

GOVERNOR

- The pattern of Government provided for the states is similar to that of the Central Government
- The reason for the similarity is that at both the levels of government, there is parliamentary system of Government in which a ceremonial head and a real head constitute the executive.
- For the Union Government, Presidency is ceremonial head and the effective head of the government is the Prime Minister heading the Council of Ministers.
- For the State Government, Governor is the counterpart of the President of India and the Chief Minister heading the Council of Ministers is the mirror image of the Prime Minister.

Historical background

- The Government of India Act 1858 transferred the responsibility of administration of India from the East India Company to the British Crown.
- It made the Governor of the province an agent of the Crown working through the Governor General.
- The Montague-Chelmsford reforms (1919) made small changes in the provincial government with insignificant level of responsible government being introduced the Government of India Act 1935 gave provincial autonomy with the Governor being required to act on the advice of the Council of Ministers.
- However, the Governor continued to exercise substantial discretion for which he was accountable only to the Governor General.
- After India achieved Independence, The GOI Act 1935 was adapted and enforced till the new Constitution was drafted and adopted.
- The Adaptation Order 1947 dropped all references to the discretionary powers and made the Governor function completely according to the advice of the Council of Ministers.

Constituent Assembly (1947-49) debated various aspects related to the institution of Governor which essentially can be grouped under two heads

- Whether the Governor should be elected, or nominated and
- Discretionary powers of the Governor.

The idea of elected Governor is discarded for the following reasons:-

- It defeats the-very purpose of the institution of Governor as it should be an independent and impartial Constitutional office which is not possible if the Governor is a political office
- Political deadlock between the offices of the Governor and that of the Chief Minister may arise and can paralyse the Government.
- In case the Governor and the Chief Minister belong to the same political party, Governor can not perform his discretionary powers objectively.
- Governor can develop his own populist vested interest which can us compromise the duties involving security of the state from internal and external threats.
- Jawaharlal Nehru explained to the Constituent Assembly that two more reasons can be cited to ignore the idea of a elected Governor: it may lead to provincial Separatist tendencies; and there will be fewer common Links with the centre.
- Art, 153 to 167 of Part VI deal with the State executive of which Governor is the titular head and the Chief Minister heading the Council of Ministers is the political and real head.
- Article 153 of the Constitution requires that there shall be a Governor for each State. It means that there shall not be a vacancy in the office of the Governor.

INDIAN POLITY-M.LAXMIKANTH

- Thus incumbent Governor of the State continues even after the five year tenure over till a new Governor is appointed by the President as the Art.156 mandates.
- The Constitution (Seventh Amendment) Act, 1956 made a change in the Art. 153 to the effect that one person can be appointed as Governor for two more States.
- The need for it was felt in the wake of the reorganization of states in 1956.
- Article 154 vests the executive power of the State in the Governor.
- Article 155 says that the Governor of a State shall be appointed by the President by warrant under his hand and seal.
- Article 156 provides that “The Governor shall hold office during the pleasure of the President”.
- The term of the Governor is prescribed as five years.
- There is a controversy about whether the five year term is more important than the reference to the pleasure of the President of India.
- In order to understand the debate clear the contents of Art. 156 are to be clearly followed as they are available in the Constitution:

- Art.156. Term of office of Governor.—(1) The Governor shall hold office during the pleasure of the President.
- (2)The Governor may, by writing under his hand addressed to the President, resign his office.
- (3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office: Provided that a Governor shall, notwithstanding expiration of his term, continue to hold office until his successor enters upon his office.
- As can be seen from above conflicts of Art. 156, the meaning of the sequence of the above provisions is that President’s pleasure is more important than the five year term

Art. 157 lay down two qualifications for the office of the Governor:

- he should be a citizen of India and
- must have completed the age of thirty five years.

Art. 158 stipulate the conditions of Governor’s office as the following:

- shall not be a member of either House of Parliament or State Legislature, and if such a member is appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.
- shall not hold any other office of profit.
- shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.
- Where the same person is appointed as Governor of two or more states, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.
- The emoluments and allowances of the Governor shall not be diminished during his term of office.

In 2008, Government raised the salary of Governor from Rs.36,000 to Rs.75,000 a month. It has also been decided to award pensions, for the first time, to former Governors.

- Art.159 prescribes the oath/affirmation which a Governor has to take before entering upon his office, in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available to faithfully discharge the functions of the Governor

INDIAN POLITY-M.LAXMIKANTH

of (name of the State) and will to the best of his ability preserve, protect and defend the Constitution and the law and that he will devote himself to the service and well-being of the people of (name of the State)

The Executive Powers of Governors.

- The executive power of the state is vested in the Governor.
- exercises it either directly or through officers subordinate to him.
- It has been held that ministers are, officers subordinate to him.
- The executive power of the state extends to all matters with respect to which the State Legislature has power to make laws.
- All executive is expressed to be taken in the name of the Governor.
- All orders, instruments, etc are authenticated in the manner specified in the rules made by the Governor.
- appoints the Chief Minister and other ministers are appointed by him in the advice of the Chief Minister.
- has the power to nominate one member from the Anglo-Indian Community, if he is of the opinion that the immunity needs representation in the Assembly.
- appoints the Council of Ministers, Advocate General, Chairman and the members of the State Public Service Commission.
- has the power to nominate one / twelfth of the members of the Legislative Council of State.
- The persons to be nominated are required to have special knowledge and practical experience in respect of Literature, Science and Arts etc.

The Legislative Powers of Governors.

- is the part of the legislature (Art. 168).
- the legislature of a State shall consist of the Governor and the Legislative Assembly.
- the Legislature consists of two Houses, the upper House too is a part of the Legislature.
- has the right to address the legislature and to send messages to it.
- may from time to time summon, prorogue or dissolve the Legislative Assembly.
- has the power of causing to be laid before the legislature, the Annual Financial Statement (Budget) and reports of the State Finance Commission.
- Without his recommendation no demand for grant can be made by the legislature.
- may reserve Bills for the assent of the President made by the Legislature.

In this regard, Art. 200 and 201 are very important and they are as follows:

Art. 200: Assent to Bills —

- When a Bill has been passed by the Legislature of a State, it shall be presented to the Governor who may accept or reject the Bill.
- In the case of Bills other than Money Bills, he may return to the legislature for reconsideration.
- may also reserve the Bill for time consideration of the President.
- When a Bill is returned to legislature by the Governor, it must be re-passed to be accepted by the Governor.
- shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion to the Governor would, if it became law, so derogate the powers of the High Court so as to endanger the position of High Court which the Indian Constitution designed to till.

In essence as per the Article 200, when a Bill passed by the Legislature of a State is presented to the Governor, he has four options

- he assents to the Bill when it becomes an Act
- he withholds assent
- he returns the Bill to the Legislature for reconsideration
- he reserves time Bill for the consideration of the President

Art. 201 . Bills reserved for consideration

- When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent in case of a Money Bill.
- In other Bills, he may return the Bill for repassage— the third option for the President.
- The repassed Bill need not be assented to by the President and he may return it again and again.
- Thus, it is an absolute veto.
- Also, there is no time limit within which the President should take a decision.
- There have been instances where Bills have been pending with the President for periods up to six years or more.
- The most recent Bill to be reserved by the Governor for the Presidential assent is the GUJCOC Bill- Gujarat Control of Organised Crime Bill for which the President has expressed the need for three changes and returned it. For example, the provision that the evidence tendered to the police officer is admissible in the Court is objectionable, according to the President (2009).

The differences between the ordinance making powers of Governor and the President.

- Largely the powers of the Governor in the promulgation of ordinances are similar to the President. There are the following differences:
 - if the ordinance has contents which in the form of a Bill would require Presidential permission before hand for introduction or
 - if the ordinance has contents which in the form of a Bill would be compulsorily reserved for Presidential assent after passage as a matter of Constitutional requirement— for example, a Bill derogating from the powers of the High Court, or
 - if the ordinance has contents that in the form of a Bill would have inclined the Governor to reserve it for the President- for example, the GUJCOC Bill in the most recent case

In all the above cases, the Governor would take the prior consent of the President before passing the ordinance.

The Judicial or Pardoning Powers of the Governors?

- Article 161 confers on the Governor the power to grant pardon, reprieve, respite or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to matters to which the executive power of the state extends.
- In *Nanawati V/s State of Bombay* (1961), Supreme Court (SC) held that Governor's powers under Art. 161 are subjected to the rules made by the SC Governor has no power regarding court martial. Governor also can not pardon a sentence of death.

The discretionary power of Governor.

Following are the provisions of Art 163 which contains the discretionary powers.

Art 163. Council of Ministers to aid and advise Governor.

(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

INDIAN POLITY-M.LAXMIKANTH

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Art. 163 explicitly recognizes Governor's discretionary powers that there are situations in which the Governor has to act without the aid and advice of the Council of Ministers. There are two types of such situations:

- circumstances thrown up in the Functioning and process of legislative democracy
- where the Constitution confers such powers

In the first class are the following situations as mentioned in the Sarkaria Commission report

- choosing the Chief Minister
- testing majority
- dismissal of the Chief Minister
- dissolving the Assembly
- recommendation of the President's Rule (Art.356)
- reserving the Bill for Presidential consideration (Art.200)
- returning a Bill for re-passage to the Legislature

In the second class are the Constitutional powers where Governor's discretion is in the exercise of the powers. There are shades of discretion in the following forms as given in the Constitution-

- in his discretion; or
- in his individual judgement; or
- independently of the State Council of Ministers or
- in his special responsibility

1. Discretionary powers as given in the Constitution

- Governors of all states- Reservation for the consideration of the President of any Bill which, in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Constitution designed to fill (Art. 200).
- The- Governors -of Arunachal Pradesh, Assam, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura have been entrusted with some specific functions to be exercised by them in their discretion (Articles 371A, 371F and 371H and in Sixth Schedule).

2. Powers in individual judgement: Explanation

- The Governors of Arunachal Pradesh and Nagaland have been entrusted with a special responsibility with respect to law and order in their respective states. In the discharge of this responsibility, they are required to exercise "individual judgement" after consulting their Council of Ministers.

3. Powers independently of the Council of Ministers

- Governors as Administrators of Union Territories (UT) - Any Governor, on being appointed by the President as the administrator of an adjoining UT, has to exercise his functions as administrator, independently of the State Council of Ministers { Art. 239 (2) }.

4. Similarly, the Special Responsibility Powers of Governor are as follow:

- Articles 371(2) and 371C(1) provide that certain special responsibilities may be entrusted by Presidential Orders to the Governors of Maharashtra and Gujarat and the Governor of Manipur, respectively.

INDIAN POLITY-M.LAXMIKANTH

- Article 371(1), which has since been deleted, made a similar provision in respect of the Governors of Andhra Pradesh and the erstwhile composite state of Punjab.
- The presidential Orders so far issued under these Articles have provided that the concerned Governors, while carrying out certain functions connected with the special responsibilities entrusted to them, may exercise their discretion.
- It has to be noted that these Articles themselves do not expressly provide for the exercise of discretion by the concerned Governors.
- Thus, these presidential Orders are instances of a Governor being required to act in his discretion “under” the Constitution.

Art. 164

Art. 164 says the following:

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

- Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

The Nature of the Office of Governor.

- Constitutional provisions concerning the Governor and the Scope of these provisions shows that there are three main facets of Governor’s role. The three facets so pointed out are

- as the constitutional head of the State operating normally under a system of Parliamentary democracy
- as a vital link between the Union Government and the State Government.
- as a representative of the Union Government in a specific areas during normal times [e.g. Article 239(2)] — appointment of the Governor of a State in charge of an adjoining UT; and in a number of areas during abnormal situations [e.g. Article 356(1).

- Governor’s office is of vital importance having multi-faceted role.
- He is the linchpin of constitutional apparatus and assures continuity of Government.
- The Committee of Governors appointed by President V.V. Giri affirmed in its report (1971): “Under the Constitution, just as a State is a unit of the Federation and exercises its executive powers and functions through a Council of Ministers responsible to the Legislature and none else, the Governor, as the Head of the State, has his functions laid down in the Constitution itself, and is in no sense an agent of the President”
- The Rajamannar Committee Report (1971) recommended: the Governor should not be liable to be removed except under proved misbehaviour or incapacity after inquiry by the Supreme Court.”

The Sarkaria Commission Report on Centre-State Relations (1988) noted:

- “Frequent removals and transfers of Governors before the end of their tenure have lowered the prestige of this office.
- Criticism has been levelled that the Union government utilises the Governors for its own political ends.
- Many Governors looking forward to further office under the Union or active role in politics after their tenure came to regard themselves as agents of the Union”

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- Supreme Court went into the constitutional position of governorship. In *Hargovind Pant vs. Dr. Raghukul Tilak* (AIR 1979, SC), a Constitution Bench observed: “The Governor is the head of the State and holds a high constitutional office ...he cannot be regarded as an employee or servant of the Government of India.
- His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties.
- He is an independent constitutional office, which is not subject to the control of the Government of India
- He is constitutionally the head of the State in whom is vested the executive power of the State”.

The Sarkaria Commission’s recommendations related to Governor.

- A Commission headed by Justice R.S. Sarkaria, a former Judge of the Supreme Court, was constituted to “examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate”. It gave its recommendations in 1987.

Recommendations of the Sarkaria Commission in regard to the institution of Governor are briefly the following:—

The person to be appointed as a Governor

- should be an eminent person;
- must be a person from outside the State;
- must not have participated in active politics at least for some time before his appointment;
- he should be a detached person and not too intimately connected with the local politics of the State;
- he should be appointed in consultation with the Chief Minister of the State, Vice-President of India and the Speaker of the Lok Sabha. His tenure of office must be guaranteed and should not be disturbed except for extremely compelling reasons and if any action is to be taken against him he must be given a reasonable opportunity for showing cause against the grounds on which he is sought to be removed. In case of such termination or resignation by the Governor, the Government should lay before both the Houses of Parliament, a statement explaining the, circumstances leading to such removal or resignation, as the case may be;
- After demitting his office, the person appointed as Governor should not be eligible for any other appointment or office of profit under the Union or a State Government except for a second term as Governor or election as Vice-President or President of India, as the case may be; and
- At the end of his tenure, reasonable post-retirement benefits should be provided.

Sarkaria Commission further recommended that in choosing a Chief Minister, the Governor should be guided by the following principles, viz.:

- The Party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the government
- The Governor’s task is to see that a government is formed and not to try to form a government which pursue policies which he approves.
- If there is a single party having an absolute majority in the Assembly, the leader of the party should automatically be asked to become the Chief Minister.
- If there is no such party, the Governor should select a Chief Minister from among the following parties or groups of parties by sounding them, in turn, in the order of preference indicated below:
 - an alliance of parties that was formed prior to the Elections.

INDIAN POLITY-M.LAXMIKANTH

- the largest single party staking a claim to form the government with the support of others, including 'independents'.
 - a post-electoral coalition of parties, with all the partners in the coalition joining the government.
 - a post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including 'independents' supporting the government, from outside.
 - The Governor while going through the process described above should select a leader who in his (Governor's) judgment is most likely to command a majority in the Assembly.
- It was also recommended that a Chief Minister, unless he is the leader of a party which has absolute majority in the Assembly, should seek a vote of confidence in the Assembly within 30 day's of taking over.
- The other recommendations made by the Sarkaria Commission are that the issue of majority support should be allowed/directed to be tested only on the floor of the House and no where else and that in the matter of summoning and proroguing the Legislative Assembly, he must normally go by the advice to Council of Ministers but where a no confidence motion is moved and the Chief Minister advises proroguing the Assembly, he should not accept it straightaway and advise him to face the House.

CHIEF MINISTER

- the governor is the nominal executive authority (*de jure* executive) and the Chief Minister is the real executive authority (*de facto* executive).
- In other words, the governor is the head of the state while the Chief Minister is the head of the government.
- Thus the position of the Chief Minister at the state level is analogous to the position of prime minister at the Centre.

Appointment of Chief Minister

- The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister.
- Article 164 only says that the Chief Minister shall be appointed by the governor.
- However, this does not imply that the governor is free to appoint any one as the Chief Minister.
- In accordance with the conceptions of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state legislative assembly as the Chief Minister.
- But, when no party has a clear majority in the assembly, then the governor may exercise his personal discretion in the selection and appointment of the Chief Minister.
- In such a situation, the governor usually appoints the leader of the largest party or coalition in the assembly as the Chief Minister and ask him to seek a vote of confidence in the House within a month.
- The governor may have to exercise his individual judgement in the selection and appointed of the Chief Minister when the Chief Minister in office dies suddenly and there is no obvious successor.
- However, on the death of a Chief Minister, the ruling party usually elects a new leader and the governor has no choice but to appoint him as Chief Minister.
- The Constitution does not require that a person must prove his majority in the legislative assembly before he is appointed as the Chief Minister.
- The governor may first appoint him as the Chief Minister and then ask him to prove his majority in the legislative assembly within a reasonable period. This is what has been done in a number of cases.

INDIAN POLITY-M.LAXMIKANTH

- A person who is not a member of the state legislature can be appointed as Chief Minister for six months, within which time, he should be elected to the state legislature, failing which he ceases to be the Chief Minister
- According to the Constitution, the Chief Minister may be a member of any of the two Houses of a state legislature.
- Usually Chief Ministers have been selected from the Lower House (legislative assembly), but, on a number of occasions, a member of the Upper House (legislative council) has also been appointed as Chief Minister.

Oath, Term and Salary

- the governor administers to him the oaths of office and secrecy. In his oath of office, the Chief Minister swears
 1. to bear true faith and allegiance to the Constitution of India,
 2. to uphold the sovereignty and integrity of India,
 3. to faithfully and conscientiously discharge the duties of his office, and
 4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will
- The term of the Chief Minister is not fixed and he holds office during the pleasure of the governor. However, this does not mean that the governor can dismiss him at any time. He cannot be dismissed by the governor as long as he enjoys the majority support in the legislative assembly
- But, if he loses the confidence of the assembly, he must resign or the governor can dismiss him
- The salary and allowances of the Chief Minister are determined by the state legislature. In addition to the salary and allowances, which are payable to a member of the state legislature, he gets a sumptuary allowance, free accommodation, travelling allowance, medical facilities, etc

Powers and Functions of Chief Minister

In Relation to Council of Ministers

The Chief Minister enjoys the following powers as head of the state council of ministers:

- (a) The governor appoints only those persons as ministers who are recommended by the Chief Minister.
- (b) allocates and reshuffles the portfolios among ministers.
- (c) ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.
- (d) presides over the meetings of the council of ministers and influences its decisions.
- (e) guides, directs, controls and coordinates the activities of all the ministers.
- (f) bring about the collapse of the council of ministers by resigning from office.
- (g) Since the Chief Minister is the head of the council of ministers, his resignation or death automatically dissolves the council of ministers. The resignation or death of any other minister, on the other hand, merely creates a vacancy, which the Chief Minister may or may not like to fill

In Relation to the Governor

The Chief Minister enjoys the following powers in relation to the governor:

INDIAN POLITY-M.LAXMIKANTH

- (a) He is the principal channel of communication between the governor and the council of ministers. It is the duty of the Chief Minister:
 - (i) to communicate to the Governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation;
 - (ii) to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for; and
 - (iii) if the governor so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
- He advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election commissioner, and so on.

In Relation to State Legislature

The Chief Minister enjoys the following powers as the leader of the house:

- (a) He advises the governor with regard to the summoning and proroguing of the sessions of the state legislature.
- (b) He can recommend the dissolution of the legislative assembly to the governor at any time.
- (c) He announces the government policies on the floor of the house.

Other Powers and Functions

In addition, the Chief Minister also performs the following functions:

- (a) the chairman of the State Planning Board.
- (b) acts as a vice-chairman of the concerned zonal council by rotation, holding office for a period of one year at a time.
- (c) a member of the Inter-State Council and the National Development Council, both headed by the prime minister.
- (d) the chief spokesman of the state government.
- (e) the crisis manager-in-chief at the political level during emergencies.
- (f) As a leader of the state, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.
- (g) the political head of the services

Relationship with the Governor

Article No.	Subject-matter
163.	Council of Ministers to aid and advise Governor
164.	Other provisions as to Ministers
166.	Conduct of business of the Government of a State
167.	Duties of Chief Minister as respects the furnishing of information to Governor, etc.

STATE COUNCIL OF MINISTERS

- the council of ministers headed by the chief minister is the real executive authority in the politico-administrative system of a state
- The principles of parliamentary system of government are not detailed in the Constitution; but two Articles (163 and 164) deal with them
- Article 163 deals with the status of the council of ministers while Article 164 deals with the appointment, tenure, responsibility, qualifications, oath and salaries and allowances of the ministers.

Constitutional Provisions

Article 163—Council of Ministers to aid and advise Governor

1. If any question arises whether a matter falls within the Governor's discretion or not, decision of the Governor shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.
2. The advice tendered by Ministers to the Governor shall not be inquired into in any court

Article 164—Other Provisions as to Ministers

1. The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister.
2. However, in the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and backward classes or any other work.
3. The state of Bihar was excluded from this provision by the 94th Amendment Act of 2006.
4. The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed 15 per cent of the total strength of the legislative assembly of that state.
5. But, the number of ministers, including the chief minister, in a state shall not be less than 12. This provision was added by the 91st Amendment Act of 2003.
6. A member of either House of state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. The provision was also added by the 91st Amendment Act of 2003.
7. The ministers shall hold office during the pleasure of the Governor.
8. The council of ministers shall be collectively responsible to the state Legislative Assembly.
9. The Governor shall administer the oaths of office and secrecy to a minister.
10. A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be a minister.
11. The salaries and allowances of ministers shall be determined by the state legislature.

Article 166—Conduct of Business of the Government of a State

1. All executive action of the Government of a State—the Governor.
2. The Governor shall make rules for the more convenient transaction of the business of the government of the state, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is required to act in his discretion.

Article 167—Duties of Chief Minister

- To communicate to the governor regarding the decisions of the council of ministers relating to the administration of the affairs of the state

Nature of Advice by Ministers

- the nature of advice tendered by ministers to the governor cannot be enquired by any court. This provision emphasises the intimate and the confidential relationship between the governor and the ministers

Appointment of Ministers

- ministers are appointed by the governor on the advice of the chief minister.
- the governor can appoint only those persons as ministers who are recommended by the chief minister
- tribal welfare minister in Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha
- The 94th Amendment Act of 2006 freed Bihar from the obligation of having a tribal welfare minister as there are no Scheduled Areas in Bihar now
- A person who is not a member of either House of the state legislature can also be appointed as a minister
- But, within six months, he must become a member (either by election or by nomination) of either House of the state legislature, otherwise, he ceases to be a minister
- A minister who is a member of one House of the state legislature has the right to speak and to take part in the proceedings of the other House.
- can vote only in the House of which he is a member

Oath and Salary of Ministers

- the governor administers the oaths of office and secrecy

In his oath of office, the minister swears:

1. to bear true faith and allegiance to the Constitution of India,
2. to uphold the sovereignty and integrity of India,
3. to faithfully and conscientiously discharge the duties of his office, and
4. to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

Responsibility of Ministers

Collective Responsibility

- Article 164- collectively responsible to the legislative assembly of the state for all their acts of omission and commission
- When the legislative assembly passes a no- confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the legislative council
- the council of ministers can advice the governor to dissolve the legislative assembly on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections. The governor may not oblige the council of ministers which has lost the confidence of the legislative assembly
- the cabinet decisions bind all cabinet ministers (and other ministers) even if they deferred in the cabinet meeting. It is the duty of every minister to stand by the cabinet decisions and support them both within and outside the state legislature. If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign.

Individual Responsibility

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- Article 164 also contains the principle of individual responsibility
- the ministers hold office during the pleasure of the governor
- the governor can remove a minister only on the advice of the chief minister

No Legal Responsibility

- Centre-no provision in the Constitution for the system of legal responsibility of the minister in the states. not required that an order of the governor for a public act should be countersigned by a minister.
- Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the governor

Composition of the Council of Ministers

- Constitution does not specify the size of the state council of ministers or the ranking of ministers
- determined by the chief minister
- the council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers
- The cabinet ministers- head the important departments of the state government like home, education, finance, agriculture and so forth, play an important role in deciding policies
- The ministers of state- given independent charge of departments or can be attached to cabinet ministers. not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their departments are considered by the cabinet
- the deputy ministers- not given independent charge of departments, attached to the cabinet ministers and assist them in their administrative, political and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings

Cabinet

- A smaller body called *cabinet* is the nucleus of the council of ministers. It consists of only the cabinet ministers. It is the real centre of authority in the state government. It performs the following role:
 1. It is the highest decisionmaking authority in the politico-administrative system of a state.
 2. It is the chief policy formulating body of the state government.
 3. It is the supreme executive authority of the state government.
 4. It is the chief coordinator of state administration.
 5. It is an advisory body to the governor.
 6. It is the chief crisis manager and thus deals with all emergency situations.
 7. It deals with all major legislative and financial matters.
 8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

Cabinet Committees

- The cabinet works through various committees called cabinet committees. They are of two types standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature.
- They are set up by the chief minister according to the exigencies of the time and requirements of the

INDIAN POLITY-M.LAXMIKANTH

situation. Hence, their number, nomenclature and composition varies from time to time.

- They not only sort out issues and formulate proposals for the consideration of the cabinet but also take decisions. However, the cabinet can review their decisions.

Article No.	Subject-matter
163.	Council of Ministers to aid and advise Governor
164.	Other provisions as to Ministers
166.	Conduct of business of the Government of a State
167.	Duties of Chief Minister as respects the furnishing of information to Governor, etc.

STATE LEGISLATURE

- Articles 168 to 212 in Part VI of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature

Organisation of State Legislature

- no uniformity in the organisation of state legislatures
- Most of the states have an unicameral system, while others have a bicameral system.
- At present (2015), only seven states have two Houses (bicameral). These are Andhra Pradesh, Uttar Pradesh, Bihar, Maharashtra, Karnataka, Jammu and Kashmir and Telangana
- The twenty-four states have unicameral system.
- Here, the state legislature consists of the governor and the legislative assembly.
- In the states having bicameral system, the state legislature consists of the governor, the legislative council and the legislative assembly.
- The legislative council (Vidhan Parishad) is the upper house (second chamber or house of elders), while the legislative assembly (Vidhan Sabha) is the lower house (first chamber or popular house).

Abolition or creation of legislative councils in states

- Parliament can abolish a legislative council (where it already exists) or create it (where it does not exist), if the legislative assembly of the concerned state passes a resolution to that effect.
- a specific resolution must be passed by the state assembly by a special majority, that is, a majority of the total membership of the assembly and a majority of not less than two-thirds of the members of the assembly present and voting.
- This Act of Parliament is not to be deemed as an amendment of the Constitution for the purposes of Article 368 and is passed like an ordinary piece of legislation (ie, by simple majority).

Composition of Assembly

Strength- The legislative assembly-

- directly elected by the people on the basis of universal adult franchise.

INDIAN POLITY-M.LAXMIKANTH

- maximum strength is fixed at 500 and minimum strength at 60, in case of Arunachal Pradesh, Sikkim and Goa, the minimum number is fixed at 30 and in case of Mizoram and Nagaland, it is 40 and 46 respectively,
- some members of the legislative assemblies in Sikkim and Nagaland are also elected indirectly

Nominated Member

- governor nominate one member from the Anglo-Indian community,
- Originally, this provision was to operate for ten years (ie, upto 1960). But this duration has been extended continuously since then by 10 years each time.
- Now, under the 95th Amendment Act of 2009, this is to last until 2020,

Territorial Constituencies

- The demarcation of constituencies is done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state.
- In other words, the Constitution ensures that there is uniformity of representation between different constituencies in the state.
- The expression 'population' means, the population as ascertained at the last preceding census of which the relevant figures have been published

Readjustment after each census

- a readjustment is to be made in the (a) total number of seats in the assembly of each state and (b) the division of each state into territorial constituencies. The Parliament is empowered to determine the authority and the manner in which it is to be made.
- Accordingly, Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose.
- The 42nd Amendment Act of 1976 had frozen total number of seats in the assembly of each state and the division of such state into territorial constituencies till the year 2000 at the 1971 level.
- This ban on readjustment has been extended for another 25 years (ie, upto year 2026) by the 84th Amendment Act of 2001 with the same objective of encouraging population limiting measures.
- The 84th Amendment Act of 2001 also empowered the government to undertake readjustment and rationalisation of territorial constituencies in a state on the basis of the population figures of 1991 census.
- Later, the 87th Amendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census. However, this can be done without altering the total number of seats in the assembly of each state

Reservation of seats for SCs and STs

- reservation was to operate for ten years (i.e., up to 1960). But this duration has been extended continuously since then by 10 years each time.
- Now, under the 79th Amendment Act of 2009, this reservation is to last until 2020

Composition of Council

Strength-

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- members of the legislative council are indirectly elected
- maximum strength of the council is fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 40
- the Constitution has fixed the maximum and the minimum limits, the actual strength of a Council is fixed by Parliament

Manner of Election

1. 1/3 are elected by the members of local bodies in the state like municipalities, district boards, etc.,
2. 1/12 are elected by graduates of three years standing and residing within the state,
3. 1/12 are elected by teachers of three years standing in the state, not lower in standard than secondary school,
4. 1/3 are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and
5. the remainder are nominated by the governor from amongst persons who have a special knowledge or practical experience of literature, science, art, cooperative movement and social service.
6. Thus, 5/6 of the total number of members of a legislative council are indirectly elected and 1/6 are nominated by the governor.
7. by means of a single transferable vote

Duration of Two Houses

Duration of Assembly

- normal term is five years
- the governor is authorised to dissolve the assembly at any time (i.e., even before the completion of five years) to pave the way for fresh elections
- the term of the assembly can be extended during the period of national emergency by a law of Parliament for one year at a time (for any length of time)
- cannot continue beyond a period of six months after the emergency has ceased to operate

Duration of Council

- it is a permanent body and is not subject to dissolution
- one-third of its members retire on the expiration of every second year
- a member continues as such for six years
- vacant seats are filled up by fresh elections and nominations (by governor) at the beginning of every third year.
- retiring members are also eligible for re-election and re-nomination any number of times

Membership of State Legislature

- Qualifications- a citizen of India, 30 years of age for legislative council, 25 years of age for the legislative assembly
- a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them

Disqualifications-

INDIAN POLITY-M.LAXMIKANTH

- holds any office of profit under the Union or state government, unsound mind, insolvent, not a citizen of India or has voluntarily acquired the citizenship of a foreign state, disqualified under any law made by Parliament
- the governor's decision is final on disqualification is final

Disqualification on Ground of Defection-

- a person shall be disqualified for being a member of either House of state legislature if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule
- The question of disqualification under the Tenth Schedule is decided by the Chairman, in the case of legislative council and, Speaker, in the case of legislative assembly (and not by the governor).

Oath or Affirmation- Common in nature

Vacation of Seats

- Double Membership:* A person cannot be a member of both Houses of state legislature at one and the same time. If a person is elected to both the Houses, his seat in one of the Houses falls vacant as per the provisions of a law made by the state legislature.
- Disqualification:* If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.
- Resignation:* A member may resign his seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls vacant when the resignation is accepted¹¹.
- Absence:* A House of the state legislature can declare the seat of a member vacant if he absents himself from all its meeting for a period of sixty days without its permission.
- Other Cases:* A member has to vacate his seat in the either House of state legislature,
 - if his election is declared void by the court if he is expelled by the House,
 - if he is elected to the office of president or office of vice-president, and
 - if he is appointed to the office of governor of a state

Presiding Officers of State Legislature

- Speaker and a Deputy Speaker for the legislative assembly and Chairman and a Deputy Chairman for the legislative council

Speaker of Assembly

- elected by the assembly itself from amongst its members
- vacates his office earlier in any of the following three cases:
 1. if he ceases to be a member of the assembly;
 2. if he resigns by writing to the deputy speaker; and
 3. if he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days advance notice

Powers and duties

- maintains order and decorum in the assembly

INDIAN POLITY-M.LAXMIKANTH

- final interpreter of the provisions of (a) the Constitution of India, (b) the rules of procedure and conduct of business of assembly, and (c) the legislative precedents
- adjourns the assembly or suspends the meeting in the absence of a quorum
- does not vote in the first instance. But, he can exercise a casting vote in the case of a tie
- can allow a 'secret' sitting of the House at the request of the leader of the House
- decides whether a bill is a Money Bill or not and his decision on this question is final
- appoints the chairmen of all the committees of the assembly and supervises their functioning
- himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee

Deputy Speaker of Assembly

- also elected by the assembly itself from amongst its members, remaining part is same as like speaker.

