Union Territories
- Ex-officio Membership: Up to four members of the Union Council of Ministers nominated by the Prime Minister
- Regional Council ⇒ The Prime Minister or his nominee presides over meetings of Chief Ministers and Lieutenant Governors to address specific regional issues.
- Ad-hoc Membership: 2 ex-officio members by rotation from premier research institutions
- Chief Executive Officer (CEO): Secretary to the Government of India (appointed by the Prime Minister)
- Special invitees: Experts in various fields nominated by the Prime Minister

Two major hubs of NITI Aayog

- Team India Hub: Interface between States and Center
- Knowledge & Innovation Hub: Think-Tank of NITI Aayog

Objectives of NITI Aayog

- promote cooperative federalism
- Creation of framework for strategic vision and long term policies
- ensuring inter-governmental and inter-departmental coordination
- speed up development activities
- Ensuring participation of states in developmental activities

law commission of india

- Formation from time to time to give important suggestions on legal related subjects
- is neither a constitutional commission nor a statutory one by the Ministry of Law and Justice
- The first Law Commission of India was formed in 1834 by Lord William Bentinck, the then Viceroy under the chairmanship of Lord Macaulay.
- The first Law Commission of independent India was formed in 1955 under the chairmanship of the first Attorney General of India, M. C. Setalvad.
- 21st Law Commission ⇒ Balbir Singh Chauhan (2018)

First Administrative Reforms Commission (1966)

- headed by Morarji Desai
- Later, due to Morarji Desai becoming a minister in the central government, K. Hanumantayya was appointed its president.
- The first Administrative Reforms Commission submitted its two reports to the Central Government in 1966 and 1970 respectively.

Second Administrative Reforms Commission (2005)

- Headed by Veerappa Moily, former Chief Minister of Karnataka
- In 2009, the commission presented 15 reports for reforms in the Indian governance system.

National Investigation Agency (NIA)

- Established in December 2008 under the National Investigation Agency Act, 2008
- To check and curb terrorist activities on all India basis
- Coordinating role between center and states
- Appeal to the High Court and the Supreme Court against the decisions of the NAI

TRAI

- Establishment : 1997
- Telecom Regulatory Authority of India Act, 1997
- Headquarters : New Delhi
- Composition: One Chairman + minimum two and maximum six members
- appointment by the central government
- The Chairperson shall be a person who is or has been a Judge of the Supreme Court, the Chief Justice of a High Court.
- Other members shall be selected from amongst persons having special knowledge or practical experience in the field of telecommunication, industry, finance, accounting, management or consumer affairs.

key objectives

- to Regulate telecom Services
- To create a fair, equitable and transparent environment for expansion of telecom services
- Recommending terms of service of the license to the service provider
- ensuring compliance with license conditions
- To protect the interests of telecom service consumers

National Green Tribunal (NGT)

- Establishment under the National Green Tribunal Act (NGT, Act) 2010
- India is the world's third overall while the first developing country (Aus & NZ)
- Headquarters: Delhi + Four Regional Offices: Bhopal, Pune, Kolkata & Chennai
- The NGT Act, 2010 mandates that environmental issues referred to the NGT be disposed of within 6 months.
- A Chairperson, Judicial Member and Expert Member
- tenure 5 years
- Member not reappointed

- Chairman is appointed by the Central Government in consultation with the Chief Justice of India.
- It is necessary that the Tribunal should have at least 10 and not more than 20 full-time judicial members and expert members.

Central pollution control board

- Establishment : 1974
- Established under the Water (Prevention and Control of Pollution) Act, 1974
- Nature : Statutory
- Ministry: Union Ministry of Environment and Forests

Source of Powers of CPCB

- Water (Prevention and Control of Pollution) Act, 1974
- Air (Prevention and Control of Pollution) Act, 1981
- Environment (Protection) Act, 1986

air quality management commission

- Establishment to improve the air pollution situation in the year 2020
- Along with the establishment of the commission, the EPCA (Environment Pollution Control Authority) was also abolished on the orders of the Supreme Court.
- Objective: To improve air quality & control air pollution in Delhi and its border areas (Punjab, Haryana, Rajasthan and Uttar Pradesh)

Composition of the commission

- 18 members including a chairman
- Representatives of Delhi, Punjab, Haryana, Uttar Pradesh and Rajasthan
- ISRO, NITI Aayog, Central Pollution Control Board members also included
- Tenure of the chairman three years + eligible for re-appointment
- MM First Chairman of Kutty Commission

Powers of the commission

- Issuance of guidelines regarding air pollution
- air pollution complaint
- regulating air polluting activities
- ban polluting industries
- Determination of air quality and emission standards of pollutants

Judicial powers

- Commission's decision binding, appeal only in Supreme Court
- Maximum 5 years imprisonment and fine up to Rs 1 crore
- Power to take suo motu cognizance of any matter relating to air pollution

Major constitutional amendments

first constitutional amendment

- When: 1951
- Prime Minister: Jawaharlal Nehru
- President: Dr. Rajendra Prasad
- Objective: To implement land related reforms
- Article 31 A ⇒ Constitutional recognition to the abolition of Zamindari system
- Article 31B ⇒ Laws included in the Ninth Schedule or constitutional amendment cannot be challenged in the court on any ground

Ninth Schedule

If the Parliament declares any law or constitutional amendment as a part of the Ninth Schedule of the Constitution, then that law cannot be challenged in the court on any ground.

constitutional recognition

The first constitutional amendment was given constitutional recognition by the Supreme Court in *Shankari Prasad v. Union of India*, 1951.

other modifications

- Article 15(4)
- The State may make special provisions for the advancement of the socially and educationally backward classes of citizens.

