B.A. LL.B. (HONS.) II SEMESTER
CONSTITUTIONAL LAW-I

UNIT-I : INTRODUCTION

1. Preamble
2. Nature of Indian Constitution
3. Characteristics of federalism
4. Unitary form of Government

INTRODUCTION

A **Constitution** is a set of fundamental principles or established precedents according to which a State or other organization is governed. These rules together make up, i.e. *constitute*, what the entity is. When these principles are written down into a single document or set of legal documents, those documents may be said to embody a *written* constitution; if they are written down in a single comprehensive document, it is said to embody a *codified* constitution. Constitution was written by a committee headed by Dr. Bhimrao Ambedkar. It took ***2 yrs, 11 months, 18 days*** for compilation. It was adopted on **26th November, 1949 (celebrated as Law Day)**, and enforced fully on **26th January, 1950 (celebrated as Republic Day)**.

The Constitution of India is the longest written Constitution of any sovereign country in the world, containing 444 Articles in 22 Parts, 12 Schedules while the United States Constitution is the shortest written Constitution, at 7 Articles. At the time of commencement, the Constitution had 395 Articles in 22 parts and 8 schedules.

- Constitution is said to be the ***supreme law of the land***.
- The drafting of the document called the Constitution was pursued by an assembly of elected representatives called the ***Drafting Committee***, which was chaired by ***Dr. B.R. Ambedkar.***
- The above-said Committee prepared the draft of the Constitution. Then, several rounds of discussions took place. More than two thousand amendments were considered.
- Every document presented and every word spoken in the Constituent Assembly has been recorded and preserved under the name of ***Constituent Assembly Debates.***

SOURCES OF CONSTITUTION

SOURCE	PROVISION
BRITISH CONSTITUTION	Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, citizenship, prerogative writs, parliamentary privileges and bicameralism.

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UNITED STATES 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 States Policy, nomination of members to Rajya Sabha and method of election of President.
CANADIAN CONSTITUTION	Federation with strong centre, vesting of residuary power 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 intercourse, 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.

While drafting the Constitutional Draft, several provisions were borrowed from various *written* and *unwritten Constitutions* all over the world.

Similarly the Constitution as a whole stands to its effect after having incorporated several unique features and provisions from several other Constitutions.

PREAMBLE

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC

and to secure to all its citizens:

JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this *twenty-sixth day of November, 1949,* do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

Preamble means a preliminary or introductory statement, especially attached to a statute or constitution setting forth its purpose. Preamble is an expressionary statement in a document that explains the document's purpose and underlying philosophy. When applied to the opening paragraphs of a statute, it may recite historical facts pertinent to the subject of the statute. The **preamble to the Constitution of India** is a brief introductory statement that sets out the guiding purpose and principles of the document.

In re BeruBari's case[1], it was held that the preamble is not an integral part of the Indian Constitution & therefore it can neither be regarded as a source of limitations or substantive powers nor it is enforceable in a court of law. However, Supreme Court of India has, in the *Keshavananda Bharti Case*[2], overruled earlier decisions and recognised that the preamble may be used to interpret ambiguous areas of the constitution where differing interpretations present themselves.

Forty-second Amendment, 1976: As originally enacted the preamble described the state as a "sovereign democratic republic". In **1976** the *Forty-second Amendment* changed this to read "sovereign ***socialist secular*** democratic republic." Also through this amendment, the phrase "unity of the Nation" was changed to "***unity and integrity of the Nation***".

PURPOSE OF PREAMBLE

Preamble basically is a declaration of-

1. The source of the Constitution,
2. The statement of its objectives,
3. The date of its adoption and enactment.

- ✓ Preamble begins with a short statement of its basic values and it contains the philosophy on which our Constitution is built. It is just like an introduction or preface of a book. Preamble actually embodies the spirit of the Constitution.
- ✓ It is a key to the minds of the draftsmen.
- ✓ It is also the soul of the Constitution.

PREAMBLE AND ITS INTERPRETATION

"We, The People of India..."

- ➢ This phrase simply indicates that it's ***we people***, ***the people of India*** who are the source of authority behind the Constitution.
- ➢ This also has an implication that the Constitution has been drawn up and enacted by the people through their representatives, and not just handed down to them by a king or any outside powers.

"..having solemnly resolved to constitute India.."

- ➢ That is to say that by declaring such a phrase we have actually abide ourselves in it's true spirits to follow and give full effect to the policies and principles laid down in the Constitution.

"sovereign"

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[1] AIR 1960 SC 858
[2] AIR 1973 SC 1461

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- This indicates that India is a sovereign, a nation free from any external control or interference i.e. no external power can dictate the government of India. India is internally and externally sovereign i.e. externally free from the control of any foreign power and internally, it has a free government which is directly elected by the people and makes laws that govern the people.
- Constitution may appear to be sovereign as it is the supreme law of the land. However, a document cannot be a sovereign. The people of India, according to this Constitution have given to themselves this Constitution and therefore, we can say that the political sovereignty lies in "***We, the people..***" and the legal sovereignty lies in the Constitution of India.
- The word "Sovereign" emphasizes that India is no more dependent upon any outside authority.
- It's membership of that Commonwealth of Nations and that of the United Nations Organization do not restrict her sovereignty.

"socialist"

- The word "socialist" was not there in the original draft of the Constitution. This has been incorporated in the Preamble by the ***42nd Constitutional Amendment, 1976.***
- This is also reflected in the words "***..economic justice..***" in the preamble. In a democracy, socialism simply refers to a system of government in which the means of productions are wholly or partly controlled by the State.
- It implies social and economic equality. Social equality in this context means the absence of discrimination on the grounds only of caste, colour, creed, sex, religion, or language. Under social equality, everyone has equal status and opportunities. Economic equality in this context means that the government will endeavour to make the distribution of wealth more equal and provide a decent standard of living for all. This is in effect emphasized a commitment towards the formation of a welfare state. India has adopted a socialistic and mixed economy and the government has framed many laws to achieve the aim.
- In ***D.S. Nakara v. Union of India (UoI)***, the Supreme Court has observed that the basic framework of socialism is to provide a decent standard of living to the people and specially provide basic social security from cradle to grave. Therefore, it clearly marks the economic equality and equitable distribution of income.
  {Art. 39(b) and (c)}

"secular"

- The word "secular" also was not there in the original draft of the Constitution. This has also been incorporated in the Preamble by the ***Constitutional (42nd Amendment) Act, 1976.***
- It simply indicates that the State does not recognize any religion as its own religion and thus, treats all religions equally. It's a status of being neither pro-religion nor anti-religion. It is also not based on total neutrality towards religion. It is based on equal respect for all religions. It embodies the age old concept of 'sarva dharma sambhava'.
- ***Art. 25 to 28*** constitutes the right to freedom of religion
- Citizens have complete freedom to follow any religion, and there is no official religion. The Government treats all religious beliefs and practices with equal respect and honour.
- In a secular State, the State regulates the relationship between man and man and it is actually not concerned with the relation of man with God.

"democratic"

- This is based on the legal status of ***"Damus Cratus"*** which means ***rule of people*** i.e. where the Government gets its authority from the will of the people. The rulers are elected by the people and are responsible to them.
- There is a famous definition of democracy as given by ***Abrahim Lincoln*** that "democracy is by the people, of the people and for the people."

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- The first part of the preamble "We, the people of India" and, its last part "give to ourselves this Constitution" clearly indicate the democratic spirit involved even in the Constitution. India is a democracy.
- This simply means that the government of our country is carried on by the people of the State through their representatives and the executive head of the State i.e. the President of India is an elected representative of the People (and not a hereditary monarch as like King of England). In India, President is elected by the people although he is elected indirectly. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as "one man one vote". Every citizen of India, who is 18 years of age and above and not otherwise debarred by law, is entitled to vote. Every citizen enjoys this right without any discrimination on the basis of caste, creed, colour, sex, religion or education.

"republic"

- The Constitution of India is republican in nature as the executive head of India is not any hereditary monarch. This indicates the form of Government in which the Head of State will be an elected person and not a monarch like the King or the Queen in England. Such elected Head will be the Chief Executive Head.
- This concept of being republic is taken from France.
- As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure, the President of India is elected by an electoral college for a term of five years. The post of the President of India is not hereditary. Every single citizen of India is eligible to become the President of the country. The leaders of the state and local bodies are also elected by the people in similar manner.
- India became a republic on 26th January, 1950.

"..and to secure to all its citizens.." - This is a declaratory statement wherein the ultimate objective of the Constitution lies.

"..justice, social economic and political.."

Here, these words indicate that the Indian Constitution aims at achieving three-fold justice. It's simply about the attainment of common good and that the people cannot be discriminated on the basis of caste, religion or gender or so and that the government or the State should work for the welfare of the people as a whole irrespective of their social status.

- ***Economic justice*** can be and ought to be ensured by rational policy making and it's proper implementation. Socio-economic justice has been ensured by provision such as Art. 38 and 39.
- ***Political justice*** is ensured by way of the right of adult franchise i.e. exercise of right to vote as soon as a citizen attains the age of 18 years.
- ***Social justice*** actually requires the abolition of all sorts of inequities which result from inequalities of wealth, opportunity, race, caste and religion. ***Art. 14 to Art.18 provides for equality of status and opportunity.***
- The concept of social justice thus enables the legislature to enact and the Courts to uphold such legislations-
  - (a) to protect the interests of the weaker sections;
  - (b) to remove economic inequalities;
  - (c) to provide a decent standard of living to the people of the country.

"..liberty, of thought, expression, belief, faith and worship.."

The Constitution regards liberty of thought, expression, belief, faith and worship to be essential to the development of the individual and the nation, and therefore the Preamble itself promises to ensure the same to it's citizens. In simple words, there are no unreasonable restrictions on the citizens in what they think, how they think, how they wish to express their

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thoughts and the way they wish to follow up their thoughts in action. {***Art. 19(1), Art. 25, Art.26 makes provision of such liberty}***

"..fraternity, assuring the dignity of the individual and the unity and integrity of the Nation.."

"Fraternity" means the spirit of brotherhood. Simply put it's that all of us should behave as if we are members of the same family and no one should treat any other person as inferior owing to any factor. India being a ***multilingual and multi-religious State***, the unity and integrity can be preserved only through a spirit of brotherhood that pervades the entire country, among all its citizens, irrespective of their differences. Indian Constitution provides for a single citizenship. All citizens have been given the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India. ***[Art.19(1)(d) and Art.19(1)(e)]***

"..In our Constituent Assembly this twenty-sixth day of November, 1949, do hereby ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

This is a declaratory statement about the adopting, enacting the Constitution.

Art. 394 and some other Articles such as Art. 5, 6, 7, 8, 9, 60, 324, 366, 379, 380, 388, 391, 392 and 393 came into force on 26th Nov.,1949 (celebrated as ***Lawyer's day***)

The remaining provisions of this Constitution came into force later on 26th January,1950 which day is referred to as the day of commencement of this Constitution. (As also celebrated as the ***Republic Day***)

PREAMBLE WHETHER A PART OF CONSTITUTION OR NOT??

&

WHETHER AMENDABLE OR NOT??

- ***In Re Berubari Case {AIR 1960 SC 845}***

  The Supreme Court held that preamble is ***not a part of the Constitution*** *as it does not create any substantive rights or obligations or powers. It cannot be a source of powers or restrictions on such powers. Further held that preamble is just an important tool for the interpretation of the Constitution.*

- ***In Keshwanand Bharti's case {AIR 1973 SC 1461}***

  It was held that preamble of the Constitution cannot be compared to the preamble of any other statute. It was also held that the objectives stated in the Preamble reflect the basic structure of the Constitution. Thus, it must be considered a part of the Constitution. It was not a provision as held in the Berubari's case.

- ***S.R. Bommai v. UoI {AIR 1994 SC 1918}***

  Supreme Court held that the preamble forms a part of the Constitution.

CAN PREAMBLE BE AMENDED??

- ✓ *As far as the power of the Parliament to amend the Preamble is concerned, it can be concluded that the Preamble is a part of the Constitution and therefore it can be amended by the Parliament under Article 368 but the **'basic features'** in the Preamble cannot be amended.*
- ✓ *Till date, preamble has been amended only ones i.e. by the **Constitution (42nd Amendment) Act, 1976.***
- ✓ *By this 42nd Amendment, four words were added in the preamble i.e. "**socialist**", "**secular**", "**and integrity**"*

SALIENT FEATURES OF INDIAN CONSTITUTION

- The Constitution of India has some outstanding features which distinguish it from other Constitutions. The framers of our Constitution studied other Constitutions, selected their valuable features and put them with necessary modifications in our Constitution.
- The framers of the Constitution of India did not aim at a completely new or original Constitution. They just wanted to produce "a good and workable" Constitution. And they succeeded doing this. The fact that the Constitution, for last 59 years, has been working satisfactorily is a testimony to its quality and utility.

1) *Written and lengthiest Constitution*

- ✓ There are two types of Constitutions in the world. Most of the Constitutions are written. The first modern written Constitution was the American Constitution. On the other hand, the British Constitution is unwritten. It consists of customs and conventions which have grown over the years.
- ✓ In India, we have a **written Constitution**. The framers of our Constitution tried to put everything in black and white. Indian Constitution can be called the largest written constitution in the world because of its contents. In its original form, it consisted of 395 Articles and 8 Schedules to which additions have been made through subsequent amendments. At present it contains 395 Articles and 12 Schedules.

There are various factors responsible for the long size of the Constitution. The Constitution became lengthy mainly due to the following factors-

(a) The Constitutional draftsmen wanted to put everything in black and white and that too in great detail.

(b) In other federations, there are two Constitutions: one for the federation and the other for the states. In India, the states do not have separate Constitutions. The powers of states along with the powers of the federation i.e. the Union have been vested in one Constitution.

(c) The Government of India Act, 1935 was in operation when India got independence. Our leaders were familiar with this Act. They borrowed heavily from this lengthy Act while framing our Constitution.

(d) India is a country of great diversity. It is a country of several minorities; it has many languages, castes, races and religions. The problems and interests of these different groups have found place in one Constitution leading it to be a long document.

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(e) Good features of other Constitutions have been included, with necessary modifications, in our Constitution. For example, we have brought the 'bill of rights' from the American Constitution, parliamentary system of government from the British Constitution and Directive Principles of State Policy from the Irish Constitution.

While including these elements of other Constitutions in our Constitution, Dr. B.R. Ambedkar said the framers of our Constitution tried to remove their faults and suit them to our conditions.

2) Preamble

- ✓ The Preamble describes the source, nature, ideology, goals and objectives of the Constitution. The Constitution declares India to be a Sovereign, Socialist, Secular, Democratic, Republic. The words, 'Socialist' and 'secular' were added in the Preamble of the Constitution by 42nd amendment which was passed in 1976.
- ✓ It underlines the national objective of social justice economic justice and political justice as well as fraternity. It emphasises the dignity of the individual and the unity and integrity of the nation.

Sovereign: Sovereign means absolutely independent; it is not under the control of any other state. Before 1947, India was not sovereign as it was under the Britishers. Now it can frame its policy without any outside interference.

Socialist: Word 'Socialist' was added in the Preamble by 42nd Amendment of the Constitution which was passed in 1976. This implies a system which will endeavour to avoid concentration of wealth in a few hands and will assure its equitable distribution amongst all the people of the nation. It also implies that India is against exploitation in all forms and believes in economic justice to all its citizens. Indian Socialism is basically a combination of Marxist and Gandhian ideology.

Secular: The word 'Secular', like Socialist, was also added in the Preamble by 42nd Amendment of the Constitution. India is a country of several religions but India has no official religion of the Indian State. There is no State Religion. In matters relating to religion, the state is neutral and non-interfering. It does not patronize any religion. Nor does it discriminate against any religion. Every citizen is free to follow and practise the religion of his/her own choice. The state cannot discriminate among its citizens on the basis of religion or it cannot force a citizen to accept any specific religion.

Democratic: Democracy means that the power of the government is vested in the hands of the people. People exercise this power through their elected representatives who, in turn, are responsible to them. All the citizens enjoy equal political rights. Our Constitution lays a lot of emphasis on democratic values, and a number of democratic institutions have been established to give shape to these values. The centre, states and local self-governing bodies follow democratic principles, and all elections from gram panchayats to parliament are democratically held.

Republic: Means that the head of the State is not a hereditary monarch but a President who is indirectly elected by the people for a definite period is actually the political head of the nation.

3) Federal government

- ✓ The Constitution provides for a federal form of government. In a federation, there are two governments - at the central level and at the state level. In India, the powers of the government are divided between the central government and state governments.
- ✓ **Article 1** of the Constitution of India says: - "India, that is Bharat shall be a Union of States." Though the word 'Federation' is not used, the government is federal. A state is federal when (a) there are two sets of governments and there is distribution of powers between the two, (b) there is a written constitution, which is the supreme law of the land and (c) there is an independent judiciary to interpret the constitution and settle disputes between the centre and the states. All these features are present in India. There are two sets of government, one at the centre, the other at state level and the distribution of powers between them is quite detailed in our Constitution. The Constitution of India is written and the supreme law of the land. At the

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apex of single integrated judicial system, stands the Supreme Court which is independent from the control of the executive and the legislature.

- ✓ But in spite of all these essential features of a federation, Indian Constitution has a centralizing or a unitary tendency. While other federations like U.S.A. provide for dual citizenship, the India Constitution provides for single citizenship. There is also a single integrated judiciary for the whole country. The provision of All India Services, like the Indian Administrative Service, the India Police Service, and Indian Forest Service prove another unitary feature. Members of these services are recruited by the Union Public Service Commission on an All-India basis. Because these services are controlled by Union Government, to some extent this constitutes a constraint on the autonomy of states.

- ✓ A significant unitary feature is the Emergency provisions in the Indian constitution. During the time of emergency, the Union Government becomes most powerful and the Union Parliament acquires the power of making laws for the states. The Governor placed as the constitutional head of the state, acts as the agent of the centre and is intended to safeguard the interests of the centre. These provisions reveal the centralising tendency of our federation.

- ✓ Prof: K.C. Wheare has rightly remarked that Indian Constitution provides, "a system of government which is quasi-federal, a unitary state with the subsidiary unitary features". The framers of the constitution expressed clearly that there exists the harmony of federalism and the unitarism. Dr. Ambedkar said, "The political system adopted in the Constitution could be both unitary as well as federal according to the requirement of time and circumstances". We can say that India has a "Cooperative federalism" with central guidance and state compliance.

- ✓ There are three different lists of subjects given under the Seventh Schedule of the Constitution - **Union list, State list and Concurrent list.**

- ✓ The Union list contains **97 subjects of national importance** like Defence, Foreign Affairs, Currency, Post and Telegraph, Railways. On these subjects, only central legislature (Parliament) can make laws.
- ✓ The State list contains **66 subjects of local importance.** On these subjects, state legislatures make laws. These subjects include agriculture, police, and jails.
- ✓ Concurrent list contains **47 subjects which are of common concern to both the central and state governments.** These include education, roads, social security etc. On these subjects, both the parliament and state legislatures can legislate. However, if there is a conflict between a central law and the state law over a subject given in the concurrent list, the central law will prevail.

4) Parliamentary government

- ✓ India has adopted the Parliamentary system as found in Britain. In this system, the executive is responsible to the legislature, and remains in power only as long and it enjoys the confidence of the legislature. The president of India, who remains in office for five years is the nominal, titular or constitutional head. The Union Council of Ministers with the Prime Minister as its head is drawn from the legislature. It is collectively responsible to the House of People (Lok Sabha), and has to resign as soon as it loses the confidence of that house. The President, the nominal executive shall exercise his powers according to the advice of the Union Council of Ministers, the real executive. In the states also, the government is Parliamentary in nature.

- ✓ Indian Constitution provides for a parliamentary form of government. The majority party in the Lower House (Lok Sabha) forms government. The Council of Ministers is collectively

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responsible to the Parliament. The Cabinet is the real executive head. In Presidential form of government, the President is the executive head. In India, the President is only the nominal head.
- ✓ In Britain, the monarchy is hereditary. But in India, the post of President is elective.

5) Three Tier Government
- ✓ Indian Constitution provides for a three tier government.
- ✓ Originally, it was two tier i.e. Centre and the State
- ✓ But by 73rd and 74th Amendment Act, 1992 three tier government has been established. (Centre, state & local self government)
- ✓ Panchayat raj system was adopted by way of these two amendments.

6) Fundamental rights and duties
- ✓ These rights are fundamental because they are basic to the moral and spiritual development of the individual and these rights cannot be easily abridged by the parliament.
- ✓ Now the citizen enjoys six fundamental rights, originally there were seven fundamental rights. One of them was taken away from Part III of the Constitution by the Forty-fourth Amendment Act, 1978. As a result, the Right to Property is no longer a fundamental right. Since 1978, it has become a legal right.
- ✓ The idea of fundamental rights has been borrowed from the American Constitution.
- ✓ Any citizen of India can seek the help of High Court or Supreme Court of India if any of his fundamental rights is undermined by the government or any institution or any other government.
- ✓ Fundamental rights are **justiciable in nature.** (i.e. they are legally enforceable by the court of law). These are not absolute in nature & are subject to some restrictions. Parliament can amend them but not those provisions that form the **"basic structure"** of the Constitution.
- ✓ Suspended during National Emergency (Except Art 20 & 21).
- ✓ ***The Constitution of India guarantees six fundamental rights to every citizen.*** **These are:**
  - ***i.*** *Right to Equality.*[Article 14-18]
  - ***ii.*** *Right to Freedom.* [Article 19-22]
  - ***iii.*** *Right against Exploitation.* [Article 23,24]
  - ***iv.*** *Right to Freedom of Religion.* [Article 25-28]
  - ***v.*** *Cultural and Educational Rights.* [Article 29, 30]
  - ***vi.*** *Right to Constitutional Remedies.* [Article 32]

(Right to property (Article-31) originally a fundamental right has been omitted by the 44th Amendment Act. 1978. It is now a legal right.)

7) Fundamental Duties
- ✓ Non-justiciable in nature (i.e. they are not legally enforceable by the court of law)
- ✓ Not present in the original Constitution. (Added by 42nd Amendment Act, 1976 on the recommendation by Swarn Singh committee.)
- ✓ Reminds people that while enjoying rights they have some duties to do.

8) Directive principles of state policy
- ✓ These principles are in the nature of directives to the government to implement them for establishing social and economic democracy in the country.

- ✓ The Directive Principles of State Policy are enumerated in Part IV of the Constitution. The framers of our Constitution took the idea of having such principles from the Irish Constitution.

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- ✓ These principles have been stated a; "fundamental in the governance of the country".
- ✓ They are instructions or directives from the Constitution to the state and the government. It is the duty of the government to implement them.
- ✓ **Non-justiciable in nature** (i.e. they are not legally enforceable by the court of law) but they are nevertheless fundamental in the governance of the country.
- ✓ Promotes social and economic democracy
- ✓ In general, the Directive Principles aim at building a Welfare State. These principles provide the criteria with which we can judge the performance of the government.

Some of the important Directive Principles are:

(1) There should not be concentration of wealth and means of production to the detriment of common man;

(2) Workers should be paid adequate wage & there should be equal pay for equal work for both men and women;

(3) Weaker sections of the people, Scheduled Caste and Scheduled Tribe people should be given special care;

(4) The state should promote respect for international law and international peace.

- ✓ *All the governments-Central, State and Local-are expected to frame their policies in accordance with these principles. The aim of these principles is to establish a welfare state in India. They, however, are not binding on the government-they are mere guidelines.*

9) Fundamental Duties

- ✓ A new part IV (A) after the Directive Principles of State Policy was incorporated in the constitution by the 42nd Amendment, 1976 for fundaments duties. Fundamental Duties did not form part of the Constitution. Ten Fundamental Duties were inserted in Part IV by the Constitution 42nd Amendment Act, 1976.
- ✓ A new Article - Article 51-A enumerates ten Fundamental Duties. These duties are assigned only to citizens and not to non-citizens. These duties are **not justifiable** (i.e. These cannot be enforced through the courts of law)
- ✓ The purpose of incorporating these duties in the Constitution is just to remind the people that while enjoying their right as citizens, should also perform their duties for rights and duties are correlative.

10) Partly rigid and partly flexible

- ✓ Whether a Constitution is rigid or flexible depends on the nature of amendment.
- ✓ The Constitution of India is neither wholly rigid nor wholly flexible. It is partly rigid and partly flexible. It is because of the fact that for the purpose of amendment, our Constitution has been divided into three parts:
  - (a) Certain provisions of the Constitution can be amended by a simple majority in the Parliament.
  - (b) Certain provisions can be amended by a two-third majority of the Parliament and its ratification by at least half of the states.
  - (c) The remaining provisions can be amended by the Parliament by two-third majority.
- ✓ These different amendment procedures make our Constitution partly flexible and rigid. In fact, there is a balance between rigidity and flexibility in our Constitution.
- ✓ Some amount of flexibility was introduced into our Constitution in order to encourage its growth.
- ✓ Pt. Jawaharlal Nehru feared that if a Constitution is too rigid, it will be stagnant and that the growth of the nation would be hampered.

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11) Single citizenship

- ✓ In a federation, normally we have double citizenship. In the United States of America, there is double citizenship. An American is a citizen of America and at the same time he is also a citizen of one of the 50 States of America where he resides. In India, there is only single citizenship. Every Indian, irrespective of his place of birth or residence, is a citizen of India only. He is not a citizen of any Indian state. There is no citizenship of Madhya Pradesh, Delhi, Punjab, U.P. or so.
- ✓ Single citizenship is meant to ensure national unity and national integration.

12) Universal Adult Franchise

- ✓ Article 326 of the Constitution of India provides Universal Adult Franchise. It means that every citizen of India who has completed 18 years of age is eligible to vote in general elections irrespective of his caste, creed, sex, religion or place of birth. This is one of the most revolutionary aspects of Indian democracy.

13) Language Policy

- ✓ The Constitution has also defined the language policy. India is a country where different languages are spoken in various parts of the country. Hindi and English have been made official languages of the Central Government. A state can adopt the language spoken by its people in that state also as its official language.
- ✓ Although India is a multi-lingual nation, the Constitution provides that Hindi in Devnagri script will be the national language. It shall be the duty of the union to promote and spread Hindi language.
- ✓ At present, we have **22 languages** which have been recognised by the Indian Constitution. These are: ***Assamese, Gujarati, Konkani, Marathi, Sanskrit, Telugu, Bengali, Hindi, Maithili, Nepali, Santhali, Urdu, Bodo, Kannada, Malayalam, Oriya, Sindhi, Dogri, Kashmiri, Manipuri, Punjabi, Tamil.***

14) Independent judiciary

- ✓ The Indian Constitution provides for an independent judiciary as also envisaged as a directive principle laid down under Art. 50 i.e. "Separation of judiciary from executive". The judiciary has been made independent of the Executive as well as the Legislature.
- ✓ The judiciary in India is independent and impartial. It is an integrated and a hierarchical judiciary with the Supreme Court at the apex of the hierarchy. The High Courts stand in its middle, and the lower courts are located at its bottom.
- ✓ The Judges security of tenure and it is extremely difficult to remove any Judge of the Supreme or of the High Court through impeachment.
- ✓ Also, the Supreme Court and the High Courts have the power of Judicial Review. They have the power to declare acts of legislatures and actions of the Executive ultra vires and such acts or actions are found to be in conflict with the provisions of the Constitution.

15) A Constitution derived from many sources

- ✓ The framers of our Constitution borrowed many things from the Constitutions of various other countries and included them in our Constitution. That is why some writers call Indian Constitution a 'bag of borrowings'.

16) Emergency provisions

- ✓ The framers of our Constitution had realised that there could be certain dangerous situations when government could not be run as in ordinary time. Hence our Constitution contains certain emergency provisions.
- ✓ During emergency the fundamental rights of the citizens can be suspended and our government becomes a unitary one.

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17) *Federal Government with Unitary Bias*

- ✓ India is a federation, although word 'federation' does not find a place in the whole text of the Indian Constitution. The elements of federation are present in the Indian Constitution. It is a written and rigid Constitution.
- ✓ There is dual polity and there is Constitutional division of powers between the centre and the states. There is also an independent judiciary. The Supreme Court arbitrates the disputes between the centre and the states.
- ✓ All these provisions make India a federation. But in Indian Federation, the centre is strong as compared to the states. The centre has more financial powers and the states largely depend upon it for their economic development. The Governor acts as the agent of the centre.
- ✓ The centre can reorganize a state, but a state cannot reorganize the centre. In other words, the centre is indestructible while the states are destructible. During emergencies, the powers of the centre considerably grow and the states become weak.
- ✓ K. C. Where has described the Indian government as 'quasi-federal'. India has also been characterised as 'a federal state with unitary spirit.'
- ✓ Indian Constitution establishes India as the federal system of government. Federal system means a political system where is there division of powers between centre and State. But Indian federal system is unique in itself as it has a strong centre.
- ✓ So, Indian Political structure can be rightly described as “federal system with strong centre”

NATURE OF VARIOUS CONSTITUTIONS IN THE WORLD

Nature of Constitution necessarily depends upon the types of Constitution

Written or unwritten Constitution: Most of the countries over the world have a written Constitution. Best example of an unwritten Constitution is British Constitution (UK)

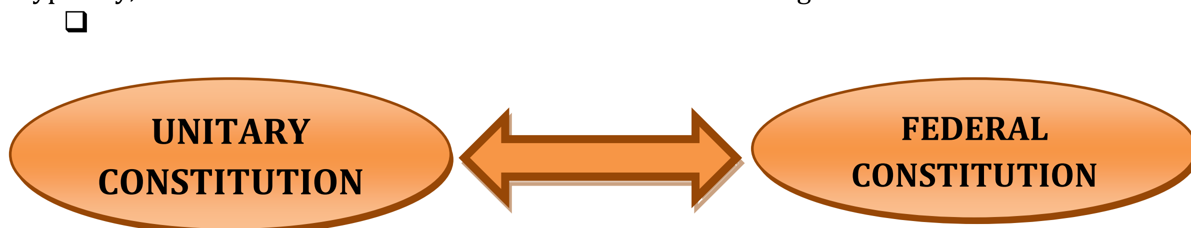
❑ ***Rigid or Flexible Constitution***

- ➢ A Constitution is ***rigid*** if for the amendment or review of its provisions, a special provision is required to be followed. *Example - Constitution of USA.*
- ➢ A Constitution is **flexible** if its provisions can be amended or revised by the ordinary legislative process. *Example - Constitution of UK*
- ➢ A rigid Constitution possesses the quality of stability. And the drawback of being a rigid Constitution is that such a Constitution cannot be tuned in accordance with the needs of the society as and when required. It places obstacles in the required social changes.
- ➢ Flexible Constitution, on the other hand, can be easily amended according to the needs of the society but the drawback is that such a Constitution lacks stability.

❑ ***Federal and Unitary Constitution***

Typically, democratic Constitutions are classified into two categories-

❑



- ➢ Constitution which provides for a federal system of government is called a Federal Constitution, while a Constitution which provides for a unitary form of government is called a Unitary Constitution.

- In a Unitary Constitution, all the powers of the government are given to the Centre and the local govt. enjoy the powers delegated to them by the Centre.
- The federal Constitution establishes a federal system of government. It establishes a system of double government – Central government, and the State government.

- ***Merits of Unitary Constitution***
  1. Unitary Constitution establishes a strong Central Government which is found more useful in times of war and emergencies.
  2. The Central govt. has all the powers of the govt. and the local or the State govt. just enjoys the powers delegated to them.
  3. No conflict of authority and no overlapping of jurisdiction.
  4. Unitary Constitution is more flexible.

- ***Demerits of Unitary Constitution***
  1. Unitary Constitution develops centralized bureaucracy.
  2. The laws are often made in ignorance of the local conditions and needs.
  3. They are administered by the persons who do not have sufficient knowledge of the local needs.
  4. Unitary Constitution is more flexible and therefore it does lack stability.

