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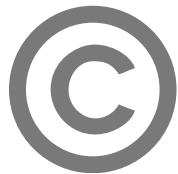
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# PREFACE

The Indian polity subject is an important component of the Civil Services Examination conducted by the Union Public Service Commission (UPSC). Aspirants who are preparing for this prestigious examination need to have a strong understanding of Indian Polity subject.

This book of UPSC Power Bank of Indian Polity subject has been designed keeping in mind the needs of aspirants who are preparing for the Civil Services Examination. The book covers all the important topics of Indian Polity including Fundamental Rights, Characteristics of Constitution, Centre State Relation, Emergency Provision, Panchayat Raj Institution, Constitutional and Non-Constitutional Bodies and Union Executive Legislature and Parliament.

The questions in this book are comprehensive and have been curated after extensive research to ensure that they cover all the aspects of. Each question is accompanied by a detailed answer that not only explains the correct option but also provides additional information related to the question. This will help aspirants to build a strong foundation in Indian Polity subject and understand the subject in greater depth.

**The objective of this book is:**

1. **Assessing Knowledge:** by testing the candidates' understanding and knowledge of these topics.
2. **Testing Critical Thinking Skills:** to apply it in new and different contexts, analyse and evaluate information, and draw conclusions.
3. **Providing Practice:** by making them familiar with the format and style of UPSC questions.
4. **Preparing for the Exam:** by covering the same types of questions and difficulty levels as the actual exam.
5. **Identifying Knowledge Gaps:** By using the question bank, candidates can identify areas where they need to improve their knowledge or skills, and focus their study efforts accordingly.
6. **Improving Time Management:** This question bank provides a variety of questions that test different aspects of knowledge and skills, so that candidates can learn to manage their time effectively during the actual exam.
7. **Encouraging Self-Assessment:** By detailed explanations and solutions to each question, candidates can assess their own performance and identify areas for improvement.

We hope that this book will prove to be a valuable resource for aspirants preparing for the UPSC Civil Services Examination and help them achieve their goals. We wish all the aspirants the very best for their preparation and future endeavours.

We also express our gratitude to **Mr. Ujjwal Garg & Mr. Lalit Sikarwar** who have contributed to the book, for their experience and their knowledge. Their contributions will help our readers gain valuable insights and knowledge and secure a high rank in the UPSC examination. We wish the readers great success ahead!

All the best!  
Team Oswaal

## Study approach for the Polity for UPSC prelims

Indian polity is a crucial subject in UPSC exams as it encompasses the functioning and structure of the country's political system. To study it effectively, candidates should focus on certain guidelines which are mentioned below.

- **Syllabus Analysis:** Go through the UPSC syllabus for the Polity section to understand the topics and subtopics you need to cover. This will help you create a study plan and prioritise your preparation.
- **Study Material Selection:** Restrict your source first of all. Do not follow multiple sources for the same topic.
- **NCERT books:** They are good to understand basics concept of polity specially class 11th and 12th, such as the Preamble, Fundamental Rights, Directive Principles of State Policy, Fundamental Duties, and various parts of the Constitution. This will provide a strong foundation for your Polity preparation.
- **Analyse Previous Year Question Papers:** Analyse the previous year's question papers to understand the type of questions asked and the weightage given to different topics. It will help you identify important areas and focus your preparation accordingly.
- **Make Notes:** While studying, make concise and organized notes for quick revision. Highlight important points, definitions, articles, and case, supreme court verdict, laws for easy reference. This will also help you in retaining the information for a longer time.
- **Understand Concepts:** Focus on understanding the concepts rather than just memorising facts. Polity is a subject that requires conceptual clarity, especially in topics like the separation of powers, federalism, emergency provisions, etc.
- **Current Affairs:** Stay updated with current affairs related to polity and governance. Read newspapers, magazines, and online sources to gather information about important constitutional amendments, bills, debates, and Supreme Court judgments.
- **Revision:** Allocate sufficient time for revision. Review your notes, important concepts, and practice questions regularly. Revision is crucial for consolidating your knowledge and ensuring better retention.
- **Join Discussion Groups:** Discussions in Study groups with fellow aspirants will not only help in remembering facts but also build conceptual understanding. This will provide you with different perspectives, help clarify doubts, and keep you motivated throughout the preparation process.

Remember to maintain a disciplined study schedule, stay focused, and have a positive mindset. Polity is a significant section in the UPSC Prelims and scoring too.

Good luck for your exam!

Aashirvad Kumar  
UPSC Consultant: **Oswaal Books**  
7+ years of teaching experience  
3 UPSC Interviews



## Positive Affirmations

I realize what I cannot Control and let the good things flow

I courageously move in the direction of my dreams

I am Supported fully by the universe

I am wrapped in the loving energy of the universe

I allow my desires to flow to me now

All of my thoughts are aligned with my desires

### Affirmations for the new "YOU"

I effortlessly attract my desires

// Accept yourself, love yourself, and keep moving forward. If you want to fly, you have to give up what weighs you down.

I am open to new experiences and welcome abundance into my life

When I let go, I create space for something better.

// I have the power to shift my mindset and see the good in everything.

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## Flash Facts

### Unit-1: Historical Background

1600	The British came to India as traders in the form of East India Company.
1765	East India Company obtained 'Diwani rights' <ul style="list-style-type: none"><li>● Rights over revenue and civil justice of Bengal, Bihar and Orissa.</li><li>● Shah Alam II granted these rights after losing the Battle of Buxar against East India Company.</li></ul>
1773 - 1858	Company Rule
1858	After the "Sepoy Mutiny" the British crown assumed direct responsibility for the governance of India.
1858 - 1947	Crown Rule

### 1. The Company Rule (1773 – 1858)

#### Regulating Act of 1773

##### Key points:

- The beginning of parliamentary control over the Government of the Company.
- The British government laid the foundations of central administration in India.
- First time, the British government recognised the political and administrative functions of the EIC.

##### Features of the Act:

- Governor of Bengal was made 'Governor-General of Bengal' and governors of Bombay and Madras presidencies were made his subordinates.
- During this period, the Supreme court was established, and it had a chief justice and three other judges.
- They also introduced the four-member council.
- The Court of Directors should report all affairs to the British government.

#### Pitt's India Act 1784

##### Features of the Act:

- East India company's activities are divided into commercial and political activities.
- Company's territories in India were for the first time called the 'British possessions in India'.

#### Act of 1786

- In 1786, Lord Cornwallis was appointed as the Governor-General of Bengal. He placed two demands to accept that post, viz.,

- He should be given power to override the decision of his council in special cases.
- He would also be the Commander-in-Chief.
- Accordingly, the Act of 1786 was enacted to make both the provisions.

#### Charter Act of 1793

##### Features of the Act:

- It extended the overriding power given to Lord Cornwallis over his council, to all future Governor-Generals.
- It gave the Governor-General more powers and control over the governments of the subordinate Presidencies of Bombay and Madras.
- It extended the trade monopoly of the Company in India for another period of twenty years.
- It provided that the Commander-in-Chief was not to be a member of the Governor-General's council, unless he was so appointed.
- It laid down that the members of the Board of Control and their staff were, henceforth, to be paid out of the Indian revenues.

#### Charter Act- 1813

##### Features of the Act:

- This Act was the final step towards centralisation in British India.
- This Act ended all the activities of the East India Company as a commercial body.
  - Company's monopoly over Indian trade terminated.
  - Indian trade was thrown open to all the British subjects.
- Missionaries allowed to preach in India.
- The Company rule extended for another 20 years.

#### Charter Act – 1833

##### Features of the Act:

- Governor-general of Bengal designated as governor-general of India.
- Legislative and executive functions of the Governor-General's council were separated for the first time.
- The First Law Commission was pioneered in 1834 under the chairmanship of Lord Macaulay.

#### Charter Act – 1853

##### Features of the Act:

- Indian Civil Service opened for all
- The first time, the legislature was given the right to frame its own rules of procedure.

## 2. The Crown Rule (1858 – 1947)

### Government of India Act-1858

#### Features of the Act:

- The Company Rule ended in 1858, The Crown Rule began.
- This Act abolished the East India Company, and transferred the powers of government, territories and revenues to the British Crown.
- The designation Governor-general of India (GGI) was changed to Viceroy of India (VOI).
- Office of secretary of state and council of India created.

### Indian Council Acts (1861, 1892, 1909)

#### Features of Indian Councils Act of 1861:

- This Act made a beginning of representative institutions – it associated Indians with the law-making process.
- The trend of decentralisation was initiated by this act, which restored the legislative powers of the Bombay and Madras presidencies.
- It thus reversed the centralising tendency that started from the Regulating Act of 1773.
- It recognized the Portfolio System introduced by Lord Canning in 1859.
- The life of such an ordinance was 6 months.

#### Features of Indian Councils Act of 1892:

- Enlarge the size and functions of central and provincial councils.
- The council to have the right to discuss the budget under certain conditions.
- Members of the council granted the right to ask questions.

#### Features of Indian Councils Act of 1909: (Morley-Minto Reforms)

- The Act introduced a system of communal representation for Muslims – the concept of ‘separate electorate’.
- The Beginning of non-official resolutions in the Council.

### Government of India Act-1919

#### Features of the Act (Montagu-Chelmsford Reforms):

- Demarcation of separate central and provincial subjects: Central and provincial legislatures can make laws on their respective list of subjects.
- Diarchy was applied on a state-by-state basis. Diarchy refers to the presence of two governments in which one is responsible and the other is not.
- Extended communal representation or separate electorate to Sikhs, Indian Christians, Anglo-Indians and Europeans.
- Upper House and Lower House: First time, bicameralism and direct elections in the country were introduced. (Only at Centre).
- It separated, for the first time, provincial budgets from the Central budget and authorised the provincial legislatures to enact their budgets.

- It provided for the establishment of a public service commission.
- It granted franchise to a limited number of people on the basis of property, tax or education.
- It provided for the appointment of a statutory commission to inquire into and report on its working after ten years of its coming into force.

