STUDY MATERIAL

(LIMITED CIRCULATION)

ON

CONSTITUTION OF INDIA

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1. INTRODUCTION

1.1.1 Significance of the Constitution: A constitution is a document of people's faith and aspirations that has a special legal sanctity. It is the fundamental law of a country. There are various forms of Government prevalent across the world. The philosophy embodied in a nation's constitution determines the kind of government present there. The idea of constitutionalism suggests ways and means to work out a governmental form, which exercises power and ensures, at the same time, individual freedom and liberty. Moreover, these government institutions are essential for the smooth functioning of the society. But, the power of the State[1] should not be absolute.

1.1.2 Constitutionalism suggests a way for reconciling the power of the State with individual liberty, by prescribing the principles of organizing the State. The constitution outlines the vision of a State and is its most important document. It is an expression of faith and hopes that people have from the State, and promises that they wish to make for the future. A constitution ensures certain rights to its citizens as well as defines their duties as for e.g. Part III of the Indian Constitution.

1.2 Is constitution static?

1.2.1 A constitution is an extension of the philosophical and organizational frameworks into the future. But a State has to face the challenges of changing social, economic and political conditions in the society. All living constitutions provide for procedures for introducing changes in them by means of amendments. So, the constitution is not static.

1.3 Written and unwritten constitutions

1.3.1 Constitution of most countries came into existence as a result of a conscious decision to have such a document. These are the '*written*' constitutions which provide institutional arrangements and procedures. But, the laws and institutions of British constitution have gradually evolved over the centuries. The British Constitution is an '*unwritten*' constitution. It comprises of the constitutional conventions that act as precedents for the working of institutions and other documents such as the statutes and Acts of parliament. Here the parliament is supreme, unlike in the nations which have '*written*' constitution where, the constitution is supreme.

1.3.2 In Britain, any change in the Constitution is possible by means of laws passed by the Parliament. There is no distinction between an ordinary law and a constitutional law. This is an example of the most flexible form of constitution.

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1 - See definition of "State" on page 15

1.4 Framing of the present Constitution

1.4.1 The Indian Constitution was framed and adopted by the Constituent Assembly of India. As per the Cabinet Mission Plan of 1946, the Constituent Assembly was set up in November 1946. It was not a sovereign body since it had to work within the limits imposed by the Cabinet Mission. After the passage of the Indian Independence Act of 1947, granting independence to India, the sovereign character of the Constituent Assembly was established.

1.4.2 Members of the Constituent Assembly were elected indirectly by the Provincial Assemblies in the ratio of one member per one million populations. There were a total of 389 members in the Constituent Assembly, of which 296 were elected by the members of the Provincial Assemblies and the rest were nominated by the Princely States. The first meeting of the Constituent Assembly was held on 9th December, 1946, wherein Dr. Sachidanand Sinha was elected as its interim President. Later, Dr. Rajendra Prasad was elected as the President of the Assembly.

1.4.3 The Constituent Assembly formed 13 important committees for framing the Constitution. The Drafting Committee was headed by Dr B.R. Ambedkar and the first draft Constitution was published in January, 1948. The Constituent Assembly discussed the draft and finally adopted the Constitution on 26th November, 1949. The Constitution came into effect on 26th January, 1950.

1.5 Nature of the Indian Constitution

1.5.1 Though the members of the Drafting Committee of the Constituent Assembly called the Indian Constitution Federal, an attribute which has not been explicitly mentioned anywhere in the Constitution itself, some jurists dispute this title. The western scholars generally used to take the US Constitution as a role model or a benchmark of Federal constitution and exclude those Constitutions, which do not conform to it from the nomenclature of 'federation'. But now, it is increasingly realized that any assumption of such a typology is fallacious, and it is generally agreed that the question whether a State is unitary or federal is one of degrees, and whether it is a federation or not depends upon the number of federal features it possesses.

1.6 What is a Federation?

1.6.1 It is a group of regions or States united with a central government or a Federal government. A federation has a well established dual polity or dual form of governments i.e., the field of governance is divided between the Federal and the State governments which are not subordinate to one another, but co-ordinate and are independent within their allotted spheres. Therefore, the existence of co-ordinate authorities independent of each other is the gist of the federal principle.

1.6.2 Essential Characteristics of a federation:

a) Distribution of Powers: An essential feature of a federal constitution is the distribution of powers between the central government and the governments of the several units forming the federation.

b) Supremacy of the Constitution: The constitution is binding on the Federal and the State governments. The central government as well as the State governments derives their powers from the constitution. Also, neither of the two governments should be in a position to override the provisions of the constitution related to the powers and status enjoyed by the other.

c) Written constitution: The constitution must be necessarily a written one. This is basically to avoid any doubt about the supremacy of the constitution as well as to clearly demarcate the powers between the central and the State governments.

d) Rigidity of the Constitution: This feature is a corollary to the supremacy of the constitution. Rigidity does not mean unamendability of the Constitution, but simply means, the power of amending the constitution, especially those regulating the status and powers of the Federal and the State governments, should not be confined exclusively either to the Federal or the State government.

e) Authority of the Courts: There must be an authority that can prevent the Federal and State governments from encroaching upon each other's powers. Secondly, there should be a final Supreme Court which should not be dependent upon the Federal or State governments and should have the last word in matters involving constitutional affairs.

1.7 Indian Situation

1.7.1 A perusal of the provisions of the Indian Constitution reveals that the political system introduced by it, possesses all the aforesaid essentials of a federal polity.

1.7.2 The Indian Constitution establishes a dual polity with the Union at the centre and the States at the periphery, each enjoying powers clearly demarcated by the Constitution. The Constitution is written and supreme, with enough power to declare enactments in excess of the powers of the Union or State Legislatures as *ultra vires,* which has been firmly established after the historic decision of the constitutional bench of 13 judges of the Supreme Court in Kesavananda Bharati Vs. State of Kerala, 1973. Moreover, no amendment making any change in the status of powers of the Centre and the States is possible without the participation of the States (Art.368). Finally, the Supreme Court is the apex authority to interpret the Constitution of India as well as to decide disputes arising out of Centre-State relations.

1.7.3 Even though all the five essential characteristics are present in the Indian Constitution, in certain circumstances, the Constitution empowers the Centre to interfere in the matters of the States, which places the States in a subordinate position. This violates the federal principle.

1.7.4 **Provisions in the Indian Constitution which are not strictly federal in character:** The question of the extent of federalism is a different matter and in this regard the Constitution of India has certain distinctive features having a bias towards the Centre. The political system of a country is by and large, the outcome of the circumstances, which certainly differ from one country to another. The following are the provisions in the Indian Constitution which are not strictly federal in character:

a) In the USA and Australia, the States have their own constitutions which are equally powerful as the federal Constitution, but in India, there are no separate constitutions for a member State.
b) India follows the principle of uniform and single citizenship, but in the USA and Australia, double citizenship is followed.
c) In the USA, it is not possible for the Federal Government to unilaterally change the territorial extent of a State but in India, the parliament can do so even without the consent of the State concerned. Thus, the States in India do not enjoy the right to territorial integrity.
d) If the President declares national emergency for the whole or part of India under Article 352, the Parliament can make laws on subjects, which are otherwise, exclusively under the State List. The Parliament can give directions to the States on the manner in which to exercise their executive authority in matters within their charge. The financial provisions can also be suspended. Thus in one stroke, the Indian Federation acquires a unitary character. However, such a situation is not possible in other federal constitutions.
e) The VII Schedule of the Indian Constitution distributes the legislative subjects on which the Parliament and the State Legislatures can enact laws under three lists: Union, State and Concurrent. The Union List contains 99 subjects over which the Parliament has exclusive control, while the State List contains only 66 subjects over which the State Legislatures have control. Moreover, the most important subjects except only one i.e. the state tax, are under the Union List. Further, in the event of a conflict between the Union and State laws on concurrent subjects, the latter must give way to the former to the extent of such contradiction. Furthermore, the Residuary power i.e. the power to enact laws on subjects not falling under any of the three Lists lies with the Centre (Canadian model) and not with the States, as is the case in the USA and Australia.
f) The Parliament has the exclusive authority to make laws on the 99 subjects of the Union List (Schedule VII), but the States do not have such exclusive rights over the State List. Under certain circumstances and situation, the Parliament can legislate on subjects of State List. There are five such situations as mentioned below:

(i) Under Art. 249, if the Rajya Sabha passes a resolution with not less than 2/3rd majority, authorizing Parliament to make laws on any State subject, on the ground that it is expedient or necessary in the national interest Parliament can legislate over that subject. Such laws shall be in force for only 1 year and can be continuously extended any number of times but for not more than one year at a time.

(ii) Under Art 250, if national emergency is declared under Art 352 Parliament has the right to make laws with respect to all the 66 subjects in the State List automatically i.e. the State List is transformed into the Concurrent List.

(iii) Under Art 252, if the Legislatures of two or more States request the Parliament to legislate on a particular State subject, the Parliament can do so. However, such legislation can be amended or repealed only by the Parliament.

(iv) Under Art 253, Parliament can make laws even on State List to comply with the international agreements to which India is a party. The States cannot oppose such a move. An example of this is the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which was enacted for giving effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December 1992.

(v) Under Art. 356, if President's rule is imposed in a State the power of the legislature of that State become exercisable by or under the authority of the Parliament. This gives the Parliament full powers to legislate on any matter included in the State list.

g) Under Art. 155, the Governor of a State is appointed by the President and the former is not responsible to the State Legislature. Thus indirectly, the Centre enjoys control over the State through the appointment of the Governor.

h) If financial emergency is declared by the President under Art. 360, on the ground that the financial stability or credibility of India or any of its units is threatened, all the Money Bills passed by the State Legislatures during the period of financial emergency are also subject to the control of the Centre.

i) Under Art 256, the Centre can give administrative directions to the States, which are binding on the latter. Along with the directions, the constitution also provides measures to be adopted by the Centre to ensure such compliance.

j) Under Art. 312, the All India Services officials IAS, IPS and IFS (Forest) – are appointed by the Centre, but are paid and controlled by the State. However, in case of any irregularities or misconduct committed by the officer, States cannot initiate any disciplinary action except suspending him/her.

k) Judges of the High Courts are appointed by the President in consultation with the Governors under Art. 217 and the State do not play any role in this.

1.7.5 Thus, apart from certain provisions biased towards the Union, the constitution of India, in normal times, is framed to work as a federal system. But in times of war and other emergencies, it is designed to work as though it were unitary. The federal constitutions of the USA and Australia, which are placed in a tight mould of federalism, cannot change their form. They can never be unitary as per the provisions of their constitution. But, the Indian Constitution is a flexible form of federation - a federation of its own kind. That is why Indian federation is called federation *sui generis*.

Difference between a Federation and a Confederation

1. Federation is a close association (legal) between two or more units, while confederation is a loose association of two or more States.
2. In a federation, units normally do not have the right to secede (as in India and Pakistan), but in case of a confederation, the States always enjoy the right to secede. (e.g. CIS, erstwhile USSR)
3. A federation is a sovereign body, while in a confederation, the units or States are sovereign.
4. In federation, there is a legal relation between the federation and its people, but in confederation, the people are citizens of the respective units of confederation.

1.8 Different Sources of our Constitution

1.8.1 The most profound influence was exercised by the Government of India Act, 1935. The federal scheme, office of Governor, powers of federal judiciary, emergency powers etc. were drawn from this Act.

1.8.2 The British practice influenced the lawmaking procedures, rule of law, system of single citizenship, besides, of course, the model of a parliamentary system of governance.

1.8.3 The US constitution inspired details on the independence of judiciary, judicial review, fundamental rights, and the removal of the judges of Supreme Court and High Courts.

1.8.4 The Irish Constitution was the source of the Directive Principles, method of Presidential elections and the nomination of members of Rajya Sabha by the President.

1.8.5 From the Canadian Constitution was taken the idea of a federation with a strong Centre and placing residuary powers with the Centre.

1.8.6 The Wemar Constitution of Germany was the source of provisions concerning the suspension of fundamental rights during emergency.

1.8.7 The idea of a Concurrent List was taken from the Australian constitution.

1.9.1 The founding fathers of our Constitution had before them the accumulated experience from the working of all the known constitutions of the world and were aware of the difficulties faced in the working of those constitutions. Hence, besides incorporating some provisions from

the other constitutions, a number of provisions were included to avoid some of the difficulties experienced in the working of these constitutions. This is an important reason for making our constitution the lengthiest and the most comprehensive of all the written constitutions of the world.

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2. THE PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN [SOCIALIST SECULAR][2] 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][2] of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

2.1 The framing of the Preamble:

2.1.1 The Preamble to the Constitution sets out the main objectives which the Constituent Assembly intended to achieve. The 'Objective Resolution' proposed by Pandit Nehru and passed by the Constituent Assembly, ultimately became the Preamble to the Constitution of India. As the Supreme Court has observed, the Preamble is a key to unravel the minds of the makers of the Constitution. It also embodies the ideals and aspirations of the people of India.

2.1.2 The Constitution (42nd Amendment) Act, 1976 amended the Preamble and added the words *Socialist, Secular* and *Integrity* to the Preamble. The Preamble is non-justiciable in nature, like the Directive Principles of State Policy, and cannot be enforced in a court of law. It can neither provide substantive power (definite and real power) to the three organs of the State, nor limit their powers under the provisions of the Constitution. The Preamble cannot override the specific provisions of the Constitution. In case of any conflict between the two, the latter shall prevail. So, it has a very limited role to play. As observed by the Supreme Court, the Preamble plays a vital role in removing the ambiguity surrounding the provisions of the constitution.

2.2 Whether the Preamble is a part of the Constitution:

2.2.1 The Supreme Court in the Kesavananda Bharati Vs State of Kerala (1973) case overruled its earlier decision of 1960 and made it clear that it is a part of the Constitution and is subject to the amending power of the Parliament as any other provisions of the Constitution, provided the basic structure of the Constitution as found in the Preamble is not destroyed. However, it is not the essential part of the Constitution.

2.2.2 Basic Structure of the Constitution: The concept of basic structure of the Constitution is nowhere found in the Constitution. This doctrine is a judicial innovation and was given its shape by the Supreme Court in the Kesavananda Bharati vs State of Kerala case (1973). The doctrine

2 - Inserted through the Constitution (42nd Amendment) Act, 1976

simply states that any law passed by the Parliament, which destroys the basic structure of the Constitution, shall be declared void to the extent of its destruction. The basic aim of the Supreme Court was to maintain its superiority as well as to sustain a balance between the three organs of the State. The Court however did not define in precise terms the basic structure of the Constitution. But in a number of decisions, the Supreme Court has made it clear as to what the basic structure of the Constitution is. The following concepts are some of the basic structure – Supremacy of the Constitution, Republican and Democratic form of Government, Federalism, Secular character of the Constitution, Separation of powers between the three organs of the State, Judicial review, Sovereignty of the country, etc. Exercising this power, the Supreme Court struck down the amended provision of Art. 368 (introduced by the 42nd Amendment Act, 1976) on the ground that it deprives the Supreme Court of the power of 'judicial review', a basic structure of the Constitution (Minerva Mills case in 1980 and Waman Rao vs. Union of India case in 1981).

2.3 **Purpose of the Preamble**:

2.3.1 The Preamble declares that it is the people of India who had enacted, adopted and given the Constitution to themselves. Thus, sovereignty lies ultimately with the people. It also declares the ideals and aspirations of the people that need to be achieved. Ideals are different from aspirations. While the former have been achieved with the Constitution proclaiming India as '*Sovereign, Socialist, Secular, Democratic Republic*, the latter include *Justice, Liberty, Equality* and *Fraternity*, which are yet to be achieved. The ideals are the means to achieve aspirations.

2.3.2 The word '*Sovereign*' emphasizes that there is no authority outside India on which the country is in any way dependent. By the word '*Socialism*' the constitution means the achievement of socialistic pattern of society through democratic means. That India is a '*Secular* State' does not mean that India is non-religious or irreligious, or anti religious, but simply that the State in itself is not religious and follows the ancient Indian principle of "*Sarva Dharma Samabhava*". It also means that the State shall not discriminate against the citizens in any way on the basis of religion. The State regards religion to be the private affair of a person including the right to believe or not to believe in a religion. However, India is not secular in the sense the western countries are, due to its distinctive socio-cultural environment.

2.3.3 The term '*Democratic*' means that the rulers elected by the people only have the authority to run the government. India follows a system of 'Representative Democracy', where the MPs and MLAs are elected directly by the people. Efforts are being made to take democracy to the grassroots through Panchayats and Municipalities (73rd and 74th Constitutional Amendment Acts, 1992). However, the Preamble envisages not only political democracy but also social and economic democracies.

2.3.4 The word 'Republic' means that there exists no hereditary ruler in India and all the Authorities of the State are directly or indirectly elected by the people.

2.4 Objectives of the Constitution as stated in the Preamble:

2.4.1 The Preamble states that the objectives to be secured to every citizen are -

(i) Justice-social, economic and political.
(ii) Liberty- of thought, expression, belief, faith and worship.
(iii)Equality-of status, opportunity;

and to promote among them all - Fraternity-assuring the dignity of the individual and the unity and integrity of the Nation.

2.4.2 Regarding *Justice*, one thing is clear that the Indian Constitution expects political justice to be the means to achieve social and economic justice, by making the State more and more welfare oriented in nature. Political justice in India is guaranteed by universal adult suffrage without any sort of qualification. While social justice is ensured by abolishing any title of honor (Art. 18) and untouchability (Art 17), economic justice is guaranteed primarily through the Directive Principles.

2.4.3 *Liberty* is an essential attribute of a free society that helps in the fullest development of intellectual, mental and spiritual faculties of an individual. The Indian Constitution guarantees six democratic freedoms to the individuals under Art. 19 and the Right to freedom of religion under Arts. 25-28.

2.4.4 The fruits of *Liberty* cannot be fully realized until there is an *Equality* of status and opportunity. Our Constitution renders any discrimination by the State only on the basis of religion, race, caste, sex or place of birth as illegal by throwing open public places to all (Art. 15), by abolishing untouchability (Art. 17) and by abolishing titles of honour (Art. 18). However, to bring the hitherto neglected sections of the society into the national mainstream, the Parliament has passed certain laws for the benefit of SCs, STs, OBCs (Protective Discrimination).

2.4.5 *Fraternity* as enshrined in the Constitution means a sense of brotherhood prevailing amongst all the sections of the people. This is sought to be achieved by making the State secular, guaranteeing fundamental and other rights equally to people of all sections, and protecting their interests. However, fraternity is an evolving process and by the 42nd amendment, the word 'integrity' was added, thus giving it a broader meaning.

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3. UNION AND ITS TERRITORY

3.1.1 Art. 1 says that 'India that is Bharat' shall be a Union of States'.

3.1.2 Though our Constitution is federal in structure, the Drafting Committee has used the term 'Union' because the Union of India has not formed as a result of an agreement among the 'units', like the American federation. Moreover, the States of India have no right to secede from the federation. Federation is a union because it is indestructible. Americans had to wage a civil war to establish that the States have no right to secession and that their federation is indestructible. The Drafting Committee thought that it was better to make it clear at the outset, rather than leave it to speculation.

3.1.3 The expression 'Union of India' needs to be distinguished from the expression 'Territory of India'. While the Union of India includes only the States which share federal powers with the centre. Territory of India includes the entire territory over which the sovereignty of the country is exercised. Apart from the States, the territory of the country includes the Union Territories and other territories acquired by India.

3.2 Formation of new states:

3.2.1 Article 3 deals with the formation of a new State out of the territories of the existing States. Parliament under Article 3 can increase or diminish the area of any State or alter the boundaries or change the name of any State. The Indian Constitution empowers the parliament to alter the territory or names, etc., of the States without their consent or concurrence.

3.2.2 Thus, it is clear that the very existence of a State depends upon the sweet will of the Centre. Articles 2, 3 and 4 demonstrate the flexibility of the Indian Constitution. By a simple majority and by ordinary legislative process, parliament may form a new State or alter the boundaries etc. of the existing States and thereby, can change the political map of India.

3.3 Creating a new State:

3.3.1 Of late, there are many demands for new States. For e.g Telangana (Andhra Pradesh), Vidharbha (Maharshtra), Bodoland (Assam), Gorkhaland (West Bengal), Kodagu (Karnataka), Pondicherry, Delhi etc. Needless to say, all the demands cannot be met as it would lead to proliferation of States to a point of federal burdens; they are economically unviable; national unity would be threatened; small States are not necessarily better-governed as seen in the north-east where, in some States, there are more ministers than districts; administrative problems about creation of institutions like High court, Secretariat etc.; the costs of setting up a capital etc. to name some problems of creating new states.

3.3.2 However, in November 2000, the Union Parliament passed three bills for the creation of three new states - Uttaranchal, Jharkhand and Chhattisgarh. The arguments put forward for the creation of three new states are as follows:

a) In the case of Uttaranchal comprising 11 hill districts of UP, the need arose due to the underdevelopment of the region; its geographical distinctness; administrative remoteness from the State capital and the consequent problems. The border districts believe that being strategically important, their being made into a new state will confer on them additional importance. Regarding the question of viability, Uttaranchal is viable as it has great potential in tourism, horticulture etc. which can help in generating revenue. The region is self-sufficient in irrigation and can generate enough electricity. UP, being the most populous State, is administrative unmanageable, unless it is carved into two or more States.
b) In the case of Jharkhand (18 districts), the cultural neglect of the region by outsiders and economic backwardness were the main causes of resentment among the locals. The region is very rich in mineral resources and used to generate substantial revenues not only for the State of Bihar but also for the country. Unfortunately, very little was spent on the region.
c) Chhattisgarh (16 districts) is the rice bowl of Madhya Pradesh, but is economically backward. It has mineral resources that can make it economically viable. Madhya Pradesh, being the biggest state of the country, needed to be divided so that administrative problems and a feeling of neglect among the locals do not arise.

3.3.3 While it is true that the grievances of the people of these newly created states were genuine and the demands need to be met, it remains to be assessed as to what extent the aspirations of the people of these States have been fulfilled over a period of more than a decade since their establishment.

PROCEDURE OF CREATION OF NEW STATES:

Parliament can form new States, and can alter the area, boundaries or names of the existing States by a law passed by a simple majority.

- No Bill for the formation of new States or alteration of the boundaries or names of the existing State shall be introduced in either House of the Parliament, except on the recommendation of the President.
- The President, before introducing the Bill in the Parliament, shall refer it to the State Legislature concerned for its opinion within the specified time limit.
- If the State Legislature does not give its opinion within the specified time limit, the time limit may be extended.
- The Bill may be introduced even if the opinion has not come.
- The Parliament is not bound to accept or act upon the views of the State Legislature.
- It is not necessary to make fresh reference to the State Legislature every time an amendment to the Bill is proposed and accepted.

3.3.4 Giving the fact that ours is a federal system which is going through a process of democratic consolidation in times of transition, characterized by coalition governance, the option of creating new states needs to be considered with utmost caution, howsoever convincing the reasons for such creation may be. The concerns of the Federal government about other regions and ethnicities of the country raising similar demands must also need to be understood.

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4. CITIZENSHIP

4.1.1 A citizen is a person who enjoys full membership of the community or State in which he lives or ordinarily lives. Citizens are different from aliens, who do not enjoy all the rights which are essential for full membership of a state.

4.1.2 Part II of the Constitution simply describes classes of persons living in India at the commencement of the Constitution, i.e. 26th January 1950, and leaves the entire law of the citizenship to be regulated by legislations made by the Parliament. In exercise of its power, the Parliament has enacted the Indian Citizenship Act, 1955, which was subsequently amended in 1986.

4.2.1 The Act provides for the acquisition of Indian citizenship after the commencement of the Constitution in following five ways. i.e., birth, descent, registration, naturalization and in-corporation of territory:

a) By birth - Every person born in India on or after Jan 26, 1950, shall be a citizen of India by law of soil (Jus Soli), provided either or both of his/her parents are citizens of India at the time of his/her birth. But this law does not apply where his/her father is a diplomat of any other country or is an enemy alien at the time of his/her birth.
b) By descent- Broadly, a person born outside India on or after January 26, 1950, is a citizen of India by descent if his/her father is a citizen of India at the time of that person's birth i.e. law of blood (Jus Sanguine)
c) By registration- Any person who is not a citizen of India by virtue of the Constitution or any of the provisions of the Citizenship Act may acquire citizenship by applying for registration for such a purpose. However, he/she should have lived in India for at least 5 years for not less than 90 days a year, immediately before making such an application.
d) By naturalization- A foreigner can acquire citizenship of India by applying for it before a competent authority provided he/she had lived in India for at least 10 years.
e) By incorporation of territories- If any new territory becomes a part of India, after a popular verdict, the Government of India may notify the person of that territory to be citizens of India.

4.3.1 Termination of citizenship: The Citizenship Act 1955 also lays down three modes by which Indian citizens may lose his/her citizenship. These are renunciation, termination and deprivation.

a. Renunciation is a voluntary act by which a person, after acquiring the citizenship of another country gives up his/her Indian citizenship. This provision is subject to certain conditions.

b. Termination takes place by operation of law when an Indian citizen voluntarily acquired the citizenship of another country. He/she automatically ceases to be an Indian citizen.

c. Deprivation is a compulsory termination of the citizenship of India obtained by Registration to Naturalization, by the Government of India on charges of using fraudulent means to acquire citizenship.

Rights Not Available to Aliens

1. Right not to be discriminated against on grounds of race, religion, caste, sex or place of birth (Art. 15)
2. Right to equality of opportunity in public employment (Art. 16)
3. Right to six fundamental freedoms (Art. 19)
4. Right to suffrage
5. Cultural and educational rights (Art. 29 & 30)
6. Rights to hold certain offices – President, Vice President, Governor, Judges of Supreme Court and the High Courts, Attorney General of India, Comptroller and Auditor General, etc.
7. Right to contest election and get elected to either House at the Centre or State level.

4.4 **Dual Citizenship**:

4.4.1 The Indian Constitution, under Art. 11, gives power to the Indian Parliament to legislate on citizenship matters. Accordingly, Parliament enacted the Citizenship Act in 1955. Art 9 says that citizenship means full citizenship. The Constitution does not recognize divided allegiance. Section 10 of the Citizenship Act provides that a person cannot have allegiance to the Indian Constitution as well as to the Constitution of another country. The Indian courts have consistently ruled against dual citizenship.

4.4.2 If an Indian citizen acquires citizenship of another country, he loses the Indian citizenship. For example, if a child of parents who are citizens of India, is born in another country and does not renounce the citizenship of that country on attainment of adulthood, he/ she loses the Indian citizenship.

4.4.3 The reason for the denial of dual citizenship is that citizenship entails certain duties like serving in the army, if the need be.

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5. FUNDAMENTAL RIGHTS

5.1 The most striking difference between the Government of India Act, 1935 and the present Indian Constitution is the presence of Fundamental Rights in the latter. This is the Magna Carta of India. In the American Constitution these rights are provided in the form of Bill of Rights. The Constitution of India has embodied a number of Fundamental Rights, in Part III of the Constitution. Part III of the Constitution is called the cornerstone of the Constitution and together with part IV (Directive Principles) constitutes the '*conscience*' of the Constitution.

5.2 Why are these Rights fundamental?

5.2.1 These Rights are regarded as fundamental because they are most essential for the attainment, by the individual of his/her full intellectual moral and spiritual stature.

5.3 Significance of Fundamental Rights:

5.3.1 Fundamental Rights are individual rights and without them democracy is meaningless. The Fundamental Rights are included in the Constitution because these rights should be regarded as inviolable under all conditions. A society cannot function freely without Fundamental Rights.

5.3.2 Fundamental Rights are meant to protect the rights and liberties of the people from the encroachment by the Government. They are limitations upon the powers of the Government, legislative as well as executive, and are essential for the presentation of public and private rights. The danger of encroachment on citizen's liberties is particularly great in the parliamentary system as those who form the Government enjoy a majority support in the legislature and can get laws made according to their wishes.

The Definition of State

According to Art. 12 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the State and all local or other authorities within the territory of India or under the control of the Government of India. The judiciary, it is said, though not expressly mentioned in Art. 12, should be included within the expression 'other authorities' since courts are set up by statutes and exercise powers conferred by the law.

5.4 Plenary Power: This means absolute, unquestioned and uncontrolled power. Through the 24th Constitutional Amendment, the Parliament tried to assume plenary power but the Supreme Court, under the concept of the 'Basic Structure' of the Constitution, has negated the attempt of the Parliament. According to the Supreme Court, all legislations of the Parliament are subject to the judicial review by the court**.**

5.5 Nature of Fundamental Rights under Indian Constitution

5.5.1 Fundamental rights are individual rights and these rights are enforceable against the arbitrary invasions by the State.

5.5.2 The rights which are given to the citizens by way of fundamental rights as included in Part III of the Constitution are a guarantee against State action, as distinguished from violation of such rights by private parties. But, the following two rights can be enforced against private individuals also:

a) Right against discrimination and Right against untouchability (Arts. 15(2), 17; and
b) Right against exploitation (Arts. 23, 24).

5.6 Are fundamental Rights absolute?

5.6.1 Fundamental Rights do not give absolute power to the individual. They are restricted rights. Unrestricted liberty becomes a license and jeopardizes the liberty of others. If individuals are given absolute freedom and action, the result will be chaos, ruin and anarchy. There should be a balance between individual liberty and social needs. On the other hand, if the State has absolute power over liberty, the result would be tyranny. Thus Constitution empowered the Parliament to provide restrictions on Fundamental Rights, provided such restrictions are reasonable and fair.

Grounds For Reasonable Restrictions

Some of the grounds on which reasonable restrictions can be imposed are:

1. Advancement of SCs, STs, OBCs and other backward and weaker classes including women and children;
2. In the interest of general public, public order, decency and morality;
3. Sovereignty and integrity of India;
4. Security of the State;
5. Friendly relations with foreign States etc.

5.6.2 But the following two Fundamental Rights are absolute rights -

1. Right against untouchability (Art. 17)
2. Children below 14 years shall not be employed in hazardous jobs (Art. 24)

5.7 Judicial Review and Fundamental Rights

5.7.1 Art. 13 provides for Judicial Review of all legislations in India.

5.7.2 Judicial Review is the power conferred on the High Courts and Supreme Court of India to declare a law unconstitutional, if it is inconsistent with any of the provisions of Part III of the

Constitution to the extent of the contravention. The concept of Judicial Review is taken from the American Constitution.

5.7.3 In India, it is the Constitution that is supreme. For a law to be valid, it must conform to the constitutional requirements. It is for the judiciary to decide whether the law is constitutional or not.