CHARACTERISTICS OF FEDERALISM

1. **System of double government**: India has two sets of government - the Central or Union government and the State government. The Central government works for the whole country and the State governments look after the States. The areas of activity of both the governments are different.
2. **Distribution of Powers**: The Constitution of India has divided powers between the Central government and the state governments. The Seventh Schedule of the Constitution contains three lists of subjects which show how division of power is made between the two sets of government. Both the governments have their separate powers and responsibilities.
3. **Written and rigid Constitution**: The Constitution of India is written. Every provision of the Constitution is clearly written down and has been discussed in detail. It is regarded as one of the longest constitutions of the world which has 395 Articles 22 Parts and 12 Schedules.
4. **Supremacy of the Constitution**: The Constitution is regarded as the supreme law of the land. No law can be made which will go against the authority of the Constitution. The Constitution is above all and all citizens and organizations within the territory of India must be loyal to the Constitution.
5. **Independent judiciary and Supremacy of judiciary**: The Supreme Court of India is the highest court of justice in India. It has been given the responsibility of interpreting the provisions of the Constitution. It is regarded as the guardian of the Constitution.
6. **Bi-cameral legislation**: In India, the legislature is bi-cameral. The Indian Parliament, i.e., the legislature has two houses - the Lok Sabha and the Rajya Sabha. The Rajya is the upper house of the Parliament representing the States while the Lok Sabha is the lower house representing the people in general.

All the above characteristics are present in the Indian Constitution. However, there are certain provisions that affect its federal character.

1. Appointment of the Governor of a State – Art.155 and Art.156 provide that the Governor, who is the Constitutional head of a State, is to be appointed by the President and stays only until the pleasure

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of the President. Further, that the Governor can send the laws made by the state for assent from the President, who can veto the law.

It should be noted that Governor is only a ceremonial held and he works on the advice of council of ministers. In past 50 yrs, there has been only one case (**Re Kerala Education Bill**), where amendments to a state law were asked by the centre and that too after the opinion of the Supreme Court. Thus, it does not tarnish the federal character and states are quite free from outside control.

2. Power of the Parliament to make laws on subjects in the State list - Under Art. 249, centre is empowered to make laws on subjects in the State list. On the face of it, it looks a direct assault on the power of the states. However, this power is not unlimited. It is exercised only on the matters of national importance and that too if the Rajya Sabha agrees with 2/3rd majority. It should be noted that Rajya Sabha is nothing but the representative of the States. So an approval by Rajya Sabha means that States themselves are giving the power to the centre to make law on that subject.

3. Power to form new states and to change existing boundaries - Under Art. 3, centre can change the boundaries of existing states and can carve out new states. This should be seen in the perspective of the historical situation at the time of independence. At that time there were no independent states. There were only provinces that were formed by the British based on administrative convenience. At that time States were artificially created and a provision to alter the boundaries and to create new states was kept so that appropriate changes could be made as per requirement. It should be noted that British India did not have states similar to the States in the USA.

4. Emergency Provisions - Centre has the power to take complete control of the State in the following 3 situations:

(a) An act of foreign aggression or internal armed rebellion (Art. 352)
(b) Failure of constitutional machinery in a state (Art. 356)
(c) Financial Emergency (Art. 360)

In all the above cases, an elected State government can lose control of the State and a central rule can be established. In the first case, it is very clear that such a provision is not only justified but necessary to protect the existence of a state. A state cannot be left alone to defend itself from outside aggression. In the third case also, it is justified because a financial emergency could cause severe stress among the population, plunge the country into chaos and jeopardize the existence of the whole country. Such provisions exist even in USA. The second provision is most controversial. It gives the Centre the power to take over the control of a State. However, such an action can be taken only upon the advice of the governor and such an advice is not beyond the purview of the Supreme Court. Thus, it can be safely said that Indian Constitution is primarily federal in nature even though it has unique features that enable it to assume unitary features upon the time of need.

- ***Merits of Federal Constitution***

1. Federal Constitution better protects the Regional and Local interest.
2. Subjects of local interest are entrusted to the regional govt. and that of the national importance are entrusted to the Central govt. Therefore, the local Legislatures gets an opportunity to make laws according to the local needs.
3. A federal Constitution tends to develop decentralization.
4. A federal Constitution is therefore more democratic in nature.

- ***Demerits of Federal Constitution***

1. A Federal Constitution leads to the establishment of a weak government. The Central govt. has no direct control over the matters allotted to the regional governments.

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2. Such weaknesses are evident on the times of emergencies.
3. Possibility of development of regionalism.
4. Citizens may show a greater loyalty towards their region rather than the Union. This may be a serious threat to the national unity.
5. A Federal Constitution, a conflict of authority and overlapping of jurisdiction may always arise and in such a govt., there is a possibility of confusion regarding the responsibility for work to be done and duplication of work.
6. Duplication of work may always lead to more administrative expenses.
7. A Federal Constitution is rigid in nature and therefore it cannot be amended according to the needs.
8. Such double system of govt. is also a cause of the delayed execution and implementation of plans and projects.

INDIAN CONSTITUTION WHETHER FEDERAL OR UNITARY??

- No doubt, Indian Constitution is a blend of features of both Federal as well as Unitary Constitution. But, after observing all the features of Indian Constitution, it is conclusive that it is federal with a unitary bias.
- **Austin** rightly says about Indian Constitution, it is a **co-operative federalism**.

Nature of Indian Constitution

A controversy has always been there as to the actual nature of the Indian Constitution that, whether the Indian Constitution is federal or unitary in nature. It is mandatory here to examine the basic features of Indian Constitution and critically analyze the same in order to conclude upon its nature.

Dr. Ambedkar has categorically said in Constituent Assembly discussions that "notwithstanding certain provisions that centralize the powers, Indian Constitution is essentially federal." Prof. Wheare and some other academicians, however, are hesitant in calling it a federal constitution and prefer to term it as "quasi-federal" or "federal with strong centralizing tendency". Though, it should be noted that even Prof. Wheare accepts the existence of certain provisions in the American Constitution, such as dependence of Senate on States that are contrary to federal character. However, he says that while the principles of federalism should be rigid, the terminology of "federal Constitution" should be wide. A Constitution should be called federal if it displays federal character predominantly.

Comparative analysis of essential features of federal Constitution and Indian Constitution

A federal Constitution possesses the following characteristics -

1. System of double governments

In a federal Constitution, there exists a double government i.e. the Central government and the State or the regional Governments. This feature is also found under the Indian Constitution.

2. Distribution of powers

A Federal Constitution essentially provides for distribution of powers between the Central and the State Governments. Both the governments are coordinate and independent in their sphere and not subordinate to one another.

Indian Constitution also provides for such distribution of powers.

LEGISLATIVE

As far as the legislative powers are concerned, the subjects have been divided into three lists as given under ***the Seventh Schedule*** *of the Indian Constitution*, namely –

UNION LIST

STATE LIST

CONCURRENT LIST

- **Subjects of national importance** such as defense of India, Naval, Military and Air Forces, Foreign Affairs, Railways, National Highways, Foreign Exchange, Banking etc have been placed under ***the Union List i.e. List I.*** The union list in all contains **97 items**.
- The **subjects of local interest** such as public order, police, local government, public health and sanitation, hospitals, agriculture, etc. have been placed under ***the State list i.e. List II*** which contains **66 items**.
- The **subjects which are of local interest but require uniform treatment all over the country** such as education, factories, newspapers, civil or criminal laws, contract have been placed under **the Concurrent list i.e. List III** which contains **47 items.**

Parliament i.e. the Central legislature has exclusive power to make laws with respect to any of the matters as mentioned under List I. The State legislature has the exclusive power to make laws upon the matters that are mentioned in the State list.

Parliament as well as the State legislatures has a concurrent **(co-existing)** power to make laws on the matters listed in the concurrent list. If there is a conflict between same laws as passed by the Parliament and a State legislature on a particular subject, then the law passed by the Parliament shall have an over-riding effect or it will prevail and the State law to the extent of repugnancy will be void.

Distribution of powers is an essential feature of Federal Constitution but Indian Constitution also has following characteristics of a Unitary Constitution.

(Unitary features)

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- Although law making power is vested in both, the Parliament and the State Legislature as to the matters enlisted in List 3, but the very factor that if both the above said legislative bodies enact their own legislations on a particular matter and such laws tends to conflict, then the law passed by the Parliament would prevail and the State law shall, to the extent of repugnancy, be void.
- An exception to this is given under **Article 254(2)** wherein such repugnant law made by State legislature was reserved for President's consideration and it has received President's assent, then such law may prevail in that State.

- Also, the residuary power to legislate upon any matter that has not been listed in any of the three lists has been vested in the Parliament. Whereas in American Constitution, such residuary power is vested in the State legislatures.

Parliament can also make laws with matters listed in the State list in the following cases –

1) **Under Art.248** – A general power of the Parliament to legislate upon matters mentioned in State List.

2) If Council of States i.e. Rajya Sabha declares by a resolution supported by not less than 2/3rd of the members present and voting that **it is in the national interest** that Parliament should make law regarding a subject-matter of the State list, it shall be lawful for the Parliament to pass such law. {valid for 1 year/ceases after 6 months}

3) While proclamation of emergency is there.

4) If two or more State Legislatures feels that Parliament should legislate upon a matter of common concern to such states, but the Parliament directly does not have a power to legislate upon such matter, then on such request being made by such States, the Parliament can legislate upon the same.

5) In case of State emergency (under Art. 356)

- **The provisions under Art. 2 and 3 also indicates the unitary features of the Indian Constitution.**

    Art. 2 – Admission or establishment of new States.

    Art. 3 – Formation of new States and alteration of areas, boundaries or names of existing States.

Both the above functions and powers to do the same have been vested in the Parliament by the Indian Constitution.

ADMINISTRATIVE

As such, Indian Constitution provides for distribution of the administrative powers as well. But, there are certain features of being unitary system with this regard as well.

1) Art.256 – The State must so exercise their executive powers as to ensure compliance with the laws made by Parliament and the Union govt. can also give directions to a State in this regard. If the State fails to comply, the President may impose State emergency on this very ground.

FINANCIAL

Under a Federal Constitution, the union and the States are financially independent. But, under Indian system, the States are dependent upon the Centre for the grants-in-aid and the financial assistance. This indicates the unitary feature of Indian Constitution.

3. Rigid and Written Constitution

It is not necessary that a federal Constitution should always be a written Constitution but it has been observed that in most of the countries having a Federal Constitution are generally written Constitutions. India too has a written Constitution and under Art.368, three

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modes of amendment have been provided, which renders it neither absolutely rigid nor absolutely flexible.

4. **Independent judiciary** - Independence of judiciary is necessary to maintain the federal structure intact.

Various provisions to ensure the independence of judiciary are-

- Appointment of judges by the Head of the executive or through independent Commission.
- Difficult procedure for their removal(impeachment)
- No variation in conditions of their services to their disadvantage after their appointment.
- Prohibition of any discussion as to the conduct of any judge.
- Security of tenure.

5. **Supremacy of Constitution** -

- In India, Constitution is the supreme of the land.
- All three organs of the Indian democracy i.e. the executive, legislature and the judiciary, all have to abide by and follow the Constitutional principles.
- Here, judiciary is regarded as the guardian of Indian Constitution and therefore the power of judicial review holds a very significant place as far as the power of judiciary as the guardian of Constitution is concerned.
- In USA's Constitution also, since it establishes a federalism, the Constitution is supreme like India.
- In England, there is supremacy of the Parliament. In England, the Parliament is sovereign.
- Supremacy of Constitution is also one of the basic structures in the Indian Constitution which cannot be disturbed in the name of a Constitutional amendment.
- Power of judicial review as provided under Article 13 is a reflection of the independence of the judiciary. Here, it simply means that if the Parliament passes any law which actually contravenes the basic principles laid down in the Constitution, then the judiciary is empowered to review the Constitutionality of a particular enactment and the judiciary may struck down the said law as null and void.
- ***Art. 32 and Art. 226*** are also a different aspect of the independence of judiciary.

Comparative analysis of essential features of Unitary Constitution and Indian Constitution

- Single citizenship
- Unified system of Courts.
- Election Commission
- Comptroller and Auditor General of India
- All India Services. (Like IAS, IPS, IFS, IRS)
- Governor of the States.
- Emergency provisions.
- Legislative functions.

▪

CASES ON NATURE OF INDIAN CONSTITUTION

- ***State of West Bengal v. UoI {AIR 1963 SC 1241}*** - *Supreme Court held that Indian Constitution is **not truly federal because the States are not coordinate with the Union**.*
- ***Kuldeep Nayyar v. UoI {AIR 2006 SC 3127}*** - *Supreme Court held that **federal principle is the basic feature of the Constitution however federation leans in favour of strong Centre.***

OPINIONS REGARDING NATURE OF INDIAN CONSTITUTION

- ***K.C. Wheare*** *has characterized Indian Constitution as **quasi-federal.***
- ***Jennings*** *opined that Indian Constitution should be described as **federation with a strong centralizing tendency.***
- ***Austin*** *suggested that Indian Constitution can be called federal, "**a Co-operative federalism**"*

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UNIT-II (A)
CITIZENSHIP, FUNDAMENTAL RIGHTS

1. STATE
2. CITIZENSHIP

STATE

Article 1 (1) of the Indian Constitution provides that- "***India, that is Bharat, shall be a Union of States.***" Thus, Article 1 describes the name by which our Country shall be called or known. The expression "Union of States" has been taken from the Preamble to the North America (Canada) Act, 1867. The expression indicates that India is a federation. The Preamble to the Constitution of India declares that the Republic of India is creation of the people of India and not of the States. But, the States are also a creation of the people of India and they cannot break away from the Republic.

Although, the Republic of India is described as a union and it cannot be said to be a federation in the strict sense of the term. The Constitution makers had a purpose in choosing the word "Union" in preference to "Federation". They were of the view that the word "Union" better expresses the fact that the Union of India is not the outcome of an agreement among the old provinces with the result that it is not open to any State or a group of states to secede or withdraw from the Union or to vary the boundary of the states on their free will.

Article 1 : Name and territory of the Union

(1) India, that is Bharat, shall be a Union of States.
(2) The States and the territories thereof shall be as specified in the First Schedule.
(3) The territory of India shall comprise—
  (a) the territories of the States;
  (b) the Union territories specified in the First Schedule; and
  (c) such other territories as may be acquired.

According to Article 1 of the Indian Constitution, India is declared a Union of States, and the States and territories are specified in the First Schedule. The territory of India which is described in clause(3) falls under three categories— the State territories, the Union territories, the territories which may be acquired by Government of India.

Before the Constitution (Seventh Amendment) Act, 1953, the Union consisted of States which were classified into three main Categories—Parts A, B and C of the First Schedule. In addition to these there were territories specified in Past D of The First Schedule. Thus there were four categories in all. Thus at the time of the commencement of the Constitution (Seventh amendment) Act, 1956, the Union of India consisted of 10 Part A States, 8 Part B States, 9 Part C States and 1 Part D State.

The Constitution (Seventh Amendment) Act, 1956, has abolished the three categories and placed all the States of the Union on the same footing as a result of the reorganization made by the State Reorganization Act, 1956. At present, the territory of India consists of 29 states and 7 Union Territories namely the following—

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STATES		
Andhra Pradesh	Assam	Bihar
Gujarat	Kerala	Madhya Pradesh
Tamil Nadu	Maharashtra	Karnataka
Orissa	Punjab	Rajasthan
Uttar Pradesh	West Bengal	Jammu & Kashmir
Nagaland	Haryana	Himachal Pradesh
Manipur	Tripura	Meghalaya
Sikkim	Mizoram	Arunachal Pradesh
Goa	Chhattisgarh	Uttaranchal
Jharkhand	Telangana	

UNION TERRITORIES
Delhi
Andaman & Nikobar Island
Dadara & Nagar Haveli
Daman & Diu
Pondicherry
Chandigarh
Laccadive

The Union territories mentioned above are centrally administered areas, to be governed by the President, acting, through an administrator appointed by him. By 69th Amendment Act, Union Territory of Delhi was converted into National Capital Territory of Delhi, and the 70th Amendment Act, provides that 'State' includes National Capital of Delhi, and Union Territory of Pondicherry. Now both these union territories enjoy the status of a state with legislative assemblies and are governed by the Council of Ministers with a Chief-Minister as its head.

Any territory which may at any time, be acquired by India will be included in the definition of union territories. A territory can be said to have been acquired when the Indian Union acquires sovereignty over such territory. The usual modes of acquisition of territory by a State are cession following a treaty, occupation, subjugation, acquisition and prescription. Thus, foreign territories acquired by India may be admitted into the union or Constitution into new states under Article 2 or may be merged into an existing State under Article 3(a) or 3(b).

Article 2* : *Admission or establishment of new States - Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

The admission or establishment of a new State will be on such terms and conditions as Parliament may think fit. Such terms and conditions must, however, be consistent with the foundational principles of the basic structure of the Constitution.

Article 3* : *Formation of new States and alteration of areas, boundaries or names of existing States -

Parliament may by law—

(a) 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;

(b) increase the area of any State;

(c) diminish the area of any State;
(d) alter the boundaries of any State;
(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the **recommendation of the President** and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

Explanation I : In this article, in clauses (a) to (e), "State'' includes a Union territory, but in the proviso, "State'' does not include a Union territory.

Explanation II : The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.

The scope of Article 3 is different from that of the preceding provisions as Article 2 relates to admission or establishment of new States which are not part of the Union whereas Article 3 provides for the formation of or changes in the existing States including Union Territories.

Article 4: Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters -

1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.
2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

This article directs the Parliament, in case it makes a law under Article 2 or Article 3, to include therein necessary provisions for amendment of the First and Fourth Schedules of the Constitution. The First Schedule specifies the States which are the members of the Union and their respective territories. The Fourth Schedule specifies the number of seats to which each State is entitled to in the Council of States (i.e. the upper house of the Parliament, Rajya Sabha)

CITIZENSHIP

Part II of the Indian Constitution defines several categories of Indian citizens at the commencement of the Constitution. A citizen of a given State is a person who enjoys full membership of the political community or the State. Citizens are different from aliens or mere residents who do not have all the rights which go to make full membership of a State. A citizen actually enjoys full civil and political rights. Citizenship carries with it certain advantages conferred by the Constitution. Citizenship inheres only in natural persons and not in juristic persons like corporations or societies etc. There is single citizenship for the whole of India i.e. Indian citizenship. In many federal constitutions, there are dual citizenship—a state citizenship and a federal citizenship. Under dual citizenship the citizen of one federating state is virtually an alien in another such state. There being only single citizenship, the rights, privileges and obligations are the same for all citizens throughout India.

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Indian Constitution ensures certain fundamental rights which are available to Indian citizens only. Aliens cannot enjoy these rights. Such fundamental rights as exclusively enjoyable by the Indian citizens are enumerated under Articles 15, 16, 18(2), 19 and 29. Also, citizens alone have the right to hold certain high offices such as those of President of India [Article 58 (1)(a)], Vice-President [Article. 66(3)(a)], Governor of the State [Article 157], Judge of the Supreme Court [Article 124(3)], High Court Judge [Article 217(2)], Attorney General of India [Article 76(1)] and Advocate General [Article 165].

The Constitution lays down sets of provisions relating to citizenship—one set which tells us who are, or who may be deemed to be, Indian citizens at the commencement of the Constitution, the other set tells us that Parliament may make any provision with respect to acquisition and termination of citizenship and all other matters relating to citizenship. The Constitution thus, as it stands, does not contain the exhaustive law on the subject and that is why a separate enactment (i.e. The Indian Citizenship Act, 1955) has been passed. Citizenship is to be determined as per the Citizenship Act, 1955 and the Constitutional provisions.

Citizenship at the commencement of the Constitution

Article 5 to 8 describes 4 classes of people who were deemed to be citizens of India at the time of the commencement of the constitution-

1. Persons domiciled in India
2. Persons who migrated from Pakistan
3. Persons who migrated to Pakistan
4. Persons living abroad i.e., in foreign countries other than Pakistan

Citizenship by domicile (Article 5) **-** A person is entitled to citizenship by domicile if he fulfils two conditions laid down by Article 5. First, he must, at the commencement of the Constitution, have his domicile in the territory of India. Secondly, such person must fulfil any one of the three conditions laid down in the Article, namely,

(a) he was born in India,
(b) either of his parents was born in India,
(c) he must have been ordinarily resident in the territory of India for not less than 5 years immediately before the commencement of the Constitution.

Domicile is of two kinds*- *domicile of origin and domicile of choice. Every person is born with a domicile of origin. It is domicile received by him at his birth. The domicile of origin of every person is the country in which at the time of his birth his father was domiciled. Thus the domicile of origin is a concept of law. It clings to a man till he abandons it and acquires a new domicile. Every independent person can acquire a domicile of choice by a combination of-

(a) actual residence in a particular place, and
(b) intention to remain there permanently or for an indefinite period.

Citizenship of persons who migrated to India from Pakistan before the commencement of the Constitution (Art. 6)

Persons who have migrated from Pakistan to India have been classified into two categories for the purposes of citizenship—

(a) those who migrated to India before July 19, 1948, and
(b) those who migrated on or after July 19, 1948.

{NOTE – 19/07/1948 is the date when permit system was introduced for going from India to Pakistan and for coming from Pakistan to India.}

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According to Article 6-

(i) The persons of the first category i.e. persons who migrated from Pakistan to India **before July 19, 1948** shall be deemed to be a citizen of India at the commencement of the Constitution, that is on 26th January, 1950, if-

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 and

(b) he should have resided in India since the date of his migration.

(ii) As regarding the persons of second category i.e. persons who migrated from Pakistan to India on or after July 19, 1948, following conditions must be fulfilled to enable him to acquire Indian citizenship and to be deemed as a citizen of India at the commencement of the Constitution i.e. on 26th January, 1950-

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 and

(b) he should have resided in India, after migration for at least six months.

(c) he must have submitted an application for registration as a citizen wherein he must prove that he resided in India for at least six months preceding submission of such application.

(d) he has been registered as citizen of India by an officer appointed by the Government of India for that purpose.

Citizenship of migrants of Pakistan (Article 7)

Article 7 provides that anyone who has, after 1st March, 1947 migrated from India to Pakistan, cannot be a citizen of India. But, Article 7 also makes a special provision regarding the citizenship rights of persons who migrated to Pakistan after March 1, 1947 but returned to India subsequently. Such a person becomes entitled to Citizenship of India, provided they fulfil the conditions stated for Migrants from Pakistan stated in Article 6. An immigrant to Pakistan after 1st March, 1947, who has returned to India under a proper legal permit for resettlement or permanent return to India— such a person should fulfil all other conditions necessary for immigrants from Pakistan after July 19, 1948.

Citizenship of persons of Indian origin residing outside India (Article 8)

Article 8 provides that any person who or either of whose parents or grandparents was born in India as defined in Government of India Act 1955 but who is ordinarily residing in any country outside India, shall be deemed to be a citizen of India if he has been registered as an Indian Citizen by the diplomatic or consular representative of India in that country on an application made by him/her in the prescribed form to such diplomatic or consular representative, whether before or after the commencement of the Constitution.

A person residing outside India if he satisfies the following two conditions—

(i) he or either of his parents or any of his grand-parents must have been born in undivided India and

(ii) he must have been registered as a citizen of India by the Diplomatic or Consular representative of India in the country where he is for the time being residing on an application made to such representative in prescribed form and manner.

Article 9 provides that if a person voluntarily acquires the citizenship of any foreign State, he shall not remain a citizen of India under Article 5, 6 and 8. Article 9 does not disable Parliament from conferring Indian citizenship on a person who has voluntarily acquired the citizenship of any foreign state. The Citizenship Act was amended in 2003 and again in 2005 to introduce the concept of overseas citizenship for citizens of other countries.

Continuance of the rights of citizenship (Article 10)

Article 10 reads every person who is or is deemed to be a citizen of India under any of the foregoing provisions of Article 5-10 shall continue to be a citizen of India, subject to the provisions of any law that may be made by Parliament. In the other words, the right of citizenship cannot be taken away from a person except through express parliamentary legislation.

Parliament is empowered under Article 11 to make any provision with respect to acquisition and termination of citizenship. In exercise of that power it may take away the right of citizenship which has accrued to a person under the foregoing provisions. But until that is done, a person who is or is deemed to be a citizen of India shall continue to be a citizen of India.

In connection with provisions relating to citizenship in the Constitution of India, the framers of Indian Constitution did not actually intended to frame comprehensive rules regarding citizenship. Constitution has simply described the persons who would be deemed to be citizens of India at the date of the commencement of the Constitution. Parliament has been empowered to make laws relating to citizenship. In exercise of this power the Parliament has enacted the Citizenship Act, 1955. This Act contains elaborate provisions relating to Citizenship.

The Citizenship Act, 1955 that came into force with effect from 30th December, 1955 deals with matters relating to the acquisition, determination and termination of Indian citizenship. The act has been amended by the Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act 1992, the Citizenship (Amendment) Act 2003, and the Citizenship (Amendment) Act, 2005.

The Act provides for five ways for acquiring Indian citizenship as follows-

1. By birth.
2. By descent.
3. By registration.
4. By naturalisation, and
5. By incorporation of territory into India.

1. By Birth— A person born in India on or after the 26th January, 1950, is a citizen of India by birth, when—
(1) His father possesses diplomatic immunity and is not an Indian citizen; or
(2) His father is an enemy alien and he is born at a place under enemy occupation.

2. By Descent— A person born outside India on or after January 26th, 1950, is a citizen of India by descent if at the time of his birth his father was an Indian citizen. But if the father of such a person was a citizen of India by descent only, the person becomes an Indian citizen only when his birth has been registered at an Indian consulate within one year of his birth or the commencement of Citizenship Act, whichever is later, or unless his father is, at the time of his birth, in service under the Government of India.

3. By Registration— Subject to certain restrictions and conditions, the appropriate authority may register the following person, who is already a citizen of India by virtue of any other provision of the Citizenship Act, as a citizen of India on an application made by such person and after taking an oath of allegiance:

a) a person of Indian origin ordinarily resident in India and must have been ordinarily resident in India for at least 6 months immediately preceding the application for registration;
b) persons of Indian origin who are ordinarily resident outside undivided India;
c) women married to Indian citizens;
d) minor children of Indian citizens;

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e) persons of full age and capacity who are citizens of a Commonwealth country.

4. By Naturalization— A person of full age and capacity who is a citizen of a non-Commonwealth country may become a citizen by naturalization, after taking an oath of allegiance, if the Central Government is satisfied that he fulfils the conditions laid down in the Act. As per Section 6 of the Citizenship Act, 1955 the qualifications for naturalization are as follows-

a) He is not a subject or citizen of a country where Indian citizens are prevented from becoming citizens by naturalization.
b) He renounces his citizenship of the other country.
c) He has resided and/or has been in service of the Government for 12 months immediately preceding the date of application.
d) During 7 years prior to the aforesaid 12 months, he has resided and/or has been in Government service for not less than four years;
e) He is of good character ;
f) He has an adequate knowledge of language recognized by the Constitution of India ;
g) After naturalization he intends to reside in India or enter into service with Government of India, international organization, or a society or company established in India.

5. By incorporation of territory in India— If a territory becomes a part of India, the Central Government may notify the persons who shall be citizens of India by reason of their connection with that territory.

Termination or deprivation of Citizenship

Citizenship Act, 1955 provides for three ways for terminating Indian Citizenship as following—

1) ***Renunciation of Citizenship***—If a person renounces Indian citizenship by words or conduct, he ceases to be a citizen of India.
2) ***Termination of Citizenship***—Termination is an act of law. It takes place as soon as a citizen of India voluntarily acquires the citizenship of another country whereby he shall cease to be a citizen of India.
3) ***Deprivation of Citizenship***—Deprivation is a compulsory termination of the citizenship of India by an order of the Government of India.

   A citizenship of India by a naturalization, registration, domicile and residence may be deprived of his citizenship by an order of the Central Government after making due inquiry in matter of any one of the following grounds-

   a) Obtaining citizenship by fraud or misrepresentation.
   b) Showing and on proving of disloyalty towards the Indian Constitution.
   c) Communication with India's enemy during war.
   d) Imprisonment for longer than 2 years within 5 years of registration on naturalization.
   e) Residing outside India for longer than 7 years at a time.

The citizenship of India cannot be claimed as a matter of fundamental right. There is no such fundamental right.

UNIT-II (B) : FUNDAMENTAL RIGHTS

3. **FUNDAMENTAL RIGHTS – EQUALITY, FREEDOM AND SOCIAL CONTROL, PERSONAL LIBERTY, CHANGING DIMENSIONS OF PERSONAL LIBERTY, CULTURAL AND EDUCATIONAL RIGHTS.**

4. **RIGHT TO CONSTITUTIONAL REMEDIES**

FUNDAMENTAL RIGHTS

Rights are claims that are essential for the existence and development of individuals. In that sense there will be a long list of rights. Whereas all these are recognized by the society, some of the most important rights are recognized by the State and enshrined in the Constitution. Such rights are called ***fundamental rights***. These rights are fundamental because of two reasons.

1. ***These are mentioned in the Constitution which guarantees them; and***
2. ***These are justifiable, i.e. enforceable through courts.***

Being justifiable means that in case of a violation of any of the fundamental rights the individual can approach courts for their protection.

The fundamental rights were included under ***Part III of the Indian Constitution*** because they were considered essential for the development of the personality of every individual and to preserve human dignity. These Fundamental Rights guarantee to each citizen basic substantive and procedural protections from any arbitrary state actions, but some rights are enforceable against individuals. For instance, the Constitution abolishes untouchability and also prohibits begar. These provisions act as a check both on state action as well as the action of private individuals. However, these rights are not absolute or uncontrolled and are subject to reasonable restrictions as necessary for the protection of general welfare. They can also be selectively curtailed.

ORIGIN OF FUNDAMENTAL RIGHTS

This Chapter of the Constitution of India is well described as the ***Magna Carta of India***. If a government enacts a law that restricts any of these rights, it will be declared invalid by courts.

As early as in 1214, the English people exacted an assurance from King John for respect of the then ancient liberties. The Magna Carta is the evidence of their success which is a written document. This is the first written document relating to fundamental rights. Thereafter from time to time, the King had to accede to many rights to his subjects. In 1689, the Bill of rights was written consolidating all important rights and liberties of the English people. In France Declaration of Rights of Man and the Citizen (1789) declared the natural, inalienable and sacred rights of man. Following the spirit of the ***Magna Carta of the British*** and the ***Declaration of the Rights of Man and the Citizen of France***, the Americans incorporated the ***Bill of Rights*** in their Constitution. The Americans were the first to give

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Bill of Rights a Constitutional status. While drafting the Constitution of India, our Constitutional draftsmen took an inspiration and therefore incorporated under Part III what is called "***fundamental rights***"

Part III of the Indian Constitution guarantees ***six fundamental rights*** to Indian citizens which are as follows:

FUNDAMENTAL RIGHTS
RIGHT TO EQUALITY (Article 14 – 18)
RIGHT TO FREEDOM (Article 19 – 22)
RIGHT AGAINST EXPLOITATION (Article 23 – 24)
RIGHT TO FREEDOM OF RELIGION (Article 25 – 28)
CULTURAL AND EDUCATIONAL RIGHT (Article 29 – 30)
RIGHT TO CONSTITUTION REMEDIES (Article 32)

The ***44th Amendment*** has ***abolished the right to property as a fundamental*** right as ***guaranteed by Art. 19(1)(f) and Art.31 of the Constitution***. Since this Right created a lot of problems in the way of attaining the goal of socialism and equitable distribution of wealth, it was removed from the list of Fundamental Rights in 1978. However, its deletion does not mean that we do not have the right to acquire, hold and dispose of property. Citizens are still free to enjoy this right. But now it is just a legal or a Constitutional right as incorporated under ***Art. 300A***. It is not a Fundamental Right anymore.

P.D. Shamdasani v. Central Bank of India **[AIR 1952 SC 59]**

Bank confiscated property on loan default. Supreme Court held that fundamental rights are available against the state and not against private individuals because there already are enough safeguards under ordinary laws for such disputes.

ARTICLE 12 : DEFINITION OF STATE

In this Part, unless the context otherwise requires, "***the State***" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.
The definition of the term "State" specifies the authorities and the instrumentalities functioning within or without the territory of India which shall be deemed to be 'the State' for the purpose of Part III of the Constitution.

By the express terms of Article 12, the expression "the State" includes :

- ***the Government of India;***
- ***Parliament of India;***
- ***the Government of each of the States***
- ***the Legislature of each of the States***
- ***all local authorities within the territory of India;***
- ***all local authorities under the control of the Government of India;***
- ***all other authorities within the territory of India; and***
- ***all other authorities under the control of the Government of India.***

The State is an abstract entity and it can, therefore only act through its agencies or instrumentalities, whether such agency or instrumentality be human or juristic.

STATE INSTRUMENTALITIES - Authorities constituted under and corporations established by statutes have been held to be instrumentalities and agencies of the Government in several decisions of the Supreme Court. The observations in several of these decisions are general in nature and take into their count all instrumentalities and agencies of the State, whatever be the form which such instrumentality or agency may have assumed.