### Government of India Act -1935

#### Features of the Act:

- The Act intended to bring completely responsible government in India.
- It provided for the establishment of an All-India federation consisting of provinces and princely states as units.
- Bicameralism was introduced in six provinces- Bengal, Bombay, Madras, Bihar, Assam and the United Provinces.
- It divided the powers between the centre and units in terms of three lists- Federal list, provincial list and the concurrent list.
- Extended separate electorates for depressed classes (scheduled castes), women and labour (workers).
- Establishment of a Reserve Bank of India to control the currency and credit of the country.
- Establishment of a Federal Court (in 1937).
- Federal PSC + Provincial PSC (on lines of UPSC + SPSC).
- It extended franchise. About 10 per cent of the total population got the voting right.

### Indian Independence Act of 1947

#### Features of the Act:

- It ended the British rule in India and declared India as an independent and sovereign state from August 15, 1947.
- It provided for partition of India and creation of two new dominions- India and Pakistan.
- It proclaimed the lapse of British paramountcy over the Indian princely states and treaty relations with tribal areas from August 15, 1947.
- It granted freedom to the Indian princely states either to join the Dominion of India or Dominion of Pakistan or to remain independent.
- It abolished the office of viceroy and provided for each dominion, a governor-general, who was to be appointed by the British King on the advice of the dominion cabinet.

#### Interim Government (1946)

Members	Portfolios Held
Jawaharlal Nehru	Vice-President of the Council; External Affairs & Commonwealth Relations
Sardar Vallabhbhai Patel	Home, Information & Broadcasting
Dr. Rajendra Prasad	Food & Agriculture
Dr. John Mathai	Industries & Supplies

Jagjivan Ram	Labour
Sardar Baldev Singh	Defence
C.H. Bhabha	Works, Mines & Power
Liaquat Ali Khan	Finance
Abdur Rab Nishtar	Posts & Air
Asaf Ali	Railways & Transport
C. Rajagopalachari	Education & Arts
T.T. Chundrigar	Commerce
Ghazanfar Ali Khan	Health
Joginder Nath Mended	Law

The members of the interim Government were members of the Viceroy's Executive Council. The Viceroy continued to be the head of the Council.

#### First Cabinet of Free India (1947)

Members	Portfolios Held
Jawaharlal Nehru	Prime Minister; External Affairs & Commonwealth Relations; Scientific Research
Sardar Vallabhbhai Patel	Home, Information & Broadcasting States
Dr. Rajendra Prasad	Food & Agriculture
Maulana Abul Kalam Azad	Education
Dr. John Mathai	Railways & Transport
R.K. Shanmugham Chetty	Finance
Dr. B.R. Ambedkar	Law
Jagjivan Ram	Labour
Sardar Baldev Singh	Defence
Raj Kumari Amrit Kaur	Health
C.H. Bhabha	Commerce
Rafi Ahmed Kidwai	Communication
V.N. Gadgil	Works, Mines & Power
Dr. Shayama Prasad Mukherji	Industries & Supplies

### Unit-2: Indian Constitution

- The Indian Constitution is unique in both spirit and content.
- The Constitution of India contains 395 articles in 22 parts. Additional articles and parts are inserted later through various amendments.
- There are also 12 schedules in the Indian Constitution.
- Adoption Date of the Constitution of India: November 26, 1949.

### 1. Evolution of the Constitution

1934	The idea of a Constituent Assembly for India was put forward for the First time by M.N. Roy.
1935	The Indian National Congress (INC), for the first time, officially demanded a Constituent Assembly to frame the Constitution of India.
1938	The Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise'.
1940	<b>August Offer</b> The demand was finally accepted by the British Government.
1942	Sir Stafford Cripps, a Member of the Cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after World War II.
1946	The Constituent Assembly was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan.

#### Composition of the Constituent Assembly

- The total strength of the Constituent Assembly was to be 389.
- Each province and princely state (or group of states in case of small states) were to be allotted seats in proportion to their respective population.
- Seats allocated to each British province were to be divided among the three principal communities—Muslims, Sikhs and General (all except Muslims and Sikhs), in proportion to their population.
- The Constituent Assembly was to be a partly elected and partly nominated body.
  - Although the Constituent Assembly was not directly elected by the people of India on the basis of adult franchise.
- The representatives of the princely states were to be nominated by the heads of the princely states.

#### Working of the Constituent Assembly

9 December 1946	First meeting of the Constituent Assembly.
11 December 1946	Dr. Rajendra Prasad was elected as the permanent President of Constituent Assembly.
13 December 1946	Jawaharlal Nehru moved the historic 'Objectives Resolution' in the Assembly.
22 January 1947	This Resolution was unanimously adopted by the Assembly.

#### Other Functions Performed the Constituent Assembly

May 1949	It ratified the India's membership of the Commonwealth.
22 July 1947	It adopted the national flag.

24 January 1950	It adopted the national anthem.
24 January 1950	It adopted the national song.
24 January 1950	It elected Dr. Rajendra Prasad as the first President of India.
24 January 1950	The Constituent Assembly held its final session.

- In all, the Constituent Assembly had 11 sessions over two years, 11 months and 18 days.
- The total expenditure incurred on making the Constitution amounted to ₹ 64 lakh.

#### Important Committees

- Union Powers Committee - Jawaharlal Nehru
- Union Constitution Committee - Jawaharlal Nehru
- Provincial Constitution Committee - Sardar Patel
- Drafting Committee - Dr. B.R. Ambedkar
- Rules of Procedure Committee - Dr. Rajendra Prasad
- States Committee (Committee for Negotiating with States) - Jawaharlal Nehru
- Steering Committee - Dr. Rajendra Prasad
- Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas - Sardar Patel.

## 2. Salient Features of the Indian Constitution

- The salient features of the Constitution, as it stands today, are as follows:
- Longest Written Constitution
  - The Constitution of India is the longest of all the written Constitutions of the world.
  - The Constitution contains not only the fundamental principles of governance, but also detailed administrative provisions.
- **Drawn From Various Sources:** The Constitution borrowed from almost every Constitution of the world.

Sources	Features Borrowed
Government of India Act, 1935	Federal Scheme, Office of Governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
British Constitution	Parliamentary government, Rule of Law, Legislative procedure, Single citizenship, Cabinet System, Prerogative writs, Parliamentary privileges and Bicameralism.
US Constitution	Fundamental rights, Independence of judiciary, Judicial review, Impeachment of the President, Removal of Supreme Court and High Court judges and Post of Vice president.

Irish Constitution	Directive Principles of State Policy, Nomination of members to Rajya Sabha and Method of election of President.
Canadian Constitution	Federation with a strong Centre, Vesting of residuary powers in the Centre, Appointment of state governors by the Centre, and Advisory jurisdiction of the Supreme Court.
Australian Constitution	Concurrent List, Freedom of trade, Commerce and Inter-course, and Joint sitting of the two Houses of Parliament.
Weimar Constitution of Germany	Suspension of Fundamental Rights during Emergency.
Soviet Constitution (USSR, now Russia)	Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
French Constitution	Republic and the ideals of liberty, equality and fraternity in the Preamble.
South African Constitution	Procedure for amendment of the Constitution and Election of members of Rajya Sabha.
Japanese Constitution	Procedure established by Law.

**Federal System with Unitary Bias:** The Constitution of India establishes a federal system of Government.

#### Federal Feature

- Dual Government,
- Division of powers,
- Written Constitution,
- Supremacy of Constitution,
- Rigidity of Constitution,
- Independent judiciary
- Bicameralism.

#### Unitary Bias

- A Strong Centre
- Single Constitution
- Single Citizenship
- Flexibility of Constitution
- Integrated Judiciary
- Appointment of State Governor by the Centre
- All-India Services
- Emergency Provisions
- The Indian Constitution has been variously described as 'federal in form but, unitary in spirit', therefore known as "Quasi-federal".

#### Parliamentary Form of Government

- The Constitution of India has opted for the British Parliamentary System of Government.
- The features of parliamentary government in India are:
  - Presence of nominal and real executives
  - Majority party rule
  - Collective responsibility of the executive to the legislature

- Membership of the ministers in the legislature
- Leadership of the Prime Minister or the Chief Minister
- Dissolution of the lower House (Lok Sabha or Assembly).
- **Integrated and Independent Judiciary**
- **Single Citizenship**
- **Independent Bodies**
- Independent bodies like:
  - Election Commission
  - Comptroller and Auditor-General of India
  - Union Public Service Commission
  - State Public Service Commission

#### Co-operative Societies

- The 97<sup>th</sup> Constitutional Amendment Act of 2011 gave constitutional status and protection to co-operative societies.
- It made the following three changes in the Constitution:

**Article 19:** Right to form co-operative societies a fundamental right

**Article 43-B:** Directive Principle of State Policy on promotion of co-operative societies

**Articles 243-ZH to 243-ZT Part IX-B:** It empowers the Parliament in respect of multi-state cooperative societies and the state legislatures in respect of other co-operative societies to make the appropriate law.

- **Three-tier Government**
  - The 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment Acts (1992) have added a third-tier of Government (i.e., local) which is not found in any other Constitution of the world.
  - Criticism of the Constitution
  - A borrowed Constitution
  - A Carbon Copy of the 1935 Act
  - Un-Indian or Anti-Indian
  - An Un-Gandhian Constitution
  - Elephantine Size
  - Paradise of the Lawyers

### 3. Preamble

#### Key Points

- A preamble is an introductory statement in a document that explains the document's philosophy and objectives.
- It contains the summary of the essence of the Constitution.
- Some experts and jurists like N.A. Palkhivala called the Preamble as the "identity card of the Constitution".

#### History of the Preamble

- The American Constitution was the first to begin with a Preamble.
- Many countries, including India, followed this practice.
- The ideals behind the Preamble to India's Constitution were laid down by Jawaharlal Nehru's Objectives Resolution, adopted by the Constituent Assembly on January 22, 1947.