5.8 Amenability of the Fundamental Rights

5.8.1 As per Art. 13(2), any 'law' made by Parliament, if it takes away or abridges the fundamental rights conferred by Part III of the constitution, shall be declared void to the extent of such contravention. The Supreme Court in a number of cases from Shankari Prasad vs Union of India (1952) to Sajjan Singh vs State of Rajasthan (1965), held that by exercising its amending power under Art. 368, the Parliament can amend even Part III of the Constitution.

5.8.2 But in Golaknath Vs State of Punjab (1967) case, the Supreme Court overruled its earlier decision and held that the Fundamental Rights embodied in Part III had been given a 'Transcendental position' by the constitution and no authority including the Parliament through its amending power under Art. 368, was competent to amend the Fundamental Rights.

5.8.3 However, by the 24th Amendment Act, 1971 the Parliament suitably amended Art. 13 and Art. 368 to empower itself to amend Part III of the Constitution. This Amendment Act was challenged before the Supreme Court in the landmark case, Kesavananda Bharati Vs State of Kerala (1973). The Court in this case held that the Parliament can amend any provisions of the Constitution including Fundamental Rights by its amending power under Art. 368, provided such amendments do not touch the *basic structure* of the Constitution.

Rights Outsides Part III

- Art. 300 - A no person shall be deprived of his property save by authority of law.
- Art 301 - Freedom of trade, commerce and intercourse –Subject to other provisions of this Part, trade commerce and intercourse throughout the territory of India shall be free.
- Art. - 326, Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.

5.9 Suspension of Fundamental Rights

5.9.1 In the USA and Australia, the fundamental rights cannot be suspended under any circumstances. But the Constitution of India contains provisions for automatic suspension of Fundamental Rights under certain circumstances, as for e.g. during national emergency under

Art. 352 (i.e., war or external aggression). The Constitution further empowers the President, under Art. 359, to suspend any or all fundamental rights by issuing a separate proclamation during a national emergency. However, the 44th Amendment Act, 1978 prohibits the suspension of Arts. 20 and 21 (protection in respect of conviction of offences and protection of life and personal liberty respectively) even during a national emergency.

Classification of Fundamental Rights

There are six groups of Fundamental Rights:

1. Right to equality (Arts. 14-18)
2. Right to freedom (Arts. 19-22)
3. Right against exploitation (Arts. 23-24)
4. Right to Freedom of Religion (Arts. 25-28)
5. Cultural and Educational Rights (Arts. 29-30)
6. Right to Constitutional Remedies (art. 32)

5.10 Fundamental Rights exclusive to citizens

a) Art. 15. Prohibition of discrimination **only** on grounds of religion, race, caste, sex or place of birth.
b) Art. 16. Equality of opportunity in matters of public employment.
c) Art. 19. Protection of certain rights, regarding freedom of speech etc.
d) Art. 30. Right of minorities to establish and administer educational institutions.

5.11 Fundamental Rights available to any person on the soil of India (*except the enemy aliens*)

a) Art. 14. Equality before law and equal protection of laws.
b) Art. 20. Protection in respect of conviction for offences.
c) Art. 21. Protection of life and personal liberty.
d) Art. 23. Prohibition of traffic in human beings and forced labour.
e) Art. 25. Freedom of religion.
f) Art. 27. Freedom as to payment of taxes for promotion of any particular religion.

5.12 Article 14

5.12.1 Right to Equality **-** The State shall not deny to any person *equality before the law* or *equal protection of the laws* within the territory of India.

5.12.2 Equality before Law - This is borrowed from the British Constitution. Equality before Law is a negative concept. It means 'no man is above the law' and every person, whatever be

his social status, is subject to the jurisdiction of the courts. Equality is an antithesis of arbitrariness. Equality and arbitrariness are sworn enemies.

5.12.3 Exceptions - The rule of equality before law is, however, not an absolute rule and there are a number of exceptions to it. Firstly, foreign diplomats are immune from the jurisdiction of courts. Secondly, Article 361 provides that the President or the Governor of the states shall not be answerable to any Court for the exercise and performance of the powers and duties of the office. Thirdly, no criminal proceeding shall be instituted or continued against the President or the Governor of a State in any Court during his term of office. Further, no process for the arrest or imprisonment of the President or the Governor shall be issued from any Court during his term of office.

Rule of Law

The guarantee of equality before the law is an aspect of, what Dicey calls, the 'Rule of Law' that originated in England. It means no man is above law and that every person, whatever be his rank or status is subject to the jurisdiction of ordinary courts. Also, it says no person shall be subject to harsh, uncivilized or discriminatory treatment even for the sake of maintaining law and order.

There are three basic meanings of 'Rule of Law' –

1. Absence of arbitrary power or supremacy of law – "a man can be punished for a breach of law and not for anything else."
2. Equality before law – no one is above law.
3. The Constitution is the supreme law of the land and all laws passed by the Legislature must be consistent with the provisions of the Constitution.
   Rule of Law as under Art. 14 is a 'basic feature' of the Constitution.

5.12.4 Equal protection of law - This is a positive concept. The concept of equal protection of law has been borrowed from the US Constitution. It only means that all persons in similar circumstances shall be treated alike, both in the privileges conferred and liabilities imposed. Equal law should be applied to all persons who are similarly placed, and there should be no discrimination between one person and another.

5.12.5 So, Art. 14 empowers the State to reasonably classify people. But this classification should not be arbitrary, artificial or evasive. There can be discrimination between the groups but not within the groups. Since the State stands for the welfare of all sections of the society, it can make certain discrimination in favour of those who are less privileged. Hence, the income tax for an income upto Rs. 2,00,000/- per annum has been exempted. Under the policy of protective discrimination, the State has made laws in favour of certain sections of the society, e.g. the Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Castes (OBCs). But these three are not classified as a single group. For example, between the SCs and STs, the latter have got more favours and the OBCs have received the least favours. But within a group, say, Scheduled Caste, there cannot be further discrimination.

5.13 Article 15

5.13.1 Art. 15 directs the State not to discriminate against a citizen on grounds only of race, religion, caste, sex, place of birth, etc.. The word '**only**' indicates that discrimination cannot be made merely on the ground that one belongs to a particular caste, race, religion, etc. If other qualifications are equal, religion, caste, race, etc. should not be a disability.

5.13.2 Exceptions

1. Special provisions for women and children.
2. Art. 15(4) provides for special favours for groups of citizens who are economically and socially depressed.

Who are socially and educationally backward classes?

This is not defined in the Constitution. But Art. 340 empowers the President to appoint a commission to investigate conditions of socially and educationally backward classes. On the basis of the recommendations of the commission, the President may specify the backward classes. But the decision of the Government is subject to judicial review.

In various rulings, Supreme Court held that 'Backwardness', as defined in Art. 15(4), should be both social and educational, and not either. Poverty, occupation, place of habitation may all be relevant factors to be taken into consideration. Though poverty is not the sole test of backwardness, it is a relevant factor in the contest of social backwardness.

5.14 Article 16

5.14.1 Equality of opportunity in matters of public employment. No citizen shall, on grounds only of race, religion, caste, sex, descent, place of birth or residence be ineligible for, or discriminated against in respect of any employment or office under the State. But the State is free to specify qualifications. There cannot be any other ground for non-eligibility.

5.14.2 Exceptions

a) Residence can be made as a restriction for employment on the basis of historical aspects.
b) Special favours can be given to the backward classes if they are not adequately represented.
c) Religion can be a ground for discrimination in special cases. There are religious institutions taken over by the State. So the religious posts are reserved for people of the same religious denomination.

Constitutional Protection of SC/STs

The goal of establishing an egalitarian society is the foundation of the Indian Constitution. In India, the additional burden of history in the form of inherited social distortions taking ethnic and caste dimensions needs to be addressed with preferential and special constitutional steps in support of the SC/ST communities. The Constitution provides the following support to them:

- Art. 15 eliminates disability with regard to access to public places.
- Art. 16 provides equality of opportunity which is enriched by protective measures for the SC/STs in matters of State employment and appointment.
- Art. 18 abolishes untouchability and the accused has to prove his innocence.
- The President is empowered to draw a list of SC/STs in consultation with the Governor of each state subject to Parliamentary amendments (Arts. 341-342).
- The property of these communities cannot be taken away unless specified authorities permit the same (Art.19.5).
- National Commission of SC/STs has been set up by the 65th Amendment Act in 1990, which was further bifurcated into National Commission for SC and National Commission for ST by way of the 89th Constitution Amendment Act (2003) (Art. 338 & 338A).
- The President may appoint a commission to review the functioning of the Scheduled areas and the welfare of the STs in the areas.
- The President may direct a state to draw and execute schemes for the welfare of the STs.
- One of the criteria for extending the Central grants-in-aid of the states is the obligation of the latter to meet the cost of the welfare schemes for the SC/STs.
- Special provisions are laid down in the 5th and 6th Schedules of the Constitution, which are read along with Art. 244 for the administration of areas inhabited by the STs.
- In states like Madhya Pradesh, Bihar etc. there shall be ministers in charge of welfare of SC, ST and OBC.
  There are seats and constituencies reserved for the SC/STs. It is a temporary provision, that is being extended, so far, for every ten years.

5.15 Article 17

5.15.1 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. But the Constitution does not prescribe any punishment under this Article. The Parliament enacted the 'Untouchability (Offences) Act, 1955', which prescribed punishment for the practice of untouchability. This Act was amended by the 'Untouchability (Offences) Amendment Act, 1987', in order to make the untouchability laws more stringent. Further, the name of the original Act was changed to Civil Rights (Protection) Act, 1976. However, the Act does not define what is 'Untouchability'. According to the Supreme Court, 'Untouchability' should not be understood in its literal or grammatical sense. It

is to be understood as the 'practice as it had developed historically'. Art. 17 also imposes a duty on the public servants to investigate such offences.

5.16 Article 18

5.16.1 Abolition of title - 'No title, not being a military or academic distinction, shall be conferred by the State.' 'No citizen of India shall accept any title from any foreign State'. It also prohibits a foreign national under the employment of the State to receive any title from any foreign state without the consent of the President. But Art. 18 does not prescribe any punishment for the offence. Parliament is free to make a law for punishment.

Are Bharat Ratna, Padma Vibhushan, Padmashree, etc. violative of Art. 18?

These awards merely denote the State's recognition of good work by citizens in various fields of activities. These fit in the category of academic distinctions. But, they cannot be used as a title and cannot be used as suffix or prefix.
Art. 51-A of the Constitution speaks about the fundamental duties of every citizen. It is necessary that there should be a system of awards and decorations to recognize the excellence in performance of duties. So, these awards are not violative of the provisions of Art. 18.

5.17 Article 19

5.17.1 Right to Freedom - Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right –
- (a) To freedom of speech and expression.
- (b) To assemble peacefully and without arms.
- (c) To form associations or unions.
- (d) To move freely throughout the territory of India.
- (e) To reside and settle in any part of the territory of India.
- (f) To property (*removed by the 44th Constitutional Amendment, 1978 and transferred to Art. 300A*)
- (g) To practice any profession, or to carry on any occupation, trade or business.

5.17.2 Restrictions - The freedom of speech and expression is not absolute. The State can impose reasonable restrictions on grounds of security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation etc. Also, the right to form associations, unions etc. does not give any fundamental right to strike. Moreover, an individual has the right to or not to join an association.

5.17.3 The Supreme Court in 1995, in the 'airways case', held that the freedom of speech and expression was limited not only by 'reasonable restrictions', but also by State regulations associated with the use of public property. However, the State-ownership of radio and TV

violates the freedom of speech and expression and so a public autonomous authority is to be set up so that the State responsibility of collective benefit and the individual need for self-expression are balanced.

Article 19 and Judicial Review

The six basic freedoms prescribed in Art. 19 are not absolute. The State can impose reasonable restrictions.
The expression 'reasonable restriction' has brought with it the doctrine of Judicial Review.
In determining the reasonableness, the court looks not only to the surrounding circumstances, but also, other laws which were passed as a single scheme.

5.18 Article 20

5.18.1 Protection in respect of conviction for offences. This protection is available against the following three types of convictions -

a) *Ex-post Facto Legislation*

This means enacting a law and giving it a retrospective (i.e., From a previous date/year) effect. This power has been conferred to the Parliament by our Constitution. This is applicable only for civil legislation while criminal legislation cannot be given retrospective effect.

b) *Double Jeopardy*

This means that an individual can be punished for a crime only once and also not beyond the period prescribed by the authority. However, if a civil servant is dismissed on criminal charges, his dismissal does not come under Double Jeopardy and he could be well prosecuted further in the court.

c) *Prohibition against self incrimination*

No person accused of an offence shall be compelled to be a witness against himself. The cardinal principle of criminal law is, an accused should be presumed to be innocent till the contrary is proved. It is the duty of the prosecution to prove the offence.

Freedom of Press

The Indian Constitution does not provide for the freedom of press separately. It is implicit in Art. 19, which grants freedom of speech and expression. Freedom of expression includes not only expression of one's own views but of other's as well. The restrictions that limit the freedoms in the case of individuals apply to the press also.
The laws that apply to press include:

- Taxation;
- Laws regulating industrial relations;

- Regulations of the conditions of service of the employees;
- Defamation, contempt of House and Court etc.
  In its interpretation of Art. 19 in the 'Airways case' (February, 1995), the Supreme Court reiterated that the Press would be bound by the rules of the Government, expressed through an autonomous body.

5.19 Article 21

5.19.1 Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law.

Inferred Rights

The composite or inferred rights are those rights of the citizens which are not explicitly provided by the Constitution but have been derived by liberal interpretation of the various provisions of the Constitution.
Some of the inferred rights from Art. 21 are:

1. Right to clean air.
2. Right to health of the workers.
3. Right to privacy (i.e. to be left alone).
4. Right to live with dignity.
5. Right against denial of wages and arbitrary dismissal of workers.
6. Right to speedy trials for under trials.
7. Right against cruel punishment
8. Right to shelter.

5.19.2 This Article provides Right to Life and personal liberty except on the ground of procedure established by law. Over the years, this Article has undergone a sea change and has become the most important and fundamental right. The Supreme Court, through a liberal interpretation of the Article, has derived a number of composite or inferred rights. Now, the Article stands not merely for the Right to Life and personal liberty, but also the right to dignity and all other attributes of human personality that are essential for the full development of a person. That is why Art. 21 has become the foundation stone of Part III of the Constitution.

5.19.3 The Supreme Court and the High Courts have been enlarging the scope of the Article with various activist judgments. In 1992 and 1993, in the case of capitation fees being charged by some professional colleges, the Supreme Court rules that right to education upto fourteen years of age is a part of Right to Life. In some judgments, the Supreme Court held that right to clean and hygienic conditions of life is a part of Right to Life. In recent years, the Supreme Court and High Courts have ordered many industries to close down for the pollution they are generating thus, violating the right to clean surroundings, which is a part of Right to Life.

Procedure Established by law and the Due Process of Law

The procedure established by law means the uses and practices as laid down in the statute or law. Under this doctrine, the Court examines a law from the point of view of the Legislature's competence and sees whether the prescribed procedures have been followed by the Executive. The Court cannot go behind the motive of the law and cannot declare it unconstitutional, unless the law is passed without procedure established by law. Therefore, the Court relies more on the good sense of the Legislature and strength of the public opinion. This doctrine protects individual against the executive actions only.

On the other hand, the phrase due process of law means that the court should examine the law, not only from the point of view of legislature's competence, but also from the broad view of the intention of the law. Thus it provides greater power to the court.
The Constitution of India provides for the procedure established by law. But, the Supreme Court in the Maneka Gandhi case, in 1978, interpreted Art. 21 to include the phrase "due process of law" in it. Thus, Art. 21 now protects an individual both against legislative and executive actions.

5.20 Article 21 A

5.20.1 Right to education – 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.

5.21 Article 22

5.21.1 Protection against arrest and detention against certain cases - The Article says that the Authority cannot arrest or detain a person without properly informing him of the grounds for such arrest/detention. The detained or arrested person must be produced before the nearest magistrate within 24 hours of arrest (excluding the holidays and time taken during the journey). Further, the period of detention cannot be beyond what is authorized by the magistrate.

5.21.2 Preventive Detention - A person can be detained under preventive detention, if there is a suspicion or reasonable probability of that person committing some act which is likely to cause harm to the society and endanger the security of the society. Article 22 does not apply in case of preventive detention because the person is arrested on the ground of suspicion and is meant to prevent him from committing a serious crime. However, there are certain provisions in Article 22 for the protection of such persons. These provisions are –

a. A person detained on the ground of suspicion shall be detained for a maximum period of two months. If the government seeks to detain the arrested person beyond this period, his detention must be authorized by an 'Advisory Body', which is purely judicial.
b. The detained person must be informed about the reason of his arrest, as soon as possible.
c. The detained person must have the earliest opportunity to present his case before the authority of law.

5.21.3 In the case of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA); and National Security Act (NSA), the period of preventive detention is 6 months or more. Parliament is given the power to determine the maximum period for which a person can be detained on preventive grounds. The Parliament passed the Preventive Detention Act in 1950. Later, in 1971, Maintenance of Internal Security Act (MISA); IN 1974, COFEPOSA; IN 1980, The National Security Act were passed.

5.22 Article 23

5.22.1 Prohibition of traffic in human beings and forced labour - Traffic in human beings and beggar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

5.22.2 Traffic in Human Being: selling and buying men and women like goods and includes immoral traffic in women and children for immoral and other purposes. It is prohibited to force a person to render service, where he was lawfully entitled not to work or to receive remuneration of services rendered by him. One shall not be forced to provide labour or services against his will even if remuneration is paid. If remuneration is less than minimum wages, it amounts to forced labour under Art. 23.

5.23 Article 24

5.23.1 Prohibition of employment of children in hazardous jobs: No child below the age of fourteen years shall be employed to work in any factory or mining or engaged in any other hazardous employment.

5.23.2 This provision is in the interest of public health and safety of the lives of children. In M.C. Mehta Vs. State of Tamil Nadu case, the Supreme Court held that the State authorities should protect economic, social and humanitarian rights of millions of children, working allegedly in public and private sectors.

5.24 Right to Freedom of Religion

5.24.1 India is a secular state. But it is not an in irreligious or atheist state. It is the ancient doctrine in India that the State protects all religions; but interferes with none. The State is concerned with relations between man and man; not man and God.

5.24.2 *What is religion*? A religion has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being.

5.25 Article 25

5.25.1 Freedom of conscience, profession, practice and propagation of religion : Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

5.25.2 However, the Right to propagate does not mean inducing or alluring a person to join any religion.

Conscience: Absolute inner freedom of the citizen to mould his / her own relation with God in whatever manner he likes.
Profess: to declare freely and openly one's faith and belief.
Practise: to perform the prescribed religious duties, rites and rituals and to exhibit his religious beliefs.
Propagate: Spread and publicise his/her religious views for the edification of others. It only indicates persuasion and exposition without any element of coercion.

5.25.3 Restrictions on Freedom of Religion

a) **Religious liberty is subject to public order, morality and health -** For e.g., in the name of religion, one cannot practice untouchability. There cannot be indecent dressing. One cannot forcibly convert another person. Right to wear 'kripan' are acceptable in the Sikh community; but not any number of 'kripans'.

b) **Regulation of economic, financial, political and secular activities associated with religious practices -** For e.g., sacrifice of cows on the occasion of Bakrid is not an essential part of religion. Hence, the State law forbidding slaughter is valid.

c) **Social welfare and social reforms -** This clause declares that where there is conflict between the need for social welfare and reform and religious practice, religion must yield. Social evils cannot be practiced in the name of religion, e.g., polygamy is not an essential part of Hindu Religion, hence can be regulated. Similarly, Prohibition of Sati and Devadasi systems.

Conversions

India being a secular country, with Arts. 25-28 containing the essence of secularism and the Preamble to the Constitution proclaiming the same categorically, the people of the country are given the freedom of conscience and the right to freely profess, practice and propagate religion, subject to public order, morality, health and so on (Art. 25.1).

There has been a debate over whether Art. 25.1 can be understood as granting person the right to convert others to his/her religion. But a Constitution Bench of the Supreme Court, in a group of related cases in 1977 called the Rev. Stainislau vs. State of Madhya Pradesh and Others case, ruled that Art. 25.1 does not give the right to convert but only the right to spread the tenets of one's own religion.

The Supreme Court was delivering the verdict about the legislation made in Madhya Pradesh and Orissa to outlaw conversions based on force, fraud and allurement in 1968.

5.26 Article 26

5.26.1 Freedom to manage religious affairs - Subject to public order, morality and health, every religious denomination or any section thereof shall have the right –

a) to establish and maintain institutions for religious and charitable purposes.

b) to manage its own affairs in matters of religion.

d) to own and acquire movable and immovable property; and

e) to administer such property in accordance with law.

5.27 Article 27

5.27.1 Freedom as to payment of taxes for promotion of any particular religion- No person shall be compelled to pay any taxes for religious purposes. But if the government has done any service for a particular religious denomination, the government is free to charge fees from the devotees.

5.28 Article 28

5.28.1 Freedom as to attendance at religious instruction or religious worship in certain educational institutions - Educational institutions have been divided into the following four categories:

a) Wholly maintained by the State.

b) Recognised by the State.

c) Receive aid out of the State funds.

d) Administered by the State, but established under a religious endowment.

5.28.2 In the first case, there can be no religious instructions whatsoever. In the second and third cases, religious instructions can be imparted, but the pupils cannot be compelled to attend such instructions. In the fourth case, there is no restriction whatsoever, as far as religious instructions are concerned.

5.29 Article 29

5.29.1 Protection of interests of minorities - Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

5.30 Article 30

5.30.1 Right of minorities to establish and administer educational institutions - All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

5.30.2 It provides to religious, educational and cultural institutions, the right to own, possess and dispose immovable property. The State shall give due compensation in case of acquisition of such property.

5.30.3 The right to preserve language, culture or script can be implemented through educational institutions. Art. 30(1) provides the Right to 'establish' and 'administer' institutions. *Administer* means the management of affairs of the institution.

Minority institutions and Regulatory measures

Article 30 confers the right to establish and administer an institution by a minority community. But, states can regulate the working of such institutions. Regulations should pass the dual test of reasonableness and there being an effective vehicle of education for the minority community.

The Supreme Court observed that the Right to administer is not the right to mal-administer. Also, management should be effective, but Universities cannot regulate the composition and personnel of the managing bodies. Regarding selection of teachers, the Supreme Court held that it is a part of the administration. But, the University can put basic qualifications for selection.

5.31 Article 32

5.31.1 Rights to Constitutional Remedies - Article 32 provides institutional framework for the enforcement of the Fundamental Rights by the Supreme Court. Dr. B.R. Ambedkar called this Article as "the Fundamental of the fundamental rights" and the heart and soul of the Constitution.

5.31.2 To enforce the Fundamental Rights, the Supreme Court is empowered under Art. 32 to issue writs of various forms. The concept of issuing writs is taken from the UK. The five forms of writs are as follows:

a) ***Habeas Corpus*:** It literally means 'to have a body' i.e. to be produced before the court. This kind of writ is issued to protect personal liberty of an individual against the arbitrary action of both the State and private individuals. The aggrieved person can even claim for compensation against such action.

b) ***Mandamus*:** It literally means 'command'. This kind of writ is issued against a public authority or a public officer and inferior courts for purpose of enforcing legal rights only. However, this writ cannot be issued against the President and the Governors. Also private right cannot be enforced by the writ of the mandamus.

c) ***Prohibition*:** This kind of writ is issued by the higher courts to the lower courts or quasi-judicial bodies (tribunals, etc.) when the latter exceed their judicial authority. The

objective is to keep the inferior courts or the quasi-judicial bodies within the limits of their respective jurisdiction.

The difference between 'Mandamus' and 'Prohibition' is that while the former can be issued against judicial as well as administrative authorities, the latter is issued only against the judicial or quasi-judicial authorities.

d) ***Certiorari*:** It is similar to Prohibition. The only difference is that this writ is issued to quash the order of a lower court or the decision of a tribunal in excess of its jurisdiction. While Prohibition is issued to prevent an inferior court or tribunal to go ahead with the trial of a case in which it has assumed excess of jurisdiction. The purpose of this writ is to secure that the jurisdiction of an inferior court or tribunal is properly exercised and that it does not usurp the jurisdiction it does not possess.

e) ***Quo Warranto*:** It literally means "What is your authority". This kind of a writ is issued to ensure that the person holding a public office is qualified to hold the office.

No time-limit is prescribed for issuing the writs in the Constitution and has been left to the Courts to decide this.

Difference between the Writ Jurisdiction of the Supreme Court and High Courts

1. The Supreme Court issues the Writ (under Art. 32) only in cases of the violation of the Fundamental Rights, whereas the High Courts (under Art. 226) can issue the writs not only for the enforcement of the Fundamental Rights but also for redressal of any other injury or illegality, provided certain conditions are satisfied. Thus in a way the writ jurisdiction of the High Court is wider than the Supreme Court.

2. Art. 32 imposes on the Supreme Court a duty to issue the Writs, whereas no such duty is imposed on the High Court by Art. 226.

3. The jurisdiction of the Supreme Court extends all over the country, whereas that of the High Court only to the territorial confines of the particular sate and the Union Territory to which its jurisdiction extends.

Is there any erosion in the Fundamental Rights since the commencement of the Constitution?

There has been much discussion about whether the Fundamental Rights have been eroded since the commencement of the constitution. The arguments in favour of the erosion of Fundamental Rights are:

- Directives are implemented essentially at the expense of the Fundamental Rights.

- Inclusion of the Fundamental Duties (Part IVA and Art. 51A) in the Constitution by the 42nd Constitution Amendment Act, whose observance by the individuals is necessary for having their Fundamental Rights redressed in case of violation.

The removal of the right to property from Part III of the Constitution after progressive reduction in their scope. However, there has been a progressive strengthening of the Fundamental Rights as well. Firstly, there have been attempts to make Right to Work a Fundamental Right. Secondly, the Supreme Court has been interpreting the Right to Life as including all basic material facilities and legal access to them like clean environment. Thirdly, the Supreme Court, in the case of capitation fees in April 1993 held that Right to primary education is a Fundamental Right. Finally, the Supreme Court has always come to the rescue of the journalists, whose reports have been found to be violative of the privileges of the legislators, and these arrests have been ordered by the legislatures without giving journalists a chance to free and fair trial, as promised by Art. 21.

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6. DIRECTIVE PRINCIPLES OF STATE POLICY

6.1 The enumeration of the Directive Principles of the State Policy is a unique feature of the Indian Constitution. This novel feature of the Constitution has been adopted from the Constitution of Ireland. The concept is the latest development in the Constitutional governments throughout the world, with the growing acceptance of a 'welfare state'. The Directive Principles of the Constitution of India are a unique blend of Socialism, Gandhism, Western Liberalism, and the ideals of the Indian freedom movement. They are in the nature of directions or instructions to the State.

6.2 Art. 38-51 in Part – IV of the constitution, deal with the provisions of the Directive Principles. Art. 38 clearly directs the state to secure and protect a social order which stands for the welfare of the people.

6.3 Art. 37 says that Directive Principles are not justiciable but are fundamental to the governance of the country, and the State has the duty in applying the DPSPs. If they are not acted upon by the State, no one can move the courts. The reasons for making the DPSPs explicitly unjusticiable are that they require resources which the State may not have. However, with the economic development and growth, the state should strive to achieve goals set out in this part. For example, the Right to work enshrined in Art. 41 could not be guaranteed in the beginning, however, with the enactment of the Mahatma Gandhi National Rural Employment Guarantee Act, every household has been given the right to work for at least 100 days in a year. Similarly, poverty in India makes children take to labour. As a consequence, making primary education universal as well as compulsory was not considered practical in the beginning and was kept as a DPSP at Art 45. This has now been ensured for children between the age of 6 and 14 years and has been introduced as a fundamental right at Art 21 A. Thus, the DPSPs also require a modicum of economic development as a prerequisite for their enforcement.

6.4 There are other DPSPs which are irrespective of the economic condition of the nation, such as the uniform civil code, which is difficult to be enforced in a country where there is rampant religious superstition, illiteracy and mutual fear among religious communities. The code can only be brought about in the form of a law when suitable conditions are built up and all the concerned communities develop consensus for it. Therefore, DPSPs have to be implemented as and when the socio material conditions in the country improve.

Directive principles subsequently added

42nd Amendment Act – 1976

- Equal opportunity for justice and free legal aid.
- To protect the environment, forests and wild animals.

- Right of workers to participate in management of industries.
- To protect children against exploitation and to provide opportunities for their healthy development in conditions of freedom and dignity.

44th Amendment Act – 1978

- State shall minimize inequality in income, status, facilities and opportunities among individuals and groups (Art. 38(2)).

6.5 These principles can be classified under the following categories for a better understanding:

(a) Socialist Principles

Art. 38 - To secure a social order for the promotion of welfare of the people.

Art. 39 - To strive to minimise inequalities of income.

Art. 39(b) - Ownership and control of material resources of the community shall be so distributed so as to subserve the common good.

Art. 39(d) - Equal pay for equal work for men and women.

Ar. 39(e) - Health and strength of workers, and the tender age of children must not be abused.

Art. 39 A - Equal justice and free legal aid.

Art. 41 - Right to work to education and to public assistance in certain cases.

Art. 42 - Provision of just and humane conditions of work and maternity relief.

Art. 43A - Participation of workers in the management of industries.

Art. 45 - Provision for early childhood care and education to children below the age of six years.

(b) The Gandhian Principles

Art. 40 - Organisation of Village Panchayats

Art. 46 - Promotion of education and economic interests of SCs, STs and other weaker sections.

Art. 45 - Provision for early childhood care and education to children below the age of six years.

Art. 48 - Organisation of agriculture and animal husbandry on modern and scientific lines to prohibit the slaughter of cows, calves and other milch and draught animals.

Art. 47 - To bring about the prohibition of intoxicating drinks and drugs that are injurious to health.

Art. 43 - To promote cottage industries

(c) The Western Liberal Principles

Art. 44 - Uniform Civil Code for the citizens

Art. 45 - Provision for early childhood care and education to children below the age of six years.

Art. 50 - Separation of judiciary from executive.

Art. 51 - To promote international peace and amity

Art 49 - To preserve historical monuments

Directives in other Parts (Not in Part IV) of the Constitution

Art. 350A – enjoins every State and every local authority within the State to provide adequate facilities for instruction in the mother tongue at the primary stage to children of linguistic minorities.

Art. 351 – enjoins the Union to promote the spread of Hindi language so that it may serve as a medium of expression of all the elements of the composite culture of India.

Art. 335 – claims of Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with affairs of Union or of a State. Relaxation in qualifying marks was made permissible through the 82nd Constitution Amendment Act (2000).