University of Madras v. Santa Bai [AIR 1954 Madras 67]

Madras High Court held that ***"other authorities"*** referred under Art.12 could only indicate authorities of a like nature i.e. ***ejusdem generis***. If so construed or interpreted, it could only mean authorities exercising governmental or sovereign functions. It cannot include persons, natural or juristic, such as a University unless it is 'maintained by the State'

Ujjambai v. State of U.P. [AIR 1962 SC 1621]

Court rejected the above restrictive interpretation of the words "other authorities" given by the Madras High Court and held that ejusdem generis rule could not be resorted to in interpreting this expression.

Rajasthan Electricity Board v. Mohan Lal **[AIR 1967 SC 1857]**

Definition of State is not narrow. The expression 'other authorities' is wide enough to include all such authorities and entities that are constituted by the State under the Constitution or a statute on whom powers are conferred by law. It is not a mandate that such a statutory authority should be engaged in performing governmental or sovereign function. On this interpretation, Electricity Board, Co-operative Societies etc which have power to make bye-laws under Co-operative Societies Act, 1911 will be included in the definition of State under Article 12.

Sukhdev v. Bhagatram **[AIR 1975 SC 1331]**

Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporations are all 'States' under Article 12, because all these three statutory Corporations have power to make rules and regulations for regulating conditions of service of their employees and such rules and regulations have the force of law.

Justice Mathew in a separate but a concurring judgment preferred a broader test that if the functions of the Corporation are of public importance and closely related to Governmental functions it should be treated an agency or instrument of government and hence a "State" within the ambit of Article 12 of the Constitution.

In subsequent decisions, the Supreme Court has given a broad and liberal interpretation to the expression 'other authorities' under Article 12. With the changing role of the State from merely being a police State to a welfare State it was necessary to widen to scope of the expression "authorities" in Article 12 so as to include all those bodies which are, though not created by the Constitution or by a statute, are acting as agencies or instrumentalities of the Government.

Ramana Dayaram Shetty
v.
The International Airport Authority of India

[AIR 1979 SC 1628]

The Supreme Court laid down five tests to be an "***other authority***"-

1. Entire share capital is owned or managed by State i.e. financial resources of the State is the chief funding source.
2. Enjoys monopoly status, whether it is State conferred or State protected.
3. If a department of Government is transferred to a corporation.
4. Functional character being governmental in essence i.e. if the functions of the corporation are of public importance and closely related to governmental functions.
5. Existence of deep and pervasive State control.

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Ajay Hasia v. Khalid Mujib & Others [AIR 1981 SC 487]

It has been held that the societies registered under the Societies Registration Act, 1898 is an agency or instrumentality of the State and therefore it is covered under the definition of State under Article 12. The Court also observed that the test to know whether a juristic person such as registered societies is State is not how it has been brought but why it has been brought. ***(i.e. the purpose behind creation of such society or trust)***

In ***Central Inland Water Transport Corporation v. Brojo Nath Ganguly*** **[(1986) 3 SCC 156]**, applying the above test, Central Inland Water Transport Corporation was held to be 'State' under Article 12.

In ***Union of India v. R.C. Jain[1981 SCR (2) 854]***, it was held that to be a "***local authority***" within the definition of "State" under Article 12, an authority must fulfil the following tests-

1. ***Separate legal existence.***
2. ***Function in a defined area (territory).***
3. ***Has power to raise funds.***
4. ***Enjoys autonomy.***
5. ***Entrusted by a statute with functions which are usually entrusted to municipalities.***

WHETHER JUDICIARY IS INCLUDED IN THE DEFINITION OF STATE???

The definition of State under Article 12 of the Constitution does not explicitly mention the Judiciary. Hence, a significant amount of controversy surrounds its status with respect to Part III of the Constitution.

Bringing the Judiciary within the scope of Article 12 would mean that it is deemed capable of acting in contravention of Fundamental Rights. It is well established that in its non-judicial functions, the Judiciary does come within the meaning of State. However, challenging a judicial decision which has achieved finality, under the writ jurisdiction of superior courts on the basis of violation of fundamental rights, remains open to debate.

Naresh v. State of Maharashtra **[AIR 1967 SC 1]**

The issue posed before the Supreme Court for consideration whether judiciary is covered by the expression 'State' in Article 12 of the Constitution. The Court held that the fundamental right is not infringed by the order of the Court and no writ can be issued to High Court.

This question has raised a controversy, because of non-mentioning of judiciary under Art, 12. Judiciary is the prominent organ of the State. Legislature frames the law and executor organ implements them and enjoys vast power of delegated legislation as well. One of the most important functions of Judiciary is to check invasion of fundamental rights by these two organs and their instrumentality.

Judiciary is to turn down the rules, regulation etc. which are in clear violation of fundamental rights. Inclusion of judiciary under Article 12 sets judiciary as the possible violator of fundamental rights as well. Judiciary being the guardian of the Constitution is not supposed to violate the Fundamental Rights.

Jurists like ***H.M.Seervai***, ***V.N.Shukla*** consider judiciary to be State. Their view is supported by Articles 145 and 146 of the Constitution of India.

- ***(a) The Supreme Court is empowered to make rules for regulating the practice and procedure of Courts.***
- **(b)** ***The Supreme Court is empowered to make appointments of its staff and servants; decide its service conditions.***

Such kind of administrative duties of the judiciary bring it within the purview of the definition of State

Also, in ***A.R. Antulay v. R.S. Nayak*** **[AIR 1988 SC 1531]** ***and*** ***N.S.Mirajkar v. State of Maharashtra*** **[AIR1967 SC 1]**, it has been observed that ***while exercising the rule making powers, the judiciary is covered by the expression state within Art.12 but while performing its judicial functions it is not so included.***

The word '***State***' under Article 12 has been interpreted by the courts as per the changing times. It has gained wider meaning which ensures that Part-III can be applied to a larger extent. The ultimate aim is to attain a welfare State.

ARTICLE 13
LAWS INCONSISTENT WITH OR IN DEROGATION OF THE FUNDAMENTAL RIGHTS

1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

3) In this article, unless the context otherwise requires,—

a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

POWER OF JUDICIAL REVIEW

The power of the Judiciary to review the Act of the Legislature or the Executive or the validity of a law or an order in order to determine its constitutional propriety and to ensure that such actions conform to the provisions of the nation's Constitution is known as the "Doctrine of Judicial Review". Judicial Review implies that the Constitution is the supreme power of the nation and all laws are under its supremacy and that any law inconsistent therewith is void through judicial review. ***Judicial review is adopted in the Indian Constitution from the Constitution of the United States of America.***

Judicial review has two important functions-

- Of legitimizing government action, and
- The protection of constitution against any undue encroachment by the government.

In the Indian Constitution, Judicial Review is dealt with under Article 13 which provides for the judicial review of all legislations in India, past as well as future. This power has been conferred on the High Courts and the Supreme Court of India (Article 226 and Article 32 respectively) which can declare a law unconstitutional if it is inconsistent with any of the provisions of Part III of the Constitution.

BASIS AND ORIGIN OF JUDICIAL REVIEW

The doctrine of judicial review was for the first time propounded by the Supreme Court of America. Originally, the United States Constitution did not contain an express provision for judicial review. The power of judicial review was, however, assumed by the Supreme Court of America in the historic case of ***Marbury v. Madison*** by ***Justice John Marshall.***

State of Madras v. V.G. Row **[AIR 1952 SC 196]**

In Indian Constitution, there is an express provision for judicial review, and in this sense it is on more solid footing than it is in America.

L. Chandra Kumar v. Union of India **[AIR 1997 SC 1125]**

The power of judicial review of legislative action as vested in Supreme Court by Article 32 and in High Court by Article 226 is a basic feature of the Constitution and cannot be curtailed even by constitutional amendment.

When a part of a statute is declared unconstitutional then a question arises whether the whole of the statute is to be declared void or only that part which is unconstitutional should be declared as

such. To resolve this problem, the Supreme Court has devised the doctrine of severability or separability. This doctrine means that if an offending provision can be separated from that which is unconstitutional then only that part which is offending is to be declared as void and not the entire statute. This conclusion can be very well drawn from the words that Article 13 uses i.e. ***"...to the extent of such inconsistency be void"***

DOCTRINE OF SEVERABILITY

Doctrine of Severability or Separability is incorporated under ***Art. 13 Clause (2)*** which states that the State shall not make any laws which take away Fundamental Rights of a citizen. Therefore, laws made after adoption of the Constitution by the Constituent Assembly must be compatible with the Constitution, otherwise the laws and amendments will be deemed to be void-ab-initio. **Such a law will be ultra vires** (i.e. out of authority)

When a part of the statute is declared unconstitutional, then the unconstitutional part is to be removed and the remaining valid portion will continue as valid. The idea is to retain the Act or legislation in force by discarding or deleting only the void portion and retaining the rest. However, invalid part of the law will be severed only if it is severable, i.e., if after separating the invalid part, the valid part is capable of giving effect to the legislature's intent, then only it will survive otherwise the court shall declare the entire law as invalid.

RELEVANT CASES

A.K. Gopalan v. State of Madras **[AIR 1950 SC 27]**

Only Section 14 of Preventive Detention Act, 1950 was held unconstitutional. Applying the doctrine of severability, whole Act except Section 14 was held valid.

State of Bombay v. F.N. Balsara **[AIR 1951 SC 318]**

It was observed that the certain provisions of Bombay Prohibition Act, 1949, which have been declared as void do not affect the entire statute, therefore, there is no necessity for declaring the whole statute as invalid.

Romesh Thapper v. State of Madras **[AIR 1950 SC 124]**

Supreme Court held that only if the unconstitutional portions cannot be removed then the whole Act will be utra-vires and thus unconstitutional.

R.M.D.C. v. Union of India **[AIR 1957 SC 628]**

Supreme Court held that where after removing the invalid portion what remains constitutes a complete Code there is no necessity to declare the whole Act invalid. In such cases, whether the valid parts of the statute are separable from the invalid, the intention of the legislature is the determining factor.

THEORY OF ECLIPSE

According to ***Article 13(1)***, "All pre-constitutional laws, after the coming into force of Constitution, if in conflict with it in all or some of its provisions then the provisions of Constitution will prevail and the provisions of that pre-constitutional law will not be in force until an amendment of the Constitution relating to the same matter is made. In such situation the provision of that law will again come into force, if it is compatible with the Constitution as amended. This is called the ***Theory of Eclipse.***

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Article 13(1) is prospective in nature. All pre-Constitution laws inconsistent with the Fundamental Rights will become void only after the commencement of the Constitution. They are not void ab initio.

In addition to article 13, articles 32, 124, 131, 219, 226 and 246 provide a constitutional basis to the Judicial review in India.

CAN SUCH A LAW WHICH BECOMES UNENFORCEABLE AFTER THE CONSTITUTION CAME INTO FORCE BE AGAIN REVIVED AND MADE EFFECTIVE BY AN AMENDMENT IN THE CONSTITUTION??

It was to solve this problem that the Supreme Court formulated the doctrine of eclipse in ***Bhikaji vs. State of M.P.*** **[AIR 1955 SC 781].** Government of Central Province monopolized motor transport by an Act. Supreme Court held that the pre-constitutional law that violates fundamental rights is not void ab initio. It is merely eclipsed. When Art 19 was amended to allow the state to monopolize any business, the said act became constitutional again.

Post-Constitutional Laws- ***Clause (2) of Article 13*** prohibits the State to make any law which takes away or abridges the rights conferred by Part III of the Constitution. If State makes such a law then that law will be ultra vires and void to the extent of the contravention. As contrary to Article 13 clause (1), clause (2) makes the inconsistent laws void ab initio.

Deep Chand v. State of U.P. **[AIR 1959 SC 648]**

It was held that doctrine of eclipse does not apply to Post-Constitutional law because such a law is void ab initio. A subsequent constitutional amendment cannot revive such a law.

State of Gujarat v. Ambica Mills **[AIR 1974 SC 1300]**

Overruled Deep Chand's ruling and held that a post-Constitutional law which is inconsistent with fundamental rights is not nullity or non-existent in all cases and for all purposes.

Dulare Lodh v. III Additional District Judge, Kanpur **[AIR 1984 SC 1260]**

Held that Doctrine of Eclipse applies to post-constitutional law and it is applicable to citizens as well.

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DOCTRINE OF WAIVER

Waive means '***to give away***' or '***to surrender***'

Point of concern here regarding Part III of Indian Constitution is that whether can a citizen waive his fundamental rights??

As held in ***Behram v. State of Bombay*** **[AIR 1955 SC 146]**, the doctrine of waiver has no application to the provision of law enshrined in Part III of the Constitution of India. It is not open to an accused person to waive or give up his Constitutional rights and get convicted.

Basheshar Nath v. Income Tax Commissioner **[AIR 1959 SC 149]**

The appellant had reached a settlement with Income Tax Department to pay 3 Lakh rupees per month for taxes that he owed under Income Tax Act. However, later that Act was determined to be unconstitutional. So he challenged the settlement. Income Tax Department argued that he had waived

his right by reaching a settlement. Supreme Court held that, unlike USA, Indian Constitution does not follow Doctrine of Waiver. It was further held that it is not open to a citizen to waive any of the Fundamental Rights conferred by Part III of the Constitution. Fundamental rights are an obligation imposed upon the state by the Constitution. It is the court's duty to enforce them. No person can relieve the State of this obligation.

A question arises as to whether the term 'law' in Article 13 (2) includes just ordinary laws or Constitutional Amendment Acts also.

If Constitutional Amendment Act is not covered under law then the Parliament can amend the Fundamental rights by amending the Constitution itself.

For the purposes of Article 13, "***law***" is defined as including ***an Ordinance, Order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.*** The definition of "law" in this Article is wider than the ordinary connotation of law which refers to enacted law or enactment.

The Supreme Court in ***Shankari Prasad v. Union of India*** **[AIR 1951 SC 458]** held that Constitutional Amendment Act is not a law and thus Parliament can amend any Fundamental Right by using Constitutional Legislative power.

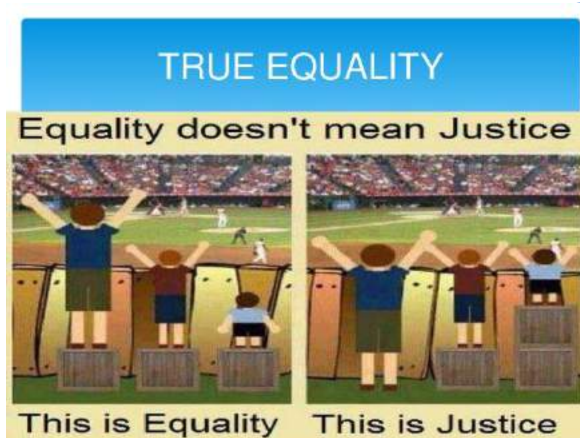
Supreme Court gave a similar verdict in ***Sajjan Singh v. State of Rajasthan*** **[AIR 1965 SC 845]**.

In ***Golak Nath v. State of Punjab*** **[AIR 1967 SC 1643],** the Supreme Court held that the word 'law' in Article 13 (2) included every branch of law, statutory, Constitutional, etc., and hence, if an amendment to the Constitution took away or abridged fundamental right of citizens, the amendment would be declared void.

In order to remove the difficulty created by the Supreme Court's decision in Golak Nath's case, the ***Constitution (24th Amendment) Act, 1971*** was enacted. By this amendment a ***new clause (4) was added to Article 13*** which makes it clear that Constitutional amendments passed under Article 368 shall not be considered as 'law' within the meaning of Article 13 and, therefore, cannot be challenged as infringing the provisions of Part III of the Constitution. Therefore, Parliament has the power to amend Fundamental Rights through Constitutional Amendment.

The validity of Constitution (24th Amendment) Act, 1971 was challenged in the Supreme Court in ***Keshavananda Bharati v. State of Kerala*** **[AIR 1973 SC 1461]** The Supreme Court overruled Golak Nath case and upheld the validity of 24th Amendment Act. However, the Supreme Court held that the Parliament's amendment power is limited and is subject to "***Basic Structure***" of the Constitution. The Supreme Court has not explicitly defined the term "Basic Structure". However, in various judgments, the Supreme Court has held that the following concepts form a part of Basic Structure-

- Supremacy of the Constitution
- Secular character of the Constitution
- Federalism
- Separation of Powers
- Power of Judicial Review
- The mandate to build a welfare state



RIGHT TO EQUALITY [ARTICLES 14 to 18]

Right to equality is a reflection of the high aspirations as enshrined in the Preamble of the Indian Constitution. The words ***"...JUSTICE, social, economic and political; EQUALITY of status and of opportunity..."*** in the Preamble of the Indian Constitution gives the very backing to this essential human right i.e. Right to equality.

Article 14 to 18 guarantees the right to equality to every citizen of India. Article 14 embodies the general principles of equality before law and prohibits unreasonable discrimination between persons. The succeeding Articles 15, 16, 17 and 18 lay down specific application of the general rules laid down in Article 14.

Article 14

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

The words "***shall not***" puts a mandatory duty upon the State not to discriminate on any ground. The words 'any person' denote that the guarantee of the equal protection of the laws is available to any person, which includes any company or association or body of individuals. The protection extends to both citizens and non-citizens and to natural persons as well as legal persons.

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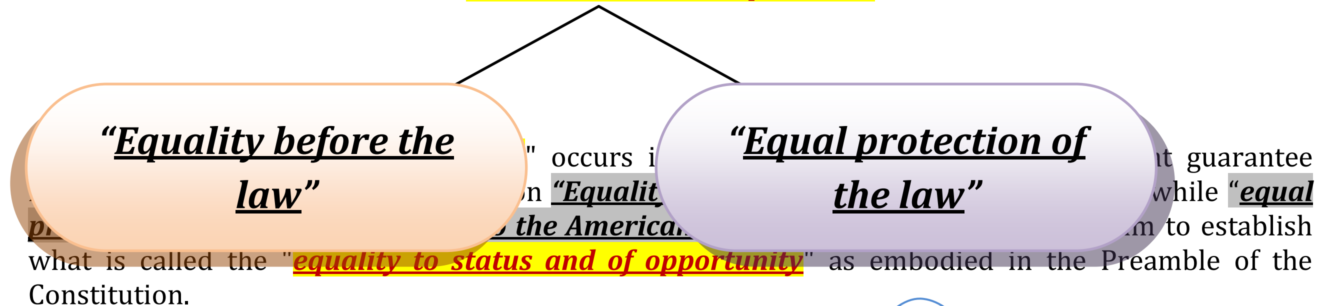
Article 14 uses two expressions



" occurs i... ...t guarantee ...n **“Equalit...** ...while “**equal pr...** ...the America... ...m to establish what is called the "***equality to status and of opportunity***" as embodied in the Preamble of the Constitution.

Equality before the law is somewhat ***negative concept*** implying the absence of any special privilege in favour of any individual and the equal subjection of all classes to the ordinary law. ***Equal protection of law*** is a more ***positive concept*** employing equality of treatment under equal circumstances.

Thus, India has taken best aspects of both systems Unitary and federal; i.e. from England we have taken equality before the law which means supremacy of the Parliament and from America we have taken the equal protection of the laws which means supremacy of the Courts and the law. Therefore, in India, the administration is based on a compromise between Judicial and Parliamentary Supremacy. ***This way Indian constitution aims towards establishing a rule of law.***

As Dr.Jennings puts it-

“***Equality before the law***” means that ***among equals the law should be equal and should be equally administered, that like should be treated alike***. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence.

It only means that **all persons similarly circumstanced shall be treated alike**, both in the privileges conferred and liabilities imposed by the laws. Equal laws should be applied to all in the same situation, and there should be no discrimination between one person and another.

Thus the rule is that the ***like should be treated alike*** and not that unlike should be treated alike

The guarantee of equality before the law is an aspect of what Dicey calls the rule of the law in England. It means that no man is above the law and that every person, whatever be his rank or conditions, is subject to the jurisdiction of ordinary courts. Rule of law requires that no person shall be subjected to harsh, uncivilized or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.

PROFESSOR DICEY GAVE THREE MEANINGS OF THE RULE OF LAW

Absence of Arbitrary Power or Supremacy of the law

A man may be punished for a breach of law, but he can be punished for nothing else.

Equality before the law

It means subjection of all classes to the ordinary law of land administered by ordinary law courts. This means that no one is above law.

The Constitution is the result of the ordinary law of the land

It means that the source of the right of individual is not the written Constitution but the rules as defined and enforced by the courts.

EXCEPTIONS TO RULE OF LAW

The rule of equality is not an absolute rule and there are number of exceptions to it-

1) ***"Equality before the law" does not mean the "powers of the private citizens are the same as the powers of the public officials".*** For example- A police officer has a power to arrest whereas no private individual has that power generally. But, the rule of law does require that these powers should be clearly defined by law and that abuse of authority by public officers must be punished by ordinary courts in the same manner as illegal acts committed by private persons.

   The rule of law does not prevent certain classes of persons being subject to special rules. Thus, members of the armed forces are controlled by military laws. Similarly, medical practitioners are subjected to the regulation framed by the Medical council of India.

2) ***Article 361 of the Indian Constitution affords immunity to the President of India and State Governors.*** **According to the said provision, t**he President, or the governor or rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those power and duties.

   Provided that the conduct of the president may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61.

   Article 361 Clause (2) provides that- "No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office."

   Article 361 Clause (3) provides that- "No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office."

Article 361 Clause (4) provides that- "No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefore, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims."

3) Besides above, under international law, the ***foreign sovereigns and ambassadors*** are also exempted from the jurisdiction of the Indian courts and they enjoy full immunity from any judicial process. This is also available to enemy aliens for acts of war.

ART. 14 PERMITS REASONABLE CLASSIFICATION BUT IT PROHIBITS CLASS LEGISLATION

What ***Article 14 forbids is class legislation*** and ***it does not forbid reasonable classification.*** The classification must not be "arbitrary, artificial or evasive" but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation.

Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privilege granted and that no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.

From the very nature of society there should be different laws in different places and the legislature controls the policy and enacts laws in the best interest of the safety and security of the state. In fact identical treatment in unequal circumstances would amount to inequality. So, a reasonable classification is not only permitted but it is necessary if society is to progress.

Classification to be reasonable must fulfil the following two conditions:-

- ***Firstly, the classification must be founded on the intelligible differentia.***
- ***Secondly, the differentia must have a rational relation to the object sought or to be achieved by the act.***

The differentia which is the basis of the classification and the object of the act are two distinct things. What is necessary is that **there must be nexus between the basis of classification and the object of the Act which makes the classification.** It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory and violative of Article 14.

NEW CONCEPT OF EQUALITY

E.P. Royappa v. State of Tamil Nadu **[AIR 1974 SC 555]**

Supreme Court challenges the traditional concept of equality which was based on reasonable classification and has laid down a new concept of equality. The Honourable Judges who gave the decision were of the opinion that "Equality is a dynamic concept with many aspects and dimensions and it cannot be cabined or confined within traditional limits".

D.S Nakara v. union of India **[AIR 1983 SC 130]**

In this case, Supreme Court struck down Rule 34 of the Central Services (Pension) Rules, 1972 as unconstitutional on the ground that the classification made by it between pensioners retiring before a certain date and retiring after that date was not based on the any rational principle and it was arbitrary and violative of Article 14 of Indian Constitution.

Mithu v. State of Punjab **[AIR 1983 SC 473]**

The Supreme Court struck down ***Section 303 of Indian Penal Code*** as unconstitutional on the ground that the classification between persons who commits murders whilst under the sentence of imprisonment and those who commit murders whilst they were not under the sentence of life imprisonment for the purposes of making the sentence of death mandatory in the case of the former class and optional in the latter class was not based on any rational principle and was somehow violative of Article 14.

K.A. Abbas v. Union of India **[AIR 1971 SC 481]**

Validity of Cinematograph Act, 1952 was challenged on the ground that it makes unreasonable classification of cinema films in "U" films and "A" films. Supreme Court held the classification to be logical and a reasonable one as also not being violative of Article 14 in any manner.

Ajay Hasia v. Khalid Mujib **[AIR 131 SC 487]**

Air India v. Nargesh Meerza **[AIR 1981 SC 1829]**

Supreme Court struck down the Air India and Indian Airlines Regulations on the retirement and pregnancy bar on services of air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. ***Regulation*** *46* of Indian Airlines Regulations provided that an air hostess would retire from the service upon attaining the age of 35 years or on marriage, if it took place within 4 years of service or on first pregnancy, whichever occur earlier. Such rules for the termination of service on pregnancy were manifestly unreasonable and arbitrary as it was in violation of Article 14 of Indian Constitution.

Randhir Singh v. Union of India **[AIR 1982 SC 879]**

Supreme Court held that although the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right, but it is certainly a Constitutional goal under Article 14. This right can, therefore, be enforced in cases of unequal scales of pay based on irrational classification.

Javed v. State of Haryana **[AIR 2003 SC 3057]**

Petitioners challenged the validity of Section 175 (1) (g) of the Haryana Panchayati Raj Act, 1994 on the ground that it was violative of Article 14 as the said provision disqualified a person having

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more than two children from contesting elections for Sarpanch or Panch in Gram Panchayats. Supreme Court upheld the constitutionality of the said provision and held that it is not violating Article 14 in any manner.

Article 15 : Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. **{rrcsp}**
2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—
   (a) access to shops, public restaurants, hotels and places of public entertainment; or
   (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
3) Nothing in this article shall prevent the State from making any special provision for women and children.
4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

Article 15 provides for a particular application of the general principle embodied under Article 14. ***The guarantee under Article 15 is available to citizens only***. The state cannot discriminate only on the above mentioned grounds but can discriminate on grounds other than these. The rights under 15 (2) are not only available against a State but also against other citizens.

Article 15 (1) states that no citizen shall be discriminated only on the grounds of religion, race, caste, sex, place of birth or any of them. But there are special considerations for women and children, SC/ST, OBC. Exceptions for these categories are mentioned in Clause (2) and (3) of Article 15.

Article 15 (2) is a specific application of the general prohibition contained in Article 15 (1). While Clause (1) prohibits discrimination by the State; clause (2) prohibits both the State and private individuals from making any discrimination.

Women and children require special treatment on account of their very nature and therefore ***Article 15 (3)*** empowers the ***State to make special provisions for women and children***. The reason is that "women's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-being. Thus, under Article 42, women workers can be given special maternity relief and a law to this effect will not infringe Article 15 (1). Also, if an educational institution is established by the State exclusively for women or if reservation of seats is made for women in a college, it does not offend Article 15 (1).

Article 15 Clause (4) is another exception to clause (1) and (2) of Article 15. Article 15(4) has been inserted by the constitution (first amendment) Act, 1951. It was ***added by the Constitution (1st Amendment) Act, 1951***, as a result of the decision in ***State of Madras v. Champakam Dorairajan*****[AIR 1951 SC 226]**. The provision made in clause (4) is only an enabling

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provision and does not impose any obligation on the State to take any special action under it. It merely confers discretion to act if necessary by way of making special provision for backward classes. A writ cannot be issued to the State to make reservation. The basic principle underlying this clause is that a preferential treatment can be given validly where socially and educationally backward classes need it.

Thus under Article 15 (4), two things are to be determined-

1. Who are socially and educationally backward classes?
2. What is the limit of reservation?

Constitution nowhere defines 'backward classes'. ***Article 340***, however, empowers the President to appoint a Commission to investigate conditions of socially and educationally backward classes. On the basis of the report of the Commission the president may specify who are to be considered as 'Backward classes'. In ***Balaji v. State of Mysore*** **[AIR 1963 SC 649]**, it was held that 'backward' and 'more backward' classification is not bad.

In the historic ***Mandal Commission Case [Indira Sawhney v. Union of India,*** **AIR 2000 SC 498]**, the Supreme Court by 6-3 majority has held that the sub-classification of backward classes into backward into more backward and backward classes for the purpose of Article 16(4) can be done. But as result of sub-classification, the reservation cannot exceed more than 50 percent. Creamy layer must be excluded from the backward classes.

High caste girl marrying a male of Scheduled tribe is not entitled to reservation benefit under Clause (4) of Article 15. Also, a Scheduled Caste or a Scheduled Tribe candidate is entitled to reservation benefit only in the State of his origin and not in other State where he migrates to.

Article 15 clause (5)- In order to serve the educationally and socially backward classes, the State asked the private education institutions also to reserve seats for the backward classes. Private institutions objected to it, stating it would amount to violation of right under Article 19 (1) (g). The Parliament, by amending the Constitution in 2005, added Clause (5) to Article 15. According to this, it is mandatory to reserve seats for backward classes also even in private institutions whether aided or unaided, by the State. The only exception is educational institutions run by minority communities. A law was enacted in this effect called Central Educational Institutions Reservation in Admission Act, 2006. This Act was challenged in the Supreme Court, but the Supreme Court upheld the validity of this law.

Landmark cases on Clause (5)-

- ***T.M. Pai Foundation v. State of Karnataka*** **[AIR 2003 SC 355]**
- ***Islamic Academy v. State of Karnataka*** **[AIR 2003 SC 3724]**
- ***P. A. Inamdar v. State of Maharashtra*** **[AIR 2005 SC 3226]**

ARTICLE 16: EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

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(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.
(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 16 (1) and (2) applies only in respect of employment or office under the State. Clause (3), (4), (4-A), (4-B), (5) of Article 16 provide four exceptions to this general rule of equality of opportunity.

Clause (4) enables the State to make provision for the reservation of posts in government jobs in favour of any backward class of citizen which, in the opinion of the State, is not adequately represented in the services of the State.

The newly added ***clause (4-A)***, ***added by 77th Amendment, 1955***, empowers the ***State to make any provision for the reservation in matters of promotions of SCs and STs*** which, in the opinion of the State, are not adequately represented in the services of the State.

The Constitution (81st Amendment) Act, 2000 has added a new ***clause (4-B)*** in Article 16 which seeks ***to end the 50% limit for Scheduled Castes and Scheduled Tribes and other Backward Classes in backlog vacancies*** which could be filled up due to the non availability of eligible candidates of these categories in the previous year or years.

Important Amendments with reference to Article 16 are 77th, 81st, 85th Constitutional Amendments.

ARTICLE 17: ABOLITION OF UNTOUCHABILITY

"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ***"Untouchability" shall be an offence*** punishable in accordance with law.
In exercise of the powers conferred by Article 35, Parliament has enacted the Untouchability (Offences) Act, 1955. This Act was amended by the Untouchability (Offences) Amendment Act, 1976, in order to make the law more stringent to remove untouchability from the society. It has now been renamed as '***The Protection of Civil Rights Act, 1955***'. Under the amended Act, any discrimination on the ground of untouchability will be considered as an offence.

ARTICLE 18: ABOLITION OF TITLES

1) No title, not being a military or academic distinction, shall be conferred by the State.
2) No citizen of India shall accept any title from any foreign State.
3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

Article 18 prohibits the State to confer titles on anybody whether a citizen or a non-citizen. Military and academic distinctions are, however, exempted from the prohibition. Clause (3) is there to ensure loyalty to the Government that such person serves for the time being and to shut out all foreign influence in Government affairs or administration.

This is the reason why the conferment of titles of "Bharat Ratna", "Padma Vibhushan", "Padma Shri", etc. is not prohibited under Article 18 as they merely denote State recognition of good work or exceptional or distinguished services of the high integrity by citizens in any field.

These National Awards were formally instituted in January, 1954 by two Presidential Notifications. The said Notifications also provide that any person without distinction of race, occupation, position or sex, shall be eligible for these awards. It was also made clear that these civilian awards cannot be used as titles and should not be attached as suffixes or prefixes to the name. In 1977, these awards were discontinued but were again revived in 1980. Since then, the National Awards are conferred annually on Republic Day.

RIGHT TO FREEDOM [ARTICLE 19-22]

Personal liberty is the most important of all fundamental rights. ***Articles 19 to 22*** deal with different aspects of this basic right. The rights guaranteed under Article 19 are available only to citizens and not to an alien or a foreigner. Citizens under Article 19 mean only natural persons and not legal or juristic persons, such as corporation or a company which cannot claim a right under Article 19 because they are not natural persons.