Third constitutional amendment

- When: 1954
- Prime Minister: Jawaharlal Nehru
- President: Dr. Rajendra Prasad
- Objective: To confer powers on the Center with respect to food items.

key provisions

- Essential food items were removed from the State List and included in the Union List.
- Actually, the state governments had the right to have complete control of essential food items.
- This was causing great complications in an emergency.
- On the other hand, at this time the country was also facing the crisis of food security.
- Therefore, the Central Government was given the power of complete control over the production, supply and distribution of all types of essential commodities.

fifth constitutional amendment

- When: 1955
- Prime Minister: Jawaharlal Nehru
- President: Dr. Rajendra Prasad
- Objective: To set a time limit for the Legislatures in the matter of State Reorganization

key provisions

- Amendment of Article 3
- Originally, under Article 3, there was a provision for sending the bill related to state reorganization to the states and obtaining their votes.
- But there was no fixed time limit for this, due to which confusion was arising, because the states used to keep the bill with them for an indefinite period.
- If the state does not give its vote within that time limit, then that bill will automatically be deemed to have been passed by the state legislature.
- Therefore, through this amendment, it has been arranged that when the President sends the Bill for seeking the opinion of the State Legislature, the determination of the time limit will also be mentioned in it.

seventh constitutional amendment

- When: 1956
- Prime Minister: Jawaharlal Nehru
- President: Dr. Rajendra Prasad
- Objective: Reorganization of states

key provisions

- Amendment of the Second Schedule
- The system of classification of four types of states ended
- Single High Court for more than two states

9th constitutional amendment

- When: 1960
- Prime Minister: Jawaharlal Nehru
- President: Dr. Rajendra Prasad
- Purpose: Arrangement for transfer of Indian territories

key provisions

- By this constitutional amendment, a provision was made to transfer Berubari of West Bengal to Pakistan.
- Actually, there was an agreement between India and Pakistan in 1956, under which the Berubari Union Territory of West Bengal was to be handed over to Pakistan.
- In this regard, the Supreme Court decided that the Central Government, using its sovereign power, cannot hand over any Indian territory to a foreign government.
- This work can be done only through constitutional amendment.

11th constitutional amendment

- When: 1960
- Prime Minister: Jawaharlal Nehru
- President: Dr. Rajendra Prasad
- Purpose: Clarification regarding the election of President and Vice President

key provisions

- The election of the President cannot be challenged on the ground that his electoral college is not complete.
- Amendment in the election process of the Vice President ⇒ Instead of a joint sitting of both the Houses of the Parliament, the system of Electoral College

15th constitutional amendment

- When: 1963
- Prime Minister: Jawaharlal Nehru
- President: Dr. Sarvepalli Radhakrishnan
- Objective: Provision regarding Indian judicial system

key provisions

- Retirement age of High Court judges increased from 60 years to 62 years
- Transfer of a Judge of a High Court to another High Court during his tenure
- The scope of the power to issue writs of the High Court was increased.
- Now the High Court can issue writ against any government officer or person who does not come under its jurisdiction.

17th constitutional amendment

- When: 1964
- Prime Minister: Jawaharlal Nehru
- President: Dr. Sarvepalli Radhakrishnan
- Objective: To expand the scope of the Ninth Schedule

key facts

- Provided constitutional protection to the land reform laws passed by the states of Kerala and Madras, so that they could not be challenged in the courts.
- This amendment was given constitutional recognition by the Supreme Court in the case of Sajjan Singh v. State of Rajasthan (1965).

18th constitutional amendment

- When: 1966
- Prime Minister: Indira Gandhi
- President: Dr. Sarvepalli Radhakrishnan
- Objective: To delegate the power of reorganization of Union Territories to the Parliament

key provisions

- Amendment of Article 3
- Provision was made that the Parliament can also reorganize the Union Territories.

19th constitutional amendment

- When: 1966
- Prime Minister: Indira Gandhi
- President: Dr. Sarvepalli Radhakrishnan
- Objective: To empower the High Courts to settle election disputes

key provisions

- The original Constitution provided the Election Commission of India with the power to settle disputes in connection with elections to Parliament and State Legislatures.
- But by this constitutional amendment, this power was given from the Election Commission of India to the High Courts.
- In fact, at this time the executive's interference in the functioning of the Election Commission was increasing.
- To deal with this situation, the High Courts were given the power to settle disputes related to the elections of MPs and MLAs.

21st constitutional amendment

- When: 1967
- Prime Minister: Indira Gandhi
- President: Zakir Hussain
- Objective: To include Sindhi language in the Eighth Schedule

24th constitutional amendment

- When: 1971
- Prime Minister: Indira Gandhi
- President: V.V. Giri
- Objective: To exclude the constitutional amendment power of the Parliament from the purview of judicial review

key provisions

- Parliament can amend any part of the constitution including the fundamental rights.
- The constitutional amendment passed by the Parliament is not in the definition of 'law' under Article 13.
- The President is bound to give his assent to the Constitution Amendment Bill.

25th constitutional amendment

- When: 1971
- Prime Minister: Indira Gandhi
- President: V.V. Giri
- Objective: To ensure primacy of Directive Principles over Fundamental Rights

key provisions

- The law made to implement the Directive Principles mentioned in Article 39(b) and Article 39(c) cannot be called in question in any court on the ground of violation of Article 14 and Article 19.
- Article 39 (b): To ensure distribution of material resources of the society in the collective interest
- Article 39 (c): To govern the economy in such a way that wealth and means of production are not concentrated in the hands of a limited number of people

Kesavananda Bharati v. State of Kerala (1973)

- The 24th and 25th Constitutional Amendment Acts were challenged in the Supreme Court in the case of Kesavananda Bharati vs. State of Kerala (1973).
- In this, the Supreme Court said that the Parliament can amend any part of the Constitution, including the fundamental rights, but no such amendment

can be made, which destroys the basic structure or the basic spirit of the Constitution.