Chairman of Council

- elected by the council itself from amongst its members
- vacates same like Speaker
- powers and duties is also like speaker
- the Speaker has one special power which is not enjoyed by the Chairman.
- ✓ The Speaker decides whether a bill is a Money Bill or not and his decision on this question is final which is not done by the chairman of the council.

Deputy Chairman of Council

- ✓ also elected by the assembly itself from amongst its members, remaining part is same as like deputy speaker

Sessions of State Legislature

Summoning

- ✓ maximum gap between the two sessions of state legislature cannot be more than six months

Adjournment

- ✓ suspends the work in a sitting for a specified time which may be hours, days or weeks
- ✓ Adjournment *sine die* means terminating a sitting of the state legislature for an indefinite period. The power of the adjournment as well as adjournment *sine die* lies with the presiding officer of the House

Prorogation

- ✓ The presiding officer (Speaker or Chairman) declares the House adjourned *sine die*, when the business of the session is completed. Within the next few days, the governor issues a notification for prorogation of the session
- ✓ a prorogation terminates a session of the House

Dissolution

- ✓ The legislative council, being a permanent house, is not subject to dissolution. Only the legislative assembly is subject to dissolution

INDIAN POLITY-M.LAXMIKANTH

The position with respect to lapsing of bills on the dissolution of the assembly is mentioned below:

1. A Bill pending in the assembly lapses (whether originating in the assembly or transmitted to it by the council).
2. A Bill passed by the assembly but pending in the council lapses.
3. A Bill pending in the council but not passed by the assembly does not lapse.
4. A Bill passed by the assembly (in a unicameral state) or passed by both the houses (in a bicameral state) but pending assent of the governor or the President does not lapse.
5. A Bill passed by the assembly (in a unicameral state) or passed by both the Houses (in a bicameral state) but returned by the president for reconsideration of House (s) does not lapse

Quorum

- ✓ the minimum number of members required to be present in the House before it can transact any business.
- ✓ It is ten members or one-tenth of the total number of members of the House (including the presiding officer), whichever is greater

Language in State Legislature

- ✓ The Constitution has declared the official language(s) of the state or Hindi or English, to be the languages for transacting business in the state legislature
- ✓ The state legislature is authorised to decide whether to continue or discontinue English as a floor language after the completion of fifteen years from the commencement of the Constitution (i.e., from 1965). In case of Himachal Pradesh, Manipur, Meghalaya and Tripura, this time limit is twenty-five years and that of Arunachal Pradesh, Goa and Mizoram, it is forty years.

Rights of Ministers and Advocate General

- ✓ every minister and the advocate general of the state have the right to speak and take part in the proceedings of either House or any of its committees of which he is named a member, without being entitled to vote. There are two reasons underlying this constitutional provision:
 1. A minister can participate in the proceedings of a House, of which he is not a member.
 2. A minister, who is not a member of either House, can participate in the proceedings of both the Houses

Legislative Procedure in State Legislature

Ordinary Bills

Bill in the Originating House-

- ✓ can originate in either House of the state legislature (in case of a bicameral legislature),
- ✓ can be introduced either by a minister or by any other member, passes through three stages in the originating House
 1. First reading,
 2. Second reading, and
 3. Third reading

INDIAN POLITY-M.LAXMIKANTH

- ✓ After the bill is passed by the originating House, it is transmitted to the second House for consideration and passage.
- ✓ A bill is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments.
- ✓ In case of a unicameral legislature, a bill passed by the legislative assembly is sent directly to the governor for his assent

Bill in the Second House-same three reading

- ✓ the ultimate power of passing an ordinary bill is vested in the assembly, the council can detain or delay the bill for a period of four months—three months in the first instance and one month in the second instance.
- ✓ when a bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead

Assent of the Governor-

- after it is passed by the assembly or by both the Houses in case of a bicameral legislature, is presented to the governor for his assent

four alternatives

1. he may give his assent to the bill;
2. he may withhold his assent to the bill;
3. he may return the bill for reconsideration of the House or Houses; and
4. he may reserve the bill for the consideration of the President.
 - If the governor gives his assent to the bill, the bill becomes an Act and is placed on the Statute Book.
 - If the governor withholds his assent to the bill, the bill ends and does not become an Act.
 - If the governor returns the bill for reconsideration and if the bill is passed by the House or both the Houses again, with or without amendments, and presented to the governor for his assent, the governor must give his assent to the bill.
 - the governor enjoys only a *suspensive veto*

Assent of the President-

- When a bill is reserved by the governor for the consideration of the President, the President may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the House or Houses of the state legislature.
- When a bill is so returned, the House or Houses have to reconsider it within a period of six months. The bill is presented again to the presidential assent after it is passed by the House or Houses with or without amendments.
- It is not mentioned in the Constitution whether it is obligatory on the part of the president to give his assent to such a bill or not

Money Bill

- Money Bill cannot be introduced in the legislative council
- can be introduced in the legislative assembly only and that too on the recommendation of the governor

INDIAN POLITY-M.LAXMIKANTH

- After a Money Bill is passed by the legislative assembly, it is transmitted to the legislative council for its consideration.
- The legislative council has restricted powers with regard to a Money Bill. It cannot reject or amend a Money Bill.
- It can only make recommendations and must return the bill to the legislative assembly within 14 days.
- The legislative assembly can either accept or reject all or any of the recommendations of the legislative council
- If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both Houses at the expiry of the said period in the form originally passed by the legislative assembly.
- Thus, the legislative assembly has more powers than legislative council with regard to a money bill.
- At the most, the legislative council can detain or delay a money bill for a period of 14 days
- when a Money Bill is presented to the governor, he may either give his assent, withhold his assent or reserve the bill for presidential assent but cannot return the bill for reconsideration of the state legislature.
- Normally, the governor gives his assent to a money bill as it is introduced in the state legislature with his prior permission, same as like assent of president.

<i>Parliament</i>	<i>State Legislature</i>
A. With Regard to Ordinary Bills	
1. It can be introduced in either House of the Parliament.	1. It can be introduced in either House of the state legislature.
2. It can be introduced either by a minister or by a private member.	2. It can be introduced either by a minister or by private member.
3. It passes through first reading, second reading and third reading in the originating House.	3. It passes through first reading, second reading and third reading in the originating House.
4. It is deemed to have been passed by the Parliament only when both the Houses have agreed to it, either with or without amendments.	4. It is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments.

INDIAN POLITY-M.LAXMIKANTH

5. A deadlock between the two Houses takes place when the second House, after receiving a bill passed by the first House, rejects the bill or proposes amendments that are not acceptable to the first House or does not pass the bill within six months.	5. A deadlock between the two Houses takes place when the legislative council, after receiving a bill passed by the legislative assembly, rejects the bill or proposes amendments that are not acceptable to the legislative assembly or does not pass the bill within three months.
6. The Constitution provides for the mechanism of joint sitting of two Houses of the Parliament to resolve a deadlock between them over the passage of a bill.	6. The Constitution does not provide for the mechanism of joint sitting of two Houses of the state legislature to resolve a deadlock between them over the passage of a bill.
7. The Lok Sabha cannot override the Rajya Sabha by passing the bill for the second time and vice versa. A joint sitting is the only way to resolve a deadlock between the two Houses.	7. The legislative assembly can override the legislative council by passing the bill for the second time and not <i>vice versa</i> . When a bill is passed by the assembly for the second time and transmitted to the legislative council, if the legislative council rejects the bill again, or proposes amendments that are not acceptable to the legislative assembly, or does not pass the bill within one month, then the bill is deemed to have been passed by both the Houses in the form in which it was passed by the legislative assembly for the second
8. The mechanism of joint sitting for resolving a deadlock applies to a bill whether originating in the Lok Sabha or the Rajya Sabha. If a joint sitting is not summoned by the president, the bill ends and becomes dead.	8. The mechanism of passing the bill for the second time to resolve a deadlock applies to a bill originating in the legislative assembly only. When a bill, which has originated in the legislative council and sent to the legislative assembly, is rejected by the latter, the bill ends and becomes dead.

B. With Regard to Money Bills

1. It can be introduced only in the Lok Sabha and not in the Rajya Sabha.	1. It can be introduced only in the legislative assembly and not in the legislative council.
2. It can be introduced only on the recommendation of the president.	2. It can be introduced only on the recommendation of the governor.
3. It can be introduced only by a minister and not by a private member.	3. It can be introduced only by a minister and not by a private member.
4. It cannot be rejected or amended by the Rajya Sabha. It should be returned to the Lok Sabha within 14 days, either with or without recommendations.	4. It cannot be rejected or amended by the legislative council. It should be returned to the legislative assembly within 14 days, either with or without amendments.
5. The Lok Sabha can either accept or reject all or any of the	5. The legislative assembly can either accept or reject all or any of the recommendations of the legislative council.

INDIAN POLITY-M.LAXMIKANTH

recommendations of the Rajya Sabha.	
6. If the Lok Sabha accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form.	6. If the legislative assembly accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form.
7. If the Lok Sabha does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the Lok Sabha without any change.	7. If the legislative assembly does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the legislative assembly without any change.
8. If the Rajya Sabha does not return the bill to the Lok Sabha within 14 days, the bill is deemed to have been passed by both the Houses at the expiration of the said period in the form originally passed by the Lok Sabha.	8. If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both the Houses at the expiration of the said period in the form originally passed by the legislative assembly.
9. The Constitution does not provide for the resolution of any deadlock between the two Houses. This is because, the will of the Lok Sabha is made to prevail over that of the Rajya Sabha, if the latter does not agree to the bill passed by the former.	9. The Constitution does not provide for the resolution of any deadlock between the two Houses. This is because, the will of the legislative assembly is made to prevail over that of legislative council, if the latter does not agree to the bill passed by the former.

Even though both the council and the Rajya Sabha are second chambers, the Constitution has given the council much lesser importance than the Rajya Sabha due to the following reasons

- a. The Rajya Sabha consists of the representatives of the states and thus reflect the federal element of the polity. It maintains the federal equilibrium by protecting the interests of the states against the undue interference of the Centre. Therefore, it has to be an effective revising body and not just an advisory body or dilatory body like that of the council. On the other hand, the issue of federal significance does not arise in the case of a council.
- b. The council is heterogeneously constituted. It represents different interests and consists of differently elected members and also include some nominated members. Its very composition makes its position weak and reduces its utility as an effective revising body. On the other hand, the Rajya Sabha is homogeneously constituted. It represents only the states and consists of mainly elected members (only 12 out of 250 are nominated).
- c. The position accorded to the council is in accordance with the principles of democracy. The council

INDIAN POLITY-M.LAXMIKANTH

should yield to the assembly, which is a popular house. This pattern of relationship between the two Houses of the state legislature is adopted from the British model. In Britain, the House of Lords (Upper House) cannot oppose and obstruct the House of Commons (Lower House). The House of Lords is only a dilatory chamber—it can delay an ordinary bill for a maximum period of one year and a money bill for one month

Privileges of State Legislature

Collective Privileges

1. the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same.
2. exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
3. make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
4. punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
5. the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
6. institute inquiries and order the attendance of witnesses and send for relevant papers and records.
7. The courts are prohibited to inquire into the proceedings of a House or its Committees.
8. No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

Individual Privileges

1. They cannot be arrested during the session of the state legislature and 40 days before the beginning and 40 days after the end of such session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
2. They have freedom of speech in the state legislature. No member is liable to any proceedings in any court for anything said or any vote given by him in the state legislature or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the state legislature.
3. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when the state legislature is in session.

Article No.	Subject-matter
General	
168.	Constitution of Legislatures in states
169.	Abolition or creation of Legislative Councils in states
170.	Composition of the Legislative Assemblies

INDIAN POLITY-M.LAXMIKANTH

171.	Composition of the Legislative Councils
172.	Duration of State Legislatures
173.	Qualification for membership of the State Legislature
174.	Sessions of the State Legislature, prorogation and dissolution
175.	Right of Governor to address and send messages to the House or Houses
176.	Special address by the Governor
177.	Rights of Ministers and Advocate-General as respects the Houses
Officers of the State Legislature	
178.	The Speaker and Deputy Speaker of the Legislative Assembly
179.	Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker
180.	Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker
181.	The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration
182.	The Chairman and Deputy Chairman of the Legislative Council
183.	Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman
184.	Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman
185.	The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration
186.	Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman
187.	Secretariat of State Legislature
Conduct of Business	
188.	Oath or affirmation by members
189.	Voting in Houses, power of Houses to act notwithstanding vacancies and quorum
Disqualifications of Members	
190.	Vacation of seats
191.	Disqualifications for membership
192.	Decision on questions as to disqualifications of members
193.	Penalty for sitting and voting before making oath or affirmation under Article 188 or when not qualified or when disqualified

INDIAN POLITY-M.LAXMIKANTH

Powers, Privileges and Immunities of State Legislatures and their Members	
194.	Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof
195.	Salaries and allowances of members
Legislative Procedure	
196.	Provisions as to introduction and passing of Bills
197.	Restriction on powers of Legislative Council as to Bills other than Money Bills
198.	Special procedure in respect of Money Bills
199.	Definition of "Money Bills"
200.	Assent to Bills
201.	Bills reserved for consideration
Procedure in Financial Matters	
202.	Annual financial statement
203.	Procedure in Legislature with respect to estimates
204.	Appropriation Bills
205.	Supplementary, additional or excess grants
206.	Votes on account, votes of credit and exceptional grants
207.	Special provisions as to financial Bills
Procedure Generally	
208.	Rules of procedure
209.	Regulation by law of procedure in the Legislature of the state in relation to financial business
210.	Language to be used in the Legislature
211.	Restriction on discussion in the Legislature
212.	Courts not to inquire into proceedings of the Legislature
Legislative Powers of the Governor	
213.	Power of Governor to promulgate Ordinances during recess of Legislature

HIGH COURTS

✓ the high court operates below the Supreme Court but above the subordinate courts

INDIAN POLITY-M.LAXMIKANTH

- ✓ occupies the top position in the judicial administration of a state
- ✓ originated in India in 1862 when the high courts were set up at Calcutta, Bombay and Madras
- ✓ In 1866, a fourth high court was established at Allahabad. In the course of time, each province in British India came to have its own high court. After 1950, a high court existing in a province became the high court for the corresponding state
- ✓ The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory
- ✓ At present, there are 24 high courts in the country
- ✓ three are common high courts
- ✓ Delhi is the only union territory that has a high court of its own (since 1966)
- ✓ Parliament can extend the jurisdiction of a high court to any union territory or exclude the jurisdiction of a high court from any union territory

Organisation of High Court

- ✓ Consists of a chief justice and such other judges as the president may from time to time deem necessary to appoint
- ✓ the Constitution does not specify the strength of a high court and leaves it to the discretion of the president. the President determines the strength of a high court from time to time depending upon its workload

Judges

Appointment of Judges-

- ✓ appointed by the President, chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned

Qualifications of Judges-

- ✓ a citizen of India, held a judicial office in the territory of India for ten years, or have been an advocate of a high court (or high courts in succession) for ten years
- ✓ the Constitution has not prescribed a minimum age for appointment as a judge of a high court

Oath or Affirmation-

- ✓ make and subscribe an oath or affirmation before the governor of the state or some person appointed by him for this purpose

Tenure of Judges-

- ✓ The Constitution has not fixed the tenure of a judge of a high court
- ✓ four provisions in this regard- holds office until he attains the age of 62 years, resign his office by writing to the president, removed from his office by the President on the recommendation of the Parliament, vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court

Removal of Judges-

- ✓ removed from his office by an order of the President, President can issue the removal order only after an

INDIAN POLITY-M.LAXMIKANTH

address by the Parliament has been presented to him in the same session for such removal, address must be supported by a special majority of each House of Parliament (i.e., a majority of the total membership of that House and majority of not less than two-thirds of the members of that House present and voting,

✓ The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of a high court by the process of impeachment:

1. A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
2. The Speaker/Chairman may admit the motion or refuse to admit it.
3. If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
4. The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.
5. If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.
6. After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
7. Finally, the president passes an order removing the judge.

no judge of a high court has been impeached so far

Salaries and Allowances-

✓ determined from time to time by the Parliament, In 2009, the salary of the chief justice was increased from ₹30,000 to ₹90,000 per month and that of a judge from ₹26,000 to ₹80,000 per month

Transfer of Judges-

✓ President can transfer a judge from one high court to another after consulting the Chief Justice of India

Acting Chief Justice

President can appoint a judge of a high court as an acting chief justice of the high court when:

1. the office of chief justice of the high court is vacant; or
2. the chief justice of the high court is temporarily absent; or
3. the chief justice of the high court is unable to perform the duties of his office

Additional and Acting Judges

President can appoint duly qualified persons as additional judges of a high court for a temporary period not exceeding two years when:

1. there is a temporary increase in the business of the high court; or
2. there are arrears of work in the high court

Retired Judges

- ✓ the chief justice of a high court of a state can request a retired judge of that high court or any other high court to act as a judge of the high court of that state for a temporary period
- ✓ can do so only with the previous consent of the President and also of the person to be so appointed

Independence of High Court

Mode of Appointment- See Above

Security of Tenure-can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the president, though they are appointed by him

Fixed Service Conditions

Expenses Charged on Consolidated Fund- salaries and allowances of the judges, the salaries, allowances and pensions of the staff as well as the administrative expenses of a high court are charged on the consolidated fund of the state, pension of a high court judge is charged on the Consolidated Fund of India and not the state

- ✓ Conduct of Judges cannot be Discussed
- ✓ Ban on Practice after Retirement
- ✓ Power to Punish for its Contempt
- ✓ Freedom to Appoint its Staff
- ✓ Its Jurisdiction cannot be Curtailed
- ✓ Separation from Executive

Jurisdiction and Powers of High Court

At present, a high court enjoys the following jurisdiction and powers:

1. Original jurisdiction.
2. Writ jurisdiction.
3. Appellate jurisdiction.
4. Supervisory jurisdiction.
5. Control over subordinate courts.
6. A court of record.
7. Power of judicial review.

The present jurisdiction and powers of a high court are governed by (a) the constitutional provisions, (b) the Letters Patent, (c) the Acts of Parliament, (d) the Acts of State Legislature, (e) Indian Penal Code, 1860, (f) Criminal Procedure Code, 1973, and (g) Civil Procedure Code, 1908

1. Original Jurisdiction

- ✓ It means the power of a high court to hear disputes in the first instance, not by way of appeal
- (a) Matters of admiralty, will, marriage, divorce, company laws and contempt of court.
- (b) Disputes relating to the election of members of Parliament and state legislatures.
- (c) Regarding revenue matter or an act ordered or done in revenue collection.

INDIAN POLITY-M.LAXMIKANTH

- (d) Enforcement of fundamental rights of citizens.
- (e) Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.
- (f) The four high courts (i.e., Calcutta, Bombay, Madras and Delhi High Courts) have original civil jurisdiction in cases of high value
- ✓ Before 1973, the Calcutta, Bombay and Madras High Courts also had original criminal jurisdiction. This was fully abolished by the Criminal Procedure Code, 1973

2. Writ Jurisdiction

- ✓ Article 226 of the Constitution empowers a high court to issue writs including *habeas corpus*, *mandamus*, *certiorari*, prohibition and *quo-warranto* for the enforcement of the fundamental rights of the citizens and for any other purpose
- ✓ writ jurisdiction of the high court (under Article 226) is not exclusive but concurrent with the writ jurisdiction of the Supreme Court (under Article 32).
- ✓ when the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.
- ✓ the writ jurisdiction of the high court is wider than that of the Supreme Court.
- ✓ This is because, the Supreme Court can issue writs only for the enforcement of fundamental rights and not for any other purpose, that is, it does not extend to a case where the breach of an ordinary legal right is alleged

3. Appellate Jurisdiction

It has appellate jurisdiction in both civil and criminal matters

the appellate jurisdiction of a high court is wider than its original jurisdiction

4. Supervisory Jurisdiction

- ✓ high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals) Thus, it may—
- (a) call for returns from them;
- (b) make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;
- (c) prescribe forms in which books, entries and accounts are to be kept by them; and
- (d) settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.

This power of superintendence of a high court is very broad because, (i) it extends to all courts and tribunals whether they are subject to the appellate jurisdiction of the high court or not; (ii) it covers not only administrative superintendence but also judicial superintendence; (iii) it is a revisional jurisdiction; and (iv) it can be *suo-motu* (on its own) and not necessarily on the application of a party.

However, this power does not vest the high court with any unlimited authority over the subordinate courts and tribunals. It is an extraordinary power and hence has to be used most sparingly and only in appropriate cases. Usually, it is limited to, (i) excess of jurisdiction, (ii) gross violation of natural justice, (iii) error of law, (iv) disregard to the law of superior courts, (v) perverse findings, and (vi) manifest injustice.

5. Control over Subordinate Courts

INDIAN POLITY-M.LAXMIKANTH

- ✓ a high court has an administrative control and other powers over them
- (a) It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state (other than district judges).
- (b) It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state (other than district judges).
- (c) It can withdraw a case pending in a subordinate court if it involves a substantial question of law that require the interpretation of the Constitution. It can then either dispose of the case itself or determine the question of law and return the case to the subordinate court with its judgement.
- (d) Its law is binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India

6. A Court of Record

As a court of record, a high court has two powers:

- (a) The judgements, proceedings and acts of the high courts are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any subordinate court. They are recognised as legal precedents and legal references.
- (b) It has power to punish for contempt of court, either with simple imprisonment or with fine or with both.
 - ✓ The expression 'contempt of court' has not been defined by the Constitution
 - ✓ the expression has been defined by the Contempt of Court Act of 1971. Under this, contempt of court may be civil or criminal.
 - ✓ Civil contempt means wilful disobedience to any judgement, order, writ or other process of a court or wilful breach of an undertaking given to a court.
 - ✓ Criminal contempt means the publication of any matter or doing an act which—(i) scandalises or lowers the authority of a court; or (ii) prejudices or interferes with the due course of a judicial proceeding; or (iii) interferes or obstructs the administration of justice in any other manner.

7. Power of Judicial Review

- ✓ Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments,
- ✓ Though the phrase 'judicial review' has nowhere been used in the Constitution, the provisions of Articles 13 and 226 explicitly confer the power of judicial review on a high court
- ✓ The 42nd Amendment Act of 1976 curtailed the judicial review power of high court. It debarred the high courts from considering the constitutional validity of any central law. However, the 43rd Amendment Act of 1977 restored the original position

<i>Article</i>	<i>Subject-matter</i>
214.	High Courts for states
215.	High Courts to be courts of record
216.	Constitution of High Courts

INDIAN POLITY-M.LAXMIKANTH

217.	Appointment and conditions of the office of a Judge of a High Court
218.	Application of certain provisions relating to Supreme Court to High Courts
219.	Oath or affirmation by judges of High Courts
220.	Restriction on practice after being a permanent judge
221.	Salaries etc., of judges
222.	Transfer of a judge from one High Court to another
223.	Appointment of acting Chief Justice
224.	Appointment of additional and acting judges
224A.	Appointment of retired judges at sittings of High Courts
225.	Jurisdiction of existing High Courts
226.	Power of High Courts to issue certain writs
226A.	Constitutional validity of Central laws not to be considered in proceedings under Article 226 (Repealed)
227.	Power of superintendence over all courts by the High Court
228.	Transfer of certain cases to High Court
228A.	Special provisions as to disposal of questions relating to constitutional validity of state laws (Repealed)
229.	Officers and servants and the expenses of High Courts
230.	Extension of jurisdiction of High Courts to union territories
231.	Establishment of a common High Court for two or more states
232.	Interpretation (Repealed)

SUBORDINATE COURTS

- ✓ also known as lower courts
- ✓ so called because of their subordination to the state high court

Constitutional Provisions

- ✓ Articles 233 to 237 in Part VI of the Constitution

1. Appointment of District Judges

- ✓ The appointment, posting and promotion of district judges in a state are made by the governor of the state in consultation with the high court.

INDIAN POLITY-M.LAXMIKANTH

A person to be appointed as district judge should have the following qualifications:

- (a) He should not already be in the service of the Central or the state government.
- (b) He should have been an advocate or a pleader for seven years.
- (c) He should be recommended by the high court for appointment.

2. Appointment of other Judges

- ✓ made by the governor of the state after consultation with the State Public Service Commission and the high court

3. Control over Subordinate Courts

- ✓ the posting, promotion and leave of persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the high court

4. Interpretation

- ✓ 'district judge' includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge
- ✓ expression 'judicial service' means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge

5. Application of the above Provisions to Certain Magistrates

- ✓ Governor may direct that the above mentioned provisions relating to persons in the state judicial service would apply to any class or classes of magistrates in the state
- ✓ district judge is the highest judicial authority in the district, When he deals with civil cases, he is known as the district judge and when he hears the criminal cases, he is called as the sessions judge

SPECIAL STATUS TO JAMMU AND KASHMIR

- ✓ Article 1 of the Indian Constitution, the State of Jammu and Kashmir (J&K) is a constituent state of Indian Union and its territory forms a part of the territory of India,
- ✓ Article 370 in Part XXI of the Constitution grants a special status,
- ✓ all the provisions of the Constitution of India do not apply to it
- ✓ own separate state Constitution—the Constitution of Jammu and Kashmir

Accession of J&K to India

- ✓ the 'Instrument of Accession of Jammu and Kashmir to India' was signed by Pandit Jawaharlal Nehru and Maharaja Hari Singh on 26 October 1947
- ✓ the state surrendered only three subjects (defence, external affairs and communications) to the Dominion of India
- ✓ Article 370 was incorporated in the Constitution of India. It clearly states that the provisions with respect to the State of J&K are only temporary and not permanent

It became operative on 17 November 1952, with the following provisions

1. The provisions of Article 238 (dealing with the administration of Part B states) is not applicable to the

INDIAN POLITY-M.LAXMIKANTH

state of J&K. The state of J&K was specified in the category of Part B states in the original Constitution (1950). This Article in Part VII was subsequently omitted from the Constitution by the 7th Constitutional Amendment Act (1956) in the wake of the reorganisation of states.

2. The power of Parliament to make laws for the state is limited to: (a) Those matters in the Union List and the Concurrent List which correspond to matters specified in the state's Instrument of Accession. These matters are to be declared by the president in consultation with the state government. The Instrument of Accession contained matters classified under four heads, namely, external affairs, defence, communications and ancillary matters. (b) Such other matters in the Union List and the Concurrent List which are specified by the president with the concurrence of the state government. This means that laws can be made on these matters only with the consent of the State of J&K.
3. The provisions of Article 1 (declaring India as a Union of states and its territory) and this Article (that is, Article 370) are applicable to the State of J&K.
4. Besides above, the other provisions of the Constitution can be applied to the state with such exceptions and modifications as specified by the President in consultation with the state government or with the concurrence of the state government.
5. The President can declare that Article 370 ceases to be operative or operates with exceptions and modifications. However, this can be done by the President only on the recommendation of Constituent Assembly of the state.

Present Relationship Between J&K and India

- ✓ In pursuance of the provisions of Article 370, the President issued an order called the Constitution (Application to Jammu and Kashmir) Order, 1950, to specify the Union's jurisdiction over the state.
 - ✓ In 1952, the Government of India and the State of J&K entered into an agreement at Delhi regarding their future relationship. In 1954, the Constituent Assembly of J&K approved the state's accession to India as well as the Delhi Agreement.
 - ✓ Then, the President issued another order with the same title, that is, the Constitution (Application to Jammu and Kashmir), Order, 1954.
 - ✓ This order superseded the earlier order of 1950 and extended the Union's jurisdiction over the state.
 - ✓ This is the basic order that, as amended and modified from time to time, regulates the constitutional position of the state and its relationship with the Union.
1. Jammu and Kashmir is a constituent state of the Indian Union and has its place in Part I and Schedule I of the Constitution of India (dealing with the Union and its Territory). But its name, area or boundary cannot be changed by the Union without the consent of its legislature.
 2. The State of J & K has its own Constitution and is administered according to that Constitution. Hence, Part VI of the Constitution of India (dealing with state governments) is not applicable to this state. The very definition of 'state' under this part does not include the State of J&K.
 3. Parliament can make laws in relation to the state on most of the subjects enumerated in the Union List and on a good number of subjects enumerated in the Concurrent List.
 4. But, the residuary power belongs to the state legislature except in few matters like prevention of activities involving terrorist acts, questioning or disrupting the sovereignty and territorial integrity of India and causing insult to the National Flag, National Anthem and the Constitution of India. Further, the power to make laws of preventive detention in the state belongs to the state legislature.
 5. the preventive detention laws made by the Parliament are not applicable to the state.

INDIAN POLITY-M.LAXMIKANTH

6. Part III (dealing with Fundamental Rights) is applicable to the state with some exceptions and conditions. The Fundamental Right to Property is still guaranteed in the state. Also, certain special rights are granted to the permanent residents of the state with regard to public employment, acquisition of immovable property, settlement and government scholarships.
7. Part IV (dealing with Directive Principles of State Policy) and Part IVA (dealing with Fundamental Duties) are not applicable to the state.
8. A National Emergency declared on the ground of internal disturbance will not have effect in the state except with the concurrence of the state government.⁶
9. The President has no power to declare a financial emergency in relation to the state.
10. The President has no power to suspend the Constitution of the state on the ground of failure to comply with the directions given by him.
11. The State Emergency (President's Rule) is applicable to the state. However, this emergency can be imposed in the state on the ground of failure of the constitutional machinery under the provisions of state Constitution and not Indian Constitution. In fact, two types of Emergencies can be declared in the state, namely, President's Rule under the Indian Constitution and Governor's Rule under the state Constitution. In 1986, the President's Rule was imposed in the state for the first time.
12. International treaty or agreement affecting the disposition of any part of the territory of the state can be made by the Centre only with the consent of the state legislature.
13. An amendment made to the Constitution of India does not apply to the state unless it is extended by a presidential order.
14. Official language provisions are applicable to the state only in so far as they relate to the official language of the Union, the official language of inter-state and Centre-state communications and the language of the Supreme Court proceedings.
15. The Fifth Schedule (dealing with administration and control of schedule areas and scheduled tribes) and the Sixth Schedule (dealing with administration of tribal areas) do not apply to the state.
16. The special leave jurisdiction of the Supreme Court and the jurisdictions of the Election Commission and the comptroller and auditor general are applicable to the state.
17. The High Court of J&K can issue writs only for the enforcement of the fundamental rights and not for any other purpose.
18. The provisions of Part II regarding the denial of citizenship rights of migrants to Pakistan are not applicable to the permanent residents of J&K, who after having so migrated to Pakistan return to the state for resettlement. Every such person is deemed to be a citizen of India
 - ✓ the two characteristic features of the special relationship between the State of J&K and the Union of India are: (a) the state has a much greater measure of autonomy and power than enjoyed by the other states; and (b) Centre's jurisdiction within the state is more limited than what it has with respect to other states.

Features of J&K Constitution

- ✓ the Constituent Assembly of J&K was elected by the people of the state on the basis of adult franchise to prepare the future Constitution of the state and to determine its relationship with the Union of India.

INDIAN POLITY-M.LAXMIKANTH

The Constitution of J&K was adopted on 17 November 1957, and came into force on 26 January 1957. Its salient features (as amended from time to time) are as follows:

1. It declares the State of J&K to be an integral part of India.
2. It secures justice, liberty, equality and fraternity to the people of the state.
3. It says that the State of J&K comprises all the territory that was under the ruler of the state on 15 August 1947. This means that the territory of the state also includes the area which is under the occupation of Pakistan.
4. It lays down that a citizen of India is treated as a 'permanent resident' of the state if on 14 May 1954 (a) he was a state subject of Class I or Class II, or (b) having lawfully acquired immovable property in the state, he has been ordinarily resident in the state for 10 years prior to that date, or (c) any person who before 14 May, 1954 was a state subject of Class I or Class II and who, having migrated to Pakistan after 1 March 1947, returns to the state for resettlement.
5. It clarifies that the permanent residents of the state are entitled to all rights guaranteed under the Constitution of India. But, any change in the definition of 'permanent' can be made by the state legislature only.
6. It contains a list of directive principles that are to be treated as fundamental in the governance of the state. However, they are not judicially enforceable.
7. It provides for a bicameral legislature consisting of the legislative assembly and the legislative council.
8. The assembly consists of 111 members directly elected by the people.⁸ Out of this, 24 seats are to remain vacant as they are allotted for the area that is under the occupation of Pakistan.
9. Hence, as an interim measure, the total strength of the Assembly is to be taken as 87 for all practical purposes.
10. The council consists of 36 members, most of them are elected in an indirect manner and some of them are nominated by the Governor, who is also an integral part of the state legislature.
11. It vests the executive powers of the state in the governor appointed by the president for a term of five years. It provides for a council of ministers headed by the chief minister to aid and advise the governor in the exercise of his functions.
12. The council of ministers is collectively responsible to the assembly. Under the original Constitution of J&K (1957), the head of the state and head of the government were designated as *Sadar-i-Riyasat* (President) and *Wazir-i-Azam* (Prime Minister) respectively.
13. In 1965, they were redesignated as governor and chief Minister respectively. Also, the head of the state was to be elected by the state assembly.
14. It establishes a high court consisting of a chief justice and two or more other judges. They are appointed by the president in consultation with the Chief Justice of India and the Governor of the state. The High Court of J&K is a court of record and enjoys original, appellate and writ jurisdictions. However, it can issue writs only for the enforcement of fundamental rights and not for any other purpose.
15. It provides for Governor's Rule. Hence, the governor, with the concurrence of the President of India, can assume to himself all the powers of the state government, except those of the high court. He can dissolve the assembly and dismiss the council of ministers.
16. The Governor's Rule can be imposed when the state administration cannot be carried on in accordance

INDIAN POLITY-M.LAXMIKANTH

with the provisions of the J&K Constitution.