ARTICLE 19 – RIGHT TO FREEDOM

Art. 19 (1)(a)
Freedom of Speech and Expression

Art. 19 (1)(b)
Freedom to assemble peacefully and without arms

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Art. 19 (1)(c)
Freedom to form associations and unions

Art. 19 (1)(d)
Freedom to move freely throughout the territory of India

Art. 19 (1)(e)
Freedom to reside and settle in any part of India

Art. 19 (1)(g)
Freedom to practise any profession or to carry on any occupation, trade or business

The purpose of providing these freedoms is to build and maintain an environment for proper functioning of democracy. However, ***these six freedoms are not absolute.*** The guarantee of each of the above rights is, therefore, restricted by the Constitution itself by conferring upon the State to impose certain ***reasonable restrictions*** on each of them as may be necessary in the larger interest of the community. ***The restrictions on these freedoms are provided in clauses (2) to (6) of Article 19 of the Constitution.***

FREEDOM	PROVISION REGARDING RESTRICTION	GROUND FOR RESTRICTIONS
FREEDOM OF SPEECH AND EXPRESSION	**ARTICLE 19 (2)**	***8 Grounds namely-*** 1) Security of the State 2) Friendly relations with Foreign States 3) Public order 4) Decency or Morality 5) Contempt of Court 6) Defamation 7) Incitement of an offence 8) Sovereignty and integrity of India
FREEDOM TO ASSEMBLE PEACEFULLY WITHOUT ARMS	**ARTICLE 19 (3)**	The assembly must be peaceful and must be unarmed, restrictions may be imposed in the interest of public order and the sovereignty and integrity of India
FREEDOM TO FORM ASSOCIATIONS OR UNIONS	**ARTICLE 19 (4)**	In the interest of public order, morality and sovereignty and integrity of India
FREEDOM TO MOVE FREELY THROUGHOUT THE TERRITORY OF INDIA	**ARTICLE 19 (5)**	In the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics; or for the protection of the interest of Scheduled Tribes

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FREEDOM TO RESIDE AND SETTLE IN ANY PART OF THE TERRITORY OF INDIA	**ARTICLE 19 (5)**	In the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics; or for the protection of the interest of Scheduled Tribes
FREEDOM TO PRACTICE ANY PROFESSION OR TO CARRY ON ANY OCCUPATION, TRADE OR BUSINESS	**ARTICLE 19 (6)**	In the interest of the general public. Also, the professional or technical qualifications may be prescribed for practicing any profession or carrying on any trade.

The restrictions on the rights under Article 19 (1) can only be imposed by a 'Law' and not executive or departmental instructions. Restrictions should not be arbitrary or of an excessive nature, beyond what is actually required in the interest of the public. It is the Courts and not the Legislature which has to decide finally whether a restriction is reasonable or not.

FREEDOM OF SPEECH AND EXPRESSION [ARTICLE 19(1) (a)]

In ***Romesh Thapar v. State of Madras*** **[AIR 1950 SC 124]**, Patanjali Shastri, Justice observed:

"Freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible."

Territorial extent of freedom- In a landmark judgement of ***Maneka Gandhi v. Union of India*** **[AIR 1978 SC 597]**, the Supreme Court held that the freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also.

RIGHT TO VOTE

The Supreme Court observed in ***Union of India v. Association for Democratic Reforms***- "One sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes that voters have a right to know about their candidates and also freedom to hold opinions".

Bijoe Emmaneul v. State of Kerala **[(1986)3 SCC 615]**

The Supreme Court held that no person can be compelled to sing National Anthem, "if he has genuine conscientious objections based on religious faith". Standing up respectfully while the National Anthem is being sung is good enough as freedom under Art. 19 (1) (a) also includes freedom of silence.

Secretary, Minister of I & B v. Cricket Association od Bengal ***[(1995)2 SCC 161]***

Government has no monopoly on the electronic media and a citizen has under Article 19(1), a right to telecast and broadcast to the viewers/listeners through electronic media any important event.

The Government can impose restrictions on such a right only on grounds specified in Clause (2) of Article 19 and not on any other ground.

Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. **[(1995) 5 SCC 139] &**
Hamdard Dawakhana v. Union of India **[AIR 1960 SC 554]**

Commercial advertisement also forms a part of freedom of speech and expression. Commercial speech cannot be denied the protection of Article 19(1) (a) merely because the same are issued by businessmen.

People's Union for Civil Liberties v. Union of India **[AIR 1997 SC 568]**

Telephone tapping is an invasion on right to privacy.

FREEDOM OF THE PRESS

The phrase, "freedom of press" has not been used in Article 19, but freedom of expression includes freedom of press. Freedom of press is implied from Article 19(1)(a) of the Constitution. Thus the press is subject to the restrictions that are provided under the Article 19(2) of the Constitution.

Before Independence, there was no Constitutional or statutory provision to protect the freedom of press. The Preamble of the Indian Constitution ensures to all its citizens the liberty of expression.

Freedom of the press has been included as part of freedom of speech and expression under the Article 19 of the Universal Declarations of Human Rights. The heart of Article 19 says: "Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Indian Express Newspapers v. Union of India **[(1985) 1 SCC 641]**

It has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements.

1. Freedom of access to all sources of information,
2. Freedom of publication, and
3. Freedom of circulation.

There are instances when the freedom of press has been suppressed by the legislature. The authority of the government, in such circumstances, has been under the scanner of judiciary. In the case of ***Brij Bhushan v. State of Delhi*** **(AIR 1950 SC 129)**, the validity of censorship previous to the publication (***pre-censorship***) of an English Weekly of Delhi, the Organiser was questioned. The court struck down the Section 7 of the East Punjab Safety Act, 1949, which directed the editor and publisher of a newspaper "to submit for scrutiny, in duplicate, before the publication, till the further orders, all communal matters all the matters and news and views about Pakistan, including photographs, and cartoons", on the ground that it was a restriction on the liberty of the press. Similarly, prohibiting newspaper from publishing its own views or views of correspondents about a topic has been held to be a serious encroachment on the freedom of speech and expression.

Romesh Thapar v. State of Madras **[AIR 1950 SC 124]**

Entry and circulation of the English journal "Cross Road", printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as "without liberty of circulation, publication would be of little value".

Prabha Dutt v. Union of India **[AIR 1982 SC 6]**

The Supreme Court directed the Superintendent of Tihar Jail to allow representatives of a few newspapers to interview Ranga and Billa, the death sentence convicts, as they wanted to be interviewed.

Sakal Papers Ltd. v. Union of India **[AIR 1962 SC 305]**

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The Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages, size and the price in which a newspaper could be published challenged as unconstitutional being violative of freedom of press and not a reasonable restriction under the Article 19(2). It was held that the right under Article 19 cannot be curtailed with the object of placing restrictions on the business activity of a citizen.

Bennett Coleman and Company v. Union of India **[AIR 1973 SC 106]**

The validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Supreme Court of India holding it to be violative of provision of Article 19(1)(a) and not to be reasonable restriction under Article 19(2). The Court struck down the rebuttal of the Government that it would help small newspapers to grow.

R. Rajagopal v. State of Tamil Nadu (Known as 'Auto Shankar Case') **[(1994) 6 SCC 632]**

Supreme Court held that Government has no authority in law to impose a prior-restraint upon publication of defamatory material against its officials. It was held that no action could be initiated against the press if the publication was based on public records including Court records.

K.A. Abbas v. Union of India **[AIR 1971 SC 481]**

This is the first case where the question whether prior censorship of films under Cinematograph Act, 1952 is included in Article 19(2) came for the consideration of the Supreme Court. Court held that the censorship and categorisation of films into 'U' and 'A' category was reasonable and justified.

Ranjit D. Udeshi v. State of Maharashtra **[AIR 1965 SC 881]**

The word 'obscenity' of English law is identical with the word 'indecency' under the Indian Constitution. In an English case of ***R. v. Hicklin***, the test was laid down according to which it is seen 'whether the tendency of the matter charged as obscene tend to deprave and corrupt the minds which are open to such immoral influences'. This test was upheld by the Supreme Court in Ranjit D. Udeshi case. In this case the Court upheld the conviction of a book seller who was prosecuted under Section 292, Indian Penal code, for selling and keeping the book *Lady Chatterley's Lover*. The standard of morality varies from time to time and from place to place.

FREEDOM TO ASSEMBLE PEACEFULLY AND WITHOUT ARMS [ARTICLE 19 (1) (b)]

Article 19(1)(b) guarantees to all citizens of India right to assemble peacefully and without arms. The right of assembly also includes right to hold meetings and to take out processions. This right is subject to following restrictions-

1) The assembly must be peaceful
2) It must be unarmed
3) Reasonable restrictions can be imposed under Clause 3 of Article 19

Chapter VIII of the Indian Penal code, 1860 lays down the conditions when an assembly becomes "unlawful". Under ***Sec. 141*** of the IPC, an assembly of five or more persons becomes an unlawful assembly if the common object of the persons composing assembly is-

1. To resist the execution of any law or legal process,
2. To commit any mischief or criminal trespass
3. Obtaining possession of any property by force
4. To compel a person to do what he is not legally bound to do or omit which he is legally entitled to do

5. To overawe the Government by means of criminal force or show of criminal force or any public servant in the exercise of his lawful powers.

Freedom to assemble peacefully without arms can be reasonably restricted by the State in the interest of public order and the sovereignty and integrity of India.

FREEDOM TO RESIDE AND SETTLE IN ANY PART OF THE TERRITORY OF INDIA [ARTICLE 19 (1) (e)]

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

FREEDOM TO PRACTICE ANY PROFESSION OR TO CARRY ON ANY OCCUPATION, TRADE OR BUSINESS [ARTICLE 19 (1) (g)]

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

Sodan singh v. New Delhi Municipal Committee **[AIR 1989 SC 1988]**

Supreme Court held that the hawkers have a fundamental right to carry on trade on pavement of roads, but subject to reasonable restrictions under article 19 Clause (6).

ARTICLE 20
PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

Article 20 affords protection against arbitrary and excessive punishment to any person who commits an offence.

1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence

[Protection against Ex post facto law]

This has two basic implications-

(a) A person can be convicted of an offence only if he has violated a law in force at the time when he is alleged to have committed the offence.

(b) No person can be subjected to a greater penalty than what might have been given to him under the law that was prevalent when he committed the offence.

2) No person shall be prosecuted and punished for the same offence more than once.
[Protection against Double jeopardy]

3) No person accused of any offence shall be compelled to be a witness against himself.
[Prohibition against self-incrimination]

According to Article 20(1), ***no one can be awarded punishment which is more than what the law of the land prescribes at that time***. This legal axiom is based on the principle that no criminal law can be made retrospective, that is, for an act to become an offence, the essential condition is that it should have been an offence legally at the time of committing it.

Protection against double jeopardy- Article 20(2) establishes what is known as "principle of double jeopardy", that is, no person can be convicted twice for the same offence. This principle was first established in the Magna Carta. This clause embodies the common law rule of '***nemo debet vis vexari pro una et eadem causa***' which means that no man should be put twice in peril for the same offence. If he is prosecuted again for the same offence for which he has already been prosecuted he can take complete defence of his former acquittal or conviction.

Prohibition against self-incrimination

As per Article 20(3), no person accused of any offence shall be compelled to be a witness against himself. "Compulsion" in this article refers to what in law is called "Duress" (injury, beating or unlawful imprisonment to make a person do something that he does not want to do). This article is known as a safeguard against self incrimination.

Self-incrimination is the act of exposing oneself (generally, by making a statement) "to an accusation or charge of crime; to involve oneself or another person in a criminal prosecution or the danger thereof."

Self-incrimination can occur either directly or indirectly:

- ***directly***, by means of interrogation where information of a self-incriminatory nature is disclosed;
- ***indirectly***, when information of a self-incriminatory nature is disclosed voluntarily without pressure from another person.

Relevant Cases-
State of Bombay v. Kathi Kalu **[AIR 1961 SC 108]**
Nandani Satpathy v. PL Dani **[AIR 1977 SC 1025]**

NARCO ANALYSIS, POLYGRAPHY, BRAIN MAPPING AND FINGER PRINTING

Selvi v. State of Karnataka [AIR 2010 SC 1974]

People on whom this test is conducted often allege it to be violation of their right to self-incrimination guaranteed under Article 20(3) of the Constitution of India.

What is Narco Analysis test?

Narco-Analysis test, also known as '***Truth Serum Test***', is done with the main intent and aim of extracting information from the accused when he is in hypnotic state. The Hon'ble Supreme Court of India is of the view that narco analysis, polygraph or brain mapping tests cannot be conducted on any person, whether an accused or a suspect, without their consent.

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The Court further stresses that no person should be compelled to go through such test as it amounts to violation of Art 21 i.e. Right to Personal Liberty and prohibits self-incrimination and thereby violates Art 20 (3). In short according to Supreme Court, conducting Narco Analysis Test is Unconstitutional and Illegal.

PROTECTION OF LIFE AND PERSONAL LIBERTY [ARTICLE 21]

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

This means that a person's life and personal liberty can only be disputed if that person has committed a crime. However, the right to life does not include the right to die, and hence, suicide or an attempt thereof, is an offence.

"Personal liberty" includes all the freedoms which are not included in Article 19 (that is, the six freedoms). The right to travel abroad is also covered under "personal liberty" in Article 21.

*The words "**No person...**" simply indicates that this right is available to every individual, be it a citizen or a non- citizen.* ***The right guaranteed in Article 21 is available to 'citizens' as well as 'non-citizens'.***

"..procedure established by law.."

Constitution make no distinction between a law made by the legislature & ordinance issued by president, both are equally subject to limitation which the Constitution has placed upon that power i.e. ***"..procedure established by law.."***

It extends both to substantive as well as procedural laws. A procedure not fulfilling these attributes is no procedure at all in the eyes of art.21

In **American Constitution**, the corresponding provision is-

SCOPE OF THE RIGHT UNDER ARTICLE 21

"***No person shall be deprived of his life or liberty or property except by due process of law***"

Here, '***..due process..***' refers to a ***just, fair and a reasonable procedure***.

A.K. Gopalan v. State of Madras **[1950 SC 27]**

A communist leader A. K. Gopalan was detained under Preventive Detention Act, 1950. The first major constitutional issue came out of the preventive detention of communist leader A. K. Gopalan. The issue was whether somebody's detention could be justified merely on the ground that it had been carried out "according to the procedure established by law," as stipulated in Article 21 of the Constitution. Or, would that procedure be valid only if it complied with principles of natural justice such as giving a hearing to the affected person?

In this case, the Supreme Court, taking a narrow view of Article 21, refused to consider if the procedure established by law suffered from any deficiencies. Three decades later, Supreme Court took a new approach on this issue in the Maneka Gandhi case of 1978. The provocation was the arbitrary

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law that had allowed the Janata Party government to take away Maneka's passport without any remedy. Importing the American concept of due process, the Supreme Court ruled that the procedure established by law for depriving somebody of their life or personal liberty had to be "just, fair and reasonable".

Kharak Singh v. State of U.P. **[AIR 1963 SC 1295]**

UP Police performed domiciliary visits to make sure that he was at home in the nights. This was challenged. SC held the following-

1. Personal liberty is not confined only to bodily restraint or confinement in prisons but includes all those things through which life is enjoyed.
2. Personal Liberty means much more that mere animal existence.
3. Article 19 gives some of the freedoms required to enjoy personal liberty, while Article 21 constitutes the rest.
4. Since there was no law which could justify domiciliary visits, they were held to be an unauthorized intrusion into a person's life and were held to be in violation of Article 21.

Maneka Gandhi v. Union of India **[AIR 1978 SC 597]**

Prior to Maneka Gandhi's decision, Article 21 guaranteed the right to life and personal liberty to citizens only against arbitrary action of the executive, and not from legislative action. But after this case Article 21 now protects the right to life and personal liberty of citizen not only from the executive action but from the legislative action also.

Facts : Maneka Gandhi's passport was impounded by the Central government under the Passport Act in the interest of the general public and in the name of security reasons. Maneka filed a writ petition challenging the order on the ground of violation of fundamental right of personal liberty under Article 21. The major ground of challenge was the order impounding the passport was null and void as it had been made without affording her an opportunity of being heard in her defence. Also, that such an impounding order was not in accordance with the procedure established by law.

After Maneka Gandhi's case, there has been a new interpretation of this right. Earlier the concept as understood was that Article 21 gives a safeguard only against executive action which is unsupported by law. In this case, the Supreme Court made it clear that a ***procedure established by the legislature must also be reasonable, just and fair and not an arbitrary one.*** ***In order that the procedure was just, fair and reasonable, it should conform to the principles of natural justice***.

The Constituent Assembly in 1948 eventually omitted the phrase "due process" in favour of "procedure established by law". As a result, Article 21, which prevents the encroachment of life or personal liberty by the State except in accordance with the procedure established by law, was, until 1978, construed narrowly as being restricted to executive action. However, in 1978, the Supreme Court in the case of *Maneka Gandhi v. Union of India* extended the protection of Article 21 to legislative action, holding that any law laying down a procedure must be just, fair and reasonable, and effectively reading due process into Article 21. In the same case, the Supreme Court also ruled that "life" under Article 21 meant more than a mere "animal existence"; it would include the right to live with human dignity and all other aspects which made life "meaningful, complete and worth living". Subsequent judicial interpretation has broadened the scope of Article 21 to include within it a number of rights including those to livelihood, clean environment, good health, speedy trial and humanitarian treatment while imprisoned. The right to education at elementary level has been made one of the Fundamental Rights under Article 21A by the 86th Constitutional amendment of 2002.

Francis Coralie v. Union territory of Delhi **[AIR 1981 SC 746]**

Right to life is not only about mere animal existence rather it means something more than just physical survival. It rather involves many other basic rights which are necessary to lead a life with human dignity.

People's Union for Democratic Rights v. Union of India **[AIR 1982 SC 1473]**

It was held that if the government fails to ensure the proper implementation of the labour laws, it is a deemed denial of the right to life and personal liberty of the workers.

Bandhua Mukti Morcha v. UoI **[AIR 1984 SC 802]**

Supreme Court held that right to life should be taken to mean right to live with human dignity free from exploitation.

Neerja Choudhary v. State of M.P. **[AIR 1984 SC 1099]**

It was held that bonded labourers should not only be identified and released but also they must be rehabilitated after their release.

Parmanand Katara v. Union of India **[AIR 1989 SC 2039]**

SC held that it is the professional duty of all doctors, whether government or private, to extend medical aid to the injured persons so as to preserve his life without waiting for the compliance of the legal formalities like form filling etc.

M.C. Mehta v. Union of India **[AIR 1988 SC 1115]**

SC held that a pollution free environment i.e. pure air, pure water, edible food do form an essential part of right to life.

Subhash Kumar v. State of Bihar **[AIR 1991 SC 420]**

Right to pollution free air and water falls within the ambit of Article 21.

Indian Council for Enviro Legal Action v. Union of India **[(1996)3 SCC 212]**

Private companies are also bound under statutes and under constitution not to affect the right to life of the citizens.

Vellore Citizens Welfare Forum v. Union of India **[(1996)5 SCC 650]**

Precautionary principle and polluter pays principal have been accepted as part of the law of land. "***Green benches***" have been formed in pursuance of these two principles. Thus the two concepts aim towards ensuring a pollution free atmosphere and creates an extra burden on the private companies and factories etc to be have more self monitoring mechanisms towards ensuring rights of the citizens.

Olga Tellis V. Bombay Municipal Corporation **[AIR 1986 SC 180]**

The right to livelihood is borne out of the right to life, as no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part and parcel of the Constitutional right to life, the easiest way of depriving a person of his right to life would be deprived him of means of livelihood to the point of abrogation.

Murali S. Deora v. Union of India **[AIR 2002 SC 40]**

Smoking in public places was banned. By no means, the passive smokers must be allowed to get affected by the act of a active smoker. It was here when smoking in public places such as auditoriums, hospital buildings, health institutions or hospitals, educational institutions, libraries, court buildings, public offices, public conveyances including railways, is banned.

People's Union for Civil Liberties(PUCL) v. Union of India **[AIR 1997 SC 568]**

Popularly known as "***Phone Tapping case***". Supreme Court held that telephone tapping is a serious invasion of an individual's right to privacy which is a part of the right to life and personal liberty and it should not be resorted by the State unless there is public emergency or interest of public safety requires.

Kishore Singh v. State of Rajasthan **[AIR 191 SC 625] &**
Sheela Barse v. State of Maharashtra **[(1983) 2 SCC 96]**

Supreme Court held that the use of 'third degree' method by police is violative of Article 21.

Vishaka v. State of Rajasthan **[AIR 1997 SC 3011]**

The SC has declared sexual harassment of a working woman at her place of work as amounting to violation of rights of gender equality and right to life and liberty which is clear violation

of Article 14, 15 and 21. In this case, the Supreme Court has formulated the basic guidelines as to the conditions of work of working women at their work places and factories etc. The guidelines basically relates to the number of working hours and the phase of work i.e. the female workers can only work in between 8 A.M. to 5 P.M.

Hussainara Khatoon v. State of Bihar **[AIR 1979 SC 1360]**

Right to speedy trial was recognised to be a part of Art. 21

A.R. Antulay v. R.S. Nayak **[AIR 1988 SC 1531]**

The SC laid down detailed guidelines for speedy trials of an accused in a criminal trial. However, the SC declined to fix any time limit for trial of offences. The Court held that the right to speedy trial flowing from Article 21 is available to accused at all stages namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

ADM, Jabalpur v. Shivkant Shukla **[AIR 1976 SC 1207]** {Also known as "***Habeas Corpus case***"}

The detenue challenged Sec. 16-A of the MISA (now repealed). The detention was challenged as being violative of Art. 21. The Court held that Article 21 is the sole repository of the right to life and personal liberty and if the right to move to any court for the enforcement of that right was suspended by the Presidential Order under Article 359 the detenue had no locus standi to file a writ petition for challenging the validity of their detention.

Sunil Batra v. Delhi Administration **[AIR 1978 SC 1575]**

It was held that custodial violence to the arrested person is a grave violation of person's right to life.

Rudal shah v. State of Bihar **[AIR 1983 SC 1086]**

Supreme Court held that the Court has power to award monetary compensation in appropriate cases where there has been a violation of the Constitutional rights of the citizens. In this case, the SC directed the Bihar Government to pay compensation of Rs. 30,000/- to Rudal Shah who had to remain in the jail for 14 years because of the irresponsible behaviour of the State Govt. Officers even after his acquittal.

Bhim Singh v. State of J & K **[(1985) 4 SCC 677]**

The Court awarded a compensation of Rs.50,000/- to the petitioner as compensation for the violation of his right to personal liberty. The petitioner, an MLA, was arrested and detained in police custody and deliberately prevented from attending the sessions of the Legislative Assembly.

Bodhisathwa Gautam v. Subhra Chakravorthy **[(1996) 1 SCC 490]**

Interim compensation to a rape victim was awarded considering his right to life.

M.H. Hoskot v. State of Maharashtra **[AIR 1978 SC 1548]**

The right to legal aid is one of the ingredients of fair procedure. If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, for want of legal assistance, there is implicit in the court under article 142 read with article 21 and 39-A of the Constitution, power to assign council for such imprisoned individual for doing complete justice. Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so required, assign competent counsel for the prisoners defence, provided the party doesn't object to that lawyer.

Prem Shankar Shukla v. Delhi Administration **[AIR 1980 SC 1535]**

The petitioner was an under-trial prisoner in Tihar jail. He was required to be taken from jail to magistrate court and back periodically in connection with certain cases pending against him. The trial court has directed the concerned officer that while escorting him to the court and back, handcuffing should not be done unless it was so warranted. But handcuffing was forced on him by the escorts. He therefore sent a telegram to one of the judges of Supreme Court on the basis of which the present habeas corpus petition has been admitted by the court. To handcuff is to hoop harshly and to

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punish humiliatingly. The minimum freedom of movement, under which a detainee is entitled to under Art.19, cannot be cut down by the application of handcuffs. Handcuffs must be the last refuge as there are other ways for ensuring security.

Saheli v. Commissioner of Police **[AIR 1990 SC 513]**

In this case, a 9 year old boy died after being beaten by the Indian Police. The Court directed a payment of Rs 75,000 to the mother of the deceased child and permitted the Delhi Administration to take appropriate steps for the recovery of the amount paid as compensation or part thereof from the officers responsible for this dastardly act.

The ambit of right to life has thus widened with the changing times. Many corollary and incidental rights have now been considered to fall under Art.21 and these are now to be ensured as fundamental rights. In a nutshell, various rights involved under article 21 may be enumerated as-

RIGHT TO EDUCATION (Article 21-A)

Article 21-A reads as:-

"***The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.***"

Article 21-A added by the ***Constitution (86th Amendment) Act, 2002*** makes the education from 6 to 14 years old, a fundamental right, within the meaning of Part III of the Constitution.

Article 21-A may be read with the new substituted **Article 45** and new ***clause(k) inserted in Article 51-A*** by the Constitution (86th Amendment) Act, 2002. To study the status of right to education, it is necessary to understand the relationship between Art.21-A, Art.45 and Art. 51-A (k)

Article 45 calls upon the State "***to endeavour to provide early childhood care and education for all children until they complete the age of six years***"

Clause (k) inserted in **Article 51-A** imposes a fundamental duty on parent/guardian "***to provide opportunities for education to his child or, as the case may be, ward, between the age of six and fourteen years.***"

Mohini Jain V. State of Karnataka **[AIR 1992 SC 1858]**

(Also known as "Capitation Fee case")

Supreme Court held that right to education is a fundamental right under Art. 21 of the Constitution which cannot be denied by charging a higher fee in the name of 'Capitation fees'.

Facts : In this case, the petitioner Mohini Jain of Meerut, U.P. had challenged the validity of a Notification issued by the government under the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 which was passed to regulate tuition fees to be charged by private Medical colleges in the State.

The Notification provided for the following tuition to be charged at the time of admissions-

Candidates on Govt seats – Rs.2,000/- per annum.
Karnataka students – Rs.25,000/- per annum.
Students from outside Karnataka – Rs.60,000/-

The petitioner was denied admission on the ground that she was unable to pay such higher tuition fee. The SC held that such a notification is violative of Art.14 and it's arbitrary, unfair and unjust. "The right to education flows directly from the right to life," and the right to education being concomitant to the fundamental right, "The state is under a Constitutional mandate to provide educational institutions at all levels for the benefit of the citizens."

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Unni Krishnan v. State of Andhra Pradesh **[(1993) 1 SCC 645]**

In this case, SC examined the correctness of the Mohini Jain's case judgment. The SC rejected the view held in Mohini Jain's case and held that State is bound only till the age of 14 years to provide free education and the private colleges are no ways bound to provide free education. But, they should be allowed to run their institutions under strict regulatory controls in order to prevent education sector being commercialised. The majority view was that in all such institutions, 50% seats should be filled on merit basis and rest 50% seats may be filled by charging a higher fee.

TMA Pai Foundation v. State of Karnataka **[AIR 2003 SC 355]**

The scheme as laid down by Unni Krishnan case was rejected and it was held that the private institutions may charge a capitation fee but that always remains in the strict regulation of the State Govt.

DEATH SENTENCE

Various issues involved are-

1. DELAY IN EXECUTION

In ***T.V. Vatheeswaram v. State of Tamil Nadu*** **[AIR 1981 SC 643]**, the Supreme Court held that delay in execution of death sentence exceeding 2 years would be sufficient ground to invoke protection under Article 21 and the death sentence would be commuted to life imprisonment.

In ***Sher Singh v. State of Punjab*** **[AIR 1983 SC 465]**, the Supreme Court said that prolonged wait for execution of a sentence of death is an unjust, unfair and unreasonable procedure and the only way to undo that is through Article 21. But the Court held that this cannot be taken as the rule of law and applied to each case and each case should be decided upon its own faces.

2. VALIDITY OF HANGING BY ROPE

The Rajasthan High Court, by an order directed the execution of the death sentence of an accused by hanging at the Stadium Ground of Jaipur. It was also directed that the execution should be done after giving widespread publicity through the media. On receipt of the above order, the Supreme Court in ***Attorney General v. Lachma Devi*** **[AIR 1986 SC 467]**, held that the said direction for execution of the death sentence was unconstitutional and violative of Article 21. It was further made clear that death by public hanging would be a barbaric practice. Although the crime for which the accused has been found guilty was barbaric it would be a shame on the civilised society to reciprocate the same. The Court said "a barbaric crime should not have to be visited with a barbaric penalty."

RIGHT TO DIE WHETHER COVERED UNDER RIGHT TO LIFE??

This question came for consideration for first time before the High Court of Bombay in ***State of Maharashtra v. Maruti Sripati Dubal*** **[1987 Cr.L.J. 549]**

In this case the Bombay High Court held that the right to life guaranteed under Article 21 includes right to die, and the Hon'ble High Court struck down section 309, IPC which provides punishment for attempt to commit suicide by a person as unconstitutional.

In ***P. Rathinam v. Union of India*** **[(1994) 3 SCC 394]** a Division Bench of the Supreme Court supporting the decision of the High Court of Bombay in *Maruti Sripati Dubal Case* held that under Article 21, right to life also include right to die and laid down that Section 309 of Indian Penal Court which deals with attempt to commit suicide is a penal offence and is unconstitutional as well.

This issue again raised before the court in ***Gian Kaur v. State of Punjab*** **[(1996)2 SCC 648].** In this case a five judge Constitutional Bench of the Supreme Court overruled the P. Ratinam's case and held that "Right to Life" under Article 21 of the Constitution ***does not include "Right to die"*** or "Right to be killed" and there is no ground to hold that the section 309, IPC is constitutionally invalid. The true meaning of the word 'life' in Article 21 means life with human dignity. Any aspect of life which makes life dignified may be included in it but not that which extinguishes it. The 'Right to Die' if any, is inherently inconsistent with the "Right to Life" as is "death" with "Life"

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A question may arise, in case of a dying man, who is, seriously ill or has been suffering from virulent and incurable form of disease he may be permitted to terminate it by a premature extinction of his life in those circumstances. This category of cases may fall within the ambit of 'Right to Die' with dignity as a part of life with dignity. According to the court these are not cases of extinguishing life but only of accelerating the process of natural death which has already commenced.

EUTHANASIA

Aruna Ramchandra Shanbaug v. Union of India(2011)

On 7 March 2011, the Supreme Court of India legalised passive euthanasia by means of the withdrawal of life support to patients in a permanent vegetative state. The decision was made as part of the verdict in a case involving Aruna Shanbaug, who has been in a vegetative state for 37 years at King Edward Memorial Hospital. The Court rejected active euthanasia by means of lethal injection. In the absence of a law regulating euthanasia in India, the court stated that its decision becomes the law of the land until the Indian parliament enacts a suitable law. Active euthanasia, including the administration of lethal compounds for the purpose of ending life, is still illegal in India, and in most countries. While rejecting Pinki Virani's plea for Aruna Shanbaug's euthanasia, the court laid out guidelines for passive euthanasia. According to these guidelines, passive euthanasia involves the withdrawing of treatment or food that would allow the patient to live. As India had no law about euthanasia, the Supreme Court's guidelines are law until and unless Parliament passes legislation.

The following guidelines were laid down:-

A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.

The question remained as to who is to decide what is the patient's best interest where he is in a ***persistent vegetative state*** (PVS)? Most decisions have held that the decision of the parents, spouse, or other close relative, should carry weight if it is an informed one, but it is not decisive. It is ultimately for the Court to decide, as parens patriae, as to what is in the best interest of the patient, though the wishes of close relatives and next friend, and opinion of medical practitioners should be given due weight in coming to its decision.

Even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned.

When such an application is filed the Chief Justice of the High Court should forthwith constitute a Bench of at least two Judges who should decide to grant approval or not. A committee of three reputed doctors to be nominated by the Bench, who will give report regarding the condition of the patient. Before giving the verdict a notice regarding the report should be given to the close relatives and the State. After hearing the parties, the High Court can give its verdict.

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SAFEGUARDS AGAINST ARBITRARY ARREST AND DETENTION [Article 22]

Article 22 of the Constitution provides preventive detention laws. The object of preventive detention is to prevent a person from committing a crime and not to punish him as is done under punitive detention.

Article 22 provides specific rights to arrested and detained persons, in particular the rights to be informed of the grounds of arrest, consult a lawyer of one's own choice, be produced before a magistrate within 24 hours of the arrest, and the freedom not to be detained beyond that period without an order of the magistrate.

The Constitution also authorises the State to make laws providing for preventive detention, subject to certain other safeguards present in Article 22. ***Article 22 Clause (4) to (7) provides for the rights of a person detained under preventive detention.*** Art. 22 provides that when a person is detained under any law of preventive detention, the State can detain such person without trial for only three months, and any detention for a longer period must be authorised by an Advisory Board. The person being detained also has the right to be informed about the grounds of detention, and be permitted to make a representation against it, at the earliest opportunity.