- **The Preamble, in brief, explains the objectives of the Constitution in two ways:**

#### Important key words in the Preamble

<b>Sovereignty</b>	<ul style="list-style-type: none"> <li>● Independent authority (<b>not a dominion of any other external power</b>).</li> </ul>
<b>Socialist</b>	<ul style="list-style-type: none"> <li>● This word was added in the Preamble by 42<sup>nd</sup> Amendment, 1976.</li> </ul>
<b>Secularism</b>	<ul style="list-style-type: none"> <li>● In India there will be no 'State' religion.</li> <li>● It was incorporated in the Preamble by 42<sup>nd</sup> Constitutional Amendment, 1976.</li> </ul>
<b>Democratic Republic</b>	<ul style="list-style-type: none"> <li>● Preamble declares India as a Republic - It means that the head of the State is the President who is indirectly elected and he is not a hereditary ruler as in case of the British Monarch.</li> </ul>
<b>Justice:</b> Justice in the Preamble means social, political and economic justice.	
<b>Liberty</b>	<ul style="list-style-type: none"> <li>● The ideals of liberty, equality and fraternity in our Preamble have been taken from the French Revolution (1789–1799).</li> <li>● The term 'Liberty' means freedom for the people to choose their way of life, have political views and behavior in society.</li> </ul>
<b>Equality</b>	<ul style="list-style-type: none"> <li>● Everyone is equal before the law.</li> <li>● The Preamble secures to all citizens of India equality of status and opportunity.</li> </ul>
<b>Fraternity</b>	<ul style="list-style-type: none"> <li>● Fraternity helps to promote dignity and unity in the nation.</li> <li>● The term Fraternity is (perhaps) incorporated from the Article 1 of Universal <b>Declaration of Human Rights 1948</b>.</li> </ul>

#### Preamble as Part of the Constitution

- The Preamble is as to whether it is a part of the Constitution or not.

<b>Berubari Union case (1960)</b>	The Supreme Court specifically opined that Preamble is not a part of the Constitution.
<b>Kesavananda Bharati case (1973)</b>	The Supreme Court rejected the earlier opinion and held that Preamble is a part of the Constitution.
<b>LIC of India case (1995)</b>	The Supreme Court again held that the Preamble is an integral part of the Constitution.

- The Preamble is neither a source of power to legislature nor a prohibition upon the powers of legislature.
- It is non-justiciable, that is, its provisions are not enforceable in courts of law.

## 4. Basic Structure

### Doctrine of Basic Structure

- The parliament's unlimited power to amend the constitution is subject to only one restriction i.e. it should not dilute or violate the basic structure of the constitution
- Or the effects of the amendment should not be abrogating or disturbing in nature towards the basic structure.

Emergence of the Basic Structure
<p><b>Shankari Prasad case (1951)</b></p> <ul style="list-style-type: none"> <li>● In this case, the SC contended that the Parliament's power of amending the Constitution under Article 368 included the power to amend the Fundamental Rights guaranteed in Part III as well.</li> </ul>
<p><b>Golaknath case (1967)</b></p> <ul style="list-style-type: none"> <li>● In this case, the court reversed its earlier stance that the Fundamental Rights can be amended.</li> <li>● Parliament reacted to this judgment by enacting the 24<sup>th</sup> amendment act which included a provision in Art 368 which declared that Parliament has power to take away any of the fundamental rights.</li> </ul>
<p><b>Keshavananda Bharati case (1973)</b></p> <ul style="list-style-type: none"> <li>● This was a landmark case in defining the concept of the basic structure doctrine.</li> <li>● The constituent power of Parliament under Article 368 does not enable it to alter the "basic structure" of the Constitution.</li> </ul>
<p><b>42<sup>nd</sup> CAA 1976</b></p> <ul style="list-style-type: none"> <li>● Amended Art. 368 – no limitation on the constituent power of Parliament.</li> <li>● Any amendment cannot be questioned in any court on any ground.</li> </ul>
<p><b>Minerva mills case (1980)</b></p> <ul style="list-style-type: none"> <li>● Parliament reacted to the above case by enacting 42<sup>nd</sup> amendment act which declared under article 368 that there is no limitation on the constituent power of Parliament and it barred the courts from questioning such amendments.</li> </ul>
<p><b>Waman Rao case 1981</b></p> <ul style="list-style-type: none"> <li>● SC clarified that doctrine would be applicable to constitutional amendments enacted after April 24, 1973 (Kesavananda Bharati case) (Including 9<sup>th</sup> schedule).</li> </ul>
<p><b>Indra Sawhney case 1992</b></p> <ul style="list-style-type: none"> <li>● SC examined the scope and extent of Article 16(4), which provides for the reservation of jobs in favour of backward classes. It upheld the constitutional validity of 27% reservation for the OBCs with certain conditions (like creamy layer exclusion, no reservation in promotion, total reserved quota should not exceed 50%, etc.).</li> <li>● Here, 'Rule of Law' was added to the list of basic features of the constitution.</li> </ul>

### Elements of Basic Structure

From the various judgments, the following have emerged as "Basic features" of the Constitution or elements of the "Basic structure" of the constitution:

- Supremacy of the constitution.
- Rule of law.
- Sovereignty, liberty and republic nature of Indian polity.
- Judicial review.
- Harmony and Balance between fundamental rights and directive principles.
- Separation of power.
- Federal character.
- Parliamentary system.
- Rule of equality.
- Unity and integrity of the nation.
- Free and fair elections.
- Powers of SC under Article 32, 136, 141, 142, 147.
- Power of High Court under Article 226 and 227.
- Limited power of parliament to amend the constitution.
- Welfare state.
- Freedom and dignity of an individual.

## 5. Amendment of the Constitution

- The Constitution of India also provides for its amendment in order to adjust itself to the changing conditions and needs.
- It was borrowed from the South African constitution Procedure for Amending the Indian Constitution.

### Procedure for Amending the Indian Constitution

- Article 368 in Part XX of the Constitution deals with the power of parliament to amend the constitution and its procedures,
  - It states that the Parliament may amend the Constitution by way of addition, variation or repeal of any provision in accordance with the procedure laid down for the purpose.
  - The Supreme Court in the Kesavananda Bharati case (1973), the Parliament cannot amend those provisions which form the 'Basic structure' of the Constitution.

### Types of Amendments

The Constitution can be amended in three ways:

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

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

- Formation of new states and alteration of areas, boundaries or names of existing states,
- Abolition or creation of legislative councils in states,
- Use of official language,
- Citizenship – acquisition, and termination,
- Elections to Parliament and state legislatures,
- Fifth Schedule – administration of scheduled areas and scheduled tribes,
- Sixth Schedule – administration of tribal areas.

**Special Majority:** Under Article 368(2), Parliament can amend the Constitution by passing a Bill with a special majority.

- Fundamental Rights;
- Directive Principles of State Policy

**Special Majority with Consent of Half of States**

Amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority.

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

**Recent Important Constitutional Amendments:**

The Constitution (100 <sup>th</sup> Amendment) Act, 2015	Land Boundary Agreement (LBA) between India and Bangladesh.
The Constitution (101 <sup>th</sup> Amendment) Act, 2017	Introduced the Goods and Services Tax.
The Constitution (102 <sup>th</sup> Amendment) Act, 2018	Constitutional status to National Commission for Backward Classes.
The Constitution (103 <sup>th</sup> Amendment) Act, 2019	10% Reservation for Economically Weaker Sections (EWSs).
The Constitution (104 <sup>th</sup> Amendment) Act, 2020	It extended the reservation of seats for SCs and STs in the Lok Sabha and states assemblies.

**Unit-3: Conceptual Elements of Constitution**

**1. Fundamental Rights**

Fundamental Rights is defined as the basic human rights of all citizens. These rights, defined in **Part III of the Constitution** are guaranteed by the Constitution to all persons without any discrimination.

**Article 12: Definition of State**

- Executive and legislative organs of the union.
- Executive and legislative organs of the state.
- All local bodies.
- All statutory and non-statutory authorities.
- Private body or agency working as an instrument of state can fall within the meaning of the state.

**Article 13:** Declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.

**Article 14: Right to equality: Equality before law and equal protection of laws**

- Includes legal persons as well.
- Equality before law: British version.
- Equal protection of laws: American constitution.
- It permits reasonable classification of persons, objects and transactions by the law but it should not be arbitrary.

**Exceptions to equality**

- President and Governor not answerable to court for their official acts.
- No criminal proceedings shall be instituted or continued against the President or the Governor in any court during his term of office.
- No process for the arrest or imprisonment of the President or Governor.
- Civil proceeding on personal acts can be initiated only after two months notice.
- No liability of true reporting in newspapers.
- No member of Parliament shall be liable for anything said or vote in Parliament.
- Article 31C.
- Foreign sovereigns enjoy immunity; this includes even UNO.

**Article 15: No citizen of India shall be discriminated on the basis of religion, race, caste, sex or place of birth**

- Usage of two keywords- 'Discrimination' and 'Only'.
- Ground mentioned in the article: religion, race, caste, sex or place of birth.
- The second provision in this article is applicable to even private individuals and legal persons.

**Exceptions**

- Special provisions for women and children.
- Advancement of socially and educationally backward classes of citizens or for the SC and ST.
- Provision for education of the above could be made for education in aided and unaided.

**Article 16: Equality of opportunity in public employment**

- Addition of two more grounds: Descent or residence.

**Exceptions:**

- Parliament can prescribe residence as condition for certain employment.
- State can provide reservation for any backward classes if they are inadequately represented.
- Religious denomination exception.

**Article 16(2):** It guarantees equal treatment under law in matters of public employment, and prohibits the state from discriminating on grounds of place of birth or residence.

**Article 16(3):** It provides an exception by saying that Parliament may make a law "prescribing" a requirement of residence for jobs in a particular state.

**Article 16(4):** "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

**Article 17: Abolition of untouchability**

- Protection of civil rights act, 1955.
- Term untouchability has not been defined anywhere in the constitution.
- It is available against even private individuals.

**Article 18: Abolition of titles**

- State cannot confer titles until it is military or academic.
- Prohibits a citizen of India from accepting titles from foreign countries.
- Foreigner who holds office of profit should take consent of the President.
- No gift also for a foreigner without President's approval.