These Directives are also non-justiciable. Maximum progress in implementing in directive has taken place in relation to Art. 39(b).

6.6 Implementation of DPSPs

6.6.1 Since the commencement of the Constitution, there have been a number of legislations to implement the DPSPs. In fact, the very first Amendment Act was for implementing land reforms. It was followed by the 4th, 17th, 25th, 42nd and 44th Amendment Acts.

6.6.2 The 73rd Constitution Amendment Act (1992) is in pursuit of implementing Art. 40.

6.6.3 In 1990, the bill to make the right to work an FR was introduced but the government of the day did not survive and the Bill fell through.

6.6.4 The 86th Constitution Amendment Act (2002) was enacted to provide Right to Education until the age of fourteen years.

6.6.5 There have been several factory legislations to make the conditions of work humane for the workers.

6.6.6 Promotion of cottage industries has been one of the main aspects of the economic policy of the government and there exists the Khadi and Village Industries Commission for the purpose.

6.6.7 In 1990, there was an attempt by the Parliament to bring about workers' participation in management but the Bill fell through with the fall of the then government.

6.6.8 The government's position as regards the uniform civil code (UCC) is that the matter being sensitive in the country, unless the religious groups concerned come forward and voluntarily seek the enforcement of the UCC, it is not desirable to implement the code. The Supreme Court, in 1995, held that the UCC must be implemented, and 'directed' the Union Government to report to it on the progress made in the implementation of the UCC.

6.6.9 The policy of preferential treatment in education, administration and economy for the weaker sections including women, SCs, STs and OBCs has been a consistent plank of the government welfare policy, the most recent being the implementation of the Mandal Commission Report, for which judicial clearance was given by the Supreme Court in 1992.

6.6.10 Many schemes like the Integrated Child Development Services, midday meal scheme and the policy of prohibition followed by some states (Andhra Pradesh in 1993, for example) are in pursuance of Art. 47.

6.6.11 In pursuit of Art. 48, the Green Revolution and the research in biotechnology are aimed at modernizing agriculture and animal husbandry, among other things.

6.6.12 The Environment Protection Act, 1986: The Wild Life Act: The National Forest Policy, 1988 are some of the steps taken for the implementation of Art. 48A. In 1995, the Union Government established the National Environment Tribunal.

6.6.13 The Archaeological Survey of India (ASI) is entrusted with the work of protection of monument like the Taj Mahal. The ASI took up the work of protecting the Puri temple from dilapidation in late 1992.

6.6.14 The amendments made to the Criminal Procedure Code to divest the executive of certain judicial powers at the district level are in pursuit of Art. 50.

5.6.15 The efforts of India to secure international peace are many like participating in the peace keeping operations of the UN (Somania in 1992-93; Sierra Leone in 2000); pioneering and leading the Non-aligned Movement and so on.

6.7 Difference between Fundamental Rights and Directive Principles

6.7.1 There are three significant differences between the two. These are:

a) Whereas the Fundamental Rights provide the foundation of political democracy in India, the Directives spell out the character of social and economic democracy in India.

b) Fundamental Rights are in the form of negative obligations of the State i.e., injunctions against the actions of the State. The Directive Principles are, on the contrary, positive obligations of the state towards the citizen.

c) A vital difference between the two is that, whereas the Fundamental Rights are justiciable, the Directive Principles are non-justiciable, thus lacking legal sanctity.

6.8 Relationship between the Fundamental Rights and Directive Principles

6.8.1 Although unlike the Fundamental Rights (Part III), the Directive Principles (Part IV) are not justiciable, Art. 37 declares that the Directive Principles are fundamental in the governance of the country and it shall be the duty of the State to apply the Directive Principles in making laws. But here the question of the validity of Directive Principles arises, if laws made by the State giving effect to them violate the Fundamental Rights. The Supreme Court in various cases has evolved a 'doctrine or theory of harmonization'. It has further stated that both the Fundamental Rights and Directive Principles are in fact supplementary to each other and together constitute an integrated scheme. However, it has also held that where this is not possible, the Fundamental Rights shall prevail over the Directive Principles. On this ground the Supreme Court held the Bank Nationalization Act and the Privy Purses Abolition Act as unconstitutional.

6.8.2 The Parliament, by the 25th Amendment Act 1971, introduced a new Article 31-C which stated that if the State enacts any law giving effect to the Directive Principles namely, Art. 39(a) and Art. 39(b) and in the process if the law violates the Fundamental Rights enumerated in Arts. 14, 19 and 30, such law(s) cannot be (1) held void for impinging the three Fundamental Rights and (2) questioned in any court of law. The 25th amendment was challenged before the Supreme Court in the Kesavananda Bharati case in 1973. The Court upheld the 25th Amendment Act, but struck down the 2nd part on the ground that the 'judicial review' is a part of the 'basic structure' of the Constitution, which no authority can change.

6.8.3 The Parliament again, by the 42nd Amendment (1976) amended Art. 31-C to extend it to include all the Directive Principles. But this change (as made under 42nd Amendment) was declared by the Supreme Court as unconstitutional in the Minerva Mills case (1980) on the ground that it affects the balance of judicial power. Thus, the present position is that only Art. 39(a) and Art. 39(b) can be given precedence over Arts. 14, 19 and not all the Directive Principles. [Art. 31 no longer exists, for by 44th Amendment, the right to property (earlier under Art. 31) has been made a Constitutional right under Art. 300A]. Also the court held that there

exists a balance between Parts III and IV and while giving judgement, a harmonious reading of the two is important rather than giving any general preference to the Directives.

6.9 Importance of the Directive Principles

6.9.1 The Directive Principles have been criticized chiefly for their lack of legal sanction. But Art. 37 declares Directive Principles as fundamental in the governance of the country. It should also be kept in mind that it is due to practical necessity (basically, lack of finance on the part of the Stats to fulfil the provisions of the Directive Principles) that the Directive Principles have not been given legal status and not because they have an inferior status. These principles represent not only the temporary will of the Constituent Assembly as observed by B.R. Ambedkar and later Chief Justice Kania, but the deliberate wisdom of the country expressed through the Constituent Assembly. Since the Government is answerable to the people, the Directive Principles act as a signpost to all succeeding governments. The Directive Principles provide the yardstick for assessing the success or failures of these governments.

Fundamental Duties

This is included in the Indian Constitution by the 42nd Amendment Act, 1976. It is based on the Japanese model. Ten duties of the citizens towards the state have been enumerated by inserting Art. 51A in Part IV-A of our Constitution.

Rights and Duties are correlative. These serve as a constant reminder to every citizen that, while the Constitution specifically confers on them certain Fundamental Rights, it also requires them to observe certain basic norms of democratic conduct and behaviour. It was argued that in India, people lay emphasis only on rights and not on duties.

Fundamental Duties in other countries

None of the major democracies in the world has Fundamental Duties. Only Japan has made some mention of them. France has a passing reference only. It does not mean that people of these countries behave in an irresponsible manner. In all these countries, citizens have a high sense of patriotism as a result of education and training in the elementary duties and obligations of citizenship.

But in socialist countries, there are specific Fundamental Duties.

The ten duties require the citizens:

1. To abide by and respect the Constitution, the National Flag, and the National Anthem.
2. To cherish and follow the noble ideals of the freedom struggle.
3. To uphold and protect the sovereignty, unity and integrity of India.
4. To defend the country and render national service when required.
5. To promote common brotherhood and establish dignity of women.
6. To preserve the rich heritage of the nation's composite culture.

7. To protect and improve natural environment.
8. To develop scientific temper, humanism and spirit of inquiry.
9. To safeguard public property and abjure violence.
10. To strive for excellence in all spheres of individual and collective activity.

6.10 Distributive Justice: It means that the profits of economic development shall be shared by all and not appropriated by a few. Also, there shall be no concentration of wealth. This intention is embodied in Art. 39 (a) and (b) of the Constitution.

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7. THE UNION EXECUTIVE

7.1.1 Art. 52 says that 'there shall be a President of India' And Art. 53 says that the executive power of the Union shall be vested in the President.

7.2.1 Election of President: The provisions dealing with the election of the President are provided in Articles 54 and 55 and the President and Vice-President (Elections) Act of 1952 amended in 1974. The President is elected by an Electoral College, which consists of the elected members of the State Legislatures (MLAs) and those of the Parliament (MPs) through proportional representation by means of a single transferable vote. The value of vote of an MLA and MP is such that a true federal character of the office of the President is maintained by striking a balance between the State and Centre.

Planning Commission

The Planning Commission was set up in 1950 by a Cabinet resolution and hence it is a non-statutory body, sometimes also called an extra-constitutional body. This was done by the cabinet by taking advantage of the subject 'Economic and Social Planning', which is in the Concurrent List. It acts as an advisory body to the Union Government. Following duties were assigned to the body:

- To assess the material, capital and human resources of the country and to formulate plan for its most effective and balanced utilization.
- To determine national priorities of development and define stages of growth.
- To point out those factors of economic retardation and prepare conditions necessary for the successful execution of the plan.
- To determine the nature of machinery required for the implementation of each stage of the plan.
- To appraise, periodically, the progress achieved and make recommendations regarding necessary changes in the prevailing economic conditions, policies, measures and development programmes, etc.

The body was constituted basically to make recommendations to the Union Cabinet and work in close understanding and consultation with the ministries of the Central Government and State Governments. However, gradually the Commission's activities have been extended over the entire sphere of administration, except defence and foreign affairs. The body has been criticized by some as it encroaches upon the functions of the constitutional bodies like the Finance Commission and also impinges of the financial autonomy of the states.

The point of critics is partially true at the Union level because the Planning Commission certainly has weightage in the planning process at the Centre, leading to overlapping of its work and responsibility with those of the Finance Commission. But they are not justified in what they say about its role in the states, where it always play an advisory role. Also, taking advantage of the financial assistance in no way undermines the federal feature.

7.3.1 Value of the vote of an MLA

$$\frac{\text{Population of the State}}{\text{(Total elected members of the state legislature)}} \times \frac{1}{1000}$$

7.3.2 This means that value of the vote of an MLA differs from one state to another. This is done to give equality of representation in terms of the population.

7.4.1 Value of the vote of an MP

$$\frac{\text{(Value of votes of total MLA of 28 states and two UTs)}}{\text{(Total elected members of the Parliament)}}$$

Qualification for election to the office of the President

(a) He must be a citizen of India.
(b) He must have completed 35 years of age.
(c) He must be qualified to be a member of the Lok Sabha.
(d) He must not hold any office of profit under the Government of India or the Government of any State or under any local or other authority.

However, following persons are not deemed to be holding any office of profit and hence they cannot be disqualified for election as the President:-

(a) A sitting President or Vice-President of India.
(b) Governor of any State
(c) A minister of the Union or of any State

7.5.1 To be declared elected to the office of the President, more than 50% of the valid votes are required by a Presidential candidate. In case of any dispute regarding the election of the President, only the Supreme Court is authorized to intervene in the matter. Election of the President is an indirect one. Two basic reasons given for the indirect elections are –

a) Since Parliamentary form of the Government is in practice, the real power lies with the Council of Ministers. So, it would be anomalous to elect the President directly by the people and give him no real powers.
b) Direct election would mean tremendous loss of time, money and human resources.

7.6 Disputes relating to the election of the President

7.6.1 As far as disputes are concerned, only Supreme Court has the jurisdiction. The dispute can be brought in front of Supreme Court only after the elections are over. On account of vacancies in Electoral College, no petition can be filed. If the election of the President is declared void, acts of the President till the declaration cannot be invalidated.

Impeachment of the President

Under Art. 61 of the Constitution, the President of India can be impeached for the violation of the Constitution, which is solely to be decided by the Parliament. The impeachment procedure is quasi-judicial in nature because after a Resolution to this effect is passed by the originating House, by a 2/3rd majority (resolution supported by not less than 25% of the members of the House and to be moved only after a prior notice of 14 days to the President), the other House sets up a Committee to investigate the charges against the President. The President can defend himself by taking service of the Attorney-General of India or any other lawyer of his choice. If the second House also passes the Resolution with the same 2/3rd majority, the President stands impeached.

7.7 Conditions of President's Office

7.7.1 The President shall not be a member of either House of the Parliament or of a House of the Legislature of any State, and in case, a member of either House of the Parliament or of a House of Legislature of any State is elected President, he shall be deemed to have vacated his seat in that House on the day he enters his office as President.

7.7.2 The President is entitled, without payment of rent, to use his official residence and also such emoluments and allowances and privileges as may be determined by the Parliament by law.

7.7.3 The emoluments and allowances of the President cannot be diminished during his term of office.

7.8 Terms of the Office of the President

7.8.1 The terms of the office of the President are enumerated in Article 56 and are as follows:

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

(a) The President may, by writing under his hand, addressed to the Vice-President, resign his office.
(b) The President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in Art 61.
(c) The President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

In case of the resignation, death or impeachment of the President, a new President should be elected within six months of the date of the vacancy. Under the above circumstances, the Vice-President acts as an acting President till the new President enters the office.

Veto Powers

The President is given a variety of veto powers in the Indian Constitution. The Bill that is duly passed by the Parliament becomes an Act only when it is assented to by the President. When a Bill, other than a Money or Constitutional Bill, passed by the Parliament is sent to the President, the options that he has are –

- Gives assent to the Bill after which it becomes an Act.
- Rejects it on which the Bill lapses. It is called an absolute veto and is exercised generally by the President, in the case of a Private Member's Bill (private member is a member of Parliament who is not a Minister) or a Bill reserved for his assent by the Governor. The latter can be returned for re-passage by the concerned state legislature any number of times.
- He may return it for reconsideration by the Parliament. But if the Bill is again passed by the Parliament, his assent is mandatory. It is called suspensive veto.
- He can sit over the Bill indefinitely as the Constitution does not specify a time limit within which he should give his assent or otherwise. It is called pocket veto and is exercised when the political circumstances are uncertain and the ruling party does not seem to be stable and promising.

In the case of the Constitution Amendment Bill that is passed duly, the President is obliged to give his assent to it [Constitution (24th Amendment) Act, 1971].

7.9 Power of the President

7.9.1 As per Art. 53, the executive power of the Union is vested in the President and it is exercised by him either directly or through officers subordinate to him in accordance with the provisions of the Constitution. Although nowhere defined in the Constitution, the 'executive power' broadly embodies both determination of policy as well as carrying it into execution. This includes the initiation of legislation, maintenance of order, promotion of social and economic welfare, the direction of foreign policy, carrying on or supervision of the general administration discussed under following heads.

7.10.1 Administrative Powers. All the executive functions of the Union are carried on in the name of the President. Although the execution of the law and administration of the departments of government are carried out by respective ministers, they are constitutionally not responsible because they perform their duties and functions on behalf of the President who, in fact, is the executive head of the State.

7.10.2 The President has been constitutionally empowered to make appointment to the following offices with or without consulting, as mentioned in the Constitution, certain authorities. These offices are –

(a) The Prime Minister of India and on his advice other ministers.
(b) The Attorney General of India.
(c) The Comptroller and Auditor General of India
(d) The Judges of the Supreme Court and the High Courts.

(e) The Governor of a State or the Lt. Governor or Commissioner of a Union Territory.
(f) The Finance Commission.
(g) The members of the Union Public Service Commission and Joint Commission for a group of States.
(h) The Chief Election Commissioner and other members of the Election Commission.
(i) A special officer for the Scheduled Castes and Tribal areas.

7.10.3 The President also enjoys power to remove some of the above mentioned officials, e.g., the Governor of a State, the Attorney-General of India, members of the Public Service Commission of the Union or of a State.

7.11.1 Military Power. The President is the supreme command of the Armed Forces of India. Declarations of war and peace is done by the President. However, the Parliament, by law, can regulate this power.

7.12.1 Diplomatic Power. The President has the power to negotiate and conclude treaties and agreements with other countries, subject to the verification by Parliament. Also, the President sends and receives diplomatic representatives and Ambassadors.

7.13.1 Legislative Power. The Constitution confers various legislative powers on the President.

(a) The President summons the Houses of Parliament, prorogues either House and dissolves the Lok Sabha (Art. 85).
(b) He nominates 12 members to the Rajya Sabha and 2 members of the Anglo-Indian community to the Lok Sabha.
(c) He addresses the Houses of Parliament separately or jointly.
(d) Certain Bills require prior approval of the President for introduction in the Parliament. These are – Money Bill, Financial Bill of First Class and Bill for the formation of new State(s) or for alteration of boundaries of a State.
(e) Every Bill, to become an Act, must receive the President's assent. Except the Money Bill and Constitutional Amendment Bill, the President can return the Bill to the Parliament for reconsideration only once. However, the President cannot return the Bill a second time and is constitutionally bound to give his assent.
(f) The President also enjoys the veto power usually called pocket-veto. Using this power, the President can withhold the Bill for any period, because there is no time limit fixed in the Constitution. The idea behind this power is to check any hasty and ill-conceived action by the Legislature particularly if the Executive has only a doubtful majority.
(g) The President causes to lay before the Parliament certain reports – (i) the Annual Financial statement (Budget) and supplementary Budgets, if any; (ii) the report of the Comptroller and Auditor General of India; (iii) the recommendations of the Finance Commissioner; (iv) the report of the Union Public Service Commissioner; ((v) the report of the special officer for Scheduled Castes and Tribes and also the Backward classes (vi) the report of the Special Officer for Linguistic minorities.

7.14.1 The most important power of the President is perhaps to promulgate ordinances under Art. 123. The promulgation of an ordinance is not necessarily connected with an 'emergency' but issued by the President in case he is convinced that it is not possible to have the Parliament enact on some subject immediately and the circumstances render it necessary for him to take "immediate action" [Art. 123(1)]. However, such an ordinance must receive Parliamentary approval within six weeks of the next session of the Parliament, otherwise it shall become invalid.

Prior Recommendation of the President for Bills

There are certain Bills which can be introduced in the Parliament only on the recommendation of the President such as –

- A Bill to alter the boundaries of the States or to change the names of the States (Art. 3)
- A Money Bill as detailed in Art. 110.
- A financial Bill (category one) involving Art. 110 but containing other provisions as well.
- A Financial Bill (category two) which is an ordinary Bill but seeking to draw from the Consolidated Fund of India can be taken up for 'Consideration", that is 'reading two' in the process of passage of a Bill.
- Legislation involving Art. 31A.
- Any legislation involving items of taxation in which the States are interested or one that seeks to redefine agricultural income etc.
- A State Bill that seeks to restrict freedom of trade.

  It must be said that a Bill that requires the previous sanction of the President for the introduction in Parliament cannot be questioned in the Courts for is constitutionality, if such a sanction is not obtained after it is legislated upon, and the assent of the President is obtained.

7.15.1 Judicial Powers. The President has power to grant pardons, reprieves, respites or remission of punishment or to suspend, remit or commute the sentences of any person in cases –

(a) Where the punishment or sentence is by a Court Martial.

(b) Where the punishment or sentence is for an offence against any law relating to a matter within the executive power of the Union.

(c) Where the sentence is a death sentence.

7.15.2 The President is the only authority to grant pardons in case of death sentence. This power is exercised by him on advice of the Council of Ministers.

Should the President always act on the advice of the Council of Ministers?

Under Art. 53(1), the executive powers of the Union are vested in the President but Art. 74 says that the President acts on the aid and advice of the Council of Ministers headed by the Prime Minister. The President can only ask for reconsideration of his advice once after which he shall act in accordance with the advice tendered after such reconsideration. However, there are circumstances when the President need not act on the advice of the Council of Ministers like –

- A defeated Council of Ministers advises the President to dissolve the Lok Sabha. Unless the President sees no scope of a stable alternative political formation, the advice need not be followed.
- When a caretaker government advises the President to pass an ordinance which are politically motivated (1996).
- A caretaker government wants President's rule imposed (UP, 1997)

Thus, in normal circumstances as well in certain exigencies, the 'ceremonial' President is required to act as a 'working' President.

7.16.1 Emergency Powers. This extraordinary power has been given to the President to meet any kind of threat to the country. The President can declare emergency under three circumstances;

(a) On the grounds of security threat to India by war, external aggression or armed rebellion. This is called national emergency (under Art. 353) and during this period all the fundamental rights except those under Arts. 20 and 21 are suspended.

(b) On the ground of failure of Constitutional machinery in a State or States under Art. 356. This is called imposition of the President's rule.

(c) On the ground of serious financial instability or threat to credit of India or any part thereof. This is called 'financial emergency' (Art. 360).

7.17.1 Apart from these, the President also has certain other powers which are scattered in the Constitution. These miscellaneous powers include:

(a) Making rules and regulations on various matters.
(b) Some special powers in the administration of the Union Territories.
(c) To appoint certain commissions for the purpose of reporting on administration of the Scheduled Castes (SCs) and Scheduled Tribes (STs) areas.
(d) Appointing a Special Officer to report on the working of the constitutional safeguards provided to the SCs and STs.

7.18 Constitutional Position of the President

7.18.1 The Indian Constitution envisages a Parliamentary form of Government. The essence of such a form of Government is that the formal head of the State is the President while the real executive power lies with the Council of Ministers, which is collectively responsible to the Lok Sabha. The President is constitutionally obliged to exercise his powers with the aid and advice of the Council of Ministers headed by the Prime Minister (Art. 74).

7.18.2 Art. 53, which vests all the "Executive Power' in the President has close link with Art. 74. So long as the Council of Ministers enjoys the confidence of the Lok Sabha, the President is literally bound by its advice. He is liable to be impeached for the violation of the Constitution if he acts contrary to this. By the 44th Amendment, a Proviso was added to Art. 74 which gave the President power to send back any Bill, except Money and Financial Bills, once for reconsideration with his suggestions, if any. However, if the Parliament passes the Bill again with or without recommendations suggested by the President, the latter is constitutionally bound to act accordingly.

7.18.3 However, the President is not a figurehead, holding totally ceremonial office. He enjoys certain discretionary powers in the Constitution. Thus, the constitutional position of the President is both ceremonial as well as that of dignity and authority.

7.19 Relationship between the President and the Prime Minister

7.19.1 The Constitution does not explicitly say about this. Art. 78 says that the President may call the Prime Minister for information on the affairs of the State. On the dispute arising over the Prime Minister's failure to pass the information to the President, the Constitution is silent. So, there exists an ambiguity in this regard.

Discretionary Powers of the President

The President of India almost always acts on the aid and advice of the Council of Ministers except under the following circumstances where he acts on his direction.

- In selecting the Prime Minister from among the contenders when no single party attains majority after elections to the Lok Sabha.
- A Council of Ministers is voted out and after resigning advises the President to dissolve the Lok Sabha and hold fresh elections (or resigns and advises so without being voted out). The President is expected to exercise his discretion in such circumstances as much of the Lok Sabha's life may still be intact and it is worthwhile to explore the possibility of forming an alternative government.
- While exercising a pocket veto.
- Disqualifying members of the legislature when the Council's advice is not taken.
- Can return the advice of the Council of Ministers once for its reconsideration.
- Can return the passed by the Parliament once for its reconsideration.

7.20 Attorney General of India (AGI)

7.20.1 Art. 76 states that the President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

7.20.2 He is the first legal officer of the Government of India. It is conventional that, after the change of the Government, the Attorney General resigns and the new Government appoints one of its own choice.

7.21 Functions of AGI

7.21.1 He advises the Government of India on any legal matter. He performs any legal duties assigned by the President of India. He discharges any functions conferred on him by the Constitution or the President.

7.21.2 According to the rules made by the President under this Article, the Attorney General is required to appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned. He may also be required to appear in any High Court in any cases in which the Government of India is concerned. He shall neither advise nor hold a brief against the Government of India in cases in which he is called upon to advise the Government of India. Nor should he defend accused persons for criminal prosecutions without the permission of the Government of India. He is prohibited to take appointment as a director in any company. The Attorney General represents the Union and the States before the courts but is also allowed to take up private practice provided, the other party is not the State. Because of this, he is not paid a salary but a retainer that is determined by the President.

7.22 Powers of the AGI

7.22.1 He has a right of audience in all the courts of India even in in-camera proceedings, while performing his official duties. Although he is not a member of either House of Parliament, he enjoys the right to attend and speak in the Parliamentary deliberations and meetings (of both Lok Sabha and Rajya Sabha) but without a right to vote. He is entitled to all the privileges and immunities as a member of Parliament.

7.23 Privileges of the AGI

6.23.1 The Attorney General is not paid any salary but only a retainer because he is not a full time appointee and can have his private practice. The retainer is equal to the salary of a judge of the Supreme Court. He is assisted by two Solicitors-General and four Assistant Solicitors-General.

7.24 The Comptroller and Auditor-General (CAG)

7.24.1 He is appointed by the President for a full term of 6 years or till 65 years of age, whichever is earlier. He is the custodian of the public pursue, controlling the entire financial system of the country – the Union and the States. Dr. B. R. Ambedkar said it to be the most important office under the Constitution.

7.25 Duties of CAG

- To audit the accounts of the Union and the States and submit the Report to the President or the Governor, as the case may be.
- To ensure that all expenditures from the Consolidated Fund of India (CFI) or States are in accordance with the law.
- To oversee that the money sanctioned by the Parliament or State Legislature is being spent for the particular purpose for which it has been issued.
- Also, to audit and report on the receipts and expenditure of the
  - (i) Government Companies;
  - (ii) All bodies and authorities 'substantially financed' from Union or State revenues; and
  - (iii) Other corporations or bodies when so required by the laws relating to such corporations or bodies.

7.26 Safeguards in the Constitution for CAG

7.26.1 Since the office of the CAG is very important, to make this office independent from any control of the Executive, safeguards have been provided in the Constitution and by an enactment of the Parliament – Comptroller and Auditor General (Conditions of Service) Act, 1971.

7.26.2 The CAG can be removed only on an address from both Houses of Parliament on the grounds of proved mis-behaviour and incapacity. He is not eligible for any further appointment either under the Union or the State after his retirement.

7.26.3 His salary and other allowances are charged upon the Consolidated Fund of India and are non-votable in the Parliament. His salary and other allowances cannot be reduced to his disadvantages after his appointment, the only exception being in the case of financial emergency.

7.27 How the CAG Functions?

7.27.1 The CAG audits the accounts of the Union and the States and submits the Report to the President who causes it to lay down before the Parliament. This report is immediately referred to the Public Accounts Committee of the Parliament which, after a detailed study prepares another report which is placed in the Parliament. Thus, in fact, discussion in the Parliament takes place on the secondary report of the Public Accounts Committee.

7.28 Is CAG just an Auditor?

7.28.1 Though the designation is that of Comptroller and Auditor General, the authority acts functionally as an auditor only. The authority has no control over the issue of money from the Consolidated Fund of India or that from a State. The CAG is concerned only at the stage of audit after the expenditure has already taken place. Unlike the same authority in Britain, the CAG in India is not empowered to ensure that "the grants voted and appropriation made by Parliament are not exceeded". This is because, the authority argue, such an empowering would entail serious overhauling of the entire accounts and financial control mechanism.

7.28.2 Another question is whether the CAG can comment on the extravagance of the expenditure by the executive and suggerst economic measures. There prevails two views about this. One view says that the CAG has no right to comment on this because the executive is responsible to the Parliament and not the CAG. Another view holds that since the financial control is ultimately under the Legislature, there is a need for comprehensive auditing to provide economy, efficiency and effectiveness to the whole process. So the CAG has been given the right to comment and even suggest measures for this.

7.28.3 The CAG Report in recent times brought to the public notice a number of financial mishandlings at various levels, the most prominent being the Animal Husbandry scam in Bihar.

National Development Council

The National Development Council (NDC) was constituted in 1952 as an adjunct to the Planning Commission to associate the States in the formulation of the Plans so as to ensure balanced and rapid development. The Council performs two functions

(a) To review the working of the National plan from time to time and
(b) To recommend measures for the achievement of the aims and targets the National Plans.

The Council is the highest deciding body for planning in the country. It meets under the Chairmanship of the Prime Minister. Its Secretary is the same person who is the Secretary of the Planning Commission. The Council discusses the Draft Plan and makes modifications, if necessary. After the Council's approval, the plan is sent to the Parliament for its final approval.

7.29 Council of Ministers

7.29.1 The Indian Constitution follows the British Parliamentary system of government. The Council of Ministers is formed as soon as the Prime Minister is sworn in. Though technically, the President appoints the Ministers, this power really belongs to the PM. The number of the Council of Ministers has not been fixed in the Constitution, except in the Delhi Legislative Assembly where its number has been provisioned not to exceed $1/10^{th}$ of the number f the MLAs.

Categories of Ministers

The Constitution does not say anything about this. But following the British parliamentary practices, the elected government in India also consists of three categories of ministers. They are :

1. **Cabinet Ministers -** They are the senior-most ministers to head a department with portfolio. They constitute the Cabinet and have the right to attend all the Cabinet meetings convened by the Primate Minister. Only the Cabinet Ministers deliberate and decide on the policy matters. (The word 'Cabinet Ministers' has been incorporated into the Constitution through 42nd Amendment Act in Art. 352).
2. **Ministers of State -** They are lower in rank to Cabinet ministers and normally assist the latter. Usually they are not given independent charge of a ministry but the Prime Minister has the prerogative to allot an independent charge if he desires so. They can not attend the Cabinet meetings normally but can be invited to attend them.
3. **Deputy Ministers -** They cannot hold independent charge and always assist the Cabinet or State Ministers or both. Also, they never attend the Cabinet meetings.

A minister can be a member of either of the House, but he is liable to vote only in the House to which he belongs. A person not belonging to any House can be appointed as a Minister, but he has to get elected to either House within a period of 6 months.

7.30 Collective Responsibility of the Government

7.30.1 As per Art. 75(3) the Council of Ministers are collectively responsible to the Lok Sabha. This means that if a resolution is defeated in the Parliament, the entire ministry collapse. This concept evolved in England and the motive behind this is that the Government should function as a homogenous body. To maintain this, the Prime Minister has the right to refer to the President, the removal of dissident minister(s) because technically the ministers are individually responsible to the President (Art. 75(2)) i.e., though the ministers are collectively responsible to the Legislature, they shall be individually responsible to the head of the Executive and shall be liable to dismissal, even when they may have the confidence of the Legislature. Usually, the Prime Minister asks the undesirable colleague to resign, which the latter readily complies with in order to avoid the odium of a dismissal, (an instance being the resignation of Ram Jethmalani from Vajpayee Cabinet in July 2000).

Can a non-member become a Minister?

There is no legal bar that a Minister must be a member of Parliament. Art. 75(5) provides that a Minister, who for a period of six consecutive months is not a member of either House of Parliament, shall cease to be a Minister at the expiration of that period. An outsider may be appointed a Minister, but he must become a member of Parliament within the period of six months. If he is not elected within the prescribed time, he is bound to resign from the ministry.