17. It was imposed for the first time in 1977. Notably, in 1964, Article 356 of the Indian Constitution (dealing with the imposition of President's Rule in a state) was extended to the state of J&K.
18. It declares **Urdu** as the official language of the state. It also permits the use of English for official purposes unless the state legislature provides otherwise.
19. It lays down the procedure for its amendment. It can be amended by a bill passed in each house of the state legislature by a majority of two-thirds of the total membership of that house. Such a bill must be introduced in the assembly only. However, no bill of constitutional amendment can be moved in either House if it seeks to change the relationship of the state with the Union of India.

SPECIAL PROVISIONS FOR SOME STATES

- ✓ Articles 371 to 371-J in Part XXI of the constitution contain special provisions for eleven states viz., Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Mizoram, Arunachal Pradesh, Goa and Karnataka.

Provisions for Maharashtra and Gujarat

- ✓ Under Article 371, the President is authorised to provide that the Governor of Maharashtra and that of Gujarat would have special responsibility for :
 1. the establishment of separate development boards for (i) Vidarbha, Marathwada and the rest of Maharashtra, (ii) Saurashtra, Kutch and the rest of Gujarat;
 2. making a provision that a report on the working of these boards would be placed every year before the State Legislative Assembly;
 3. the equitable allocation of funds for developmental expenditure over the above-mentioned areas; and
 4. an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate employment opportunities in the state services in respect of the above- mentioned areas.

Provisions for Nagaland

Article 371-A makes the following special provisions for Nagaland³ :

1. The Acts of Parliament relating to the following matters would not apply to Nagaland unless the State Legislative Assembly so decides:
 - (i) religious or social practices of the Nagas;
 - (ii) Naga customary law and procedure;
 - (iii) administration of civil and criminal justice involving decisions according to Naga customary law; and
 - (iv) ownership and transfer of land and its resources.
2. The Governor of Nagaland shall have special responsibility for law and order in the state so long as internal disturbances caused by the hostile Nagas continue. In the discharge of this responsibility, the Governor, after consulting the Council of Ministers, exercises his individual judgement and his decision is final. This special responsibility of the Governor shall cease when the President so directs.
3. The Governor has to ensure that the money provided by the Central Government for any specific purpose is included in the demand for a grant relating to that purpose and not in any other demand moved in the State Legislative Assembly.

INDIAN POLITY-M.LAXMIKANTH

4. A regional council consisting of 35 members should be established for the Tuensang district of the state. The Governor should make rules for the composition of the council, manner of choosing its members, their qualifications, term, salaries and allowances; the procedure and conduct of business of the council; the appointment of officers and staff of the council and their service conditions; and any other matter relating to the constitution and proper functioning of the council.
5. For a period of ten years from the formation of Nagaland or for such further period as the Governor may specify on the recommendation of the regional council, the following provisions would be operative for the Tuensang district:
 - (i) The administration of the Tuensang district shall be carried on by the Governor.
 - (ii) The Governor shall in his discretion arrange for equitable distribution of money provided by the Centre between Tuensang district and the rest of Nagaland.
 - (iii) Any Act of Nagaland Legislature shall not apply to Tuensang district unless the Governor so directs on the recommendation of the regional council.
 - (iv) The Governor can make Regulations for the peace, progress and good government of the Tuensang district. Any such Regulation may repeal or amend an Act of Parliament or any other law applicable to that district.
 - (v) There shall be a Minister for Tuensang affairs in the State Council of Ministers. He is to be appointed from amongst the members representing Tuensang district in the Nagaland Legislative Assembly.
 - (vi) The final decision on all matters relating to Tuensang district shall be made by the Governor in his discretion.
 - (vii) Members in the Nagaland Legislative Assembly from the Tuensang district are not elected directly by the people but by the regional council

Provisions for Assam and Manipur

Assam

- ✓ Under Article 371-B, the President is empowered to provide for the creation of a committee of the Assam Legislative Assembly consisting of the members elected from the Tribal Areas of the state and such other members as he may specify.

Manipur

Article 371-C makes the following special provisions for Manipur:

1. The President is authorized to provide for the creation of a committee of the Manipur Legislative Assembly consisting of the members elected from the Hill Areas of the state.
2. The President can also direct that the Governor shall have special responsibility to secure the proper functioning of that committee.
3. The Governor should submit an annual report to the President regarding the administration of the Hill Areas.
4. The Central Government can give directions to the State Government as to the administration of the Hill Areas.

INDIAN POLITY-M.LAXMIKANTH

Provisions for Andhra Pradesh

- ✓ Articles 371-D and 371-E contain the special provisions for Andhra Pradesh¹⁰. Under Article 371-D, the following are mentioned:
 1. The President is empowered to provide for equitable opportunities and facilities for the people belonging to different parts of the state in the matter of public employment and education and different provisions can be made for various parts of the state.
 2. For the above purpose, the President may require the State Government to organise civil posts in local cadres for different parts of the state and provide for direct recruitment to posts in any local cadre. He may specify parts of the state which shall be regarded as the local area for admission to any educational institution. He may also specify the extent and manner of preference or reservation given in the matter of direct recruitment to posts in any such cadre or admission to any such educational institution.
 3. The President may provide for the establishment of an Administrative Tribunal in the state to deal with certain disputes and grievances relating to appointment, allotment or promotion to civil posts in the state¹¹. The tribunal is to function outside the purview of the state High Court. No court (other than the Supreme Court) is to exercise any jurisdiction in respect of any matter subject to the jurisdiction of the tribunal. The President may abolish the tribunal when he is satisfied that its continued existence is not necessary.
- ✓ Article 371-E empowers the Parliament to provide for the establishment of a Central University in the state.

Provisions for Sikkim

- ✓ The 36th Constitutional Amendment Act of 1975 made Sikkim a full-fledged state of the Indian Union. It included a new Article 371-F containing special provisions with respect to Sikkim. These are as follows:
 1. The Sikkim Legislative Assembly is to consist of not less than 30 members.
 2. One seat is allotted to Sikkim in the Lok Sabha and Sikkim forms one Parliamentary constituency.
 3. For the purpose of protecting the rights and interests of the different sections of the Sikkim population, the Parliament is empowered to provide for the:
 - (i) number of seats in the Sikkim Legislative Assembly which may be filled by candidates belonging to such sections; and
 - (ii) delimitation of the Assembly constituencies from which candidates belonging to such sections alone may stand for election to the Assembly.
 4. The Governor shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of the different sections of the Sikkim population. In the discharge of this responsibility, the Governor shall act in his discretion, subject to the directions issued by the President.
 5. The President can extend (with restrictions or modifications) to Sikkim any law which is in force in a state of the Indian Union.

Provisions for Mizoram

- ✓ Article 371-G specifies the following special provisions for Mizoram¹² :

INDIAN POLITY-M.LAXMIKANTH

1. The Acts of Parliament relating to the following matters would not apply to Mizoram unless the State Legislative Assembly so decides :
 - (i) religious or social practices of the Mizos;
 - (ii) Mizo customary law and procedure;
 - (iii) administration of civil and criminal justice involving decisions according to Mizo customary law; and
 - (iv) ownership and transfer of land.
2. The Mizoram Legislative Assembly is to consist of not less than 40 members.

Provisions for Arunachal Pradesh and Goa

Arunachal Pradesh

Under Article 371-H, the following special provisions are made for Arunachal Pradesh¹³:

The Governor of Arunachal Pradesh shall have special responsibility for law and order in the state. In the discharge of this responsibility, the Governor, after consulting the Council of Ministers, exercises his individual judgement and his decision is final. This special responsibility of the Governor shall cease when the President so directs.

1. The Arunachal Pradesh Legislative Assembly is to consist of not less than 30 members.

Goa

- ✓ Article 371-I provides that the Goa Legislative Assembly is to consist of not less than 30 members¹⁴.

Provisions for Karnataka

- ✓ Under Article 371-J, the President is empowered to provide that the Governor of Karnataka would have special responsibility for
 1. The establishment of a separate development board for Hyderabad-Karnataka region¹⁵
 2. Making a provision that a report on the working of the board would be placed every year before the State Legislative Assembly
 3. The equitable allocation of funds for developmental expenditure over the region
 4. The reservation of seats in educational and vocational training institutions in the region for students who belong to the region
 5. The reservation in state government posts in the region for persons who belong to the region
- ✓ Article 371-J (which provided for special provisions for the Hyderabad-Karnataka region of the state of Karnataka) was inserted in the Constitution by the 98th *Constitutional Amendment Act* of 2012.
- ✓ The special provisions aim to establish an institutional mechanism for equitable allocation of funds to meet the development needs over the region, as well as to enhance human resources and promote employment from the region by providing for local cadres in service and reservation in educational and vocational training institutions.
- ✓ In 2010, the Legislative Assembly as well as the Legislative Council of Karnataka passed separate resolutions seeking special provisions for the Hyderabad-Karnataka region of the state of Karnataka.

INDIAN POLITY-M.LAXMIKANTH

- ✓ The government of Karnataka also endorsed the need for special provisions for the region.
- ✓ The resolutions sought to accelerate development of the most backward region of the state and promote inclusive growth with a view to reducing inter-district and inter-regional disparities in the state.

Article No.	Subject-matter
371.	Special provision with respect to the states of Maharashtra and Gujarat
371A.	Special provision with respect to the state of Nagaland
371B.	Special provision with respect to the state of Assam
371C.	Special provision with respect to the state of Manipur
371D.	Special provisions with respect to the state of Andhra Pradesh
371E.	Establishment of Central University in Andhra Pradesh
371F.	Special provisions with respect to the state of Sikkim
371G.	Special provision with respect to the state of Mizoram
371H.	Special provision with respect to the state of Arunachal Pradesh
371-I.	Special provision with respect to the state of Goa
371J.	Special provisions with respect to the state of Karnataka

PRESIDENT OF INDIA

Election of the President

The President of India is elected by an electoral college consisting of:

- elected members of the two Houses of Parliament and Legislative Assemblies of the States - Article 54
- It includes the national capital territory of Delhi and the Union territory of Pondicherry
- The President's election is held in accordance with a system of proportional representation by means of a single transferable vote
- there shall be uniformity in the scale of representation of the different states at the election of the President - Article 55

Eligibility

Conditions as per Article 58:

- The candidate should be a Indian citizen.
- Should have completed the age of thirty-five (35) years.
- Should be qualified for election as a member of the Lok Sabha.
- Should not hold any office of profit under the Union Government or any state government or any local or other authority

Condition as per Article 59:

- The President should not be a member of any house of Union or State legislature.

Presidents' Term of Office

- The oath of office to the President is administered by the Chief Justice of India and in his absence, by the senior most judge of the Supreme Court available.
- An election should be held to fill the vacancy of Presidential post before the expiration of President's term - Article 62(1)
- The President holds office for a five year term from the date on which he enters the office.
- President can resign at any time by addressing the resignation letter to the Vice-President of India.
- When a vacancy occurs in the President's office due to his death, resignation or removal or otherwise, the Vice-president acts as the President until a new President is elected.
- An election to fill such vacancy should be held within six months from the date of occurrence of such vacancy.
- A person is eligible for re-election to Presidential office.

Presidents Impeachment

- President may be impeached from his office for violation of the Constitution - Article 61
- The impeachment charges may be initiated by either Lok Sabha or Rajya Sabha and it should be signed by at least 1/4th members.
- Regarding the charges a 14 days' notice should be given.
- The resolution of the charges for impeachment of the President should be passed by at least 2/3rd majority

INDIAN POLITY-M.LAXMIKANTH

- Afterwards the charges are investigated in the other House of the Parliament. If the resolution is passed in this House also with a of 2/3rd majority, then the President stands removed from his office from the date on which the bill is so passed.

The Powers and Functions of the President

Executive Powers - Article 53

All executive powers of the Union are vested in him. These powers are exercised by him either directly or through subordinate officers in accordance with the Constitution. The Supreme Command of the Defence Force is vested on the President and he exercises it in accordance with law.

- Executive powers of the President must be exercised in accordance with the Constitution. In particular it includes the provisions of article 14 (equality before law)
- President appoints the Prime Minister and other ministers; and they hold office during his pleasure.
- He appoints the Attorney General of India, Comptroller and Auditor General of India, the Chief Election Commissioner and other Election Commissioners, the Chairman and Members of the UPSC, the Governors of the states, the Chairman and the members of the Finance Commissions etc.
- The President can appoint a commission to investigate into the conditions of SCs, STs and OBCs.
- The President also receives the credentials of Ambassadors and High Commissioners from other countries.
- The President is the Commander in Chief of the Indian Armed Forces.
- The President of India can grant a pardon to or reduce the sentence of a convicted person for one time, particularly in cases involving punishment of death.

The Legislative Powers

- The President can summon or end a session of the Parliament and dissolve the Lok Sabha.
- He can address the Parliament at the commencement of the first session after the general election and the first session of each year.
- He can also summon a joint sitting of both the houses of Parliament which is presided over by the Speaker of the Lok Sabha.
- The President can appoint a member of the Lok Sabha to preside over its proceedings the positions of Speaker as well as Deputy Speaker are vacant.
- He also can appoint any member of the Rajya Sabha to preside over its proceeding when both the Chairman's and Deputy Chairman's office fall vacant.
- He can nominate 12 members to the Rajya Sabha with extraordinary accomplishments in literature, science, art and social service and two members to the Lok Sabha from the Anglo-Indian Community.
- President's prior recommendation or permission is needed for introducing bills in the parliament involving expenditure from Consolidated Fund of India, alternation of boundaries of states or creation of a new state
- When a bill is sent to the Parliament after it has been passed by the parliament, the President can give his assent to the bill or withhold his assent to the bill or return the bill (if it is not a Money Bill or a Constitutional Amendment Bill) for reconsideration of the Parliament.
- When a bill is passed by a State legislature is re-served by the Governor for consideration of the President, the President can give his assent to the bill, or withhold his assent to the bill or direct the Governor to return the bill (if it is not a Money bill) for reconsideration of the State Legislature.
- President can promulgate ordinances when both the Houses of the Parliament are not in session. These ordinances must be approved by the Parliament within the six weeks of its reassembly. The ordinance can be effective for a maximum period of six months and six weeks – Article 123

INDIAN POLITY-M.LAXMIKANTH

Emergency Powers of the President

President may proclaim a state of emergency in the whole or part of India if he realises/feels that a grave situation has arisen in which the security of India on part of its territory might get threatened by war or external aggression or rebellion. - Article 352

The President can declare three types of emergencies:

National Emergency:

- National emergency is caused by war, external aggression or armed rebellion in the whole of India or a part of its territory.
- President can declare national emergency only on a written request by the Cabinet Ministers headed by the Prime Minister and the proclamation must be approved by the Parliament within one month.
- National emergency can be imposed for six months. It can be extended by six months by repeated parliamentary approval, up to a maximum of three years.
- Under national emergency, Fundamental Rights of Indian citizens can be suspended.
 - The six freedoms under Right to Freedom are automatically suspended.
 - The Right to Life and Personal Liberty cannot be suspended.

Such an emergency has been invoked at three instances:

- 1962 (Indo-China war)
- 1971 (Indo-Pakistan war)
- 1975 to 1977 (declared by Indira Gandhi on account of "internal disturbance").

State Emergency or President's Rule

A State Emergency can be imposed via the following:

1. If that state failed to run constitutionally i.e. constitutional machinery has failed - Article 356
2. If that state is not working according to the given direction of the Union Government – Article 365

Such an emergency must be approved by the Parliament within a period of two months.

- It can be imposed from six months to a maximum period of three years with repeated parliamentary approval every six months.
- If needed, the emergency can be extended for more than three years, by a constitutional amendment, for example in the case of Punjab and Jammu and Kashmir.
- During such an emergency, the Governor administers the state in the name of the President. The Legislative Assembly can be dissolved or may remain in suspended animation. The Parliament makes laws on the 66 subjects of the state list. All money bills have to be referred to the Parliament for approval.

Financial Emergency: Article - 360

- President can proclaim a Financial Emergency if financial stability or credit of India or any part thereof is threatened.
- This proclamation must be approved by the Parliament within two months.
- This type of Emergency has not been declared so far.

INDIAN POLITY-M.LAXMIKANTH

Financial Powers

- A money bill can be introduced in the Parliament only with the President's recommendation
- The President lays the Annual Financial Statement i.e. the Union budget before the Parliament.
- President can make advances out of the Contingency Fund of India to meet unforeseen expenses
- The President continues a Finance commission after every five years to recommend the distribution of the taxes between the centre and the States.

Diplomatic powers

- International treaties and agreements are signed on behalf of the President. However, they are subject to approval of the parliament.
- The president represents India in International forms and affairs and may send and receives diplomats like ambassadors, high commissioners

Military powers

- The President is the supreme commander of the defence forces of India
- The President can declare war and conclude peace, subject to Parliaments' approval.
- The President appoints the chiefs of Army, Navy and Air Force.

Judicial powers

- The president appoints the Chief Justice of the Union Judiciary and other judges on the advice of the Chief Justice.
- The President dismisses the judges if and only if the two Houses of the Parliament pass resolutions to that effect by two-thirds majority of the members present.
- The president has the right to grant pardon.
- The president enjoys the judicial immunity
 - No criminal proceedings can be initiated against the president during the term in office
 - The president is not answerable for the exercise of his/her duties.

Veto Power of the President

When a bill is presented to the President for his assent, he has three alternatives (under Article 111 of the Constitution):

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or

He may return the bill (if it is not a Money bill) for reconsideration of the Parliament. However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, the President must give his assent to the bill.

The veto power enjoyed by the executive in modern states can be classified into the following four types:

1. Absolute veto that is, withholding of assent to the bill passed by the legislature.
2. Qualified veto, which can be overridden by the legislature with a higher majority.
3. Suspensive veto, which can be over ridden by the legislature with an ordinary majority.
4. Pocket veto, that is, taking no action on the bill passed by the legislature.

INDIAN POLITY-M.LAXMIKANTH

- Of the above four, the President of India is vested with three—absolute veto, suspensive veto and pocket veto.
- There is no qualified veto in the case of Indian President

Absolute Veto

- ✓ refers to the power of the President to withhold his assent to a bill passed by the Parliament.
- ✓ The bill then ends and does not become an act.
- ✓ Usually, this veto is exercised in the following two cases:
 - (a) With respect to private members' bills (i.e., bills introduced by any member of Parliament who is not a minister); and
 - (b) With respect to the government bills when the cabinet resigns (after the passage of the bills but before the assent by the President) and the new cabinet advises the President not to give his assent to such bills.

Suspensive Veto

- The President exercises this veto when he returns a bill for reconsideration of the Parliament.
- However, if the bill is passed again by the Parliament with or without amendments and again presented to the President, it is obligatory for the President to give his assent to the bill.
- This means that the presidential veto is overridden by a re-passage of the bill by the same ordinary majority (and not a higher majority as required in USA).
- the President does not possess this veto in the case of money bills.
- The President can either give his assent to a money bill or withhold his assent to a money bill but cannot return it for the reconsideration of the Parliament.
- Normally, the President gives his assent to money bill as it is introduced in the Parliament with his previous permission.

Pocket Veto

- In this case, the President neither ratifies nor rejects nor returns the bill, but simply keeps the bill pending for an indefinite period.
- This power of the President not to take any action (either positive or negative) on the bill is known as the pocket veto.
- The President can exercise this veto power as the Constitution does not prescribe any time-limit within which he has to take the decision with respect to a bill presented to him for his assent.
- In USA, on the other hand, the President has to return the bill for reconsideration within 10 days. Hence, it is remarked that the pocket of the Indian President is bigger than that of the American President.
- It should be noted here that the President has no veto power in respect of a constitutional amendment bill.
- The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to give his assent to a constitutional amendment bill.

Presidential Veto over State Legislation

- The President has veto power with respect to state legislation also.
- A bill passed by a state legislature can become an act only if it receives the assent of the governor or the President (in case the bill is reserved for the consideration of the President).
- When a bill, passed by a state legislature, is presented to the governor for his assent, he has four alternatives (under Article 200 of the Constitution):
 1. He may give his assent to the bill, or
 2. He may withhold his assent to the bill, or
 3. He may return the bill (if it is not a money bill) for reconsideration of the state legislature, or
 4. He may reserve the bill for the consideration of the President.

Veto Power of the President At a Glance

<i>Central Legislation</i>	<i>State Legislation</i>
With Regard to Ordinary Bills	
1. Can be ratified	1. Can be ratified
2. Can be rejected	2. Can be rejected
3. Can be returned	3. Can be returned
With Regard to Money Bills	
1. Can be ratified	1. Can be ratified
2. Can be rejected (but cannot be returned)	2. Can be rejected (but cannot be returned)
With Regard to Constitutional Amendment Bills	
Can only be ratified (that is, cannot be rejected or returned)	Constitutional amendment bills cannot be introduced in the state legislature.

Ordinance-making Power of the President

- Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament.
- These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws.
- The ordinance-making power is the most important legislative power of the President.
- It has been vested in him to deal with unforeseen or urgent matters.
- But, the exercises of this power is subject to the following four limitations:

INDIAN POLITY-M.LAXMIKANTH

1. He can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session. An ordinance can also be issued when only one House is in session because a law can be passed by both the Houses and not by one House alone. An ordinance made when both the Houses are in session is void. Thus, the power of the President to legislate by ordinance is not a parallel power of legislation.
2. He can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action. The decision of the President to issue an ordinance can be questioned in a court on the ground that the President has prorogued one House or both Houses of Parliament deliberately with a view to promulgate an ordinance on a controversial subject, so as to bypass the parliamentary decision and thereby circumventing the authority of the Parliament. The 38th Constitutional Amendment Act of 1975 made the President's satisfaction final and conclusive and beyond judicial review. But, this provision was deleted by the 44th Constitutional Amendment Act of 1978. Thus, the President's satisfaction is justiciable on the ground of malafide.
3. His ordinance-making power is coextensive as regards all matters except duration, with the law-making powers of the Parliament. This has two implications:
 - (a) An ordinance can be issued only on those subjects on which the Parliament can make laws.
 - (b) An ordinance is subject to the same constitutional limitation as an act of Parliament. Hence, an ordinance cannot abridge or take away any of the fundamental rights
4. Every ordinance issued by the President during the recess of Parliament must be laid before both the Houses of Parliament when it reassembles. If the ordinance is approved by both the Houses, it becomes an act. If Parliament takes no action at all, the ordinance ceases to operate on the expiry of six weeks from the reassembly of Parliament. The ordinance may also cease to operate even earlier than the prescribed six weeks, if both the Houses of Parliament pass resolutions disapproving it. If the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks is calculated from the later of those dates. This means that the maximum life of an ordinance can be six months and six weeks, in case of non-approval by the Parliament (six months being the maximum gap between the two sessions of Parliament). If an ordinance is allowed to lapse without being placed before Parliament, then the acts done and completed under it, before it ceases to operate, remain fully valid and effective.
 - The President can also withdraw an ordinance at any time. However, his power of ordinance-making is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of the council of ministers headed by the prime minister.
 - An ordinance like any other legislation, can be retrospective, that is, it may come into force from a back date.
 - It may modify or repeal any act of Parliament or another ordinance. It can alter or amend a tax law also.
 - However, it cannot be issued to amend the Constitution.
 - The ordinance-making power of the President in India is rather unusual and not found in most of the democratic Constitutions of the world including that of USA, and UK.
 - It must be clarified here that the ordinance-making power of the President has no necessary connection with the national emergency envisaged in Article 352.
- The President can issue an ordinance even when there is no war or external aggression or armed rebellion.
- The rules of Lok Sabha require that whenever a bill seeking to replace an ordinance is introduced in the House, a statement explaining the circumstances that had necessitated immediate legislation by ordinance should

INDIAN POLITY-M.LAXMIKANTH

also be placed before the House. So far, no case has gone to the Supreme Court regarding repromulgation of ordinance by the President.

Pardoning Power of the President

- Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:
 1. Punishment or sentence is for an offence against a Union Law;
 2. Punishment or sentence is by a court martial (military court); and
 3. Sentence is a sentence of death.
- The pardoning power of the President is independent of the Judiciary; it is an executive power.
- But, the President while exercising this power, does not sit as a court of appeal.
- The object of conferring this power on the President is two-fold: (a) to keep the door open for correcting any judicial errors in the operation of law; and, (b) to afford relief from a sentence, which the President regards as unduly harsh.

The pardoning power of the President includes the following:

1. Pardon It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.

2. Commutation It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.

3. Remission It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.

4. Respite It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.

5. Reprieve It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President. Under Article 161 of the Constitution, the governor of a state also possesses the pardoning power. Hence, the governor can also grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against a state law. But, the pardoning power of the governor differs from that of the President in following two respects:

1. The President can pardon sentences inflicted by court martial (military courts) while the governor cannot.
2. The President can pardon death sentence while governor cannot. Even if a state law prescribes death sentence, the power to grant pardon lies with the President and not the governor. However, the governor can suspend, remit or commute a death sentence. In other words, both the governor and the President have concurrent power in respect of suspension, remission and commutation of death sentence.

The Supreme Court examined the pardoning power of the President under different cases and laid down the following principles:

1. The petitioner for mercy has no right to an oral hearing by the President.
2. The President can examine the evidence afresh and take a view different from the view taken by the

INDIAN POLITY-M.LAXMIKANTH

court.

3. The power is to be exercised by the President on the advice of the union cabinet.
4. The President is not bound to give reasons for his order.
5. The President can afford relief not only from a sentence that he regards as unduly harsh but also from an evident mistake.
6. There is no need for the Supreme Court to lay down specific guidelines for the exercise of power by the President.
7. The exercise of power by the President is not subject to judicial review except where the presidential decision is arbitrary, irrational, *mala fide* or discriminatory.
8. Where the earlier petition for mercy has been rejected by the President, stay cannot be obtained by filing another petition.

VICE-PRESIDENT OF INDIA

Introduction

- The Vice-President of India is the second highest constitutional office in the country. He serves for a five-year term, but can continue to be in office, irrespective of the expiry of the term until the successor assumes office.

Art. 63 declares: "There shall be a Vice-President of India That is the office cannot remain vacant.

Election-

- The Vice-President, like the president, is elected not directly by the people but by the method of indirect election. He is elected by the members of an electoral college consisting of the members of both Houses of Parliament. Thus, this electoral college is different from the electoral college for the election of the President in the following two respects:
 1. It consists of both elected and nominated members of the Parliament (in the case of president, only elected members).
 2. It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included)

Qualifications

A person cannot be elected as Vice-President unless he

- is a citizen of India
- has completed the age of 35 years, and
- is qualified for election as a member of the Council of States (Rajya Sabha).

Under Article: 102.

- a person cannot become a Member of Lok Sabha or Rajya Sabha if he is of unsound mind and a competent court has declared so, an undischarged insolvent, has voluntarily acquired the citizenship of a foreign state or if he has been disqualified under any parliamentary law.

A person is not eligible if he holds any office of profit under the Government of India or a State Government or any subordinate local authority (Art. 66.4)

The Vice-Presidents not a member of either House of Parliament or of a House of a legislature of any state.

- If a member of either House of Parliament or of a House of a legislature of any state is elected as Vice-President, he is deemed to have vacated his seat in that House on the date he/she enters his office as Vice-President (Art.662).

Superintendence of the Election of the Vice-President

- The Election Commission of India conducts the election to the office of the Vice- President.

INDIAN POLITY-M.LAXMIKANTH

Important Provisions relating to the Election of the Vice-President are:

- The election of the next Vice-President is to be held within 60 days of the expiry of the term of office of the outgoing Vice-President.
- The Returning Officer appointed to conduct the Vice-Presidential elections is the Secretary-General of either House of the Parliament by rotation.
- Any person qualified to be elected and intending to stand for election as Vice-President is required to be nominated by at least 20 MPs as proposers and at least 20 MPs as seconders.
- A candidate seeking election as Vice-President is required to make a security deposit of Rs. 15,000/-. He loses the security deposit if he does not secure 1/6th of the valid votes.

Disputes Regarding Election of the Vice-President

- An election petition calling in question an election to the office of Vice-President may be presented by any candidate at such election or by any ten or more electors joined together as petitioners.
- According to Article 71 of the Constitution, all doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court.
- Further, according to Presidential and Vice-Presidential Elections Act, 1952, an election petition can be filed only before the Supreme Court.
- A petition challenging the election of the Vice-President is heard by a five-judge bench of the Supreme Court of India.
- The petition has necessarily to be accompanied by a security deposit of Rs 20,000/-.
- An election petition may be presented within 30 days from the date of publication of the declaration containing the name of the returned candidate.

Oath of the Vice President

Oath of Affirmation by the Vice-President:

- bear true faith and allegiance to solemnly affirm the Constitution of India as by law established and
- to faithfully discharge the duties of his office

Conditions of Office

The Constitution lays down the following two conditions of the Vice-President's office:

1. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected Vice-President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.
2. He should not hold any other office of profit

Term of office

- It is five years from the date of assumption of office. Even after the expiration of the term, the vice-President shall continue in office until his successor assumes office.
- Art. 67(c). The Vice-President may resign his office by writing to the President. The resignation becomes effective from the day it is accepted.

Removal

- The Vice-President can be removed from office by a resolution of the Council of States (Rajya Sabha), passed by a majority of its members at that time and agreed to by the House of the People (Lok Sabha).
- A resolution for this purpose may be moved only after a notice of at least a minimum of 14 days has been given of such an intention.
- It may be noted that for Impeachment of the President, the cause or reason is "violation of the Constitution". But for the removal of Vice-President, no cause or reason has been mentioned in the Constitution.

Vacancy

INDIAN POLITY-M.LAXMIKANTH

- An election to fill a vacancy caused by the expiry of the term of office of Vice- President is completed before the expiry of the term. In case a vacancy arises by reasons of death, resignation or removal or otherwise, the election to fill that vacancy is held as soon as possible after the occurrence.
- In contrast, the Constitution provides an outer limit of six months (Article 62) for election to the office of the President of India under these circumstances.
- The person so elected is entitled to hold office for a full term of 5 years from the date he enters office. The Constitution is silent on who performs the duties of the Vice-President, when a vacancy occurs in the office of the Vice-President of India, before the expiry of his term, or when the Vice-President acts as the President of India.
- The only provision in the Constitution is with regard to the Vice-Presidents function as the Chairperson of the Council of States (Rajya Sabha), which is performed, during the period of such vacancy, by the Deputy Chairperson of the Rajya Sabha, or any other member of the Rajya Sabha authorised by the President of India (Protem Chairman).

Powers and Functions

The functions of Vice-President are two-fold:

1. He acts as the ex-officio Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American vice-president who also acts as the Chairman of the Senate—the Upper House of the American legislature.
2. He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise.⁷ He can act as President only for a maximum period of six months within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.

PRIME MINISTER

- Prime Minister is the real executive authority (*de facto* executive).
- Is the head of the government

Appointment of the Prime Minister

- The Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister.
- Article 75 says only that the Prime Minister shall be appointed by the president.
- the President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister.
- But, when no party has a clear majority in the Lok Sabha- the President may exercise his personal discretion in the selection and appointment of the Prime Minister.
- In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month.
- There is also one more situation when the president may have to exercise his individual judgement in the selection and appointment of the Prime Minister, that is, when the Prime Minister in office dies suddenly and there is no obvious successor.
- In 1997, the Supreme Court held that a person who is not a member of either House of Parliament can be

INDIAN POLITY-M.LAXMIKANTH

appointed as Prime Minister for six months, within which, he should become a member of either House of Parliament; otherwise, he ceases to be the Prime Minister.