**Article 19: Right to freedom**

- It has six rights within it
- Right to hold property was deleted by the 44th amendment act of 1978.
- These rights are not applicable to aliens, legal corporation.
- These are not available against private individuals.
- Reasonable restrictions can be imposed on enjoyment of these rights.
- Restrictions should be based on the grounds mentioned in article 19 and not on any other grounds.

**Freedom of speech and expression:** Constitution imposes reasonable restriction on Right of speech and expression when it comes to:

- Includes freedom of commercial advertisements.
- Right against bundh called by a political party.
- Freedom of silence.
- It does not include right to strike.

**Reasonable restrictions: Constitution imposes reasonable restriction on Right of speech and expression when it comes to:**

- Sovereignty and integrity of India.
- Security of the state.
- Friendly relations with foreign states.
- Public order.
- Decency or morality.
- Contempt of court.
- Defamation and.
- Incitement to an offence.

**Freedom of assembly**

- Can be exercised only on public land.
- Assembly must be peaceful and unarmed.
- Reasonable restriction: sovereignty and integrity of India and public order.

**Freedom of association**

- Right to obtain recognition of the association is not a fundamental right.

- Right to strike is not a constitutional right can be regulated by appropriate law.

**Reasonable restriction:**

- Interest of general public and protection of interests of any scheduled tribes.
- Article 19 does not deal with movement outside the country.
- Freedom of residence is complementary to the above right.
- Freedom of profession.

**Article 20: Protection in respect of conviction for offences**

- Grants protection against arbitrary and excessive punishment to an accused person.
- Applicable to almost everyone.
  - No ex-post facto law (not on civil or tax laws or even on criminal trials, preventive detention cases).
  - No double jeopardy (not available in proceedings before departmental or administrative authorities).
  - No self-incrimination (not applicable to civil proceedings).

**Article 21:**

- Article 21 of the Constitution defines 'life' as more than just the act of breathing.
- It encompasses a far broader range of rights, including the right to live in dignity, the right to a livelihood, the right to health, the right to clean air, and so on.
- Based on the decisions, the Court provided a list of rights that Article 21 protects. Here are a few examples:
  - Right Against Sexual Harassment at Workplace.
  - Right to Shelter.
  - Right to get Pollution Free Water and Air etc
  - Various rights included under this are:
    - Right to privacy.
    - Right to shelter.
    - Right to a speedy trial.
    - Right to information.

**Article 21A: Right to education**

- Free and compulsory education to all children in the age group of 6-14 years.
- Added by 86<sup>th</sup> Constitutional amendment act.

**Article 22: Protection against arrest and detention**

- Two types of detention: punitive and preventive.

**First part of article 22**

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



These are applicable to those acts which are of a criminal or quasi-criminal nature.

These safeguards are not available to a person detained under preventive detention law and also to an alien.

Preventive detention provisions are applicable to both citizens as well as aliens.

- Detention of a person cannot exceed three months unless an advisory board recommends the same (the board is to consist of judges of a high court).
- Ground of detention should be communicated to Detenu. However, facts considered important may not be communicated.
- Opportunity for representation should be provided.

Constitution has divided the legislative power with regard to preventive detention between Parliament (exclusively for defence, foreign affairs and security of India) and the state legislatures.

#### **Article 23: Prohibition of traffic in Human beings and Forced Labour**

- Protection against private actions as well.
- Compulsion arising from economic reasons are also included.
- Exception: compulsory military service.

#### **Article 24: Prohibition of employment of children in factories etc.**

- Does not prohibit employment in harmless activities.
- Commission for Protection of Child rights act, 2005 was enacted to provide for a national commission and state commission for child rights.

#### **Right to freedom of religion**

##### **Article 25 to Article 28**

#### **Article 25: Freedom of Conscience and Free profession, Practice and Propagation of Religion**

- No forcible conversions allowed.
- Available to both citizens and non-citizens.
- Covers both rituals and practices.
- It guarantees rights of individuals.
- State can regulate these religious institutions.
- State can provide for social welfare and reform.

#### **Article 26: Freedom to manage religious affairs**

- To establish institutions.
  - To manage its religious affairs.
- To own property.
- To administer such property.
- It guarantees rights of religious denominations.
- These are not subject to other provisions relating to FRs.

#### **Religious denomination**

- Group of people with common belief.
- Common organization.
- Distinctive name.

#### **Article 27: Freedom of taxation for promotion of a religion**

- It prohibits levy of a tax and not fee.

#### **Article 28: Freedom from attending religious instruction**

- Institution wholly setup by use of state funds: prohibited.

- Institution administered by state but established by a trust: allowed.
- Institutions recognized by a state: voluntary basis.
- Institution receiving aid from state: voluntary basis.

#### **Cultural and educational rights Article 29-30:**

##### **Article 29: Right to conserve distinct language, script or culture of its own**

- No discrimination can be made on the basis of language in educational institutions.
- This is applicable to not just to minorities.
- It provides protection to both religious and linguistic minorities.

##### **Article 30: To administer educational institutions**

- Applicable to both religious and linguistic minorities.
- Here, protection is confined only to minorities.

##### **Article 32: Right to constitutional remedies**

- Most important part of the Fundamental Rights.
- Parliament can empower any other court to issue directions, orders and writs of all kinds.
- President can suspend the enforcement of Fundamental rights during a national emergency (article 359).
- Article 32 can be invoked in only those cases where there is violation of FRs.

#### **Writs**

- Before 1950, only the high courts of Bombay, Madras and Calcutta could issue writs.
- Idea borrowed from Britishers.
- Writ jurisdiction of Supreme Court is narrower than High court.
- Territorial jurisdiction of Supreme Court is much greater than High Court.
- SC is the defender and guarantor of fundamental rights.

#### **Habeas Corpus**

- Tool of individual liberty against arbitrary detention.
- Can be issued against both public and private individuals.
- The writ cannot be issued in following cases:
  - Detention is lawful.
  - Proceedings is for contempt of legislature or court.
  - Detention is by a competent court.
  - Detention is outside court jurisdiction.

#### **Mandamus**

- Demanding a public official to perform a duty which he has failed to perform.
- Can be issued against an inferior court also.
- Cannot be issued against a private individual or body. To enforce departmental instruction that does not possess statutory force; when the duty is discretionary; to enforce a contractual obligation; against President or Governor; against CJI or a Judge of high court acting in judicial capacity.

#### **Prohibition**

- It means 'to forbid'.

- Issued by a higher court to a lower court.
- To prevent exceeding jurisdiction.
- Only against judicial and quasi-judicial bodies.
- Not available against administrative authorities, legislative bodies and private individuals or bodies.

**Certiorari**

- Much like above but it is curative as well.
- Available against administrative authorities as well.

**Quo-Warranto**

- To adjudicate the legality of a claim of a person to public office.
- It can be issued against public office of substantive character.
- Cannot be issued against ministerial or private office.
- Any interested person can seek the application of this.

**Armed Forces & FR**

- Article 33 empowers the Parliament to restrict or abrogate the fundamental rights of the members of the armed forces, para-military forces, police forces, intelligence agencies and analogous forces.

**Martial Law & FR**

- Article 34 provides for the restrictions on FRs while martial law is in force in any area within the territory of India.
- Parliament is authorized to indemnify any government servant for restoration of law and order while martial law is in force even if those actions were violative of FRs.
- The concept of Martial law has been borrowed from Britishers.

**Effecting certain fundamental rights**

The parliament shall have the rights and the state legislature shall not have the right to make laws in the following provisions:

- Prescribing residence as a condition for certain employments or appointments in a union territory or local authority or other authority.
- Empowers courts other than Supreme Court and high courts to issue directions, orders and writs of all kinds.
- Restricting or abrogating the application of fundamental rights to members of armed forces, police forces etc.
- Indemnifying any government or any other person for any act done during the operation of martial law in any area.
- Punishment for acts involving untouchability.
- Traffic in human beings and forced labour.

**Exceptions of FR****Article 31A, 31B and 31C**

**Article 31A:** Saving of laws providing for acquisition of estates etc.

- It saves **five categories** of laws from being challenged and invalidated on the ground of contravention of article 14 and article 19.

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

**Article 31B: Validation of certain acts and regulations**

- It saves the acts and regulations included in the 9th schedule from being challenged and invalidated on the ground of contravention of any of the fundamental rights.
- SC in one of its judgments ruled that there could not be any blanket immunity. Laws enacted after Keshavananda Bharati judgment can be challenged in court if they violate FRs guaranteed by 14, 15, 19 and 21.

**Article 31C: Saving of laws giving effect to certain directive principles**

It contains following two provisions:

- No law shall be deemed void if it seeks to give effect article 39 (b) or 39 (c) even if it violates Article 14 or article 19.
- Barring of courts to question such laws made so that it does not give effect to such a policy. (This provision was deemed unconstitutional by the court in the Keshavananda Bharati judgment).

**Rights outside part III**

- No tax shall be levied or collected except by authority of law (Article 265 in Part XII).
- No person shall be deprived of his property save by authority of law (Article 300-A in Part XII).
- Trade, commerce and intercourse throughout the territory of India shall be free (Article 301 in Part XIII).

## 2. Directive Principles of State Policy (DPSP)

The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51.

- Borrowed from Ireland – **Irish constitution**
- Enshrines Socio-economic democracy.
- They are an ‘instrument of instructions’ which are enumerated in the **Government of India Act, 1935**.
- Not legally enforceable by the courts for their violation.
- The concept behind the DPSP is to create a ‘**Welfare State**’.
- **Sapru Report:** 1945 which gave us both Fundamental Rights (justiciable) and DPSP(s) (non-justiciable).
- The Indian Constitution under Article 37 makes it clear that ‘DPSPs are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.’
- Directive Principles are not classified in the Constitution as per their underlying philosophies. However, they can be classified into:
  - Socialistic
  - Gandhian
  - Liberal-intellectual

**Socialistic principles:**

**Article 38:** Promoting welfare of the society by securing a social order permeated by justice.

**Article 39:** To secure.

- Right of adequate means of livelihood.
  - Equitable distribution of material resources of the community for the common good.
  - Prevention of concentration of wealth and means of production.
  - Equal pay for equal work for men and women.
  - Preservation of health and strength of workers and children against forcible abuse.
  - Opportunities for healthy development of the child.