- Also, the Supreme Court said that in order to implement Article 39 and Article 39, Parliament can limit Article 14 and Article 19 but not violate it.
- Thus, the Supreme Court brought out the subtle difference between the two words 'limit' and 'infringement'.

26th constitutional amendment

- When: 1971
- Prime Minister: Indira Gandhi
- President: V.V. Giri
- Objective: To abolish the privileges and privileges of former princes of princely states

33rd constitutional amendment

- When: 1974
- Prime Minister: Indira Gandhi
- President: V.V. Giri
- Objective: To empower the Presiding Officers to accept the resignations of MPs and MLAs

key provisions

- Amendment of Articles 101 and 190
- The resignation of the members of Parliament and State Legislature can be accepted by the Speaker/Chairman only when he is satisfied that the resignation is genuine and is being given without any pressure.

35th & 36th Constitutional Amendment

- When: 1975
- Prime Minister: Indira Gandhi
- President: V.V. Giri

- Purpose: Provisions in respect of Sikkim

key provisions

- Through the 35th Amendment, Sikkim was given the status of a protected state and for this the Tenth Schedule was added to the Constitution.
- Through the 35th Amendment, Sikkim was given the status of a protected state and for this the Tenth Schedule was added to the Constitution.

38th constitutional amendment

- When: 1975
- Prime Minister: Indira Gandhi
- President: V.V. Giri
- Purpose: To declare emergency and to exclude ordinance from the purview of judicial review

key provisions

- The proclamation of emergency made by the President under Article 352 was taken out of the purview of judicial review.
- The ordinance issued by the President under Article 123 and the Governor under Article 213 were also kept out of the purview of judicial review.

39th constitutional amendment

- When: 1975
- Prime Minister: Indira Gandhi
- President: V.V. Giri
- Objective: To exclude election related disputes from the jurisdiction of the Supreme Court

key provisions

- Disputes relating to the election of the President, the Vice President, the Prime Minister and the Speaker of the Lok Sabha were taken out of the jurisdiction of the Supreme Court.

- Provision for hearing of such disputes by a committee established by parliamentary law

42nd Constitutional Amendment

- When: 1976
- Prime Minister: Indira Gandhi
- President: Fakhruddin Ali Ahmed
- The biggest amendment of the constitution so far ⇒ Mini constitution
- Objective: To update the constitution in a way
- The amendments were mainly based on the recommendations of the Swaran Singh Commission.

key provisions

- Three new words in the preamble ⇒ socialism, secularism and integrity of the nation
- Part IV ⇒ Article 51 ⇒ 10 Fundamental Duties added
- The President is bound to accept the advice of the Council of Ministers.
- The subjects of education, forests, protection of wild animals and birds, weights and measures, administration of justice and constitution of all courts except the Supreme and High Courts were transferred from the State List to the Concurrent List.
- Constitution of administrative and other authorities: Article 323A
- To exclude constitutional amendment from the purview of judicial review
- Tenure of Lok Sabha and State Assemblies increased from 5 years to 6 years
- No judicial review of laws violating fundamental rights to enforce Directive Principles
- The period of President's rule in the state was increased from 6 months to one year in one go.

- Removal of the requirement of quorum from Parliament and State Legislatures

Article 368(4)

Constitutional amendment made by the Parliament cannot be challenged in any court

Article 368(5)

There will be no restriction on the power of Parliament to amend the constitution

Minerva Mills v. Union of India case (1980)

Article 368(4)

Basic Structure Concept

Article 368(5)

judicial review

44th constitutional amendment

- When: 1978
- Prime Minister: Morarji Desai
- President: Neelam Sanjeeva Reddy
- Objective: To remove some of the offensive provisions of the 42nd Constitutional Amendment

key provisions

- Right to property was removed as a fundamental right and made only a constitutional right. (Article 300A)
- In Article 352, the word 'internal disturbance' was removed and 'armed rebellion' was added.
- System of declaring national emergency by the President only on the basis of written recommendation of the cabinet
- The three-year limit on President's rule under Article 356 was abolished.

- Along with this, a provision was made that the President can remain in force in a state for a maximum period of one year.

Two conditions for extending the period of one year

1. When Emergency is in force under Article 352
 2. The Election Commission should certify that it is not possible to hold elections in the state at present.
- President's rule will not be implemented after three years under any circumstances.
 - Arrangement that the fundamental rights conferred by Articles 20 and 21 cannot be suspended during national emergency
 - Tenure of Lok Sabha and State Legislatures again 5 years
 - The power to take the final decision on the election disputes of President, Vice President, Prime Minister and Speaker was again handed over to the Supreme Court.
 - The President can return the advice given by the Council of Ministers for reconsideration only once.

49th constitutional amendment

- When: 1984
- Prime Minister: Rajiv Gandhi
- President: Giani Zail Singh
- Objective: Extension of the Sixth Schedule

key provisions

- The state of Tripura was also included in the Sixth Schedule.
- Now there are four states under the purview of the Sixth Schedule – Assam, Meghalaya, Tripura and Mizoram.
- At present also these are the four states.

52nd constitutional amendment

- When: 1985
- Prime Minister: Rajiv Gandhi
- President: Giani Zail Singh
- Purpose: Tenth Schedule added for anti-defection law

61st constitutional amendment

- When: 1989
- Prime Minister: Rajiv Gandhi
- President: R. Venkataraman
- Objective: To reduce the voting age from 21 years to 18 years

65th constitutional amendment

- When: 1989
- Prime Minister: Chandrashekhar
- President: R. Venkataraman
- Purpose: Constitution of Scheduled Castes and Scheduled Tribes Commission

key provisions

- Constitution of Scheduled Castes and Scheduled Tribes Commission by amending Article 338
- Provision of 'Special Officer' for these castes and tribes in the original constitution

69th constitutional amendment

- When: 1990
- Prime Minister: Chandrashekhar
- President: R. Venkataraman
- Objective: Special status of Union Territory to Delhi

key provisions

- Special status of Union Territory to Delhi by adding Article 239AA and Article 239AB
- Along with the formation of Legislative Assembly and Council of Ministers for Delhi.