7.31 Presidential form of Government

Main features of a presidential form of government are:

1. **No distinction between the National and Real Executive**. The executive powers of the government are not only vested in the President, they are exercised by him in actual practice also. The President is, thus, both head of the State and Head of the Government.
2. **President is elected by the people for a fixed term**. The President is elected, not by the legislature, but directly by the entire electorate. Thus, both in regard to his election and tenure the President is not dependent on the legislature.
3. **The President is the sole Executive**. All executive powers of the government are vested in the President and are exercised by him. His Cabinet has merely the status of an advisory body. Constitutionally, he is not bound by their advice. He may take the advice or may not take it at all. After getting the opinion of the Cabinet, he may refuse to accept it and may choose to act according to his own judgment.
4. **Both the President and the Legislature are independent of each other in respect of their terms**. The President and members of his Cabinet are not members of the Legislature. The Legislature has no power to terminate the tenure of the President before its full constitutional course, other than by impeachment. Similarly, the President has no power to dissolve the Legislature before the expiry of its term. Thus, the President and the Legislature are elected for fixed terms.

7.32 MERITS

The following are the merits of the presidential form of government:

1. **Greater Stability:** In presidential systems, the Head of State has fixed term. This ensures stability of the system. He is also free from day-to-day legislative duties and control, which enable him to devote his entire time to administration.
2. **Valuable in time of War or National Crisis.** Presidential executive is a single executive. In taking decisions the President is not bogged down by endless discussions in his Cabinet. He can take quick decisions and implement them with full energy. Such a government, therefore, is very useful in time of war or national crisis.
3. **Experts may be obtained to head the Departments.** The President can select persons with proper expertise to head various departments of the government. These heads of departments constitute his Cabinet. The Ministries under the presidential system, therefore, prove to be better administrators, whereas Ministers in a parliamentary system are appointed as Ministers not because of administrative acumen, but simply because of their political affiliation.
4. **Less dominated by Party Spirit.** Once election to the office of the President is over, the whole nation accepts the new President as the leader of the nation. Political rivalries of the election days are forgotten. Both inside the legislature and outside it people look at

problems from a national rather than a party angle. This gives the system greater cohesion and unity.

5. **No concentration of Legislative and Executive powers.** Presidential system is organized on the principle of separation of functions and checks and balances. This provides much better protection to personal liberties than in the parliamentary system.

7.33 DEMERITS

Presidential system has been criticized on the following grounds:

1. **Autocratic and Irresponsible.** Presidential system places immense powers in the hands of the President.

It is autocratic because the President is independent of the control of the legislature. He may govern largely as he pleases. He cannot be made answerable regularly for the misdeeds of his administration. The legislature (Congress) in the United States can turn down the appointments and treaties made by the President, but it can in no way remove him from office except through impeachment. A power hungry President may misuse his powers to amass wealth and to finish off political opponents.

2. **Presidential Election is an Untidy Affair.** The President in this system is elected directly. The election to this office generates great heat and tension. The whole national life gets disturbed. In countries where constitutional traditions are not as deep-rooted as in the United States tensions and instability of the election time can even result in revolutions.
3. **Friction and Discord between the President and the Legislature.** The separation of the executive and the legislature may lead to conflicts and deadlocks between the President and the legislature. The legislature may refuse to accept executive policies, or enact the laws suggested by the executive. The President, on the other hand, may show lack of interest in implementing the laws passed against his will. He may even veto the bills passed by the legislature. Such deadlocks are more frequent when the party to which the President belongs does not have a majority in the legislature.
4. **Responsibility is hard to find.** In the Presidential system it becomes difficult to fix responsibility for governmental failure. The President may blame the legislature; the legislature may put the blame on President. In the US most of the bills are referred to committees of the legislature, on the report of which the bills are passed. The powers of these committees are immense. The committees have not only seized the power of law-making they have also made fixing of responsibility in this regard very difficult.

The congress support from outside:

7.34.1 Coalition Government: The Government formed by two or more political parties, with some common goals to be achieved. It may or may not enjoy the confidence of the Legislature on its own. The present Vajpayee Government is a coalition Government.

7.35.1 National Government: This is a form of coalition Government with participation of almost all the political parties represented in the legislature. Essentially there exists no

opposition party in the legislature. Usually this form of Government comes during the time of national crisis. It is, in fact, a 'government by consensus' on certain basic issues affecting the country. Such a Government was formed in Britain by Winston Churchill in May, 1940 during the World War II with a common goal of defeating the fascist forces of Germany.

7.36.1 Shadow Cabinet: It is a national cabinet formed by the main opposition party in the Parliament wherein the members are assigned certain special functions to perform. Such members lead the opposition during discussion in the Parliament. It is also known as 'Cabinet-in-waiting'.

7.36.2 This system not only provides a government but also an effective opposition. Further, it helps in training members in the art of governance even while in opposition. The system can function only in the Parliamentary form of government having only two political parties. It functions well in the United Kingdom.

7.37.1 Hung Parliament: When in a general election no political party or coalition of political parties is in a position to form a majority government; such a Parliament is called Hung Parliament.

7.38.1 Care-taker Government: A Government during the inter–regnum comes as soon as the Council of Ministers goes out of office. Usually, the outgoing Government is allowed to continue in the office and run the Government. This caretaker Government lasts till a new Government, after election, takes charge. There are certain moral restrictions on the legislative powers of this Government and it is supposed not to take any major policy decisions. However, the President may refuse to accept any such Bills, if passed by a Care – take Government. For example, in 1996 the then President Dr. S.D.Sharma refused to give assent to the Christian Quota Bill passed by the Care-taker Government of P.V.Narasimha Rao.

7.39.1 Interim Government: This Government is formed during the transitional phase of the history of the country. It is full-fledged Government and can take any policy decisions. In India, the interim Government came to power with the Independence of India Act on 15th August and lasted till March, 1952.

7.40.1 Minority Government: A form a Government which does not enjoy the confidence of the Lok Sabha on its own and survives on support of other political parties from outside the Government. For example, the Chandrashekhar Government in 1990-1991, Deve Gowda and I.K.Gujral Government during 1996-1997 survived on the Congress support from outside.

7.41.1 Officers of Cabinet Rank by Statue

(i) Deputy Chairman of the Planning Commission.
(ii) Speaker of the Lok Sabha
(iii) Leader of Opposition in the Lok Sabha

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8. THE PARLIAMENT

8.1 Art. 79

8.1.1 Constitution of Parliament - There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Though the President is not a member of either House of the Parliament, yet like British crown, he is an integral part of the Parliament and performs certain functions relating to its proceedings.

8.2 Functions of the Parliament

8.2.1 The most important function of the Parliament is to legislate i.e., make legislations for development which benefits the society.

8.2.2 The second most important function is to exercise control over the Executive.

8.2.3 The Parliament provides the Council of ministers as ministers are the members of Parliament.

8.2.4 It has financial control over the Executive. The Parliament is the sole authority to raise taxes.

8.2.5 It provides an opportunity to deliberate on various policies and measures before their implementation. Thus, the Parliament is also an authoritative source of information, collected and disseminated through the debates and through the specific medium of 'Questions' to ministers.

8.3 The Rajya Sabha or Council of States

8.3.1 The Rajya Sabha consists of two categories of members – elected and nominated – who are members for a period of six years. They are indirectly elected by the members of the State legislatures. The election is scheduled in such a way that one-third of its members retire every two years. The Rajya Sabha represents the federal character of the Constitution in the Parliament.

How Rajya Sabha is different from the Upper House of the USA or Australia

At least on two levels, the Rajya Sabha differs from the Upper House of the USA or Australia –

- In the USA or Australia, the States have equal representation in the Upper House irrespective of the population of the State. But in India the representation is based on the basis of the population of the State.
- In the USA and Australia, only the States have their representation, while in India some Union Territories e.g. Delhi and Pondichery also have representation in the House.

8.4 Art. 80

8.4.1 The Council of States shall consist of

(a) Twelve members to be nominated by the President in accordance with the provisions and
(b) Not more than two hundred and thirty eight representatives of the States and of the Union Territories.

(only Union Territories of Delhi and Pondicherry have representation in the Rajya Sabha).

8.4.2 At present, the strength of the Rajya Sabha is 245, of which 233 are elected and 12 nominated.

8.5 Criteria for nomination

8.5.1 The members to be nominated by the President are persons having special knowledge or practical experience in respect of such matters as the following, namely:-

Literature, science, art and social service.

8.6 Federal Features of the Rajya Sabha

8.6.1 Under Art. 249, the Council of States or Rajya Sabha is empowered to declare by a resolution, supported by not less than two-thirds of the members present and voting (a special majority) that Parliament should make laws with respect to any matter enumerated in the State list. Such a resolution remains in force for a specified period, not exceeding one year. (The resolution can be initiated only in the Rajya Sabha).

8.6.2 Art. 312 empowers the Rajya Sabha to declare by a resolution, supported by not less than two-thirds of the members present and voting, that it is necessary or expedient in the national interest, that Parliament should create one or more All India Services, including All India Judicial Services (42nd Amendment, 1976), common to the Union and the States, and also to regulate the recruitment and conditions of service of persons appointed to such service (Lok Sabha cannot initiate the process).

8.6.3 In case of the Constitutional Amendment Bill, it must be passed by the Rajya Sabha separately. There is no provision for a joint-sitting to pass such Bills.

8.6.4 The Ordinary and Financial Bills should have the approval of the Rajya Sabha. There are provisions for joint-sittings in these cases.

8.6.5 The members of the Council of Ministers could also be taken from the Rajya Sabha. Thus, States indirectly have a say in policy-making.

8.6.6 The members of the Rajya Sabha participate in the election of the President. For the impeachment of the President, a resolution to this effect must have the approval of not less than two-third members of the Rajya Sabha separately.

8.6.7 In cases of declaration of emergencies under Article 352 and Article 356 by the President (who, in fact, proclaims them on the advice of the Council of Ministers), such declarations must be approved by the Rajya Sabha within a period of one month and two months respectively after such declarations.

8.7 Officers of the Rajya Sabha

8.7.1 **Chairman** – The Vice-President of India is the ex-officio chairman of the Rajya Sabha. He presides over the proceedings of the Rajya Sabha as long as he does not act as the President of India during a vacancy in the office of the President.

8.7.2 **Deputy Chairman** – The Deputy Chairman is elected by the Rajya Sabha from amongst its members. In the absence of the Chairman, Deputy Chairman presides over the functions and proceedings of the House.

Qualifications for the Membership of Rajya Sabha

Following are the qualifications needed to be elected to the Rajya Sabha:

- The person must be a citizen of India;
- The person must not be below the age of 30 years.
- He must be an ordinary citizen / registered voter in the State or Union Territory from where he is intended to be chosen.
- He should not hold any office of profit.

8.8 Removal from the office of Chairman or Deputy Chairman

8.8.1 The Vice President of India is the ex-officio Chairman of the Rajya Sabha. The Chairman can be removed from his office by the following procedure.

8.8.2 He may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council, which is to be approved by the Lok Sabha by a simple majority. But such a resolution can only be moved by giving at least fourteen days' notice to the Chairman.

8.8.3 A Deputy Chairman shall vacate his office if he ceased to be a member of the Council. He may resign his office by writing to the Chairman. He may also be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council [Art.90]. But such a resolution can only be moved by giving at least 14 days' notice to him.

Utility of the Rajya Sabha

It is said that in a Federal Constitution the second chamber is a necessity. It plays an important role in matters of legislation and therefore it should be retained. The Rajya Sabha is desirable because it fulfills the following purposes:

1. It is considered useful because senior politicians and statesmen might get an easy access to it without undergoing the ordeal of contesting general elections. So, the experience and talent is not lost to the country and their services are utilized.
2. The Rajya Sabha acts as a revising House over the Lok Sabha which, being a popular House, may be tempted to act rather hastily keeping in view of public opinion.
3. The Rajya Sabha is a House where the States are represented, keeping with the federal principles.

8.9 Lok Sabha or the Lower House

8.9.1 The Lok Sabha is the popular House of the Parliament because its members are directly elected by the citizens of India. All the members of the Parliament are popularly elected, except not more than two members of the Anglo-Indian community, who are nominated by the President. This is basically due to the fact that they are not concentrated in a particular constituency and hence the Anglo-Indian community, in the opinion of the President, is not adequately represented in the Lok Sabha.

8.9.2 In the Constitution, the strength of the Lok Sabha was provisioned to be not more than 552-530 from the States. 20 from the Union Territories and 2 nominated from the Anglo-Indian community. But the Constitution empowers the Lok Sabha to readjust strength. The Parliament has fixed the strength of the Lok Sabha as 545 (530+13+2 respectively) at present. Also regarding revision of the representation after every Census, the Parliament has decided to freeze the strength of the Lok Sabha till 2025 A.D.

8.10 Tenure of the Lok Sabha

8.10.1 The normal tenure of the Lok Sabha is five years. But the House can be dissolved by the President before the end of the normal tenure. Also, the life of the Lok Sabha can be extended by the Parliament beyond the five year term during the period of national emergency, proclaimed under Art. 352. But this extension is for a period of not more than one year at a time (no limit on the number of times in the Constitution). However, such extension shall remain in force for not more than six months after the emergency has been revoked.

8.10.2 The original Constitution, under Art. 83 envisaged the normal tenure of the Lok Sabha to be 5 years. However, Parliament by 42nd Amendment extended it to six years, but the 44th Amendment Act again fixed the original normal tenure of five years.

8.11 Qualifications for the membership of Lok Sabha

8.11.1 To become a member of the Lok Sabha, the person must –

a) Be a citizen of India;
b) Be not less than 25 years of age;
c) Be a registered voter in any of the Parliamentary constituencies in India; and
d) Should not hold any office of profit.

Special Powers of the Lok Sabha

There are certain powers which are constitutionally granted to the Lok Sabha and not to the Rajya Sabha. These powers are –

- Money and Financial Bills can only originate in the Lok Sabha.
- In case of a Money Bill, the Rajya Sabha has only the right to make recommendation and the Lok Sabha may or may not accept the recommendation. Also, a Money Bill must be passed by the Upper House within a period of 14 days. Otherwise, the Bill shall be automatically deemed to be passed by the House. Thus, the Lok Sabha enjoys exclusive legislative jurisdiction over the passage of the Money Bills.
- The Council of Ministers are only responsible for the Lok Sabha and hence the Confidence and Non-confidence motions can be introduced in this House only.
- Under Art. 352, the Lok Sabha in a special sitting can disapprove the continuance of a national emergency proclaimed by the President, even if the Rajya Sabha rejects such a resolution.

8.12 Vacation of Seats

8.12.1 Provisions for vacation of the seats in the Parliament are enumerated in Art. 101. These are:

a) No person shall be a member of both the Houses of Parliament. If a person is chosen for both the Houses, he/she shall have to vacate membership of either House.
b) If a member of either House is disqualified under Art. 102(1) and (2).
c) If a member resigns in writing addressed to the Chairman (Council of States) of Speaker (House of People) as the case may be, and if his resignation is accepted by the Chairman or the Speaker, as the case may be.
d) If a member or either House absents himself from the House without its permission for a period of more than sixty days, the House may declare his seat vacant.

Disqualification of the Members of Parliament

The members of the Parliament (Lok Sabha and Rajya Sabha) can be disqualified on one or more of the following grounds enumerated in Art. 102 of the Constitution –

Clause (1)

- If he holds any office of profit under the Union or the State government, other than an office declared by Parliament, by law, not to disqualify its holder.
- If a competent court declares him to be of unsound mind;
- If he is an undischarged insolvent;
- If his citizenship is found forged or if he voluntarily acquires the citizenship of any foreign country or is under any acknowledgement of allegiance or adherence to a foreign State;
- If he is so disqualified under any law by Parliament:
  In case of any dispute regarding the disqualification on the above grounds the President's decision, in accordance with the opinion of the Election Commission, shall be final (Art. 103)

Clause (2) (inserted by 52nd Amendment, 1985):
If he is so disqualified under the Tenth Schedule i.e., on the grounds of defection.

8.13 Speaker and Deputy Speaker of Lok Sabha

8.13.1 The Speaker is the Chief Presiding Officer of the Lok Sabha. The two officers are elected from amongst the members of the Lok Sabha after a new Lok Sabha is constituted. The Speaker presides over the meetings of the House and his rulings on the proceedings of the House are final. He has the responsibility to uphold the dignity and privileges of the House. In the absence of the Speaker, the Deputy Speaker performs the Speaker's duties. The Speaker continues to hold office even after the Lok Sabha is dissolved till the newly elected Lok Sabha is constituted.

8.13.2 The Speaker and Deputy Speaker may be removed from their offices by a resolution passed by the House with an effective majority of the House after a prior notice of 14 days to them.

8.14.1 The Speaker, to maintain impartiality of his office votes only in case of a tie i.e., to remove a deadlock arising from equality of votes.

8.15 Special position of the Speaker

8.15.1 The Constitution has given a special position to the office of the Speaker. Though he is an elected member of the Lok Sabha, he continues to hold his office even after the dissolution of the Lok Sabha till The new Lok Sabha is constituted. This is because he not only presides and

controls the parliamentary functions but also acts as the Head of the Secretariat of the Lok Sabha which continues to function even after the House is dissolved. Another part of his special position is that he has been given the responsibility to uphold the dignity and privileges of the House because the Speaker represents the Lok Sabha as an institution.

Special Powers of the Speaker

There are certain powers which belong only to the Speaker of Lok Sabha while similar powers are not available to the Chairman of Rajya Sabha. These are –

- Whether a Bill is Money Bill or not is certified only by the Speaker and his decision is final and binding.
- The Speaker, or in his absence, the Deputy Speaker, presides over the joint-sittings of the Parliament.
- The Committees of Parliament (e.g. Public Accounts Committee etc.) function essentially under the Speaker and their chairpersons are also appointed or nominated by him. Members of the Rajya Sabha are also present in these committees.
- If the Speaker is a member of any Committee, he is the ex-officio Chairman of such a Committee.

8.16 Joint sitting of the parliament

8.16.1 There are two occasions on which the joint-sitting of the parliament is convened.

a) Special address by the President – At the commencement of the first session after each general election of the house of the people and at the commencement of the first session of each year (normally the budget session). The president shall address both the houses of Parliament assembled together and inform the parliament of the causes of its summons.

b) For resolving any deadlock over the passage of a Bill – There are three circumstances which can lead to a deadlock between the two Houses of the parliament. If after a Bill, other than a Money Bill or a Constitutional Amendment Bill, has been passed by one House and transmitted to the other House-

i) The bill is rejected by the other House: or
ii) The house have finally disagreed as to the amendments to be made in the Bill: or
iii) More than six months elapse from the date of the reception of the Bill by the other House without the bill being passed by it.

8.16.2 The president may, notify his intention to summon both the Houses to meet in a joint sitting for the purpose of deliberating and voting on the Bill.

8.16.3 The joint sitting of the Parliament is called by the President and is presided over by the Speaker or in his absence by the Deputy speaker of the Lok Sabha or in his absence, the chairman or in his absence the Deputy-Chairman of the Rajya Sabha. If any of the above officers

are not present then any other member of the Parliament can preside by consensus of both the Houses.

8.16.4 It should be noted here that in case of joint-sitting to pass a Bill, the Lok Sabha has an edge. This is because of the fact that the strength of the Lok Sabha is 545 and that of Rajya Sabha 245 and the Bill in such sitting is passed by a simple majority i.e. more than fifty per cent of the members of the Parliament present and voting (excluding the number of members abstaining).

8.17 Speaker pro-tem

8.17.1 As soon as the new Lok Sabha is constituted, the president appoints a speaker pro-tem who is generally the senior most member (seniority in terms of number of years he/she served as a member) of the House. In case the two members are equally qualified, weightage is given to the member's age. His functions include administering oath to the Lok Sabha members and presiding over the election of a new Speaker. The office of the Speaker Pro-tem sinks as soon as the Speaker is elected.

8.18 Starred and unstarred questions

8.18.1 When a member wants oral answer to his questions from a minister in the House, such questions are called starred questions. Supplementary questions can be asked after the answer to such a question.

8.18.2 When the answer is demanded by the members of the House in written, such a question is called unstarred question. There is no provision of supplementary questions after the written reply.

8.19 Question Hour: Normally the first hour of the business of the House every day is devoted to questions and answers. This hour is called Question Hour of the Parliament.

8.20 Zero Hour: It is period which follows after the Question House when members raise any issue of public importance on very short or even without notice. The procedure is not recognized under the Rules and Procedures of the Parliament, but has become conventional since 1970's.

8.21.1 Calling Attention: It is a notice by which a member, with prior permission of the Speaker, call the attention of a minister to any matter of urgent public importance. The minister may make a brief statement or ask for some time – an hour or a day – for the reply.

8.21.2 The 'Calling Attention' procedure does not exist in the Rajya Sabha, which has instead 'Motion of Papers'.

8.22.1 Point of Order: It is an extra – ordinary process which when raised, has the effect of suspending the business before the House and the member who is on his legs gives way. This is meant to assist the Presiding Officer in enforcing the Rules, Directions and Provisions of the Constitution for regulating the business of the House.

8.23 Quorum in Parliament

8.18.1 The quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House. If, at any time during a meeting of a House, there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

8.24 Penalty for sitting and voting when not qualified

8.24.1 If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of Art.99 (Oath), or when he knows that he is not qualified or that he is disqualified for membership thereof, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

8.25 Leader of the Opposition

8.25.1 There was no provision of the leader of opposition in the original Constitution. This was created and given a Cabinet rank by an Act of the Parliament. The party (other than from the ruling side) with the largest number of members in the Parliament having at least one-tenth of the strength of Lok Sabha, is recognized as Opposition Party.

8.26 Sessions of the Parliament

8.26.1 The Constitution only states that there should not be a gap of more than six months between two consecutive sittings. There are three types of sessions as per Parliamentary practices.

a) Budget Session. Between February to May. This is the most important and the longest session.
b) Monsoon session. July-August
c) Winter session. November-December. This is the shortest session.

8.26.2 There is a provision for special sessions in the Constitution. In this case it can be convened by the President on the recommendations of the Council of Ministers on the basis of a 14 days of advance notice the President or the Speaker, as the case may be. In another case, if the Lok Sabha is not in session, not less than one-tenth of the members can, on prior notice of 14 days, write to the President for convening a session for the rejection of national emergency (under Art, 352). The Council of Ministers does not play any role in this.

8.27 Panel of Chairmen

8.27.1 If both the Speaker and the Deputy Speaker are absent from a sitting one of the members of the House out of a panel of six chairmen, whom the speaker nominates from time to time, presides. Should a situation arise when none from among the speaker the deputy speaker and the

members of the panel is present in the House, another member may be chosen by the House to act as the Chairmen until one from among the Panel or the Deputy Speaker or Speaker returns to take the Chair.

8.27.2 Like the Deputy Speaker, a Chairman has all the powers of the Speaker in the House during the time he is presiding.

8.28 End of the Session

8.28.1 Prorogation: This is done by the President on the advice of the council of Ministers. This can be done even when the House is adjourned. It brings a session of the House to an end.

8.28.2 Adjournment: This is a short recess within a session of the Parliament, called by the Presiding Officer of the House. Its duration may be from a few minutes to days together. Another type of adjournment is when the House is adjourned by the Presiding Officer without fixing any date or time of the next meeting. This is called Adjournment *sine die* i.e. without fixing any time/day. The adjournment does not bring to an end a session, but merely postpones the proceedings of the House to a future time and date.

8.29 Position of Bills at the time of dissolution of Lok Sabha

8.29.1 Briefly, the position of various items of business pending before the Lok Sabha at the time of its dissolution is as under:

a) All bills pending in the Lok Sabha at the time of dissolution, whether originating in the House or transmitted to it by the Rajya Sabha lapse.
b) Bills passed by the Lok Sabha, but have not been disposed of and are pending in the Rajya Sabha on the date of dissolution lapse.
c) Bills originating in the Rajya Sabha, which have not been passed by the Lok Sabha but are still pending before the Rajya Sabha do not lapse.
d) Bills passed by both the Houses and sent to the President for assent do not lapse on dissolution of the Lok Sabha.
e) All other businesses pending in the Lok Sabha viz. motions, resolutions, amendments supplementary demands for grants etc. at whatever stage, lapse on dissolution.

8.30 Parliamentary Control over Executive

8.30.1 The channels of parliamentary control over the Executive are the following:-

- The Executive that is the Council of Ministers holds office only as long as it enjoys the confidence of the Parliament and especially the Lok Sabha. If the

Lok Sabha passes a no confidence motion successfully, the Council of Ministers is bound to reign.

- In the case of the formal Head of the Executive, the President, Parliament is given the power to impeach the President if he violates the constitution.
- If a Bill moved by a member of the Council of Ministers is defeated in the Parliament it is tantamount to loss of majority in the Parliament and the Council of Ministers is bound to resign.
- If a cut motion is moved the budgetary proposals successfully in the Parliament, the Council of Ministers should resign.
- The control of the Parliament is also exercised through motions like adjournment motions: short notice questions: call attention motions: censure motions: questions (starred and unstarred questions, the former to be answered by the minister concerned) and so on.

8.31 Dissolution of the house

8.31.1 Dissolution ends the very life of the House and general elections must be held to elect a new Lok Sabha. It is to be noted that it is to Lok Sabha which is subject to dissolution. The Rajya Sabha is a permanent body, not subject to dissolution. Dissolution ends the very life of the House while a prorogation ends a session.

8.32 Prerogatives of the Parliament

8.32.1 The members of parliament enjoy certain prerogatives and privileges, not enjoyed by other citizen. The intention behind this is to enable them to discharge their functions efficiently and fearlessly.

a) Individually: - These are the prerogatives enjoyed by the parliament in an individual's capacity.

- Freedom of speech. The extent of the freedom of speech enjoyed by the members of Parliament is far wider than that of an ordinary citizen under Art. 19 (1) not only does he enjoy absolute immunity from any action in the court of law for anything he says within the house. But even in public speeches if he is so authorized by the Parliament. However, such freedom has two limitations

  i) It must conform to the rules and procedures of the House; and
  ii) The member cannot discuss the conduct of a judge of the Supreme Court. Or High Courts, except on the resolution for the removal of Judges.
- Freedom from arrest: A member of Parliament enjoys immunity from arrest 40 days before the commencement and 40 days after the prorogation of a session of the House. This immunity is only in civil cases and does not extend to criminal proceedings or contempt of court or preventive detention.

- Freedom from Jury Service: A member of Parliament cannot be compelled to give witness in the case pending in the court of law when the Parliament is in session. This is because the Parliamentary proceedings is above all other business.

b) Collectively:- There are certain privileges which the members of parliament enjoys as a collective body:-

- Right to publish or not to publish the Parliamentary proceedings including right to punish individuals for publishing such reports.
- Right to exclude civilians from the house
- Right to regulate the internal affairs of the House.
- Right to decide about its business
- Right to punish for contempt of the House
- Right to punish members and outsiders for breach of its privileges

8.33 Categories and Passage of the Bills

8.33.1 The most important function of the Parliament is making laws. The legislative procedure is initiated in the form of a Bill. A Bill is a proposed legislation. It becomes a law when it is assented to by the President.

8.33.2 These Bills are classified as- Ordinary, Financial, Money and Constitutional Amendment Bills. The Bills are of two types – Government Bills and Private Member's Bills. Money, Financial and an Ordinary Bill under Art. 3 are essentially Government Bills because these can only be introduced on the commendation of the President. Other bills can be introduced by private members also (any member other than a Minister is a Private Member). The procedure for the passage of both types of Bills is the same.

8.34 Ordinary Bills

8.34.1 All the Bills, other than Finance Bills, Money Bills and Constitutional Amendment Bills are Ordinary Bills.

8.34.2 Such Bills can be introduced in either House of the Parliament (Lok Sabha or Rajya Sabha) without the recommendation of the President, except those Bills under Article 3 (i.e., Bills related to reorganization of the territory of a State).

8.34.3 These Bills are passed by a simple majority by both the Houses. Both the Houses enjoy equal jurisdiction over such Bills and in case of a deadlock due to any reason, the tie is resolved by a joint sitting.

8.34.4 President has the right to return such Bills for reconsideration to the Parliament once.

8.34.5 Each House has laid down a procedure for the passage of a Bill. According to the procedure of the House, a Bill has to pass through three stages commonly known as Readings.

a) First Reading: The Bill is introduced in the House. At this stage, no discussion takes place.

b) Second Reading: This is the consideration stage when then Bill is discussed clause by clause.

c) Third Reading: During this stage, a brief general discussion of the Bill takes place and the Bill is finally passed.

8.34.6 When the Bill is passed by one House, it is sent to the other House for its consideration.

Power of President to Promulgate Ordnance during recess of parliament

Under Art. 123, the President on the advice of the Council of Ministers has been empowered to issue ordinance(s) related to any subject of the Union Legislature, when the Parliament is not in session and if he is satisfied that the circumstances, not necessarily emergency, need 'immediate action' by him. None can question, be it the Supreme Court or any other court, the validity of the President's judgment of the circumstances, except possibly on the ground of 'malafide'.

The ordinance has the same force of law, for under Art. 13[3(a)] 'law' includes any ordinance. Its maximum life is six months. However, it should be approved by both the Houses within six weeks of the reassembly of Parliament otherwise it shall lapse automatically on the expiry of the period of six weeks.

8.35 Money Bills

8.35.1 Money Bill is defined in Art. 110 of the Constitution. As per the Article, any Bill dealing with all or any of the matters enumerated from (a) to (g) of the same Article shall be a Money Bill. These are –

(a) Imposition, abolition, remission, alteration or regulation of any tax.
(b) Regulation of the borrowing of money or giving of guarantee by the Government of India.
(c) Custody of the Consolidated or Contingency Funds of India, payment into or withdrawal of money from any such fund.
(d) Appropriation of money out of the Consolidated Fund of India (CFI).
(e) Declaring any expenditure as "Charged" on the CFI.
(f) Receipt or issue of money from the CFI and audit of the accounts of the Union or the States.
(g) Any matter incidental to any of the matter specified in sub-clauses (a) to (f).

8.35.2 If there arises any question over the validity of Money Bill, the decision of the Speaker of Lok Sabha is final. The Speaker duly certifies the Bill as Money Bill because this Bill passed through special procedures (Art. 109).

8.35.3 A money Bill can only originate in the Lok Sabha after recommendation of the President.

8.35.4 After being passed by the Lok Sabha, the Money Bill passed on to the Rajya Sabha which has four options:

(a) Pass the Bill in the original form;
(b) Reject the Bill;
(c) Take no action for 14 days;
(d) Send the Bill with suggestive amendments to the Lok Sabha.