**Article 39A:** To promote equal justice and to provide free legal aid to the poor.

**Article 41:** To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.

**Article 42:** Make provisions for just and humane conditions for work and maternity relief.

**Article 43:** To secure a living wage, a decent standard of life and social and cultural opportunities for all workers.

**Article 43A:** Steps to secure participation of workers in the management of industries.

**Article 47:** Raise the level of nutrition and the standard of living of people and to improve public health.

**Gandhian principles:**

**Article 40:** To organize village panchayats and endow them with necessary powers.

**Article 43:** To promote cottage industries on an individual and cooperative basis.

**Article 43B:** To promote functioning of cooperative societies.

**Article 46:** To promote educational and economic interests of SCs, STs and other weaker sections.

**Article 47:** To prohibit the consumption of intoxicating drinks and drugs.

**Article 48:** To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds.

**Liberal-Intellectual principles:**

**Article 44:** To secure a uniform civil code for all.

**Article 45:** To provide early childhood care until 6 years of age.

**Article 48:** To organize agriculture and animal husbandry on modern scientific lines.

**Article 48A:** To protect and improve the environment and to safeguard forests and wildlife.

**Article 49:** To protect monuments, places and objects of artistic or historic interest.

**Article 50:** To separate judiciary from the executive.

**Article 51:** To promote international peace and security.

**DPSP and Amendment****42<sup>nd</sup> Constitutional Amendment, 1976:****Added four new DPSP**

Article 39: To secure opportunities for healthy development of children.

Article 39A: To provide free legal aid to the poor.

Article 43A: Participation of workers in management of Industries.

Article 48A: To protect and improve the environment.

**44<sup>th</sup> Constitutional Amendment, 1978:**

Article 38: To minimize inequalities in income, status, facilities and opportunities.

**86<sup>th</sup> Amendment Act of 2002:**

Changed the subject-matter and made elementary education a fundamental right under Article 21A.

The amendment directed state to provide early childhood care until the completion of six years.

**97<sup>th</sup> amendment act of 2011:**

Article 43B: cooperative societies

**Conflict between DPSPs and FRs**

- The conflict between FR and DPSP arises primarily because of justiciability of one and the lack of the same. The Supreme Court's jurisprudence has developed in the following ways:
- Champakam Dorairajan case: Fundamental Rights would prevail over the DPSP in case of conflict between the two. However, legislature can amend FR to give effect to DPSP.
- Golaknath case: FR are sacrosanct in nature and cannot be amended for implementation of DPSP.
- Keshavanda Bharati case: Article 31C providing blanket immunity for those laws giving effect to DPSP was deemed null and void.
- Minerva Mills case: Constitution is founded on the bedrock of balance between FR and DPSP.

**3. Fundamental Duties**

- The Fundamental Duties of citizens were added to the Constitution by the 42<sup>nd</sup> Amendment in 1976, upon the recommendations of the Swaran Singh Committee that was constituted by the government earlier that year.
- The idea of this section was borrowed from USSR constitution.
- Enumerated in Part IV(A) and consists of single Article 51 A.
- Fundamental duties like DPSP are non-justiciable.
- Japanese constitution is one of the other democratic nations which have a provision dealing with the duties of its citizens.
- Fundamental duties apply only to citizens and do not extend to foreigners.

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.

- To cherish and follow the noble ideals which inspired our national struggle for freedom.
- To uphold and protect the sovereignty, unity and integrity of India.
- To defend the country and render national service when called upon to do so.
- To promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women.
- To value and preserve the rich heritage of our composite culture.
- To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.
- To develop the scientific temper, humanism and the spirit of inquiry and reform.
- To safeguard public property and to abjure violence.
- To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.
- Subsequently, another duty was added by the 86th Constitutional Amendment Act of 2002: For a parent or guardian to provide opportunities for education of the child or ward between the age of six to fourteen (It was added when under Article 21A Right to education was made a FR).

- Both moral and civic duties have been laid down under the fundamental duties.
- The **fundamental duties are not enforceable in nature**. No legal sanction can be enforced by the government in case of their violation.

#### Unit-4: Citizenship

- India has two kinds of people—citizens and aliens.
  - Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights.
  - Aliens, on the other hand, are the citizens of some other state and hence, do not enjoy all the civil and political rights.

##### Article 5:

- Citizenship was granted to all persons who were born and raised in India.
- Even people who were domiciled in India but not born there, yet had one of their parents born there, were considered citizens.
- Anyone who had lived in India for more than five years was also eligible to seek citizenship.

##### Article 6:

- It granted citizenship rights to certain Pakistani migrants to India.

- Because of Partition and migration prior to Independence, Article 6 stated that anyone who migrated to India prior to July 19, 1949, automatically became an Indian citizen if one of his parents or ancestors was born in India.
- Those who arrived in India after this date, on the other hand, had to register.

##### Article 7:

- It Provided certain migrants to Pakistan with the right to citizenship.
- Those who migrated to Pakistan after March 1, 1947 and later returned on resettlement permits were included in the citizenship net.
- The law was more sympathetic to those who migrated from Pakistan and were referred to as refugees than to those who were stranded in Pakistan or went there but decided to return soon.

##### Article 8:

- Provided certain persons of Indian origin residing outside India with the right to citizenship.
- Any Person of Indian Origin residing outside India who was born in India, or either of his or her parents or grandparents, could register as an Indian citizen with the Indian Diplomatic Mission.

**Article 9:** Article 9 states that if a person voluntarily obtains the citizenship of a foreign state, he or she will no longer be a citizen of India.

**Article 10:** Article 10 states that any person who is or is deemed to be a citizen of India under any of the preceding provisions of this Part shall continue to be such a citizen, subject to the provisions of any law made by Parliament.

**Article 11:** It gives Parliament the authority to make any provision regarding the acquisition and termination of citizenship, as well as all matters pertaining to it.

- The Citizenship Act, 1955 provides for the acquisition and determination of Indian citizenship.

#### Acquisition and Determination of Indian Citizenship

There are four ways in which Indian citizenship can be acquired: birth, descent, registration and naturalisation. The provisions are listed under the Citizenship Act, 1955.

##### By Birth

- Every person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of his/her parents.
- Every person born in India between 01.07.1987 and 02.12.2004 is a citizen of India given that either of his/her parents is a citizen of the country at the time of his/her birth.
- Every person born in India on or after 3.12.2004 is a citizen of the country given both his/her parents are Indians or at least one parent is a citizen and the other is not an illegal migrant at the time of birth.

##### By Registration

Citizenship can also be acquired by registration. Some of the mandatory rules are:

- A person of Indian origin who has been a resident of India for 7 years before applying for registration.

- A person of Indian origin who is a resident of any country outside undivided India.
- A person who is married to an Indian citizen and is ordinarily resident for 7 years before applying for registration. Minor children of persons who are citizens of India.

#### By Descent

- A person born outside India on or after January 26, 1950 is a citizen of India by descent if his/her father was a citizen of India by birth.
- A person born outside India on or after December 10, 1992, but before December 3, 2004 if either of his/her parents was a citizen of India by birth.
- If a person born outside India or after December 3, 2004 has to acquire citizenship, his/her parents have to declare that the minor does not hold a passport of another country and his/her birth is registered at an Indian consulate within one year of birth.

#### By Naturalisation

- A person can acquire citizenship by naturalisation if he/she is ordinarily resident of India for 12 years (throughout 12 months preceding the date of application and 11 years in the aggregate) and fulfils all qualifications in the third schedule of the Citizenship Act.

#### By Incorporation of Territory

- If any foreign territory becomes part of India, the Government of India specifies the person who among the people of territory shall be the Citizens of India.
- The Act does not provide for dual citizenship or dual nationality. It only allows citizenship for a person listed under the provisions above i.e., by birth, descent, registration or naturalisation.

*Note:* The act has been amended four times — in **1986, 2003, 2005, and 2015**.

**Citizenship (Amendment) Bill 2019:** The amendment proposes to permit members of six communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Pakistan, Bangladesh and Afghanistan — to continue to live in India if they entered India before December 14, 2014. It also reduces the requirement for citizenship from 11 years to just 6 years.

#### The Citizenship Act, 1955: Termination

##### By Renunciation

- Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship.

**By Termination:** An Indian citizen's citizenship can be revoked if he or she knowingly or voluntarily adopts the citizenship of another country.

The Constitution of India, like **Canada**, has introduced the system of single citizenship and provided uniform rights (barring some exceptions) for the people of India to promote the feeling of fraternity and unity among them and to build an integrated Indian nation.

- This provision, however, does not apply during a war in which India is engaged.

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

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

#### National Register of Citizens (NRC)

- The National Register of Citizens, 1951 is a register prepared after the conduct of the Census of 1951 in respect of each village, showing the houses or holdings in a serial order and indicating against each house or holding the number and names of persons staying therein.
- The NRC was published only once in 1951.
- The NRC of 1951 and the Electoral Roll of 1971 (up to midnight of 24 March 1971) are together called Legacy Data.
- Persons and their descendants whose names appeared in these documents are certified as Indian citizens.

#### PIO Card (Persons of Indian Origin)

- If a person meets the following criteria, he or she is qualified for the PIO card:
- Is of Indian descent and a citizen of any nation other than Pakistan, Sri Lanka, Nepal, Bangladesh, Bhutan, China, or Afghanistan, or has previously held an Indian passport, or is the spouse of an Indian citizen or a person of Indian heritage.
- PIO cardholders can enter India many times for a period of fifteen years. They do not need to obtain a second visa.