71st constitutional amendment

- When: 1992
- Prime Minister: Narasimha Rao
- President: Shankar Dayal Sharma
- Objective: To include Konkani, Manipuri and Nepali languages in the Eighth Schedule

73rd & 74th Constitutional Amendment

- When: 1992
- Prime Minister: Narasimha Rao
- President: Shankar Dayal Sharma
- Objective: Constitutional arrangement with reference to local bodies

key provisions

- 73rd Constitutional Amendment: Part 9 ⇒ Panchayats ⇒ 11th Schedule ⇒ 29 subjects
- 74th Constitutional Amendment: Part 10 ⇒ Municipalities ⇒ 12th Schedule ⇒ 18 Subjects

77th constitutional amendment

- When: 1995
- Prime Minister: Narasimha Rao
- President: Shankar Dayal Sharma
- Objective: Article 16 (4A) ⇒ Reservation in promotion for SC/ST also

81st constitutional amendment

- When: 2000

- Prime Minister: Atal Bihari Vajpayee
- President: K. R. Narayanan
- Objective: Reservation in backlog posts

key provisions

- Under this amendment, the states were authorized to consider the reserved seats lying vacant in any year as separate vacant seats and make arrangements to fill them in the next year.
- Such separate vacant seats should not be seen in conjunction with the seats to be filled in that year.
- That is, in this amendment, the limit of 50% reservation in backlog posts has been abolished.

84th constitutional amendment

- When: 2001
- Prime Minister: Atal Bihari Vajpayee
- President: K. R. Narayanan
- Objective: Re-allocation of seats in the Lok Sabha and State Assemblies

key provisions

- Re-allocation of seats in the Lok Sabha and State Assemblies was extended till 2026.
- Objective: To encourage measures to limit population

86th constitutional amendment

- When: 2002
- Prime Minister: Atal Bihari Vajpayee
- President: Dr. APJ Abdul Kalam
- Objective: To declare elementary education as a fundamental right

key provisions

- By this amendment, elementary education was declared a fundamental right by adding Article 21A.
- Along with this, Article 45 of Part-IV was amended to provide that the State shall provide care and elementary education to all children of the age group of 6 to 14 years.

89th constitutional amendment

- When: 2003
- Prime Minister: Atal Bihari Vajpayee
- President: Dr. APJ Abdul Kalam
- Objective: To constitute a separate commission for ST

key provisions

- Article 338A: Provision for constitution of a National Commission for Scheduled Tribes
- Earlier provision of same commission for SC and ST (Article 338)

91st constitutional amendment

- When: 2003
- Prime Minister: Atal Bihari Vajpayee
- President: Dr. APJ Abdul Kalam
- Objective: To strengthen the anti-defection law by amending it

key provisions

- The size of the Council of Ministers shall not exceed 15% of the total membership of the Lok Sabha including the Prime Minister.
- Same arrangement with respect to states
- In relation to states, the number of members of the Council of Ministers, including the Chief Minister, is a minimum of 12 members.
- If an MP or MLA loses his membership on the ground of defection, he is also ineligible to hold ministerial post.

92nd Constitutional Amendment

- When: 2003
- Prime Minister: Atal Bihari Vajpayee
- President: Dr. APJ Abdul Kalam
- Objective: To include Bodo, Dogri, Maithili, and Santhali languages in the Eighth Schedule

93rd Constitutional Amendment

- When: 2005
- Prime Minister: Manmohan Singh
- President: Dr. APJ Abdul Kalam
- Objective: Reservation related provisions in schools

key provisions

- Article 15(5): Provision of reservation for admission of OBC, SC / ST children in all types of government and private schools in the state
- However, this provision does not apply in respect of schools established by minorities.

97th constitutional amendment

- When: 2011
- Prime Minister: Manmohan Singh
- President: Mrs. Pratibha Patil
- Objective: To make provisions regarding co-operative societies

key provisions

- A new Part IX-B was added to the Constitution in the name of Co-operative Societies.
- The formation of co-operative societies was declared a fundamental right under Article 19.

- Article 43B The state will make efforts for the formation and development of co-operative societies.

99th constitutional amendment

- When: 2014
- Prime Minister: Narendra Modi
- President: Pranab Mukherjee
- Objective: Provision for formation of National Judicial Appointments Commission

key provisions

- Amendment of Article 124(2)
- Provision for constitution of National Judicial Appointments Commission in relation to the appointment of Supreme Court and High Court judges
- Taking suo moto cognizance of this matter, the Supreme Court declared this amendment act void on the basis of violation of the basic structure of the constitution.

100th constitutional amendment

- When: 2015
- Prime Minister: Narendra Modi
- President: Pranab Mukherjee
- Objective: To implement the Land Boundary Agreement between India-Bangladesh

key provisions

- In pursuance of the 1974 Land Boundary Agreement between India and Bangladesh, some territories were exchanged by the two countries.
- For this, the provisions relating to four states (Assam, West Bengal, Meghalaya, Tripura) in the First Schedule were amended.