Preventive detention has not been unknown in other democratic countries like England and Canada but their recourse has been had to it only in war time. In ***A.K. Gopalan v. State of Madras*****,[AIR 1950 S.C. 27]**, the Supreme Court had expressed the view that a detenue could not claim the freedom guaranteed by Article 19(l)(d) if it was infringed by his detention.

But this view of the court changed in ***R.C. Cooper v. Union of India,*** **[AIR 1970 S.C. 564]**, and in Maneka Gandhi's case. The court expressed the view in these cases that a law relating to preventive detention must satisfy not only the requirements of Article 22 but also the requirements of Article 21 of the Constitution.

The legislative capacity of Parliament or the State legislatures to enact a law of preventive detention is however, limited to Clauses (4) to (7) of Article 22 which lay down a few safeguards for a person subjected to such detention. The scheme of these clauses is to classify preventive detention in three categories, viz.:

(a) A preventive detention up to two months, provision for which may be made either by Parliament or a State legislature, in such a case, no reference may be made to an Advisory Board;

However, Constitution (44th Amendment Act, 1978) has substituted a new clause for clause (4) which now reduces the maximum period for which a person may be detained without obtaining the opinion of Advisory Board from 3 months to 2 months. The detention of a person for a longer period than 2 months can only be made after obtaining the opinion of the Advisory Board.

(b) Preventive detention for over three months subject to safeguard of an Advisory Board consisting of persons qualified to act as High Court judges. No person can remain in preventive detention for more than 3 months unless the Board holds that in its opinion, there are sufficient causes for detention.

(c) Preventive detention for over three months without the safeguard of an Advisory Board. Such detention is possible if Parliament prescribes by law the circumstances under which, and the class or classes of cases in which a person may be detained for over three months without reference to Advisory Board.

Parliament may also prescribe the maximum period for which a person can be detained in cases (b) and (c). This provision, it has been held is merely permissive and does not oblige Parliament to prescribe any maximum period. Further, Parliament may by law prescribe the procedure to be followed by an Advisory Board in an inquiry under Clause (4).

The following safeguards have been provided to a detenue:

(1) Grounds of detention must be communicated

Article 22(5) gives the right to the detenue to be communicated the grounds of detention as soon as possible, the detaining authority making the order of detention must as soon as possible communicate to the person detained the grounds of his arrest and to give the detenue the earliest opportunity of making representation against the order of the detention.

The clause (5) of Article 22 imposes an obligation on the detaining authority to furnish to the detenue the grounds for detention, "as soon as possible". The grounds of detention must be clear and easily understandable by the detenue.

(2) Right of representation

Article 22 imposes an obligation upon the Government to afford the detenue the opportunity to make representation under clause (5) of Article 22. It makes no distinction between order of detention for only two months and less and for those for a longer duration.

The obligation applies to both kinds of orders. It is clear from clauses (4) and (5) of Article 22 that there is dual obligation on the appropriate Government and dual right in favour of detenue, namely, (1) to have his representation irrespective of the length of detention considered by the appropriate Government, and (ii) to have once again in the light of the circumstances of the case considered by Board before it gives its opinion. If in the light of the representation, the Board finds that there is no sufficient cause for detention, the Government has to revoke the order of detention and set at liberty the detenue.

(3) Advisory Board

Article 22 provides that the detenue under the preventive detention law shall have the right to have his representation against his detention reviewed by an Advisory Board. If the Advisory Board reports that the detention is not justified, the detenue must be released forthwith. If the Advisory Board reports that the detention is justified, the government may fix the period for detention.

The Advisory Board must conclude its proceedings expeditiously and must express its opinion within the time prescribed by law. Failure to do that makes detention invalid. Along with its opinion, the Board must forward the entire record to the Government who is supposed to take a decision on the perusal of the entire record.

The Constitution (44th Amendment Act, 1978) has amended Article 22 and reduced the maximum period for which a person may be detained without obtaining the opinion of the Advisory Board from 3 months to 2 months.

It has also changed the constitution of the Board which shall now consist of a Chairman and two other members. The Chairman must be a sitting judge of the appropriate High Court and other members shall be either a sitting or retired judge of a High Court.

The detenue has no right of legal assistance in the proceedings before the Advisory Board. But if the Government is given a facility, it should equally be provided to the detenue.

ADM, Jabalpur v. Shivkant Shukla [AIR 1976 SC 1207]

(Also known as "***Habeas Corpus case***")

RIGHT AGAINST EXPLOITATION [ARTICLE 23-24]

The right against exploitation, contained in ***Articles 23–24***, lays down certain provisions to prevent exploitation of the weaker sections of the society by individuals or the State.

Article 23 provides prohibits human trafficking, making it an offence punishable by law, and also prohibits forced labour or any act of compelling a person to work without wages where he was

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legally entitled not to work or to receive remuneration for it. However, it permits the State to impose compulsory service for public purposes, including conscription and community service.

The ***Bonded Labour system (Abolition) Act, 1976***, has been enacted by Parliament to give effect to this Article. Article 24 prohibits the employment of children below the age of 14 years in factories, mines and other hazardous jobs. Parliament has enacted the Child Labour (Prohibition and Regulation) Act, 1986, providing regulations for the abolition of, and penalties for employing, child labour, as well as provisions for rehabilitation of former child labourers.

As per the provisions enshrined the Constitution, the government passed "***The Immoral Traffic (Prevention) Act 1956***" and "***The Bonded Labour System (Abolition) Act 1976.***"

1. Even when the state takes up relief works such as famine or flood relief, it cannot pay less than minimum wages.
2. When the prisoners are sent for the rigorous imprisonment, they must be paid reasonable wages. Please note that as per Supreme Court if a prisoner is not paid wages, it is not a violation of Article 23. But if the under trials, persons sentences to simple imprisonments and those who have been detained under preventive detention cannot be asked to do manual work. They can do work if they wish to do out of their choice and it would require equitable wages.

What is Bonded Labor?

Bonded Labour or Forced Labour is forbidden. The Forced Labour means not only the physical and legal force *but also arising out of the compulsion of the economic circumstances.*

In this context, the Supreme Court of India in ***People's Union for Democratic Rights and others v. Union of India and others [1982]*** also known as "***Asiad Workers Case***" gave the following explanation:

> "We are, therefore, of the view that when a person provides labour of service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23 of the Constitution of India."

RIGHT TO FREEDOM OF RELIGION (ARTICLE 25-28)

The concept of secularism is implicit in the preamble of the Indian Constitution which declares to secure to all its citizens "liberty of thought, expression, belief, faith and worship."The word 'secularism' has been inserted by the *42nd Amendment Act, 1976*. In ***S.R. Bommai v. UoI (1994)***, the SC has held that "secularism is a basic feature of the Constitution."

The chief aspects of Indian Secularism are:-

1. No State Religion - Separation of State and Religion,
2. Peaceful co-existence of all religions,
3. Treatment of all religions equally by the State,
4. Equality of opportunity in the public field for all, irrespective of caste or creed or race or religion ensuring equal citizenship,
5. Freedom of religion both individual and corporate

The Right to Freedom of Religion, covered in ***Articles 25–28***, provides religious freedom to all citizens and ensures a secular state in India. According to the Constitution, there is no official State religion, and the State is required to treat all religions impartially and neutrally.

Article 25 guarantees all persons the freedom of conscience and the right to preach practice and propagate any religion of their choice. This right is, however, subject to public order, morality and health, and the power of the State to take measures for social welfare and reform. The right to

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propagate, however, does not include the right to convert another individual, since it would amount to an infringement of the other's right to freedom of conscience.

Article 26 guarantees all religious denominations and sects, ***subject to public order, morality and health***, ***to manage their own affairs in matters of religion, set up institutions of their own for charitable or religious purposes, and own, acquire and manage property in accordance with law***. These provisions do not derogate from the State's power to acquire property belonging to a religious denomination. The State is also empowered to regulate any economic, political or other secular activity associated with religious practice.

Article 27 guarantees that no person can be compelled to pay taxes for the promotion of any particular religion or religious institution.

Article 28 prohibits religious instruction in a wholly State-funded educational institution, and educational institutions receiving aid from the State cannot compel any of their members to receive religious instruction or attend religious worship without their (or their guardian's) consent.

RESTRICTIONS ON FREEDOM OF RELIGION

1) ***Religious liberty subjected to public order, morality and health*** - In the name of religion, no act can be done against public order, morality and health of public. Thus Section 34 of the Police Act prohibits the slaughter of cattle or indecent exposure of one's person in public place. These acts cannot be justified on plea of practice of religious rites. Likewise, in the name of religion 'untouchability' or traffic in human beings' e.g. system of *Dev-dasis* cannot be tolerated. These rights are subjected to the reasonable restrictions under clause (2) of Article 19. For instance, a citizen's freedom of speech and expression in matters of religion is subjected to reasonable restrictions under Article 19 (2). Right to propagate one's religion does not give right to anyone to "forcibly" convert any person to one's own religion. Forcible conversion of any person to one's own religion might disturb the public order and hence could be prohibited by law.

2) ***Regulation of economic, financial, political and secular activities associated with religious practices- Clause (2)(a)*** - The freedom to practice extends only to those activities which are the essence of religion. It would not cover secular activities which do not form the essence of religion. It is not always easy to say which activities fall under religious practice or which are of secular, commercial or political nature associated with religion practice. Each case must be judge by its own facts and circumstances.

3) ***Social Welfare and Social Reforms- Clause (2)(b)*** - Under this clause, the State is empowered to make laws for social welfare and social reform. Thus under this clause the State can eradicate social practices and dogmas which stand in the path of the country's onward progress. Such laws do not affect the essence of any religion. Prohibition of evil practices such as *Sati* or system of *Devadasi* has been held to be justified under this clause. The right protected under this clause is a right to enter into a temple for the purpose of worship. But it does not follow from this that, that right is, absolute and unlimited in character. No one can claim that a temple must be kept open for worship at all hours of the day and night or that he should be permitted to perform services personally which the Acharya alone could perform. The State cannot regulate the manner in which the worship of the deity is performed by the authorised *pujaris* of the temple or the hours and days on which the temple is to be kept open for *Darshan* or *Puja* for devotees. The right of Sikhs to wear and carry *Kripan* is recognised as a religious practice in Explanation 1 of Article 25. It does not mean that he can keep any number of *Kripans*. He cannot possess more than one *Kripan* without licence.

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FREEDOM TO MANAGE RELIGIOUS AFFAIRS (ARTICLE 26)

Article 26 says that, subject to public order, morality and health, every religious denomination or any section of it shall have the following rights-

(a) to establish and maintain institutions for religious and charitable purpose,
(b) to manage its own affairs in matters of religion,
(c) to own and acquire movable and immovable property,
(d) to administer such property in accordance with law.

The right guaranteed by Article 25 is an individual right while the right guaranteed by Article 26 is the right of an 'organised body' like the religious denomination or any section thereof.

FREEDOM FROM TAXES FOR PROMOTION OF ANY PARTICULAR RELIGION (ARTICLE 27)

Article 27 provides that no person shall be compelled to pay tax for the promotion or maintenance of any religion or religious denomination. This Article emphasises the secular character of the State. The public money collected by way of tax cannot be spent by the State for the promotion of any particular religion.

PROHIBITION OF RELIGIOUS INSTITUTION IN STATE AIDED INSTITUTION (ARTICLE 28)

According to ***Article 28(1)***, no religious instruction shall be imparted in any educational institution wholly maintained out of State funds. But this clause shall not apply to an educational institution which is administered by the State but was not established under any endowment or trust which requires that religious instruction shall be imparted in such institution. Thus Article 28 mentions four types of educational institutions:

(a) Institutions wholly maintained by the State.
(b) Institutions recognised by the State.
(c) Institutions that are receiving aid out of the State fund.
(d) ***Institutions that are administered by the State but are established any trust or endowment.***

In the institutions of (a) type, no religious instructions can be imparted.
In (b) and (c) type of institutions, religious instructions may be imparted only with the consent of the individuals.
In the (d) type institution, there is not restriction on religious instructions.

N Aditya v. Travancore Dewaswom Board

SC held that Brahmins do not have a monopoly over performing puja in a temple and said that a non-brahmin can be appointed as a pujari if he is properly trained and well versed with rituals and the mantras, as necessary to be recited for the particular deity.

Gulam Kadar Ahmadbhai Menon v. Surat Municipal Corporation (1998)

The Gujarat HC held that the right to religion guaranteed to citizens under Art.25 and 26 does not prohibit State to acquire any place of worship for public purpose or a welfare purpose.

Moulana Mufti Sayeed v. State of West Bengal (1999)

The Calcutta HC held that restrictions imposed by the State on the use of microphones and loud-speakers at the time of Azaan are not violative of Art. 25. Azaan is certainly an essential and integral part. Traditionally and according to the religious order, azaan has to be given by the imam or

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the person-in-charge of the mosques through their own voice and this is sanctioned under the religious order.

Church of God in India v. K.K.R.M.C. Welfare Association (2000)

The SC has held that in the exercise of the right to religious freedom under Articles 25 and 26, no person can be allowed to create noise pollution or disturb the peace of others.

Mohd. Hanif Qureshi v. State of Bihar (1958)

The petitioner claimed that the sacrifice of cows on the occassion of Bakrid was an essential part of his religion and therefore the State law forbidding the slaughter of cows was violative of his right to practise religion. The Court rejected this argument and held that this is not an essential part of the religion and the State can prohibit the same under Art.25 (2).

Rev Stainislaus v. State of M.P.(1958) - Forcible conversion is not allowed in the name of propagation of religion.

Aruna Roy v. Union of India (2002)

The validity of *National Curriculum Framework for School Education, 2000* which provided for education for value development based upon all religions and also a comparative study of philosophy of all religions was challenged on the ground that it was violative of Art.28. Three judge bench of the SC held that the above-said policy was neither violative of Art.28 nor it is against the concept of secularism.

CULTURAL AND EDUCATIONAL RIGHTS (Article 29-30)

India, being a diverse country with a myriad of ethnic backgrounds, religious influence and varied sub-cultures, also have minority groups. ***Articles 29 to 30*** of the Indian Constitution effectively aim to eradicate this problem by making a provision in the article known as 'Right to Cultural and Educational rights of Minority groups'.

The Cultural and Educational rights are measures to protect the rights of cultural, linguistic and religious minorities, by enabling them to conserve their heritage and protecting them against discrimination.

Article 29 grants any section of citizens having a distinct language, script culture of its own the right to conserve and develop the same, and thus safeguards the rights of minorities by preventing the State from imposing any external culture on them. It also prohibits discrimination against any citizen for admission into any educational institutions maintained or aided by the State, on the grounds only of religion, race, caste, language or any of them.

However, this is subject to reservation of a reasonable number of seats by the State for socially and educationally backward classes, as well as reservation of up to 50 percent of seats in any educational institution run by a minority community for citizens belonging to that community.

Article 30 confers upon all religious and linguistic minorities the right to set up and administer educational institutions of their choice in order to preserve and develop their own culture, and prohibits the State, while granting aid, from discriminating against any institution on the basis of the fact that it is administered by a religious or cultural minority.

The term "**minority**", while not defined in the Constitution, has been interpreted by the Supreme Court to mean any community which numerically forms less than 50% of the population of the state in which it seeks to avail the right under Article 30. In order to claim the right, it is essential that the educational institution must have been established as well as administered by a religious or linguistic minority. Further, the right under Article 30 can be availed of even if the educational institution established does not confine itself to the teaching of the religion or language of the minority concerned, or a majority of students in that institution do not belong to such minority. This right is

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subject to the power of the State to impose reasonable regulations regarding educational standards, conditions of service of employees, fee structure, and the utilisation of any aid granted by it.

RIGHT TO PROTECTION OF INTERESTS (ARTICLE 29)

The constitution of India ensures equal to all the citizens of India liberty pertaining to conserving their culture, language and script under **Article 29 (1)**.

This provision simply states that the citizens have the right to preserve their language, heritage and backgrounds and cannot be stifled by major language groups.

The second right under **Article 29 (2)**, says that 'no minority groups will be denied admission into any educational system or institution of their choice, and will also not be deprived of any funds from the state purely based on religion, caste or language'.

In this case, no minority or majority can be denied admission into any state or private institution on the basis of social factors such as language and religion. The institutions have the responsibility of accepting students on the basis of merit and talent, and not on the basis of language, class and religion. The institutions also have to make sure that the cultural diversity of the country is well-maintained in the form of multifarious languages and various religious groups.

Although there appears to be overlapping of provisions in respect to Article 15 (1) and 29 (2), Article 15 (1) is a more general provision stating that there shall be no discrimination on the basis of sex, caste and religion. Article 29, however, is more specific pertaining to a particular species of the system in the form of gaining admission into educational systems and getting benefits from state funds like all other citizens.

RIGHT TO ESTABLISH EDUCATIONAL INSTITUTIONS (ARTICLE 30)

Article 30 of the Indian Constitution states that religious and language minorities will have the right to administer and start their own educational institutions. However, no minority, other than the ones suggested in the article will have the right to establish any institution.

Article 30 (1A)- *In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.*

The second provision, under Article 30 (2) states that, the government will not deny these institutions any state funds or aid on the basis that it is run and managed by minority groups.

PROTECTION OF MINORITY GROUPS

The government has come with varied laws to help protect the rights of the minorities. The Protection of Civil Rights Act 1989 and the Prevention of Atrocities Act of 1989 are two such acts established by the government. The National Commission for Minority Educational Institutions, 1992 was set up to look into any grievances lodged by the minorities or any violation of rights. The commission was also set up to advice the state or central government on any matter relating to the protection of educational minority groups by providing reports and suggestions.

LANDMARK JUDGMENTS ON RIGHT TO ESTABLISH AND ADMINISTER

S.P. Mittal v. UoI (1983) Validity of **Auroville (Emergency Provisions) Act, 1980** was challenged on the ground of being violative of Art. 29 and 30.

Facts: The society was established to preach and propagate the ideals and teaching of Sri Aurobindo. On receiving complaints about mismanagement of the affairs of the society, the Central Government enacted the Auroville (Emergency Provisions) Act, 1980 for taking over the management of the society. It was held that the Act was not violative of Art. 30. Since the said Society was not a religious denomination, the taking over of the management by the State did not violate Articles 29 and 30 of the Constitution.

State of Madras v. Champakam Dorairajan (1951)

An order of Madras Govt. which fixed the proportion of students of each community that could be admitted into the State Medical and Engineering Colleges. The order was challenged on the ground that it denied admission to a person only on the ground of religion or caste. The petitioners in this case were denied admission only because they were Brahmins. The SC held the order invalid for being violative of Art. 29(2)

State of Bombay v. Bombay Educational Society (1954)

The SC struck down an order of the Bombay Govt. banning admission of those whose language was not English into schools having English as medium of instruction because it denied admission solely on the ground of language.

St. Xaviers College v. State of Gujarat (1974)

The petitioners, a Jesuit Society of Ahmedabad, were running St. Xaviers College of Arts and Commerce in Ahmedabad, which was affiliated to Gujarat University, with the object of giving higher education to the Christian students. The said petitioners challenged certain provisions of the Gujarat University Act, 1949 as being violative of Art. 30. The Court held that the said provisions violated the rights provided by Art.30 and thus does not apply upon the minority institutions.

RIGHT OF A RECOGNITION OR AFFILIATION - NOT A FUNDAMENTAL RIGHT

Affiliation and recognition are matters of policy and the institution seeking recognition or an affiliation has to comply with the basic norms and requirements for claiming the same.

In ***TMA Pai Foundation Judgment***, the Supreme Court has laid down that the right to establish educational institutions of their choice is available not only to the minorities but to all the citizens of the India. One of the fundamental rights in Article 19(1)(g) of the Constitution i.e. "**to practice any profession, or to carry on any occupations, trade or business**" - has been interpreted by the Supreme Court to include right to establish educational institutions, which is a right guaranteed to all the citizens.

What are the actual rights of the minorities?

Minorities can not only establish educational institutions of their choice but also administer them. Supreme Court has further laid down that the right to establish and administer broadly comprises of right to-

(a) admit students;
(b) set up a reasonable fee structure;
(c) constitute a governing body i.e. Management;
(d) appoint staff (teaching and non-teaching); and
(e) take action if there is dereliction of duty on the part of any employees.

Status of Non-minority Institutions-

Non-minority (i.e. the Majority) educational institutions are governed by the policies and regulations of the state government or the Central Government in matters of admission, appointment of staff, fixing the fee structure and constitution of governing body, where as the minority institutions are not.

Except the right to establish and administer educational institutions of their choice, there is no other right that minorities enjoy under the Constitution of India.

RIGHT TO CONSTITUTIONAL REMEDIES (Article 32 & 226)

Any provision in any Constitution for Fundamental Rights is meaningless unless there are adequate safeguards to ensure enforcement of such provisions. Enforcement of the fundamental rights

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largely depends upon the degree of independence of the Judiciary and the availability of relevant instruments with the executive authority.

Indian Constitution lays down certain provisions to ensure the enforcement of Fundamental Rights. These are as under:

(a) The Fundamental Rights provided in the Indian Constitution are guaranteed against any executive and legislative actions. Any executive or legislative action, which infringes upon the Fundamental Rights of any person or any group of persons, can be declared as void by the Courts under Article 13 of the Constitution.

(b) In addition, the Judiciary has the power to issue the prerogative writs. These are the extraordinary remedies provided to the citizens to get their rights enforced against any authority in the State. These writs are - ***Habeas corpus***, ***Mandamus, Prohibition***, ***Certiorari and Quo warranto***. Both, High Courts as well as the Supreme Court may issue the writs.

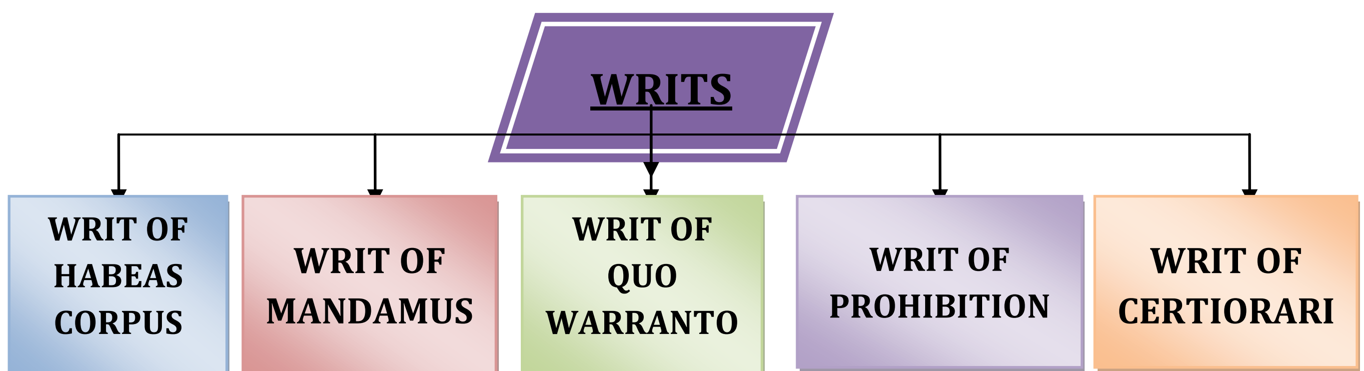
The Fundamental Rights provided to the citizens by the Constitution cannot be suspended by the State, except during the period of emergency, as laid down in Article 359 of the Constitution.

However, Article 32 is referred to as the "Constitutional Remedy" for enforcement of Fundamental Rights. This provision itself has been included in the Fundamental Rights and hence it cannot be denied to any person. Dr. B.R. Ambedkar described Article 32 as the heart and soul of Indian Constitution, without which the Constitution would be reduced to nullity.

By including Article 32 in the Fundamental Rights, the Supreme Court has been made the protector and guarantor of these Rights. An application made under Article 32 of the Constitution before the Supreme Court, cannot be refused on technical grounds. In addition to the prescribed five types of writs, the Supreme Court may pass any other appropriate order. Moreover, only the questions pertaining to the Fundamental Rights can be determined in proceedings against Article 32.

Under Article 32, the Supreme Court may issue a writ against any person or government within the territory of India. Where the infringement of a Fundamental Right has been established, the Supreme Court cannot refuse relief on the ground that the aggrieved person may have remedy before some other court or under the ordinary law. The relief can also not be denied on the ground that the disputed facts have to be investigated or some evidence has to be collected. Even if an aggrieved person has not asked for a particular writ, the Supreme Court, after considering the facts and circumstances, may grant the appropriate writ and may even modify it to suit the exigencies of the case.

Normally, only the aggrieved person is allowed to move the Court. But it has been held by the Supreme Court that in social or public interest matters, any one may move the Court. Any piece of legislation or law, which tends to interfere with the power of Supreme Court under Article 32 shall be declared as void. Hence, there is no way that the legislative or the executive authorities can by-pass the power and responsibility entrusted to the Supreme Court by the Constitution.



1) ***Writ of Habeas corpus***: It is the most valuable **writ for personal liberty**. Habeas Corpus means, "**Let us have the body**." A person, when arrested, can move the Court for the issue of

Habeas Corpus. It is an order by a Court to the detaining authority to produce the arrested person before it so that it may examine whether the person has been detained lawfully or otherwise. If the Court is convinced that the person is illegally detained, it can issue orders for his release.

2) ***The Writ of Mandamus***: Mandamus is a Latin word, which means "**We Command**". ***Mandamus is an order from a superior court to a lower court or tribunal or public authority to perform an act, which falls within its duty***. It is issued to secure the performance of public duties and to enforce private rights withheld by the public authorities. Simply, it is a writ issued to a public official to do a thing which is a part of his official duty, but, which, he has failed to do, so far. This writ cannot be claimed as a matter of right. It is the discretionary power of a court to issue such writs.

3) ***The Writ of Quo-Warranto***: The word Quo-Warranto literally means "***by what warrants***?" or "***by what authority***". It is a writ issued with a view to restraining a person from acting in a public office to which he is not entitled. The writ of quo warranto is used to prevent illegal assumption of any public office or usurpation of any public office by anybody. For example, a person of 62 years has been appointed to fill a public office whereas the retirement age is 60 years. Now, the appropriate High Court has a right to issue a writ of quo-warranto against the person and declare the office vacant.

4) ***The Writ of Prohibition***: Writ of prohibition means to forbid or to stop and it is popularly known as ***'Stay Order'***. This writ is issued when a lower court or a body tries to transgress the limits or powers vested in it. It is a writ issued by a superior court to lower court or a tribunal forbidding it to perform an act outside its jurisdiction. After the issue of this writ, proceedings in the lower court etc. come to a stop.

5) ***The Writ of Certiorari***: Literally, Certiorari means ***to be certified***. The writ of certiorari is ***issued by the Supreme Court to some inferior court or tribunal to transfer the matter to it or to some other superior authority for proper consideration.***

WRITS OF PROHIBITION, MANDAMUS AND CERTIORARI

The writ of prohibition is issued by any High Court or the Supreme Court to any inferior court, prohibiting the latter to continue proceedings in a particular case, where it has no legal jurisdiction of trial. While the writ of mandamus commands doing of particular thing, the writ of prohibition is essentially addressed to a subordinate court commanding inactivity. Writ of prohibition is, thus, not available against a public officer not vested with judicial or quasi-judicial powers. The Supreme Court can issue this writ only where a fundamental right is affected.

The writ of certiorari can be issued by the Supreme Court or any High Court for quashing the order already passed by an inferior court. In other words, *while the prohibition is available at the earlier stage, certiorari is available on similar grounds at a later stage. It can also be said that the writ of prohibition is available during the pendency of proceedings before a sub-ordinate court, certiorari can be resorted to only after the order or decision has been announced.*

There are several conditions necessary for the issue of writ of certiorari, which are as under:

(a) There should be court, tribunal or an officer having legal authority to determine the question of deciding fundamental rights with a duty to act judicially.

(b) Such a court, tribunal or officer must have passed order acting without jurisdiction or in excess of the judicial authority vested by law in such court, tribunal or law.

The order could also be against the principle of natural justice or it could contain an error of judgment in appreciating the facts of the case.

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UNIT-III
FUNDAMENTAL DUTIES, DIRECTIVE PRINCIPLES

5. DIRECTIVE PRINCIPLES OF STATE POLICY
6. INTER-RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES.
7. FUNDAMENTAL DUTIES

DIRECTIVE PRINCIPLES OF STATE POLICY

Introduction-

Part IV of the Constitution of Indian contains Directive Principles of State Policy which extends from ***Articles 36 to 51*** (both inclusive). The concept of Directive Principles under Part IV of Indian Constitution have been inspired by the Directive Principles given in the ***Constitution of Ireland*** and also by the principles of Gandhism; and relate to social justice, economic welfare, foreign policy, and legal and administrative matters.

In previous days, it was thought that the main duty of state is the maintenance of law and order and the protection of life, liberty and property of the subjects. This was rather a restrictive approach towards the concept of State. The Directive Principles are certain active obligations or guidelines to State which lay down certain economic and social goal to be pursued by the State to attain a welfare State. These principles impose certain obligations on the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. If we go through the 16 articles contained in Part IV, we will find that these directives extend to almost every field of life, i.e., economic, social, legal, environmental.

EXTENT TO WHICH THE EXECUTIVE, LEGISLATURE AND JUDICIARY IS OBLIGED TO FOLLOW THE DIRECTIVE PRINCIPLES OF STATE POLICY

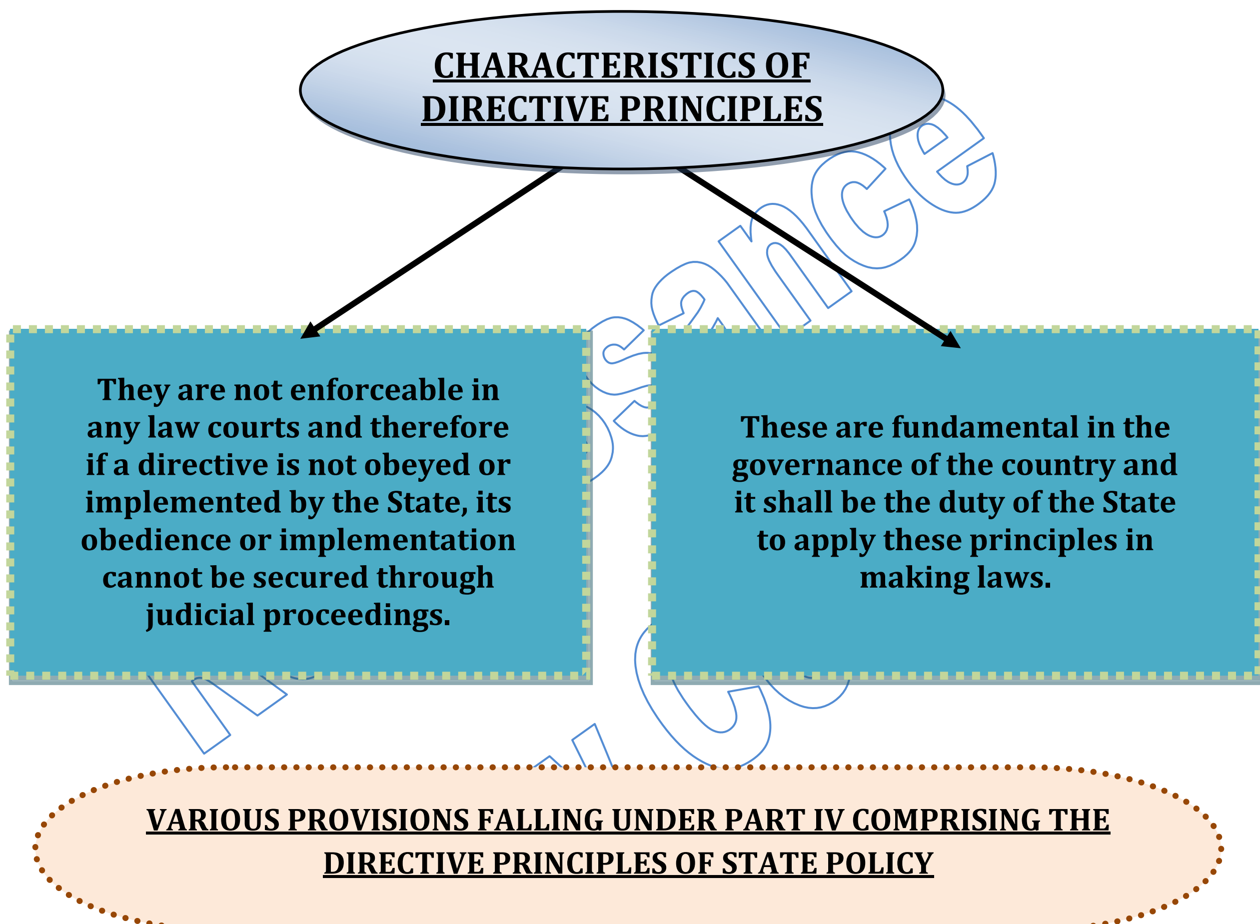
According to ***Article 37***, the directive principles **shall not be enforceable by any court**, but these principles are fundamental in the governance of the country and it shall be the duty of the state to apply them in making laws.