#### Overseas Citizen of India (OCI) Card

- The OCI Card is for overseas people who were eligible for Indian citizenship on or after January 26, 1950, or who were already citizens of India.
- The OCI Card is not available to citizens of Pakistan or Bangladesh. The holder of an OCI card does not have voting privileges.

## Unit-5: Union and Its Territory

Articles 1 to 4 under Part I of the Constitution explains the Union and its Territory.

- **Article 1** describes India, that is, Bharat as a 'Union of States' rather than a 'Federation of States'.

**Article 1(1):** India, that is Bharat, shall be a Union of States.

**Article 1(2):** The States and the territories will be specified in the First Schedule.

**Article 1(3):** The territory of India will comprise the following:

- The territories of the States;
- The Union territories mentioned in the First Schedule; and
- Such other territories may be acquired.

- **Article 2** deals with admission or establishment of new States. Parliament may by law admit into the Union, or establish, new States based on terms and conditions.
- **Article 3 authorises the Parliament to:**
  - Form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state;
  - Increase the area of any state;
  - Diminish the area of any state;
  - Alter the boundaries of any state; and
  - Alter the name of any state.
- **Article 3** lays down two conditions in this regard:
  - One, a bill contemplating the above changes can be introduced in the Parliament only with the prior recommendation of the President;
  - Two, before recommending the bill, the President has to refer the same to the state legislature concerned for expressing its views within a specified period.
  - The President (or Parliament) is not bound by the views of the state legislature and may either accept or reject them, even if the views are received in time.

**100<sup>th</sup> Constitutional Amendment Act (2015)** was enacted to give effect to the acquiring of certain territories by India and transfer of certain other territories to Bangladesh in pursuance of the agreement and its protocol entered into between the Governments of India and Bangladesh.

- **Article 4** – Itself declares that laws made for admission or establishment of new states (**under Art.2**) and formation of new states and alteration of areas, boundaries or names of existing states (**under Art. 3**) are not to be considered as amendments of the Constitution under Art. 368.

#### Evolution of states and union territories

**Integration of Princely States:** Of the 552 princely states situated within the geographical boundaries of India, 549 joined India and the remaining 3 (Hyderabad, Junagarh and Kashmir) refused to join India. However, in course of time, they were also integrated with India–Hyderabad by means of police action, Junagarh by means of referendum and Kashmir by the Instrument of Accession.

#### Dhar Commission and JVP Committee (1948)

- Government of India appointed the Linguistic Provinces Commission under the Chairmanship of K. Dhar in 1948 to examine the feasibility and evolution of an objective criteria.

#### Fazl Ali Commission (1953)

- It identified four major factors that can be taken into account:
  - Preservation and strengthening of the unity and security of the country.
  - Linguistic and cultural homogeneity.
  - Financial, economic and administrative considerations.
  - Planning and promotion of the welfare of the people in each state as well as of the nation as a whole.

**Andhra State Act, 1953** – Formed the first linguistic state, known as the State of Andhra, by taking out the Telugu speaking areas from the State of Madras. Kurnool was the capital of Andhra State and the state high court was established at Guntur.

## Unit-6: System of Government

### 1. Parliamentary and Federal System

#### Parliamentary System

- The Constitution of India provides for a parliamentary form of government, both at the Centre and in the states.
- **Articles 74 and 75** deal with the parliamentary system at the Centre and **Articles 163 and 164** in the states.

#### Features of Parliamentary Government

##### Nominal and Real Executives

- The President is the nominal executive officer.
- The Prime minister is the actual executive officer (de facto executive officer).
- Article 74 provides for the Council of Ministers headed by the Prime Minister to assist the President in performing his duties and to advise him.
- The proposal made in this way is binding on the President.

##### Majority Party Rule

- The political party which secures majority seats in the Lok Sabha forms the government.

##### Collective Responsibility:

- The ministers are collectively responsible to the entire parliament, especially to the People's Chamber (Article 75). They swim and sink together as a team.
- The constitution stipulates that ministers will no longer serve as ministers if they do not serve as members of Parliament for six consecutive months.

##### Dissolution of the Lok Sabha

- The lower house of the Parliament (Lok Sabha) can be dissolved by the President on recommendation of the Prime Minister.

##### Secrecy:

- Ministers operate under the principle of confidentiality of procedures and cannot disclose information about their procedures, policies and decisions.
- They swore confidentiality before entering their office. The oath of secrecy to the ministers is presided over by the president.

### Federal System

- A federal government is one in which powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions.

#### Features of Federal System

- Dual Polity
- Written Constitution
- Division of Powers
- Supremacy of the Constitution
- Independent Judiciary

- However, the India federal system of government has a power tilt towards the centre:
  - Strong Centre
  - States Not Indestructible
  - Flexibility of the Constitution
  - No Equality of State Representation
  - Emergency Provisions
  - Parliament's Authority Over State List
  - Veto Over State Bills

## 2. Centre-State Relations and Inter-State Relations

- The constitution of India divides all powers—legislative, executive and financial between the centre and the states.
- Articles 245 to 263 of Part XI and Articles 268 to 293 of Part XII describe the types of Centre-State relations.
- Centre-state relations can be better understood under the following three heads:
  - Legislative relations
  - Administrative relations
  - Financial relations

### Legislative relations (Articles 245 to 255)

- **Article 245 (1)** states that Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
- **Article 245 (2)** No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation.
- **Article 246** states that the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I (Union List) and List III (Concurrent List) of the Seventh Schedule.
- **Article 248** states that the Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.
- Further, **Article 250** states the Parliament shall have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List during the Emergency.

### Administrative relations (Articles 255 to 263)

- **Article 256** states that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.
- **Article 257(1)** states that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.
- **Article 258(2)** states that a law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.
- **Article 261(3)** states that final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law Disputes relating to Waters.
- **Article 262(1)** states that Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.
- **Article 262(2)** states that Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1) Coordination between States.

### Financial relations

- **Article 268** describes the Duties levied by the Union but collected and appropriated by the States.
- **Article 269** describes the Taxes levied and collected by the Union but assigned to the States.
- **Article 269-A** describes Levy and Collection of Goods and Services Tax in Course of Inter-State Trade or Commerce.
- **Article 270** describes the Taxes levied and distributed between the Union and the States.
- **Article 271** describes Surcharge on Certain Taxes and Duties for Purposes of the Centre.
- **80<sup>th</sup> Amendment Act of 2000 and the 101st Amendment Act of 2016.**
- **Article 279-** A empowered the President to constitute a GST Council by an order.

### Grants-in-Aid to the States

- **Statutory Grants:** The statutory grants under Article 275 (both general and specific) are given to the states on the recommendation of the Finance Commission.
- **Discretionary Grants:** Article 282 empowers both the Centre and the states to make any grants for any public purpose, even if it is not within their respective legislative competence. Under this provision, the Centre makes grants to the states.
- **Other Grants:** The Constitution also provided for a third type of grants-in-aid, but for a temporary period.

### Inter-State Relations

For ensuring harmonious relations and close cooperation between the Centre and the states the Constitution makes the following provisions with regard to inter-state relations:

- Adjudication of inter-state water disputes.
- Coordination through inter-state councils.
- Mutual recognition of public acts, records and judicial proceedings.
- Freedom of inter-state trade, commerce and intercourse.

### Inter-State Council

- Art 263 contemplates the establishment of an inter-state council (ISC) to effect coordination between the states and between Centre and States.
- The President can establish such a council at any time it appears to him that public interest would be served by its establishment.
- The ISC is the only multilateral centre-state forum that operates directly within the framework of the Constitution (Article 263 (b) and (c)) where topics like the GST and contemporary issues like disaster management, terrorism and internal security can be taken up.

### Inter-State Trade and Commerce

- **Article 301 to 307** in Part XIII of the Constitution deal with the trade, commerce and intercourse within the territory of India.

### Zonal Councils

- They are statutory bodies established by an act of parliament (**State reorganization Act of 1956**).
- The home minister of central government is the common chairman of all the zonal councils.
- At present there are five zonal councils– Northern, Central, Eastern, Western, Southern.
- In addition to above Zonal councils, a north-Eastern council was created by a separate Act of 1971. Its functions are similar to those of the zonal councils, but with a few additions.

## 3. Emergency Provisions

- Emergency provisions are borrowed from the Govt. Of India Act 1935.
- Constitutional provisions: **Part XVIII- Articles 352 to 360.**

- “Suspension of Fundamental Rights during proclamation of emergency” provision borrowed from Weimer constitution (Now Germany).
- During emergency, Central government becomes all powerful and states are in the complete control of the union.
- The federal structure becomes unitary without a formal amendment to the Constitution.

### Types of Emergencies

#### National Emergency

##### Declaration of National Emergency

- Under Article 352, the President can declare a national emergency only, after receiving a written recommendation from the cabinet.

##### Grounds of declaration

- Grounds of emergency is war, external aggression,( External Emergency) and armed rebellion (Internal Emergency).
  - Due to the vagueness of the term Internal disturbance, **44<sup>th</sup> Amendment Act 1978** substituted it with Armed Rebellion.
- Emergency can be declared over the complete territory of India or any part thereof.
  - Limiting the operation to any part of the country is enabled by the **42<sup>nd</sup> Amendment Act 1976**.

##### Approval of National Emergency

- The President can declare an emergency only on the written advice of the cabinet.
- Must be approved by both the houses of parliament within one month from the date of its issue.
- Once approved the proclamation continues to be in force for six months.
- Such proclamations can be extended indefinitely, however, each extension should be approved by the Parliament through a special majority (**44<sup>th</sup> amendment act, 1978**).
- If the Lok Sabha is not in session or has been dissolved then the proclamation has to be approved within 30 days since the new Lok Sabha is constituted.

##### Revocation of proclamation

- Emergency can be revoked at any time by the President by passing a subsequent proclamation to this effect.
- The emergency must be revoked if the Lok Sabha passes a resolution by a simple majority disapproving its continuation.

##### Judicial Review

#### Effect on the fundamental rights

##### Article 358

- Article 358 deals with suspension of the elemental rights guaranteed by Article 19.