101st constitutional amendment

- When: 2017
- Prime Minister: Narendra Modi
- President: Pranab Mukherjee
- Purpose: Implementation of GST

key provisions

- GST implemented by abolishing all types of indirect taxes
- input tax credit
- Goods and Services Tax Appellate Tribunal
- GST Council (Article 279A)

102nd Constitutional Amendment

- When: 2018
- Prime Minister: Narendra Modi
- President: Ram Nath Kovind
- Objective: Constitutional status to the National Commission for Backward Classes
- Constitution of National Commission for Backward Classes under Article 338B
- Composition: One President + Vice President + Three other members
- Terms of service prescribed by the President
- The commission will decide its own procedure for doing its work.
- Right to investigate and monitor matters relating to safeguards for socially and educationally backward classes
- consultative role

103rd Constitutional Amendment

- When: 2019
- Prime Minister: Narendra Modi
- President: Ram Nath Kovind

- Purpose: Reservation system for economically weaker sections

key provisions

- Amendment of Article 16
- 10% reservation for general category
- Purpose: To ensure the participation of every class in the field of education, government jobs, elections and welfare schemes in the center and state

economically backward?

- Family income less than eight lakh rupees annually
- whose cultivable land is less than five acres
- Residential house less than one thousand square feet

104th constitutional amendment

- When: 2020
- Prime Minister: Narendra Modi
- President: Ram Nath Kovind
- Objective: To abolish the system of nomination of Anglo-Indian members in the Lok Sabha and Rajya Sabha

key provisions

- Under Article 331, the President could nominate two to the Lok Sabha while under Article 333, the Governor could nominate one Anglo-Indian to the State Legislative Assembly.
- Irrelevant at present, so this system is abolished
- Apart from this, through this act, the reservation for SC and ST for the Lok Sabha and State Legislatures was extended for the next 10 years i.e. the year 2030.

- Because this period of reservation was extended for 10 years by the 95th Constitutional Amendment in the year 2009 and this period was ending in the year 2020.

105th constitutional amendment

- When: 2021
- Prime Minister: Narendra Modi
- President: Ram Nath Kovind
- Objective: To empower the State Governments to prepare a list of socially and educationally backward classes
- Relation of Amendment Act to Article 15, 16 and Article 338B
- Main reason for amendment 102nd Constitutional Amendment Act, 2018
- According to this Act, along with the formation of the National Commission for Backward Classes, it was also arranged that the list of backward classes on social and educational grounds would be determined by the Central Government, as it is a subject of the Union List.

objection of the states

It cannot be a subject of the Union List, because in the year 1993 when the provision of reservation for Other Backward Classes was made, then also the State Governments had the power to determine the list of Other Backward Classes.

Important decisions of the Supreme Court

Why is the decision of the Supreme Court important?

Three Sources of Understanding the Indian Constitution

1. vision of the framers of the constitution
2. provisions of the constitution
3. Supreme Court's interpretation

- Under Article 13 and Article 32, the Supreme Court has the right to interpret the constitution.
- Under Article 129, the Supreme Court to be the court of record, that is, the decisions given by the Supreme Court will be accepted as declared law in the whole of India.

Shankari Prasad vs. Union of India, 1951

- Case: Fundamental Rights Amendable by Parliament or not
- What the Supreme Court said: Constitutional amendment made by the Parliament does not come under the definition of law in Article 13; Therefore, the Parliament can modify the fundamental rights through constitutional amendment.

Kesavananda Bharati v. State of Kerala, 1973

Case

- Srimat Jagadguru Sri Sri Shankaracharya Totakacharya Sri Kesavananda Bharati Sripadangalavaru → Abbot of the Shaiva Mutt at Edneer, Kerala
- Edneer Math property acquired by Kerala government
- Question of power of Parliament to amend fundamental rights
- Supreme Court Judgment: Concept of Basic Structure

Although the scope of Parliament's power to amend the Constitution under Article 368 is wide, it is not unlimited. Parliament cannot make any such amendment, which destroys the basic elements of the constitution or its basic structure. There are limits on this power of the Parliament which are enshrined in the constitution itself. The Parliament has to exercise its constitutional power within this ambit. The definition of what this range will be will depend on the interpretation of the word 'amendment'.

Supreme Court

To understand the real meaning of the term 'amendment of the Constitution' as used in Article 368, we have to look at the overall structure of the Constitution.

If Parliament limits or amends any such provision of the constitution, which destroys the basic spirit of the constitution, then it will be unconstitutional.

Final decision of Supreme Court in Kesavananda Bharti case

Maneka Gandhi v. Union of India (1978)

- Case: Maneka Gandhi's passport was suspended by the government in the year 1977 without assigning any reason.
- What the Supreme Court said: Explained the importance of fundamental rights

Supreme Court orders withdrawal of suspension of Maneka Gandhi's passport with immediate effect

- Explaining the fundamental rights, the Supreme Court said that the fundamental rights represent the basic values cherished by the people of this country from time immemorial and protect the dignity of the individual.
- The fundamental rights envisage and oblige the state to create such conditions in which every individual can fully develop his personality.
- The fundamental rights impose a negative obligation on the state not to encroach upon individual liberty in its various dimensions.

Minerva Mills v. Union of India, 1980

- Case: Parliament amended Article 368 to add a provision that any constitutional amendment made by Parliament cannot be challenged in any court.
- What the Supreme Court said: Based on the concept of the basic structure of the Constitution given in the Kesavanand Bharti case, the Supreme Court said that the Parliament cannot make any such amendment, which violates the basic spirit of the Constitution.

- The provisions added to Article 368 by the Constitutional Amendment violate the Supreme Court's power of 'judicial review'.
- Because Article 368(4) provides that no law passed by the Parliament in exercise of its constitutional powers can be challenged in the court.
- Hence, it violates the principle of judicial review.