Oath, Term and Salary

Quite similar.

Powers and Functions of the Prime Minister

In Relation to Council of Ministers

1. recommends persons who can be appointed as ministers by the president. The President can appoint only those persons as ministers who are recommended by the Prime Minister.
2. allocates and reshuffles various portfolios among the ministers.
3. ask a minister to resign or advise the President to dismiss him in case of difference of opinion.
4. presides over the meeting of council of ministers and influences its decisions.
5. guides, directs, controls, and coordinates the activities of all the ministers.
6. bring about the collapse of the council of ministers by resigning from office.

In Relation to the President

1. the principal channel of communication between the President and the council of ministers. It is the duty of the prime minister :
 - (a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;
 - (b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
 - (c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
2. advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.

In Relation to Parliament

1. advises the President with regard to summoning and proroguing of the sessions of the Parliament.
2. recommend dissolution of the Lok Sabha to President at anytime.
3. announces government policies on the floor of the House.

Other Powers & Functions

1. the chairman of the Planning Commission, National Development Council, National Integration Council, Inter-State Council and National Water Resources Council.
2. plays a significant role in shaping the foreign policy of the country.
3. the chief spokesman of the Union government.
4. the crisis manager-in-chief at the political level during emergencies.
5. As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and soon.
6. leader of the party in power.

INDIAN POLITY-M.LAXMIKANTH

7. political head of the services. Relationship with the President

The following provisions of the Constitution deal with the relationship between the President and the Prime Minister:

1. Article 74 - a council of ministers with the Prime Minister at the head to aid and advise the President the President may require the council of ministers to reconsider such advice and the President shall act in accordance with the advice tendered after suchreconsideration.

2. Article 75 (a) The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the president on the advice of the Prime Minister;

(b) The ministers shall hold office during the pleasure of the president; and

(c) The council of ministers shall be collectively responsible to the House of the People.

3. Article 78 It shall be the duty of the Prime Minister:

(a) to communicate to the President all decisions of the council of ministers relating to the administration of the affairs of the Union and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(c) if the President so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.

CENTRAL COUNCIL OF MINISTERS

Constitutional Provisions

Article 74—Council of Ministers to aid and advise President

1. There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President
2. The advice tendered by Ministers to the President shall not be inquired into in any court.

Article 75—Other Provisions as to Ministers

1. The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.
 2. The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. The provision was added by the 91st Amendment Act of 2003.
- A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.

1. The ministers shall hold office during the pleasure of the President.
 2. The council of ministers shall be collectively responsible to the Lok Sabha.
 3. The President shall administer the oaths of office and secrecy to a minister.
 4. A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.
- **The salaries and allowances of ministers shall be determined by the Parliament Article 77—
Conduct of Business of the Government of India**

1. All executive action of the Government of India shall be expressed to be taken in the name of the President.
2. Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President.
3. The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

Article 78—Duties of Prime Minister

1. To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation
2. If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council

Nature of Advice by Ministers

INDIAN POLITY-M.LAXMIKANTH

- The 42nd and 44th Constitutional Amendment Acts have made the advice binding on the President.
- Further, the nature of advice tendered by ministers to the President cannot be enquired by any court.
- This provision emphasises the intimate and the confidential relationship between the President and the ministers.
- In 1971, the Supreme Court held that ‘even after the dissolution of the Lok Sabha, the council of ministers does not cease to hold office.
- Article 74 is mandatory and, therefore, the president cannot exercise the executive power without the aid and advice of the council of ministers.
- Any exercise of executive power without the aid and advice will be unconstitutional as being violative of Article 74’.
- Again in 1974, the court held that ‘wherever the Constitution requires the satisfaction of the President, the satisfaction is not the personal satisfaction of the President but it is the satisfaction of the council of ministers with whose aid and on whose advice the President exercises his powers and functions’.

Appointment of Ministers

- The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister.
- Means that the President can appoint only those persons as ministers who are recommended by the Prime minister.
- A person who is not a member of either House of Parliament can also be appointed as a minister.
- But, within six months, he must become a member (either by election or by nomination) of either House of Parliament; otherwise, he ceases to be a minister.
- A minister who is a member of one House of Parliament has the right to speak and to take part in the proceedings of the other House also, but he can vote only in the House of which he is a member.

Oath and Salary of Ministers

- Quite Similar
- In 1990, the oath by Devi Lal as deputy prime minister was challenged as being unconstitutional as the Constitution provides only for the Prime Minister and ministers.
- The Supreme Court upheld the oath as valid and stated that describing a person as Deputy Prime Minister is descriptive only and such description does not confer on him any powers of Prime Minister.
- It ruled that the description of a minister as Deputy Prime Minister or any other type of minister such as minister of state or deputy minister of which there is no mention in the Constitution does not vitiate the oath taken by him so long as the substantive part of the oath is correct.

Responsibility of Ministers

Collective Responsibility

- Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha.
- all the ministers own joint responsibility to the Lok Sabha for all their acts of omission and commission.
- When the Lok Sabha passes a no-confidence motion against the council of ministers, all the ministers

INDIAN POLITY-M.LAXMIKANTH

have to resign including those ministers who are from the Rajya Sabha.

- Alternatively, the council of ministers can advise the president to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections.
- The President may not oblige the council of ministers that has lost the confidence of the Lok Sabha.
- the Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting.
- If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign.

Individual Responsibility

- the ministers hold office during the pleasure of the president, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha.
- However, the President removes a minister only on the advice of the Prime Minister.
- In case of a difference of opinion or dissatisfaction with the performance of a minister, the Prime Minister can ask him to resign or advise the President to dismiss him.

No Legal Responsibility

- In India, there is no provision in the Constitution for the system of legal responsibility of a minister.
- It is not required that an order of the President for a public act should be countersigned by a minister.
- Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the president.

Composition of the Council of Ministers

Already Covered

Council of Ministers Vs Cabinet

The words 'council of ministers' and 'cabinet' are often used interchangeably though there is a definite distinction between them. They differ from each other in respects of composition, functions, and role.

Role of Cabinet

1. It is the highest decision-making authority in our politico-administrative system.
2. It is the chief policy formulating body of the Central government.
3. It is the supreme executive authority of the Central government.
4. It is chief coordinator of Central administration.
5. It is an advisory body to the president and its advice is binding on him.
6. It is the chief crisis manager and thus deals with all emergency situations.
7. It deals with all major legislative and financial matters.
8. It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

INDIAN POLITY-M.LAXMIKANTH

9. It deals with all foreign policies and foreign affairs.

Kitchen Cabinet

- Kitchen Cabinet consists an informal body of the Prime Minister and 2-4 influential colleagues in whom he has faith and with whom he can discuss every problem.
- not only cabinet ministers but also outsiders like friends and family members of the prime minister.
- Also called as Inner Cabinet

CABINET COMMITTEES

Features of Cabinet Committees

The following are the features of Cabinet Committees:

1. They are extra-constitutional in emergence. In other words, they are not mentioned in the Constitution. However, the Rules of Business provide for their establishment.
2. They are of two types—standing and *ad hoc*. The former are of a permanent nature while the latter are of a temporary nature. The *ad hoc* committees are constituted from time to time to deal with special problems. They are disbanded after their task is completed.
3. They are set up by the Prime Minister according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature, and composition varies from time to time.
4. Their membership varies from three to eight. They usually include only Cabinet Ministers. However, the non-cabinet Ministers are not debarred from their membership.
5. They not only include the Ministers in charge of subjects covered by them but also include other senior Ministers.
6. They are mostly headed by the Prime Minister. Some times other Cabinet Ministers, particularly the Home Minister or the Finance Minister, also acts as their Chairman. But, in case the Prime Minister is a member of a committee, he invariably presides over it.
7. They not only sort out issues and formulate proposals for the consideration of the Cabinet, but also take decisions. However, the Cabinet can review their decisions.

They are an organisational device to reduce the enormous workload of the Cabinet. They also facilitate in-depth examination of policy issues and effective coordination. They are based on the principles of division of labour and effective delegation.

List of Cabinet Committees

1. *In 1994, there were the following 13 Cabinet Committees* Cabinet Committee on Political Affairs
2. Cabinet Committee on Natural Calamities
3. Cabinet Committee on Parliamentary Affairs
4. Appointments Committee of the Cabinet
5. Cabinet Committee on Accommodation
6. Cabinet Committee on Foreign Investment
7. Cabinet Committee on Drug Abuse Control
8. Cabinet Committee on Prices

INDIAN POLITY-M.LAXMIKANTH

9. Cabinet Committee on Minority Welfare
10. Cabinet Committee on Economic Affairs
11. Cabinet Committee on Trade and Investment
12. Cabinet Committee on Expenditure
13. Cabinet Committee on Infrastructure

At present (2013), the following 10 Cabinet Committees are functional:

1. Cabinet Committee on Economic Affairs
2. Cabinet Committee on Prices
3. Cabinet Committee on Political Affairs
4. Appointments Committee of the Cabinet
5. Cabinet Committee on Security
6. Cabinet Committee on World Trade Organisation (WTO) Matters
7. Cabinet Committee on Investment
8. Cabinet Committee on Unique Identification Authority of India (UIDAI) related issues
9. Cabinet Committee on Parliamentary Affairs
10. Cabinet Committee on Accommodation

Functions of Cabinet Committees

The following four are the more important cabinet committees:

1. The Political Affairs Committee deals with all policy matters pertaining to domestic and foreign affairs.
 2. The Economic Affairs Committee directs and coordinates the governmental activities in the economic sphere.
 3. Appointments Committee decides all higher level appointments in the Central Secretariat, Public Enterprises, Banks and Financial Institutions.
 4. Parliamentary Affairs Committee looks after the progress of government business in the Parliament.
- The first three committees are chaired by the Prime Minister and the last one by the Home Minister. Of all the Cabinet Committees, the most powerful is the Political Affairs Committee, often describe as a "Super-Cabinet".
 - The Narendra Modi government reconstituted six cabinet committees, including the one on appointments and on security.
 - "The government has reconstituted six committees of the Cabinet i.e. Appointments Committee of the Cabinet, Cabinet Committee on Accommodation, Cabinet Committee on Economic Affairs, Cabinet Committee on Parliamentary Affairs, Cabinet Committee on Political Affairs and Cabinet Committee on Security,".
 - The Appointments Committee would comprise the prime minister and the home minister, according to an official statement.
 - The Cabinet Committee on Security would comprise Prime Minister, Home Minister, External Affairs Minister and Finance and Defence Minister.
 - The Cabinet Committee on Economic Affairs would comprise of the prime minister, home minister, external affairs minister, finance minister, Urban Development Minister, Transport Minister, Railways Minister,

INDIAN POLITY-M.LAXMIKANTH

Communications and IT Minister , Civil Aviation Minister, Food Processing Industries Minister and Agriculture Minister.

- The Cabinet Committee on Accommodation, on political affairs and parliamentary affairs were also reconstituted.

PARLIAMENTARY COMMITTEES

a parliamentary committee means a committee that:

1. Is appointed or elected by the House or nominated by the Speaker / Chairman
2. Works under the direction of the Speaker / Chairman
3. Presents its report to the House or to the Speaker / Chairman
4. Has a secretariat provided by the Lok Sabha / Rajya Sabha
 - The consultative committees, which also consist of members of Parliament, are not parliamentary committees as they do not fulfill above four conditions.
 - Broadly, parliamentary committees are of two kinds—Standing Committees and *Ad Hoc* Committees. The former are permanent (constituted every year or periodically) and work on a continuous basis, while the latter are temporary and cease to exist on completion of the task assigned to them.

Standing Committees

On the basis of the nature of functions performed by them, standing committees can be classified into the following six categories:

1. Financial Committees

- (a) Public Accounts Committee Estimates Committee
- (b) Committee on Public Undertakings

2. Departmental Standing Committees (24)

3. Committees to Inquire

- (a) Committee on Petitions
- (b) Committee of Privileges
- (c) Ethics Committee

4. Committees to Scrutinize and Control

- (a) Committee on Government Assurances
- (b) Committee on Subordinate Legislation
- (c) Committee on Papers Laid on the Table
- (d) Committee on Welfare of SCs and STs
- (e) Committee on Empowerment of Women
- (f) Joint Committee on Offices of Profit

5. Committees Relating to the Day-to-Day Business of the House

- (a) Business Advisory Committee
- (b) Committee on Private Members' Bills and Resolutions
- (c) Rules Committee
- (d) Committee on Absence of Members from Sitzings of the House

6. House-Keeping Committees or Service Committees (i.e., Committees concerned with the Provision of Facilities and Services to Members):

- (a) General Purposes Committee
- (b) House Committee

INDIAN POLITY-M.LAXMIKANTH

- (c) Library Committee
- (d) Joint Committee on Salaries and Allowances of Members

Ad Hoc Committees

Ad hoc committees can be divided into two categories, that is, Inquiry Committees and Advisory Committees.

1. Inquiry Committees are constituted from time to time, either by the two Houses on a motion adopted in that behalf, or by the Speaker / Chairman, to inquire into and report on specific subjects. For example:
 - (a) Committee on the Conduct of Certain Members during President's Address
 - (b) Committee on Draft Five-Year Plan Railway Convention Committee
 - (c) Committee on Members of Parliament Local Area Development Scheme (MPLADS)
 - (d) Joint Committee on Bofors Contract
 - (e) Joint Committee on Fertilizer Pricing
 - (f) Joint Committee to Enquire into Irregularities in Securities and Banking Transactions
 - (g) Joint Committee on Stock Market Scam
 - (h) Joint Committee on Security in Parliament Complex
 - (i) Committee on Provision of Computers to Members of Parliament, Offices of Political Parties and Officers of the Lok Sabha Secretariat
 - (j) Committee on Food Management in Parliament House Complex
 - (k) Committee on Installation of Portraits / Statues of National Leaders and Parliamentarians in Parliament House Complex
 - (l) Joint Committee on Maintenance of Heritage Character and Development of Parliament House Complex
 - (m) Committee on Violation of Protocol Norms and Contemptuous Behaviour of Government Officers with Members of Lok Sabha
 - (n) Joint Committee to Examine Matters Relating to Allocation and Pricing of Telecom Licences and Spectrum
2. Advisory Committees include select or joint committees on bills, which are appointed to consider and report on particular bills. These committees are distinguishable from the other *ad hoc* committees in as much as they are concerned with bills and the procedure to be followed by them is laid down in the Rules of Procedure and the Directions by the Speaker / Chairman.

PARLIAMENTARY FORUMS

The first Parliamentary Forum on Water Conservation and Management was constituted in the year 2005. Subsequently, five more Parliamentary forums were constituted. At present, there are six Parliamentary forums.

1. Parliamentary Forum on Water Conservation and Management (2005)
2. Parliamentary Forum on Youth (2006)
3. Parliamentary Forum on Children (2006)
4. Parliamentary Forum on Population and Public Health (2006)
5. Parliamentary Forum on Global Warming and Climate Change (2008)
6. Parliamentary Forum on Disaster Management (2011)

INDIAN POLITY-M.LAXMIKANTH

Objectives of the Forums

The objectives behind the constitution of the Parliamentary forums are:

- (i) To provide a platform to the members to have interactions with the ministers concerned, experts and key officials from the nodal ministries with a view to have a focused and meaningful discussion on critical issues with a result-oriented approach for speeding up the implementation process;
 - (ii) To sensitise members about the key areas of concern and also about the ground level situation and equip them with the latest information, knowledge, technical know-how and valuable inputs from experts both from the country and abroad for enabling them to raise these issues effectively on the Floor of the House and in the meetings of the Departmentally-Related Standing Committees (DRSCs); and
To prepare a data-base through collection of data on critical issues from ministries concerned, reliable NGOs, newspapers, United Nations, Internet, etc. and circulation thereof to the members so that they can meaningfully participate in the discussions of the forums and seek clarifications from experts or officials from the Ministry present in the meetings.
- It has been mandated that the Parliamentary Fora will not interfere with or encroach upon the jurisdiction of the Departmentally-Related Standing Committees of the Ministry/Department concerned.

Composition of the Forums

- The Speaker of Lok Sabha is the President of all the Forums except the Parliamentary Forum on Population and Public Health wherein the Chairman of Rajya Sabha is the President and the Speaker is the Co-President.
- The Deputy Chairman of Rajya Sabha, the Deputy Speaker of Lok Sabha, the concerned Ministers and the Chairmen of Departmentally-Related Standing Committees are the ex- officio Vice-Presidents of the respective Forums.
- Each Forum consists of not more than 31 members (excluding the President and ex-officio Vice-Presidents) out of whom not more than 21 are from the Lok Sabha and not more than 10 are from the Rajya Sabha.
- Members (other than the President and Vice-Presidents) of these forums are nominated by the Speaker/Chairman from amongst the leaders of various political parties/groups or their nominees, who have special knowledge/keen interest in the subject.
- The duration of the office of members of the forum is co-terminus with their membership in the respective Houses. A member may also resign from the forum by writing to the Speaker/Chairman.
- The President of the forum appoints a member-convener for each forum to conduct regular, approved programmes/meetings of the forum in consultation with the President. The meetings of the forums are held from time to time, as may be necessary, during Parliament sessions.

Functions of the Forums

Parliamentary Forum on Water Conservation and Management

The functions of the forum are:

1. To identify problems relating to water and make suggestions/recommendations
2. for consideration and appropriate action by Government/organisations concerned
3. To identify the ways of involving members of Parliament in conservation and augmentation of water

INDIAN POLITY-M.LAXMIKANTH

resources in their respective states/constituencies

4. To organize seminars/workshops to create awareness for conservation and efficient management of water
5. To undertake such other related task as it may deem fit

Parliamentary Forum on Youth

The functions of this forum are:

To have focused deliberations on strategies to leverage human capital in the youth for accelerating development initiatives

1. To build greater awareness amongst public leaders and at the grass-roots level of the potential of youth for effecting socio-economic change
2. To interact on a regular basis with youth representatives and leaders, in order to better appreciate their hopes, aspirations, concerns and problems
3. To consider ways for improving Parliament's out-reach to different sections of youth, in order to reinforce their faith and commitment in democratic institutions and encourage their active participation therein
4. To hold consultations with experts, national and international academicians and government agencies concerned on redesigning of public policy in the matter of youth empowerment.

Parliamentary Forum on Children

The functions of the forum are:

1. To further enhance awareness and attention of Parliamentarians towards critical issues affecting children's wellbeing so that they may provide due leadership to ensure their rightful place in the development process
2. To provide a platform to Parliamentarians to exchange ideas, views, experiences, expert practices in relation to children, in a structured manner, through workshops, seminars, orientation programmes, etc.
3. To provide Parliamentarians an interface with civil society for highlighting children's issues, including, *inter-alia*, the voluntary sector, media and corporate sector, and thereby to foster effective strategic partnerships in this regard
4. To enable Parliamentarians to interact, in an institutionalised manner with specialised UN agencies like the UNICEF and other comparable multilateral agencies on expert reports, studies, news and trend-analyses, etc., world-wide, which are germane to developments in the sector
5. To undertake any other tasks, projects, assignments, etc., as the Forum may deem fit.

Parliamentary Forum on Population and Public Health

The functions of the forum are:

1. To have focused deliberations on strategies relating to population stabilisation and matters connected therewith
2. To discuss and prepare strategies on issues concerning public health
3. To build greater awareness in all sections of the society, particularly at the grass-root level, regarding population control and public health

INDIAN POLITY-M.LAXMIKANTH

- To hold comprehensive dialogue and discussion in the matter of population and public health with experts at the national and international levels and to have interactions with multilateral organisations like WHO, United Nations Population Fund, and academicians and government agencies concerned.

Parliamentary Forum on Global Warming and Climate Change

The functions of the forum are:

1. To identify problems relating to global warming and climate change and make suggestions/recommendations for consideration and appropriate action by the government/organisations concerned to reduce the extent of global warming
2. To identify the ways of involving members of Parliament to interact with specialists of national and international bodies working on global warming and climate change with increased effort to develop new technologies to mitigate global warming
3. To organise seminars/workshops to create awareness about the causes and effects of global warming and climate change among the members of Parliament
4. To identify the ways of involving members of Parliament to spread awareness to prevent global warming and climate change
5. To undertake such other related task as it may deem fit

Parliamentary Forum on Disaster Management

The functions of the forum are:

1. To identify and discuss the problems relating to disaster management
2. To equip the members of Parliament with the information and knowledge on disaster management, for making them aware of the seriousness of the issues involved and enabling them to adopt a result-oriented approach towards this critical issue

CONSTITUTIONAL BODIES

CONTENTS

1. *ELECTION COMMISSION OF INDIA*
2. *UNION PUBLIC SERVICE COMMISSION*
3. *STATE PUBLIC SERVICE COMMISSION*
4. *FINANCE COMMISSION*
5. *NATIONAL COMMISSION FOR SCs*
6. *NATIONAL COMMISSION FOR STs*
7. *SPECIAL OFFICER FOR LINGUISTIC MINORITIES*
8. *COMPTROLLER AND AUDITOR GENERAL OF INDIA*
9. *ATTORNEY GENERAL OF INDIA*
10. *ADVOCATE GENERAL OF THE STATE*

ELECTION COMMISSION OF INDIA

Election Commission of India is an important body in the World's Largest Democracy

- a permanent Constitutional Body.
- Article 324 of the Constitution establishes the Election Commission of India.
- established on 25th January 1950.
- supervises the conduct of elections to Parliament and Legislature of every State and elections to the offices of President and Vice-President of India.
- consists of Chief Election Commissioner and two Election Commissioners. Previously, there were no Election Commissioners.

Appointment of Election Commissioners

- The President appoints Chief Election Commissioner and Election Commissioners.
- tenure of six years, or up to the age of 65 years, whichever is earlier.
- status, salary and perks of election commissioners are equivalent to Judges of the Supreme Court of India.
- The Chief Election Commissioner can be removed from office only through impeachment by Parliament.
- Other members can be removed by the President in consultation with the Chief Election Commissioner
- The President may appoint Regional Election Commissioners in consultation with the CEC before elections to the Parliament or Assemblies. The regional election commissioners resign after the elections
- The Chief Election Commissioner cannot hold any office of profit after retirement.
- The Chief Election Commissioner cannot be reappointed to the post

Powers of the Election Commission

- The EC enjoys complete autonomy and is insulated from any interference from the Executive
- It also functions as a quasi-judiciary body regarding matters related to elections and electoral disputes
- Its recommendations are binding on the President of India
- However, its decisions are subject to judicial review by High Courts and the Supreme Court acting on electoral petitions
- During the election process, the entire Central and state government machinery (including paramilitary and police forces) is deemed to be on deputation to the Commission
- The Commission takes effective control of government personnel, movable and immovable property for successful conduct of elections

Functions of the Election Commission

- Demarcation of constituencies
- Preparation of electoral rolls
- Issue notification of election dates and schedules
- Establish and enforce code of conduct
- Scrutiny of nomination papers of candidates
- Scrutiny of election expenses
- Allot symbols and accord recognition to political parties
- Render advice to the President and Governors regarding disqualification of MPs and MLAs
- Allot schedules for broadcast and telecast of party campaigns
- Grant exemptions to persons from disqualifications imposed by judicial decisions

UNION PUBLIC SERVICE COMMISSION

- the central recruiting agency in India
- independent constitutional body in the sense that it has been directly created by the Constitution
- Articles 315 to 323 in Part XIV of the Constitution contain elaborate provisions regarding the composition, appointment and removal of members along with the independence, powers and functions of the UPSC

Chairman and Members

- The Chairman and other members of a Public Service Commission are appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State:
- As nearly as one-half of the members of every Public Service Commission shall be persons who have held office for at least ten year either under the Government of India or under the Government of a State
- The chairman and members of the Commission hold office for a term of six years or until they attain the age of 65 years, whichever is earlier.

Removal

- Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court on reference being made to it by the President had held an inquiry and recommended removal.
- removed from office by the president only in the manner and on the grounds mentioned in the Constitution
- enjoy security of tenure
- (a) The entire expenses including the salaries, allowances and pensions of the chairman and members of the UPSC are charged on the Consolidated Fund of India. Thus, they are not subject to vote of Parliament.
- (b) The chairman of UPSC (on ceasing to hold office) is not eligible for further employment in the Government of India or a state.
- (c) A member of UPSC (on ceasing to hold office) is eligible for appointment as the chairman of UPSC or a State Public Service Commission (SPSC), but not for any other employment in the Government of India or a state.
- The chairman or a member or UPSC is (after having completed his first term) not eligible for reappointment to that office (i.e., not eligible for second term).

In short, the functions are

Functions of the UPSC are to conduct examinations for appointment to the services of the Union.

- Recruitment to services & posts under the Union through conduct of competitive examinations;
- Recruitment to services & posts under the Central Government by selection through Interviews;
- Advising on the suitability of officers for appointment on promotion as well as transfer-on-deputation;
- Advising the Government on all matter relating to methods of Recruitment to various services and posts;
- Disciplinary cases relating to different civil services: and

INDIAN POLITY-M.LAXMIKANTH

- Miscellaneous matters, relating to grant to extra ordinary pensions, reimbursement of legal expenses etc.
 - ✓ The Supreme Court has held that if the government fails to consult UPSC in the matters (mentioned above), the aggrieved public servant has no remedy in a court.
 - ✓ In other words, the court held that any irregularity in consultation with the UPSC or acting without consultation does not invalidate the decision of the government.
 - ✓ Thus, the provision is directory and not mandatory. Similarly, the court held that a selection by the UPSC does not confer any right to the post upon the candidate.
 - ✓ However, the government is to act fairly and without arbitrariness or malafides.
 - ✓ The additional functions relating to the services of the Union can be conferred on UPSC by the Parliament.
 - ✓ It can also place the personnel system of any authority, corporate body or public institution within the jurisdiction of the UPSC.
 - ✓ Hence the jurisdiction of UPSC can be extended by an act made by the Parliament.
 - ✓ The UPSC presents, annually, to the president a report on its performance.
 - ✓ The President places this report before both the Houses of Parliament, along with a memorandum explaining the cases where the advice of the Commission was not accepted and the reasons for such non-acceptance.
 - ✓ All such cases of non-acceptance must be approved by the Appointments Committee of the Union cabinet.
 - ✓ An individual ministry or department has no power to reject the advice of the UPSC.

Limitations

The UPSC is not consulted on the following matters:

- (a) While making reservations of appointments or posts in favour of any backward class of citizens.
 - (b) While taking into consideration the claims of scheduled castes and scheduled tribes in making appointments to services and posts.
 - (c) With regard to the selections for chairmanship or membership of commissions or tribunals, posts of the highest diplomatic nature and a bulk of group C and group D services.
 - (d) With regard to the selection for temporary or officiating appointment to a post if the person appointed is not likely to hold the post for more than a year.
- ✓ The president can exclude posts, services and matters from the purview of the UPSC.
 - ✓ The Constitution states that the president, in respect to the all-India services and Central services and posts may make regulations specifying the matters in which, it shall not be necessary for UPSC to be consulted.
 - ✓ But all such regulations made by the president shall be laid before each House of Parliament for at least 14 days.
 - ✓ The Parliament can amend or repeal them.
 - ✓ The Constitution visualises the UPSC to be the 'watch-dog of merit system' in India.

STATE PUBLIC SERVICE COMMISSION

- ✓ All are same except, A State Public Service Commission consists of a chairman and other members appointed by the governor of the state.
- ✓ The Constitution does not specify the strength of the Commission but has left the matter to the discretion of the Governor
- ✓ The chairman and members of the Commission hold office for a term of six years or until they attain the age of 62 years, whichever is earlier (in the case of UPSC, the age limit is 65 years).

JOINT STATE PUBLIC SERVICE COMMISSION

- ✓ The Constitution makes a provision for the establishment of a Joint State Public Service Commission (JSPSC) for two or more states.
- ✓ While the UPSC and the SPSC are created directly by the Constitution, a JSPSC can be created by an act of Parliament on the request of the state legislatures concerned.
- ✓ JSPSC is a statutory and not a constitutional body.
- ✓ The two states of Punjab and Haryana had a JSPSC for a short period, after the creation of Haryana out of Punjab in 1966.
- ✓ The chairman and members of a JSPSC are appointed by the president.
- ✓ They hold office for a term of six years or until they attain the age of 62 years, whichever is earlier.
- ✓ They can be suspended or removed by the president.
- ✓ They can also resign from their offices at any time by submitting their resignation letters to the president.
- ✓ The number of members of a JSPSC and their conditions of service are determined by the president.
- ✓ A JSPSC presents its annual performance report to each of the concerned state governors. Each governor places the report before the state legislature.
- ✓ The UPSC can also serve the needs of a state on the request of the state governor and with the approval of the president.
- ✓ As provided by the Government of India Act of 1919, a Central Public Service Commission was set up in 1926 and entrusted with the task of recruiting civil servants.
- ✓ The Government of India Act of 1935 provided for the establishment of not only a Federal Public Service Commission but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.

FINANCE COMMISSION

- ✓ Article 280 of the Constitution of India provides for a Finance Commission as a quasi-judicial body.
- ✓ It is constituted by the president of India every fifth year or at such earlier time as he considers necessary

Composition

- ✓ The Finance Commission consists of a chairman and four other members to be appointed by the

INDIAN POLITY-M.LAXMIKANTH

president. They hold office for such period as specified by the president in his order.

- ✓ eligible for reappointment.
- ✓ The Constitution authorises the Parliament to determine the qualifications of members of the commission and the manner in which they should be selected.
- ✓ Accordingly, the Parliament has specified the qualifications of the chairman and members of the commission.
- ✓ The chairman should be a person having experience in public affairs and the four other members should be selected from amongst the following:
 1. A judge of high court or one qualified to be appointed as one.
 2. A person who has specialized knowledge of finance and accounts of the government.
 3. A person who has wide experience in financial matters and in administration.
 4. A person who has special knowledge of economics

Functions

The Finance Commission is required to make recommendations to the president of India on the following matters:

1. The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states of the respective shares of such proceeds The principles that should govern the grants-in-aid to the states by the Centre (i.e., out of the consolidated fund of India).
2. The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the state finance commission.
3. Any other matter referred to it by the president in the interests of sound finance.

Advisory Role

- ✓ the recommendations made by the Finance Commission are only of advisory nature and hence, not binding on the government.
- ✓ It is up to the Union government to implement its recommendations on granting money to the states.
- ✓ 'It is nowhere laid down in the Constitution that the recommendations of the commission shall be binding upon the Government of India or that it would give rise to a legal right in favour of the beneficiary states to receive the money recommended to be offered to them by the Commission'.

Impact of Planning Commission (Now NITI Ayog)

- ✓ The Constitution of India envisages the Finance commission as the balancing wheel of fiscal federalism in India.
- ✓ However, its role in the Centre–state fiscal relations has been undermined by the emergence of the Planning Commission, a non-constitutional and a non-statutory body.
- ✓ Dr P V Rajamannar, the Chairman of the Fourth Finance commission, highlighted the overlapping of functions and responsibilities between the Finance Commission and the Planning Commission in federal fiscal transfers in the following way:
 - ✓ It is the setting up of the Planning Commission that has in practice restricted the scope and functions of the Finance Commission. I say 'in practice' because there has been no amendment of the

INDIAN POLITY-M.LAXMIKANTH

Constitution to confine the functions of the Finance Commission to merely ascertain and cover the revenue gap of each state, on a review of the forecast of revenue and expenditure furnished by the state.

✓ The reference in Article 275 to grants-in-aid to the revenues of states is not confined to revenue expenditure only.

✓ There is no legal warrant for excluding from the scope of the Finance Commission all capital grants; even the capital requirements of a state may be properly met by grants-in-aid under Article 275, made on the recommendations of the Finance Commission.

✓ The legal position, therefore, is that there is nothing in the Constitution to prevent the finance commission from taking into consideration both capital and revenue requirements of the states in formulating a scheme of devolution and in recommending grants under Article 275 of the Constitution.

✓ But the setting up of Planning Commission in-avoidably has led to a duplication and overlapping of functions, to avoid which a practice has grown which has resulted in the curtailment of the functions of the finance commission.

✓ As the entire plan, with regard to both policy and programme, comes within the purview of the Planning Commission and as the assistance to be given by the Centre for plan projects either by way of grants or loans is practically dependent on the recommendations of the Planning Commission, it is obvious that a body like the Finance Commission cannot operate in the same field.

✓ The main functions of the Finance Commission now consist in determining the revenue gap of each state and providing for filling up the gap by a scheme of devolution, partly by a distribution of taxes and duties and partly by grants-in-aid.