##### Article 359

- As per Article 359, the President is authorised to suspend the right to move any court for the enforcement of fundamental rights during the National emergency.
- It deals with the suspension of other fundamental rights except for Articles 20 and 21.



**President's Rule**

- **Article 355** imposes a duty on the center to ensure that the government of every state is carried out in accordance with the provisions of the Constitution.
- President's rule can also be termed as either a "State emergency" or "Constitutional Emergency".
- First time, the President's Rule was imposed in Punjab in 1951.

**Financial Emergency**

In India, no Financial Emergency has been declared so far.

**Grounds of imposition**

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

**Parliamentary approval and duration**

- The proclamation regarding financial emergency must be approved by either house of the parliament within two months of time only with a simple majority.

**Unit-7: Central Executive****1. President**

- The President of India is the head of state of the Republic of India.
- The President is the formal head of the executive, legislature and judiciary of India and is also the commander-in-chief of the Indian Armed Forces.

**Article 52**

- There shall be a President of India.

**Article 53 : Executive Power of the Union**

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

**Article 54 : Election of President**

- The President shall be elected by the members of an electoral college consisting of –
  - The elected members of both Houses of Parliament; and
  - The elected members of the Legislative Assemblies of the States.

In this Article and in Article 55, "State" includes the National Capital Territory of Delhi and the Union territory of Pondicherry.

**Article 55 : Manner of Election of President**

- As per **Article 55(3)** of the Constitution of India, the election of the President shall be held in accordance with the system of proportional representation by means of single transferable vote and the voting at such election shall be by secret ballot.

**Article 56 : Term of Office of President**

- The President shall hold office for a term of five years from the date on which he enters upon his office:

**Article 57 : Eligibility for Re-Election**

- A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution be eligible for re-election to that office.

**Article 58 : Qualifications for Election as President**

- No person shall be eligible for election as President unless he –
  - Is a citizen of India;
  - Has completed the age of thirty-five years, and.
  - Is qualified for election as a member of the House of the People.
- A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

**Article 59 : Conditions of President's Office**

- He should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected as President, he is deemed to have vacated his seat therein house on the date on which he enters upon his office as President.

**Article 60 : Oath or Affirmation by the President**

- The oath to the President is administered by the Chief Justice of India and in his absence, by the senior most judge of the Supreme Court.

**Article 61 : Procedure For Impeachment of the President**

- The President can be removed from his office before the expiry of his term only on the grounds of violation of the constitution.
- If the other house passes the resolution by a two-thirds majority after the investigation by the select committee, the President of India is impeached.

**Article 62 : Vacancy in The President's Office**

- In case of completion of President's term for five years in the office
- In case of resignation to the Vice-president of India.
- If Lok Sabha/Rajya Sabha initiates an impeachment charge and they stand valid, he is removed
- In case of he dies during his tenure
- Invalidation of election by Supreme Court.

**Powers and functions of President****Executive Powers**

- President is executive head (**Article 53**).
- Act on Aid and advice of Council of Ministers (**Article 74**).
- All executive action taken in his name; make rules for convenient transaction of business of Government of India (**Article 77**).
- Power of appointment and removal of various dignitaries. Example: Comptroller and auditor General of India; Chief Election Commissioner and Election Commissioners; Attorney Generals; members of Union Public Service Commission; Joint Public Service Commission; Judges of Supreme Court and High Courts etc.

- Administers Union Territories directly (**Article 239**)
- Enjoys special powers with regard to administration of scheduled areas.

### Legislative Power

- Sessions of parliament, prorogation and Dissolution (**Article 85**).
- Right of the President to Address and Send messages to the House (**Article 86**).
- Special address by President (**Article 87**)
- Power of Nomination of members of the house.
  - Lok Sabha – 2 members from Anglo Indian Community (**Article 331**).
  - Rajya Sabha – 12 members (Art; Science; literature and Social Service) (**Article 80**).
- Prior Sanction for Introduction of Certain Legislature. Example:
  - Bill for creation of new states (**Article 3**).
  - Introduction of certain Financial Bills (**Article 117**).
- Power of president to Assent Legislations (**Article 111**).
  - Give Assent.
  - Withhold the Assent.
  - Return for reconsideration.
- **Type of veto:** Absolute; Qualified; Suspensive; Pocket.
  - Indian President: Absolute; Suspensive and Pocket.
- President Veto power with regards to Bills Passed by State Legislature. (**Art. 201**).
- Governor's power to Assent (**Article 200**).
  - Give Assent.
  - Withhold the Assent.
  - Send for Reconsideration.
  - Reserve Bill for Consideration of the President.
- President Shall Convene Joint Sitting (Article 108)
- Ordinance Making power of President and Governor (**Art. 123 and 213**).

### Pardoning power of the President Article 72.

- President under Article 72 (Pardon; Commute; Remit; Reprieve and Respite).

- **Pardon:** With the grant of pardon convicts both conviction and sentence completely absolved.
- **Commutation:** With this nature of the punishment of the convict can be changed.
- **Remission:** Reduces the term of the imprisonment.
- **Respite:** Awards lesser punishment than original punishment by looking at the special condition of a convict.
- **Reprieve:** Stays the execution of the awarded sentence for a temporary period.

- In cases of:
  - Court martial.
  - Prosecuting agency is the Central Govt. (Executive power of union extends).
  - All cases where punishment is the sentence of death.

## 2. Vice-President

- **Article 63** – There shall be a Vice President.
- Ex officio chairman of Rajya Sabha.
- Acts as President during death, resignation removal (or) otherwise of the incumbent President (Article 65).
- Vice President may also discharge the duties of the President during his absence, illness or any other cause (**Article 65**).
- Election of Vice President (**Article 66**):
  - Electoral college; proportional representation single transferable vote; secret ballot.
  - Electoral College – Member of both houses of the parliament (elected and nominated).
  - Eligibility Criteria – similar to that of President.
  - Exception: He should be qualified for the election of member of Rajya Sabha.
- Oath to be administered by the President (or) any person appointed on that behalf by the President.
- **Term of Office of Vice President (Article 67)**
  - 5 Year.
  - Resignation to President.
  - Removed by resolution introduced only Rajya Sabha; 14 days prior notice; effective majority.
  - Continue to hold office until his successor assume office (on expiration).
- **Vacancy to Office of Vice President (Article 68)**
  - Expiry of term – Vacancy to be filled before such expiration.
  - Death.
  - Resignation.
  - Removal.
  - Otherwise.

**Note** – Election in case of vacancy other than the end of term shall be held as soon as possible (and not within 6 months). Newly elected Vice-President occupies Office for a full 5-year term.

## 3. Prime Minister

The Prime Minister is both the head of government and the real executive of the Indian system.

- Article 74 states that "There shall be a Council of Ministers with the Prime Minister as the head to aid and advise the President."

### Appointment

- **Indirect election:** The Prime Minister is appointed by the President.

### Power and Functions of the Prime Minister

- The PM recommends a person to the President for appointment as ministers.
- The PM can ask for the resignation of any minister.
- He guides, directs, controls and coordinates the activities of all the ministers.
- If the PM resigned from his office the Council of Ministers also collapsed.

## 4. Council of Ministers – Cabinet and Cabinet Committees

**Article 74** deals with the status of the council of ministers while **Article 75** deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.

**Article 74 (council of ministers to aid and advise President):** The President may require the council of ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.

**Article 75 (Other Provisions as to Ministers):** The PM shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the PM.

- The total number of ministers, including the Prime Minister, in the council of ministers shall not exceed 15% of the total strength of the Lok Sabha.
- This provision was added by the 91<sup>st</sup> Amendment Act of 2003.

**Article 77 (Conduct of Business of the Government of India):** The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

**Article 78 (Duties of Prime Minister):** To communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation.

**Article 88 (Rights of Ministers as Respects the Houses):** Every minister shall have the right to speak and take part in the proceedings of either House, any joint sitting of the Houses and any Committee of Parliament of which he may be named a member. But he shall not be entitled to vote.

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

### Cabinet Committees

- A Cabinet committee is a group of ministers which can take collective decisions that are binding across various ministries/departments.
- They are an organizational device to reduce the enormous workload of the Cabinet which also facilitates in-depth examination of policy issues and effective coordination.

### List of Cabinet Committees

- Cabinet Committee on Political Affairs
- Cabinet Committee on Economic Affairs
- Appointments Committee of the Cabinet
- Cabinet Committee on Security
- Cabinet Committee on Parliamentary Affairs
- Cabinet Committee on Accommodation
- Cabinet Committee on Investment and Growth
- Cabinet Committee on Employment and Skill Development

## 5. Attorney General of India

- The Attorney General (AG) of India is a part of the Union Executive. AG is the highest law officer in the country.
- Article 76 of the Constitution provides for the office of AG of India.

### Appointment:

- The Attorney General (AG) of India appointed by the President on the advice of the Government.

### Eligibility:

- Qualified to be appointed as Supreme Court judge.
- Citizen of India.
- Judge of High Court (High Court) for 5 years/advocate High Court for 10 years/eminent jurist in President's opinion.

### Functions:

- Advise Government on legal matters.
- Perform legal duties assigned by the President.
- Appear on behalf of Government in all cases in Supreme Court or High Court.
- Represent Government under Article 143 (Power of President to consult SC).
- Discharge functions conferred by Constitution or law.

### Rights:

- Right to Speak & take part in proceedings of both Houses of Parliament/joint sitting/any committee of Parliament of which he/she may be named a member.
- Enjoys privileges & immunities of a member of Parliament.
- Not a Government servant & not debarred from private legal practice.

### Limitations:

- No Right to Vote in House proceedings/committees.
- Should not advise against or hold a brief against the Government.
- Should not defend accused persons in criminal prosecutions without the permission of the Government of India.
- Should not accept appointment as a director in any company or corporation without the permission of the Government of India.

**Removal:**

- Holds office during President's pleasure & can be removed by President at any time.
- No grounds for removal or procedure mentioned in the Constitution.