Here, the word 'State' includes the executive, the legislature and the judiciary. Hence a duty has been imposed upon the organs of the Government to apply these principles in making laws. It is the duty of the Judiciary to interpret the law in the light of these directive principles.

Supreme Court in many decisions has laid down the following two propositions–

(i) The directive principles run as subsidiary to the fundamental rights.

(ii) The directive principles can also be taken into consideration in constructing the ambiguous provisions of the Constitution.



VARIOUS PROVISIONS FALLING UNDER PART IV COMPRISING THE DIRECTIVE PRINCIPLES OF STATE POLICY

Despite being non-justiciable, the Directive Principles act as a check on the State; theorised as a yardstick in the hands of the electorate and the opposition to measure the performance of a government at the time of an election.

Article 37 while stating that the Directive Principles are not enforceable in any court of law, declares them to be "fundamental to the governance of the country" and imposes an obligation on the State to apply them in matters of legislation. Thus, they serve to emphasise the welfare state model of the Constitution and emphasise the positive duty of the State to promote the welfare of the people by affirming social, economic and political justice, as well as to fight income inequality and ensure individual dignity, as mandated by Article 38.

Article 39 lays down certain principles of policy to be followed by the State, including providing an adequate means of livelihood for all citizens, equal pay for equal work for men and women, proper working conditions, reduction of the concentration of wealth and means of production from the hands of a few, and distribution of community resources to "sub-serve the common good". These clauses highlight the Constitutional objectives of building an egalitarian social order and establishing a welfare state, by bringing about a social revolution assisted by the State, and has been used to support

the nationalisation of mineral resources as well as public utilities. Further, several legislations pertaining to agrarian reform and land tenure have been enacted by the federal and state governments, in order to ensure equitable distribution of land resources.

Article 39A requires the State to provide free legal aid to ensure that opportunities for securing justice are available to all citizens irrespective of economic or other disabilities.

Article 40 provides that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Articles 41–43 mandate the State to endeavour to secure to all citizens the right to work, to secure a living wage, ensure social security, render maternity relief, and a decent standard of living. These provisions aim at establishing a socialist state as envisaged in the Preamble.

Article 43 also places upon the State the responsibility of promoting cottage industries, and the federal government has, in furtherance of this, established several Boards for the promotion of khadi, handlooms etc., in coordination with the state governments.

Article 43A mandates the State to work towards securing the participation of workers in the management of industries.

Article 44 encourages the State to secure a uniform civil code for all citizens, by eliminating discrepancies between various personal laws currently in force in the country. However, this has remained a "dead letter" despite numerous reminders from the Supreme Court to implement the provision.

Article 45 originally mandated the State to provide free and compulsory education to children between the ages of six and fourteen years, but after the ***86th Amendment in 2002***, this has been converted into a Fundamental Right and replaced by an obligation upon the State to secure early childhood care to all children below the age of six.

Article 46 makes it mandatory upon the State to promote the interests of and work for the economic uplift of the scheduled castes and scheduled tribes and protect them from discrimination and exploitation. Several enactments, including two Constitutional amendments i.e. 73rd and 74th Constitutional Amendments, have been passed to give effect to this provision.

Article 47 commits the State to raise the standard of living and improve public health, and prohibit the consumption of intoxicating drinks and drugs injurious to health. As a consequence, partial or total prohibition has been introduced in several states, but financial constraints have prevented its full-fledged application.

Article 48 makes it mandatory upon the State to organise agriculture and animal husbandry on modern and scientific lines by improving breeds and prohibiting slaughter of cattle.

Article 48A mandates the State to protect the environment and safeguard the forests and wildlife of the country.

Article 49 places an obligation upon the State to ensure the preservation of monuments and objects of national importance.

Article 50 requires the State to ensure the separation of judiciary from executive in public services, in order to ensure judicial independence, and federal legislation has been enacted to achieve this objective.

The State, according to ***Article 51***, must also strive for the promotion of international peace and security, and Parliament has been empowered under Article 253 to make laws giving effect to international treaties.

CLASSIFICATION OF DIRECTIVE PRINCIPLES OF STATE POLICY

There is a classification of the Directive principles of State policy according to which the Constitutional draftsmen have classified the articles or the provisions falling under Part IV on the basis of their basic purposes or the legislative intent. There are three kinds of Directive Principles of State Policy as enumerated in the Constitution of India from Article 38 to Article 51. They are as follows:-

1) The directives in the nature of ideals of the State are-

(a) The State shall strive to promote the welfare of the people by securing a social order permeated by social, economic and political justice (Art. 38).

(b) The State shall endeavour to secure just and humane conditions of work a living wage a decent standard of living and social and cultural opportunities for all workers (Art 43).

(c) The State shall endeavour to raise the level of nutrition and standard of living and to improve the health of the people (Art. 47).

(d) The State shall endeavour to promote international peace and amity (Art. 51)

(e) The State shall direct its policy towards securing equitable distribution of the material resources of the community and prevention of concentration of wealth and means of production to the common detriment (Art . 39)

2) Directives in the nature of policy of the State–

(a) To establish economic democracy and justice by securing certain economic rights.

(b) To secure a uniform civil code for the citizen. (Art. 44)

(c) To provide free and compulsory primary education (Art. 45)

(d) To prohibit consumption of liquor and intoxicating drug except for medical purposes (Art. 47).

(e) To develop cottage industries (Art. 43).

(f) To organise agriculture and animal husbandry on modern lines (Art. 48).

(g) To prevent slaughter of useful cattle i.e. cows, calves and other milch and draught, cattle (Art. 48).

(h) To organise village Panchayats as units of self-government (Art. 40),

(i) To protect and improve the environment and to safeguards forest and wild life (Art. 48A).

(j) To protect and maintain places of historic or artistic interest (Art. 49).

(k) To separate the Judiciary from the Executive (Art. 50).

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3) Directives in the nature of non-justiciable rights of every citizen-

(a) Right to adequate means of livelihood (Art. 39 (a))
(b) Right to both sexes to equal pay for equal work (Art. 39 (d))
(c) Right against economic exploitation (Art. 39(e),(f)).
(d) Right to work (Art.41)
(e) Right to education (Art.45).

IMPORTANCE OF DIRECTIVE PRINCIPLES

- The Directive Principles are fundamental in the smooth governance of the States
- The Directive Principles lay down the foundation of economic democracy.
- These are measuring rods to judge the achievements of the Government.
- The Directive Principles aim to establish a welfare state.
- These principles supplement the Fundamental rights.
- These principles also serve as guiding principles for courts.
- They bring stability and continuity in State policies.

WHY DID THE FRAMERS OF THE CONSTITUTION MADE DIRECTIVE PRINCIPLES NON-JUSTICIABLE IN NATURE?

- India as a country didn't possess enough financial resources to implement the directions given in the directive principles.
- Moreover, vast diversity and backwardness in the country posed as a hurdle in the way of their implementation.
- India after independence had many preoccupations i.e. various regions had their unique set of problems which they needed to deal with them on priority. If these directive principles were made compulsory they would have added to the burden on these regions.

CRITICISM OF DIRECTIVE PRINCIPLES OF STATE POLICY

- Although very noble in thought but the Directive Principles are non-justiciable in nature.
- Directive Principles are nothing more than moral principles or obligations.
- Directive Principles are neither properly classified nor logically arranged.
- Some Directive Principles are not practicable.
- Directive Principles are foreign in nature.
- Directive Principles are actually against the principle of State Sovereignty.
- It is illogical to include these principles in the Constitution.
- These are responsible for Constitutional conflicts.
- No mention of methods to implement these has been provided.

DIFFERENCE BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

FUNDAMENTAL RIGHTS	DIRECTIVE PRINCIPLES OF STATE POLICY
Part III—Arts. 12 to 35 deal with Fundamental Rights.	Part 1V—Arts. 36 to 51 deal with Directive principles.

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Fundamental rights mainly aimed at assuring political freedom to the citizen by protecting against State action.	Directive principles are aimed at securing social and economic freedom by appropriate State action.
Fundamental rights are justiciable rights	Directive principles are justiciable rights.
Fundamental rights are sacrosanct and not liable to be curtailed by the State action.	Directive principles are sacrosanct.
Fundamental rights are negative in character and the State not to do certain things.	Directive principles are positive in character and the State is directed to take certain positive steps.
Fundamental rights described by the Supreme Court as transcended 'inalienable' and personal.	Directive principles described by the Supreme Court as conscience or the Constitution.
Fundamental rights considered as means by which goals to be achieved.	Directive principles prescribed the goals to be attained.

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RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

	MILESTONE	DESCRIPTION
1.	**Champakam Dorairajan Case (1951)**	Supreme Court (SC) in its verdict said that in case of conflict between Fundamental Rights and Directive Principles, Fundamental Rights would always prevail. It also said that Directive principles have to work as a supplement with Fundamental rights & Parliament can't amend Fundamental Rights.
2.	**Golaknath Case (1967)**	SC held that Parliament cannot amend Fundamental Rights to give effect to the Directive Principles.
3.	**24th Amendment Act, 1971**	This amendment was done in reaction to Golaknath Case judgement and to nullify the effect of the same. It declared that Parliament has the right to amend the Fundamental Right by use of a Constitutional Amendment.
		It was also done in reaction to Golaknath Case judgement. It inserted a new Article 31-C which contained the following two provisions:

4.	25th Amendment Act, 1971	(i) No law which gives effect to the directive principles can be declared invalid and unconstitutional on the grounds that it is violating fundamental rights namely Article 14 (equality before law and equal protection of laws), Article 19(protection of six rights in respect of speech, assembly, movement, etc) & Article 31(right to property). (ii) No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy. (Note: Right to Property was a fundamental right at this time.)
5.	Kesavananda Bharti Case (1973)	SC in its verdict held that the second provision mentioned in the Article 31-C is invalid & unconstitutional as it is taking away the power of court for judicial review. However, first provision of Article 31-C was held valid & constitutional.
6.	42nd Amendment Act, 1976	Position of Directive Principles was made superior to Fundamental Rights
7.	Minerva Mills Case (1980)	SC in its decision declared that Directive Principles are subordinate to Fundamental Rights. But position of Fundamental Rights under Article 14 & Article 19 was made subordinate to Directive Principles. SC also said that Constitution demands to maintain balance between the Fundamental Rights & Directive principles. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. **[Note: Right to property (Article 31) was abolished as a fundamental right by 44th Amendment Act (1978)]**
8.	Present Position	For now Fundamental Rights enjoy supremacy over Directive Principles **(except Article 14 & Article 19)**. Parliament is entitled to amend Fundamental Right in order to give effect to the Directive Principles as long as it does not affect to the basic structure of the Constitution.

FUNDAMENTAL DUTIES

Rights and Duties are like two sides of a coin, absolutely inseparable. Whenever and wherever we have any rights, we must have corresponding duties. Whether it be the home, the society or the country, in every sphere of life we have rights and duties that go hand in hand. We have rights in the same measure as we have duties. The Fundamental Duties are a novel feature of the Indian Constitution. No democratic polity can ever succeed where the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties and coming forward to give their best to the country.

ORIGIN: The Fundamental Duties of citizens were ***added to the Constitution by the 42nd Amendment in 1976 by way of inserting*** **PART IV-A** ***upon the recommendations of the Swaran Singh Committee*** that was constituted by the government earlier that year. All the fundamental duties were incorporated in one article only i.e. ***Article 51-A***. Originally, constitution had only 10 fundamental duties. Originally ten in number, the Fundamental Duties were increased to eleven by the 86th Amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years. The idea for Fundamental Duties has been borrowed from erstwhile ***USSR***.

Fundamental duties are obligatory in nature. But there is no provision in the constitution for direct enforcement of these duties. There is no sanction either to prevent their violation. However the importance of fundamental duties can be gauged from the following facts:

(a) As rights and duties are the two side of the same coin, it is expected that one should observe one's duties in order to seek the enforcement of one's fundamental rights, in the context if a person approaches the court for the enforcement of any of his fundamental rights, the court may refuse to take a lenient view of him if it comes to know that the concerned individual has no respect for what is expected of him by the state as a citizen of the country.

(b) They can be used for interpreting ambiguous statutes. The court may look at the fundamental duties while interpreting equivocal statutes which admit of two constructions.

(c) While determining the constitutionality of any law, if court finds that it seeks to give effect to any of the duties, it may consider such law to be 'reasonable', and thereby, save such law from unconstitutionality.

FUNDAMENTAL DUTIES IN INDIA

Under **Article 51-A** of Indian Constitution, every citizen has been obligated to perform certain duties called the ***Fundamental Duties***. These duties are defined as the ***moral obligations of all citizens* to help promote a spirit of patriotism and to uphold the unity of India**.

The following are the Eleven Fundamental Duties of every citizen of India:

(a) *To abide by the Constitution and respect the National Flag and the National Anthem;*

The first and the foremost duty assigned to every citizen of India is to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. These are the very physical foundations of our citizenship. Citizens are supposed to maintain the dignity of the Constitution by not indulging in any activities in violation of the

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letter or spirit of the Constitution. Ours is a vast country with many languages, sub-cultures and religious and ethnic diversities, but the essential unit of the country is epitomized in the one Constitution, one flag, one people and single citizenship. We are all governed and guided by this Constitution irrespective of caste, religion, race, sex, etc. National Flag and the National Anthem are symbols of our history, sovereignty, unity and pride. We, the citizens of India, have to be equally proud of our nation, our Constitution, our National Flag and our National Anthem. We must put the nation above our narrow personal interests and then only we will be able to protect our hard-earned freedom and sovereignty.

(b) ***To cherish and follow the noble ideals which inspired our national struggle for freedom;***

The citizens of India must cherish and follow the noble ideals which inspired the national struggle for freedom. The battle of freedom was a long one where thousands of people sacrificed their lives for our freedom. It becomes our duty to remember the sacrifices made by our forefathers for the cause of the country. But, what is much more important is to remember, imbibe and follow the ideals which pervaded our unique struggle. It was not a struggle merely for political freedom of India. It was for the social and economic emancipation of the people all over the nation. If we, the citizens of India remain conscious of and committed to these ideals, then only we will be able to do justice with the great struggle of our freedom fighters.

(c) ***To uphold and protect the sovereignty, unity and integrity of India;***

It imposes a Fundamental Duty on every citizen of India that he shall not do anything derogatory of upholding or protecting the sovereignty, unity or integrity of India. It is a duty prohibitory in nature addressed to traitors and spies.

(d) ***To defend the country and render national service when called upon to do so;***

In modern nation States, it is goes without saying that every citizen is bound to be ready to defend the country against war or external aggression. The present day wars are not fought on the battlefield only nor are they won only by the armed forces; the citizens at large play a most vital role in a variety of ways. Sometimes, civilians may be required also to take up arms in defence of the country.

(e) ***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;***

The duty to promote harmony and the spirit of common brotherhood amongst all the people of India essentially flows from the basic value of fraternity enshrined in the Preamble to the Constitution. India is a country of different castes, languages, religions and many cultural streams but we are one people with one Constitution, one flag and single citizenship. Spirit of brotherhood should come very normally among the citizens of a country like India where the norm has been to consider the entire world as one family. The Constitution also casts upon us the Fundamental Duty of ensuring that all practices derogatory to the dignity of women are renounced. This again should come normally to a country where it is an saying that Gods reside where women are worshipped.

(f) ***To value and preserve the rich heritage of our composite culture;***

Our cultural heritage is one of the noblest and the richest. What we have inherited from the past, we must preserve and pass on to the future generations. In fact, each

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generation leaves its footprints on the sands of time. We must hold precious and dear what our fore-fathers have created and their successive generations bequeathed to us as symbols of their artistic excellence and achievements. Generations to come will always draw an inspiration from past history which stimulates them to aim at ever greater heights of achievement and excellence. It becomes the ardent duty of every citizen to ensure that these monuments and pieces of art are not in any way damaged, disfigured, scratched or subjected to vandalism or greed of unscrupulous traders and smugglers.

(g) ***To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures;***

In the face of the menace of the increasing pollution and environmental degradation, it is the duty of every citizen to protect and improve natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The rising air, water and noise pollution and large-scale denudation of forest are causing immense harm to all human life on earth. The mindless and wanton deforestation in the name of needs of development is causing havoc in the form of natural calamities and imbalances. By protecting our forests, planting new trees, cleaning rivers, conserving water resources, reforesting wastelands, hills and mountains and controlling pollution in cities, villages and industrial units, we can help save the future of our coming generations and of planet itself. What is needed is a concerted effort at, an awareness campaign and a planned strategy to move forward through voluntary citizen initiatives. Governmental steps alone would not suffice.

(h) ***To develop the scientific temper, humanism and the spirit of inquiry and reform;***

It is the bounden duty of every citizen to preserve and promote a scientific temper and a spirit of inquiry to keep pace with the fast changing world.

(i) ***To safeguard public property and to abjure violence;***

It is most unfortunate that in a country which preaches non-violence to the rest of the world, we see from time to time instances of senseless violence and destruction of public property indulged in by a few of its citizens. This is why it became necessary to prescribe the responsibility "to safeguard public property and abjure violence" as a fundamental duty of the citizens.

(j) ***To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement;***

The drive for excellence in all spheres of individual and collective activity is the demand of times and a basic requirement in a highly competitive world. This would include respect for professional obligations and excellence.

(k) ***To provide opportunities for education by the parent the guardian, to his child, or a ward between the age of 6-14 years as the case may be.***

Significant points of Fundamental Duties

- The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the Swarn Singh Committee that was constituted by the government earlier that year.
- Fundamental duties are applicable only to citizens and not to the aliens.
- India borrowed the concept of Fundamental Duties from USSR.
- The inclusion of Fundamental Duties brought our Constitution in line with Article 29 (1) of the Universal Declaration of Human Rights and with provisions in several modern Constitutions of other countries.

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- Out of the ten clauses in Article 51A, six are positive duties and the other five are negative duties. Clauses (b), (d), (f), (h), (j) and (k) require the citizens to perform these Fundamental Duties actively.
- It is suggested that a few more Fundamental Duties, namely, duty to vote in an election, duty to pay taxes and duty to resist injustice may be added in due course to Article 51A.
- A number of judicial decisions are available towards the enforcement of certain clauses under Article 51A.
- Comprehensive legislation is needed for clauses (a), (c), (e), (g) and (i). The remaining 5 clauses, which are exhortation of basic human values, have to be developed amongst citizens through the education system by creating proper and graded curricular input from primary level of education to the higher and professional levels.

Some legal provisions in consonance with the Fundamental Duties are-

(a) In order to ensure that no disrespect is shown to the National Flag, Constitution of India and the National anthem, the **Prevention of Insults to National Honour Act, 1971** was enacted.

(b) The **Emblems and Names (Prevention of Improper Use) Act, 1950** was enacted soon after independence to prevent improper use of the National Flag and the National Anthem.

(c) There are a number of provisions in the existing criminal laws to ensure that the activities which encourage enmity between different groups of people on grounds of religion, race, place of birth, residence, language, etc. are adequately punished. Writings, speeches, gestures, activities, exercise, drills, etc. aimed at creating a feeling of insecurity or ill-will among the members of other communities, etc. have been prohibited under **Section 153-A of the Indian Penal Code, 1860.**

(d) Imputations and assertions prejudicial to the national integration constitute a punishable offence under **Section 153-B of the Indian Penal Code, 1860**.

(e) A Communal organization can be declared unlawful association under the provisions of **Unlawful Activities (Prevention) Act, 1967**.

(f) Offences related to religion are covered in **Sections 295-298 of the Indian Penal Code.**

(g) Provisions of the **Protection of Civil Rights Act, 1955 (earlier the Untouchability (Offences) Act, 1955).**

(h) **Sections 123(3) and 123(3A) of the Representation of People Act, 1951** declares that soliciting of vote on the ground of religion and the promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India on the grounds of religion, race, caste, community or language is a corrupt practice. A person indulging in a corrupt practice can be disqualified for being a Member of Parliament or a State Legislature under **Section 8A of the Representation of People Act, 1951.**

- ***Bijoe Emannuel v. State of Kerala [AIR 1987 SC 758]*** - The Supreme court held that proper respect was shown by the students to the National them by standing up in silence when the National anthem was sung. By not joining in the singing, the Court held, did not amount to committing disrespect to the National Anthem.

UNIT-IV
UNION EXECUTIVE, LEGISLATURE AND JUDICIARY

1. **UNION EXECUTIVE – THE PRESIDENT, VICE-PRESIDENT**
2. **UNION LEGISLATURE – COUNCIL OF MINISTERS**
3. **UNION JUDICIARY – SUPREME COURT**
4. **RIGHT TO CONSTITUTIONAL REMEDIES**

UNION EXECUTIVE: PRESIDENT, VICE PRESIDENT

The Union Executive broadly covers the President, Council of Ministers and the Prime Minister. Under the Indian Constitution, the President of India enjoys a unique position. President is the **head of the Union Executive**. ***Article 52*** creates the position of the President. The **President of India** is the head of state of the Republic of India. He is considered to be above party politics and is **not a member of any political party**.

The President is the **first citizen of the country** and **formal head of the executive, legislature and judiciary of India**. He is also the **commander-in-chief of the Indian Armed Forces**. He represents sovereignty of the country. He is elected by the elected representatives of the people.

POSITION OF THE PRESIDENT UNDER INDIAN CONSTITUTION

Article 52 provides that there shall be a President of India and ***Article 53*** provides that the executive powers of the Union shall be vested in the President of India and shall be exercised either directly or through officers subordinate to him in accordance with the *Constitution*. Thus President of India is bound to act in accordance with the Constitution.

Also, ***Article 74*** of the Constitution provides that there shall be Council of Ministers with the Prime Minister at the head to aid and advice the President of India. Thus, a question arises what does aid and advise mean? Can President of India refuse or disallow or disregard the advice tendered or given by the Council of Ministers to the President? As ***Article 75 (3)*** provides, the Council of Ministers shall be collectively responsible to the House of the People. In Parliamentary form of Government, Council of Ministers is responsible to the Lok Sabha. Similarly, if President does not act in accordance with the Constitution then there is provision for his impeachment. Under Article 368, a provision has been made that if any Amendment Act has been passed in order to amend the Constitution, the President shall have to sign it. It is very clear from all the above provisions that President cannot go against the wishes of the Council of Ministers as headed by the Prime Minister. He is said to be a puppet in the hands of Prime Minister.

DUTIES OF THE PRESIDENT

The primary duty of the President is to preserve, protect and defend the Constitution and the law of India as made part of his oath (***Article 60***). He is liable for impeachment for violation of the Constitution (***Article 61)***.

The Constitution of India envisages a parliamentary Government in India. ***Part V*** of the Constitution of India deals with the office of the President of India. Although Article 53 of the

Constitution says that the executive power of union shall be exercised by the President either directly or through officers sub-ordinate to him.
In practice the President has to abide by the decisions of the council of ministers with the Prime Ministers at the head. Our Constitution is a harmonious blend of the political systems of the U.S.A. and the U.K. The President merely represents the nation, he does not rule.

QUALIFICATIONS TO BE ELECTED A PRESIDENT

The candidate-

- **(a)** Should be a citizen of India;
- **(b)** Should be of not less than 35 years of age;
- **(c)** Should be qualified for elections as a member of the House of people; and
- **(d)** Should not hold any office of profit under the Government of India or any state Government or any local authority subject to the control of any of these Government;
- **(e)** Must not be a member of the parliament.

ELECTION OF THE PRESIDENT

The founding fathers of the Constitution did not provide for the popular election of the President. ***Article 54*** of the Indian Constitution provides for the election of the President of India.
The President of India is elected by indirect election that is by an electoral college through secret ballot, in accordance with the system of proportional representation by means of the single transferable vote.
As far as practicable, there shall be uniformity of representation of the different states at the election, according to the population and the total number of elected members of the Legislative Assembly of each state, and party shall also be maintained between the State as a whole and the Union ***(Article 55)***.
Electoral College which elects President consists of-

- Elected members of both the Houses of Parliament (does not include nominated members)
- Electoral college which elects the President consists of elected MP's and elected MLA's at the state level
- MLA's of National Capital Territory of Delhi and the Union territory of Pondicherry are also included

SINGLE TRANSFERABLE VOTE

The election of the President is held through single transferable vote system of proportional representation. Under this system names of all the candidates are listed on the ballot paper and the elector gives them numbers according to his/her preference. Every voter may mark on the ballot paper as many preferences as there are candidates. Thus the elector shall place the figure 1 opposite the name of the candidate whom he/she chooses for first preference and may mark as many preferences as he/she wishes by putting the figures 2, 3, 4 and so on against the names of other candidates. The ballot becomes invalid if first preference is marked against more than one candidate or if the first preference is not marked at all.

As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President. For the purpose of securing such uniformity among the States 'inter se' as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner-

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(a) Every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
(b) if, after taking the said multiple of one thousand; the remainder is not less than five hundred than the vote of each member referred to in sub-clause (a) shall be further increased by one;
(c) Each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clause (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions disregarded.

The election of the President shall be held in accordance with the ***system of proportional representation by means of the single transferable vote*** ***and the voting at such election shall be*** ***by the secret ballot.*** In this Article, the expression "population" means the population as ascertained at the preceding census of which the relevant figures have been published. **[Article 55]**
Conditions of President's office - ***Article 59*** of the Constitution lays down the conditions-
(a) The President cannot be a member of either of House of Parliament or State Legislature when holding the office of President.
(b) The President cannot hold any other office of profit.
(c) Parliament by law will determine the salary of President.
Term of office: The President's term of office is for ***five years*** from the date on which he enters upon his office; but he is eligible for re-election.
The President office may terminate within the term of five years in either of two ways-
(a) By resignation in writing under his hand addressed to the vice-President of India,
(b) By removal for violation of the constitution, by the process of impeachment (Art. 56).

VACANCY IN THE OFFICE OF PRESIDENT

A vacancy in the office of the President may be caused in way of the following ways-
(i) On the expiry of his term of five years,
(ii) By his death,
(iii) By his resignation. The President may, by writing under his hand addressed to the Vice-President, resign from his office,
(iv) On his removal by impeachment,
The President may, for violation of the Constitution, be removed from the office by impeachment in the manner provided in Art. 61
(v) Otherwise, e.g., on the setting aside of his election as President.

TIME FOR HOLDING PRESIDENTIAL ELECTIONS

(a) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the current term.
(b) An election to fill a vacancy in the office of President occurring by the reasons of death, resignation or removal, or otherwise, should be held within 6 months from the date of occurrence of vacancy.

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PRIVILEGES AND IMMUNITIES

(a) The President cannot be asked to be present in any court of law during his tenure.
(b) A prior notice of two months' time is to be served before instituting a civil case against him.
(c) The President can neither be arrested nor any criminal proceedings be instituted against him in any court of law during his tenure.
(d) The President is not answerable to any court of law for the exercise of his functions.

REMOVAL OF PRESIDENT (IMPEACHMENT PROCESS)

The President can only be removed from office through a process called ***impeachment***. The Constitution lays down a detailed procedure for the impeachment of the President. An impeachment is a quasi-judicial procedure in parliament. Either House may prefer the charge of violation of the Constitution before the other House which shall then either investigate the charge itself or cause the charge to be investigated.

PROCEDURE FOR IMPEACHMENT

The resolution to impeach the President can be moved in either House of Parliament. ***Such a resolution can be moved only after a notice has been given by at least one-fourth of the total number of members of the House.*** Such a resolution charging the President for violation of the Constitution must be passed by a majority of not less than two-third of the total membership of that House before it goes to the other House for investigation.

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The charges levelled against the President are investigated by the second House. President has the right to be heard or defended when the charges against him are being investigated. The President may defend himself in person or through his counsel.

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If the charges are accepted by a two-third majority of the total membership of the second House, the impeachment succeeds. The President thus stands removed from the office from the date on which the resolution is passed.

But the charge cannot be preferred by a House unless-

(a) a resolution containing the proposal is moved after a 14 days notice in writing signed by not less than 1/4 of the total number of members of the House; and

(b) the resolution is then passed by a majority of not less than 2/3 of the total membership of the House.

The President shall have a right to appear and to be represented at such investigation. If as a result of the investigation, a resolution is passed by not less than 2/3 of the total membership of the House before which the charge has been preferred declaring that the charge has been sustained, such resolution shall have the effect of removing the President from his office with effect from the date on which such resolution is passed ***(Article 61)***.

Since the Constitution provides the mode and ground for removing the President, he cannot be removed otherwise than by impeachment, in accordance with the terms of Art 56 and 61.

ALLOWANCES AND EMOLUMENTS

The President shall be entitled without payment of rent to the use of his official residence and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law that behalf is so made, such emoluments, allowances and privileges as are specified in the second schedule of the Constitution.

The President receives a salary of ***Rs. 1,50,000/- per month*** and an annual pension on the expiration of his term or on resignation provided he is not re-elected to the office. The emoluments and allowances of the President shall not be diminished during his term of office.

POWERS OF THE PRESIDENT

The President of India is the head of a parliamentary state, entrusted with all the executive authorities including the supreme command of the forces. He exercises his power with the aid and advice of the Council of Ministers.

The Prime Minister is the real head of the Government. However, a vast number of powers have been earmarked for the President by the Constitution. Powers of President can be summarized under following categories:-

1. EXECUTIVE POWERS

(a) ***Article 53*** of the Constitution declares the President to be the chief of the state. Sub-clause (i) states, "The executive powers of the union shall be vested in the President and shall be exercised by him either directly or through offices sub-ordinate to him in accordance with his constitution. The Constitution vests the supreme executive authority of the Union in the President.

(b) Under **Article 77**, all the executive actions of the government are taken under the name of the President.

(c) He holds the **supreme command of India's defence forces** and has the power of declaring war or concluding peace.

(d) Under **Article 78**, the President has the right to seek any information from the Centre and the State.

(e) The President appoints, as Prime Minister, the person most likely to command the support of the majority in the Lok Sabha (usually the leader of the majority party or coalition). The

President then appoints the other members of the Council of Ministers, distributing portfolios to them on the advice of the Prime Minister.

(f) Under **Article 310**, every officer of the government occupies his/her position during the pleasure of the President.

(g) It is the President of India by whom Houses of Parliament are summoned and he may convene joint sitting of the two Houses in case of deadlock.

(h) The President **nominates 12 members for the Rajya Sabha** with extra-ordinary accomplishments from amongst persons who have special knowledge or practical experience in respect of such matters as literature, science, art and social service and **two members for the Lok Sabha from the Anglo-Indian Community.**

(i) The President is responsible for making a **wide variety of appointments**. These include:

- Governors of States
- The Chief Justice, other judges of the Supreme Court and High Courts of India
- The Chief Minister of National capital territory of Delhi (Article 239 AA 5 of the constitution)
- The Attorney General
- The Comptroller and Auditor General
- The Chief Election Commissioner and other Election Commissioners
- The Chairman and other Members of the Union Public Service Commission
- Vice Chancellor of central university and academic staff of central university through his nominee
- Ambassadors and High Commissioners to other countries

(j) Besides he has the power to **appoint an Inter-State Commission, Finance Commission, Election Commission, etc**. He has the power to be kept informed of all the officers of the Union. It is the duty of the Prime Minister to communicate to the President all decisions of the council of ministers relating to the administration of Union Affairs.

2. LEGISLATIVE POWERS

According to the Constitution, the President is an integral part of the Parliament. He has many powers in relation to the Parliament-

(a) The President **inaugurates the Parliament by addressing it after the general elections** and also at the beginning of the first session each year. Presidential address on these occasions is generally meant to outline the new policies of the government.**[Article 87]**

(b) He **summons, prorogues the Parliament**.

(c) He **can dissolve the House of people.**

(d) He **can address either Houses of Parliament or both the Houses jointly** (i.e. a joint session of both the houses of the Parliament).

(e) He **can send message to either House of Parliament whether with respect to a Bill pending** in Parliament or otherwise.[Article 86(2)]

(f) The President **decides questions as to disqualification of members.[Art. 103]**

(g) He can **cause certain reports and statements to be laid before the Parliament** such as the report of the Comptroller and Auditor General, or the Report of the Finance Commission.