✓ We, therefore, recommend that in future the Finance Commission may be asked to make recommendations on the principles which should govern the distribution of plan grants to the states. In order that the Finance Commission may be able to make such recommendations, it will be necessary that it should have before it an outline of the Five Year Plan as prepared by the Planning Commission.

✓ The appointment of the Finance Commission will, therefore, have to be so timed that it will have before it this outline before it finalizes its recommendations.

✓ While the principles governing the distribution of the plan grants will be set out by the Finance Commission, the application of these principles from year to year will be left to the Planning Commission and the Government.

Till Now -14th Finance Commission appointed so far starting from 1952-1957 to 2015-2020-Y.V. Reddy Chairman-14th FC

NATIONAL COMMISSION FOR SCs

- ✓ a constitutional body in the sense that it is directly established by Article 338 of the Constitution.
- ✓ On the other hand, the other national commissions like the National Commission for Women (1992), the National Commission for Minorities (1993), the National Commission for Backward Classes (1993), the National Human Rights Commission (1993) and the National Commission for Protection of Child Rights (2007) are statutory bodies in the sense that they are established

INDIAN POLITY-M.LAXMIKANTH

by acts of the Parliament

Evolution of the Commission

- ✓ Originally, Article 338 of the Constitution provided for the appointment of a Special Officer for Scheduled Castes (SCs) and Scheduled Tribes (STs) to investigate all matters relating to the constitutional safeguards for the SCs and STs and to report to the President on their working.
- ✓ He was designated as the Commissioner for SCs and STs and assigned the said duty.
- ✓ In 1978, the Government (through a Resolution) set up a non-statutory multi-member Commission for SCs and STs; the Office of Commissioner for SCs and STs also continued to exist.
- ✓ In 1987, the Government (through another Resolution) modified the functions of the Commission and renamed it as the National Commission for SCs and STs.
- ✓ Later, the 65th Constitutional Amendment Act of 1990 provided for the establishment of a high level multi-member National Commission for SCs and STs in the place of a single Special Officer for SCs and STs.
- ✓ This constitutional body replaced the Commissioner for SCs and STs as well as the Commission set up under the Resolution of 1987.
- ✓ Again, the 89th Constitutional Amendment Act of 2003 bifurcated the combined National Commission for SCs and STs into two separate bodies, namely, National Commission for Scheduled
- ✓ Castes (under Article 338) and National Commission for Scheduled Tribes (under Article 338-A).
- ✓ The separate National Commission for SCs came into existence in 2004.
- ✓ It consists of a chairperson, a vice-chairperson and three other members.
- ✓ They are appointed by the President by warrant

Report of the Commission

- ✓ The commission presents an annual report to the president. It can also submit a report as and when it thinks necessary.
- ✓ The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission.
- ✓ The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.
- ✓ The President also forwards any report of the Commission pertaining to a state government to the state governor.
- ✓ The governor places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission.
- ✓ The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

Powers of the Commission

- ✓ The Commission is vested with the power to regulate its own procedure.
- ✓ The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:
 - (a) summoning and enforcing the attendance of any person from any part of India and examining

INDIAN POLITY-M.LAXMIKANTH

him on oath;

- (b) requiring the discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record from any court or office issuing summons for the examination of witnesses and documents; and
 - (e) any other matter which the President may determine.
- ✓ The Central government and the state governments are required to consult the Commission on all major policy matters affecting the SCs.
 - ✓ The Commission is also required to discharge similar functions with regard to the other backward classes (OBCs) and the Anglo-Indian Community as it does with respect to the SCs.
 - ✓ In other words, the Commission has to investigate all matters relating to the constitutional and other legal safeguards for the OBCs and the Anglo-Indian Community and report to the President upon their working.

NATIONAL COMMISSION FOR STs

- ✓ Like the National Commission for Schedules Castes (SCs), the National Commission for Scheduled Tribes (STs) is also a constitutional body in the sense that it is directly established by Article 338-A of the Constitution.

Separate Commission for STs

- ✓ The National Commission for SCs and STs came into being consequent upon passing of the 65th Constitutional Amendment Act of 1990.
- ✓ The Commission was established under Article 338 of the Constitution with the objective of monitoring all the safeguards provided for the SCs and STs under the Constitution or other laws.
- ✓ Geographically and culturally, the STs are different from the SCs and their problems are also different from those of SCs.
- ✓ In 1999, a new Ministry of Tribal Affairs was created to provide a sharp focus to the welfare and development of the STs.
- ✓ It was felt necessary that the Ministry of Tribal Affairs should co-ordinate all activities relating to the STs as it would not be administratively feasible for the Ministry of Social Justice and Empowerment to perform this role.
- ✓ Hence, in order to safeguard the interests of the STs more effectively, it was proposed to set up a separate National Commission for STs by bifurcating the existing combined National Commission for SCs and STs. This was done by passing the 89th Constitutional Amendment Act of 2003.
- ✓ This Act further amended Article 338 and inserted a new Article 338-A in the Constitution.
- ✓ The separate National Commission for STs came into existence in 2004.
- ✓ It consists of a chairperson, a vice-chairperson and three other members.
- ✓ They are appointed by the President by warrant under his hand and seal.
- ✓ Their conditions of service and tenure of office are also determined by the President

Functions of the Commission

INDIAN POLITY-M.LAXMIKANTH

The functions of the Commission are:

- (a) To investigate and monitor all matters relating to the constitutional and other legal safeguards for the STs and to evaluate their working;
- (b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the STs;
- (c) To participate and advise on the planning process of socio-economic development of the STs and to evaluate the progress of their development under the Union or a state;
- (d) To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards;
- (e) To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the STs; and
- (f) To discharge such other functions in relation to the protection, welfare and development and advancement of the STs as the President may specify.

Other Functions of the Commission

In 2005, the President specified the following other functions of the Commission in relation to the protection, welfare and development and advancement of the STs:

- (i) Measures to be taken over conferring ownership rights in respect of minor forest produce to STs living in forest areas
- (ii) Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc., as per law
- (iii) Measures to be taken for the development of tribals and to work for more viable livelihood strategies
- (iv) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects
- (v) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place
- (vi) Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation
- (vii) Measures to be taken to ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996
- (viii) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribals that lead to their continuous disempowerment and degradation of land and the environment

Report of the Commission

- ✓ The Commission presents an annual report to the President. It can also submit a report as and when it thinks necessary.
- ✓ The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission.

INDIAN POLITY-M.LAXMIKANTH

- ✓ The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.
- ✓ The President also forwards any report of the Commission pertaining to a state government to the state governor.
- ✓ The governor places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission.
- ✓ The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

Powers of the Commission

- ✓ The Commission is vested with the power to regulate its own procedure.
- ✓ The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:
 - (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
 - (b) requiring the discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record from any court or office;
 - (e) issuing summons for the examination of witnesses and documents; and
 - (f) any other matter which the President may determine.
- ✓ The Central government and the state governments are required to consult the Commission on all major policy matters affecting the STs.

SPECIAL OFFICER FOR LINGUISTIC MINORITIES

Constitutional Provisions

- ✓ Originally, the Constitution of India did not make any provision with respect to the Special Officer for Linguistic Minorities.
- ✓ Later, the States Reorganisation Commission (1953-55) made a recommendation in this regard.
- ✓ Accordingly, the Seventh Constitutional Amendment Act of 1956 inserted a new Article 350-B in Part XVII of the Constitution.
 - ✓ This article contains the following provisions:
 1. There should be a Special Officer for Linguistic Minorities. He is to be appointed by the President of India.
 2. It would be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution³. He would report to the President upon those matters at such intervals as the President may direct. The President should place all such reports before each House of Parliament and send to the governments of the states concerned.
 - ✓ It must be noted here that the Constitution does not specify the qualifications, tenure, salaries and allowances, service conditions and procedure for removal of the Special Officer for Linguistic Minorities.

Commissioner for Linguistic Minorities

- ✓ In pursuance of the provision of Article 350-B of the Constitution, the office of the Special Officer for Linguistic Minorities was created in 1957.
- ✓ He is designated as the Commissioner for Linguistic Minorities.
- ✓ The Commissioner has his headquarters at Allahabad (Uttar Pradesh).
- ✓ He has three regional offices at Belgaum (Karnataka), Chennai (Tamil Nadu) and Kolkata (West Bengal).
- ✓ Each is headed by an Assistant Commissioner.
- ✓ The Commissioner is assisted at headquarters by Deputy Commissioner and an Assistant Commissioner.
- ✓ He maintains liaison with the State Governments and Union Territories through nodal officers appointed by them.
- ✓ At the Central level, the Commissioner falls under the Ministry of Minority Affairs. Hence, he submits the annual reports or other reports to the President through the Union Minority Affairs Minister.

Role

- ✓ The Commissioner takes up all the matters pertaining to the grievances arising out of the non-implementation of the Constitutional and Nationally Agreed Scheme of Safeguards provided to linguistic minorities that come to its notice or are brought to its knowledge by the linguistic minority individuals, groups, associations or organisations at the highest political and administrative levels of the state governments and UT administrations and recommends remedial actions to be taken.
- ✓ To promote and preserve linguistic minority groups, the Ministry of Minority Affairs has requested the State Governments / Union Territories to give wide publicity to the constitutional safeguards provided to linguistic minorities and to take necessary administrative measures.
- ✓ The state governments and UT Administrations were urged to accord priority to the implementation of the scheme of safeguards for linguistic minorities.
- ✓ The Commissioner launched a 10 point programme to lend fresh impetus to Governmental efforts towards the preservation of the language and culture of linguistic minorities.

Vision and Mission

Vision

- ✓ Streamlining and strengthening implementation machinery and mechanism for effective implementation of the Constitutional safeguards for the Linguistic Minorities, thereby ensuring protection of the rights of speakers of the minority languages so as to provide them equal opportunities for inclusive and integrated development.

Mission

- ✓ To ensure that all the states / U.T.s effectively implement the Constitutional safeguards and the nationally agreed scheme of safeguards for the linguistic minorities for providing them equal opportunities for inclusive development.

Functions and Objectives

Functions

1. To investigate all matters related to safeguards provided to the linguistic minorities To submit to the President of India, the reports on the status of implementation of the Constitutional and the nationally agreed safeguards for the linguistic minorities
2. To monitor the implementation of safeguards through questionnaires, visits, conferences, seminars, meetings, review mechanism, etc

Objectives

1. To provide equal opportunities to the linguistic minorities for inclusive development and national integration
2. To spread awareness amongst the linguistic minorities about the safeguards available to them
3. To ensure effective implementation of the safeguards provided for the linguistic minorities in the Constitution and other safeguards, which are agreed to by the states / U.T.s
4. To handle the representations for redress of grievances related to the safeguards for linguistic minorities

COMPTROLLER AND AUDITOR GENERAL OF INDIA

- ✓ The Constitution of India (Article 148) provides for an independent office of the Comptroller and Auditor General of India (CAG).
- ✓ He is the head of the Indian Audit and Accounts Department.
- ✓ He is the guardian of the public purse and controls the entire financial system of the country at both the levels—the Centre and the state.
- ✓ His duty is to uphold the Constitution of India and laws of Parliament in the field of financial administration.
- ✓ This is the reason why Dr B R Ambedkar said that the CAG shall be the most important Officer under the Constitution of India.
- ✓ He is one of the bulwarks of the democratic system of government in India; the others being the Supreme Court, the Election Commission and the Union Public Service Commission.

Appointment and Term

- ✓ The CAG is appointed by the president of India by a warrant under his hand and seal.
- ✓ The CAG, before taking over his office, makes and subscribes before the president an oath or affirmation:
 1. to bear true faith and allegiance to the Constitution of India;
 2. to uphold the sovereignty and integrity of India;
 3. to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of his office without fear or favour, affection or ill-will; and
 4. to uphold the Constitution and the laws.
- ✓ He holds office for a period of six years or upto the age of 65 years, whichever is earlier.
- ✓ He can resign any time from his office by addressing the resignation letter to the president.
- ✓ He can also be removed by the president on same grounds and in the same manner as a judge of the Supreme Court.
- ✓ In other words, he can be removed by the president on the basis of a resolution passed to that

INDIAN POLITY-M.LAXMIKANTH

effect by both the Houses of Parliament with special majority, either on the ground of proved misbehavior or incapacity.

Independence

The Constitution has made the following provisions to safeguard and ensure the independence of CAG:

1. He is provided with the security of tenure. He can be removed by the president only in accordance with the procedure mentioned in the Constitution. Thus, he does not hold his office till the pleasure of the president, though he is appointed by him.
2. He is not eligible for further office, either under the Government of India or of any state, after he ceases to hold his office.
3. His salary and other service conditions are determined by the Parliament. His salary is equal to that of a judge of the Supreme Court.
4. Neither his salary nor his rights in respect of leave of absence, pension or age of retirement can be altered to his disadvantage after his appointment.
5. The conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the CAG are prescribed by the president after consultation with the CAG.
6. The administrative expenses of the office of the CAG, including all salaries, allowances and pensions of persons serving in that office are charged upon the Consolidated Fund of India. Thus, they are not subject to the vote of Parliament.
7. Further, no minister can represent the CAG in Parliament (both Houses) and no minister can be called upon to take any responsibility for any actions done by him.

Duties and Powers

- ✓ The Constitution (Article 149) authorises the Parliament to prescribe the duties and powers of the CAG in relation to the accounts of the Union and of the states and of any other authority or body.
 - ✓ Accordingly, the Parliament enacted the CAG's (Duties, Powers and Conditions of Service) act, 1971.
 - ✓ This Act was amended in 1976 to separate accounts from audit in the Central government.
- The duties and functions of the CAG as laid down by the Parliament and the Constitution are:

1. audits the accounts related to all expenditure from the Consolidated Fund of India, consolidated fund of each state and consolidated fund of each union territory having a Legislative Assembly.
2. audits all expenditure from the Contingency Fund of India and the Public Account of India as well as the contingency fund of each state and the public account of each state.
3. audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by any department of the Central Government and state governments.
4. audits the receipts and expenditure of the Centre and each state to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue.
5. audits the receipts and expenditure of the following:

INDIAN POLITY-M.LAXMIKANTH

- (a) All bodies and authorities substantially financed from the Central or state revenues;
 - (b) Government companies; and Other corporations and bodies, when so required by related laws.
6. audits all transactions of the Central and state governments related to debt, sinking funds, deposits, advances, suspense accounts and remittance business. He also audits receipts, stock accounts and others, with approval of the President, or when required by the President.
 7. audits the accounts of any other authority when requested by the President or Governor. For example, the audit of local bodies.
 8. advises the President with regard to prescription of the form in which the accounts of the Centre and the states shall be kept (Article 150).
 9. submits his audit reports relating to the accounts of the Centre to President, who shall, in turn, place them before both the Houses of Parliament (Article 151).
 10. submits his audit reports relating to the accounts of a state to governor, who shall, in turn, place them before the state legislature (Article 151).
 11. ascertains and certifies the net proceeds of any tax or duty (Article 279). His certificate is final. The 'net proceeds' means the proceeds of a tax or a duty minus the cost of collection.
 12. acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament.
 13. compiles and maintains the accounts of state governments. In 1976, he was relieved of his responsibilities with regard to the compilation and maintenance of accounts of the Central Government due to the separation of accounts from audit, that is, departmentalisation of accounts.
 - ✓ The CAG submits three audit reports to the President—audit report on appropriation accounts, audit report on finance accounts, and audit report on public undertakings.
 - ✓ The President lays these reports before both the Houses of Parliament.
 - ✓ After this, the Public Accounts Committee examines them and reports its findings to the Parliament.
- ✓ The appropriation accounts compare the actual expenditure with the expenditure sanctioned by the Parliament through the Appropriation Act, while the finance accounts show the annual receipts and disbursements of the Union government.

Role

- ✓ The role of CAG is to uphold the Constitution of India and the laws of Parliament in the field of financial administration.
- ✓ The accountability of the executive (i.e., council of ministers) to the Parliament in the sphere of financial administration is secured through audit reports of the CAG.
- ✓ The CAG is an agent of the Parliament and conducts audit of expenditure on behalf of the Parliament.
- ✓ Therefore, he is responsible only to the Parliament.
- ✓ The CAG has more freedom with regard to audit of expenditure than with regard to audit of receipts, stores and stock. "Whereas in relation to expenditure he decides the scope of audit and frames his own audit codes and manuals, he has to proceed with the approval of the executive government in relation to rules for the conduct of the other audits."

INDIAN POLITY-M.LAXMIKANTH

- ✓ The CAG has 'to ascertain whether money shown in the accounts as having been disbursed was legally available for and applicable to the service or the purpose to which they have been applied or charged and whether the expenditure conforms to the authority that governs it'.
- ✓ In addition to this legal and regulatory audit, the CAG can also conduct the propriety audit, that is, he can look into the 'wisdom, faithfulness and economy' of government expenditure and comment on the wastefulness and extravagance of such expenditure.
- ✓ However, unlike the legal and regulatory audit, which is obligatory on the part of the CAG, the propriety audit is discretionary.
- ✓ The secret service expenditure is a limitation on the auditing role of the CAG. In this regard, the CAG cannot call for particulars of expenditure incurred by the executive agencies, but has to accept a certificate from the competent administrative authority that the expenditure has been so incurred under his authority.
- ✓ The Constitution of India visualises the CAG to be Comptroller as well as Auditor General. However, in practice, the CAG is fulfilling the role of an Auditor-General only and not that of a Comptroller.
- ✓ In other words, 'the CAG has no control over the issue of money from the consolidated fund and many departments are authorised to draw money by issuing cheques without specific authority from the CAG, who is concerned only at the audit stage when the expenditure has already taken place'.
- ✓ In this respect, the CAG of India differs totally from the CAG of Britain who has powers of both Comptroller as well as Auditor General.
- ✓ In other words, in Britain, the executive can draw money from the public exchequer only with the approval of the CAG.

CAG and Corporations

- ✓ The role of CAG in the auditing of public corporations is limited. Broadly speaking, his relationship with the public corporations falls into the following three categories:
 - (i) Some corporations are audited totally and directly by the CAG, for example, Damodar Valley Corporation, Oil and Natural Gas Commission, Air India, Indian Airlines Corporation, and others.
 - (ii) Some other corporations are audited by private professional auditors who are appointed by the Central Government in consultation with the CAG. If necessary, the CAG can conduct supplementary audit. The examples are, Central Warehousing Corporation, Industrial Finance Corporation, and others.
 - (iii) Some other corporations are totally subjected to private audit. In other words, their audit is done exclusively by private professional auditors and the CAG does not come into the picture at all. They submit their annual reports and accounts directly to the Parliament. Examples of such corporations are Life Insurance Corporation of India, Reserve Bank of India, State Bank of India, Food Corporation of India, and others.
- ✓ The role of the CAG in the auditing of Government companies is also limited.
- ✓ They are audited by private auditors who are appointed by the Government on the advise of the CAG.
- ✓ The CAG can also undertake supplementary audit or test audit of such companies.

INDIAN POLITY-M.LAXMIKANTH

- ✓ In 1968, an Audit Board was established as a part of the office of CAG to associate outside specialists and experts to handle the technical aspects of audit of specialised enterprises like engineering, iron and steel, chemicals and so on.
- ✓ This board was established on the recommendations of the Administrative Reforms Commission of India.
- ✓ It consists of a Chairman and two members appointed by the CAG.

ATTORNEY GENERAL OF INDIA

- ✓ The Constitution (Article 76) has provided for the office of the Attorney General for India.
- ✓ the highest law officer in the country.

Appointment and Term

- ✓ appointed by the president.
- ✓ must be a person who is qualified to be appointed a judge of the Supreme Court.
- ✓ In other words, he must be a citizen of India and he must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist, in the opinion of the president.
- ✓ The term of office of the AG is not fixed by the Constitution. Further, the Constitution does not contain the procedure and grounds for his removal.
- ✓ He holds office during the pleasure of the president.
- ✓ This means that he may be removed by the president at any time.
- ✓ He may also quit his office by submitting his resignation to the president.
- ✓ Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.
- ✓ The remuneration of the AG is not fixed by the Constitution. He receives such remuneration as the president may determine.

Duties and Functions

As the chief law officer of the Government of India, the duties of the AG include the following:

1. To give advice to the Government of India upon such legal matters, which are referred to him by the president.
2. To perform such other duties of a legal character that are assigned to him by the president.
 1. To discharge the functions conferred on him by the Constitution or any other law.
 2. The president has assigned the following duties to the AG: To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
3. To represent the Government of India in any reference made by the president to the Supreme Court under Article 143 of the Constitution.
4. To appear (when required by the Government of India) in any high court in any case in which the Government of India is concerned.

Rights and Limitations

- ✓ In the performance of his official duties, the Attorney General has the right of audience in all

INDIAN POLITY-M.LAXMIKANTH

courts in the territory of India.

- ✓ Further, he has the right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting and any committee of the Parliament of which he may be named a member, but without a right to vote.
- ✓ He enjoys all the privileges and immunities that are available to a member of Parliament.

Following limitations are placed on the Attorney General in order to avoid any complication and conflict of duty:

1. He should not advise or hold a brief against the Government of India.
 2. He should not advise or hold a brief in cases in which he is called upon to advise or appear for the Government of India.
 3. He should not defend accused persons in criminal prosecutions without the permission of the Government of India.
 4. He should not accept appointment as a director in any company or corporation without the permission of the Government of India.
- ✓ However, the Attorney General is not a full-time counsel for the Government.
 - ✓ He does not fall in the category of government servants. Further, he is not debarred from private legal practice.

SOLICITOR GENERAL OF INDIA

- ✓ In addition to the AG, there are other law officers of the Government of India.
- ✓ They are the solicitor general of India and additional solicitor general of India.
- ✓ They assist the AG in the fulfilment of his official responsibilities.
- ✓ It should be noted here that only the office of the AG is created by the Constitution.
- ✓ In other words, Article 76 does not mention about the solicitor general and additional solicitor general.
- ✓ The AG is not a member of the Central cabinet.
- ✓ There is a separate law minister in the Central cabinet to look after legal matters at the government level.

ADVOCATE GENERAL OF THE STATE

- ✓ The Constitution (Article 165) has provided for the office of the advocate general for the states.
- ✓ the highest law officer in the state. Thus he corresponds to the Attorney General of India.

Appointment and Term

- ✓ The advocate general is appointed by the governor.
- ✓ must be a person who is qualified to be appointed a judge of a high court.
- ✓ must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years.
- ✓ The term of office of the advocate general is not fixed by the Constitution.
- ✓ Further, the Constitution does not contain the procedure and grounds for his removal.
- ✓ holds office during the pleasure of the governor.
- ✓ This means that he may be removed by the governor at any time. He may also quit his office by

INDIAN POLITY-M.LAXMIKANTH

submitting his resignation to the governor.

- ✓ Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.
- ✓ The remuneration of the advocate general is not fixed by the Constitution.
- ✓ He receives such remuneration as the governor may determine.

Duties and Functions

As the chief law officer of the government in the state, the duties of the advocate general include the following:

1. To give advice to the government of the state upon such legal matters which are referred to him by the governor.
 2. To perform such other duties of a legal character that are assigned to him by the governor.
 3. To discharge the functions conferred on him by the Constitution or any other law.
- ✓ entitled to appear before any court of law within the state.
 - ✓ he has the right to speak and to take part in the proceedings of both the Houses of the state legislature or any committee of the state legislature of which he may be named a member, but without a right to vote.
 - ✓ enjoys all the privileges and immunities that are available to a member of the state legislature.

NON-CONSTITUTIONAL BODIES

CONTENTS

- 1. PLANNING COMMISSION*
 - 2. NATIONAL DEVELOPMENT COUNCIL*
 - 3. NATIONAL HUMAN RIGHT COMMISSION*
 - 4. STATE HUMAN RIGHT COMMISSION*
 - 5. CENTRAL INFORMATION COMMISSION*
 - 6. STATE INFORMATION COMMISSION*
 - 7. CENTRAL VIGILANCE COMMISSION*
 - 8. CENTRAL BUREAU OF INVESTIGATION*
 - 9. LOKPAL AND LOKYUKTA*
-

PLANNING COMMISSION

- Established in March 1950 by an executive resolution of the Government of India, (i.e., union cabinet) on the recommendation of the Advisory Planning Board constituted in 1946, under the chairmanship of K C Neogi.
- neither a constitutional body nor a statutory body.
- a non-constitutional or extra-constitutional body (i.e., not created by the Constitution) and a non-statutory body (not created by an act of Parliament).
- the supreme organ of planning for social and economic development

Functions

The functions of the Planning Commission include the following:

1. assessment of material, capital and human resources and investigate the possibilities of augmenting them.
2. formulate plan for the most effective and balanced utilisation of the country's resources.
3. determine priorities and to define stages in which the plan should be carried out.
4. indicate the factors that retard economic development.
5. determine the nature of the machinery required for successful implementation of the plan in each stage.
6. appraise, from time to time, the progress achieved in execution of the plan and to recommend necessary adjustments.
7. make appropriate recommendations for facilitating the discharge of its duties, or on a matter referred to it for advice by Central or state governments.

The Allocation of Business Rules have assigned the following matters (in addition to the above) to the Planning Commission:

1. Public Co-operation in National Development Specific programmes for area development notified from time to time
2. Perspective Planning
3. Institute of Applied Manpower Research
4. Unique Identification Authority of India (UIDAI)
5. All matters relating to National Rainfed Area Authority (NRAA)
 - Earlier, the National Informatics Centre was also under the Planning Commission. Later brought under the Ministry of Information Technology.
 - The Unique Identification Authority of India (UIDAI) has been constituted in January, 2009 as an attached office under aegis of Planning Commission.
 - the transfer of National Rainfed Area Authority (NRAA) from Ministry of Agriculture to the Planning Commission, all matters relating to the NRAA will henceforth be looked after by Planning Commission.
 - only a staff agency—an advisory body and has no executive responsibility.
 - not responsible for taking and implementing decisions.
 - responsibility rests with the Central and state governments.

Composition

The following points can be noted in context of the composition (membership) of the Planning Commission:

1. Chairman-Prime Minister, presides over the meetings of the commission.
2. a deputy chairman. the *de facto* executive head (i.e., full-time functional head) of the commission.

Deputy Chairman-

- responsible for the formulation and submission of the draft Five-Year Plan to the Central cabinet.

INDIAN POLITY-M.LAXMIKANTH

- appointed by the Central cabinet for a fixed tenure and enjoys the rank of a cabinet minister.
- not a member of cabinet, he is invited to attend all its meeting (without a right to vote).
- 3. Central ministers are appointed as a part-time members of the commission.
- 4. the finance minister and planning minister are the *ex-officio* (by virtue of) members of the commission.
- 5. four to seven full-time expert members.
- 6. enjoy the rank of a minister of state.
- 7. a member-secretary, usually a senior member of IAS.
- **The state governments are not represented in the commission in any way. Thus, the Planning Commission is wholly a Centre-constituted body.**

Personnel

- The internal organisation of Planning Commission has dual hierarchy—administrative and technical.
- The administrative hierarchy is headed by the Secretary of the Planning Commission who is assisted by Joint Secretaries, Deputy Secretaries, Under Secretaries and other administrative and clerical staff.
- functionaries are drawn from the Indian Administrative Service, Indian Revenue Service, Central Secretariat Service, Indian Audit and Accounts Service and the other non-technical Central services.
- The technical hierarchy is headed by the Advisor who is assisted by Chiefs, Directors, Joint Directors and other technical staff.
- drawn from the Indian Economic Service, Indian Statistical Service, Central Engineering Service and other Central technical services.
- The Advisor is head of the technical division and enjoys the rank of either an Additional Secretary or a Joint Secretary.

Programme Evaluation Organisation

- The Programme Evaluation Organisation (PEO) was established in 1952 as an independent unit of the Planning Commission.
- functions under the general guidance and direction of the Planning Commission.
- The PEO is headed by a Director / Chief who is assisted by Joint Directors, Deputy Directors, Assistant Directors and other staff.
- The PEO has seven regional offices at Chennai, Hyderabad, Mumbai, Lucknow, Chandigarh, Jaipur and Kolkata. Each regional evaluation office of PEO is headed by a Deputy Director.
- The PEO undertakes an assessment of the implementation of development programmes and plans as contained in Five-Year Plans to provide, from time to time, feedback to the Planning Commission and executive agencies.
- provides technical advice to state evaluation organisations.

Critical evaluation

- originally established as a staff agency with advisory role but in the course of time it has emerged as a powerful and directive authority whereby its recommendations are considered both by the Union and states.
- The critics have described it as a 'Super Cabinet', an 'Economic Cabinet', a 'Parallel Cabinet', the 'Fifth Wheel of the Coach' and so on.

NATIONAL DEVELOPMENT COUNCIL

- established in August 1952 by an executive resolution of the Government of India on the recommendation of the first five year plan (draft outline).
- neither a constitutional body nor a statutory body.

Composition

INDIAN POLITY-M.LAXMIKANTH

The NDC is composed of the following members.

1. Prime minister of India (as its chairman/head).
2. All Union cabinet ministers (since 1967).
3. Chief Ministers of all states.
4. Chief ministers/administrators of all union territories.
5. Members of the Planning Commission.
 - The secretary of the Planning Commission acts as the secretary to the NDC.
 - It (NDC) is also provided with administrative and other assistance for its work by the Planning Commission.

Objectives

1. secure cooperation of states in the execution of the Plan.
2. strengthen and mobilise the efforts and resources of the nation in support of the Plan.
3. promote common economic policies in all vital spheres.
4. ensure balanced and rapid development of all parts of the country.

Functions

1. To prescribe guidelines for preparation of the national Plan.
2. To consider the national Plan as prepared by the Planning Commission.
3. To make an assessment of the resources that is required for implementing the Plan and to suggest measures for augmenting them.
4. To consider important questions of social and economic policy affecting national development.
5. To review the working of the national Plan from time to time.
6. To recommend measures for achievement of the aims and targets set out in the national Plan.
 - The Draft Five-Year Plan prepared by the Planning Commission is first submitted to the Union cabinet.
 - After its approval, it is placed before the NDC, for its acceptance.
 - Then, the Plan is presented to the Parliament.
 - With its approval, it emerges as the official Plan and published in the official gazette.
 - Therefore, the NDC is the highest body, below the Parliament, responsible for policy matters with regard to planning for social and economic development.
 - an advisory body to the Planning Commission and its recommendations are not binding.
 - makes its recommendations to the Central and state governments and should meet at least twice every year.

Critical Evaluation

- act as a bridge and link between the Central government, the state governments and the Planning Commission, especially in the field of planning, to bring about coordination of policies and programmes of plans.
- served as a forum for Centre–state deliberations on matters of national importance, and also as a device for sharing responsibility between them in the federal political system.
- However, two diametrically opposite views have been expressed on its working.
- On one hand, it has been described as a ‘Super Cabinet’ due to its wide and powerful composition, though its recommendations are only advisory and not binding, and can hardly be ignored as they are backed by a national mandate.
- On the other hand, it has been described as a mere ‘rubber stamp’ of the policy decisions already taken by the Union government.
- This is mainly due to the Congress Party rule both at the Centre and states for a long period.

INDIAN POLITY-M.LAXMIKANTH

- However, due to the emergence of regional parties in various states, the NDC is steadily acquiring its federal character and thus providing a greater say to the states in the preparation of national plans.

NATIONAL HUMAN RIGHT COMMISSION

Establishment of the Human Rights Commission

- a statutory (and not a constitutional) body.
- established in 1993 under a legislation enacted by the Parliament, namely, the Protection of Human Rights Act, 1993.
- amended in 2006.
- the watchdog of human rights in the country, that is, the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India.

The specific objectives of the establishment of the commission are :

- (a) To strengthen the institutional arrangements through which human rights issues could be addressed in their entirety in a more focussed manner;
- (b) To look into allegations of excesses, independently of the government, in a manner that would underline the government's commitment to protect human rights; and
- (c) To complement and strengthen the efforts that have already been made in this direction.

Composition of the Commission

- The commission is a multi-member body consisting of a chairman and four members.
- The chairman should be a retired chief justice of India, and members should be serving or retired judges of the Supreme Court, a serving or retired chief justice of a high court and two persons having knowledge or practical experience with respect to human rights. In addition to these full-time members, the commission also has four ex-officio members—the chairmen of the National Commission for Minorities, the National Commission for SCs, the National Commission for STs and the National Commission for Women.
- The chairman and members are appointed by the president on the recommendations of a six-member committee consisting of the prime minister as its head, the Speaker of the Lok Sabha, the Deputy Chairman of the Rajya Sabha, leaders of the Opposition in both the Houses of Parliament and the Central home minister.
- Further, a sitting judge of the Supreme Court or a sitting chief justice of a high court can be appointed only after consultation with the chief justice of India.
- The chairman and members hold office for a term of five years or until they attain the age of 70 years, whichever is earlier.
- After their tenure, the chairman and members are not eligible for further employment under the Central or a state government.