8.35.5 If the case is either (b) or (c), the Bill shall be automatically deemed to have been passed by Rajya Sabha. In case of (d), the Lok Sabha has sole authority to accept or reject one or all of the recommendation(s) and in this case also the Bill shall be deemed as passed with or without recommendations.

- There is no provision for a joint-sitting of the Parliament to pass Money Bills.
- After the Money Bill is passed by the Lok Sabha and the Rajya Sabha, it is presented to the President who unlike in the case of other Bills, has no right to withhold it. (Art. 111).
- The 'Appropriation Bill' and 'Annual Finance Bill' are Money Bills.

8.36 Financial Bills

8.36.1 Any Bill dealing with revenue or expenditure, but not certified as Money Bill by the Speaker, is a Financial Bill. These Financial Bills are of two classes –

(a) A Bill containing any of the matters specified in Art. 110, but not exclusively dealing with those matters. For example, a Bill containing taxation clause, but not solely dealing with taxation. This is called Financial Bill of First Class.
(b) Any Ordinary Bill containing provisions involving expenditure from the Consolidated Fund of India. This is called Financial Bill of Second Class.

8.36.2 As regarding the procedure for its passage, a Financial Bill is as good as an ordinary bill except that a Financial Bill cannot be introduced without President's recommendation, and it can only be introduced in the Lok Sabha. Thus a Financial Bill is passed according to the ordinary procedure provided for passing of a ordinary bill.

Types of Majority

There are certain types of majority followed in the Parliament to pass specific Bill or Motions.

1. **Simple Majority**: Also called 'working majority', this is the majority more than fifty percent of the members of the legislature present and voting, excluding the

members abstaining. For example, if the total number of Members of Parliament present and voting is 500, a strength of 251 or more will be a simple majority. A confidence, Non-Confidence or Censure Motion, Money, Financial or Ordinary Bill, Budget, ratification of an amendment of Parliament by the state legislature(s) etc. are passed by simple majority

2. **Absolute Majority**: It is the majority of more than fifty percent of the total strength of the House, which includes even those members who are abstaining. For example, in case of the Rajya Sabha which has the total strength of 245 members, 123 and above shall be an absolute majority.
3. **Effective Majority**: This is more than fifty percent of the effective strength of the House (vacancies are not taken into account). In other words, the effective strength of the House is total strength of the House minus the number of vacancies. In case of Rajya Sabha (total strength 245), if there are 15 vacancies, 230 shall be the effective strength and more than 50% of this (i.e. 230) -116 or more is called effective majority. Removal of the Vice-President of India (resolution for this can be introduced in the Rajya Sabha only) requires effective majority for passage of such a resolution to this effect (Art. 67(b)).
4. **Special Majority**: All types of majorities other than the above three are called special majorities. These are of the following types:
    - Special Majority under Art. 249. This is basically a majority of 2/3rd of the members of the House present and voting excluding the number of members abstaining. For example, in Rajya Sabha (total strength 245) if only 200 members are present and voting, only 2/3rd of this (200) shall be special majority under Art. 249 (i.e. for creation of one or more All-India Services). To make it more clear, if 100 members of the House are present and 10 of them abstain from voting then in this case only 2/3rd of this (100-10=90), i.e. 60 will be special majority.
    - Special Majority under Art. 61 (Impeachment of the President of India). A resolution under Art. 61 must be passed by not less than two-thirds of the total strength of the House, including the number of vacancies. For example, a resolution for impeachment of the President of India requires the support of 2/3rd of the members of total strength of the Upper House 245, two third of which shall be 164 or more.
    - Special Majority under Art. 368. (Constitutional Amendment) – A bill seeking Constitutional Amendment requires its passage by 2/3rdd of the members of the House present and voting. There is no provision of joint sitting for this. Both the Houses must pass it separately. Also, this majority should be absolute majority of the House.

Constitutional Amendment Bills. Resolutions for removal of the judges of the Supreme Court or High Courts. Chief Election Commissioner, Comptroller and Auditor General, etc. are passed by special majority under Art. 368. However, whenever the Constitution does not specially mention the type of majority required, it means simple majority.

8.37 Constitutional Amendment Bills

8.37.1 Art. 368 deals with the power of the Parliament to amend the Constitution and the procedure thereof. A Bill for this can be introduced in either House (Lok Sabha or Rajya Sabha) of the Parliament and there is no need of the President's recommendation for this. Such a Bill must be passed by each House separately with special majority required under Article 368, i.e., not less than two-third of the members of the House present, and voting. This majority should be more than the absolute majority of the House. The joint-sitting of Parliament is not possible for passing such a Bill (Art. 108). If the Bill is passed by both the Houses, it goes for the President's assent. By the 24th Constitutional Amendment Act, it is obligatory for the President to give his assent to the Bill amending the Constitution.

8.37.2 But the Amending power of the Parliament is subject to the basic structure of the Constitution. Thus the amending power is limited. The Supreme Court can strike down any such amendment, if it is not in concurrence with the basic structure of the Constitution.

8.37.3 The Government should not take the decision of the court as a challenge against it, but in the spirit of the compromise and cooperation between the two important organs of the state.

8.38 Assent to Bills

8.38.1 No Bill can become law without the assent of the President, even if it has been passed by both the Houses of the Parliament. Article 111 says that when a Bill has been passed by both the Houses of the Parliament, it is sent to the President for his assent. The President may either –

(a) give his assent to the Bill, or
(b) he may withhold his assent, if it is not a Money Bill or a Constitutional Amendment Bill.
(c) he may return the Bill, if it is not a Money Bill or a Constitutional Amendment Bill to the House for reconsideration with or without a message, suggesting such amendments as he may recommend. When a Bill is so returned, the Houses shall reconsider in the light of the Presidential message. However, if the Bill is again passed by the Houses with or without amendment and presented to the President for assent, the President shall not withhold his assent.

8.39 Amendment by Simple Majority

8.39.1 A bill seeking to amend the following provisions of the Constitution requires only simple majority and such a Bill is not deemed to be a constitution (Amendment) Bill under Art, 368 of the Constitution:

a. Admission of establishment of new State, formation of new States and alteration of areas, boundaries or names of existing ones (Arts. 2,3, & 4):
b. Creation or abolition of Legislative Councils in a State (Art. 169):
c. Administration and control of scheduled areas and scheduled tribes (Para 7 of the Fifth Schedule), and

d. Administration of Tribal areas in the states of Assam, Meghalaya and Mizoram (Para 21 of the Sixth Schedule).

8.40 Amendment by Special Majority and Ratification by States

8.40.1 A bill seeking to amend the following provisions of the constitution has to be passed by a special majority of both the Houses of Parliament and has also to be ratified by the legislatures of not less than one-half of the States, by resolutions to that effect passed by those Legislatures before such a Bill is presented to the President for assent:

a. The election of the President (Arts 54 & 55):
b. The extent of the executive power of the Union and the States (Arts. 73 & 162):
c. The Supreme Court and the High Courts (Art 241, Chapter IV of part V, and Chapter V of part VI of the Constitution):
d. Distribution of legislative powers between the Union and the States (Chapter I of part XI and the Seventh Scheduled of the Constitution):
e. Representation of States in Parliament: or
f. The procedure for amendment of the constitution is itself (Art. 368)

8.40.2 The Constitution does not provide for any time limit within which the states must signify their ratification of a Constitution (Amendment) Bill, referred to them for this purpose.

8.41 The Budget

8.41.1 According to Article 112, the President shall in respect of every financial year, cause to be laid before both the House of the Parliament, an annual financial statement commonly known as the Budget. This statement gives out the estimated income and expenditure for that year.

8.41.2 The estimated expenditure is shown separately under two heads:

(a) The sums charged upon the Consolidated Fund of India and
(b) The sums required to meet other expenditure out of the Consolidated Fund of India.

8.41.3 The Budget provides an opportunity to review and explain financial and economic policies and programmes of the government.

8.41.4 After introduction of the Budget, the Lok Sabha discusses the proposed expenditures (Demands for Grants) of various Ministries and Departments, and approve it one by one. All the expenditures approved through various Demand for Grants and expenses charged on the Consolidated Fund of India are then presented in the form a single Bill called the "Appropriation Bill". The proposal for taxation to raise revenue are separately presented in the form of a 'Financial Bill'. Both these Bills are Money Bills and are passed accordingly.

8.42 Vote on Account

8.42.1 Before the Appropriation Act is passed, no money can be withdrawn from the Consolidated Fund of India. But its passage is a time-consuming process, and the Government may need money to spend before the Appropriation Bill is passed. Accordingly, under Article 116(a), the Lok Sabha can grant a limited sum from the Consolidated Fund of India to the Executive to spend till the Appropriation Act is passed by the Parliament.

8.43 Parliamentary Control over Financial System

8.43.1 In financial matters, Parliament has effective control over the Executive. The Annual Budget is presented to the Parliament and is passed by it. The Appropriation and Finance Bills are also passed by the Parliament. Unless the Appropriation Bill is passed, no money can be withdrawn by the government from the Consolidated Fund of India.

8.43.2 It also exercises control over financial matters through the Public Accounts Committee and the Estimates Committee. The Public Accounts Committee considers the Appropriation accounts. It also considers the report of the Comptroller and Auditor-General. The report is submitted to the House. The Estimates Committee examines such estimates (presented to Lok Sabha) of the budget as may seem fit to the committee, suggests economy in the expenditure and other steps for increasing efficiency , finds out whether the money is well laid out and also suggests the form in which the estimates should be presented to the parliament.

Consolidated Fund of India (CFI)

This is the largest fund of the Government of India to which all revenues, loans raised and income received by the Government of India are deposited. No money can be deposited into the Consolidated Fund of India or reimbursed from it without proper legislation of the Parliament. However, the 'Charged expenditures' do not require approval of the Parliament and are automatically withdrawn from the Fund. Each State has its own Consolidated Fund, under the authority of the Legislature of that State.

Public Account of India

This Fund consists of all other sources of income, i.e., except those included in the Consolidated Fund of India. For example, money received by an officer or court in connection with the affairs of the Union such as pension, Provident Fund, etc.

Contingency Fund of India

It was created by an act of Parliament in 1950 on the basis of the powers provided under Art 267. This fund is placed at the disposal of the President to meet any unforeseen expenditure where the Parliament's approval cannot be obtained due to time factor. The amount so expended is again put back into the fund from the Consolidated Fund of India, if the parliament by law sanctions the expended amount. For example, the president sanctioned funds from the

Contingency Fund of India to meet the expenditure of the Seventh Lok Sabha elections when the 6th Lok sabha dissolved in 1979. The states have their own contingency Funds placed in the disposal of the respective Governors.

8.44 Guillotine

8.44.1 Certain demands for grants of various Ministries are accepted by Lok sabha without any discussion on this. This is known as Guillotine. This is basically done due to paucity of time.

8.44.2 However, questions were raised over this provision for this could lead to lesser control of the Legislature over the Executive. To overcome this, 24 departmentally related parliamentary Committees (Standing Parliamentary Committees) have been constituted. From the Budget Session of 1993 onwards the departmentally related Committee system has been introduced for discussion the demand for grants of various Ministries .

8.44.3 Each committee consists of 45 members - 30 from Lok Sabha and 15 from Rajya Sabha - and works for one year. Each committee has a chair person. Of the 24 chairperson, 16 are appointed by the Speaker of the Lok Sabha while the Chairman of the Rajya Sabha appoints the remaining 8 chairpersons.

8.44.4 The functions of the each committee are basically to scrutinize the Demands for Grants of various Ministeries/ Departments and report to the House with in one month without any extension. Their Reports are recommendatory in nature and are not binding on the House.

8.45 Parliamentary Committees

8.45.1 The Legislature has to perform complex and enormous quantity of work. Due to paucity of time in the Legislature, the initial work is mostly done by the committee appointed or elected for a specific purpose. These committees essentially belongs to the Lok sabha and function under the speaker to whom they submit their reports. These parliamentary committees are classified as Standing Committees and Ad–hoc Committees, while the former are permanent in nature. The latter are constituted for specific purposes and they cease to exist after completing of the specific work.

8.45.2 Most important committees with their strength in brackets are as follows:-
Business and Advisory committee (15) Estimates Committee (30) Committee on Public Accounts (22), Committee on the welfare of schedule Castes and Scheduled Tribes (30).

8.45.3 Members of the Rajya sabha are also given representation, usually about one third except in the Estimates Committee. Members of the committees are generally elected or nominated for a term of not more than one year. As far as possible, all the parties in the parliament are represented in these committees in proportion to their strength in parliament so that they become a microcosm of the whole house of the parliament. The chairman of all the Committees of parliament are appointed by the speaker except that of the Joint Committee on

salaries and allowances of members of Parliament who is elected by the committee itself. Wherever the speaker is a member of a committee he is the ex officio Chairman of that (those) committee. The Chairman of the Committee on public Accounts is appointed by the speaker from amongst members of the Lok sabha and is generally an opposition member.

8.45.4 Details of some of the important committees are:

a) **Committee on Estimates -** This committee consists of 30 members wholly derived from the Lok sabha. All the parties in the parliament are given proportionate representation in this committee. The chairman is appointed by the speaker from amongst the members. A minister is not liable to be elected to the committee and if its member is appointed a minister, he ceases to be a member of the committee. The term of office is for not more than one year. The functions of the committee are:-

- to report on the efficiency of the policy underlying the estimates
- to examine whether the money is well laid out within the limit of the policy implied in the estimates.
- to suggest the form in which the estimates are to be presented in the parliament.

The committee works well within the limits of policy approved by the parliament but it may suggest a change if he think so.

b) **Committee on Public Accounts -** the twenty two members committee is elected through single transferable vote, 15 from Lok Sabha and 7 from Rajya sabha. Externally, the committee belongs to the Lok sabha and its chairman is appointed by the speaker and is from the lok Sabha members of the committee. By convention, the speaker appoints a member of opposition to chair the committee. A minister is not eligible for election to the committee and when its member is given portfolio of a ministry, he ceases to be a member of that committee. The term of the office is one year.

the functions of the committee include:

- to examine the accounts showing the appropriation granted by the parliament to meet the expenditure of the government of India.
- to examine the Annual Finance Accounts of the Government of India and other accounts laid before the house.
- to examine the reports of the comptroller and Auditor General (CAG) of India on revenue receipts.

c) **Committee on Public Undertakings:**

This committee consists of 15 members of Lok sabha and 7 associated members of Rajya sabha, elected by means of single transferrable vote in both houses. The chairman of the committee is appointed from amongst the members of Lok sabha by

the speaker. A minister is not eligible to be elected a member of the committee. The functions of the committee are-

- to examine the reports and Accounts of the Public Undertakings specified in the Fourth Schedule of the Rules of Procedure and Conduct of Business of the Lok Sabha and also the report of the CAG, if any.
- To examine the efficiency and autonomy of the Public Undertakings
- to examine other specific subjects or matters referred to it by the House or the Speaker.

d) Committee on welfare of the Scheduled Castes and Scheduled Tribes-

This committee consists of 20 members from the Lok sabha and 10 members from the Rajya Sabha. The members are elected by means of Single transferrable vote through the principal of proportion representation. The chairman is one of the members of the committee and is appointed by the speaker. A minister is not eligible to become member of the committee. The functions include:-

- to consider the reports submitted by the commissioner for Scheduled Castes and Scheduled Tribes.
- to examine the representation of the Scheduled Castes and Scheduled tribes in services of the central Government Departments, Central Public Undertakings, Nationalised Banks etc.
- To review the working of the welfare programmes of the Central Government for Scheduled Castes and Scheduled Tribes and to examine such other matters referred to it by the House or the Speaker
- may examine implementation of the welfare programme for SCs and STs by the State Government, provided that funds for this are made available partly or wholly by the Central Government.

The Committee System

Governments in contemporary times have enormous welfare responsibilities. The quantity of the legislation is increasing as also the complexity and technical character of the legislation. In addition, the Parliament has the duty of reviewing the execution of the Legislation. It is not possible for the parliament to discharge all the functions as it consists of 552 members in the Lok sabha and 250 members in Rajya Sabha (maximum possible strength) and most are not expected to be conversant in legal and technical aspects of the governance. To make the functions of legislation and review relatively simple, there are many types of the committee : some are Standing Committee, Liberty Committee, Committee on Governmental Assurances and so on: some are ad hoc

committees , which are set up for a particular purpose like a Select Committee to report on a bill. Some are committees set up to probe into controversial national issues like the Joint Parliamentary Committee set up to probe banking and securities irregularities (1992-93): some are financial committees like the Estimates Committee, Public Accounts Committee, and the committee on public Undertakings: there are also consultative committees attached to various ministries.

8.46 Motions and Resolutions

8.46.1 Motion - It is a procedural device by which functions of the House are sought to be achieved. It proposes a question or suggests a course of action before the House.

8.46.2 Resolution - It is a self contained motion. If a resolution is passed in the form of a statute, it has a legally bind effect but if it passed as an expression of opinion, it has only a persuasive effect.

8.47 Types of Motion

8.47.1 Censure Motion- This motion seeking disapproval f the policy of the ruling government, can be introduced in the Lok sabha only by the opposition parties under the rule 184 of the Rules and procedures of the Lok Sabha. If a censure motion is passed in the House, the Council of the Ministers is bound to seek the confidence of the Lok sabha as early as possible. Further, if a money Bill or the Vote of thanks to the President is defeated, this also amounts to the censure of the Government policy and the government needs to seek the confidence of the Lok Sabha.

8.47.2 No Confidence motion - This is Introduced only in the Lok Sabha by the Opposition party. When such a motion is admitted in the House, the members of the Parliament have the right to discuss any acts of Commission or omission on the part of the Government on any policy matter in which substantial time is allotted. Then admitted in the House. After the option of a non confidence motion in the Lok Sabha, the council of Ministers is obliged to resign.

8.47.3 Confidence Motion - The provision of confidence motion is not found under the rules and procedures of the parliament has come in vogue, under the Indian Parliamentary practice, with the emergence of the coalition governments. The first incident of this was in Feb, 1979 when the Charan Sngh Government was asked by the president to seek the confidence of the Lok Sabha. It is similar the 'No Confidence Motion' in all these respects except that it is introduced by the Government itself to prove that it demands the approval of the House. Thus, if a Confidence motion is defeated, the Council of Ministers is obliged to resign. Example of this are the fall of V.P.Singh Government in 1990 and of Deve Gowda Government in 1997

8.47.4 Cut Motion- These are a part of the budgetary process which seek to reduce the amount of grants. These are moved in the Lok Sabha only. They are classified into 3 categories:

a) Policy Cut: A policy cut motion implies that the mover disapproves of the policy underlying the demand. Its form of expression is "that the amount of the demand be reduced by Re 1"

b) Economy Cut: This means reduction in the amount of the expenditure. It clearly states the amount to be reduced and its form of expression is "that the amount of the demand be reduced by Rs…(a specified amount)

c) Token Cut: It is introduced where the object of the motion is to ventilate a specific grievance within the sphere of responsibility of the Government of India. Its form of expression is "that the amount of the demand be reduced by Rupees 100"

8.48 Breach of Privileges and Contempt of Parliament

8.48.1 When any individual or authority disregards or attacks any of the privileges or immunities of the members of the either House enjoyed individually or collectively, it is called the breach of privileges.

8.48.2 While the contempt of Parliament is, when any sort of commission or omission causes abstraction or impedes the official functions of the House or its member by any individual or authority. Following are considered contempt of Parliament:

(a) Speeches or writings reflecting on the House, its committees or members.
(b) Any question on the character and impartiality of the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha in discharge of his/her duties.
(c) Publication of false or distorted report of the proceedings of the House.

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9. STATE EXECUTIVE

9.1.1 The pattern of the Government – in the Sates is similar to that at the centre. The only difference is that while powers and authority of the state Executive extend only to the territory comprising of the State, that of the Union Executive extend to the whole of India.

9.2 Governor

9.2.1 The Governor is the executive head of the state and acts on the advice of the Council of Ministers of the State. Generally, one Governor is appointed for each state, but after the 7th Constitutional Amendment 1956, a person can be appointed a Governor of one or more states or Lt. Governor of Union Territories. Like the President at the Union Level, all executive action of the State is taken in the name of the Governor.

9.2.2 The Governor is appointed by the president on the recommendation of the Union Council of Ministers. Thus, he is an agent of the Centre to which he reports weekly, on the affairs of the state. He holds the office for the term of 5 years and can be dismissed earlier or can be asked to continue for more time until his successor takes charge. He can also be transferred from one state to another by the President. His salary and allowances are drawn from the Consolidated Fund of the State.

9.2.3 To be appointed a Governor, following qualifications are required-

a. He must be a citizen of India
b. He must have completed 35 years of age.
c. He must not hold any office of profit.
d. If a member of Parliament or a State legislature is appointed as Governor, his seat shall become vacant.

9.3.1 Unattached members of the legislature: They are those members whose status vis –a-vis a political party subsequent to defection or dismissal, is yet to be decided by the Presiding Officer of the Legislature

9.4 Immunities to The Governor

9.4.1 Under Art. 361, a Governor is not answerable to any court for the performance of the powers and duties of his office

9.4.2 No criminal proceedings can be instituted or continued in any form as long as a person holds the office of Governor. However, no such immunity is available in case of civil cases, the only respite being that the Governor should be given a two months' prior notice containing full details of such proceedings.

9.4.3 A court can not issue arrest warrant or order imprisonment of a Governor during his term of Office.

9.5 Powers and Functions of the Governor

9.5.1 Unlike the President, the Governor of a state does not enjoy military or diplomatic powers. However, his executive, Legislative and Judicial Powers are similar to the President, except certain limitations and restrictions. The Governor has also been given certain discretionary powers which are not available to the President.

9.6.1 **Executive Powers**: Like the President at the Centre, the Governor is also the executive head of the state. All Executive actions of the State Government are taken in his name. The Governors of Bihar, Orissa and Madhya Pradesh have a special responsibility to see that a minister is appointed for the welfare of the Tribal. In Assam, the Governor is given special power regarding administration of the tribal areas as provided under VIth Schedule of the Constitution.

9.6.2 He appoints the Chief Minister and on his advice other ministers.

9.6.3 He appoints the Advocate General of the State and also the members of the State Public Service Commission. However, the latter can only be removed by the president.

9.6.4 He nominates a member of the Anglo Indian Community of the State Assembly.

9.6.5 He nominates 1/6th of the total members to the Legislative Council.

9.6.6 The Governor can remit any matter for consideration to the council of the Ministers of the State which, he thinks, needs its attention. He can also ask to be kept informed about any decision of the Council of Ministers on the administration of the State, and the Chief Minister of the State is continuously bound to comply with and provide such information to the Governor. The Governor is entitled to be consulted by the President of India in matters of appointment of the judges of the High court of the State.

9.7.1 **Legislative Powers**: The Legislative Powers of the Governor is formidable. He is an integral part of the state legislature. His legislature powers are as follows:

- He can address, send message, summon or prorogue either House of the State Legislature. Regarding the State Legislative Assembly, he can also dissolve it.
- He ensures the laying of the State Budget before the Legislature.
- Introduction of Money Bill requires his prior recommendation.
- He has the right to withhold any bill including a money bill passed by the State Legislature. He can also reserve a bill for the assent of the President.
- He has the power to issue ordinance when one or both the Houses of the State Legislature are not in session. However, in certain cases, the ordinance can only be issued by the Governor after a prior sanction of the President. The Ordinance has a force of Law.

9.8.1 **Financial Powers** - The financial powers of the Governor are as follows:

- A money bill or Financial Bill can not be introduced in the State Legislature without prior recommendation of the Governor.

- The Constitution confers on the Governor, the duty to get prepared and introduced to the State Legislature, the annual budget and also the supplementary Budgets, if necessary.
- Make advance from the contingency fund of the state to meet any unforeseen expenditure, pending its authorization by the Legislature.

9.9.1 **Judicial Powers**: Like the President, the Governor also enjoys the power to grant pardons, reprieves, respites or remissions of punishment or to suspend or to commute sentences in certain cases on which the state legislature is competent to make laws. He has no power to commute or pardon death sentences.

9.10.1 **Emergency Powers**: The Governor has no emergency powers per se, but can report to the President that the laws and order situation in the state has collapsed and that the State can not be run in accordance with provisions of the Constitution. The President after getting such report, may impose President's rule in the State (Art.356). In case, President's rule is imposed in the State, the Governor takes over the reins of administration to himself and runs it with the aid of civil servants.

9.11 Governor and the Council of Minister

9.11.1 Unlike at the centre, where the decision of council of Ministers is binding on the President (Art.74(1)) the Governor is constitutionally given discretionary powers under Art.163 and clause of Art 163 clearly states that whenever there arise a question whether the matter is under the discretionary sphere, the decision of the Governor shall be final. The Governor is not also bound by the advice of the council of the Ministers of the State, while exercising the special responsibilities directed by the President. However, the Supreme Court has given in ruling in Sanjeevi Vs State of Madras (1970) case that, except where the Governor is to exercise his functions 'in his discretion', he has to accept the advice of the council of Ministers.

9.11.2 The functions which are specially to be exercised by the Governor in his discretion are:

a) As enumerated in the Sixth Schedule, the Governor of Assam can in his, discretion, determine the amount payable by the State to the District Council as royalty received from the licenses for minerals.
b) Empowered by Art. 239(2), the Governor of a State, appointed also as the Administrator of an adjoining Union Territory can exercise the functions as such Administrator independently of his Council of Ministers.

9.12 Advocate General

9.12.1 The Advocate General is the first law officer of the State. His office and functions are comparable to that of the Attorney General of India. He is appointed by the Governor and holds the office at his pleasure. His remunerations are also determined by the Governor. To be appointed to the office of the Advocate General, he/she must be qualified to be a judge of the

high Court. He has the right to attend and speak in the proceedings of either House of the State Legislature without any right to vote. He also has the right of audience in any Court in the State.

9.13 State Legislature

9.13.1 The Legislature of every state consists of the Governor and one or two Houses. The Legislature of Jammu Kashmir, Bihar, Maharashtra, Karnataka and the Uttar Pradesh are bicameral i.e. having both the Legislative Assembly and the Legislative Council. Other states have unicameral legislatures i.e. there exists only the State Legislative Assembly.

Sarkaria Commission Report on the Office of Governor

To provide greater neutrality to the person holding office of the Governor, the Sarkaria Commission has suggested certain standards to be followed by the Central Government while appointing a person to the office. These are-

- State must be consulted before the appointment of a person to the office of Governor.
- The Governor should not belong to the same State.
- He should be an eminent figure in any walk of life.
- He should have detached himself from the local politics of that State.
- He should not have been actively involved in politics in recent past.
- He should not be a politician of the ruling party at the Centre, if the State to which he is being appointed is ruled by some other party (parties)
- Persons of minority groups should continue to be given a chance.
- system of sending fortnightly report to the President by the Governor must continue.
- The power of the Governor to refer any Bill to the Centre for the President by the Governor must continue.

Powers and position of the President and the Governor : A Comparison

The office of the President is more ceremonial than functional. But the Governor's office is ceremonial as well as functional.

The constitution has explicitly conferred certain discretionary powers on the Governor. But for President there are no explicit discretionary functions. It is to the inferred from the constitution.

Other than all the discretionary powers of the President a Governor enjoys the following powers, which are not enjoyed by the President.

According to Act. 163(1) there shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is required to exercise his discretion. Thus the discretionary powers of the Governor is explicitly mentioned in Act. 163. According to Article 163(2), if any question arises whether any matter is discretionary or not the decision of the Governor in his discretion shall be final.

Exercising power under Act. 200 the Governor can reserve the Bill passed by the State Legislature for the President's consideration. Such power is not available to the President.

Under Article 356, the Governor can invite President to take over the administration of a State, if he feels that the State Government cannot function in accordance with the provisions of the Constitution. Thus the administration of the State will be directly under the control of the Governor. But there is no such provision of taking over the administration for the President

A Governor can exist without the aid and advice of the Council of Ministers (during the President's Rule). But the President cannot function without the aid and advise of the Council of Ministers. That is there is no provision of "President's Rule" for the Union.

The Governors of certain States have been granted "Special Responsibilities" under the Constitution (Art. 371). In fact, this power has been invested to the office of the President who directs the State Governors to perform specific works and duties. The 'Special Responsibility' is totally at the discretion of the Governor and his individual judgement can not be questioned in any court of law. Under the cover of special responsibilities, the Governors of the different States have different functions:

a) For the Governors of Maharashtra and Gujarat, it is regarding special care, for the development of Vidarbha and Saurashtra regions respectively.
b) For the Governor of Nagaland, it is maintenance of Law and order so long as disturbance by the Naga continue.
c) For the Governor of Manipur, it is regarding securing proper functioning of the Committee of the Hill areas.
d) For the Governor of Sikkim, it is basically for a peace in the state and equitable arrangement for ensuring social and economic advancement of different sections.
e) In State of Bihar, Madhya Pradesh and Orissa, the Governors have to see that a special or separate Ministry for the development of tribal is constituted. That the office of the Governor is that of both dignity and authority. While that of the President is more of dignity and prestige.

9.14 The Legislative Council (Vidhan Parishad)

9.14.1 As per the Constitution, the number of members of the Legislative Council is not to exceed one third of the total strength of the State Assembly. However, the strength, should not be less than 40 either.

9.14.2 The members of the Legislative Council are derived from various sections and streams of the society.

a) Not less than one third to be elected by the Panchayats, Municipalities, District Boards etc
b) Not less than one third to be elected by the Legislative Assembly
c) not less than one twelfth to be elected by graduates of three years standing residing in the State
d) Not less than one twelfth to be elected by the persons having teaching experience of three years in educational institutions
e) The reminder one sixth to be nominated by the Governor from among distinguished persons of the society in the field of literature, science, art, cooperative movement and social service.

9.14.3 Just like the Upper House at the Centre, the Legislative Council of a state is never dissolved. The members are elected for a term of 6 years and 1/3rd of its member retire every two years.

9.15 Creation and Abolition of the Legislative Council

9.15.1 The Parliament, under Art 169 is empowered to create or abolish the Legislative Council in a state. Where the Legislative Council is to be created or abolished. The concerned State Legislative Assembly should pass a resolution to this effect by a majority of not less than 2/3rd of the members present and voting. After this, the bill goes to the Parliament for approval, which may or may not pass it. In Parliament, such a resolution is passed by a simple majority.

9.16 The Legislative Assembly (Vidhan Sabha)

9.16.1 The Legislative Assembly is the popular house of the State Legislature where members are directly elected by the people for a term of five years, unless the House is dissolved by the Governor earlier. The strength of this popular house should not be less than 60 or more than 500. However, the President has the power to alter this number and, in fact, the strengths of Goa and Sikkim Legislatures are less than 60. The Governor may nominate one member from the Anglo-Indian community to this house if thinks that the community is not adequately represented.