Kihoto Holohan vs. Zachilu (1993)

- Case: Speaker of the Lok Sabha has the final and universal power in relation to the determination of disqualification of a member under the anti-defection law
- This law was challenged by a leader named Kihoto Hollohon from Nagaland.
- What the Supreme Court said: The court declared the said provision of the Tenth Schedule void
- The decision of the speaker of the Lok Sabha in the anti-defection law is not final, it can be questioned in the court on the basis of political malice, irrationality and partiality.
- Further, this provision limits the principle of judicial review which is part of the basic structure of the Constitution.

S. R. Bommai v. Union of India (1994)

- Case: Karnataka Chief Minister S. R. Dismissal of Bommai's Janata Dal government through President's rule in 1989
- What the Supreme Court said: The Supreme Court clarified the meaning of the basic spirit of federalism by declaring the dismissal of the government illegal

It should be well understood that the nature of federalism depends on the historical development and need of a country. It is impossible to imagine the same pattern of federalism in every country.

Federalism varies according to time and place. The form it will adopt in a country depends on the historical, geographical, economic and political conditions of the country.

The method of federalism which is applicable in the US constitution is not necessary that it is good for India also. The form of federalism adopted by India is suitable for India. This notwithstanding the fact that there are provisions in the Constitution under which the Center has been given more powers than the States.

Despite this, the Indian Constitution is a federal constitution and it is a part of the basic structure of India. It implies that the state is sovereign within its territory. States have an independent existence. They are not agents of the Centre.

Supreme Court directions in the Prakash Singh case (2006)

- Case: Case: A PIL was filed by former Uttar Pradesh DGP Prakash Singh in the Supreme Court regarding the existing shortcomings in the police system and political interference
- What the Supreme Court said: The Supreme Court issued instructions to remove the shortcomings of the police system
- Minimum tenure for the Inspector General of Police to avoid any kind of political interference, so that he cannot be transferred mid-term by politicians.
- Instructions for posting of police officers by the Police Establishment Board
- The purpose of this board is to deprive political leaders of posting and transfer related powers.
- The Court had also recommended setting up of a 'State Police Complaints Authority' where common people aggrieved by police action could lodge their complaints.
- Establishment of 'State Security Commissions' (State Security Commissions) consisting of civil society members, as well as a National

Security Commission were also recommended to separate the functions of investigation and law and order for better improvement in policing system.

- Since these observations or guidelines by the Supreme Court were not binding in nature but advisory in view of reforms, no commitment has been expressed by the governments to follow them.

Aruna Shanbaug v. Union of India (2011)

- Case: In this case Aruna Shanbaug was in coma for the last almost 3 decades and a team of doctors constituted by the Supreme Court had made it clear that she could never lead a normal life and would remain in the ICU as a kind of living corpse. .
- Therefore, on this basis, Aruna Shanbaug should be given the right to euthanasia.

What the Supreme Court said:

- The right to euthanasia is not included under Article 21.
- In this case, the Supreme Court clearly stated that although the chances of the patient becoming physically normal are negligible, his brain is still active.
- Despite this, no law exists in this context, under which the option of euthanasia or euthanasia can be made available to the person in such circumstances.
- Medical science is still in its development stage and there is ample possibility that some therapeutic system will be developed for such patients in the near future.
- Therefore, the Supreme Court in a way did not allow euthanasia.

Navtej Johar v. Union of India (2018)

- Section 377: Section 377 of the IPC deals with homosexual relations, that is, basically section 377 provides for definition and punishment for unnatural sexual relations.
- According to this section, homosexuality has been considered a punishable offense under which there is a provision of imprisonment of up to 10 years.
- What the Supreme Court said: The Supreme Court decriminalized homosexuality under Section 377 of the IPC.
- The Supreme Court clarified in its judgment that consensual sexual relations between two same-sex adults would not amount to an offense under Section 377 and would not be punishable.

99th Constitutional Amendment Act, 2014

- National Judicial Appointments Commission
- The role of the executive in the appointment of Supreme Court judges
- suo moto cognizance by the Supreme Court
- Void on the ground of violation of the basic structure of the Constitution

Supreme Court's reasoning

- National Judicial Appointments Commission
- Unnecessary interference of the executive in the appointment of judges
- negative impact on the independence of the judiciary

Ban on sedition law (2022)

- Taking suo moto cognizance, the Supreme Court has stayed the sedition law. Now new cases will not be registered under this.

Colonial administrators used sedition laws to crack down on people who criticized British policies. The stalwarts of the freedom movement like Lokmanya Tilak, Mahatma Gandhi, Jawaharlal Nehru, Bhagat Singh etc. were convicted for

their "seditious" speeches, writings and activities under the British rule. Thus such widespread use of the sedition law is reminiscent of the colonial era.

Supreme Court

- Any law criminalizing free expression based on unconstitutionally vague definitions of dissent against the government is an unreasonable restriction on the right to freedom of expression under Article 19.

authority

- Authority A quasi-judicial institution, which is established to resolve administrative or tax-related disputes.
- In other words, an authority is mostly an institution that is given judicial powers to deal with cases of a particular nature.
- 42nd Amendment Act, 1976
- Part 14A
- Article 323A: Administrative Tribunal
- Article 323B: Tribunal for other matters (tax, land reform etc.)
- The decisions of these tribunals can be appealed to the High Court and the Supreme Court.
- Article 323A provides for setting up of authorities only in matters relating to public services
- Whereas article 323B provides for establishment of authorities in respect of certain other matters.
- Under Article 323A only the Parliament can constitute the authority
- Whereas the authorities under Article 323B can be constituted by both the Parliament and the State Legislature.

central administrative authority

- Formed in 1985 under the Central Administrative Tribunal (CAT) Act
- At present there are total 18 benches of CAT.