The president can remove the chairman or any member from the office under the following circumstances:

- (a) adjudged an insolvent; or
 - (b) engages, during his term of office, in any paid employment outside the duties of his office; or
 - (c) unfit to continue in office by reason of infirmity of mind or body; or
 - (d) unsound mind and stand so declared by a competent court; or
 - (e) convicted and sentenced to imprisonment for an offence.
- In addition to these, the president can also remove the chairman or any member on the ground of proved misbehaviour or incapacity.
 - However, in these cases, the president has to refer the matter to the Supreme Court for an inquiry.

INDIAN POLITY-M.LAXMIKANTH

- If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the president can remove the chairman or a member.
- The salaries, allowances and other conditions of service of the chairman or a member are determined by the Central government. But, they cannot be varied to his disadvantage after his appointment.

Functions of the Commission

The functions of the Commission are:

- (a) inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either *suo motu* or on a petition presented to it or on an order of a court.
- (b) intervene in any proceeding involving allegation of violation of human rights pending before a court.
- (c) visit jails and detention places to study the living conditions of inmates and make recommendation thereon.
- (d) review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
- (e) review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.
- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- (g) undertake and promote research in the field of human rights.
- (h) spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.
- (i) encourage the efforts of non-governmental organisations (NGOs) working in the field of human rights.
- (j) undertake such other functions as it may consider necessary for the promotion of human rights.

Working of the Commission

- headquarters is at Delhi and it can also establish offices at other places in India.
- vested with the power to regulate its own procedure.
- all the powers of a civil court and its proceedings have a judicial character.
- may call for information or report from the Central and state governments or any other authority subordinate thereto.
- Has its own nucleus of investigating staff for investigation into complaints of human rights violations.
- Besides, it is empowered to utilise the services of any officer or investigation agency of the Central government or any state government for the purpose.
- established effective cooperation with the NGOs with first-hand information about human rights violations.
- not empowered to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.
- look into a matter within one year of its occurrence.

The commission may take any of the following steps during or upon the completion of an inquiry:

- (a) recommend to the concerned government or authority to make payment of compensation or damages to the victim;
- (b) recommend to the concerned government or authority the initiation of proceedings for prosecution or any other action against the guilty public servant;
- (c) recommend to the concerned government or authority for the grant of immediate interim relief to the victim;
- (d) approach the Supreme Court or the high court concerned for the necessary directions, orders or writs.

Role of the Commission

INDIAN POLITY-M.LAXMIKANTH

- the functions of the commission are mainly recommendatory in nature.
- no power to punish the violators of human rights, nor to award any relief including monetary relief to the victim.
- recommendations are not binding on the concerned government or authority.
- it should be informed about the action taken on its recommendations within one month.
- ‘The government cannot wash away the recommendations made by the Commission.
- The commission’s role may be recommendatory, advisory, yet the Government considers the cases forwarded by it.
- It enjoys great material authority and no government can ignore its recommendation’.
- Moreover, the commission has limited role, powers and jurisdiction with respect to the violation of human rights by the members of the armed forces.
- In this sphere, the commission may seek a report from the Central government and make its recommendations.
- The Central government should inform the Commission of the action taken on the recommendations within three months.
- The commission submits its annual or special reports to the Central government and to the state government concerned.
- These reports are laid before the respective legislatures, along with a memorandum of action taken on the recommendations of the commission and the reasons for non- acceptance of any of such recommendations.

Performance of the Commission

The various human rights issues taken up by the Commission are as follows:

1. Abolition of Bonded Labour
2. Functioning of the Mental Hospitals at Ranchi, Agra and Gwalior
3. Functioning of the Government Protective Home (Women), Agra
4. Issues Concerning Right to Food
5. Review of the Child Marriage Restraint Act, 1929
6. Protocols to the Convention on the Rights of the Child
7. Preventing Employment of Children by Government Servants: Amendment of Service Rules
8. Abolition of Child Labour
9. Guidebook for the Media on Sexual Violence against Children
10. Trafficking in Women and Children: Manual for the Judiciary for Gender Sensitisation
11. Sensitisation Programme on Prevention of Sex Tourism and Trafficking
12. Maternal Anemia and Human Rights
13. Rehabilitation of Destitute Women in Vrindavan
14. Combating Sexual Harassment of Women at the Work Place
15. Harassment of Women Passengers in Trains
16. Abolition of Manual Scavenging
17. Dalits Issues including Atrocities Perpetrated on them
18. Problems Faced by Denotified and Nomadic Tribes
19. Rights of the Disabled Persons
20. Issues Related to Right to Health
21. Rights of Persons Affected by HIV / AIDS
22. Relief Work for the Victims of 1999 Orissa Cyclone

INDIAN POLITY-M.LAXMIKANTH

23. Monitoring of Relief Measures undertaken after Gujarat Earthquake(2001)
24. District Complaints Authority
25. Population Policy – Development and Human Rights
26. Review of Statutes, including Terrorist & Disruptive Activities Act, and (Draft) Prevention of Terrorism Bill, 2000
27. Protection of Human Rights in Areas of Insurgency and Terrorism Guidelines to Check Misuse of the Power of Arrest by the Police
28. Setting up of Human Rights Cells in the State / City Police Headquarters
29. Steps to Check Custodial Deaths, Rape and Torture
30. Accession to the Convention against Torture
31. Discussion on Adoption of a Refugee Law for the Country
32. Systemic Reforms of Police, Prisons and other Centers of Detention
33. Review of Laws, Implementation of Treaties, and the International Instruments on Human Rights
34. Promotion of Human Rights Literacy and Awareness in the Educational System
35. Human Rights Training for the Armed Forces and Police, Public Authorities and Civil Society

Human Rights (Amendment) Act, 2006

The Parliament has passed the Protection of Human Rights (Amendment) Act, 2006. The main amendments carried out in the Protection of Human Rights Act, 1993, relate to the following issues:

1. Reducing the number of members of State Human Rights Commissions (SHRCs) from five to three
2. Changing the eligibility condition for appointment of member of SHRCs
3. Strengthening the investigative machinery available with Human Rights Commissions
4. Empowering the Commissions to recommend award of compensation, etc. even during the course of enquiry
5. Empowering the NHRC to undertake visits to jails even without intimation to the state governments
6. Strengthening the procedure for recording of evidence of witnesses
7. Clarifying that the Chairpersons of NHRC and SHRCs are distinct from the Members of the respective Commission
8. Enabling the NHRC to transfer complaints received by it to the concerned SHRC
9. Enabling the Chairperson and members of the NHRC to address their resignations in writing to the President and the Chairperson and members of the SHRCs to the Governor of the state concerned
10. Clarifying that the absence of any member in the Selection Committee for selection of the Chairperson and member of the NHRC or the SHRCs will not vitiate the decisions taken by such Committees
11. Providing that the Chairperson of the National Commission for the Scheduled Castes and the Chairperson of the National Commission for the Scheduled Tribes shall be deemed to be members of the NHRC

STATE HUMAN RIGHT COMMISSION

- The Protection of Human Rights Act of 1993 provides for the creation of not only the National Human Rights Commission but also a State Human Rights Commission at the state level.
- Twenty three states have constituted the State Human Rights Commissions through Official Gazette Notifications.
- A State Human Rights Commission can inquire into violation of human rights only in respect of subjects mentioned in the State List (List-II) and the Concurrent List (List-III) of the Seventh Schedule of the Constitution.

INDIAN POLITY-M.LAXMIKANTH

- However, if any such case is already being inquired into by the National Human Rights Commission or any other Statutory Commission, then the State Human Rights Commission does not inquire into that case.

Composition of the Commission

- a multi-member body consisting of a chairperson and two members.
- The chairperson should be a retired Chief Justice of a High Court and members should be a serving or retired judge of a High Court or a District Judge in the state with a minimum of seven years experience as District Judge and a person having knowledge or practical experience with respect to human rights.
- The chairperson and members are appointed by the Governor on the recommendations of a committee consisting of the chief minister as its head, the speaker of the Legislative Assembly, the state home minister and the leader of the opposition in the Legislative Assembly.
- In the case of a state having Legislative Council, the chairman of the Council and the leader of the opposition in the Council would also be the members of the committee.
- Further, a sitting judge of a High Court or a sitting District Judge can be appointed only after consultation with the Chief Justice of the High Court of the concerned state.
- The chairperson and members hold office for a term of five years or until they attain the age of 70 years, whichever is earlier.
- After their tenure, the chairperson and members are not eligible for further employment under a state government or the Central government.
- Although the chairperson and members of a State Human Rights Commission are appointed by the governor, they can be removed only by the President (and not by the governor).
- The President can remove them on the same grounds and in the same manner as he can remove the chairperson or a member of the National Human Rights Commission.
 - Removal-same as like NHRC.

Functions of the Commission- Same as like NHRC

Working of the Commission-Same as like NHRC

Human Rights Courts

- The Protection of Human Rights Act (1993) also provides for the establishment of Human Rights Court in every district for the speedy trial of violation of human rights.
- These courts can be set up by the state government only with the concurrence of the Chief Justice of the High Court of that state.
- For every Human Rights Court, the state government specifies a public prosecutor or appoints an advocate (who has practiced for seven years) as a special public prosecutor.

CENTRAL INFORMATION COMMISSION

- established by the Central Government in 2005.
- constituted through an Official Gazette Notification under the provisions of the Right to Information Act (2005).
- not a constitutional body.
- a high-powered independent body which inter alia looks into the complaints made to it and decide the appeals.
- entertains complaints and appeals pertaining to offices, financial institutions, public sector undertakings, etc., under the Central Government and the Union Territories.

Composition

- consists of a Chief Information Commissioner and not more than ten Information Commissioners.
- appointed by the President on the recommendation of a committee consisting of the Prime Minister as Chairperson, the Leader of Opposition in the Lok Sabha and a Union Cabinet Minister nominated by the Prime Minister.
- should be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
- should not be a Member of Parliament or Member of the Legislature of any State or Union Territory.
- should not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

Tenure and Service Conditions

- hold office for a term of 5 years or until they attain the age of 65 years, whichever is earlier.
- not eligible for reappointment.
- President can remove the Chief Information Commissioner or any Information Commissioner from the office under the following circumstances :
- if he is adjudged an insolvent; or
- convicted of an offence which (in the opinion of the President) involves a moral turpitude; or
- engages during his term of office in any paid employment outside the duties of his office; or
- he is (in the opinion of the President) unfit to continue in office due to infirmity of mind or body; or
- acquired such financial or other interest as is likely to affect prejudicially his official functions.
- the President can also remove the Chief Information Commissioner or any Information Commissioner on the ground of proved misbehaviour or incapacity.
- the President has to refer the matter to the Supreme Court for an enquiry.
- If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, then the President can remove him.
- The salary, allowances and other service conditions of the Chief Information Commissioner are similar to those of the Chief Election Commissioner and that of the Information Commissioner are similar to those of an Election Commissioner.
- But, they cannot be varied to his disadvantage during service.

Powers and Functions

1. It is the duty of the Commission to receive and inquire into a complaint from any person:
 - (a) who has not been able to submit an information request because of non-appointment of a Public Information Officer;
 - (b) who has been refused information that was requested;
 - (c) who has not received response to his information request within the specified time limits;
 - (d) who thinks the fees charged are unreasonable;
 - (e) who thinks information given is incomplete, misleading or false; and
 - (f) any other matter relating to obtaining information.
2. The Commission can order inquiry into any matter if there are reasonable grounds (suo-moto power).
3. While inquiring, the Commission has the powers of a civil court in respect of the following matters:
 - (a) summoning and enforcing attendance of persons and compelling them to give oral or written

INDIAN POLITY-M.LAXMIKANTH

- evidence on oath and to produce documents or things;
 - (b) requiring the discovery and inspection of documents;
 - (c) receiving evidence on affidavit;
 - (d) requisitioning any public record from any court or office; issuing summons for examination of witnesses or documents; and
 - (e) any other matter which may be prescribed.
4. During the inquiry of a complaint, the Commission may examine any record which is under the control of the public authority and no such record may be withheld from it on any grounds. In other words, all public records must be given to the Commission during inquiry for examination.
5. The Commission has the power to secure compliance of its decisions from the public authority. This includes:
- (a) providing access to information in a particular form;
 - (b) directing the public authority to appoint a Public Information Officer where none exists;
 - (c) publishing information or categories of information;
 - (d) making necessary changes to the practices relating to management, maintenance and destruction of records;
 - (e) enhancing training provision for officials on the right to information;
 - (f) seeking an annual report from the public authority on compliance with this Act;
 - (g) requiring the public authority to compensate for any loss or other detriment suffered by the applicant;
 - (h) imposing penalties under this Act; and
 - (i) rejecting the application.
6. The Commission submits an annual report to the Central Government on the implementation of the provisions of this Act. The Central Government places this report before each House of Parliament.
- ✓ When a public authority does not conform to the provisions of this Act, the Commission may recommend (to the authority) steps which ought to be taken for promoting such conformity.

STATE INFORMATION COMMISSION

- ✓ The Right to Information Act of 2005 provides for the creation of not only the Central Information Commission but also a State Information Commission at the state level.
- ✓ all the states have constituted the State Information Commissions through Official Gazette Notifications.
- ✓ The State Information Commission is a high-powered independent body which inter alia looks into the complaints made to it and decide the appeals.
- ✓ It entertains complaints and appeals pertaining to offices, financial institutions, public sector undertakings, etc., under the concerned state government.

Composition

- ✓ The Commission consists of a State Chief Information Commissioner and not more than ten State Information Commissioners.
- ✓ appointed by the Governor on the recommendation of a committee consisting of the Chief Minister as Chairperson, the Leader of Opposition in the Legislative Assembly and a State Cabinet Minister nominated by the Chief Minister.

INDIAN POLITY-M.LAXMIKANTH

- ✓ They should be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
- ✓ should not be a Member of Parliament or Member of the Legislature of any State or Union Territory.
- ✓ should not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

Tenure and Service Conditions-Same as like CIC

Powers and Functions-Same as like CIC

CENTRAL VIGILANCE COMMISSION

- main agency for preventing corruption in the Central government.
- established in 1964 by an executive resolution of the Central government.
- establishment was recommended by the Santhanam Committee on Prevention of Corruption (1962–64).
- originally the CVC was neither a constitutional body nor a statutory body.
- In September 2003, the Parliament enacted a law conferring statutory status on the CVC.
- In 2004, the Government of India authorised the CVC as the “Designated Agency” to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action.
- conceived to be the apex vigilance institution, free of control from any executive authority, monitoring all vigilance activity under the Central Government and advising various authorities in Central Government organisations in planning, executing, reviewing and reforming their vigilance work.

Composition

- a multi-member body consisting of a Central Vigilance Commissioner (chairperson) and not more than two vigilance commissioners.
- appointed by the president by warrant under his hand and seal on the recommendation of a three-member committee consisting of the prime minister as its head, the Union minister of home affairs and the Leader of the Opposition in the Lok Sabha.
- hold office for a term of four years or until they attain the age of sixty five years, whichever is earlier.
- After their tenure, they are not eligible for further employment under the Central or a state government.

The president can remove the Central Vigilance Commissioner or any vigilance commissioner from the office under the following circumstances:

- (a) adjudged an insolvent; or convicted of an offence which (in the opinion of the Central government) involves a moral turpitude; or
 - (b) engages, during his term of office, in any paid employment outside the duties of his office; or
 - (c) he is (in the opinion of the president), unfit to continue in office by reason of infirmity of mind or body; or
 - (d) acquired such financial or other interest as is likely to affect prejudicially his official functions.
- the president can also remove the Central Vigilance Commissioner or any vigilance commissioner on the ground of proved misbehaviour or incapacity.
 - the president has to refer the matter to the Supreme Court for an enquiry.
 - If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, then the president can remove him.
 - He is deemed to be guilty of misbehaviour, if he (a) is concerned or interested in any contract or agreement

INDIAN POLITY-M.LAXMIKANTH

made by the Central government, or (b) participates in any way in the profit of such contract or agreement or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company

- The salary, allowances and other conditions of service of the Central Vigilance Commissioner are similar to those of the Chairman of UPSC and that of the vigilance commissioner are similar to those of a member of UPSC. But they cannot be varied to his disadvantage after his appointment.

Organisation

- has its own Secretariat, Chief Technical Examiners' Wing (CTE) and a wing of Commissioners for Departmental Inquiries (CDIs).

Secretariat: The Secretariat consists of a Secretary, Joint Secretaries, Deputy Secretaries, Under Secretaries and office staff.

Chief Technical Examiners' Wing: The Chief Technical Examiners' Organisation constitutes the technical wing of the CVC. It consists of Chief Engineers (designated as Chief Technical Examiners) and supporting engineering staff. The main functions assigned to this organisation are as follows:

- (i) Technical audit of construction works of Government organisations from a vigilance angle
- (ii) Investigation of specific cases of complaints relating to construction works
- (iii) Extension of assistance to CBI in their investigations involving technical matters and for evaluation of properties in Delhi
- (iv) Tendering of advice / assistance to the CVC and Chief Vigilance Officers in vigilance cases involving technical matters

Commissioners for Departmental Inquiries: The CDIs function as Inquiry Officers to conduct oral inquiries in departmental proceedings initiated against public servants.

Functions

1. inquire or cause an inquiry or investigation to be conducted on a reference made by the Central government wherein it is alleged that a public servant being an employee of the Central government or its authorities, has committed an offence under the Prevention of Corruption Act, 1988.
2. inquire or cause an inquiry or investigation to be conducted into any complaint against any official belonging to the below mentioned category of officials wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988:
 - (a) Members of all-India services serving in the Union and Group 'A' officers of the Central government; and
 - (b) Specified level of officers of the authorities of the Central government.
3. exercise superintendence over the functioning of Delhi Special Police Establishment (which is a part of Central Bureau of Investigation) in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988.
4. The Delhi Special Police Establishment is required to obtain the prior approval of the Central government before conducting any inquiry or investigation into an offence committed by officers of the rank of joint secretary and above in the Central government and its authorities.
5. give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under the Delhi Special Police Establishment Act, 1946.
6. review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the prevention of Corruption Act, 1988.

INDIAN POLITY-M.LAXMIKANTH

7. review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988.
8. tender advice to the Central government and its authorities on such matters as are referred to it by them.
9. exercise superintendence over the vigilance administration in the ministries of the Central government or its authorities.
10. To undertake or cause an inquiry into complaints received under the Public Interest Disclosure and Protection of Informers' Resolution and recommend appropriate action.
11. The Central Government is required to consult the CVC in making rules and regulations governing the vigilance and disciplinary matters relating to the members of Central Services and All-India Services.
12. The Central Vigilance Commissioner is also the Chairperson of the two Committees, on whose recommendations the Central Government appoints the Director of the Delhi Special Police Establishment and the Director of Enforcement.
13. The Committee concerned with the appointment of the Director of CBI is also empowered to recommend, after consultation with the Director (CBI), appointment of officers to the posts of the level of SP and above in DSPE.
 - ✓ The Committee concerned with the appointment of the Director of Enforcement is also empowered to recommend, after consultation with the Director of Enforcement, appointment of officers to the posts of the level of Deputy Director and above in the Directorate of Enforcement.

Jurisdiction

1. Members of All India Services serving in connection with the affairs of the Union and Group A officers of the Central Government.
2. Officers of the rank of Scale V and above in the Public Sector Banks.
3. Officers in Grade D and above in Reserve Bank of India, NABARD and SIDBI.
4. Chief Executives and Executives on the Board and other officers of E-8 and above in Schedule 'A' and 'B' Public Sector Undertakings.
5. Chief Executives and Executives on the Board and other officers of E-7 and above in Schedule 'C' and 'D' Public Sector Undertakings.
6. Managers and above in General Insurance Companies.
7. Senior Divisional Managers and above in Life Insurance Corporation.
8. Officers drawing salary of ₹8700/- p.m. and above on Central Government D.A. pattern, as on the date of the notification and as may be revised from time to time in Societies and other Local Authorities.

Working

- conducts its proceedings at its headquarters (New Delhi).
- vested with the power to regulate its own procedure.
- has all the powers of a civil court and its proceedings have a judicial character.
- call for information or report from the Central government or its authorities so as to enable it to exercise general supervision over the vigilance and anti-corruption work in them.
- on receipt of the report of the inquiry undertaken by any agency on a reference made by it, advises the Central government or its authorities as to the further course of action.
- The Central government or its authorities shall consider the advice of the CVC and take appropriate action.
- where the Central government or any of its authorities does not agree with the advice of the CVC, it shall communicate the reasons (to be recorded in writing) to the CVC.

INDIAN POLITY-M.LAXMIKANTH

- has to present annually to the President a report on its performance.
- The President places this report before each House of Parliament.
- All ministries/departments in the Union Government have a Chief Vigilance Officer (CVO) who heads the Vigilance Division of the organisation concerned, assisting and advising the Secretary or Head of Office in all matters pertaining to vigilance.
- provides a link between his organisation and the Central Vigilance Commission on the one hand and his organisation and the Central Bureau of Investigation on the other.
- Vigilance functions performed by the CVO include
 - (i) Collecting intelligence about corrupt practices of the employees of his organisation
 - (ii) Investigating verifiable allegations reported to him
 - (iii) Processing investigation reports for further consideration of the disciplinary authority concerned
Referring matters to the Central Vigilance Commission for advice wherever necessary

CENTRAL BUREAU OF INVESTIGATION

Establishment of CBI

- set up in 1963 by a resolution of the Ministry of Home Affairs.
- transferred to the Ministry of Personnel and now it enjoys the status of an attached office.
- The Special Police Establishment (which looked into vigilance cases) setup in 1941 was also merged with the CBI.
- The establishment of the CBI was recommended by the Santhanam Committee on Prevention of Corruption (1962 -1964).
- not a statutory body. It derives its powers from the Delhi Special Police Establishment Act, 1946.
- the main investigating agency of the Central Government.
- plays an important role in the prevention of corruption and maintaining integrity in administration.
- provides assistance to the Central Vigilance Commission.

Motto, Mission and Vision of CBI

Motto: Industry, Impartiality and Integrity

Mission: To uphold the Constitution of India and law of the land through in-depth investigation and successful prosecution of offences; to provide leadership and direction to police forces and to act as the nodal agency for enhancing inter-state and international cooperation in law enforcement

Vision: *Based on its motto, mission and the need to develop professionalism, transparency, adaptability to change and use of science and technology in its working, the CBI will focus on*

1. Combating corruption in public life, curbing economic and violent crimes through meticulous investigation and prosecution
2. Evolving effective systems and procedures for successful investigation and prosecution of cases in various law courts
3. Helping fight cyber and high technology crime
Creating a healthy work environment that encourages team-building, free communication and mutual trust
4. Supporting state police organisations and law enforcement agencies in national and international cooperation, particularly relating to enquiries and investigation of cases
5. Playing a lead role in the war against national and transnational organised crime
6. Upholding human rights, protecting the environment, arts, antiques and heritage of our civilisation

7. Developing a scientific temper, humanism and the spirit of inquiry and reform
8. Striving for excellence and professionalism in all spheres of functioning so that the organisation rises to high levels of endeavor and achievement.

Organisation of CBI

The CBI has the following divisions:

1. Anti-Corruption Division
2. Economic Offences Division
3. Special Crimes Division
4. Policy and International Police Cooperation Division
5. Administration Division
6. Directorate of Prosecution
7. Central Forensic Science Laboratory

Composition of CBI

- headed by a Director.
- assisted by a special director or an additional director.
- has a number of joint directors, deputy inspector generals, superintendents of police and all other usual ranks of police personnel.
- In total, it has about 5000 staff members, about 125 forensic scientists and about 250 law officers.
- The Director of CBI as Inspector-General of Police, Delhi Special Police Establishment, is responsible for the administration of the organisation.
- With the enactment of CVC Act, 2003, the superintendence of Delhi Special Police Establishment vests with the Central Government save investigations of offences under the Prevention of Corruption Act, 1988, in which, the superintendence vests with the Central Vigilance Commission.
- The Director of CBI has been provided security of two-year tenure in office by the CVC Act, 2003. The CVC Act also provides the mechanism for the selection of the Director of CBI and other officers of the rank of SP and above in the CBI.
- **The Director of the CBI is appointed by the Central Government on the recommendation of a committee consisting of the Central Vigilance Commissioner as Chairperson, the Vigilance Commissioners, the Secretary to the Government of India in-charge of the Ministry of Home Affairs and the Secretary (Coordination and Public Grievances) in the Cabinet Secretariat. Functions of CBI**

The functions of CBI are:

- (i) Investigating cases of corruption, bribery and misconduct of Central government employees
- (ii) Investigating cases relating to infringement of fiscal and economic laws, that is, breach of laws concerning export and import control, customs and central excise, income tax, foreign exchange regulations and so on. However, such cases are taken up either in consultation with or at the request of the department concerned.
- (iii) Investigating serious crimes, having national and international ramifications, committed by organised gangs of professional criminals
- (iv) Coordinating the activities of the anti-corruption agencies and the various state police forces
- (v) Taking up, on the request of a state government, any case of public importance for investigation
- (vi) Maintaining crime statistics and disseminating criminal information.

INDIAN POLITY-M.LAXMIKANTH

- The CBI is a multidisciplinary investigation agency of the Government of India and undertakes investigation of corruption-related cases, economic offences and cases of conventional crime.
- It normally confines its activities in the anti-corruption field to offences committed by the employees of the Central Government and Union Territories and their public sector undertakings.
- It takes up investigation of conventional crimes like murder, kidnapping, rape etc., on reference from the state governments or when directed by the Supreme Court/High Courts.
- The CBI acts as the “National Central Bureau” of Interpol in India.
- The Interpol Wing of the CBI coordinates requests for investigation-related activities originating from Indian law enforcement agencies and the member countries of the Interpol.

CBI Academy

- located at Ghaziabad, Uttar Pradesh and started functioning in 1996.
- Earlier, training programmes were being conducted at the CBI Training Centre, New Delhi.
- vision of the CBI Academy is “Excellence in Training in the Fields of Crime Investigation, Prosecution and Vigilance Functioning” and its mission is to train the human resources of CBI, state police and the vigilance organisations to become professional, industrious, impartial, upright and dedicated to the service of the nation.
- the focal point of training activities within the organisation and is responsible for identification of suitable training programmes, regulation of nominations of trainees and preparation of the annual training calendar.
- there are three regional training centres imparting training at regional levels at Kolkata, Mumbai and Chennai.

There are two kinds of training courses which are being conducted in the CBI Academy:

- (i) **Short Term In-service Courses:** For officers of the CBI, state police, central para-military forces and central government undertakings
- (ii) **Long Term Basic Courses:** For directly recruited deputy superintendents of police, sub- inspectors and constables of CBI.

LOKPAL AND LOKYUKTAS

Position in India

The existing legal and institutional framework to check corruption and redress citizens’ grievances in India consists of the followings:

1. Public Servants (Enquiries) Act, 1850
2. Indian Penal Code, 1860
3. Special Police Establishment, 1941
4. Delhi Police Establishment Act, 1946
5. Prevention of Corruption Act, 1988
6. Commissions of Inquiry Act, 1952 (against political leaders and eminent public men)
7. All-India Services (Conduct) Rules, 1968
8. Central Civil Services (Conduct) Rules, 1964
9. Railway Services (Conduct) Rules, 1966
10. Vigilance organisations in ministries / departments, attached and subordinate offices and public undertakings

INDIAN POLITY-M.LAXMIKANTH

11. Central Bureau of Investigation, 1963
12. Central Vigilance Commission, 1964
13. State Vigilance Commissions, 1964
14. Anti corruption bureaus in states
15. Lokayukta (Ombudsman) in states
16. Divisional Vigilance Board
17. District Vigilance Officer
18. National Consumer Disputes Redressal Commission
19. National Commission for SCs
20. National Commission for STs
21. Supreme Court and High Courts in states
22. Administrative Tribunals (quasi-judicial bodies)
23. Directorate of Public Grievances in the Cabinet Secretariat, 1988
24. Parliament and its committees
25. 'File to Field' programme in some states like Kerala; in this innovative scheme, the administrator goes to the village/area and hears public grievances and takes immediate action wherever possible.

Lokpal

- The Administrative Reforms Commission (ARC) of India (1966–1970) recommended the setting up of two special authorities designated as 'Lokpal' and 'lokyukta' for the redressal of citizens' grievances.
- set up on the pattern of the institution of Ombudsman in Scandinavian countries and the parliamentary commissioner for investigation in New Zealand.
- deal with complaints against ministers and secretaries at Central and state levels, and the lokayukta (one at the Centre and one in every state) would deal with complaints against other specified higher officials.
- The ARC kept the judiciary outside the purview of Lokpal and lokayukta as in New Zealand. But, in Sweden the judiciary is within the purview of Ombudsman.
- According to the ARC, the Lokpal would be appointed by the president after consultation with the chief justice of India, the Speaker of Lok Sabha and the Chairman of the Rajya Sabha.

The ARC also recommended that the institutions of Lokpal and lokayukta should have the following features:

1. demonstratively independent and impartial.
2. investigations and proceedings should be conducted in private and should be informal in character.
3. appointment should be, as far as possible, non-political.
4. status should compare with the highest judicial functionaries in the country.
5. deal with matters in the discretionary field involving acts of injustice, corruption or favouritism.
6. proceedings should not be subject to judicial interference.
7. should have the maximum latitude and powers in obtaining information relevant to their duties.
8. should not look forward to any benefit or pecuniary advantage from the executive government.

Bills were introduced in the Parliament in the following years:

1. In May 1968, by the Congress Government headed by Indira Gandhi.
2. In April 1971, again by the Congress Government headed by Indira Gandhi.
3. In July 1977, by the Janata Government headed by Morarji Desai.

INDIAN POLITY-M.LAXMIKANTH

4. In August 1985, by the Congress Government headed by Rajiv Gandhi.
 5. In December 1989, by the National Front Government headed by VPSingh.
 6. In September 1996, by the United Front Government headed by Deve Gowda.
 7. In August 1998, by the BJP-led coalition Government headed by AB Vajpayee.
 8. In August 2001, by the NDA government headed by A B Vajpayee.
 9. In August 2011, by the UPA government headed by ManmohanSingh.
 10. In December 2011, by the UPA government headed by ManmohanSingh.
- However, none of the bills mentioned above were passed by the Parliament due to one or the other reasons.
 - The first four bills lapsed due to the dissolution of Lok Sabha, while the fifth one was withdrawn by the government. The sixth and seventh bills also lapsed due to the dissolution of the 11th and 12th Lok Sabha
 - Again, the eight bill (2001) lapsed due to the dissolution of the 13th Lok Sabha in 2004.
 - The ninth bill (2011) was withdrawn by the government.
 - The latest tenth bill (2011) is pending in the Parliament.
 - Hence, the institution of Lokpal has not yet come into existence in our country, though its need was felt long ago.

Status of 2011 Lokpal Bills

Lokpal and Lokayuktas Bil , 2011

The Bill seeks to provide for the establishment of a body of Lokpal for the Union and Lokayukta for states to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto. The salient features of the Bill are enumerated here.

- (i) Lokpal to consist of a Chairperson and up to eight members and not less than 50% of the members to be from SCs, STs, OBCs, minorities and women
- (ii) Provision for Selection Committee for selection of the Chairperson and the members and a Search Committee of at least seven members not less than 50% of whom to be from SCs, STs, OBCs, minorities and women
- (iii) Lokpal to have jurisdiction over public functionary who is or has been the Prime Minister (with subject matter exclusion and some other safeguards); Minister of the Union; Member of Parliament; Public Servant as defined under the Prevention of Corruption Act, 1988 belonging to Group 'A', 'B', 'C' or 'D'; functionary of any body or board or corporation or authority or company or society or trust or autonomous body established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it; functionary of such bodies or organisations aided by the Government the annual income of which exceeds an amount notified by the Central Government; functionary of such bodies or organisations in receipt of donation from public and their annual income exceeding an amount notified by the Central Government or where such bodies / organisations receive donation from any foreign source under FCRA in excess of Rs. 10 lakh in a year
- (iv) Lokpal to have under it an independent Inquiry and Prosecution Wing
- (v) Separation of investigation from prosecution thereby, removing conflict of interest and increasing scope for professionalism and specialisation
- (vi) Lokpal to have power of superintendence and directions over any investigation agency including the CBI, for cases referred to them by the Lokpal

INDIAN POLITY-M.LAXMIKANTH

- (vii) No prior sanction required for launching prosecution in cases inquired by Lokpal or initiated on the direction and with the approval of the, Lokpal
- (viii) Provision for attachment and confiscation of property acquired by corrupt means even while prosecution is pending
- (ix) Appointment of Director, CBI to be on the recommendations of a high-powered committee chaired by the Prime Minister
- (x) Specific timelines for preliminary inquiry, investigation and trial
- (xi) Enhancement of minimum and maximum punishment under the Prevention of Corruption Act from six months to two years and from seven years to ten years, respectively
- (xii) Lokpal to have powers to recommend transfer or suspension of public servants connected with allegations of corruption
- (xiii) Lokpal empowered to constitute sufficient number of special courts
- (xiv) To provide for Lokayuktas in the States on similar lines.