9.16.2 The sessions of the State Legislature and its officers as well as their functions are almost similar to those at the Union level.

9.17 Legislative Procedure

9.17.1 In a Unicameral Legislature, the procedure is very simple. Every bill originates in the Vidhan Sabha, duly passed by it and then sent to Governor for his assent. However, in a Bicameral Legislature, the process is different. The Money Bill follows the similar procedure as in the Parliament.

9.18 Financial and Ordinary Bills

9.18.1 The bill should be passed by both the Houses. The Vidhan Parishad does not enjoy an equal status to that of the Vidhan Sabha. Whereas in the Parliament, both the Lok Sabha and Rajya Sabha enjoy equal status. After a Bill has been passed by the legislative Assembly of a state having a legislative council, there are three possibilities namely:

a) The Bill is rejected by the Council
b) More than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or
c) The Bill is passed by the Council with amendments

9.18.2 The Bill then returns to the Legislative Assembly, the Legislative Assembly may or may not accept the recommendations. If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council-

a) The Bill is rejected by the Council; or
b) more than one month elapses from the date on which the Bill is laid before the Council without the bill being passed by it;
c) The Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

9.18.3 The Bill shall be deemed to have been passed by both the Houses in the form in which it was passed by the Legislative Assembly for the second time. The Legislative Council has the power to introduce an Ordinary Bill, but if the Vidhan Sabha rejects it, that is the end of the bill.

9.18.4 Unlike at the Union level, there is no provision of joint-sitting in the State Legislature for resolving a dead lock over the passage of the Bill. The two Houses meet jointly on only one occasion - Governor‘s address immediately after general election to the Vidhan Sabha or at the commencement of the first session of each year.

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10. THE CENTRE – STATE RELATIONS

10.1.1 The distribution of powers between the centre and state is an essential feature of federalism. A federal Constitution establishes dual polity with the Union at the Centre and the States at the Periphery, each empowered with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. "The one is not subordinate to other in its own field, the authority of one is coordinate with that of the other."

10.1.2 The basic principal of federation is that the Legislative, executive and financial authority is divided between the Centre and the State, not by any law passed by the Centre, but by the Constitution itself.

10.2 Legislative Relations

10.2.1 Though a federal system postulates distribution of powers between the Centre and the States, the nature of such distribution varies according to the local and political background in each country. The American Constitution only enumerates the powers of the Central Government, leaving the residuary power to the states. Australia follows the American pattern. In Canada, there is double enumeration, Federal and Provincial, Federal and Provincial, leaving the residuary power to the centre.

10.2.2 Our Constitution makers followed the Canadian scheme, obviously opting for a strong centre. However, they added one more list, the Concurrent List.

10.2.3 The present Constitution adopts a method followed by the Government of India Act, 1935 and divides the powers between the Union and States in three Lists - the Union List, the State List and the Concurrent List.

10.2.4 The Union List consists of 99 subjects. The subject mentioned in the Union list are of national importance. i.e. defence, foreign affairs, banking , currency and coinage etc.

10.2.5 The State List consists of 62 subjects. These are of local importance, such as, public order and police, local Government, public health and sanitation, agriculture etc.

10.2.6 The concurrent List consists of 52 subjects. Both the Centre and the states can make laws on the subjects mentioned in the concurrent list. But in case of conflict between the Central and the state laws on concurrent subjects, the Centre law will prevail.

10.2.7 The Residuary Powers - Article 248 vests the residuary powers in the Parliament. It says that the Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or the State List.

10.3.1 Parliament's Power to Legislate on State Subjects - Though in normal times, the distribution of powers must be strictly maintained and neither the State nor the Centre can encroach upon the sphere allotted to the other by the Constitution, in certain exceptional circumstances, the above system of distribution is either suspended or the power of the Union Parliament are extended over the subjects mentioned in the state list. The exceptional circumstances are:

10.3.2 Power of Parliament to legislate in the national interests- According to Art 249, if the Rajya Sabha passes a resolution, supported by 2/3rd of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated within the State List specified in the resolution, it shall be lawful for parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force. Such a resolution normally lasts to a year; it may be renewed as many times as necessary but not exceeding for a year at a time.

10.3.3 During a proclamation of Emergency- According to Art 250 while the Emergency is in operation the Parliament shall have power to make laws for the whole or any part of the territory of India with respect to all matters in the State List.

10.3.4 Parliament's Power to legislate with the consent of the States- According to Art 252, if the Legislature of two or more states pass a resolution top the effect that it is desirable to have a law passed by Parliament on any matter in the State List, it shall be lawful for Parliament to make law regulating that matter. Any other state may adopt such a law by passing a resolution to that effect. Such law can only be amended or repealed by an Act of Parliament and not by an act of the Legislature of that State.

10.3.5 Parliament's Power to legislate for giving effect to treaties and International agreements- Art.253 empowers the Parliament to make any law for the whole or any part of the territory of India or implementing treaties and international agreements and convention even if the subjects covered by such treaties and agreements fall within the State List. In other words, the normal distribution of powers will not stand in the way of Parliament to pass a law for giving effect to an international obligation even though such law relates to any of the subject in the State List.

10.3.6 In case of failure of constitutional machinery in a State- Under Art 356, Parliament is empowered to make laws with respect to all matters in the State List when the Parliament

declares that the State Government cannot be carried on in accordance with the provisions of the Constitution and the Parliament assumes all legislation functions of the States.

10.4.1 Thus from the Scheme of distribution of legislative powers between the Union and the States, it is quite evident that the framers have given more powers to the Union Parliament as against the State Legislatures.

Special Status of Jammu and Kashmir

At the time of independence in 1947, the State of Jammu and Kashmir decided not to join either Pakistan or India. However, soon Pakistan attempted to annex the State militarily. Meanwhile, the Maharaja signed the "instrument of Accession" with India alongwith certain concession for the autonomy of the State. This special status of the State is enshrined in Art.370 of the Constitution.

The important features of the Special Status are as following:

a) The State has its own Constitution. This also implies that 'dual citizenship' principle is followed in the State.
b) Contrary to the case with the other states, the residuary power lies with the legislature of the Jammu & Kashmir and not in Parliament)
c) The national emergency proclaimed only on the ground of war or external aggression shall have automatic extension to the state of Jammu and Kashmir. This means that the national emergency proclaimed on the ground of Armed rebellion shall not have automatic extension to J &K.
d) The Governor of the State is to be appointed only after consultation with the Chief Minister of the State.
e) The Parliament is not empowered to make laws on the subjects of the State List (7th Schedule) for the State of J&K under any circumstance .
f) Financial Emergency (Art. 360) can not be imposed on the State.
g) Apart from the President's rule, Governor's rule can also be imposed on the State for a max period of 6 months.
h) The preventive detention laws (Art.22) of Parliament do not have automatic extension to the State.
i) The name, boundary or territory of the State cannot be changed by the Parliament without the concurrence of the State Legislature.
j) Art.19(1)(f) and 31(2) have not been abolished for this State and hence 'right to Property' still stands guaranteed to the people of J&K

10.5 Centre's control over State legislation

10.5.1 In addition to the Parliament's power to legislate directly on the state subjects, the Constitution also provides for the Centre's consent before a bill passed by a State Legislature can become a law.

a) Although the State enjoys authority to legislate on the subjects of the State List, the Centre has power to direct state legislature to have conformity with the Union laws.
b) Any legislation passed by the State Legislature for acquisition of Private property for public purposes will not become law unless it has the assent of president (Art.31 A).
c) Under Art.200, the Governor is empowered to reserve a bill for the President's consideration. Further, under the same article, the Governor has been directed to reserve any bill affecting the dignity and functioning of the High Court for the President's consideration.
d) Under Art.288 (2), a state is authorized to impose taxes on water, electricity stored, generated, consumed or distributed by Central Authority e.g. National Thermal Power Corporation (NTPC), National Hydel Power Corporation (NHPC) etc. But any such law is effective only after the president's assent.
e) Under Art.304 (b), the State Legislature is authorized to pass Bills regarding imposition of reasonable restrictions on freedom of trade, commerce and intercourse with in the State in public interest. But any such bill needs the President's prior approval for its introduction in the House.
f) Parliament may authorize the Central Government to delegate its functions or duties to a State Government or its officials even without the consent of the concerned State (Art.258)

10.6 Administrative Relations

10.6.1 The success and strength of a federal polity depends upon the maxim of cooperation and coordination between the Governments. In fact, the adjustment of administrative relations between the Union and the States is one of the complicated problems in a federal system of Government. The framers of the Indian Constitution, therefore, decided to include detailed provisions to avoid clashes between the Centre and the States in the administrative domain.

Doctrine of Pith and Substance

Within their respective spheres, the Union and the state legislatures are made supreme and they should not encroach on the sphere reserved for the other. If a law passed by one encroaches upon the field assigned to the other, the Court will apply the doctrine of pith & Substance.

If it is found that the law in substance is within the subjects assigned to the Legislature and the intention of the law is genuine, the law shall be held valid in its entirety, even though there is some overlapping. The justification of this is that since there can not be clear cut division of powers between the Centre and the States, a strict verbal interpretation of any provision would result in invalidation of many laws on the ground of overlapping. The Supreme Court propounded this doctrine in the case of State of Rajasthan Vs G.Chawla in 1959. In the opinion of the court such encroachment is only incidental and hence the extent of invasion is immaterial.

Doctrine of Colourable Legislation

This doctrine is explicitly applicable in a Federal Constitution. In a federal Constitution, the transgression of its limit of power by a Legislature may be either overt and direct or disguised, indirect and covert. If the legislation is disguised, indirect and covert, it is called 'colourable' Legislation. In this case, although the subject on which the Legislature make laws falls within its competence in outward appearance, its real intention is to transgress the power of the other legislature covertly or in a disguised way. Applying the doctrine of colourable legislation, the Court can invalidate the entire law. The motive and spirit of Doctrine is that ***what the Legislature cannot do directly, it can not do the same indirectly also***. The doctrine was upheld by the Supreme Court in the case of Moopil Nair Vs State of Kerala.

10.6.2 In USA, the Federal and the State administrations run parallel to each other and so no one has direct or indirect power over the other. But, in India, the case is different. The Constitution has a strong bias towards the Centre to make it strong. The Central Administration prevails over the State administration.

a) The executive power of the state should be so exercised as to ensure compliance with the laws of the Union Parliament (Art. 256) and not impede or prejudice the executive power of the Union (Art. 257).
b) If the State does not comply with the directives of the Centre, the latter may invoke Art. 356 and take over the administration of the state to itself (President's rule)
c) Under Art. 258(2), The Parliament is given power to use the State machinery to enforce the Union laws.
d) In case of any untoward happenings, officials of the All India Services [e.g. IAS, IPS and IFS (Forest) can only be suspended by the State. The State can not take disciplinary action.
e) the Centre can deploy military and para-military forces in a State even against the wishes of the State Government.
f) In case of disputes related to waters of inter-state river or river valleys, the Parliament has power to adjudicate. Under this power, the Parliament has constituted a 3 member River water Tribunal whose award, if published by the Union Government in the Gazette, is binding on the concerned States (Art. 262)
g) For coordination between States, the President is empowered under Art.263 to constitute a Council to resolve the disputes and or to discuss subjects of common interest between the States inter se and between the States and the Union. Exercising the power, the President has so far constituted three such Councils - (i)

Central Council of Health; (ii) Central Council of Local Self Government; (iii) Transport Development Council.

10.7 Financial Relations

10.7.1 The provisions of the financial relations between the Union and the States are heavily derived from the Government of India Act 1935. The Constitution makes a distinction the Legislative power to levy a tax and the financial power appropriate the proceeds of the tax. But, this division is not water-tight. Also, the residuary power regarding taxes belongs to the Parliament. Practically, the states have little power in taxation and are heavily dependent on the centre for financial resources. For this reason, they are often called 'glorified municipalities'. The chief source of the states is the Grants-in-aid from the Centre. Thus, the Centre has an overwhelming control over the finances of the States.

10.7.2 The Constitution classifies the Union taxes into four categories on the basis their collection and appropriation between the Union and the States. These are

a) Taxes levied by the Union but collected and wholly appropriated by the State (Art.270). These are stamp duties and duties of excise on medical and toilet preparations.
b) Taxes levied and collected by the Centre. But wholly assigned to the States (Art 269). These are:
    (i) duties on succession to property other than agriculture land;
    (ii) Estate duty on property other than agricultural land;
    (iii)Terminal taxes on goods and passengers (railway sea or air);
    (iv)Taxes on railway fares and freights;
    (v) Taxes on stock exchange other than stamp duties;
    (vi)Taxes on inter-state consignment of goods; and
    (vii) Taxes on sale or purchase of Newspapers and on advertisement therein;

c) Taxes levied and collected by the Union and distributed between the Union and the States (Art.270). This includes taxes on income other than agriculture income. The ratio of division is decided by the Finance Commission appointed by the President every five year.

d) Taxes levied and collected by the Union but may be shared with the States. This includes the customs and excise duties (other than those on medicinal and toilet preparations), if parliament by law so provides.

10.7.3 Apart from these, the Centre also has power to grant loans and provide Grants in aid (Art 275) to the states especially for the purposes of promoting the welfare of the Scheduled Tribes and raising the level of administration of the Scheduled areas. This is, in fact the most important source of income for the States.

10.7.4 The Union Government can borrow money on the security of the Consolidated Fund of India, but to raise loans, the States are required to take prior permission of the parliament.

10.7.5 Further, The Comptroller and Auditor General (CAG) of India is empowered to determine the manner of maintenance of the account of the States and also audit those accounts. After the 73rd and 74th Amendments, the CAG can now also audit accounts of the Panchayats and Municipal Corporations.

10.7.6 During the time of Financial Emergency (Art. 360), the President can require the States to reduce the salaries of their servants and direct the Governors to reserve all money bills for the approval.

10.7.7 Thus it is obvious from the above details of the legislative, administrative and financial relations between the Union and the State that, the former has been provided a predominant role in the Constitution. The States are, in many cases, given a subordinate role and in almost all aspects are heavily dependent on Union.

10.8 Cooperative Federalism

10.8.1 To solve the Centre-State conflicts and promote cooperative federalism consistent with national integration, the Indian Constitution, following the Australian Constitution, provides for a number of mechanisms. Certain extra-constitutional agencies also exist to help promote federal cooperation in India.

10.8.2 Important provisions of the Constitution:

a) Consultative Machinery, Under Art. 263, the President is empowered to constitute 'Inter-State Council' for resolving the dispute arising between the Centre and States and between the states inter se, so as to avoid the need to go through the judicial proceedings for the same.

   In June 1990, the Inter-State Council was formally constituted by the President. The Council is headed by the Prime Minister and includes six Union Cabinet Ministers, and Chief Ministers of States and two Union Territories (Delhi and Puducherry).

   In 1996, a Sub-Committee was appointed to go into the Sarkaria Commission Report and to suggest which of its recommendations could be adopted.

b) Adjudicative mechanism – Under Art. 262, the Parliament has passed the Inter-States Water Disputes Act, 1956 to adjudicate on my dispute or complaint with respect to use, distribution or control of the waters of Inter-State River or river valleys.

c) Full faith and credit clause – Art. 261 lays down that the final judgments or orders delivered or passed by civil courts and not criminal courts of one State shall be equally enforceable in other States, if they wish so. This is known as full faith and credit clause.

d) Delegation of executive functions – Under Art. 258, the President is empowered to delegate some of the executive functions of the Union to the State with its (State's)

consent. Under Art. 258A, similarly, the Governor of a State may entrust, with the consent of the Government of India, any of the executive functions which exclusively fall under the State's jurisdiction.

e) Immunity from mutual taxation - Art. 285 says that the property of the Union property owned by a Government company or statutory corporation do not come under this, and is exempted from State taxation, except if the Parliament by law provides otherwise.

Similarly under Art. 289, the State property and income is exempted from Union taxation, except in case of trade or business carried out by the State Government or on its behalf.

This is basically not only to avoid unnecessary conflicts but also to create space for mutual cooperation between the Centre and the State.

10.9.1 Extra-Constitutional Agencies

a) Zonal Councils – The Zonal councils are extra-constitutional bodies created under the States Re-organisation Act, 1956. The 1956 Act set up five Zonal Councils, viz. Northern, Southern, Eastern, Western and Central and the sixth, North-Eastern Council, was set up in 1971 by an Act of the Parliament. Each Council consists of the Chief Minister and two other Ministers of each State in the Zone and the Administrator in the case of a Union Territory. The Union Home Minister is the common Chairman of all the Zonal Councils.

Inter State Council

In a dual polity within the federal frame work, coordination of the national and the State policies and their implementation becomes crucial, especially in view of the large areas of common interest and shared action. A federal forum that assists in the cooperation and coordination is provided in Art. 263 to bring together the federal units.

Art. 263 says- "if at any time it appears to the president that Public interest would be served by the Establishment of a Council charged with the duty of

- inquiring into and advising upon disputes which may have arisen between the States;
- Investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- Making recommendations on any such subject and, in particular, recommendations for the better coordination of the policy and action with respect to that subject, he may establish such a Council.

The duty of any such council is to inquire to and advice upon relevant matters and not one of the adjudicating. The President set up the Inter State Council in 1990 with the following composition:

- Prime Minister as the Chairman
- Chief Ministers of the States and those UTs with a Legislative Assembly and
- Six Union Cabinet Ministers as members.

The Ministers of State in the Union Council may be invited to the meetings if the

agenda has any relevance for them.

The proceedings of the Council are to be held in camera and decisions are to be taken by consensus.

Previously, the President set up Central Council of Local Self Government, Transport Development Council etc.

The Sarkaria Commission recommended that in order to differentiate the Inter State Council from other bodies set up under the Article, it must be called Inter Government Council.

In July 1997, the Inter State Council meeting resolved to implement the Alternative Development Scheme of the Tenth Finance Commission and also recommended significant steps for making the use of Art 356 difficult.

10.10.1 Objectives

1) To take collective approach and sort out common problems of member states.
2) For Promoting economic and administrative co-operation for the implementation of developmental plans and projects.
3) To solve inter-State disputes and promote inter-zonal cooperation

Inter State River Water Disputes

In India, there are many inter-state rivers. The regulation and development of the waters of these rivers and river valleys continues to be a source of inter-state friction. For example, the waters of Krishna, Godavari, Narmada, Yamuna, Cauvery and others.

Article 262(1) of the Constitution lays down that "parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, or any inter-state river or river valley". Article 262(2) further states that the Supreme Court or any other court has no power in this regard.

Parliament enacted the Inter State River Waters Disputes Act, 1956. It provides for the reference of any such dispute to the Tribunal by the Centre, on receipt of complaint and representation from a state when the Union Government is satisfied that the disupute cannot be settled by negotiations.

In the Indian Constitution, water-related matters within a state are included in the State List while the matters related the inter-state river waters are in the Union List.

For the development of the inter-state river water disputes in an optimum way, the Parliament enacated River Boards Act, 1956. It provides for the establishment of River Boards by the Centre in consultation with the states for advising on intergrated development of waters of rivers and river valleys. The provisions of the Act have not been implemented since 1956.

So far, the Union Government has set up four Inter State Tribunals for Narmada, Krishna,

Godavari and Cauvery.

The Narmada Water Tribunal was constituted in 1969 after a complaint by Gujarat in 1968. The riparian states involved are Gujarat, Maharashtra, Madhya Pradesh and Rajasthan. The Tribunal gave the award in 1978 and the publication in the official gazette took place in 1979 (without the publication, the implementation cannot take place). The disputes for the use of Narmada waters were very old and the attempts to solve them can be traced back to 1963 and after the interstate negotiations failed to yield.

The Krishna Water Tribunal was set up in 1969 and the award was given in 1973 with the publication of the award in 1976. The states involved are Karnataka, Maharashtra, Andhra Pradesh, Madhya Pradesh and Orissa.

The background related the setting up of Godavari Tribunal is almost the same as that of the Krishna Tribunal, with the states involved being the same.

The history of the disputes concerning the Cauvery river waters is very old. The cause of the dispute is that the breach of the agreement reached in 1920s between Karnataka and Tamil Nadu by the former, the upper riparian state, by exploiting more water resources than the due amount and in the process, starving the farm fields of Tamil Nadu. The Centre set up the tribunal in 1991 and in the interim award given by the Tribunal in mid-1991, it ordered that 205 tmcft of water be annually given to Tamil Nadu. When the Karnataka government legislated against honouring the award, calling the powers of the Tribunal to give interim award into question, the President sought the advice of the Supreme Court (Art. 143). The Court opined that the award was legal and it should be published in the Official Gazette, which was done soon after. The final award of the Tribunal is awaited.

Sarkaria Commission on Centre State Relations, in its report in 1988, gave the following recommendations in this regard:

(i) Once an application under the Inter State River Disputes Act is received from a riparian State, the Union Government should set up the Tribunal within a period of one year so as to avoid the delays that cause the waters to lie wasted for long periods of time.

(ii) The Union Government should also be given the powers to act *suo moto* without receiving complaint from any state.

(iii) The award of the Tribunal should become effective within five years from the date of a setting up of the Tribunal. The terms of the Tribunal may however be extended.

(iv) The award of the Tribunal should be made binding by giving it the force of a Supreme Court ruling.

10.11 Functions

10.11.1 Its function is to advise the union and State governments represented in that council on matters of common concern, particularly relating to economic and administrative matters, social planning, border disputes, problems of Linguistic minorities, inter-state transport, and matters arising out of reorganization of States. However, in reality, the Zonal Council has become moribund. The meetings of the Zonal Councils have not been convened for decades.

10.12.1 Councils appointed by the President - Exercising power under Art. 263 regarding the establishment of Councils for resolving disputes and better co-ordination between the States, the President has appointed several councils Central Council of Health, Central Council of Local Self- Government, Central Council of Indian Medicine, Central Council of Homeopathy, etc. Also, Four Regional Councils have been set up for coordination of policy and action relating to sales tax.

SARKARIA COMMISSION

In the wake of the increasing strain in the Centre-State relations, the Parliament, in June 1983, appointed a Commission under the Chairmanship of Justice R S Sarkaria to go into details of the Centre-State relations and to recommend measures to make the relations, more efficient and cooperative. The Commission submitted its report in January 1988.
The Commission did not call for any structural change, but preferred to continue the existing arrangement because the disintegrative forces are active in the country. However, the Commission expressed the need for streamlining the provisions of the Centre-State relations. It suggested the Centre, to begin with, to relax its financial hold over the States and to give them more autonomy in this regard. This would make the regional powers more responsible.

Major Recommendations of the Sarkaria Commission

(1) On the Governor of a State – See Governor Section
(2) On Art. 356. The Commission noted that this Article has been misused in 90% of the cases for political purposes. So it recommends that –

   (a) The President's Proclamation should include the 'reasons as to why the State cannot be run as per the normal provisions of the Constitution.
   (b) As far as possible, the Centre should issue a warning to the State government before resorting to the use of Art. 356.
   (c) It should not be used to serve political purposes.
   (d) Art. 356 should be amended so that the President be empowered to dissolve the State Legislature only after approval by the Parliament.

(3) On Art. 258. The Commission recommended that the President should delegate some of the Union executive functions in concurrence with the States. This will help in furthering the spirit of cooperative 'federalism'.
(4) On Concurrent List. The Centre should have a loose control over the subjects of

the Concurrent List and consult the State Governments before enacting any laws on such subjects.

(5) On Art. 252. In case the Parliament makes a law under Art. 252 (by mutual consent of two or more states), such law should be in force for not more than three years. Currently, such law can only be repealed by the Parliament whenever it wants, although the power to legislate has been given by the States.

(6) The award of the Inter-State River Water Tribunal should be made binding, automatically, and not after the notification by the Centre.

(7) Under Art. 263 the Centre should appoint 'Inter-State Council' and its name should be changed to 'Inter-Governmental Council', so as to exclude political issues.

(8) Sharing of the Corporate Tax between the State and the Centre should be made mandatory.

(9) The surcharge must be levied for a limited period.

(10) The Judges of a High Court should not be transferred against their will.

Of the above ten recommendations, 2a and 2b, (7) and (8) have been accepted. However, the name of the Inter-State Council has not been changed to 'Inter-Governmental Council', as recommended by the Commission.

National Development Council

The National Development Council (NDC) was constituted in 1952 as an adjunct to the Planning Commission to associate the States in the formulation of the Plans so as to ensure balanced and rapid development. The Council performs two functions

(a) To review the working of the National plan from time to time and (b) To recommend measures for the achievement of the aims and targets the National Plans.

The Council is the highest deciding body for planning in the country. It meets under the Chairmanship of the Prime Minister. Its Secretary is the same person who is the Secretary of the Planning Commission. The Council discusses the Draft Plan and makes modifications, if necessary. After the Council's approval, the plan is sent to the Parliament for its final approval.

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11. FINANCE COMMISSION

11.1.1 Under Act, 280 the President is empowered to constitute a Finance Commission every five years in order to review and recommend to him-

a) On certain measures relating to the distribution of the financial resources between the Centre and the States, percentage of the net proceeds of the union to be assigned to the States and the manner of such distribution.
b) on principles which should govern the grants-in-aid of the revenues of the States out of the consolidated Fund of India.
c) Any other matter referred to the Commission by the President in the Interest of sound Finance.

11.2.1 The Finance commission consists of a Chairman and four other members. The qualifications of the Chairman and members of the Finance Commission have been laid down by a Parliamentary Act Finance Commission (Miscellaneous Provisions) Act.1951]

11.2.2 The Chairman must be a person having experience in public affairs. The members should be qualified to be

a) a high court judge or a person qualified to be appointed as such.
b) a person having special knowledge of finances and accounts of the Government;
c) a person with wide experience in financial matters and administration: and
d) a person having special knowledge of economics.

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12. UNION TERRITORIES

12.1.1 By the 7th Constitutional Amendment, 1956, the classification of States into three Parts, Part A, Part B and part C and Territories in Part D was abolished and the whole territory of India was categorized into The States, the Union Territories and Acquired Territories, if any.

12.1.2 The States or the Provinces are the constitutional units of the Union of India enjoying federal relationship with the Centre. The status of the Union Territories has subtle differences from that of the States in two respects:-

a) They are not part of the federal stricture of the Constitution and hence do not participate in the division of power.
b) They are directly administered by the Centre through the Lt. Government of Chief Commissioners (Chandigarh) appointed by the president

12.1.3 Presently, there are seven Union Territories Chandigarh – Delhi, Diu and Daman, Dadra and Nagar Haveli, Pondicherry, Lakshadweep, and Andaman and Nicobar Islands.

12.2 Administration of the Union Territories (UTs)

12.2.1 The Administration of the Union Territories is directly under the President who appoints an Administrator for each UT, designated as the Lt. Governor or Chief Commissioner. However, the President may also appoint a Governor of the adjoining State as Administrator.

12.2.2 The Parliament is empowered to enact laws for the UTs, except Delhi and Pondicherry, who have their own legislatures: and (b) constitute a separate High Court for a UT (or UTs) or declare any nearby High Court to have jurisdiction over such UTs. Among the UTs, Only Delhi has its own High Court. Other Union Territories and their respective High Courts are Chandigarh High Court of Punjab and Haryana.

Delhi	High Court of Delhi
Dadra and	High Court of Mumbai
Nagar Haveli	High Court of Mumbai
Puducherry	High Court of Mumbai

Lakshadweep Andaman & Nicobar Islands

12.2.3 The President can also make rules and regulations for the peace, progress and good governance of the Union Territories, Except Delhi and Pondicherry. However, when the Legislature of Pondicherry is not in session, the President can make rules and regulations for it

also. The President's regulations have the same effect as those of the Acts of Parliament. The Parliament is authorized to create by law democratic structures in the Union Territories.

12.3 Advisory Committees

12.3.1 To associate distinguished persons for better administration of the Union Territories Advisory Committees have been set up, which are regularly consulted for –

(a) General questions of policy relating to the administration of subjects in the State List.
(b) Mattes relating to the annual financial statements (Budgets) of the Union Territories.

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13. JUDICIARY

13.1.1 Unlike the distribution of legislative and executive powers between the states and the Union, the Indian Constitution does not adopt a similar division of judicial powers. Contrary to the situation in USA and Australia where the States have their own Constitutions, separate from the Federal one, the judicial system in India is unified and integrated. Also of the three organs of the State. The Judiciary enjoys supreme position in the Constitution.

13.2 Types of Judicial Benches

13.2.1 Supreme Court

(a) Constitutional / Full Bench – constitutes of five or more judges of the Supreme Court.
(b) Divisional Bench – constitutes of two or more judges of the Supreme Court but in case of participants of the Chief Justice three or more judges of the Supreme Court.

13.2.2 High Court

(a) Full Bench – 3 or more Judges
(b) Divisional Bench – 2 or more Judges.

Single Bench – only one Judge.

13.3 The Supreme Court

13.3.1 The essence of a federal Constitution is the division of powers between the Central and state Governments. This division is made by a written constitution, which is the Supreme Law of the Land. In order to maintain the supremacy of the Constitution, there must be an independent and impartial authority to adjudicate on the disputes between the Centre and the States or between the States. The court is the final interpreter and guardian of the Constitution; It is also the guardian of the Fundamental Rights of the people. It plays the role of "guardian of the social revolution". It is also the highest and final interpreter of the general law of the country. Moreover, the Supreme Court is the highest court of appeal in civil and criminal matters.

13.3.2 **Number of Judges:** The Constitution when it came into being, provide for a Chief Justice and not more than seven other Judges. It empowers the Parliament to prescribe by law a larger number of Judges. Under this power the Parliament has now increased the number of Judges to thirty one. Including the Chief justice.

13.3.3 **Appointment of Judges:** The Judges of the Supreme Court are appointed by the President. The Chief Justice of the Supreme Court is appointed by the President with the consultation of such number of Judges of the Supreme Court and High Courts as he may deem

necessary for the purpose. But in appointing other Judges the president shall always consult the Chief Justice of India. He may also consult such other Judges of the Supreme Court and high courts as he may deem necessary.

13.3.4 **Role of Chief Justice of India in the appointment of Judges:** In a landmark judgment, the supreme Court in the "Supreme Court Advocates on Record Association Vs. Union India" (1993) Case held that the Chief justice of India's opinion in the appointment of the Judges of the Supreme court and high Courts and in the transfer of the Judges of the High Courts shall enjoy primacy. By this Judgment the Supreme Court overruled its earlier Judgement. In S P Gupta Vs. President of India (1980) case, in which it held that the opinion of the Chief Justice of India is not binding on the President.