(h) He **recommends the introduction of certain bills** in the Parliament such as the re-organisation of states or alteration of boundaries; a money-bill involving expenditure.

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(i) No bill can become a law unless and until assented to by the President. [Article 114] All bills passed by the Parliament can become laws only after receiving the assent of the President.

After a bill is presented to him, the President shall declare either that he assents to the Bill, or that he withholds his assent from it. As a third option, he can return a bill to the Parliament, if it is not a money bill or a Constitutional amendment bill, for reconsideration.

When, after reconsideration, the bill is passed and presented to the President, with or without amendments, the President cannot withhold his assent from it. The President can also withhold his assent to a bill when it is initially presented to him (rather than return it to the Parliament) thereby exercising a pocket veto.

(j) The President **may withhold his assent or return the Bill to the House, for reconsideration, if it is not a money bill.**

(k) Certain types of bills passed by the state Legislature are to be reserved for Presidents' assent. Certain bills require his prior sanction before they are introduced in the state Legislature.

(l) The most important legislative power of the President is his **power to promulgate *Ordinances* under *Article 123*.** According to this, the President is empowered to promulgate ordinances, except when both the Houses of Parliament are in session, if he is satisfied that circumstances exit compelling him to take immediate action.

A Presidential Ordinance has the same force and effect as an Act of Parliament. However, every such ordinance should be laid before both Houses of Parliament within six weeks from the re-assembly of Parliament. Failure to comply with this condition, or Parliamentary disapproval within the six weeks' period, will make the Ordinance invalid. The President may also withdraw the Ordinance at any time he likes.

3. FINANCIAL POWERS

In respect of finance, the President enjoys the following powers:

(a) No money bill can be introduced in the House of people without the previous sanction of President. All money bills originate in House of the people (Lok Sabha) **(Article 109)**.

(b) The president shall cause to be laid before Parliament, the **Annual Budget and supplementary Budget for its approval (Article 112)**.

(c) He causes to be laid before the Parliament the Annual Finance Statement called the **Budget before the beginning of every financial year**.

(d) Withdrawal from the Contingency Fund of India is done after the permission of the President. The Contingency Fund of India is at the disposal of the President. He can make advances from the contingency fund of India to meet unforeseen expenses, pending approval by the Parliament.

(e) The **President appoints the Finance Commission** from time to time to make recommendation regarding the distribution of taxes between the Union and the states.

(f) He **determines the shares of Income Tax receipts between the Union and the States.**

4. JUDICIAL POWERS (PARDONING POWER)

The President has the power to grant pardons and reprives, and suspend, remit or commute sentences of persons convicted by court martial, and in all cases in which sentences of death have been passed. As mentioned in ***Article 72*** of Indian Constitution, the President is empowered with the powers to grant pardons in the following situations:

- ✓ Punishment is for offence against Union Law

- ✓ Punishment is by a Military Court
- ✓ Sentence is that of death

To pardon means to forgive a person of his offence. It is ***an act of grace*** and cannot be claimed or demanded as a matter of right. It is purely an executive act. The decisions involving pardoning and other rights by the President are independent of the opinion of the Prime Minister or the Lok Sabha majority. In most cases, however, the President exercises his executive powers on the advice of the Prime Minister and the cabinet.

The Presidents power does not affect the similar powers of the Governor and military officers with respect to Court-Martial. It is noteworthy that the Presidents' judicial power does not include the power to grant amnesty. This power is left to the Parliament.

(b) **Advisory Jurisdiction under Article 143** also comes under judicial powers of the President.

(c) The President enjoys certain ***privileges*** in respect to criminal or civil proceedings against him. No criminal proceedings can be started against him during his term of office. Civil proceedings can be initiated only after he has been served with a two months written notice.

5. MILITARY POWERS

The Supreme Command of the Defence Forces is vested in the President of India, but the Constitution expressly lay down that the exercise of this power shall be regulated by law.

This means that though the President may have the power to take action as to declaration of war or peace or the employment of the Defence Forces, it is competent for Parliament to regulate or control the exercise of such powers.

6. DIPLOMATIC POWERS

Like the head of other States, the President of India represents India in international affairs and has the power to appoint Indian representatives to other countries and receives diplomatic representatives of other states.

7. EMERGENCY POWERS

In addition to the power enumerated above the President of India enjoys vast emergency powers. ***Article 352 to 360*** deals with the emergency provisions. The Constitution visualizes three kinds of emergencies:-

(a) Emergency arising out of a threat to the security of India or any part of it by war, external aggression or internal disturbances,

(b) Emergency arising out of the failure of the constitutional machinery in any one of the states.

(c) Emergency caused by a threat to the financial stability of India.

It is the President who determines whether the emergency exists or not. His judgement in this case cannot be questioned. If the President issues a declaration of national emergency caused by war or threat of war he may:-

- **Suspend the autonomy of states and empower the Parliament to make laws on all matters including matters in the state list.**
- **Extend the executive power of the union so as to give directions to any state regarding the manner in which the executive power of the union is to be exercised;**
- **Suspend the fundamental rights including the right to constitutional remedies.**

- **The President can modify the provisions relating to distribution of revenues between the centre and the states in order to secure adequate revenue for the Government of India to meet situation created by emergency.**

The above is the assessment of various powers of the President of India. Looking to these powers one may say that President is no less than a dictator and especially so when an emergency has been declared.

However, whatever may be the Constitutional provisions regarding the powers of the President and however vast these powers may be, yet it may be said that the President of India being the head of a parliamentary Government cannot but exercise his powers on the advice of the Council of Ministers which includes the elected representatives of the people.

Article 74 clearly provides that "there shall be a Council of Ministers to aid and advice the President in the exercise of these functions. Article 74 is a mandatory provision.

The Constitution does not visualize the rule of the President at the centre. The powers of the President are the powers of the Council of Ministers which is responsible to the Parliament. The President must act according to their advice because disregard of their advice would kill the essence of the parliamentary Government which requires that the head of the state should exercise his powers on the advice of the cabinet responsible to the parliament.

VICE-PRESIDENT OF INDIA

The Vice-President is **elected under Article 63** of the Constitution. His importance in the Constitution is that whenever any vacancy occurs in the office of the President, he acts as President until a new President is elected. The Vice-President like the President is **elected indirectly**.

The Vice-President is elected by the members of both Houses of Parliament at a joint session by secret ballot in accordance with the system of proportional representation by means of single transferable vote.

The Vice-President of India shall be ex-officio Chairman of the Raba Sabha. His normal function is to preside over meetings of the Rajya Sabha. But since he is not the member of the Rajya Sabha, he has no right to vote.

QUALIFICATIONS

The qualifications of the Vice President are the ***same as those of the President except that he must be eligible for election to the Rajya Sabha***.

(i) He must be a citizen of India.
(ii) He must have completed the age of 35 years.
(iii) He must be eligible to be elected as a member of the Rajya Sabha.
(iv) He must not hold any office of profit under any government.

ELECTION OF THE VICE-PRESIDENT

The Vice-President of India is elected by the members of both Houses of Parliament in accordance with the system of proportional representation by means of a single transferable vote system and the voting at such election shall be by secret ballot.

TERM OF OFFICE OF VICE-PRESIDENT

The Vice-President is elected for the term ***five years***. The period of five years starts from the date on which he enters upon his office.

He is eligible for re-election. However, he may resign from his office before the expiry of normal term, even before the completion of his tenure by writing to President or may be removed by a resolution of the Rajya Sabha passed by a simple majority of all the then members of the House and agreed to by a simple majority of the Lok Sabha.

FUNCTIONS OF THE VICE-PRESIDENT

The duties of the Vice-President are two-fold:-

1. He is the **ex-officio chairman of the Rajya Sabha** and
2. He **acts for the President when the office of the President is vacant**.

   Even when the President is ill or otherwise unable to perform his duties, the Vice-President acts for him.

POSITION OF VICE-PRESIDENT

There is no doubt that the office of the Vice-President of India is next to the office of the President of India. But the Vice-President of India does not exercise any important and real powers. Therefore, the office of the Vice-President of India is not of any great importance.

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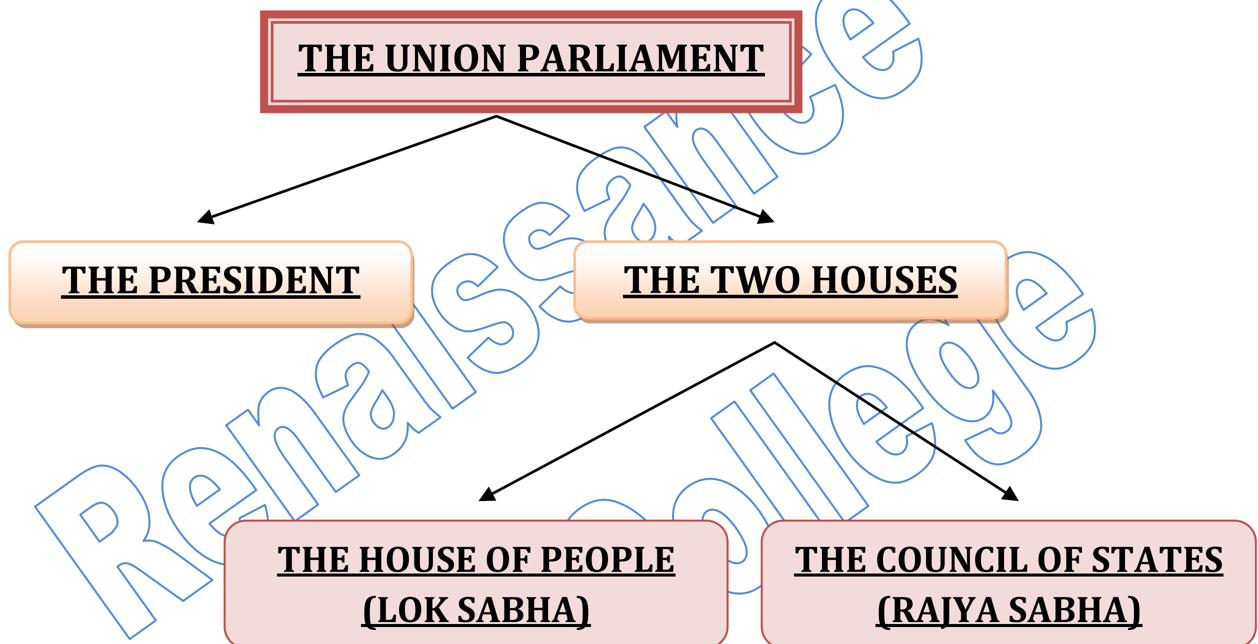
UNION LEGISLATURE
COUNCIL OF MINISTERS

The word ***'Parliament'*** is derived from the French word '***Parler***' ***which means 'to talk'***.

The term connotes a place where people sit and discuss national and international problems and enact legislation for their country.



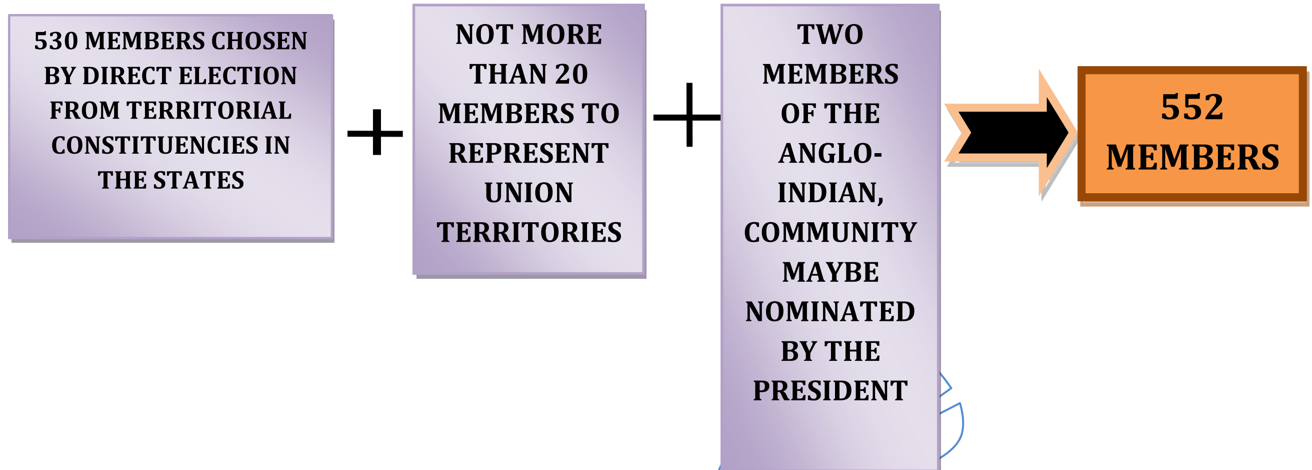
The Union Parliament of India consists of ***the President*** and ***the two Houses known as the House of people and the Council of states***. The House of people is the Lower chamber where as the council of states is the upper chamber of the house of parliament.

The Rajya Sabha is composed many of representatives of the states elected by the State Assemblies. The Lok Sabha is composed of directly elected representatives on the basis of adult franchise and territorial constituencies. ***The President is an integral part of the parliament.***

Under the Constitution of India, ***the legislature of the Union is called Parliament*** is the pivot on which the political system of the country revolves.

THE HOUSE OF PEOPLE (LOK SABHA)

The House of people is known as the '***Lower House***' of Parliament or the '***Lok Sabha***'
Its members are elected directly by the people.
Composition of Lok Sabha



Under the Constitution, ***not more than 530 members*** are to be chosen by direct election from territorial constituencies in the states, and ***not more than 20 members to represent the union Territories.***

In addition, ***two members of the Anglo-Indian, community maybe nominated by the President***, if he is of the opinion that the community is not adequately represented in the Lok Sabha. Thus the maximum strength of the House envisaged in the constitution is thus ***552.***
The total elected strength of the Lok Sabha is distributed among the states in such a way that the ratio between the number of seats and the population of any state is as far as possible the same for all states. At present the Lok Sabha consists of 545 members.
Direct Election: The election to the Lok Sabha is ***conducted on the basis of adult franchise*** where every man or woman who has completed the age of 18 years is eligible to vote. The Constitution provides for secret ballot. According to the present system, a candidate who secures the largest number of votes is declared elected.

Duration of the Lok Sabha:

Lok Sabha has been provided with a ***fixed term*** as in the case of the popularly elected House of Representatives in the United States of America and the House of commons in the United Kingdom. The term of the Lok Sabha in India is ***five years from the date appointed for its first meeting.***

The expiration of the period of five years operates as its dissolution. The Lok Sabha may be dissolved before the expiration of its full term under certain circumstances, when a proclamation of Emergency is in force, the term of Lok Sabha can be extended by Parliament for a period not exceeding one year at a time and not exceeding in any case a period of six months after the proclamation has ceased to operate.
Qualifications for membership:

According to ***Article 84*** of the Constitution, following are the qualifications for the membership of Lok Sabha. A candidate must be-

(a) a citizen of India;
(b) have attained the age of twenty five years and
(c) must possess such other qualifications as may be prescribed by the parliament. A person holding an office of profit is disqualified from becoming a member of the House.

Sessions:

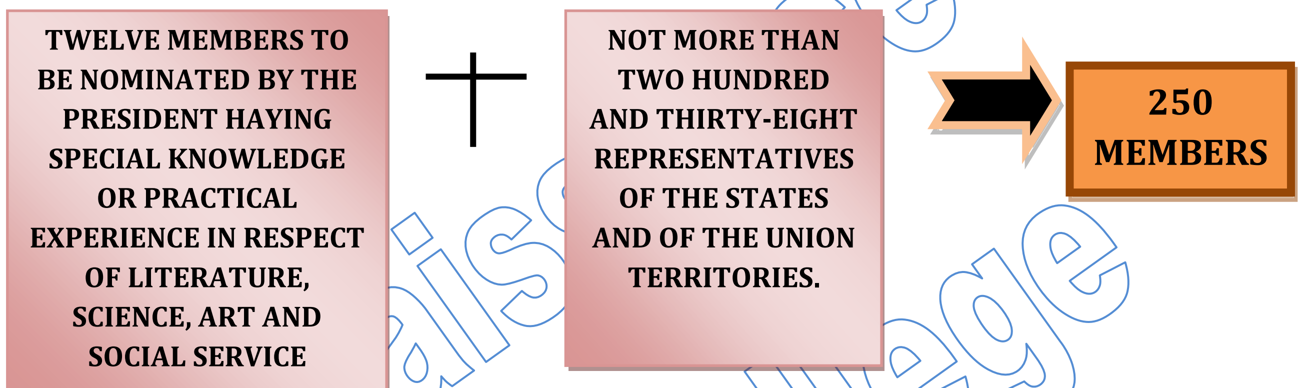
The Lok Sabha shall meet ***at least twice a year*** and ***the interval between two consecutive sessions shall be less than six months***. The time and place of meeting will be decided by the President who will summon the House to meet. He has also the power to prorogue the House.

The Lok Sabha can also be summoned in a special session for disapproving the proclamation under Article 352, if a notice in writing signed by not less than one-tenth of the members of the Lok Sabha is given to the speaker. When such a notice is given the President must summon the session within 14 days.

THE COUNCIL OF STATES (RAJYA SABHA)

The Rajya Sabha is the '***Upper House***' of Parliament and is sometimes called the '***House of Elders***'.

Composition of Rajya Sabha (Article 80):



The ***present strength of the Rajya Sabha is 245*** of these, ***233 are elected by the various State Legislative Assemblies, thus making the Rajya Sabha predominantly an indirectly elected body.***

Indirect Election:

Whereas the Lok Sabha is directly elected on the basis of adult suffrage for five years, the Rajya Sabha is ***indirectly elected on a proportional representation basis by the state Legislatures.*** For the purpose of this election to each State is allotted a certain number of seats in the Rajya Sabha.

The main basis of such allotment is the strength of the population in each State. The members of each State Legislative Assembly from the electorate for the purpose of electing the requisite number of members allotted to each state thus ensuring the principle of State representation in the 'upper chamber' of parliament.

Another principle that is given recognition in the composition of the Rajya Sabha is representation of talent, experience and service. The method of proportional representation helps better representation of minorities.

Term of Upper House i.e. Rajya Sabha:

The Rajya Sabha enjoys a continuity of life. ***Under the Constitution, the Rajya Sabha cannot be dissolved.*** The term of the members of the Rajya Sabha is six years and in this respect it resembles the senate of the United States whose members are also chosen for six years.

In fact, the Rajya Sabha is a permanent body like the American Senate, ***one third of the members of the Rajya Sabha retire after every two years.***

Chairman and Deputy-Chairman of the Rajya Sabha-

The Vice-President of India is ex-officio chairman of the Rajya Sabha. He is elected by an electoral college consisting of the members of both the Lok Sabha and the Rajya Sabha.

While the office of the chairman is vacant, or during any period when the Vice- President acts as the President of India or discharges the functions of the President, the duties of the chairman of the Rajya Sabha are performed in the Deputy Chairman.
The Rajya Sabha also has a panel of members called Vice-Chairman' nominated by the chairman for the purpose of presiding over the Rajya Sabha in the absence of both the Chairman and Deputy Chairman.

POWERS OF THE PARLIAMENT

LEGISLATIVE POWERS

The Parliament is mainly a law-making organ. It can make laws on all the matters specified in the Union list and Concurrent list of the Seventh Schedule.

The State list is beyond the jurisdiction of the Union Parliament; but under certain circumstances it can also make laws on the subjects enumerated under this list. When the President has declared an emergency, the Parliament gets power to make law on the State list in normal times.

The Parliament can make laws on the State lists if:

(a) The Council of States has declared by a resolution supported by not less than two-third of its members present and voting that it is necessary and expedient in the national interests that the Parliament should make laws with respect to any particular matter specified in the State list.
(b) Two or more States request the Parliament to make a law on a particular subject for them;
(c) Such a law is necessary for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or such other body.

EXECUTIVE POWERS

Under a Parliamentary Government, there being no strict separation of powers, the legislative organ controls the executive organ. The Parliament exercises control over the executive through numerous measures. It can move adjournment motions and can thereby bring to light the omissions and commissions of the administration.

It can put questions to the executive to elicit any information regarding administration. It can appoint investigation committees to go into any aspect of administration. In extreme cases, the Parliament can get rid of by passing a motion of no-confidence against it.

FINANCIAL POWERS

The Parliament controls the union purse. No taxes can be levied and no expenditure can be made by the Government without its approval. It determines the financial policy of the country.

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CONSTITUENT POWERS

The Parliament has the power to amend the Constitution. It is worthy of note that while certain provisions of the Constitution may be amended without the consent of the States, none of the provisions can be amended without the approval of the Parliament.

There are some provisions of the Constitution which the Parliament can amend by a simple majority while certain others it can amend by a two-third majority. There are only a few matters which require the consent of the units.

DELIBERATIVE POWERS

The Parliament is also a debating assembly. It is the place where national questions are debated upon and policies are formulated. It is here that the actions of Government are reviewed and criticised. The discussion in the Parliament attracts the attention of the entire country and compels the Government to its intentions and policies.

MISCELLANEOUS POWERS

The Parliament constitutes a part of the electoral college to elect the President of India. It alone elects the Vice-President. It has the power to impeach the President.

It can recommend to the President the removal of other high officers of the State including the judges of the Supreme Court. Finally, the proclamation of Emergency by the President is subject to the approval of the parliament.

DISQUALIFICATIONS FOR THE MEMBERSHIP OF PARLIAMENT

(a) No person shall be member of both the Houses of the Parliament.

(b) No person shall be member of the Parliament and a State Assembly. The disqualification for the membership of Parliament is different thing from the disqualification for the membership. A person shall be disqualified for being chosen as a member of either House of Parliament—

(c) If he holds an office of profit under the Govt. of India or the Government of any State.

(d) If he is of unsound mind and stands so declared by a competent court.

(e) If he is an undicharged insolvent.

(f) If he is not a citizen of India.

(g) If he acquires citizenship of any other State.

(h) he shows allegiance to any other State.

(i) If he is disqualified under any law made by the Parliament.

If any question arises as to disqualification of a member, the decision of President shall be final.

COUNCIL OF MINISTERS

Article 74 of the Constitution of India provides that there would be a Council of Ministers with the ***Prime Minister as its head to aid and advise the President of the Indian Union in discharging his duties.***

The Prime Minister is appointed by the President who also appoints other ministers on the advice of the Prime Minister.

The Council of Ministers is collectively responsible to the Lok Sabha. It is the duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to administration of the affairs of the Union and proposals for legislation and information relating to them.

The Council of Ministers comprises of ministers who are in three categories-

- ***CABINET MEMBERS***- Each member of the cabinet handles an independent charge of a department.
- ***MINISTERS OF STATE***- They are also the ministers of the cabinet rank and help in discharging the duties of cabinet ministers.
- ***DEPUTY MINISTERS***- They are the ministers of the lower rank and work under the state ministers.

THE PRIME MINISTER

The Constitution of India provides that there shall be a Council of Ministers to assist the President in discharging his duties. ***The Prime Minister of India heads the Council of Ministers.***

He is the leader of the party that enjoys a majority in the Lok Sabha. While the President of India is the head of the State, the Prime Minister is the head of the Government.

APPOINTMENT- The leader of the majority party in the Lok Sabha is appointed as the Prime Minister by the President. The President is the Constitutional head of the Union executive and the Prime Minister is the real head.

FUNCTIONS-

(a) He selects other ministers, who are appointed by the President on the advice of the Prime Minister.
(b) He presides over cabinet meetings.
(c) He is the link between the President and the Cabinet It is the Prime Minister who keeps the President informed of the decisions of the Council of Ministers.
(d) He guides the ministers and coordinates the policies of various departments and ministries.
(e) He is the leader of the Lok Sabha in Parliament.
(f) He is the Chairman of the Planning Commission.
(g) He is the Chief confidential advisor to the President.

Term of the office-The term does ***not exceed five years***. He may also be removed from his office when his party loses majority in Lok Sabha.

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Resignation- If the government is defeated in the Lok Sabha, the Cabinet and the Prime Minister both have to resign as they are responsible to the Lok Sabha.

MONEY BILL

Article 110 of the Constitution ***defines Money Bill***. It provides that-

(1) For the purpose of this chapter, a Bill shall be deemed to be money bill if it contains only provisions dealing with all or any of the following matters, namely:-

- **(a)** the imposition, abolition, remission, alteration or regulation of any tax;
- **(b)** the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- **(c)** the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;
- **(d)** the appropriation of moneys out of the Consolidated Fund of India;
- **(e)** the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
- **(f)** the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
- **(g)** any matter incidental to any of the matters specified in sub-clauses (a) to (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.
(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Procedure in respect of Money Bill-
A Money Bill shall not be introduced in the Council of States except on the recommendation of the President.

After a Money Bill has been passed by the house of the People it shall be transmitted to the Council of States for its recommendation and the Council of States shall within a period of fourteen days from the date of its receipt return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States. If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People

If the House of the People does not accept any of the recommendation, of the Council of States, the Money Bill shall be deemed to have been passed by both the Houses in the form in which it was

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passed by the House of the People without any of the amendments recommended by the Council of States.

If a Money Bill is passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People. ***[Art. 109]***

DIFFERENCE BETWEEN ORDINARY BILL AND MONEY BILL

ORDINARY BILL	MONEY BILL
Articles 107 & 108 deal with Ordinary Bills.	Articles 109 and 110 deal with Money Bills
An Ordinary Bill can be introduced any of the Houses of Parliament.	A Money Bill can only be introduced in the Lok Sabha.
An ordinary Bill can be introduced only with the recommendation of b President.	The Money Bill can be introduced without the recommendations of the President.
A dead-lock may occur.	No deadlock occurs
A Joint session of Houses may be 'lied to resolve the dead-look.	Joint session of the Houses is not necessary.
When a Bill is passed in one House and it is sent to the other House for passing, the other House may keep that Bill for six months with it.	A Money Bill is always passed by Lok Sabha. Thereafter it is sent to Rajya Sabha for recommendations. It can keep only for 14 days.
The House has to oblige the recommendations of the other House.	Lok Sabha may consider or may not consider the recommendations of the Rajya Sabha pertaining to Money Bills.
Certificate from the Speaker's not necessary.	The Speaker has to give a certificate for the Money Bill.

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THE UNION JUDICIARY
THE SUPREME COURT

In a democratic set-up like India, judiciary is the supreme authority in the sense that it is the guardian of the Constitution and the rights of the citizens. Also, it has been vested with the duty to strike a balance between the central government and the governments of the federating units, other pillars of the democracy. Therefore, existence of an independent and impartial judiciary is an essential pre-requisite of a federal form of government. It acts as the custodian of democracy and the guardian of the rights and liberties of the people.

Unlike other federal systems, we do not have separate hierarchies of federal and state courts. For the entire Republic of India, there is one unified judicial system- one hierarchy of courts- with the

Supreme Court as the highest or the apex court. Then there are High Courts at the state level and subordinate courts below them.

The Supreme Court of India consists of the Chief Justice and 30 other judges, appointed by the president. The Parliament has the power to prescribe the number of judges and no formal amendment of the constitution is required for this purpose.

Article 124 provides for the ***establishment and constitution of Supreme Court***-
(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than 30 Judges.
(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and ***shall hold office until he attains the age of sixty five years***:
Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:
Provided further that—
(a) a Judge may, by writing under his hand addressed to the President, resign his office;
(b) a Judge may be removed from his office in the manner provided in clause (4).

QUALIFICATIONS AND SALARY

For appointment as a judge of the Supreme Court a person must be-
(a) Must be a citizen of India, and
(b) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or
(c) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or
(d) is, in the opinion of the President, a distinguished jurist.

Thus, a non-practicing or an academic lawyer may also be appointed as a judge of the Supreme Court if he is, in the opinion of the President, a distinguished jurist.

Provision has also been made for the appointment of a judge of a High Court as ad hoc judge of the Supreme Court and retired judges of the Supreme Court or of High Court to sit and act as judge of the Supreme Court. The Constitution debars a retired judge of Supreme Court from practicing in any court of law or before any other authority in India. The salary of the judges is charged upon the Consolidated Fund of India.

REMOVAL OF JUDGES

The judges of the Supreme Court can be removed from office by the President only after an address by each house of Parliament supported by more than two thirds majority of members present and voting has been presented to the President in the same session for removal of the judges on the ground of proved misbehaviour or incapacity.

Oath - Every person appointed as a judge of the Supreme Court before he enters upon his office, takes an oath before the President or some person appointed in that behalf by him in the form prescribed in

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the Constitution. The Constitution prohibits a person who has hold office as a judge of the Supreme Court from practicing law before any court in the territory of India (Art 124 (6) and (7)).

The Constitution prohibits a person who has held office as a Judge of the Supreme Court from practicing or acting as a judge in any court or before any authority within the territory of India. But under ***Article 128***, the ***Chief Justice may appoint the retired judges to act as ad hoc judges in the Supreme Court.***

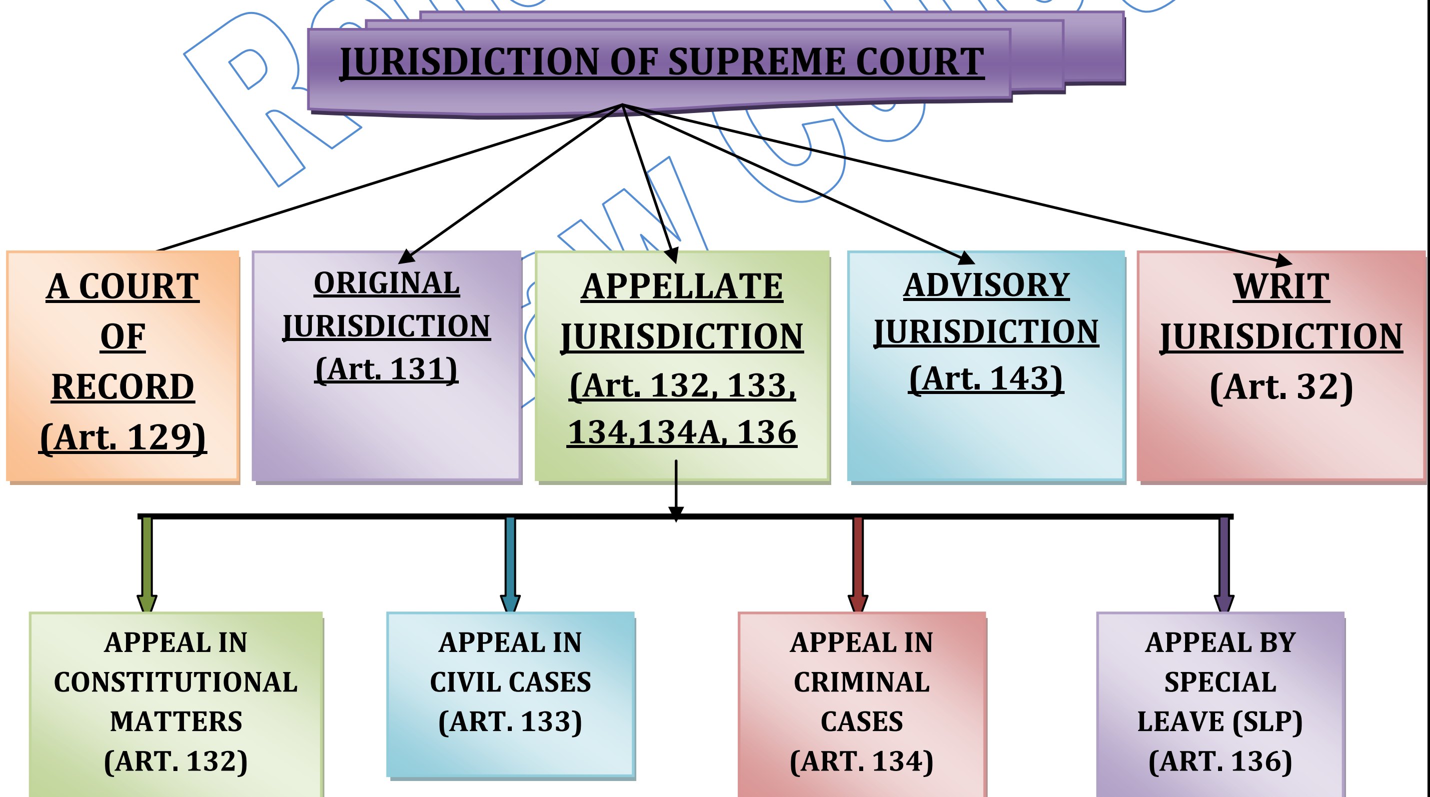
Appointment of ad hoc judges and his qualification-

Article 127 of the Constitution prescribes for the appointment and qualifications of the ad hoc Judges.