Lokayuktas

- ✓ the institution of lokayukta was established first in Maharashtra in 1971.
- ✓ Although Odisha had passed the Act in this regard in 1970, it came into force only in 1983. Till now (2013), 18 states and 1 Union Territory (Delhi) have established the institution of Lokyuktas.
- ✓ The states which have not created the institution of Lokayuktas are Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tamil Nadu, Tripura and West Bengal.

The various aspects of the institution of lokayukta are:

Structural Variations

- ✓ not same in all the states.
- ✓ Some States like Rajasthan, Karnataka, Andhra Pradesh and Maharashtra have created the lokayukta as well as upalokayukta, while some others like Bihar, Uttar Pradesh and Himachal Pradesh have created only the lokayukta.
- ✓ still other states like Punjab and Orissa that have designated officials as Lokpal.
- ✓ This pattern was not suggested by the ARC in the states.

Appointment

- ✓ appointed by the governor of the state.
- ✓ While appointing, the governor in most of the states consults (a) the chief justice of the state high court, and (b) the leader of Opposition in the state legislative assembly.

Qualifications

- ✓ Judicial qualifications are prescribed for the lokayukta in the States of Uttar Pradesh, Himachal Pradesh, Andhra Pradesh, Gujarat, Orissa, Karnataka and Assam.
- ✓ But no specific qualifications are prescribed in the states of Bihar, Maharashtra and Rajasthan.

Tenure

- ✓ In most of the states, the term of office fixed for lokayukta is of 5 years duration or 65 years of age, whichever is earlier.
- ✓ not eligible for reappointment for a second term.

Jurisdiction

There is no uniformity regarding the jurisdiction of lokayukta in all the states. The following points can be noted in this regard:

- (a) The chief minister is included within the jurisdiction of lokayukta in the states of Himachal Pradesh, Andhra Pradesh, Madhya Pradesh and Gujarat, while he is excluded from the purview of lokayukta in the states of Maharashtra, Uttar Pradesh, Rajasthan, Bihar and Orissa.
- (b) Ministers and higher civil servants are included in the purview of lokayukta in almost all the states. Maharashtra has also included former ministers and civil servants.
- (c) Members of state legislatures are included in the purview of lokayukta in the States of Andhra Pradesh, Himachal Pradesh, Gujarat, Uttar Pradesh and Assam.
- (d) The authorities of the local bodies, corporations, companies and societies are included in the jurisdiction of the lokayukta in most of the states.

Investigations

- ✓ In most of the states, the lokayukta can initiate investigations either on the basis of a complaint received from the citizen against unfair administrative action or *suo moto*.
- ✓ But he does not enjoy the power to start investigations on his own initiative (*suo moto*) in the States of Uttar Pradesh, Himachal Pradesh and Assam.

Scope of Cases Covered

- ✓ The lokayukta can consider the cases of ‘grievances’ as well as ‘allegations’ in the States of Maharashtra, Uttar Pradesh, Assam, Bihar and Karnataka.
- ✓ But, in Himachal Pradesh, Andhra Pradesh, Rajasthan and Gujarat, the job of lokayuktas is confined to investigating allegations (corruption) and not grievances (maladministration).

Other Features

1. presents, annually, to the governor of the state a consolidated report on his performance.
 2. The governor places this report along with an explanatory memorandum before the state legislature. The lokayukta is responsible to the state legislature.
 3. takes the help of the state investigating agencies for conducting inquiries.
 4. can call for relevant files and documents from the state government departments.
- ✓ The recommendations made by the lokayukta are only advisory and not binding on the state government.

SYSTEM OF GOVERNMENT

CONTENTS

- ❖ PARLIAMENTARY SYSTEM
- ❖ FEDERAL SYSTEM
- ❖ CENTRE-STATE RELATIONS
- ❖ INTER-STATE RELATIONS
- ❖ EMERGENCY PROVISION

LOCAL GOVERNMENT

CONTENTS

- ❖ PANCHAYATI RAJ
- ❖ 73RD AMENDMENT ACT OF 1992
- ❖ THE PANCHAYATS
- ❖ ARTICLES OF PANCHAYATS
- ❖ MUNICIPALITIES
- ❖ ARTICLES OF MUNICIPALITIES

PARLIAMENTARY SYSTEM

- Articles 74 and 75 deal with the parliamentary system at the Centre and Articles 163 and 164 in the states
- The parliamentary system of government is the one in which the executive is responsible to the legislature for its policies and acts.
- The presidential system of government, on the other hand, is one in which the executive is not responsible to the legislature for its policies and acts, and is constitutionally independent of the legislature in respect of its term of office.
- The parliamentary government is also known as cabinet government or responsible government or Westminster model of government and is prevalent in Britain, Japan, Canada, India among others.
- The presidential government, on the other hand, is also known as non-responsible or non-parliamentary or fixed executive system of government and is prevalent in USA, Brazil, Russia, Sri Lanka among others

Features of Parliamentary Government:

- **Nominal and Real Executives:** The President is the nominal executive (*de jure* executive or titular executive) while the Prime Minister is the real executive (*de facto* executive). The President is head of the State, while the Prime Minister is head of the government.
- **Majority Party Rule**
- **Collective Responsibility** This is the bedrock principle of parliamentary government. The ministers are collectively responsible to the Parliament in general and to the Lok Sabha in particular (Article 75).
- **Political Homogeneity-** In case of coalition government, the ministers are bound by consensus.
- **Double Membership**
- **Leadership of the Prime Minister**
- **Dissolution of the Lower House-** The lower house of the Parliament (Lok Sabha) can be dissolved by the President on recommendation of the Prime Minister. In other words, the prime minister can advise the President to dissolve the Lok Sabha before the expiry of its term and hold fresh elections. This means that the executive enjoys the right to get the legislature dissolved in a parliamentary system.
- **Secrecy**

Merits of the Parliamentary System

1. Harmony Between Legislature and Executive

2. Responsible Government

3. Prevents Despotism

4. Ready Alternative Government In case the ruling party loses its majority, the Head of the State can invite the opposition party to form the government. This means an alternative government can be formed without fresh elections. Hence, Dr Jennings says, 'the leader of the opposition is the alternative prime minister'.

5. Wide Representation

Demerits of the Parliamentary System

In spite of the above merits, the parliamentary system suffers from the following demerits:

1. Unstable Government

2. No Continuity of Policies

3. Dictatorship of the Cabinet

INDIAN POLITY-M.LAXMIKANTH

4. Powers

5. Government by Amateurs

FEDERAL SYSTEM

- a unitary government is one in which all the powers are vested in the national government and the regional governments, if at all exist, derive their authority from the national government.
- A federal government, on the other hand, is one in which powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently.
- In a federal model, the national government is known as the Federal government or the Central government or the Union government and the regional government is known as the state government or the provincial government.
- The Constitution of India provides for a federal system of government in the country.
- The framers adopted the federal system due to two main reasons—the large size of the country and its socio- cultural diversity.
- They realised that the federal system not only ensures the efficient governance of the country but also reconciles national unity with regional autonomy.
- However, the term ‘federation’ has nowhere been used in the Constitution. Instead, Article 1 of the Constitution describes India as a ‘Union of States’.
- According to Dr B R Ambedkar, the phrase ‘Union of States’ has been preferred to ‘Federation of States’ to indicate two things: **(i)** the Indian federation is not the result of an agreement among the states like the American federation; and **(ii)** the states have no right to secede from the federation. The federation is union because it is indestructible.
- The Indian federal system is based on the ‘Canadian model’ and not on the ‘American model’.
- The ‘Canadian model’ differs fundamentally from the ‘American model’ in so far as it establishes a very strong centre.
- The Indian federation resembles the Canadian federation **(i)** in its formation (i.e., by way of disintegration); **(ii)** in its preference to the term ‘Union’ (the Canadian federation is also called a ‘Union’); and **(iii)** in its centralising tendency (i.e., vesting more powers in the centre vis-a-vis the states).

Federal Features of the Constitution

1. Dual Polity
2. Written Constitution
3. Division of Powers- The Union List consists of 100 subjects (originally 97), the State List 61 subjects (originally 66) and the Concurrent List 52 subjects (originally 47). Both the Centre and the states can make laws on the subjects of the concurrent list, but in case of a conflict, the Central law prevails. The residuary subjects (ie, which are not mentioned in any of the three lists) are given to the Centre.
4. Supremacy of the Constitution
5. Rigid Constitution
6. Independent Judiciary
7. Bicameralism

CENTRE-STATE RELATIONS

The Centre-state relations can be studied under three heads:

- Legislative relations.
- Administrative relations.
- Financial relations

Legislative Relations

- Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the states.
- Like any other Federal Constitution, the Indian Constitution also divides the legislative powers between the Centre and the states with respect to both the territory and the subjects of legislation.
- Further, the Constitution provides for the parliamentary legislation in the state field under five extraordinary situations as well as the centre's control over state legislation in certain cases.
- Thus, there are four aspects in the Centre–states legislative relations, viz.,
 - ✓ Territorial extent of Central and state legislation;
 - ✓ Distribution of legislative subjects;
 - ✓ Parliamentary legislation in the state field;and
 - ✓ Centre's control over state legislation.

1. Territorial Extent of Central and State Legislation

The Constitution defines the territorial limits of the legislative powers vested in the Centre and the states in the following way:

- (i) The Parliament can make laws for the whole or any part of the territory of India. The territory of India includes the states, the union territories, and any other area for the time being included in the territory of India.
- (ii) A state legislature can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable outside the state, except when there is a sufficient nexus between the state and the object.
- (iii) The Parliament alone can make 'extra-territorial legislation'. Thus, the laws of the Parliament are also applicable to the Indian citizens and their property in any part of the world.

However, the Constitution places certain restrictions on the plenary territorial jurisdiction of the Parliament. In other words, the laws of Parliament are not applicable in the following areas:

- (i) The President can make regulations for the peace, progress and good government of the four Union Territories—the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu. A regulation so made has the same force and effect as an act of Parliament. It may also repeal or amend any act of Parliament in relation to these union territories.
- (ii) The governor is empowered to direct that an act of Parliament does not apply to a scheduled area in the state or apply with specified modifications and exceptions.
- (iii) The Governor of Assam may likewise direct that an act of Parliament does not apply to a tribal area (autonomous district) in the state or apply with specified modifications and exceptions. The

INDIAN POLITY-M.LAXMIKANTH

President enjoys the same power with respect to tribal areas (autonomous districts) in Meghalaya, Tripura and Mizoram.

2. Distribution of Legislative Subjects

The Constitution provides for a three-fold distribution of legislative subjects between the Centre and the states, viz., List-I (the Union List), List-II (the State List) and List-III (the Concurrent List) in the Seventh Schedule:

- (i) The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List. This list has at present 100 subjects (originally 97 subjects) like defence, banking, foreign affairs, currency, atomic energy, insurance, communication, inter-state trade and commerce, census, audit and so on.
- (ii) The state legislature has “in normal circumstances” exclusive powers to make laws with respect to any of the matters enumerated in the State List. This has at present 61 subjects (originally 66 subjects) like public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, theaters, gambling and so on.

Both, the Parliament and state legislature can make laws with respect to any of the matters enumerated in the Concurrent List. This list has at present **52** subjects (originally 47 subjects) like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning, drugs, newspapers, books and printing press, and others. The 42nd Amendment Act of 1976 transferred five subjects to Concurrent List from State List, that is, **(a)** education, **(b)** forests, **(c)** weights and measures, **(d)** protection of wild animals and birds, and **(e)** administration of justice; constitution and organisation of all courts except the Supreme Court and the high courts.

- ✓ The power to make laws with respect to residuary subjects (i.e., the matters which are not enumerated in any of the three lists) is vested in the Parliament. This residuary power of legislation includes the power to levy residuary taxes.
- ✓ From the above scheme, it is clear that the matters of national importance and the matters which requires uniformity of legislation nationwide are included in the Union List.
- ✓ The matters of regional and local importance and the matters which permits diversity of interest are specified in the State List.
- ✓ The matters on which uniformity of legislation throughout the country is desirable but not essential are enumerated in the concurrent list. Thus, it permits diversity along with uniformity.
- ✓ The Government of India (GoI) Act of 1935 provided for a three-fold enumeration, viz., federal, provincial and concurrent.
- ✓ The present Constitution follows the scheme of this act but with one difference, that is, under this act, the residuary powers were given neither to the federal legislature nor to the provincial legislature but to the governor-general of India. In this respect, India follows the Canadian precedent.
- ✓ The Constitution expressly secure the predominance of the Union List over the State List and the Concurrent List and that of the Concurrent List over the State List.
- ✓ Thus, in case of overlapping between the Union List and the State List, the former should prevail. In case of overlapping between the Union List and the Concurrent List, it is again the former which should prevail.
- ✓ Where there is a conflict between the Concurrent List and the State List, it is the former that should prevail.

INDIAN POLITY-M.LAXMIKANTH

- ✓ In case of a conflict between the Central law and the state law on a subject enumerated in the Concurrent List, the Central law prevails over the state law.
- ✓ But, there is an exception. If the state law has been reserved for the consideration of the president and has received his assent, then the state law prevails in that state.
- ✓ But, it would still be competent for the Parliament to override such a law by subsequently making a law on the same matter.

3. Parliamentary Legislation in the State Field

- ✓ The above scheme of distribution of legislative powers between the Centre and the states is to be maintained in normal times.
- ✓ But, in abnormal times, the scheme of distribution is either modified or suspended.
- ✓ the Constitution empowers the Parliament to make laws on any matter enumerated in the State List under the following five extraordinary circumstances:

When Rajya Sabha Passes a Resolution

- ✓ If the Rajya Sabha declares that it is necessary in the national interest that Parliament should make laws on a matter in the State List, then the Parliament becomes competent to make laws on that matter. Such a resolution must be supported by two-thirds of the members present and voting.
- ✓ The resolution remains in force for one year; it can be renewed any number of times but not exceeding one year at a time.
- ✓ The laws cease to have effect on the expiration of six months after the resolution has ceased to be in force.
- ✓ This provision does not restrict the power of a state legislature to make laws on the same matter.
- ✓ But, in case of inconsistency between a state law and a parliamentary law, the latter is to prevail.

During a National Emergency

- ✓ The Parliament acquires the power to legislate with respect to matters in the State List, while a proclamation of national emergency is in operation.
- ✓ The laws become inoperative on the expiration of six months after the emergency has ceased to operate.
- ✓ Here also, the power of a state legislature to make laws on the same matter is not restricted. But, in case of repugnancy between a state law and a parliamentary law, the latter is to prevail.

When States Make a Request

- ✓ When the legislatures of two or more states pass resolutions requesting the Parliament to enact laws on a matter in the State List, then the Parliament can make laws for regulating that matter.
- ✓ A law so enacted applies only to those states which have passed the resolutions.
- ✓ However, any other state may adopt it afterwards by passing a resolution to that effect in its legislature.
- ✓ Such a law can be amended or repealed only by the Parliament and not by the legislatures of the concerned states.
- ✓ The effect of passing a resolution under the above provision is that the Parliament becomes entitled to legislate with respect to a matter for which it has no power to make a law.

INDIAN POLITY-M.LAXMIKANTH

- ✓ On the other hand, the state legislature ceases to have the power to make a law with respect to that matter.
- ✓ The resolution operates as abdication or surrender of the power of the state legislature with respect to that matter and it is placed entirely in the hands of Parliament which alone can then legislate with respect to it.
- ✓ Some examples of laws passed under the above provision are Prize Competition Act, 1955; Wild Life (Protection) Act, 1972; Water (Prevention and Control of Pollution) Act, 1974; Urban Land (Ceiling and Regulation) Act, 1976; and Transplantation of Human Organs Act, 1994.

To Implement International Agreements

- ✓ The Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or conventions.
- ✓ This provision enables the Central government to fulfill its international obligations and commitments.
- ✓ Some examples of laws enacted under the above provision are United Nations (Privileges and Immunities) Act, 1947; Geneva Convention Act, 1960; Anti-Hijacking Act, 1982 and legislations relating to environment and TRIPS.

During President's Rule

- ✓ When the President's rule is imposed in a state, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state.
- ✓ A law made so by the Parliament continues to be operative even after the president's rule.
- ✓ This means that the period for which such a law remains in force is not co-terminus with the duration of the President's rule.
- ✓ But, such a law can be repealed or altered or re-enacted by the state legislature.
- ✓ Centre's Control Over State Legislation Besides the Parliament's power to legislate directly on the state subjects under the exceptional situations, the Constitution empowers the Centre to exercise control over the state's legislative matters in the following ways:
 - (i) The governor can reserve certain types of bills passed by the state legislature for the consideration of the President. The president enjoys absolute veto over them.
 - (ii) Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the president. (For example, the bills imposing restrictions on the freedom of trade and commerce).
 - (iii) The President can direct the states to reserve money bills and other financial bills passed by the state legislature for his consideration during a financial emergency.

Administrative Relations

- ✓ Articles 256 to 263 in Part XI of the Constitution deal with the administrative relations between the Centre and the states. In addition, there are various other articles pertaining to the same matter.

Distribution of Executive Powers

- ✓ The executive power has been divided between the Centre and the states on the lines of the distribution of legislative powers, except in few cases.

INDIAN POLITY-M.LAXMIKANTH

✓ Thus, the executive power of the Centre extends to the whole of India:

- (i) to the matters on which the Parliament has exclusive power of legislation (i.e., the subjects enumerated in the Union List); and
- (ii) to the exercise of rights, authority and jurisdiction conferred on it by any treaty or agreement. Similarly, the executive power of a state extends to its territory in respect of matters on which the state legislature has exclusive power of legislation (i.e., the subjects enumerated in the State List).

Obligation of States and the Centre

- ✓ The Constitution has placed two restrictions on the executive power of the states in order to give ample scope to the Centre for exercising its executive power in an unrestricted manner.
- ✓ Thus, the executive power of every state is to be exercised in such a way
 - (a) as to ensure compliance with the laws made by the Parliament and any existing law which apply in the state; and
 - (b) as not to impede or prejudice the exercise of executive power of the Centre in the state. While the former lays down a general obligation upon the state, the latter imposes a specific obligation on the state not to hamper the executive power of the Centre.
- ✓ Article 365 says that where any state has failed to comply with (or to give effect to) any directions given by the Centre, it will be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution.
- ✓ It means that, in such a situation, the President's rule can be imposed in the state under Article 356.

Centre's Directions to the States

In addition to the above two cases, the Centre is empowered to give directions to the states with regard to the exercise of their executive power in the following matters:

- (i) the construction and maintenance of means of communication (declared to be of national or military importance) by the state;
- (ii) the measures to be taken for the protection of the railways within the state;
- (iii) the provision of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups in the state; and
- (iv) the drawing up and execution of the specified schemes for the welfare of the Scheduled Tribes in the state.

The coercive sanction behind the Central directions under Article 365 (mentioned above) is also applicable in these cases.

Mutual Delegation of Functions

- ✓ The distribution of legislative powers between the Centre and the states is rigid. Consequently, the Centre cannot delegate its legislative powers to the states and a single state cannot request the Parliament to make a law on a state subject.
- ✓ The distribution of executive power in general follows the distribution of legislative powers.
- ✓ But, such a rigid division in the executive sphere may lead to occasional conflicts between the two.
- ✓ Hence, the Constitution provides for inter-government delegation of executive functions in order to mitigate rigidity and avoid a situation of deadlock.

INDIAN POLITY-M.LAXMIKANTH

- ✓ The Constitution also makes a provision for the entrustment of the executive functions of the Centre to a state without the consent of that state.
- ✓ But, in this case, the delegation is by the Parliament and not by the president.
- ✓ Thus, a law made by the Parliament on a subject of the Union List can confer powers and impose duties on a state, or authorise the conferring of powers and imposition of duties by the Centre upon a state (irrespective of the consent of the state concerned).
- ✓ Notably, the same thing cannot be done by the state legislature.
- ✓ the mutual delegation of functions between the Centre and the state can take place either under an agreement or by a legislation. While the Centre can use both the methods, a state can use only the first method.

Cooperation between the Centre and States

The Constitution contains the following provisions to secure cooperation and coordination between the Centre and the states:

- (i) The Parliament can provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and river valley.
- (ii) The President can establish (under Article 263) an Inter-State Council to investigate and discuss subject of common interest between the Centre and the states. Such a council was set up in 1990.⁷
- (iii) Full faith and credit is to be given throughout the territory of India to public acts, records and judicial proceedings of the Centre and every state.

The Parliament can appoint an appropriate authority to carry out the purposes of the constitutional provisions relating to the interstate freedom of trade, commerce and intercourse. But, no such authority has been appointed so far.

All India Services

- ✓ Article 312 of the Constitution authorizes the Parliament to create new All-India Services on the basis of a Rajya Sabha resolution to that effect.
- ✓ Though the all-India services violate the principle of federalism under the Constitution by restricting the autonomy and patronage of the states, they are supported on the ground that (i) they help in maintaining high standard of administration in the Centre as well as in the states; (ii) they help to ensure uniformity of the administrative system throughout the country; and (iii) they facilitate liaison, cooperation, coordination and joint action on the issues of common interest between the Centre and the states.

Financial Relations

- ✓ Articles 268 to 293 in Part XII of the Constitution deal with Centre–state financial relations.
- ✓ Besides these, there are other provisions dealing with the same subject.

Allocation of Taxing Powers

The Constitution divides the taxing powers between the Centre and the states in the following way:

- The Parliament has exclusive power to levy taxes on subjects enumerated in the Union List (which are 15 in number).
- The state legislature has exclusive power to levy taxes on subjects enumerated in the State List (which are 20 in number).
- Both the Parliament and the state legislature can levy taxes on subjects enumerated in the Concurrent

INDIAN POLITY-M.LAXMIKANTH

List (which are 3 in number).

- The residuary power of taxation (that is, the power to impose taxes not enumerated in any of the three lists) is vested in the Parliament. Under this provision, the Parliament has imposed gift tax, wealth tax and expenditure tax.

The Constitution also draws a distinction between the power to levy and collect a tax and the power to appropriate the proceeds of the tax so levied and collected. For example, the income-tax is levied and collected by the Centre but its proceeds are distributed between the Centre and the states.

Further, the Constitution has placed the following restrictions on the taxing powers of the states:

- (i) A state legislature can impose taxes on professions, trades, callings and employments. But, the total amount of such taxes payable by any person should not exceed Rs. 2,500 per annum.
- (ii) A state legislature can impose taxes on the sale or purchase of goods (other than newspapers). But, this power of the states to impose sales tax is subjected to the four restrictions: **(a)** no tax can be imposed on the sale or purchase taking place outside the states; **(b)** no tax can be imposed on the sale or purchase taking place in the course of import or export; **(c)** no tax can be imposed on the sale or purchase taking place in the course of inter-state trade and commerce; and **(d)** a tax imposed on the sale or purchase of goods declared by Parliament to be of special importance in inter-state trade and commerce is subject to the restrictions and conditions specified by the Parliament.
- (iii) A state legislature can impose tax on the consumption or sale of electricity. But, no tax can be imposed on the consumption or sale of electricity which is **(a)** consumed by the Centre or sold to the Centre; or **(b)** consumed in the construction, maintenance or operation of any railway by the Centre or by the concerned railway company or sold to the Centre or the railway company for the same purpose.
- (iv) A state legislature can impose a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by Parliament for regulating or developing any inter-state river or river valley. But, such a law, to be effective, should be reserved for the president's consideration and receive his assent.

Distribution of Tax Revenues

- ✓ The 80th Amendment of 2000 and the 88th Amendment of 2003 have introduced major changes in the scheme of the distribution of tax revenues between the centre and the states.
- ✓ The 80th Amendment was enacted to give effect to the recommendations of the 10th Finance Commission.
- ✓ The Commission recommended that out of the total income obtained from certain central taxes and duties, 29% should go to the states. This is known as the 'Alternative Scheme of Devolution' and came into effect retrospectively from April 1, 1996.
- ✓ This amendment has brought several central taxes and duties like Corporation Tax and Customs Duties at par with Income Tax (taxes on income other than agricultural income) as far as their constitutionally mandated sharing with the states is concerned.
- ✓ The 88th Amendment has added a new Article 268-A dealing with service tax.
- ✓ It also added a new subject in the Union List – entry 92-C (taxes on services).
- ✓ Service tax is levied by the centre but collected and appropriated by both the centre and the states.

A. Taxes Levied by the Centre but Collected and Appropriated by the States (Article 268):

RAJESH NAYAK

INDIAN POLITY-M.LAXMIKANTH

- (i) Stamp duties on bills of exchange, cheques, promissory notes, policies of insurance, transfer of shares and others.
- (ii) Excise duties on medicinal and toilet preparations containing alcohol and narcotics.
- ✓ The proceeds of these duties levied within any state do not form a part of the Consolidated Fund of India, but are assigned to that state.

B. Service Tax Levied by the Centre but Collected and Appropriated by the Centre and the States (Article 268-A):

- ✓ Taxes on services are levied by the Centre. But, their proceeds are collected as well as appropriated by both the Centre and the states.
- ✓ The principles of their collection and appropriation are formulated by the Parliament.

C. Taxes Levied and Collected by the Centre but Assigned to the States (Article 269):

- (i) Taxes on the sale or purchase of goods (other than newspapers) in the course of inter-state trade or commerce.
- (ii) Taxes on the consignment of goods in the course of inter-state trade or commerce.

The net proceeds of these taxes do not form a part of the Consolidated Fund of India. They are assigned to the concerned states in accordance with the principles laid down by the Parliament.

D. Taxes Levied and Collected by the Centre but Distributed between the Centre and the States (Article 270): This category includes all taxes and duties referred to in the Union List except the following:

- (i) Duties and taxes referred to in Articles 268, 268-A and 269 (mentioned above);
- (ii) Surcharge on taxes and duties referred to in Article 271 (mentioned below); and
- (iii) Any cess levied for specific purposes.
- ✓ The manner of distribution of the net proceeds of these taxes and duties is prescribed by the President on the recommendation of the Finance Commission.

E. Surcharge on Certain Taxes and Duties for Purposes of the Centre (Article 271):

- ✓ The Parliament can at any time levy the surcharges on taxes and duties referred to in Articles 269 and 270 (mentioned above).
- ✓ The proceeds of such surcharges go to the Centre exclusively.
- ✓ In other words, the states have no share in these surcharges.

F. Taxes Levied and Collected and Retained by the States

- ✓ These are the taxes belonging to the states exclusively.
- ✓ They are enumerated in the state list and are 20 in number.
- ✓ These are : (i) land revenue; (ii) taxes on agricultural income, succession and estate duties in respect of agricultural land; (iii) taxes on lands and buildings, on mineral rights, on animals and boats, on road vehicles, on luxuries, on entertainments, and on gambling; (iv) excise duties on alcoholic liquors for human consumption and narcotics; (v) taxes on the entry of goods into a local area, on advertisements (except newspapers), on consumption or sale of electricity, and on goods and

INDIAN POLITY-M.LAXMIKANTH

passengers carried by road or on inland waterways; (vi) taxes on professions, trades, callings and employments not exceeding Rs. 2,500 per annum; (vii) capitation taxes; (viii) tolls; (ix) stamp duty on documents (except those specified in the Union List); (x) sales tax (other than newspaper); and (xi) fees on the matters enumerated in the State List (except court fees).

Distribution of Non-tax Revenues

A. The Centre The receipts from the following form the major sources of non-tax revenues of the Centre: (i) posts and telegraphs; (ii) railways; (iii) banking; (iv) broadcasting (v) coinage and currency; (vi) central public sector enterprises; and (vii) escheat and lapse.

B. The States The receipts from the following form the major sources of non-tax revenues of the states: (i) irrigation; (ii) forests; (iii) fisheries; (iv) state public sector enterprise; and (v) escheat and lapse.

Grants-in-Aid to the States

- ✓ Besides sharing of taxes between the Centre and the states, the Constitution provides for grants-in-aid to the states from the Central resources.
- ✓ There are two types of grants-in-aid, viz, statutory grants and discretionary grants:

Statutory Grants

- ✓ Article 275 empowers the Parliament to make grants to the states which are in need of financial assistance and not to every state.
- ✓ Also, different sums may be fixed for different states.
- ✓ These sums are charged on the Consolidated Fund of India every year.
- ✓ Apart from this general provision, the Constitution also provides for specific grants for promoting the welfare of the scheduled tribes in a state or for raising the level of administration of the scheduled areas in a state including the State of Assam.
- ✓ The statutory grants under Article 275 (both general and specific) are given to the states on the recommendation of the Finance Commission.

Discretionary Grants

- ✓ Article 282 empowers both the Centre and the states to make any grants for any public purpose, even if it is not within their respective legislative competence.
- ✓ Under this provision, the Centre makes grants to the states on the recommendations of the Planning Commission—an extra-constitutional body.
- ✓ “These grants are also known as discretionary grants, the reason being that the Centre is under no obligation to give these grants and the matter lies within its discretion.
- ✓ These grants have a two-fold purpose: to help the state financially to fulfil plan targets; and to give some leverage to the Centre to influence and coordinate state action to effectuate the national plan.”
- ✓ Notably, the discretionary grants form the larger part of the Central grants to the states (when compared with that of the statutory grants).
- ✓ Hence, the Planning Commission has assumed greater significance than the Finance Commission in Centre state financial relations.

INDIAN POLITY-M.LAXMIKANTH

Other Grants

- ✓ The Constitution also provided for a third type of grants-in-aid, but for a temporary period.
- ✓ Thus, a provision was made for grants in lieu of export duties on jute and jute products to the States of Assam, Bihar, Orissa and West Bengal.
- ✓ These grants were to be given for a period of ten years from the commencement of the Constitution.
- ✓ These sums were charged on the Consolidated Fund of India and were made to the states on the recommendation of the Finance Commission.

Protection of the States' Interest

To protect the interest of states in the financial matters, the Constitution lays down that the following bills can be introduced in the Parliament only on the recommendation of the President:

- A bill which imposes or varies any tax or duty in which states are interested;
 - A bill which varies the meaning of the expression 'agricultural income' as defined for the purposes of the enactments relating to Indian income tax;
 - A bill which affects the principles on which moneys are or may be distributable to states; and
 - A bill which imposes any surcharge on any specified tax or duty for the purpose of the Centre.
- ✓ The expression "tax or duty in which states are interested" means: **(a)** a tax or duty the whole or part of the net proceeds whereof are assigned to any state; or **(b)** a tax or duty by reference to the net proceeds whereof sums are for the time being payable, out of the Consolidated Fund of India to any state.
- ✓ The phrase 'net proceeds' means the proceeds of a tax or a duty minus the cost of collection.
- ✓ The net proceeds of a tax or a duty in any area is to be ascertained and certified by the Comptroller and Auditor-General of India.
- ✓ His certificate is final.

Borrowing by the Centre and the States

The Constitution makes the following provisions with regard to the borrowing powers of the Centre and the states:

- The Central government can borrow either within India or outside upon the security of the Consolidated Fund of India or can give guarantees, but both within the limits fixed by the Parliament. So far, no such law has been enacted by the Parliament.
- Similarly, a state government can borrow within India (and not abroad) upon the security of the Consolidated Fund of the State or can give guarantees, but both within the limits fixed by the legislature of that state.
- The Central government can make loans to any state or give guarantees in respect of loans raised by any state. Any sums required for the purpose of making such loans are to be charged on the Consolidated Fund of India.
- A state cannot raise any loan without the consent of the Centre, if there is still out-standing any part of a loan made to the state by the Centre or in respect of which a guarantee has been given by the Centre.

Inter-Governmental Tax Immunities

Exemption of Central Property from State Taxation

INDIAN POLITY-M.LAXMIKANTH

- ✓ The property of Centre is exempted from all taxes imposed by a state or any authority within a state like municipalities, district boards, panchayats and so on. But, the Parliament is empowered to remove this ban.
- ✓ The word 'property' includes lands, buildings, chattels, shares, debts, everything that has a money value, and every kind of property— movable or immovable and tangible or intangible.
- ✓ Further, the property may be used for sovereign (like armed forces) or commercial purposes.
- ✓ The corporations or the companies created by the Central government are not immune from state taxation or local taxation.
- ✓ The reason is that a corporation or a company is a separate legal entity.