13.3.5 The Court ruled that the process of appointment of Judges is an "Integrated participatory and consultative" exercise for selecting the best and most suitable persons available. The Chief Justice of India is the sole authority to initiate the proposal for the appointment of the judges of the Supreme Court. He shares this role with the Chief Justices of the High Courts in relation to the appointment and transfers of the judges of the High Courts.

13.3.6 The Chief Justice of India's Opinion is the determinative factor in the matter of transfer of High Court Judges and Chief Justices of the High Courts.

13.3.7 While the Chief Justice of India is expected to consult his two senior most colleagues (now four senior most colleagues) in the appointment of judges to the apex court, he is expected to take into account the view of his colleagues conversant with the affairs of a particular High Court in recommending appointments there. The Chief Justice of India may also seek the opinion of a High Court judge or Chief Justice of High Court. Such opinions must be sought in writing.

13.3.8 **Safeguards for maintaining the Impartiality of Supreme Court Judges-**The Hallmark of any judiciary is impartially and for this the independence of Judges is a must. The independence of the Judges of Supreme Court is sought to be secured by the Constitution in a number of ways.

a) The president shall have to consult the Chief Justice of India before appointing a person a judge of the Supreme Court.
b) Once appointed, a judge of the supreme Court can only be removed from office by the President, on the basis of a resolution passed by both the Houses of the Parliament separately with a majority of not less than two-third of the members present and voting on ground of proved misbehavior or incapacity of the judge in question.
c) After retirement, a judge of the Supreme Court is prohibited from practicing or acting as a judge in any Court or before any authority in India. The only exception is when the Chief justice of India appoints a retired judge of the supreme court to act as an adhoc judge of the supreme Court.

d) The salaries and allowances of the judges of the Supreme Court and the administrative expenses of the Court are charged on the Consolidated Fund of India and are not subject to the vote of the parliament.
e) The salaries and allowances of the Judges of the Supreme Court cannot be varied to their disadvantage except during a financial emergency.
f) The conduct of a judge of the Supreme Court cannot be discussed in the Parliament except on the resolution for this removal.

13.3.9 **Role of the Supreme Court in strengthening the constitution in the last 50 years-** Under the constitution the Supreme Court performs multiple roles viz. as custodian of the Constitution, guarantor of the Fundamental rights and final interpreter of the Constitution. The Supreme Court has been described as a *continuous Constitutional convention, a*s it continues to expand the scope of the Constitution in conformity with the growing demands of the Indian society.

13.3.10 It is primarily through the power of the judicial review that the court has been helping in the growth of the Constitution. The most fundamental contribution in this regard is that it emphasises that, in India it is the Constitution which is supreme whenever there was a parliamentary threat it is the Constitutional which is supreme. Whenever there was a parliamentary threat to the constitution the court succeeded in protecting through various decisions, culminating in the doctrine of 'Basic Structure' as propounded in the Kesavananda Bharati case.

13.3.11 By providing a liberal interpretation of the Constitution especially arts. 19 and 21. it has expanded the scope of the Fundamental Rights by including the rights to education, privacy, health of workers, and concept of the due process of law under Part III of the Constitution. It has also succeeded in maintaining a harmony between two important parts of the constitution - part III and part IV - as is clear in the Minerva Mills case decision. It has also successfully expanded the scope of judicial review to crucial articles viz.352 and 356.

13.3.12 It has also taken upon itself the role of a crusader aimed at extending a corruption free administration and livable environment for all the people of India through a new phenomenon known as judicial activism. It has also successfully incorporated the concept of Public Interest Litigation (PIL) as part of Indian Jurisprudence to heighten the responsibility of the Executive.

Public Interest Litigation

Public Interest Litigation (PIL) is one of the most potent weapons, the judiciary in India has acquired in recent times in order to enforce the legal obligation of the executive and the legislature. Its objective is to render justice and help in promotion of the well-being of the people. It can be defined as litigation involved in the protection of the interests of the public at large. It is generally used to protect group interest and not individual interest, for which Fundamental Rights have been provided. The right to issue PIL is available to the Supreme Court and the High Courts. The concept of the PIL, having

its origin in Australia, has emanated from the power of judicial review of the Constitution. The Supreme Court through its various rulings has evolved rules related to the PIL. A PIL can be filed by any publicly spirited individual or organization. Even a post-card can be treated as a writ petition. The relief provided by the Court is usually in the form of direction or order to the State including compensation to the affected parties.
The PIL has served four important purposes:

(1) It has enormously increased the awareness among the masses about their rights and the institutional arrangements in the form of the judiciary to get them implemented. It is said that the PIL has democratized the judiciary.
(2) Through the PIL, the Supreme Court has vastly expanded the scope of the Fundamental Rights by liberally interpreting Arts. 32 and 226.
(3) It has forced the executive and the legislature to discharge their Constitutional obligations towards the people.
(4) It has made an attempt to provide a corruption – free administration and a liveable environment to the public.

However, the PIL is not without criticism – it is said that it has interfered with the normal judicial function of the Courts. Also, it has led to frivolous litigations filed merely to get certain things delayed.

(1) A screening committee can be appointed by the judiciary to study the PILs and submit a report to save time.
(2) The judiciary may also impose fines for filing frivolous PILs.
(3) The Court may also make liberal use of amicus curie ('friend of the court') in disposing the PILs more effectively.
(4) The litigants must be, as a general rule, made to provide the proof of the allegation made in the petition.

The Supreme Court on March 12, 1997, in an oral observation, said that the PIL should be supported by an affidavit sworn by one who has personal knowledge of the facts averred in the petition, while entertaining the PIL petition made against the (then) proposed Yanni concert at the Taj Mahal.

Judicial Activism

It connotes the assertive role played by the judiciary to force the other organs of the State to discharge their duties, assigned to them by the Constitution, towards the public. Judicial Activism, in essence, has been forced upon the judiciary by an insensitive and unresponsive administration that disregards the interests of the people. It is a phenomenon that has been made popular by the Supreme Court in recent times, to ensure that the administration of the country does not suffer because of the negligence on the part of the executive and the legislature. The power of judicial activism has emanated from the power of judicial review of the Constitution.

However, judicial activism is a welcome phenomenon only in the short-run. If it is carried out for long, it may destroy the concept of the separation of power with the judiciary assuming greater powers from the executive and the legislature without proper checks and balances. The judiciary should, therefore, employ self-restraint and should

evolve a code of ethics for the judges while indulging in judicial activism and should use it only as a last resort.

Need for restraint on Judicial Activism

(i) The critics argue that the Supreme Court is blurring the constitutional demarcation of Art. 32 and Art.226 by hearing cases and passing verdicts on cases other than those involving breach of fundamental rights.

(ii) The then Chief Justice of the Supreme Court, J.S.Verma, himself expressed concern over the 'monitoring' exercise being performed by the Patna High Court Bench in the fodder scam case. Important to note is the order of August 29, 1977 by the bench when it even appeared questioning the Union Government's right to institute an inquiry into the circumstances under which the Army's help was sought to arrest Mr. Laloo Prasad Yadav, the then Chief Minister of Bihar.

(iii) The Supreme Court indirectly and gently reminded the Delhi High Court of the inappropriateness of its decision to entertain the petition challenging Mr. R.C.Sharms's appointment as the CBI's director by the Centre, after Mr. Joginder Singh.

13.3.13 Thus it has also acted as a source of social and economic transformation in the country.

13.3.14 President's reference case (1998): The President of India has sought certain clarifications regarding the role of the Chief Justice of India in the appointment of the Judges. In its Judgment the Supreme Court has given the following guidelines to be followed by the Chief Justice while giving opinion about the appointment of Judges in the Supreme Court and High Courts.

a) The Chief Justice of India should consult with four senior judges regarding the appointment of new judges of new judges.
b) The views expressed by the four judges should be conveyed in writing to the Government
c) If the Government provides material evidence for non-appointment of a judge recommended for appointment by the Chief justice of India, then the Chief Justice should consult with other judges.
d) If the recommendations of the Chief justice of India are made without complying with the norms and requirements of consultative process, then such recommendations are not binding upon the Government of India.

13.3.15 **Qualifications for appointment as judges of the Supreme Court:** A person to be qualified for appointment as a judge of the Supreme Court must.

a) be a citizen of India; and
b) have been a judge of a High Court or two or more such courts in succession for at least five years; or

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

13.3.16 **Tenure and salary:** A judge of the Supreme Court vacates his office on attaining the age of sixty five years of by resignation addressed to the president or by removal by the President upon a resolution passed by both Houses of Parliament separately by a majority of not less than two-third of the members present and voting on the ground of proved misbehavior or incapacity.

13.3.17 The Chief Justice of India draws a salary of Rs. 1,00,000 and Judges Rs. 90,000 per month. In addition to salary they are eligible for allowances and a rent–free official accommodation.

13.3.18 **Appointment of acting chief Justice:** When the office of the Chief justice of India is vacant or when the Chief justice is unable to perform the duties of his office, the President may appoint for the purpose any one of the judges of the court (Art. 126).

13.3.19 **Appointment of adhoc Judges:** if at any time there is a lack of a quorum of the Judges of the Supreme court available to hold or continue any session in 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 witting the attendance at the sittings of the court as an adhoc Judge for such period as may be necessary of a Judge of a High Court duly qualified for appointment as a judge of the Supreme Court (Art 127).

13.3.20 **Jurisdiction of the Supreme Court-**The jurisdiction of the Supreme Court is five-fold viz. Original, Writ, Appellate, Advisory and Revisory Jurisdictions.

a) Original Jurisdiction: The original jurisdiction of the Supreme Court is purely federal in character, and it has the exclusive authority to decide any dispute involving a question of law or fact between the Government of India and one or more States *inter se.* However, according to the Constitution (Seventh Amendment) Act, 1956, the original jurisdiction of the Supreme Court does not extend to a dispute if it arises out of any provision of a treaty, agreement, covenant, management, *sanad*, or other similar instrument which has been entered into or executed before 26th January 1950 and has been continued in operation after that or which provides that the said jurisdiction shall not extent to such a dispute. But the Supreme Court can give advisory opinion, if asked by the President. There are certain provisions in the Constitution which exclude form the original jurisdiction of the Supreme Court.

Certain disputes, the determination of which is vested in other tribunals:

(i) Disputes specified in the provision to art. 363(1)

(ii) Complaints as to interference with inter-state water supplies, referred to the statutory tribunal mentioned in Art 262. (Since Parliament has enacted the inter-state water Disputes Act 1956)

(iii) Matters referred to the Finance Commission (Art 280)
(iv) Adjustment of certain expenses between the Union and the States (Art. 290).
(v) Adjustment of Certain expenses between the Union and the States (Art. 290)

b) Writ Jurisdiction: Art 32 imposes duty on the Supreme Court to enforce the fundamental rights. Under this Article, every individual has a right to move the Supreme Court directly if there has been any infringement on his fundamental rights. The writ jurisdiction sometimes is referred to as Original Jurisdiction of the Supreme Court. But in the strict sense original jurisdiction relates to the federal character of the Constitution.

c) Appellate Jurisdiction. The appellate jurisdiction of the Supreme court is three-fold:

(i) Constitutional: In constitutional matters, an appeal lies to the Supreme Court if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. If the High Court refuses to give the certificate, the Supreme Court may grant special leave for appeal if it is satisfied that the case does involve such a question.

(ii) Civil: In civil cases, an appeal lies to the supreme Court if a High Court certifies that the value of the subject matter of the dispute is not less than Rs. 20, 000 or that the case is fit for appeal to the supreme Court. The appellate jurisdiction of the Court in civil cases can be enlarged if Parliament passes a law to that effect.

(iii) Criminal: In criminal cases, an appeal lies to the Supreme Court if the High Court (i) has on appeal, reversed the order of acquittal of an accused and sentenced him to death: or (ii) has withdrawn for trial before itself any case from any subordinate court and has in such trial convicted the accused and sentenced him to death or (iii) certifies that the case is fit for appeal to the supreme Court.The appellate jurisdiction of the Supreme Court in criminal matters can be extended by Parliament, subject to such conditions and limitations as may be specified therein.

(iv) The Supreme Court under Art. 136 enjoys the power of granting **special leave** to appeal from any judgment, decree, order or sentence in any case or matter passed by any court or tribunal excepting Court martials.

d) Advisory Jurisdiction: One salient feature of the Supreme Court of India is its consultative role (Art.143). The President can refer to the Court either a question of law or a question of fact, provided that it is of public importance. However, it is not compulsory for the Court to give its advice. Further, the President is empowered to refer to the supreme court for its opinion, disputes arising out of any treaty, agreement etc, which had been entered into or executed before the commencement of the Constitution. In such cases, it is obligatory for the Court, under the Indian constitution, to give its opinion to the president.

e) Revisory Jurisdiction: The supreme court under Art. 137 is empowered to review any judgment or order made by it with a view to remove any mistake or error that might have crept in the judgement or order. This means that even though all the judgements and orders passed by the Supreme Court are binding on all the courts of India, they are not binding on the Supreme Court.

13.3.21 **Removal of Judges of the Supreme Court**-The constitution under Art 124(4) provided that a judge of the Supreme Court can be removed by President after an address by each House of Parliament supported by a majority of the total membership of that house and by majority of not less than two-thirds of members of that house present and voting on the ground of proved misbehavior on incapacity.

13.3.22 Further, Parliament under Art.124 (5) may, by law, regulate the procedure for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a judge. Accordingly Parliament in 1968 passed judges (Inquiry Act.)

13.3.23 Under this Act, a motion seeking the removal of a judge can be preferred before either house of the Parliament. If it is to be introduced in the Lok Sabha, it should be signed by not less than 100 members of Lok Sabha. If it is to be introduced in the Rajya Sabha, the motion should be signed by not less than 50 Members.

Judicial Reforms

In order to make the judiciary more responsive to the needs of people and speed up the process of justices, make it more accessible and reduce costs, the following must be done:

- Computerisation of the whole country for quick disposal of cases.
- Fill up vacancies. Presently, there are about 20 per cent vacancies in Supreme Court. The sanctioned strength of the Allahabad High court is 77 but it has never ever reached in its history.
- Competent and able members of the bar are to be 'attracted' to the judicial posts at the subordinate level.
- Grating of admission orders and stay orders must be curtailed.
- The high level of court fees prescribed by many state governments must be reduced as it adds to the cost of justice.
- Delays add to costs – more the delays, more the adjournments and more the cost of litigation and so delays must be cut; not more than two adjournments are to be permitted.
- The problem of arrears can be solved by strict enforcement of Art. 141 which says that the rulings of the Supreme Court are binding on all courts.
- The rules regarding adjournments given in order XVII of the Civil Procedure Code must be strictly followed so that repeated adjournments are not made.

13.3.24 The motion can be moved only after prior notice of 14 days to that judge.

13.3.25 After being properly introduced the presiding officers of that house appoints three member judicial committee to inquire into that misbehavior of incapacitation of the accused judge. The head of the judicial Committee shall be a serving judge of the Supreme Court. Of the other two members one should be a serving member of Supreme Court or a High Court and another one may be an eminent Jurist.

13.3.26 The Judge in question has the right to defend himself or through his counsel before the Judicial Committee. The Committee submits its report to the presiding officer of the House in which the motion has been introduced.

13.3.27 The Parliament may or may not act upon the report of the Judicial Committee. However, if the Judicial Committee failed to establish proof of misbehavior or incapacity, Parliament cannot take up the motion.

13.3.28 If the motion is passed by the originating House with the required majority, it moves to the other House which should also pass the motion with the same majority. After that it goes for the assent of the President in the same session of Parliament in which the address has been passed. Then the President removes the Judge in question from the office.

13.4 The High Courts

13.4.1 The High Court stands at the head of the judiciary in the State. The Judiciary in States consists of a High Court and subordinate Courts. The Parliament can, however, establish by law, a common High Court for two or more States or for one or more States and one or more Union Territories.

13.4.2 Appointment of Judges: Every High Court consists of a Chief Justice and such other Judges as appointed by the President from time to time. The Constitution, unlike in the case of he Supreme Court, does not fix any maximum number of Judges of a High Court. Apart from appointing the Judges of the High Courts, the President has the power to appoint: (1) additional judges for a temporary period, not exceeding two years, for the clearance of arrears of work in a High Court; (ii) an acting judge, when a permanent Judge of a High Court (other than a Chief Justice) is temporarily absent or unable to perform his duties or is appointed to act temporarily as Chief Justice. An Acting judge holds office until the permanent Judge resumes his Office. But neither an additional nor an acting Judge can hold office beyond the age of 62 years (now 64 years).

13.4.3 While appointing a Judge of a High Court, the President is to consult the Chief Justice of India, the Governor of the State and the Chief Justice of that High Court in the matter of appointment of a Judge other than the Chief Justice.

13.4.4 **Qualifications for appointment as a Judge of High Court**

Following are the qualifications required under the Constitution for a person to be appointed as a Judge of a High Court:

(a) must be a citizen of India; and
(b) must have held a judicial office in the territory of India for at least ten years or must have been an advocate of a High Court or two or more such Courts in succession for at least ten years.

13.4.5 **Provisions for Independence of Judges of the High Court-**The Constitution seeks to secure the independence of Judges of the High Courts in the following ways:-

a) A Judge of a High Court can only be removed by the President on an address of each House of the Parliament passed by not less than two-thirds of the members present and voting and by a majority of he House only on the ground of proved misbehaviour or incapacity.
b) After retirement a Judge of a High Court cannot serve in any Court or before any authority in India except in the Supreme Court and a High Court other than the High Court in which he had held office.
c) Their salaries and allowances cannot be changed to their disadvantage after appointment except during a financial emergency. Further, their salaries and allowances are charged on the Consolidated Fund of India and are not subject to vote in the Parliament.
d) The conduct of the Judges of the High Courts cannot be discussed in the Parliament, except on a resolution for the removal of Judges.

13.4.6 **Transfer of a Judge from one High Court to another-**A Judge of a High Court can be transferred without his consent by the President (Art. 222). But consultation with the Chief Justice of India must be effective and full. This means that all relevant facts relating to the transfer of a Judge of a High Court must be provided to the Chief Justice of India. The opinion provided by the Chief Justice shall have primacy and is binding on the President.

13.4.7 **Administrative functions of the High Courts-**The High Courts control and supervise the working of courts subordinate to them and frame rules and regulations for the transactions of their business. Under Art. 227, every High Court has the power of superintendence over all courts and tribunals except those dealing with the Armed Forces functioning within its territorial jurisdiction. In exercise of this power, the High Court may (1) call for returns from such courts; (ii) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; (iii) prescribe forms in which books and accounts shall be kept by the office of any such courts, and (iv) transfer cases from one court to another.

Jurisdiction of the High Court

(a) **Original Jurisdiction**: In their judicial capacity, the High Courts of Presidency Towns (Calcutta, Madras and Bombay) have both original and appellate jurisdictions, while other High Courts have original jurisdiction in civil cases in which the amount involved is more than Rs. 2,000/- and in criminal cases which are committed to them by the Presidency Magistrates.

(b) **Appellate Jurisdiction**: As courts of appeal, all High Courts entertain appeals in civil and criminal cases from their subordinate courts as well as on their own. They have, however, no jurisdiction over tribunals established under the laws relating to the armed forces of the country.

(c) **Writ Jurisdiction**: Under Art. 226 of the Constitution the High Courts are given powers of issuing writs not only for the enforcement of Fundamental Rights, but also for other purposes. In exercise of this power, a Court may issue the same type of writs, order or directions which the Supreme Court is empowered to issue under Art. 32. The jurisdiction to issue writs under this Article is larger in the case of High Courts, for 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.

13.4.8 Further, under Art. 235, the High Court exercise control over the District Courts and the Courts subordinate to them in matters of posting, promotion, etc. According to Art. 229 of the Constitution, every High Court has been ensured a complete control over the members of its staff. Under this Article, the Chief Justice of the High Court is empowered to appoint officers and servants of the Court. He is also authorized to regulate the conditions of service of the staff and he has the power to dismiss any such member from the services of the Court.

13.4.9 Every High Court, like the Supreme Court, is a Court of Record and has all the powers of such a court including the power to punish for contempt of itself.

Lok Adalats

Under the Legal Services Authorities Act of 1987, Lok Adalats have been given a statutory status. The aims of Lok Adalats are:

- Secure justice to the weaker sections.
- Mass disposal of cases to reduce cost and delay.

The Legal Services Act provides for Lok Adalats to be organized by the State or district authorities. The authority of the Lok Adalats is conferred on them by the State or district bodies.

The jurisdiction of the Lok Adalats is conferred on them by the State or district bodies.

The jurisdiction of the Lok Adalats is wide – any matter falling within the jurisdiction of civil, criminal, revenue courts or tribunals.

A case goes to the Lok Adalat if the two parties to the case make a joint application to compromise. The award of the Lok Adalat is binding upon all the parties. Lok Adalats, in sum, are given the powers of Civil Courts.

The Supreme Court and HCs have held Lok Adalats from time to time and disposed off thousands of cases. On October 2, 1996, a nationwide programme was launched to dispose off 1 million cases through Lok Adalats.

To find out cases are pending in all the courts in the country.

Lok Adalats are important as an alternative mode of dispute resolution.

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14. ADMINISTRATIVE TRIBUNALS

14.1.1 The 42nd Constitution Amendment Act in 1976 introduced Art. 323A, enabling the setting up of Central and State Administrative Tribunals, to adjudicate cases related to recruitment, promotion, transfer and conditions of service of persons appointed to the public services of the Union and State Governments.

14.1.2 In pursuit of the provision, the Parliament enacted Administrative Tribunal Act, 1985 to set up Central Administrative Tribunal (CAT) with branches in specified cities. Many states are also provided with State Administrative Tribunals.

14.1.3 By a notification, the service matters related to employees of the Public Sector Undertakings (PSUs) can be brought under the CAT or SATs, as the case may be.

14.1.4 The Chairman and Vice Chairman of the tribunal enjoys the status of a High Court judge and his/her retirement age is 65 years. The retirement age for other members – drawn from the administration – is 62 years.

14.1.5 The following categories of employees are exempt from the purview of the Administrative Tribunals (ATs):

a) Employees of the Supreme Court and High Courts.
b) Armed forces personnel; and
c) Employees of the Secretariat of the Lok Sabha and Rajya Sabha.

14.1.6 The Tribunals are meant to relieve the courts of overload and expedite the process of justice. Only, the Supreme Court can entertain cases relating to service matters, according to the 42nd Amendment Act.

14.1.7 President appoints the Chairman and other members of the CAT and SATs after consulting the Chief Justice of India.

14.1.8 The Chairman must be a judge of the High Court or one who served for at least two years as the High Court judge or Vice Chairman of Tribunal.

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15. PANCHAYATI RAJ

15.1.1 Panchayats have been the backbone of the Indian villages since the beginning of recorded history. Gandhiji, the father of the nation, in 1946 had aptly remarked that India's independence must begin from the bottom and every village ought to be a Republic or Panchayat having powers. Gandhiji's dream has been translated into reality with the introduction of the three tier Panchayati Raj system to enlist people's participation in rural reconstruction.

15.2 Background

- At the 1909 session, the Indian National Congress adopted a resolution for the revival of the Panchayats in India.
- The Constituent Assembly made a provision for Panchayati Raj system in the Directive Principles by inducting Art. 40.
- In 1952, the Government appointed a high-powered Committee to consider the feasibility of the Panchayati Raj in rural areas. The Committee submitted its report in 1954.
- In 1956, an official Committee, under the Chairmanship of Balwant Rai Mehta was set up to examine all the problems of the Panchayati Raj and suggest mechanism for its introduction.
- In 1958, the Government of India recommended that while the broad pattern and the fundamentals of the Panchayati Raj Institution might be uniform, there should not be any rigidity in the details of the pattern.
- Rajasthan was the first State to introduce the Panchayati Raj system. But its working in the State was not much encouraging.
- The Government of India appointed, in 1964, an official committee under the Chairmanship of Sadiq Ali to report on the working of the Panchayati Raj in Rajasthan. The committee in its report noted the lack of people's participation owning to several factors.

1. Failure of leadership to enthuse the people.
2. Functional division in the village.
3. General impression of discrimination between the cities and villages.
4. Gap between people's sense of priority and that of the government.
5. Ignorance and poverty of the people.
6. Lack of proper financial resources.

15.2.2 The Rajiv Gandhi Government initiated a move for making provisions in the Constitution to provide guidelines for the Legislatures of States to enact detailed laws with regard to Panchayati Raj. The initiative fructified with the passing of the 73rd Amendment Bill, 1992. By this, Part IX was inserted in the Constitution. Simultaneously, the Parliament also passed the 74th Amendment Bill for the Municipalities, thus inserting Part IX A in the Constitution.

15.3 - 73rd Amendment Act, 1992

15.3.1 The passage of the Constitution (73rd Amendment) Act 1992 marks a new era in the federal democratic set up of the country and provides constitutional status to the Panchayati Raj Institutions (PRIs). Consequent upon the enactment of the Act, almost all the States/UTs, except J&K, National Capital Territory (NCT) of Delhi and Arunachal Pradesh have enacted their legislation. Except Assam, Arunachal Pradesh, Bihar, NCT Delhi, Pondicherry and Goa (Zilla Parishad), all other States/UTs have held elections to the Panchayati Raj bodies. As a result, about 2,27,698 Panchayats at the village level: 5,906 Panchayats at the intermediate level and 474 Panchayats at the district level have been constituted in the country. These Panchayats are being manner by about 34 lakh elected representatives of Panchayats at all levels. Thus, this is the broadest representative base that exists in any country of the world – developed or under-developed.

15.3.2 The main features of the Act are:

a. A 3-tier system of Panchayati Raj for all States having population of over 20 lakhs;
b. Panchayat elections regularly every 5 years;
c. Reservation of seats for Scheduled Castes, Scheduled Tribes and women (33%);
d. To appoint State Finance Commission to make recommendations as regards the financial powers of the Panchayats; and
e. To constitute District Planning Committee to prepare draft development plan for the district as a whole.

15.3.3 As per the Constitution, the Panchayati Raj Institutions have been endowed with such powers and authority as may be necessary to function as institutions of self government. The Act contains provisions of devolution of powers and responsibilities upon Panchayats to the appropriate level with reference to

i. The preparation of plans for economic development and social justice;
ii. The implementation of such schemes for economic development and social justice as may be entrusted to them.

15.4 The Three-tier Panchayati Raj

(1) Gram Sabha and Gram Panchayat: It exists at the village level. While the former is the general body of local citizens, the latter is its executive committee. The Gram Sabha is expected to meet at least twice a year and work as a watch-dog of the Gram Panchayat office which is the executive arm of the Gram Panchayat.

15.4.1 The members of the Gram Panchayat are called “panchs” and its President, the “Sarpanch”. Its main functions are:

a. Administrative: maintenance of budget and accounts, registration of birth, death and marriages.
b. Law and order: maintenance of watch service and village volunteer force.
c. Commercial: supervision of panchayat enterprises, community orchards and fisheries.
d. Civic: maintenance and cleanliness of villages, drainage and sanitation, wells, tanks, street lights.
e. Welfare: maintenance of schools, libraries, village fairs, famine and flood relief works.
f. Developmental: preparation and execution of agricultural and irrigational plans, promotion of small scale industries.

15.4.2 Sources of income are:

a. From local taxation on property, professions, etc.
b. Grants-in-aid from the State Government.
c. Public contributions and voluntary donations.

15.4.3 Nyaya Panchayats have been constituted in the villages in certain States for providing speedy and inexpensive justice to the villagers. They are judicial Panchayats. They have no power of entertaining criminal cases or awarding imprisonment, but can impose fines.

2. Panchayat Samiti:

This body exists at the Block level. It is the "Kingpin" of the Panchayati Raj system and it s a vital link between the village and the district. Its Chairman is called 'Pradhan' or 'Pramukh'. It performs functions at three levels:

a. Delegated: to implement and coordinate the policy directives of the State Government.
b. Developmental: to plan and implement social welfare programme.
c. Supervisory: to supervise the works of Gram Panchayat, Block Development Officer (BDO), Vikas Adhikari and others.

Sources of Income:

Its sources of revenue are taxes accruing from part of the land revenue and the Grants-in-aid from the State government.

3. Zila Parishad:

Zila Parishad or District Council exists at the district level. Its chief functions are:

a. Advisory: to advise the Government on developmental issues and implement its programmes.
b. Financial: to examine and approve the budgets of the Panchayat Samitis and distribute the Funds allotted to the district, amongst them.

c. Supervision: to coordinate the developmental plans prepared by the Blocks in the district and supervise the activities of the Panchayat Samitis and Gram Panchayats.
d. Developmental: to secure and execute the developmental plans and projects in Blocks and look after those at the district level.
e. Civic: construction and maintenance of public roads, parts, water supply, buildings, etc.
f. Welfare: to establish markets, hold fairs and festivals, run libraries, hospitals, etc.

There are five standing committee in the Zila Parishad, one each for development, education, social welfare, construction works and finances.

Sources of Income

The sources of income of the Zila Parishads are –

a. Grants-in-aid from the State government;
b. Funds allotted for developmental activities; and
c. Shares in land revenue and other taxes.

15.4.4 All the states in the country today have Panchayati Raj in one form or the other except Meghalaya, Mizoram, and Nagaland where tribal councils exist in its place. However, some states have not yet passed legislation as per the guidelines of the 73rd Constitutional Amendment.

15.5 The Three tier Nagarpalika System

15.5.1 Similar to the above mentioned Panchayati Raj system the Nagarpalika Act, 1992 provides for 3-tier municipal bodies in the urban centres. It has been estimated that by the year 2020, the urban population would reach to 50 percent of the total population. Keeping this in mind, three categories of Nagarpalikas have been constituted.

1) Nagar Panchayat for an urban centre with population of 10,000 to 20,000.
2) Municipal Council – for an urban centre with population of 20,000 to 3 lakhs.
3) Municipal Corporation for an urban centre with population above three lakhs.

15.5.2 Reservations of seats for the Scheduled Castes, Scheduled Tribes and Other Backward Castes as well as women are similarly provided as in the Panchayati Raj institutions in the rural areas.

15.5.3 The Nagarpalikas are to work as instruments of development and planning and also to handle funds for local activities.

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16. ELECTORAL SYSTEM

16.1.1 The Electoral System in India is borrowed from the one operating in Great Britain. However, in India it has not been entirely left to the Legislature, and the Constitution itself makes detailed provisions in this regard. The Constitution also empowers Parliament to legislate in respect of all matters relating to election. In pursuance of this provision, Parliament passed the following Acts:

- Representation of the Peoples Act, 1950 as amended in 1988 and 1996, which deals, in details, with subjects like administrative machinery for conducting elections, the poll, by-elections, etc.
- Representation of the People Act, 1951 which provides for qualifications of voters, preparation of electoral rolls and other concerned matters:
- Delimitation Act, 1950 which provides for delimitation and reservation of constituencies; and
- Presidential and Vice-Presidential Election Act, 1952

It is within these framework of Acts, that the electoral system can be described as follows:

16.1.2 The electoral system is based on adult suffrage, whereby every citizen of India who is not less than 18 years of age and is not otherwise disqualified under the Constitution or any law made by the appropriate Legislature on certain grounds has the right to be registered as voter. As per Art, 326, the grounds for denial of right to vote are non-residence, unsoundness of mind, record of crime or of corruption.