It reads as under-

If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an ad hoc Judge, for such period as may be necessary, of a Judge of High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

It shall be the duty of Judge who has been so designated, in priority to other duties of his Office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties of a Judge of the Supreme Court.



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ORIGINAL JURISDICTION (ARTICLE 131)

This refers to the cases that directly originate in the Supreme Court.
It has original exclusive jurisdiction in any dispute between-

- **(a)** the Government of India and one or more States; or
- **(b)** the Government of India and any State or States on one side and one or more other States on the other; or
- **(c)** two or more States.

Such a dispute should, however, involve some question of law or fact on which the existence or extent of a legal right depends. The treaties concluded between the Centre and the princely states are excluded from the Court's original jurisdiction

The President may, however, refer the above mentioned disputes to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

Article 32 empowers the Supreme Court to issue directions or orders in the nature of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of fundamental rights. It is to be noted that this jurisdiction is not exclusive. It is concurrent. High Courts of States have also been granted similar powers.
Art 139 also empowers the Supreme Court with exactly similar powers. It says-

"Parliament, by law, may confer on the Supreme Court, power to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them.

Under the scheme of the Constitution, ***Article 131*** confers original jurisdiction on the Supreme Court in regard to a dispute between two States of the Union of India or between one or more States and the Union of India.

APPELLATE JURISDICTION (ARTICLES 132 TO 136)

This refers to the power of reviewing and revising the orders of lower courts and tribunals. This jurisdiction extends to both the civil and the criminal appeals from the High Courts under certification from these courts or, in its absence, permitted by the Supreme Court itself. Normally, these appeals are in cases involving substantial question of law of general importance or interpretation of the Constitution or death penalty awarded by a High Court.

The Appellate jurisdiction of the Supreme Court extends to three branches :

(A) Civil,
(B) Criminal, and
(C) Constitutional.

CIVIL APPELLATE JURISDICTION (ART. 133)

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A—

- (a) that the case involves a substantial question of law of general importance; and
- (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

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(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

CRIMINAL APPELLATE JURISDICTION(SEC. 134)

According to Article 134 an appeal lies to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the following two ways-

(1) with a certificate of the High Court, or
(2) without a certificate of the High Court.

(1) With a certificate of the High Court— Under clause (e) an appeal lies to the Supreme Court if the High Court certifies under Article 134-A (Added by 44th Amendment, 1978) that it is a fit case for appeal to the Supreme Court. [Art 134(c)]

Under the new Art. 134-A the High Court can grant a certificate for appeal to the Supreme Court tinder An. 132 either on its own motion or on 'oral' application of the aggrieved party immediately after passing the judgment, decree, or final order. Prior to this, the High Court does so only on the application of the aggrieved party. Under new Article (134-A); it can now grant a certificate on its own motion if it deems fit.

(2) Without a certificate of the High Court— An appeal lies to the Supreme Court without the certificate of the High Court if the High Court —

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death, or

(b) has withdrawn for trial before itself, any case from any Court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death. But if the High Court has reversed the order of conviction and has ordered the acquittal of an accused, no appeal would lie to the Supreme Court.

POWER OF PRESIDENT TO CONSULT SUPREME COURT (ADVISORY JURISDICTION)(Art. 143)

(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

The use of the word '***may***' in Art.143(1) indicates that the Supreme Court is not bound to answer a reference made to it by the President.

SUPREME COURT AS A COURT OF RECORD (ART. 129)

The Supreme Court shall be a Court of record and shall have all powers of such a Court, including the power to punish for contempt of itself. As a Court of record it has the power to punish those who are adjudged as guilty of contempt of court.

APPEAL BY SPECIAL LEAVE (SEC. 136)

This power has been conferred upon the Supreme Court by Article 136. It may, in its discretion, grant special leave to appeal from any judgments, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

WRIT JURISDICTION (ART. 32)

The Supreme Court is the guardian of the individual liberties and fundamental rights. It has the power to declare a law passed by any legislature null and void if it encroaches upon the fundamental rights guaranteed to the people by the Constitution. For the enforcement of fundamental rights, it can issue writs in the nature of ***Habeas Corpus, Mandamus, Certiorari, Prohibition and Qua-Warranto.***

Besides the above mentioned powers, the Supreme Court has the ***power of judicial review under Art.13***. It implies the power to review and determine validity of a law or an order. It refers to "the power of a court to inquire whether a law, executive order or other official action conflicts with the written Constitution, and if the court concludes that it does, to declare it unconstitutional and void".

However, the Indian Constitution does not in so many words assign the power of judicial review to the court. There are several specific provisions in the Constitution, which guarantee judicial review of legislation such as Articles 13, 32, 131-136, 143, 226, 145, 246, 251, 254 and 372.

Apart from these Articles, the power of judicial review is derived from the position of Supreme Court as the guardian of the Constitution.

The court can challenge the constitutional validity of a law on the following grounds:

(a) the subject matter of the legislation is not within competence of the legislature which has passed it;
(b) It is repugnant to the provisions of the Constitution; or
(c) It infringes one of the fundamental rights.

The power of judicial review, in general, flows from the powers of the courts to interpret the Constitution. As such it has the final say in the interpretation of the Constitution and by such interpretation; the Supreme Court has extended its power of judicial review to almost all the provisions of the Constitution.

The limitations on the power of judicial review of the Supreme Court:

Under Article 137, the Supreme Court has expressly been given the power to review its judgment. However, this is subject to any law passed by the Parliament. This power is exercisable under rules made by the Court under Article 145, on grounds mentioned in Order 47, Rule 1 of C. P. C., a review will lie in the Supreme Court on-

(1) Discovery of new and important matter or evidence;
(2) Mistake or error apparent on the face of the record; and
(3) Any other sufficient reason.

Article 141 of the Constitution provides that the judgment of the Supreme Court will be binding on all Courts in India.

MAINTENANCE OF INDEPENDENCE OF JUDICIARY

Only an impartial and independent judiciary can protect the rights of the individual and provide equal justice without force and fear. It is very necessary that the Supreme -Court should be allowed to function without fear and political pressure. There must be security of tenure of the judges, no alteration in the salaries during the term of their office etc. to enable a judge to administer justice freely.

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The Constitution has made the following provisions to ensure the independence of judiciary—

(a) ***Security of Tenure***—The Judges of the Supreme Court have security of tenure. They cannot be removed from their office except by an order of the President and that also on the ground of proved misbehaviour or incapacity supported by a resolution adopted by a majority of total membership of each House and also by a majority of not less than 2/3 of the members of the House present and voting. Parliament may, however, regulate the procedure for presentation of the address and for investigation and proof of misbehaviour or incapacity of a Judge. But Parliament cannot misuse this power because the special procedure for their removal must be followed.

(b) ***Salaries etc. are fixed***—The salaries of the Judges of the Supreme Court and High Court are fixed by the Constitution and charged on the Consolidated Fund of India. They are not subject to vote of legislature. During the term of their office, their salaries and allowances cannot be altered to their disadvantage except in grave financial emergency.

(c) ***Jurisdiction of Supreme Court not to be curtailed***—In respect of its jurisdiction, Parliament may change pecuniary limit for appeals to the Supreme Court, confer supplementary power to enable it to work more effectively, confer power to issue directions, orders or writs including all the prerogative writs for any purpose other than those mentioned in Art. 132. In this respect, the Parliament can extend but cannot curtail die jurisdiction of Supreme Court.

(d) **No discussion in Legislature**—Neither in Parliament nor in a State Legislature a discussion can take place with respect to the conduct of a Judge of the Supreme Court in discharge of his duties.

(e) **Appointment of Judges**—The Constitution does not leave the appointment of the Judges of the Supreme Court to the unguided discretion of the Executive. The Executive is required to consult Judges of the Supreme Court and High Courts in the appointment of the Judges of the Supreme Court.

Thus the position of the Supreme Court is very strong and its independence is adequately guaranteed.

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UNIT-V

STATE EXECUTIVE, LEGISLATURE AND JUDICIARY

8. STATE EXECUTIVE - GOVERNOR
9. STATE LEGISLATURE – VIDHAN SABHA – VIDHAN PARISHAD
10. STATE JUDICIARY – HIGH COURT

THE STATE EXECUTIVE: GOVERNOR

Government at the State is the same as that for the Union, that is, a Parliamentary system. The head of the states is called the ***Governor***, who is the constitutional head of the state as the President is for the whole of India.

The Governor is usually a distinguished elder states man, who can discharge his rather perfunctory duties with dignity and who is on a position to exercise what Gandhi called an "all pervading moral influence".

The Governor of a state has a dual role to play-

(a) as the constitutional head of the state and
(b) as the agent or representative of the centre.

As per Art. 157, no person shall be eligible for appointment as Governor unless-

- ✓ he is a citizen of India and
- ✓ has completed the age of 35 years

- The Governor of a State shall be appointed by the President by warrant under his hand and seal ***[Art.155]***.
- Subject to the pleasure of the President, he shall hold office for a ***term of 5 years*** and on the expiry of such period continues to hold it until his successor enters upon his office.
- The appointment may terminate either upon dismissal by the President or on resignation addressed to President by the Governor. ***[Art.156]***.
- The Governor shall not be a member of either House of Parliament or of the Legislature of any State and if any such member is appointed as Governor, his seat as such member shall be deemed to have been vacated on the date on which he enters upon his office as Governor.
- He shall not hold any other office of profit.
- He shall be entitled without payment of any rent to the use of his official residence and shall also be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law, and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule of the Constitution.
- The emoluments and allowances of the Governor shall not be diminished during his term of office. ***[Art.158]***

THE POWERS OF THE GOVERNOR OF A STATE

- It is the duty of the Governor that the Government should function according to Constitution.

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- He may recommend to the President for President's rule in the State and, according to ***Art. 356***, "If the president, on receipt of a report from the Governor or otherwise is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, he may issue a proclamation. By that proclamation the President may assume to himself all or any of the powers vested in or exercisable by the Governor or anybody or authority in the State".

- The Governor is to report to the President that a situation has arisen in which the Government of the State cannot be carried out in accordance with the provisions of the Constitution. Such a report may sometimes be against a Ministry in power, for example, if it attempts to misuse its power to subvert the Constitution. It is clear that in such casa, the report cannot be made according to ministerial advice. Moreover no such advice will be available where a ministry has resigned and another alternative ministry cannot be formed. Thus, in making report to the President under Art. 356, the Governor exercises his discretion.

- The Ministers of the State hold office during the pleasure of the Governor. The fact that each holds his office at the Governor's pleasure indicates that his office is at all times at the Chief Minister's disposal, for in these matters the Governor, like the King in England, acts on the advice of the Chief-Minister. Moreover for the effective realisation of the rule of Collective Responsibility of the Council of Ministers it is necessary that no person should be nominated to the cabinet except on the advice of the Chief Minister. Secondly no person should be retained as a member of the cabinet if the Chief-Minister says that he should be dismissed.

- The Governor in terms of ***Article 156*** of the Constitution holds office during the pleasure of the President.

Dissolution of the Legislative Assembly(Art. 174)

The Governor summons, prorogues and dissolves the Legislative Assembly. In normal circumstances the Legislative Assembly is not dissolved by the Governor, till the expiry of its normal tenure of five years. But where ministry has lost the majority and no alternate stable ministry is possible, he may dissolve the House.

The Governor is not bound to accept the advice of the defeated Ministry to dissolve the house. In this case he can act according to his discretion. He may or may not dissolve the House. Thus it is clear that the Governor can dissolve the Legislative Assembly in his discretion. Therefore the Governor has constitutional power in dismissing a Council of Ministers on his subjective satisfaction that the Government has lost its majority in the Legislative Assembly and he can very well invite any person to form the Government.

According to ***Article 164***, the ministers shall hold office during the pleasure of the Governor. This does not mean that the Governor can dismiss his ministers at any time at his sweet will. The expression '**during the pleasure**' under a Parliamentary form of Government means the confidence of the majority in the Legislature. He is to exercise his pleasure in accordance with the advice of the Council of Ministers. This follows from the provision in Article 164(2) which makes the Council of Ministers collectively responsible to the Legislative Assembly of the State. This means that till a ministry enjoys the confidence of the majority in the Lower House, the Governor should not dismiss it.

THE POSITION OF THE GOVERNOR IN RELATION TO HIS COUNCIL OF MINISTERS

In general, the relation between the Governor and his ministers is the same as that between the President and his ministers, with this important difference that ,while the Constitution does not

empower the President to exercise any functions 'in his discretion' it authorises the Governor to exercise some functions 'in his discretion'. [Article 163(1)].

In the exercise of his discretionary pourers the Governor is not required to act on the advice of Chief Minister or even to seek his advice. The Constitution does not define as to what are the discretionary powers of the Governor. This raises an important question whether the Governor like the President is merely a constitutional head or whether he has some real powers. This suspicion is however unfounded in view of the Parliamentary system of Government adopted in the Constitution. When a Cabinet, collectively responsible to the Legislature, is to give advice to the Governor in the discharge of his functions, occasions are almost non-existent from him to act contrary to the advice of the Cabinet.

In the time of crisis, the Governor can effectively and constitutionally utilize the provision and act in his discretion particularly in cases where there might be a conflict between the Governor and his Council on any issue. In view of the responsibility of the Governor to the President, one of the act that "the Governor's decision as to whether he should act in his discretion in any particular matter is final", it would be possible for the Governor to act without the advice of his Cabinet even though they are not specifically mentioned in the Constitution as discretionary functions.

Thus the Governor may exercise, in exceptional circumstances his own discretionary powers in—

(i) The appointment of the Chief Minister ;
(ii) the dismissal of Ministry ;
(iii) the dissolution, prorogation and suspension of the Legislative Assembly; and
(iv) advising the President for the proclamation of emergency.

POSITION OF THE GOVERNOR IN RELATION TO THE PRESIDENT

The powers of the Governor are analogous to those of the President with certain significant differences. The President is elected to his office, while the Governors are appointed by the President and hold office during his pleasure and may be dismissed from office by him whereas the President may be removed from office only through impeachment.

The President addresses his resignation to the Vice-President. The term of office is the same for the President as for a Governor. The oath of office is more or less alike, but not identical.

The Powers of the Governor can be discussed under the following four heads-

EXECUTIVE POWERS

- The executive power of the State is vested in the Governor to be exercised by him either directly or through the officer's sub-ordinate to him **[Art. 154].**
- All executive actions of a State shall be expressed to be taken in his name **[Art.164]**
- The executive power of a State shall extend to matters in respect to which the Legislature of the State has power to make laws.
- In any matter with respect to which both the Legislature of a State and Parliament have power to make laws & if it is a matter mentioned in the Concurrent List, the executive power of the State shall be subject to and limited by the executive power conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof. **[Art. 162]**
- The Government appoints the Chief Minister and other Ministers on his advice, and the Council of Ministers hold office during his pleasure but the Council of Ministers is collectively responsible to the State Legislature or to the Lower House of such Legislature where the

Legislature consists of two Chambers. This makes the Governor constitutional head like the President and determines the character of' State Government of Executive as a Parliamentary Government of Executive.

LEGISLATIVE POWERS

The most important Legislative power or the Governor is his ***ordinance making power***, This Ordinance making power is similar to that of the President. Under ***Article 123***, whenever the Legislature is not in session and if the Government is satisfied that circumstances exist which require him to take immediate action, he may legislate by Ordinance, however the Governor cannot issue an Ordinance without previous instruction from the President in case in which–

(a) Bill would have required his previous sanction, or

(b) required to be reserved under the Constitution for the assent of the President.

FINANCIAL POWERS

A money bill cannot be introduced in the Legislative Assembly of the State without the recommendation of the Governor. No demand of grants can be made except on the recommendation of the Governor. The Governor is required to cause to be laid before the House or Houses of the Legislature the annual financial statement, known as Budget.

JUDICIAL POWERS

The Governor of a State is empowered to grant pardon, reprieve, respite, or remission, of punishment or to suspend, remit or commute the sentence in respect of any offence against any law relating to a matter to which the executive power of the State extends. **[Art. 161]**.

The power of granting pardon under Article 161 is very wide and does not contain any limitation as to the time on which and the occasion on which and the circumstances in which the said power could be exercised. But the said power being a constitutional power is subject to judicial review on certain limited grounds. The Court, therefore, would be justified in interfering with an order passed by the Governor in exercise of power under Article 161 of the Constitution, if the Governor is found to have exercised the power himself without being advised by the Government or if the Governor transgresses the jurisdiction in exercising the same or it is established that the Governor has passed the order without the application of mind or the order in question is a malafide one or the Governor has passed the order on some extraneous consideration.

Governors do not have diplomatic, military and emergency powers which the President has. The Governor of Assam has certain discretionary powers in tribal affairs in which he is not required to act according to the advice of his Ministers.

The President also has certain discretionary powers. The executive powers of the Governor is subject to and limited in some respects by the executive power of the President to whom the Governor is required to report situation requiring the proclamation of emergency.

The President and the Governors have all got the power to veto legislation by withholding their assent to it.

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COUNCIL OF MINISTERS

According to ***Article 163(1)*** there shall be a Council of Ministers with the Chief Minister at the head to 'aid and advise' the Governor. The Council of Ministers in the State is constituted and functions in the same way as the Union Cabinet.

The Chief Minister is appointed by the Governor. As a matter of a well established convention it is the leader of the Legislative Assembly who should be appointed as the Chief Minister. Thus in normal circumstances the choice of the Governor is limited to the leader of the majority party.

But there may be circumstances where the Governor would have to exercise his discretion in selecting the Chief Minister. The other ministers are appointed by the Governor on the advice of the Chief Minister. In the appointment of other ministers the Chief Minister has the final say because it is the Chief Minister who has to run the Government. This is, indeed, necessary in order to ensure the successful operation of the rule of collective responsibility.

The Governor may appoint a person as a Chief Minister or a Minister who is not a member of either House of the State Legislature. But he must be elected to the House of State Legislature within the period of six months. If he does not become member of the Legislature within the six months of his appointment as Chief Minister or Minister he will cease to be Chief Minister or Minister. Before a Minister enters upon his office, the Governor is to administer to him the prescribed oath of office and secrecy.

A person convicted of criminal offence and sentenced to more than two years of imprisonment cannot be appointed as Chief Minister.'

According to ***Article 164(1)***, the ministers shall hold office during the 'pleasure' of the Governor. But this pleasure is to be exercisable by the, Governor on the advice of the Chief Minister. This follows from ***Clause (2) of Article 164*** which says that the ***Council of Ministers shall be collectively responsible to the Legislative Assembly of the State***.

Till the ministry enjoys the confidence of the Lower House of a State, the Governor is bound to accept the advice of the Chief Minister. Indeed, it would be strange that a ministry responsible for its acts and policies to the legislature can be dismissed by the Governor. This means that a minister holds office during the pleasure of the Chief Minister. The Governor is bound to dismiss a Minister as and when advised by the Chief Minister. It is only then that the smooth functioning of the principle of collective responsibility can be maintained.

Article 167(a) says that ***it is the duty of Chief Minister of State to communicate all decisions of the Council of Ministers relating to the administration of the State and proposals for legislation***. If the Governor asks him to furnish such information it is the duty of the Chief Minister to do so. The Chief Minister, if required by the Governor, will also submit for consideration of the cabinet any matter on which a decision has been taken by a Minister which has not been considered by the cabinet.

Article 167(c) further strengthens the rule of collective responsibility and gives power to the Chief Minister to review the decision taken by any minister individually. When a decision is taken by any minister without reference to the cabinet, Governor may require it to be considered by the cabinet.

The Governor cannot override a decision of Minister. If the cabinet stands behind him the minister remains and the Governor is bound to accept his decision. If, however, the cabinet does not uphold his decision he will have to quit the ministry. If he insists to remain he will be dismissed by the Governor on the advice of the Chief Minister. It is a safeguard which ensures the working of the

principle of collective responsibility and the power of the Chief Minister and not a power which interferes with the Government.

STATE LEGISLATURE

The Legislative Assembly

1) For every State there shall be a Legislative Assembly which shall consist of the Governor; and
   (a) in the State of Andhra Pradesh, Maharashtra, Karnataka, Bihar, Madhya Pradesh, Tamil Nadu and Uttar Pradesh, two Houses,
   (b) in other States, one House.

2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly. **[Art. 168]**

The Legislative Assembly shall consist of members elected by the major people of the State. The territorial constituencies shall be so arranged that there shall be not more than one representative for every 75000 of the population. The total number of members in the assembly shall be not more than 500 & not less than 60 according to the population of the State. There shall be a proportionately equal representation in respect of each territorial constituency within any particular State. The figures published at the last census shall be the basis for allotting the number of members for any territorial constituency. The number and ratio of members shall be readjusted by such authority, in such manner and with effect from such date as Parliament may by law determine. The duration of the Legislative Assembly is for a period of 5 years the expiry of which operates as a dissolution of the Assembly. The Governor may dissolve it earlier.

Legislative Council-

In certain states, legislative council also exists. Generally states which are big in size and population possess legislative council along with legislative assembly; the legislative council is upper chamber in the state. It may control, guide or supervise functions of legislative assembly. Generally, persons of wide experience are nominated to such councils so that those intelligent persons who could not get them elected may become members of this council.

Composition of the Legislative Councils-

1) The total number of members of the Legislative Council of a State having such a Council ***shall not exceed one-third of the total number of members in the Legislative Assembly of that State***:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

3) ***Of the total number of Members of the Legislative Council of a State***-

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify.

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(b) as nearly as may be, one twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be. one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor, in accordance with the provisions of clause (5) ;

4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in Accordance with the system of proportional representation by means of the single transferable vote.
5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely—Literature, science, art, co-operative movement and social service. **[Art. 171]**

DURATION AND RELATIONS BETWEEN TWO HOUSES OF THE STATE LEGISLATURE

Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as dissolution of the Assembly:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

The Legislative Council of a State shall not be subject to dissolution. As nearly as possible one-third of the members thereof shall retire as soon as limy be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

Qualifications for membership[Art. 173]

A person shall not be qualified to be chosen to fill a seat in the Legislature of State unless he:

1) is a citizen of India and makes and subscribes before some person authorized in that behalf by the Election Commission on an oath or affirmation according to the form set out for the purpose in the Third Schedule;
2) is in the case of seat in the Legislative Assembly, not less than twenty-five years of age and, is in the case of seat in the Legislative Council, not less than thirty years of age; and
3) Possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Disqualifications for membership[Art. 191]

1) A person shall not be disqualified for being chosen as, and for being, a member of the Legislative Council of a State—

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(a) if he holds any such office of profit under the Government of India or the Government of any State specified in the First Schedule, as is declared by Parliament by law to disqualify its holder ;
(b) if Ile is of unsound mind and stands so declared by a competent court;
(c) if he is an undischarged insolvent ;
(d) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State or is under any acknowledgement or allegiance or adherence to a foreign State;
(e) if he is disqualified by or under any law made by Parliament. The necessary qualifications and disqualifications are prescribed by Parliament in the Representation of the Peoples Act, 1951.

2) For the purposes of this Article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the first Schedule by reason only that he is a Minister either for the Union or for such State.

Decision on questions as to disqualifications of members-

The Constitution (44th Amendment) Act, 1978 substituted the old Article 192 as it was prior to 42nd Amendment Act. 1976. According to the new Article 192(1) if any question arises as to whether a member of House of the Legislature or a State has become subject to any of the disqualifications mentioned in clause (I) of Article 191, the question shall be referred for the decision of Governor and his decision shall be final. (2) Before giving any decision on any such question the Governor shall consult the Election Commission and the Election Commission may, for this purpose, made such enquiry as if thinks fit.

STATE JUDICIARY

The High Courts of India: Composition, Appointment of Judges

Article 214 provides that every State has a High Court operating within its territorial jurisdiction. But the Parliament has the power to establish a common High Court for two or more States ***(Article 231)***.

In India, neither the State executive nor the State Legislature has any power to control the High Courts or two after its Constitution or organisation. It is only Parliament which can do it. In case of Union Territories the Parliament may by law extend the jurisdiction of a High Court to or exclude the jurisdiction of a High Court from any Union Territory, or create a High Court for a Union Territory.

Thus Delhi, a Union Territory, has a separate High Court of its own while the Madras High Court has jurisdiction over Pondicherry, the Kerala High Court over Lakshadweep and Mumbai High Court over Dadra and Nagar Haveli, the Kolkata High Court over Andaman and Nicobar Islands, the Punjab High court over Chandigarh.

Composition of High Courts:

i. Every High Court shall consists of a Chief Justice and such other judges as the President of India may from time to time appoint.
ii. Besides, the President has the power to appoint
(a) Additional Judges for a temporary period not exceeding two years, for the clearance of areas of work in a High Court;
(b) an acting judge, when a permanent judge of a High Court (other than Chief Justice) is temporarily absent or unable to perform his duties or is appointed to act temporarily as Chief Justice.

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But neither an additional nor an acting Judge can hold office beyond the age of 62 years age of retirement raised from 60 to 62.

Appointment and Conditions of Office of a Judge of a High Court:

Every Judge of a High Court shall be appointed by the President. In making the appointment, the President shall consult the Chief Justice of India, the Governor of the State (and also the Chief Justice of that High Court in the matter of appointment of a Judge other than the Chief Justice).

Tenure: A Judge of the High Court shall hold office until the age of 62 years. Every Judge, permanent, additional or acting, may vacate his office earlier in any of the following ways-

(i) by resignation in writing addressed to the President;

(ii) by being appointed a Judge of the Supreme Court or being transferred to any other High Court, by the President;

(iii) by removal by the President on an address of both Houses of Parliament (supported by the vote of 2/3 of the members present) on the ground of proved misbehaviour or incapacity,. The mode of removal of a Judge of the High Court shall thus be the same as that of a judge of the Supreme Court.

Salary and Allowances of the Judges:

It is provided that the judges of the High Court shall draw such salaries and allowances, as the Parliament may by law fix from time to time. In addition they will also be entitled to receive other prescribed allowances.

By providing the expenditure salaries and allowances the judges shall be charged on the consolidated fund of State. These cannot be reduced except in financial emergency. Nor can the allowances and rights be varied by Parliament to the disadvantage of a judge during his/her term of office.

INDEPENDENCE OF JUDGES ENSURED

As in the case of the Judges of the Supreme Court, the Constitution seeks to maintain the independence of the Judges of the High Court's by a number of provisions:-

(i) By laying down that a Judge of the High Court shall not be removed, except in the manner provided for the removal of a Judge of the Supreme Court (Article 218);

(ii) by providing that the expenditure in respect of the salaries and allowances of the Judges shall be charged on the Consolidated Fund of the State [Article 202 (3)(d)];

(iii) by specifying in the Constitution the salaries payable to the Judges and providing that the allowances of a Judge or his rights in respect of absence or pension shall not be varied by Parliament to his disadvantage after his appointment (Article 221) except under a Proclamation of Financial Emergency [Article 360 (4)(b)].

(iv) by laying down that after retirement a permanent Judge of High Court shall not plead or act in a Court or before any authority in India, except the Supreme Court and a High Court other than the -High Court in which he had held his office (Article 220).

Control of the Union over High Court:

The control of the Union over a High Court in India is exercised in the following matters:

(i) Appointment, (Article 217), transfer from one High Court to another (Article 222) and removal [Article 217(1)] and determination of dispute as to age of Judges of High Courts [Article 217 (3)];

(ii) the Constitution and organisation of High Courts and the power to establish a common High Court for two or more States (Article 231); and

(iii) to extend the jurisdiction of a High Court to, or to exclude it jurisdiction from, a Union Territory, are all exclusive powers of the Union Parliament (Article 231).

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Jurisdiction of High Courts:

The constitution does not attempt detailed definitions or classification of the different types of jurisdiction of the High Courts. It was presumed that the High Court's which were functioning with well- defined jurisdiction at the time of the framing of the Constitution would continue with it and maintain their position as the highest courts in the States. The Constitution, accordingly, provided that the High Courts would retain their existing jurisdiction and any future law that was to be made by the Legislatures.

Besides, the original and appellate jurisdiction, the Constitution vested in the High Court's four additional powers:

- **i.** The power to issue writs or orders for the enforcement of Fundamental Rights or for any other purpose;
- **ii.** the power of superintendence over subordinate courts;
- **iii.** the power to transfer cases to themselves pending in the subordinate courts involving interpretation of the Constitution; and
- **iv.** the power to appoint officers.

(a) Original and Appellate Jurisdiction:

The High Courts are primarily courts of appeal. Only in matters of admiralty, probate, matrimonial, contempt of Court, enforcement of Fundamental Rights and cases ordered to be transferred from a lower court involving the interpretation of the Constitution to their own file, they have original jurisdiction. The High Courts of Bombay, Calcutta and Madras exercise original civil jurisdiction when the amount involved exceeds specified limit. In criminal cases it extends to case committed to them by Presidency Magistrates.

On the appeal side they entertain appeals in civil and criminal cases from their subordinate courts as well as from their original side. For historical reasons and as a result of the specific provisions in the Government of India Act, 1935, no High Court has any original jurisdiction in any matter concerning revenue. In 1950 Constitution removed this restriction.

(b) Power of Superintendence and Transfer:

Every High Court has a power of superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction, excepting military tribunals [Art. 227]. This power of superintendence is a very wide power in as much as it extends to all courts as well as tribunals within the State, whether such court or tribunal is subject to the appellate jurisdiction of the High Court or not.

Further, this power of superintendence would include a revisional jurisdiction to intervene in case of gross injustice or non-exercise of abuse of jurisdiction, even though no appeal or revision against the orders of such tribunal was otherwise available.

However, this jurisdiction of High Court has been taken away in respect of Administrative Tribunals set up under Article 323A, by the administrative Tribunals Act. 1985. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of the Constitution, it may transfer the case of itself.

After the case has come to the file of the High Court, it may dispose of the whole case itself, or may determine the constitutional questions involved and return the case to the court from which it has been withdrawn together with a copy of its judgement on such question and direct it to dispose of the case in conformity with such judgement.

The Constitution, thus, denies to subordinate courts the right to interpret the Constitution so that there may be the maximum possible uniformity as regards constitutional decisions. It is accordingly, the duty of the subordinate courts to refer to the High Court a case which involves a substantial question of law as to the interpretation of the Constitution and the case cannot be disposed of without the determination of such question. The High Court may also transfer the case to itself upon the application of the party in the case.

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(c) Writ Jurisdiction:

Article 226 of the Constitution empowers every High Court, throughout the territories in relation to its which exercises jurisdiction to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari, or any of them, for the enforcement of any of the Fundamental Rights and for any other purpose.

The Constitution by Forty-second amendment omitted the provision "for any other purpose", but the Forty-fourth amendment has restored it. The peculiarity of this jurisdiction is that being conferred by the Constitution, it cannot be taken away or abridged by anything short of an amendment of the Constitution itself.

Although the Supreme Court and the High Courts have concurrent jurisdiction in the enforcement of Fundamental Rights, the Constitution does not confer to the High Court's the special responsibility of protecting Fundamental Rights as the Supreme Court is vested with such a power. Under Article 32 the Supreme Court is made the guarantor and protector, of Fundamental Rights whereas in the case of High court the power to enforce Fundamental Rights is part of their general jurisdiction.

The jurisdiction to issue writs under these Articles is larger in the case of High Court in as much as while the Supreme Court can issue them only where a fundamental right has been infringed, a High Court can issue them not only in such cases but also where an ordinary legal right has been infringed, provided a writ is a proper remedy in such cases, according to well-established principles.

(d) Court of Record:

The High Court is a court of record and has all the powers of such a court including the power to punish for contempt of itself. The two characteristics of a court of record are that the records of such a Court are admitted to be of evidentiary value and that they cannot be questioned when produced before any court and that it has the power to punish for contempt of itself. Neither the Supreme Court nor the Legislature can deprive a High Court of its power of punishing contempt of itself.

OFFICERS AND SERVANTS AND THE EXPENSES OF HIGH COURTS

Article 229 of the Constitution says:

- **(a)** Appointments of officers and servants of a High Court are made by the Chief Justice of the High Court.
- **(b)** Subject to the provisions of any law made by the Legislature of the State, the conditions of service of Officers and servants of a High Court shall be such as may be prescribed by the rules made by the Chief Justice of the High Court.
- **(c)** The administrative expenses of the High Court including all salaries, allowances, etc. are charged upon the Consolidated Fund of the State.

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