- Principal Bench in New Delhi
- Matters relating to civil servants of All India Services (AIS), Central Civil Services, Services under the Center and Military Services under the jurisdiction of CAT
- Chairman, Vice-Chancellor and other members in CAT
- The President has the power to determine the number of members
- The members are chosen from both judicial and administrative fields so as to benefit from the expertise of both the fields.
- The position of the chairman and members of CAT is similar to that of a High Court judge.
- CAT chairman and members are appointed by the President on the basis of the recommendations of the selection committee headed by the Chief Justice of the Supreme Court.
- The President is bound to accept the recommendations of the committee
- The President is bound to accept the recommendations of the committee
- Tenure of members 5 years or 62 years of age
- The Speaker or the Deputy Speaker may at any time submit his resignation to the President
- CAT is not bound to follow the strict rules of procedure and evidence laid down in the Code of Civil Procedure, 1908
- CAT has the same powers as a civil court under the Code of Civil Procedure, 1908.
- eg. Power to issue summons to any person to appear before him
- Appeal against CAT decision only in High Court and Supreme Court
- Appeal not directly to the Supreme Court but before that appeal to the High Court

official language

- Part 17 ⇒ Articles 343 to 351

- The official language of the Union will be Hindi and the international form of numerals.
- Formation of Linguistic Commission by the President every 10 years, which will give recommendations regarding the official use of Hindi and English and assess the situation
- So far only Linguistic Commission has been formed
- In 1955 B. Yes. headed by Khare
- Center will make efforts for the development of Hindi language
- Power of State Legislatures to make laws with respect to the official language of the State
- Any language outside the Eighth Schedule can also be adopted by a state as an official language.
- The language of communication and correspondence between the center and the states will be Hindi and English.
- Every proceedings of the Supreme Court and the High Court shall be in English.
- A Governor can, with the prior approval of the President, declare any language to be the language of the proceedings of the concerned High Court.
- But despite this, the decisions and orders of the High Court will be in English only.
- Any aggrieved person shall be entitled to present his case before any officer in his own language or dialect.
- Will arrange for primary education to be imparted in the mother tongue

Article 262

- Parliament can make arrangements for settlement of inter-state river water disputes
- The Supreme Court will have no right to hear such cases.

Article 263 → Interstate Council

- Provision for constitution of Inter-State Council by the President for the purpose of establishing coordination between Center and States and in public interest
- Power of the President to determine the functions of the Council
- Work: Investigating the disputes between the states and giving advice in this regard + making recommendations for better coordination in the implementation of various subjects and policies
- According to this provision, the President had established the Inter-State Council in the year 1990.
- The Inter-State Council submits its report to the Union Government to coordinate the policies of the Union and the State Governments and to settle disputes between the States.

freedom of trade commerce and association

Articles 301 to 307 in Part 13 of the Constitution describe trade, commerce and intercourse in Indian territory.

Constitutional provision for reservation in legislature

- According to Article-330 of the Constitution, representation is given to members of the Scheduled Castes and Scheduled Tribes in the Lok Sabha on the basis of population ratio.
- Article-331 empowers the President to nominate two representatives of the said community if the Anglo-Indian community is not adequately represented in the Lok Sabha.
- Article-332 of the constitution makes provision for reservation for SC/ST class in state assemblies while Article-333 makes provision for reservation for Anglo-Indian community.
- Although seats are reserved for the SC/ST category in the Lok Sabha and state assemblies, they are elected by all the voters in the constituency.

fifth schedule

- Scheduled Areas Provisions (Except Assam, Meghalaya, Mizoram, Tripura)
- Scheduled Areas: Such areas which the President declares by his order.
- Tribal Advisory Council for the Scheduled Area so declared
- max 20 members
- Dedicated to the development of tribal area
- advisory role
- not have judicial powers

SIXTH SCHEDULE

Special provision regarding administration of tribal areas of Assam, Meghalaya, Tripura and Mizoram ⇒ Part 10 ⇒ Article 244A

autonomous district

- Any area of these states can be declared as tribal area by the Governor.
- Administration of the Autonomous District by the Autonomous District Council
- Maximum 30 members (26 direct election + 4 nominated by the Governor)

self-governing state

- 22nd Constitutional Amendment Act, 1969 ⇒ Under Article 244A only for Assam
- Constituted by Parliament only by simple majority
- Autonomous district does not get the power to enforce law and order
- While the autonomous state also gets powers in the context of law and order.

regional council

- Regional councils statutory (not constitutional) bodies

- Zonal councils were formed under the States Reorganization Act 1956 with the objective of developing a culture of collaborative working among the states and between the center and the states.
- In the year 1971, an additional North Eastern Council for the North Eastern Region was constituted by the North Eastern Council Act, 1971.
- Northern Zonal Council: It includes the states of Haryana, Himachal Pradesh, Punjab, Rajasthan, National Capital Territory of Delhi and the Union Territories of Chandigarh, Jammu and Kashmir and Ladakh
- Central Zonal Council: It includes Chhattisgarh, Uttarakhand, Uttar Pradesh and Madhya Pradesh
- Eastern Zonal Council: It includes Bihar, Jharkhand, Odisha and West Bengal
- Western Zonal Council: includes the States of Goa, Gujarat, Maharashtra and the Union Territories of Daman-Diu and Dadra and Nagar Haveli
- Southern Zonal Council: includes the states of Andhra Pradesh, Telangana, Karnataka, Kerala, Tamil Nadu, and the Union Territory of Puducherry
- Each Zonal Council is headed by the Union Home Minister.
- The Chief Ministers of the states included in each Zonal Council, by rotation, act as Vice-Chairman of the Zonal Council for that region for a period of one year at a time.
- The chief minister of each state and the governor of each union territory and two other ministers nominated from each state of the region are members of the regional council.
- One person was nominated by the Planning Commission for each of the Zonal Councils, Chief Secretaries and other officers/Development Commissioners were nominated by each of the States included in the Zone.