**Unit-8: State Executive****1. Governor**

- The Governor is the constitutional head of the State Government.
- He plays a twofold function as the constitutional head of the State Government and as a link between the Centre and the State government.
- The Governor of a State is appointed by the President by warrant under his hand and seal.

**Articles 153:**

- **Articles 153** says that there should be a Governor for each state.
- But under the 7th Amendment Act, 1956, the same person can be appointed as Governor of one or more States.

**Article 156 – Term of Office:**

- Normally holds office for five years but can be removed at any time before that by the President.
- Thus, Governors remain in office during the pleasure of the President.
- The Governor may resign at any time by writing to the President.

**Article 157 Appointment:**

**Qualifications:** In order to be appointed as Governor, a person:

- Must be a citizen of India;
- Must have completed the age of 35 years.

**Functions and Powers****Executive Powers:**

- All executive actions of the State Government are formally taken in his/her name.
- Can make rules for more convenient transactions of the business of a State government.
- Appoints the Chief Minister and other ministers and Advocate General who hold office during his/her pleasure.
- Appoints the State Election Commissioner (SEC). However, the SEC can be removed only in like manner and on the like grounds as a judge of a high court.
- Appoints the Chairman and members of the State Public Service Commission, who can be removed only by the President and not by a Governor.
- Can recommend the imposition of constitutional emergency in a State to the President. During the period of the President's rule in a state, the Governor enjoys extensive executive powers as an agent of the President.

- Acts as the Chancellor of universities in the State and appoints the Vice-Chancellors (VCs).

**Legislative Powers:**

- **Article 174** – Power to prorogue the state legislature and dissolve the state legislative assemblies.
- **Article 176** – He addresses the state legislature at the first session of every year.
- He can send messages to the house or houses of the state legislatures, with respect to a bill pending in the legislature or otherwise.
- If the speaker of the legislative assembly is absent and the same is Deputy Speaker, then the Governor appoints a person to preside over the session.
- Governor appoints 1/6th of the total members of the legislative council from the fields of – Literature, Science, Art, Cooperative Movement and Social Service.
- Governor nominates 1 member in the state legislative assembly from the Anglo-Indian Community.
- He can consult Election Commission for the disqualification of members.
- **Article 200** – With respect to the bill introduced in the state legislature, he can:
  - Give his assent.
  - Withhold his assent.
  - Return the bill.
- **Article 201** – Reserve the bill for the President's consideration (In instances where the bill introduced in the state legislature endangers the position of state High Court).

Governor can reserve the bill for the President's consideration in the cases when following provisions are mentioned in the bill:

- Violates the constitution (Ultra-Vires).
- Oppose Directive Principles of State Policy.
- Hinders the larger interests of the country.
- Of grave the national importance.
- Mention the acquisition of property that is dealt with Article 31A in the Constitution.

- **Article 213** – An ordinance can be promulgated by him when either the Legislative Assembly or Council (Unicameral/Bicameral) are not in session.
- The following reports are laid by him before the state legislatures:
  - State Finance Commission.
  - State Public Service Commission.
  - Comptroller and Auditor General (Concerning the state finance).

**Financial Powers:**

- He looks over the state budget being laid in the state legislature.
- Money bills can be introduced in the State Legislature only with his/her prior recommendation.

- No demand for a grant can be made except on his/her recommendation.
- Can make advances out of the Contingency Fund of the State to meet any unforeseen expenditure.
- Constitutes a Finance Commission after every five years to review the financial position of the panchayats and the municipalities.

#### Judicial Powers:

- President consults the Governor while appointing judges of High Court.
- In Consultation with state High Court, Governor makes appointments, postings and promotions of the district judges.
- In consultation with the state high court and state public service commission, he also appoints persons to the judicial services.

#### Pardoning Power (Article 161)

- Power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted in any offence against a state law.

## 2. Chief Minister

The Chief Minister's position in the state is comparable to that of the Prime Minister at the centre.

#### Appointment

- **Article 164** of the Constitution envisages that the Chief Minister shall be appointed by the Governor.
- A leader of the party that has got the majority share of votes in the assembly elections, is appointed as the Chief Minister of the state.

#### Term of the CM

- The Chief Minister is not fixed and he holds office during the pleasure of the Governor.
- The State Legislative Assembly can also remove him by passing a vote of no-confidence against him.

#### Powers and Functions

##### With Respect to Council of Ministers

- The Governor appoints only those persons as ministers who are recommended by the Chief Minister.
- He allocates and reshuffles the portfolios among ministers.
- He can bring about the collapse of the council of ministers by resigning from office, since the Chief Minister is the head of the council of ministers.

##### With Respect to Governor

- **Under Article 167** of the Constitution, the Chief Minister acts as a link between the Governor and state council of ministers.
- CM advises the Governor regarding the appointment of important officials like Advocate General, Chairman and members of the State Public Service Commission, State Election Commission, etc.

#### With Respect to State Legislature

- All the policies are announced by him on the floor of the house.
- He recommends dissolution of legislative assembly to the Governor.

#### Other Functions

- He is the Chairman of the State Planning Board.
- He acts as a Vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.
- He is a member of the Inter-State Council and the Governing Council of NITI Aayog, both headed by the Prime minister.

## 3. Council of Ministers

#### Article 163 – Council of Ministers to Aid and Advise Governor

#### Article 164 – Other Provisions as to Ministers

- The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister.
- The ministers shall hold office during the pleasure of the Governor.
- The council of ministers shall be collectively responsible to the State Legislative Assembly.
- A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be a minister.

#### Article 166–Conduct of Business of the Government of a State

- All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

#### Article 167–Duties of Chief Minister

#### Article 177–Rights of Ministers as Respects the Houses

- Every minister shall have the right to speak and take part in the proceedings of the Assembly (and also the Council where it exists) and any Committee of the State Legislature of which he may be named a member. But he shall not be entitled to vote.

#### 91<sup>st</sup> Constitutional Amendment Act 2003

- The total number of ministers, including the Chief Minister, in the council of ministers in a state shall not exceed 15 percent of the total strength of the legislative assembly of that state.

#### Oath and Salary of Ministers

- The oath to every new minister is administered by the Governor of State. The salaries and allowances of ministers shall be determined by the state legislature.

## 4. Advocate General

- Article 165 has provided for the office of the Advocate General.

- Highest law officer in the state.

<p><b>Appointment</b></p> <ul style="list-style-type: none"> <li>● The advocate general is appointed by the Governor.</li> </ul>
<p><b>Qualification:</b></p> <ul style="list-style-type: none"> <li>● He must be a person who is qualified to be appointed a judge of a high court.</li> <li>● He must be a citizen of India.</li> <li>● He must have held a judicial office for ten years or been an advocate of a high court for ten years.</li> </ul>
<p><b>Term of office:</b></p> <ul style="list-style-type: none"> <li>● The term of office of the Advocate General is not fixed by the Constitution.</li> <li>● He holds office during the pleasure of the Governor.</li> <li>● He may also quit his office by submitting his resignation to the Governor.</li> </ul>
<p><b>Remuneration:</b></p> <ul style="list-style-type: none"> <li>● The remuneration of the advocate general is not fixed by the Constitution.</li> <li>● He receives such remuneration as the Governor may determine.</li> </ul>

## Unit-9: Parliament

### 1. Parliament

The Parliament is the legislative organ of a Union government and the Parliament of India is its supreme legislative body.

- It occupies a pre-eminent and central position in the Indian democratic political system due to the adoption of the Parliamentary form of Government (**'Westminster' model of government**).
- **Articles 79 to 122 in Part V** of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the Parliament.

#### Organs of Parliament

- President (discussed)
- Rajya Sabha
- Lok Sabha

#### Rajya Sabha

It is the Upper House (Second Chamber or House of Elders) and it represents the states and union territories of the Indian Union.

- The Rajya Sabha is called the permanent House of the Parliament as it is never fully dissolved.
- The IV Schedule of the Indian Constitution deals with the allocation of seats in the Rajya Sabha to the states and UTs.

#### Composition:

- The maximum strength of Rajya Sabha is 250 (Out of which 238 members are representatives of the states & UTs (elected indirectly) and 12 are nominated by the President).
- The members nominated by the President are those who have special knowledge or practical experience in art, literature, science and social service.

#### Election of Representatives:

- The representatives of states are elected by the members of state legislative assemblies.
- Only three UTs (Delhi, Puducherry and Jammu & Kashmir) have representation in Rajya Sabha (others don't have enough population).

**Functions:** Rajya Sabha has an important role of reviewing and altering the laws initiated by the Lok Sabha.

#### Powers:

- **State Related Matters:** The Rajya Sabha provides representation to the States. Therefore, any matter that affects the States must be referred to it for its consent and approval.
- If the Union Parliament wishes to remove/transfer a matter from the State list, the approval of the Rajya Sabha is necessary.
- Additional All-India Services are being developed on the request of Rajya Sabha (Article 312).

#### Qualifications:

- She/He should be a citizen of India and at least 30 years of age.
- She/He should make an oath or affirmation stating that she/he will bear true faith and allegiance to the Constitution of India.
- According to the Representation of People Act, 1951, she/he should be registered as a voter in the State from which she/he is seeking election to the Rajya Sabha.
- However, in 2003, a provision was made declaring, any Indian citizen can contest the Rajya Sabha elections irrespective of the State in which she/he resides.

#### Tenure:

- Every member of Rajya Sabha enjoys a safe tenure of six years.
- One-third of its members retire after every two years. They are entitled to contest again for the membership.

#### Officials:

- The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. She/He presides over the meetings of Rajya Sabha.
- In his absence the Deputy Chairman (elected by its members from amongst themselves) presides over the meeting of the House.

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

It is the Lower House (First Chamber or Popular House) and it represents the people of India as a whole.

#### Composition:

- The maximum strength of the Lok Sabha is fixed at 550 out of which 530 members are to be the representatives of the states and 20 of the UTs (**current strength of Lok Sabha is 543**).
- Earlier, the President also nominated two members from the Anglo-Indian community, but by the **95<sup>th</sup> Amendment Act, 2009**, this provision was valid till 2020 only.