16.1.3 It is based on geographical representation. Article 325 declares abandonment of separate electorates on the basis of religion, race, case or sex and provides for one general electoral roll for every territorial constituency. This has brought to an end the practice of separate or communal electorates during the British rule.

16.1.4 There are only single – member territorial constituencies and no functional or plural constituencies. There used to be some double – member constituencies upto 1961 but an Act passed in the same year abolished this practice.

16.1.5 Each territorial constituency elects a single representative by a simple majority vote. The candidate who secures the largest number of votes is declared elected. It is not necessary for a candidate to secure an absolute majority.

16.2 Single Member Constituency System

16.2.1 Under this system, election results are determined on the basis of the relative majority of the votes polled, and the candidate who is ahead of all other candidates even by a single vote is

elected, even if a majority of voters do not vote in his favour. This system is also described as "first past the post" system. In India this system is followed.

16.3 Advantages

- This is the simplest form of election in a democratic system.
- This system provides greater opportunity in helping form a majority government.
- This system helps in curbing parochial tendencies of the political parties based on exploitation of religion, race, caste, etc.

16.4 Defects

a) The chief defect of this system is that only the relative majority is taken into consideration. Since most of the contests are multicornered, sometimes a candidate securing 30 to 40 per cent of votes polled in a constituency is declared elected. As a result, bulk of the electorate is not represented at all.

b) Another serious criticism of this system is that the party that polls a minority of votes may secure a majority of seats. In this process, the minority parties get eliminated, because their political strength is dispersed. It tends to under–represent minority parties and over–represent the majority

c) Yet another criticism against this system is that the minority votes go unrepresented.

But the Constitution adopted this system because it is best suited to the Indian context.

16.5 System of Proportional Representation

16.5.1 A candidate seeking election under the Proportional Representation system should get more than 50 per cent of the total votes cast. Under this system, the number of seats in the legislative body will be as nearly as possible in proportion to the votes cast for that party. Proportional Representation system is strongly supported by minority parties which suffer from the electoral distortions of the single-member constituency system. However, even this system is not free from weakness, Proportional Representation system tends to lead to multiplication of political parties and creation of coalition governments.

16.5.2 However, it may be pointed out that Proportional Representation system is very complicated and cumbersome. Moreover, it would promote, sharpen and consolidate parochial loyalties based on caste, community, religion and so on. It would also encourage further fragmentation of political parties. It is particularly unsuited to large countries.

16.5.3 The countries following the Proportional Representation system include France, Greece, Israel, Spain, Switzerland and Austria.

There are various types of Proportional Representation system. These are:

16.6.1 Single Transferable Vote or Order of Choice

The Single Transferable Vote (STV) is followed in India for elections to the Rajya Sabha, State Legislative Councils and the Offices of the President and Vice President. It is followed in Australia, at the federal level, for elections to the House of Representatives. Under this system, each elector is allowed to mark as many preferences as there are candidates, according to his choice, on a single ballot paper. This process involves distribution of excess votes of candidates who secure the lowest number of first preference votes, and transfer of their second or subsequent preference votes in order and crediting the candidates remaining in the field with these votes. The process is continued till the required number of candidates gets elected.

16.7.1 List System

The German model known as list system, followed for elections to the Lower House – Bunderstag, is a mixture of direct elections to 50 per cent of the total seats from single member constituencies and Proportional Representation system on the basis of lists for the other half. Under this system, each voter has two votes, one to choose his constituency representative and the other to choose between party lists. In the direct election from single member constituencies, the candidates who poll votes (majority) are the winners. The seats are distributed among the parties in proportion to the total number of second votes polled by them in the entire electoral area. This, however, is subject to a condition that for entitlement to any seat from the party list, a party needs to obtain at least five per cent of the party list votes or should have won at least three seats at the Constitution's level.

16.8 Disadvantages

16.8.1 People do not have contacts with the Members of Parliaments (MPs) to the elected. The MPs are attached to the political parties.

16.8.2 People's interests are not properly tackled because the political parties discuss macro-policy only.

16.9.1 Two-ballot system

The two–ballot system followed in France and Russia for Presidency stipulates that only a candidate winning more than 50 per cent of the votes could get elected. A second round of voting is held if no candidate wins more than 50 per cent in the first round. In the second round, if necessary, only the top two candidates are allowed to contest. This system helps to curb parochial tendencies in the political parties.

16.10.1 Election Commission

The Election Commission consists of one Chief Election Commissioner (CEC) and two Election Commissioners. Since, the office of the Election Commission is very important, it has been provided with adequate security and safeguards in the Constitution. By an Ordinance of 1993, the powers of the members of the Election Commissions have been made equal to that of

the Chief Election Commissioner. However, the Commission works under the overall supervision and control of the Chief Election Commissioner. Later, Parliament passed the law to this effect and these provisions are part of Article 324 of the Constitution.

Constitutional safeguards to the office of the CEC

The term of the Chief Election Commissioner is for 6 years or till he / she attains 65 years of age, whichever is earlier.

- He is removed from the office in the same manner as the judges of the Supreme Court;
- He cannot be re-appointed to the post.
- He cannot hold any office of profit after his retirement.
- His salaries and allowances are taken from the Consolidated Fund of India

16.11.1 Powers and Functions of the Election Commission

Powers and functions of the Election Commission are very wide. Important among these are the following:

- to prepare, revise, update, and maintain the list of voters for election to the Parliament, State Legislature, local bodies (Panchayats and Nagarpalikas) and for elections of the President and Vice – President.
- to conduct and supervise elections and by- elections.
- to delimit constituencies for election and allot number of seats to each of them
- to fix the election programme dates number of poll – booths etc., and declare results.
- to advise the President or the Governor on all electoral matters, including questions relating to disqualification of members.
- to prepare guidelines for a code of conduct for political parties, candidates and voters.
- to fix the limit of election expenses and to examine the accounts of electoral expenditure.
- to determine criteria for recognizing political parties and to decide their election symbols.
- to prepare a list of 'free symbols' for allotment to independent candidates.
- to settle election disputes and petitions referred to it by the President or the Governor.

16.12 State Funding of Elections

16.12.1 There has been a demand that State funding of elections be introduced so that

- money power in elections can be reduced.
- Genuine candidates, on the basis of leadership qualities, can have a chance, as contesting the elections will be open to the poor candidates as well.

- Corruption in the form of politician-criminal-businessman nexus can be drastically reduced.

16.12.2 Thus, free and fair elections demand that State funding of elections be introduced to an extent. In almost all advanced democracies like Germany, the USA and others, some form of State funding is in vogue.

16.12.3 Some of the suggestions regarding State funding were found in the Goswami Committee report, which was the basis for the Bill introduced in the Parliament in 1990. The Bill, however, fell through as the ruling party changed at the centre. Important suggestions of the committee are –

- major items of election expenses are to be identified for which only public funding and no private funding is to be allowed.
- State funding should be only in kind and not cash.

16.12.4 Only the recognized political parties – national and regional – must be funded and those candidates outside the scope of funding, if they are elected, can be reimbursed.

16.13 Indrajit Gupta Committee on State Funding of Elections

16.13.1 The 8-member committee that was set up by the All-Party Conference in May, 1998 submitted its report in January, 1999 with the following recommendations:

- State funding should be in 'kind', that is no financial support is to be given to parties and also, part of the financial burden of the parties should be initially borne by the State.
- a Rs. 600 crore contribution from the Centre and an equal amount by the States, annually, towards an 'Election Corpus Fund' for the purpose.
- only EC-recognized political parties should be given the state support in terms of printing material and facilities: electronic media time; vehicles and fuel etc.
- political parties should compulsorily submit their annual accounts to the Income Tax Department, showing their receipts and expenditure failing which the party or the candidate foregoes that State support.
- Complete account of the election expenditure should be filed by the parties to the EC.
- all donations above Rs. 10,000 by the parties should be in the form of cheque / draft and the names of the donors should be disclosed in the accounts.
- Ban on donations by government companies for political purposes will continue, but whether other companies can donate or not is to be determined by the Parliament

The Committee says that state funding is constitutionally and legally justified and is public interest.

16.14 Law Commission's Recommendations on Electoral Reforms

16.14.1 Stability and genuine representative character of the electoral system have been the concern of the law makers as well as scholars for a long time in India, as the costs of elections are growing and repeated elections can make people apathetic and policy making difficult. For example, since 1967, the cost of conducting Lok Sabha elections went up by 8000% to about Rs. 1200 crores in 1999. Since 1996 till 1999, the country saw three Lok Sabhas and gives Prime Ministers coming and going in succession. The country cannot afford political instability. Therefore, the Law Commission in its 170th report offered some structural reforms to stabilize the political system.

16.14.2 Firstly, no party with a popular vote of less than 5 per cent should have its representatives in the Lok Sabha. It eliminates small parties and will force them to ally and eventually merge with the big parties, thus paving the way of a broad 'two front' party system, which will be relatively stable. Presently, the 5 per cent criterion will only be satisfied by the Congress (I), BJP and CPI (M) in the Lok Sabha while others will be disqualified. That is, 44 per cent of the national votes (support of the parties other than the big three) will be disqualified in the 12th Lok Sabha. But once the reform is accepted, the adjustments – electoral and ideological – will see genuine stability come about. The rule is in force in Germany and is said to have prevented proliferation of political parties.

16.14.3 The Commission suggested that if a candidate is elected from a constituency, but his party does not secure the mandatory 5 per cent of the valid popular votes, the candidate coming second is to be preferred to the former provided the latter's party attains the 5 per cent vote.

16.14.4 Secondly, the Commission recommended partial adoption of the List System to minimize the mismatch between the votes polled and the seats secured. It wants the strength of the Lok Sabha and the State Assemblies increased by 25 per cent, the entire increased numbers being filed by List System. In the existing 'first past the post' system based on territorial constituencies, the candidate who gets relative majority is declared elected even though he secures small percentage of the valid vote. Thus, often, the candidate does not represent the constituency genuinely. C aste and other considerations can tilt the balance. In the List system, each party will be asked to nominate certain number of candidates, depending upon the total seats available for the List system. These candidates must conform to the standards laid down and should not contest in the 'first past the post' mode. The list is to be submitted at the time of the elections for the 'first past the post' system. Once results are declared and the popular votes of each recognized party calculated, the parties are given seats accordingly. This is to offset the imbalance in the 'first past the post' system. The list system fulfils two important functions.

- helps intelligentsia get elected.
- Improves the representative character of the elected bodies.

16.14.5 It must be remembered that the BJP and the Congress (I), more or less, secured the equal number of popular votes in the 12th Lok Sabha, but the number of seats won by each differed vastly.

16.14.6 The list system is not meant as a substitute to the 'first past the post' system, but only meant to improve upon it.

16.14.7 Very significantly, the Commission suggested that no candidate can be elected, unless he secures 50 percent plus one votes. In case no contestant gets such a majority in the first count, a 'run off' election is to be held. With the introduction of the Electronic Voting Machines (EVMs), the exercise is neither costly nor administratively difficult. It will eliminate the practice of vote bank politics and force the parties to come together.

16.14.8 Besides, the Tenth Schedule is to be amended to bring in a definition of political party that should include a pre – election coalition or front of parties that should inform the Election Commission (EC) by a prescribed day that, they have made a front.

16.14.9 The Commission suggested changes in Rule 198 of the Rules of Procedure and Conduct of Business in the Lok Sabha to ensure stability of the system, (These rules are made by the Speaker in consultation with the political parties in the House).

16.14.10 To begin with, it is suggested that no-confidence motion cannot be passed, unless one electing an alternative Prime Minister is also endorsed so that there is continuity and the threat to the survival of the House is removed (Constructive vote of confidence).

16.14.11 Similarly, after the introduction of a no-confidence motion, a 2-year gap should be made mandatory for the next such motion.

16.14.12 Banning of independent candidates is also recommended as they divide the votes and destabilize the system. The proposal, however, attracted criticism as it attacks the fundamental individual freedom to contest.

16.14.13 Insertion as Part 2A in the Representation of Peoples' Act is recommended so that there is internal democracy in the parties that fight for democracy in the external system. The Commission quotes the Supreme Court judgement in the Bommai case (1994) and says that when democratic accountability and secularism form the core of our constitutional system, it is unthinkable that parties without inner democracy can exist. It suggests that the executive committee of the party must be elected. Sub-committees must be elected by the members of the executive committee. The Election Commission must select candidates for the elections on the basis of the recommendations and resolutions of the local units.

16.14.14 Deletion of Paras 3 and 4 in the Anti-Defection Law is suggested to outlaw splits and mergers. Strict regulation of political parties and their accounts is also suggested.

Elections and Criminals

The N N Vohra Committee, in mid-eighties, lamented the growing nexus between the politician and the criminal. The Sohani Committee appointed by the MP Government, whose report was released recently confirms the same. The obsession with the 'winnability' aspect of the election, irrespective of the means employed and the vulnerability of the defenceless electorate are the main causes for the criminalization of the electoral process, and the entry of the criminals into the legislatures. The Election Commission says that there were 180,520, and 350 contestants with criminal background in the 12th Lok Sabha elections in AP, UP and Bihar respectively.

The Law Commission says that mere framing of charges is enough to disqualify a candidate. Further, it says that the nature of punishment must be enhanced for election – related crimes mentioned in the Representation of People's Act and the Indian Penal Code. The nomination paper must be changed to have the candidate confess to the criminal cases, if any.

The responsibility of weeding out criminals from the legislative chambers is primarily that of the political parties and can be exercised as follows:

- deny tickets to those with a criminal background.
- if a candidate is chargesheeted, that is enough to deny him ticket and he need not be convicted. That is, if charges are framed after a judicial inquiry and the crime can attract electoral disqualification the candidate should not be given ticket.

The above recommendations require an amendment to the Representation of Peoples' Act, which today sanctions disqualification for six years in case of conviction (not chargesheeting) in the following three cases:

- crimes related to social issues like untouchability, fomenting inter religious tensions, rape etc.
- in the case of crimes like dowry, sati etc. it is not enough that the candidate is convicted, but must be convicted at least for 6 months so that he may be disqualified.
- any sentence of imprisonment for two years

The EC revised the proforma about the details of the contestant regarding whether he has ever been charge-sheeted, convicted etc so that those on bail and having appealed against conviction can be barred from contesting.

The Ethics Panel of Rajya Sabha gave a set of recommendations to establish a clean and credible legislature in 1998 and one of the recommendations is that the parties should not field candidates of 'dubious' past.

Internal Democracy in Political Parties

In 1994, the Chief Election Commissioner issued orders to the political parties to complete their respective organizational elections. In 1997, the orders were reissued and parties like Indian National Congress (I), Janata Dal and others complied.

The authority of the EC to enforce internal democracy in political parties is based on the following when a political party is registered with the EC under Section 29(A) of the Representation of Peoples' Act, 1951 it becomes a legal entity governed by its own constitution. It is not only registered, but recognized under the Symbol Order, 1968. Every communication of the party with the EC must be issued by the office bearers of the party, who are to be elected according to the party constitution. Where the party has no organizational elections like the Shiv Sena of Maharashtra, the EC needs to examine the issue for irregularities of elections within the party, either the party has to settle them or the Courts of Law are to deal with the disputes.

16.15 Anti – Defection Law

16.15.1 The politics of defection has been one of the conspicuous features of Indian politics since 1967 (4th General Elections). The Parliament in 1985, by the 52nd Constitutional Amendment, sought to check this tendency. The Act is negatively worded and provides for disqualification of a legislator. According to the Act, following are the grounds for the disqualification of a legislator:

1. If a legislator voluntarily resigns from the political party on whose ticket he /she was elected.
2. If a legislator votes against the whip issued by the President political party to which he / she belongs, or abstains from voting contrary to any direction issued by his / her parent party, without obtaining prior permission of the political party, and if such voting or abstention is not condoned by the party within 15 days of the occurrence of the voting. The Supreme Court in a judgement in 1992 restricted the scope of whip only in the cases of Confidence and No-Confidence Motions, Money Bills and Vote of Thanks to the President's Address. This means that a legislator has the right to vote against the whip in other cases because according to the Supreme Court, a Legislator has a right to political dissent.
3. If an independent member joins any political party.
4. If a nominated member of the legislature joins a political party after 6 months of his nomination. This means, if he / she does the same before this specified period, he shall not be disqualified.
5. If, in case of a split in the party, the splinter group has members less than one-third of that of the parent party.
6. If, in case of merger, the same is not endorsed by two-third members of the party, which wants to merge itself.

16.15.2 However, the officers of the Union and State Legislatures – Speaker or Deputy Speaker of the Lok Sabha, Deputy Chairman of the Rajya Sabha, Speaker and Deputy Speaker of the Vidhan Sabha and Chairman of the Vidhan Parishad – shall not be disqualified under the Act, if they rejoin their political party (parties) after they cease to hold such offices.

16.15.3 Also according to the Act, any decision regarding the defection issue shall be made by the Chairman or the Speaker as the case may be, and such decision shall be final. The court shall have no right to inquiry into this. However, the Supreme Court in a decision by the Constitutional Bench in November, 1991, upheld that such a clause takes away its exclusive right of 'judicial review' which is a 'basic structure' of the Constitution. Thus, the decision of the Chairman or Speaker as the case may be, is final, subject to judicial review of the court.

16.16 Causes of failure

- There is no justification for a nominated member joining a political party within six months.
- The law does not clearly say in what manner the principle for 1/3rd for split or of 2/3rd in case of merger shall operate. The loops and holes remain in the Act and hence what cannot be done by a large group can be done after the split.
- The law does not define whether the defection is a one time affair or a continuous one.

16.16.1 The law does not cover an event when a political party deliberately dismisses some of its members of the Legislature to deny them the split of political party under this Act.

16.16.2 The Speaker has the sole right to decide on this and hence political colouring of the issue is possible

16.17.1 Model code of Conduct

It is a set of moral rules and principles that have been agreed upon by the political parties to be followed by the candidates during the election time. It is enforced by the Election Commission and generally comes into force soon after the notification of the election by the President or the Governor. For the violation of this conduct, the Election Commission can disqualify a candidate from contesting elections for upto 6 years.

16.18.1 Categories of citizen who can vote by post

(i) Civil servants on duty.
(ii) Defence personnel posted in forward areas.
(iii)Members of diplomatic missions and their family members.
(iv)Persons detained under preventive detention.

Any person authorized so by the Election Commission.

16.19.1 Electoral Offences: Offences by private individual or an authority against electoral laws made by Acts of Parliament

16.20.1 Electoral Malpractices: This is violation of a code of conduct, fixed by the Election Commission, by an authority, social miscreants or a political party.

16.21.1 All India Party: Those parties which obtain at least four per cent of the total valid votes polled in the previous general election in at least four states are given All – India Party status by the Election Commission.

16.22.1 Two – Party System: When there exist only two parties in a country, sufficiently strong to win major part of the electoral vote and exercise political control, such a country is called working on a two – party political system. This does not mean that other parties do not exist, but they are without much electoral influence so as to play effective role in the national politics. This system is working well in Bangladesh and in Sri Lanka.

16.23.1 Returning Officer and Presiding Officer: Returning officer is an official in-charge of the entire constituency, right from the nomination to the declaration of election results. Generally, District Magistrate is appointed as the Returning Officer. On the other hand, Presiding Officer is the head of a polling booth and functions under the control of the Returning Officer.

16.24.1 Countermanding and Re poll: Countermanding means initiating the whole election afresh, while Repoll means re-election for certain specified booths.

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17. EMERGENCY PROVISIONS

17.1.1 One of the chief characteristics of the Indian Constitution relates to the enormous emergency powers vested in the Union Executive. Since a Federal Government involves division of power, it is generally considered a weak government. In order to overcome pitfalls of contingency situations, the Constitution concentrates the emergency powers on the Centre. The President is empowered to promulgate three kinds of emergencies:

1) On the ground of threat to the security of India by war or external aggression or armed rebellion (Art. 352)
2) On the ground of the failure of Constitutional machinery in a State (Art.356); and
3) Financial Emergency (Art. 360)

17.1.2 The expression, "Proclamation of Emergency" as used in the Constitution refers to emergency of the first kind or National emergency under Art. 352. The second kind of emergency under Art. 356 is popularly known as the "President's Rule". The third kind of emergency proclaimed under Art. 360 is called "Financial Emergency".

17.2 National Emergency (Art. 352)

17.2.1 If the President is satisfied that a grave emergency exists whereby the security of India or any part of India is threatened, whether by war or external aggression or armed rebellion, he may proclaim a state of emergency for the whole of India or a part thereof. A Proclamation of Emergency can be made by the President even before the actual occurrence of war or external aggression or armed rebellion, if he is satisfied that there is an imminent danger. Such a Proclamation of Emergency can be varied or revoked by the President subsequently. The President can issue a Proclamation of Emergency or vary it only when the decision of the Union Cabinet is conveyed to him in writing. The Proclamation of Emergency made by the President under Art.352 is subject to judicial review and its constitutionality can be questioned in a court of law on grounds of malafide.

17.2.2 Every Proclamation made under Art.352 excepting a proclamation revoking the previous Proclamation should be laid before a both the Houses of the Parliament and must be approved by them within one month after the Proclamation is made, by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. If the Parliament fails to approve such a proclamation it ceases to be in operation on the expiry of one month after the Proclamation is made. If the Parliament approves such a Proclamation, then it will be in force, unless revoked earlier, for six months from the date on which it was approved by the Parliament. It can be approved by the Parliament any number of times, but not beyond six months at a time. However, if the Lok Sabha disapproves a Proclamation of emergency or its continuance, the President shall revoke the proclamation of

Emergency. If not less than one-tenth of the members of the Lok Sabha issue a notice with the intention of disapproving a Proclamation of Emergency to the President if the Lok Sabha is not in session, or to the Speaker if the Lok Sabha is in a session, a special sitting of the Lok Sabha shall be held within fourteen days for the purpose of considering such resolution.

17.2.3 The Constitutional (44th Amendment Act) 1978 has introduced a number of safeguards in Art. 352. These are:

(i) Prior to the 44th Amendment Act 1978, a proclamation of Emergency could be issued on the grounds of war or external aggression or internal disturbances. The expression "internal disturbances" is a vague one and could be misused by the Executive. The Act, therefore, has introduced the expression "armed rebellion" in place of "internal disturbances".

(ii) Earlier, the President could proclaim an emergency on the oral advice tendered by the Prime Minister, as it happened in 1975. Now the approval of the whole Cabinet is essential and it must be communicated to the President in writing.

(iii) Before the Act become effective in 1978, a Proclamation issued by the President was to be approved by the Parliament within two months after the Proclamation is made. Now it must be approved within one month. Once approved, earlier, it could remain in force for an indefinite period. But by the Act, its period is fixed for six months only. The approval earlier was to be on the basis of a simple majority, but at present it needs a special majority.

(iv) There was no Parliamentary control, once a Proclamation of Emergency was approved by it. But now a special sitting of the Lok Sabha can be held for the purpose of considering its disapproval.

(v) Under Art. 358, before the 44th Amendment Act came into force, the Fundamental Rights enumerated under Art. 19 were automatically suspended, whether the national emergency proclaimed was on the basis of war of external aggression or internal disturbances. But now, under Art. 358 Art.19 is automatically suspended only when an emergency is declared on the basis of war or external aggression and not on the basis of armed rebellion i.e. Art. 19 cannot be suspended during an emergency if it is proclaimed on the basis of armed rebellion.

(vi) After the 44th Amendment Act during an emergency Art 20 and 21 cannot be suspended. Prior to the Act, any or all of the Fundamental Rights could be suspended when an emergency was in force.

17.3 Effects of Proclamation of Emergency

17.3.1 The effect of a Proclamation of Emergency is the emergence of a full–fledged unitary Government. Its effect can be studied under the following heads (i) Executive (2) Legislative (3) Financial and (4) on Fundamental Rights.

1. Executive: While a Proclamation of Emergency is in operation, the President is empowered to issue directions to the States as to the manner in which their executive power is to be exercised. In normal times, the President has the power to give directions to States only on certain matters like maintenance of communication, protection of railways etc. But during the operation of emergency he can issue directions to States on all matters. The administration, therefore, will be converted into a unitary system.
2. Legislative : While a Proclamation of Emergency is in operation, the Parliament can enact laws even on subjects enumerated under the State List. The Legislatures of the State are not suspended, but the distribution of legislative powers between the Union and the States is suspended for the duration of the emergency. The Parliament is also empowered to extend by law the life of the Lok Sabha beyond the five year term for a period not exceeding one year at a time but in any case not exceeding months after the Proclamation of Emergency has ceased to be in operation. The life of the State Legislative Assemblies can also be extended by law, by the Parliament in a similar manner.
3. Financial : The President may, when a Proclamation of Emergency is in operation, modify the provisions of the Constitution relating to the distribution of financial resources between the Centre and the States. Such an order of the President shall not have effect beyond the financial year in which the Proclamation of the Emergency ceases to be operative. The order of the President is subject to the approval of the Parliament.
4. On Fundamental Rights: Art. 358 states that as soon as a Proclamation of Emergency is issued on ground of war or external aggression (but not on the ground of armed rebellion) the six fundamental rights enumerated under Art. 19 are automatically suspended. The State is freed from the limitations imposed by Art. 19. The citizens cannot move the Courts for the enforcement fundamental rights enumerated under Art. 19.

17.3.2 Further, the President under Art. 359 may by order suspend the operation of any of the other fundamental rights when an Emergency declared on ground of war or external aggression or armed rebellion is in force. However, the fundamental rights guaranteed under Arts. 20 and 21 cannot be suspended even when a national emergency is in force. It is to be noted that under Art. 359, only the operation of the fundamental rights is suspended and not the fundamental rights as such. But under Art. 358 Art. 19 is suspended.

17.4 Emergency under Art. 356

17.4.1 Art. 356 says that if the President on receipt of a report from the Governor of a State 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 the Constitution, he may issue a proclamation. By that proclamation:

(1) The President may assume to himself all or any of the powers vested in the Governor.
(2) The President may declare that the powers of the Legislature of the State shall be exercisable by the Parliament.

17.4.2 The President cannot, however, assume himself any of the powers vested in a High Court or suspend the operation of any provisions of the Constitution relating to the High Court.

17.4.3 Parliament can confer on the President the power to make laws for the State. Parliament may also authorize the President to delegate such power to any other authority as specified by himself. If the Lok Sabha is not in session, the President may authorize expenditure from the Consolidated Fund of the State, pending sanction of such expenditure by Parliament.

The Bihar Experience

In October, 1998, the President of India returned for reconsideration, the recommendation of the Union Council of Ministries to impose President's rule in Bihar. The Points raised by the President are noteworthy.

- the charge that the constitutional governance of the state failed was not established beyond doubt.
- warnings, directives and eliciting explanation from the state should have preceded that recommendation, but they did not.
- the Rabri Devi ministry enjoyed majority in the assembly, which could not be ignored.

The President further mentioned that the parliamentary passage of the proclamation was itself doubtful as the ruling coalition had differences within and it did not have a majority in the Rajya Sabha.

Thus in recent years, the checks on Art. 356 have emerged from

- The Supreme Court
- The President
- Coalition Partners of the Government
- Sensitization of the Government due to the ascendancy of regional parties in the national political landscape.
- Inter State Council norms and so on.

17.4.4 It is to be noted that under Art. 356 the President acts on a report of the Governor or otherwise. That is the President can act even without the Governor's report.

17.4.5 A proclamation issued under Art.356 must be laid before each House of the Parliament. It will cease to operate at the expiry of two months, unless before that period it has been approved by both the Houses of the Parliament. A proclamation so approved shall, unless revoked be in operation for six months from the date of the issue of the proclamation. It can be approved by the Parliament for a further period of six months. A proclamation issued under Art.356 can therefore be in force normally for a maximum period of one year only at a stretch. However, it can be extended by the Parliament beyond one year but in any case not beyond three years from the date of issue of the proclamation, if:

(i) a proclamation of emergency under Art.352 is in operation in the whole of India or in the whole or any part of the State at the time of passing of such resolution ; and

(ii) the Election Commission certified that the continuance in force of the proclamation beyond the one year period is necessary on account of the difficulties in holding general elections to the Legislative Assemble of the concerned State.

17.5 The 42nd and the 44th Amendment Acts in relation to Art. 356

17.5.1 The 42nd Amendment Act amended Art. 356 and provided that the approval of the Parliament was for one year at a time. But the 44th Amendment Act 1978 restored the original period of approval of the Parliament to six months at a time. The original Constitution did not impose any condition for the extension of the proclamation under Art. 356 beyond one year period. Earlier it could be extended by Parliament to a maximum period of three years, subject to approval of six months at a time. But the 44th Amendment Act has imposed two conditions for the continuation of the proclamation beyond the one year period, as discussed earlier.

17.6 Art. 356 and Judicial Review

17.6.1 In a landmark judgment, the Supreme Court in March 1994 held that the power of the President in issuing a Proclamation of emergency in a State is subject to judicial review to the extent of (i) examining whether it was issued on the basis of any relevant material at all or (ii) whether the material was relevant or (iii) whether the proclamation was a malafide exercise of power.

17.6.2 Another important principle laid down by the Court is that the power of dissolving a State Legislative Assemble can be exercised by the President only after the proclamation is approved by both the Houses of Parliament.

17.7.1 Difference between Arts. 352 and 356

Under Article 352, the State machinery cannot be suspended. The State Legislature and the State Executive continue to function. The only effect is that the Centre gets concurrent powers of legislation and administration in State matters. Under Art. 352, the relationship of all the States with the Centre undergoes a change while under Art.356 the relationship of only the State with the Centre is affected.

17.8 Financial Emergency

17.8.1 Art. 360 states that if the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part thereof is threatened he may declare a state of financial emergency. During the period when such Proclamation is in operation, the executive authority of the Union extends to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions. Any such direction may also include (i) a provision requiring the reduction of salaries and allowances of all or any class of person

serving a State or the Union (ii) a provision requiring all Money Bills or other financial Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.

17.8.2 A proclamation issued under Art. 360 will remain in force for two months, unless before the expiry of the period it is approved by both the Houses of the Parliament. Once approved it remains in force till revoked by the President. No emergency under Art. 360 has been issued so far.

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THE END