- Article 1 :- Union name and state territory
- Article 2: - Admission or establishment of new states
- Article 3: - Creation of state and change in boundaries or names
- Article 4: - Amendment of the First Schedule and the Fourth Schedule and the laws made under two and three
- Article 5: - Citizenship at the commencement of the Constitution
- Article 6: - Citizenship to persons coming to India
- Article 7: - Citizenship to those going to Pakistan
- Article 8: - Citizenship of persons living outside India
- Article 9: - No citizenship on taking citizenship of foreign state
- Article 10: - Continuation of the rights of citizenship
- Article 11: - Regulation of law for citizenship by Parliament
- Article 12 :- Definition of State
- Article 13: - Laws inconsistent with or abridgement of fundamental rights
- Article 14: - Equality before law and equal protection of laws
- Article 15: - Prohibition of discrimination on religion, caste, gender
- Article 16: - Equality of opportunity in public employment
- Article 17 :- End of untouchability
- Article 18: - End of titles
- Article 19: - Freedom of thought and expression
- Article 20: - Protection in relation to the conviction of crimes
- Article 21: - Life and personal liberty
- Article 21A: - Right to education for children aged 6 to 14 years
- Article 22: – Protection from arrest in certain cases
- Article 23 :- Human trafficking and child shelter
- Article 24 :- Percentage of employment of children in factories
- Article 25 :- Freedom of practice and propagation of religion
- Article 26: - Freedom to manage religious affairs
- Article 29: - Protection of the interests of minorities

- Article 30: - Right of minorities to establish and administer educational institutions
- Article 32 :- Remedies for enforcement of rights\
- Article 36 :- Definition
- Article 40 :- Organization of Gram Panchayats
- Article 48 :- Agriculture and Animal Husbandry Organization
- Article 48A: - Protection of environment, forests and wildlife
- Article 49: - Protection of national monument places and objects
- Article 50: - Separation of Judiciary from Executive
- Article 51 :- International peace and security
- Article 51A :- Basic Duties
- Article 52 :- President of India
- Article 53 :- Executive Power of the Union
- Article 54: - Election of the President
- Article 55: - The manner of election of the President
- Article 56: - President's office
- Article 57 :- Eligibility for re-election
- Article 58: - Eligible to be elected President
- Article 59: - Conditions for the post of President
- Article 60: - Oath of the President
- Article 61: - The process of impeachment of the President
- Article 62 :- Time and manner of election to fill the post of President
- Article 63 :- Vice President of India
- Article 64 :- Vice President to be ex-officio Chairman of Rajya Sabha
- Article 65 :- Vice President's work on the vacancy of the post of President
- Article 66 :- Election of Vice-President
- Article 67 :- Term of Office of the Vice President
- Article 68 :- Election to fill the vacant post of Vice President
- Article 69: - Oath by the Vice President

- Article 70: - Discharge of the duties of the President in other contingencies
- Article 71. :- Subject related to election of President and Vice President
- Article 72 :- Power of pardon
- Article 73: - Expansion of the executive power of the Union
- Article 74: - Council of Ministers to advise the President
- Article 75: - Provisions about ministers
- Article 76: - Attorney General of India
- Article 77: - Operation of the work of the Government of India
- Article 78: - Duties of the Prime Minister to give information to the President
- Article 79 :- Constitution of Parliament
- Article 80 :- Structure of Rajya Sabha
- Article 81 :- Composition of Lok Sabha
- Article 83: - Duration of the Houses of Parliament
- Article 84: - Qualification for members of Parliament
- Article 85: - Prorogation and dissolution of Parliament session
- Article 87: - Special speech of the President
- Article 88 :- Ministers and Attorney General rights regarding Houses
- Article 89 :- Chairman and Deputy Chairman of Rajya Sabha
- Article 90 :- Vacancy or removal of the post of Deputy Chairman
- Article 91: - The performance and power of the duties of the Chairman
- Article 92: - When the resolution to remove the Chairman or Deputy Chairman from the post is under consideration, then he should not be presiding
- Article 93: - Speaker and Deputy Speaker of the Lok Sabha
- Article 94 :- Vacancy of the post of President and Vice President
- Article 95 :- Duties and powers in the President
- Article 96: - If there is a resolution to remove the Vice President from the post, then he should not be presiding

- Article 97: - Salaries and allowances of the Chairman, Deputy Chairman and Chairman, Vice-Chairman
- Article 98: - Secretariat of Parliament
- Article 99:- Oath or affirmation by the member
- Article 100:- Power and quorum of the Houses to function despite voting vacancies in resources
- Article 108: - Joint sitting of both houses in certain cases
- Article 109: - Special procedure in relation to Money Bill
- Article 110 :- Definition of Money Bill
- Article 111: - Permission on bills
- Article 112 :- Annual Financial Statement
- Article 118 :- Rules of procedure
- Article 120: - Language to be used in Parliament
- Article 123: - Ordinance power of the President during the recess of Parliament
- Article 124: - Establishment and constitution of the Supreme Court
- Article 125 :- Salary of judges
- Article 126 :- Appointment of Chief Justice
- Article 127: - Appointment of ad hoc judges
- Article 128 :- Presence of retired judges
- Article 129 :- Supreme Court to be Court of Record
- Article 130: - Location of the Supreme Court
- Article 131 :- Initial Jurisdiction of the Supreme Court
- Article 137 :- Review of decisions and orders
- Article 143 :- President's power to consult the Supreme Court
- Article 144: - Assistance of the Supreme Court by civil and judicial officers
- Article 148 :- Comptroller and Auditor General of India
- Article 149 :- Duties and powers of the Comptroller and Auditor General
- Article 150 :- Format of writing of the states of the union

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- Article – 394A: The President will get the constitution translated into Hindi under his authority.
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