Exemption of State Property or Income from Central Taxation

- ✓ The property and income of a state is exempted from Central taxation.
- ✓ Such income may be derived from sovereign functions or commercial functions.
- ✓ But the Centre can tax the commercial operations of a state if Parliament so provides.
- ✓ However, the Parliament can declare any particular trade or business as incidental to the ordinary functions of the government and it would then not be taxable.
- ✓ Notably, the property and income of local authorities situated within a state are not exempted from the Central taxation.
- ✓ Similarly, the property or income of corporations and companies owned by a state can be taxed by the Centre.
- ✓ The Supreme Court, in an advisory opinion (1963), held that the immunity granted to a state in respect of Central taxation does not extend to the duties of customs or duties of excise.
- ✓ In other words, the Centre can impose customs duty on goods imported or exported by a state, or an excise duty on goods produced or manufactured by a state.

Effects of Emergencies

The Centre–state financial relations in normal times (described above) undergo changes during emergencies. These are as follows:

National Emergency

- ✓ While the proclamation of national emergency (under Article 352) is in operation, the president can modify the constitutional distribution of revenues between the Centre and the states.
- ✓ This means that the president can either reduce or cancel the transfer of finances (both tax sharing and grants-in-aid) from the Centre to the states.
- ✓ Such modification continues till the end of the financial year in which the emergency ceases to operate.

Financial Emergency

- ✓ While the proclamation of financial emergency (under Article 360) is in operation, the Centre can give directions to the states: (i) to observe the specified canons of financial propriety; (ii) to reduce the salaries and allowances of all class of persons serving in the state (including the high court

INDIAN POLITY-M.LAXMIKANTH

judges); and (iii) to reserve all money bills and other financial bills for the consideration of the President.

Trends in Centre–State Relations

- ✓ Till 1967, the centre–state relations by and large were smooth due to one-party rule at the Centre and in most of the states.
- ✓ In 1967 elections, the Congress party was defeated in nine states and its position at the Centre became weak.
- ✓ This changed political scenario heralded a new era in the Centre–state relations.
- ✓ The non-Congress Governments in the states opposed the increasing centralisation and intervention of the Central government.
- ✓ They raised the issue of state autonomy and demanded more powers and financial resources to the states.
- ✓ This caused tensions and conflicts in Centre–state relations.

Administrative Reforms Commission

- ✓ The Central government appointed a six-member Administrative Reforms Commission (ARC) in 1966 under the chairmanship of Morarji Desai (followed by K Hanumant-hayya).
- ✓ Its terms of references included, among others, the examination of Centre–State relations.
- ✓ In order to examine thoroughly the various issues in Centre–state relations, the ARC constituted a study team under M C Setalvad.
- ✓ On the basis of the report of this study team, the ARC finalized its own report and submitted it to the Central government in 1969.
- ✓ It made 22 recommendations for improving the Centre–state relations. The important recommendations are:
 - Establishment of an Inter-State Council under Article 263 of the Constitution.
 - Appointment of persons having long experience in public life and administration and non- partisan attitude as governors.
 - Delegation of powers to the maximum extent to the states.
 - Transferring of more financial resources to the states to reduce their dependency upon the Centre.

Deployment of Central armed forces in the states either on their request or otherwise. No action was taken by the Central government on the recommendations of the ARC.

Sarkaria Commission

- ✓ In 1983, the Central government appointed a three-member Commission on Centre–state relations under the chairmanship of R S Sarkaria, a retired judge of the Supreme Court.
- ✓ The commission was asked to examine and review the working of existing arrangements between the Centre and states in all spheres and recommend appropriate changes and measures.

The Commission made 247 recommendations to improve Centre–state relations. The important recommendations are mentioned below:

1. A permanent Inter-State Council called the Inter-Governmental Council should be set up under Article 263.

INDIAN POLITY-M.LAXMIKANTH

2. Article 356 (President's Rule) should be used very sparingly, in extreme cases as a last resort when all the available alternatives fail.
 3. The institution of All-India Services should be further strengthened and some more such services should be created. The residuary powers of taxation should continue to remain with the Parliament, while the other residuary powers should be placed in the Concurrent List.
 4. When the president withholds his assent to the state bills, the reasons should be communicated to the state government.
 5. The National Development Council (NDC) should be renamed and reconstituted as the National Economic and Development Council (NEDC).
 6. The zonal councils should be constituted afresh and reactivated to promote the spirit of federalism.
 7. The Centre should have powers to deploy its armed forces, even without the consent of states. However, it is desirable that the states should be consulted.
 8. The Centre should consult the states before making a law on a subject of the Concurrent List.
 9. The procedure of consulting the chief minister in the appointment of the state governor should be prescribed in the Constitution itself.
 10. The net proceeds of the corporation tax may be made permissibly shareable with the states.
 11. The governor cannot dismiss the council of ministers so long as it commands a majority in the assembly.
 12. The governor's term of five years in a state should not be disturbed except for some extremely compelling reasons.
 13. No commission of enquiry should be set up against a state minister unless a demand is made by the Parliament.
 14. The surcharge on income tax should not be levied by the Centre except for a specific purpose and for a strictly limited period.
 15. The present division of functions between the Finance Commission and the Planning Commission is reasonable and should continue.
 16. Steps should be taken to uniformly implement the three language formula in its true spirit.
 17. No autonomy for radio and television but decentralisation in their operations.
 18. No change in the role of Rajya Sabha and Centre's power to reorganise the states.
 19. The commissioner for linguistic minorities should be activated.
- ✓ Till December 2011, the Central government has implemented 180 (out of 247) recommendations of the Sarkaria Commission. The most important is the establishment of the Inter-State Council in 1990.

Punchhi Commission

- ✓ The Second commission on Centre-State Relations was set-up by the Government of India in April 2007 under the Chairmanship of Madan Mohan Punchhi, former Chief Justice of India.
- ✓ It was required to look into the issues of Centre-State relations keeping in view the sea-changes that have taken place in the polity and economy of India since the Sarkaria Commission had last looked at the issue of Centre-State relations over two decades ago.

INDIAN POLITY-M.LAXMIKANTH

- ✓ The Commission submitted its report to the government in April 2010. In finalising the 1,456 page report, in seven volumes, the Commission took extensive help from the Sarkaria Commission report, the National Commission to Review the Working of the Constitution (NCRWC) report and the Second Administrative Reforms Commission report.
- ✓ However, in a number of areas, the Commission report differed from the Sarkaria Commission recommendations.
- ✓ The Planning Commission has a crucial role in the current situation. But its role should be that of coordination rather than of micro managing sectoral plans of the Central ministries and the states. Steps should be taken for the setting up of an Inter-State Trade and Commerce Commission under Article 307 read with Entry 42 of List-I.
- ✓ This Commission should be vested with both advisory and executive roles with decision making powers.
- ✓ As a Constitutional body, the decisions of the Commission should be final and binding on all states as well as the Union of India.
- ✓ Any party aggrieved with the decision of the Commission may prefer an appeal to the Supreme Court.

INTER-STATE RELATIONS

The Constitution makes the following provisions with regard to inter-state comity:

1. Adjudication of inter-state water disputes.
2. Coordination through inter-state councils.
3. Mutual recognition of public acts, records and judicial proceedings.

Freedom of inter-state trade, commerce and intercourse. Inter-state Water Disputes

Article 262 of the Constitution provides for the adjudication of inter-state water disputes. It makes two provisions:

- (i) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and river valley.
 - (ii) Parliament may also provide that neither the Supreme Court nor any other court is to exercise jurisdiction in respect of any such dispute or complaint.
- ✓ Under this provision, the Parliament has enacted two laws [the River Boards Act (1956) and the Inter-State Water Disputes Act (1956)].
 - ✓ The River Boards Act provides for the establishment of river boards for the regulation and development of inter-state river and river valleys.
 - ✓ A river board is established by the Central government on the request of the state governments concerned to advise them.
 - ✓ The Inter-State Water Disputes Act empowers the Central government to set up an ad hoc tribunal for the adjudication of a dispute between two or more states in relation to the waters of an inter-state river or river valley.
 - ✓ The decision of the tribunal would be final and binding on the parties to the dispute.
 - ✓ Neither the Supreme Court nor any other court is to have jurisdiction in respect of any water dispute which may be referred to such a tribunal under this Act.
 - ✓ The need for an extra judicial machinery to settle inter-state water disputes is as follows: “The Supreme Court would indeed have jurisdiction to decide any dispute between states in connection

INDIAN POLITY-M.LAXMIKANTH

with water supplies, if legal rights or interests are concerned; but the experience of most countries has shown that rules of law based upon the analogy of private proprietary interests in water do not afford a satisfactory basis for settling disputes between the states where the interests of the public at large in the proper use of water supplies are involved.

<i>Sl. No.</i>	<i>Name</i>	<i>Set-upin</i>	<i>State Involved</i>
1.	Krishna Water Disputes Tribunal	1969	Maharashtra, Karnataka and Andhra Pradesh
2.	Godavari Water Disputes Tribunal	1969	Maharashtra, Karnataka, Andhra Pradesh, Madhya Pradesh and Orissa
3.	Narmada Water Disputes Tribunal	1969	Rajasthan, Gujarat, Madhya Pradesh and Maharashtra
4.	Ravi and Beas Water Disputes Tribunal	1986	Punjab and Haryana
5.	Cauvery Water Disputes Tribunal	1990	Karnataka, Kerala, Tamil Nadu and Puducherry
6.	Second Krishna Water Disputes Tribunal	2004	Maharashtra, Karnataka and Andhra Pradesh
7.	Vansadhara Water Disputes Tribunal	2010	Odisha and Andhra Pradesh
8.	Mahadayi Water Disputes Tribunal	2010	Goa, Karnataka and Maharashtra

Inter-State Councils

- ✓ Article 263 contemplates the establishment of an Inter-State Council to effect coordination between the states and between Centre and states.
- ✓ The President can establish such a council if at any time it appears to him that the public interest would be served by its establishment.
- ✓ He can define the nature of duties to be performed by such a council and its organisation and procedure.

Even though the president is empowered to define the duties of an inter-state council, Article 263 specifies the duties that can be assigned to it in the following manner:

- (a) enquiring into and advising upon disputes which may arise between states;
 - (b) investigating and discussing subjects in which the states or the Centre and the states have a common interest; and making recommendations upon any such subject, and particularly for the better co-ordination of policy and action on it.
- ✓ “The council’s function to enquire and advice upon inter-state disputes is complementary to the Supreme Court’s jurisdiction under Article 131 to decide a legal controversy between the governments. The Council can deal with any controversy whether legal or non-legal, but its function is advisory unlike that of the court which gives a binding decision.”
 - ✓ Under the above provisions of Article 263, the president has established the following councils to

INDIAN POLITY-M.LAXMIKANTH

make recommendations for the better coordination of policy and action in the related subjects:

- Central Council of Health.
- Central Council of Local Government and Urban Development.
- Four Regional Councils for Sales Tax for the Northern, Eastern, Western and Southern Zones.
- The Central Council of Indian Medicine and the Central Council of Homoeopathy were set up under the Acts of Parliament.

Establishment of Inter-State Council

- ✓ The Sarkaria Commission on Centre-State Relations (1983–87) made a strong case for the establishment of a permanent Inter-State Council under Article 263 of the Constitution.
- ✓ It recommended that in order to differentiate the Inter-State Council from other bodies established under the same Article 263, it must be called as the Inter-Governmental Council.
- ✓ The Commission recommended that the Council should be charged with the duties laid down in clauses (b) and (c) of Article 263.
- ✓ In pursuance of the above recommendations of the Sarkaria Commission, **the Janata Dal Government headed by V.P. Singh established the Inter-State Council in 1990**. It consists of the following members:
 - (i) Prime minister as the Chairman
 - (ii) Chief ministers of all the states
 - (iii) Chief ministers of union territories having legislative assemblies
 - (iv) Administrators of union territories not having legislative assemblies
 - (v) Governors of States under President's rule
 - (vi) Six Central cabinet ministers, including the home minister, to be nominated by the Prime Minister.
- ✓ Five Ministers of Cabinet rank / Minister of State (independent charge) nominated by the Chairman of the Council (i.e., Prime Minister) are permanent invitees to the Council.
- ✓ The council is a recommendatory body on issues relating to inter-state, Centre–state and Centre–union territories relations.
- ✓ It aims at promoting coordination between them by examining, discussing and deliberating on such issues. Its duties, in detail, are as follows:
 - investigating and discussing such subjects in which the states or the centre have a common interest;
 - making recommendations upon any such subject for the better coordination of policy and action on it; and deliberating upon such other matters of general interest to the states as may be referred to it by the chairman.
 - The Council may meet at least thrice in a year. Its meetings are held in camera and all questions are decided by consensus.
 - There is also a Standing Committee of the Council.
 - It was set up in 1996 for continuous consultation and processing of matters for the consideration of the Council.

INDIAN POLITY-M.LAXMIKANTH

- It consists of the following members:
 - (i) Union Home Minister as the Chairman
 - (ii) Five Union Cabinet Ministers
 - (iii) Nine Chief Ministers
- The Council is assisted by a secretariat called the Inter-State Council Secretariat.
- This secretariat was set-up in 1991 and is headed by a secretary to the Government of India. Since 2011, it is also functioning as the secretariat of the Zonal Councils.

Public Acts, Records and Judicial Proceedings

Under the Constitution, the jurisdiction of each state is confined to its own territory. Hence, it is possible that the acts and records of one state may not be recognised in another state. To remove any such difficulty, the Constitution contains the “Full Faith and Credit” clause which lays down the following:

- (i) Full faith and credit is to be given throughout the territory of India to public acts, records and judicial proceedings of the Centre and every state. The expression ‘public acts’ includes both legislative and executive acts of the government. The expression ‘public record’ includes any official book, register or record made by a public servant in the discharge of his official duties.
- (ii) The manner in which and the conditions under which such acts, records and proceedings are to be proved and their effect determined would be as provided by the laws of Parliament. This means that the general rule mentioned above is subject to the power of Parliament to lay down the mode of proof as well as the effect of such acts, records and proceedings of one state in another state.
- (iii) Final judgements and orders of civil courts in any part of India are capable of execution anywhere within India (without the necessity of a fresh suit upon the judgement). The rule applies only to civil judgements and not to criminal judgements. In other words, it does not require the courts of a state to enforce the penal laws of another state.

Inter-State Trade and Commerce

- Articles 301 to 307 in Part XIII of the Constitution deal with the trade, commerce and intercourse within the territory of India.
- Article 301 declares that trade, commerce and intercourse throughout the territory of India shall be free.
- The object of this provision is to break down the border barriers between the states and to create one unit with a view to encourage the free flow of trade, commerce and intercourse in the country.
- The freedom under this provision is not confined to inter-state trade, commerce and intercourse but also extends to intra-state trade, commerce and intercourse.
- Thus, Article 301 will be violated whether restrictions are imposed at the frontier of any state or at any prior or subsequent stage.
- The freedom guaranteed by Article 301 is a freedom from all restrictions, except those which are provided for in the other provisions (Articles 302 to 305) of Part XIII of the Constitution itself. These are explained below:
 - (i) Parliament can impose restrictions on the freedom of trade, commerce and intercourse between the states or within a state in public interest. But, the Parliament cannot give preference to one state over another or discriminate between the states except in the case of scarcity of goods in any part

INDIAN POLITY-M.LAXMIKANTH

of India.

- (ii) The legislature of a state can impose reasonable restrictions on the freedom of trade, commerce and intercourse with that state or within that state in public interest. But, a bill for this purpose can be introduced in the legislature only with the previous sanction of the president. Further, the state legislature cannot give preference to one state over another or discriminate between the states.
 - (iii) The legislature of a state can impose on goods imported from other states or the union territories any tax to which similar goods manufactured in that state are subject. This provision prohibits the imposition of discriminatory taxes by the state.
 - (iv) The freedom (under Article 301) is subject to the nationalization laws (i.e., laws providing for monopolies in favour of the Centre or the states). Thus, the Parliament or the state legislature can make laws for the carrying on by the respective government of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.
- ✓ The Parliament can appoint an appropriate authority for carrying out the purposes of the above provisions relating to the freedom of trade, commerce and intercourse and restricts on it. The Parliament can also confer on that authority the necessary powers and duties. But, no such authority has been appointed so far.

Zonal Councils

- ✓ The Zonal Councils are the statutory (and not the constitutional) bodies.
 - ✓ They are established by an Act of the Parliament, that is, States Reorganisation Act of 1956.
 - ✓ The act divided the country into five zones (Northern, Central, Eastern, Western and Southern) and provided a zonal council for each zone.
 - ✓ While forming these zones, several factors have been taken into account which include: the natural divisions of the country, the river systems and means of communication, the cultural and linguistic affinity and the requirements of economic development, security and law and order.
 - ✓ Each zonal council consists of the following members: (a) home minister of Central government. (b) chief ministers of all the States in the zone. (c) Two other ministers from each state in the zone. (d) Administrator of each union territory in the zone.
- (i) Besides, the following persons can be associated with the zonal council as advisors (i.e., without the right to vote in the meetings): a person nominated by the Planning Commission; (ii) chief secretary of the government of each state in the zone; and (iii) development commissioner of each state in the zone.
- ✓ The home minister of Central government is the common chairman of the five zonal councils.
 - ✓ Each chief minister acts as a vice-chairman of the council by rotation, holding office for a period of one year at a time.
 - ✓ The zonal councils aim at promoting cooperation and coordination between states, union territories and the Centre.
 - ✓ They discuss and make recommendations regarding matters like economic and social planning, linguistic minorities, border disputes, inter-state transport, and so on.
 - ✓ They are only deliberative and advisory bodies.

The objectives (or the functions) of the zonal councils, in detail, are as follows:

- To achieve an emotional integration of the country.

INDIAN POLITY-M.LAXMIKANTH

- To help in arresting the growth of acute state-consciousness, regionalism, linguism and particularistic trends.
- To help in removing the after-effects of separation in some cases so that the process of reorganization, integration and economic advancement may synchronize.
- To enable the Centre and states to cooperate with each other in social and economic matters and exchange ideas and experience in order to evolve uniform policies.
- To cooperate with each other in the successful and speedy execution of major development projects.
- To secure some kind of political equilibrium between different regions of the country.

<i>Name</i>	<i>Members</i>	<i>Headquarters</i>
1. Northern Zonal Council	Jammu and Kashmir, Himachal Pradesh, Haryana, Punjab, Rajasthan, Delhi, and Chandigarh	New Delhi
2. Central Zonal Council	Uttar Pradesh, Uttarakhand, Chhattisgarh, and Madhya Pradesh	Allahabad
3. Eastern Zonal Council	Bihar, Jharkhand, West Bengal and Orissa	Kolkata
4. Western Zonal Council	Gujarat, Maharashtra, Goa, Dadra and Nagar Haveli and Daman and Diu	Mumbai
5. Southern Zonal Council	Andhra Pradesh, Karnataka, Tamil Nadu, Kerala and Puducherry	Chennai

North-Eastern Council

- ✓ In addition to the above Zonal Councils, a North-Eastern Council was created by a separate Act of Parliament—the North-Eastern Council Act of 1971. Its members include Assam, Manipur, Mizoram, Arunachal Pradesh, Nagaland, Meghalaya, Tripura and Sikkim. Its functions are similar to those of the zonal councils, but with few additions. It has to formulate a unified and coordinated regional plan covering matters of common importance. It has to review from time to time the measures taken by the member states for the maintenance of security and public order in the region.

EMERGENCY PROVISIONS

The Constitution stipulates three types of emergencies:

1. An emergency due to war, external aggression or armed rebellion (Article 352). This is popularly known as ‘National Emergency’. However, the Constitution employs the expression ‘proclamation of emergency’ to denote an emergency of this type.
2. An Emergency due to the failure of the constitutional machinery in the states (Article 356). This is popularly known as ‘President’s Rule’. It is also known by two other names—‘State Emergency’ or ‘constitutional Emergency’. However, the Constitution does not use the word ‘emergency’ for this situation.
3. Financial Emergency due to a threat to the financial stability or credit of India (Article 360).

INDIAN POLITY-M.LAXMIKANTH

National Emergency

Grounds of Declaration

- ✓ Under Article 352, the President can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.
- ✓ It may be noted that the president can declare a national emergency even before the actual occurrence of war or external aggression or armed rebellion, if he is satisfied that there is an imminent danger.
- ✓ The President can also issue different proclamations on grounds of war, external aggression, armed rebellion, or imminent danger thereof, whether or not there is a proclamation already issued by him and such proclamation is in operation. This provision was added by the 38th Amendment Act of 1975.
- ✓ When a national emergency is declared on the ground of 'war' or 'external aggression', it is known as 'External Emergency'.
- ✓ when it is declared on the ground of 'armed rebellion', it is known as 'Internal Emergency'.
- ✓ A proclamation of national emergency may be applicable to the entire country or only a part of it.
- ✓ The 42nd Amendment Act of 1976 enabled the president to limit the operation of a National Emergency to a specified part of India.
- ✓ Originally, the Constitution mentioned 'internal disturbance' as the third ground for the proclamation of a National Emergency, but the expression was too vague and had a wider connotation.
- ✓ Hence, the 44th Amendment Act of 1978 substituted the words 'armed rebellion' for 'internal disturbance'.
- ✓ Thus, it is no longer possible to declare a National Emergency on the ground of 'internal disturbance' as was done in 1975 by the Congress government headed by Indira Gandhi.
- ✓ The President, however, can proclaim a national emergency only after receiving a written recommendation from the cabinet. This means that the emergency can be declared only on the concurrence of the cabinet and not merely on the advice of the prime minister.
- ✓ In 1975, the then Prime Minister, Indira Gandhi advised the president to proclaim emergency without consulting her cabinet. The cabinet was informed of the proclamation after it was made, as a *fait accompli*. The 44th Amendment Act of 1978 introduced this safeguard to eliminate any possibility of the prime minister alone taking a decision in this regard.
- ✓ The 38th Amendment Act of 1975 made the declaration of a National Emergency immune from the judicial review.
- ✓ But, this provision was subsequently deleted by the 44th Amendment Act of 1978.
- ✓ Further, in the *Minerva Mills* case, (1980), the Supreme Court held that the proclamation of a national emergency can be challenged in a court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts or is absurd or perverse.

Parliamentary Approval and Duration

- ✓ The proclamation of Emergency must be approved by both the Houses of Parliament within one month from the date of its issue.
- ✓ Originally, the period allowed for approval by the Parliament was two months, but was reduced by the 44th Amendment Act of 1978.
- ✓ However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month

INDIAN POLITY-M.LAXMIKANTH

without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

- ✓ If approved by both the Houses of Parliament, the emergency continues for six months, and can be extended to an indefinite period with an approval of the Parliament for every six months.
- ✓ This provision for periodical parliamentary approval was also added by the 44th Amendment Act of 1978.
- ✓ Before that, the emergency, once approved by the Parliament, could remain in operation as long as the Executive (cabinet) desired.
- ✓ However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuance of Emergency, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the mean-time approved its continuation.
- ✓ Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority, that is, (a) a majority of the total membership of that house, and (b) a majority of not less than two-thirds of the members of that house present and voting.
- ✓ This special majority provision was introduced by the 44th Amendment Act of 1978. Previously, such resolution could be passed by a simple majority of the Parliament.

Revocation of Proclamation

- ✓ A proclamation of emergency may be revoked by the President at any time by a subsequent proclamation.
- ✓ Such a proclamation does not require the parliamentary approval.
- ✓ Further, the President must revoke a proclamation if the Lok Sabha passes a resolution disapproving its continuation. Again, this safeguard was introduced by the 44th Amendment Act of 1978.
- ✓ Before the amendment, a proclamation could be revoked by the president on his own and the Lok Sabha had no control in this regard.
- ✓ The 44th Amendment Act of 1978 also provided that, where one-tenth of the total number of members of the Lok Sabha give a written notice to the Speaker (or to the president if the House is not in session), a special sitting of the House should be held within 14 days for the purpose of considering a resolution disapproving the continuation of the proclamation.
- ✓ A resolution of disapproval is different from a resolution approving the continuation of a proclamation in the following two respects:
 1. The first one is required to be passed by the Lok Sabha only, while the second one needs to be passed by the both Houses of Parliament.
 2. The first one is to be adopted by a simple majority only, while the second one needs to be adopted by a special majority.

Effects of National Emergency

A proclamation of Emergency has drastic and wide ranging effects on the political system. These consequences can be grouped into three categories:

1. Effect on the Centre–state relations,

INDIAN POLITY-M.LAXMIKANTH

2. Effect on the life of the Lok Sabha and State assembly, and
3. Effect on the Fundamental Rights.
4. Effect on the Centre–state Relations While a proclamation of Emergency is in force, the normal fabric of the Centre–state relations undergoes a basic change. This can be studied under three heads, namely, executive, legislative and financial.

(a) *Executive*

- ✓ During a national emergency, the executive power of the Centre extends to directing any state regarding the manner in which its executive power is to be exercised.
- ✓ In normal times, the Centre can give executive directions to a state only on certain specified matters.
- ✓ However, during a national emergency, the Centre becomes entitled to give executive directions to a state on 'any' matter.
- ✓ Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.

(b) *Legislative*

- ✓ During a national emergency, the Parliament becomes empowered to make laws on any subject mentioned in the State List.
- ✓ Although the legislative power of a state legislature is not suspended, it becomes subject to the overriding power of the Parliament.
- ✓ Thus, the normal distribution of the legislative powers between the Centre and states is suspended, though the states Legislatures are not suspended.
- ✓ In brief, the Constitution becomes unitary rather than federal.
- ✓ The laws made by Parliament on the state subjects during a National Emergency become inoperative six months after the emergency has ceased to operate.
- ✓ Notably, while a proclamation of national emergency is in operation, the President can issue ordinances on the state subjects also, if the Parliament is not in session.
- ✓ Further, the Parliament can confer powers and impose duties upon the Centre or its officers and authorities in respect of matters outside the Union List, in order to carry out the laws made by it under its extended jurisdiction as a result of the proclamation of a National Emergency.
- ✓ The 42nd Amendment Act of 1976 provided that the two consequences mentioned above (executive and legislative) extends not only to a state where the Emergency is in operation but also to any other state.

(c) *Financial*

- ✓ While a proclamation of national emergency is in operation, the President can modify the constitutional distribution of revenues between the centre and the states.
- ✓ The president can either reduce or cancel the transfer of finances from Centre to the states.
- ✓ Such modification continues till the end of the financial year in which the Emergency ceases to operate.

INDIAN POLITY-M.LAXMIKANTH

- ✓ Every such order of the President has to be laid before both the Houses of Parliament.

Effect on the Life of the Lok Sabha and State Assembly

- ✓ While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond its normal term (five years) by a law of Parliament for one year at a time (for any length of time).
- ✓ However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.
- ✓ For example, the term of the Fifth Lok Sabha (1971–1977) was extended two times by one year at a time.
- ✓ Similarly, the Parliament may extend the normal tenure of a state legislative assembly (five years) by one year each time (for any length of time) during a national emergency, subject to a maximum period of six months after the Emergency has ceased to operate.

Effect on the Fundamental Rights

- ✓ Articles 358 and 359 describe the effect of a National Emergency on the Fundamental Rights.
- ✓ Article 358 deals with the suspension of the Fundamental Rights guaranteed by Article 19, while Article 359 deals with the suspension of other Fundamental Rights (except those guaranteed by Articles 20 and 21). These two provisions are explained below:

(a) Suspension of Fundamental Rights under Article 19

- ✓ According to Article 358, when a proclamation of national emergency is made, the six Fundamental Rights under Article 19 are automatically suspended.
- ✓ No separate order for their suspension is required.
- ✓ While a proclamation of national emergency is in operation, the state is freed from the restrictions imposed by Article 19.
- ✓ In other words, the state can make any law or can take any executive action abridging or taking away the six Fundamental Rights guaranteed by Article 19.
- ✓ Any such law or executive action cannot be challenged on the ground that they are inconsistent with the six Fundamental Rights guaranteed by Article 19.
- ✓ When the National Emergency ceases to operate, Article 19 automatically revives and comes into force.
- ✓ Any law made during Emergency, to the extent of inconsistency with Article 19, ceases to have effect.
- ✓ However, no remedy lies for anything done during the Emergency even after the Emergency expires.
- ✓ This means that the legislative and executive actions taken during the emergency cannot be challenged even after the Emergency ceases to operate.
- ✓ The 44th Amendment Act of 1978 restricted the scope of Article 358 in two ways.
- ✓ Firstly, the six Fundamental Rights under Article 19 can be suspended only when the National Emergency is declared on the ground of war or external aggression and not on the ground of armed rebellion.
- ✓ Secondly, only those laws which are related with the Emergency are protected from being challenged and not other laws.
- ✓ Also, the executive action taken only under such a law is protected.

INDIAN POLITY-M.LAXMIKANTH

(b) Suspension of other Fundamental Rights

- ✓ Article 359 authorises the president to suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency.
- ✓ This means that under Article 359, the Fundamental Rights as such are not suspended, but only their enforcement.
- ✓ The said rights are theoretically alive but the right to seek remedy is suspended.
- ✓ The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order.
- ✓ Further, the suspension could be for the period during the operation of emergency or for a shorter period as mentioned in the order, and the suspension order may extend to the whole or any part of the country.
- ✓ It should be laid before each House of Parliament for approval.
- ✓ While a Presidential Order is in force, the State can make any law or can take any executive action abridging or taking away the specified Fundamental Rights.
- ✓ Any such law or executive action cannot be challenged on the ground that they are inconsistent with the specified Fundamental Rights.
- ✓ When the Order ceases to operate, any law so made, to the extent of inconsistency with the specified Fundamental Rights, ceases to have effect.
- ✓ But no remedy lies for anything done during the operation of the order even after the order ceases to operate.
- ✓ This means that the legislative and executive actions taken during the operation of the Order cannot be challenged even after the Order expires.
- ✓ The 44th Amendment Act of 1978 restricted the scope of Article 359 in two ways.
- ✓ Firstly, the President cannot suspend the right to move the Court for the enforcement of fundamental rights guaranteed by Articles 20 to 21.
- ✓ In other words, the right to protection in respect of conviction for offences (Article 20) and the right to life and personal liberty (Article 21) remain enforceable even during emergency.
- ✓ Secondly, only those laws which are related with the emergency are protected from being challenged and not other laws and the executive action taken only under such a law, is protected. Distinction Between Articles 358 and 359

The differences between Articles 358 and 359 can be summarised as follows:

1. Article 358 is confined to Fundamental Rights under Article 19 only whereas Article 359 extends to all those Fundamental Rights whose enforcement is suspended by the Presidential Order.
2. Article 358 automatically suspends the fundamental rights under Article 19 as soon as the emergency is declared. On the other hand, Article 359 does not automatically suspend any Fundamental Right. It only empowers the president to suspend the enforcement of the specified Fundamental Rights.
3. Article 358 operates only in case of External Emergency (that is, when the emergency is declared on the grounds of war or external aggression) and not in the case of Internal Emergency (ie, when the Emergency is declared on the ground of armed rebellion). Article 359, on the other hand, operates

INDIAN POLITY-M.LAXMIKANTH

in case of both External Emergency as well as Internal Emergency.

4. Article 358 suspends Fundamental Rights under Article 19 for the entire duration of Emergency while Article 359 suspends the enforcement of Fundamental Rights for a period specified by the president which may either be the entire duration of Emergency or a shorter period.
5. Article 358 extends to the entire country whereas Article 359 may extend to the entire country or a part of it.
6. Article 358 suspends Article 19 completely while Article 359 does not empower the suspension of the enforcement of Articles 20 and 21.
7. Article 358 enables the State to make any law or take any executive action inconsistent with Fundamental Rights under Article 19 while Article 359 enables the State to make any law or take any executive action inconsistent with those Fundamental Rights whose enforcement is suspended by the Presidential Order.

Declarations Made So Far

- ✓ This type of Emergency has been proclaimed three times so far—in 1962, 1971 and 1975.
- ✓ The first proclamation of National Emergency was issued in October 1962 on account of Chinese aggression in the NEFA (North-East Frontier Agency—now Arunachal Pradesh), and was in force till January 1968.
- ✓ Hence, a fresh proclamation was not needed at the time of war against Pakistan in 1965.
- ✓ The second proclamation of national emergency was made in December 1971 in the wake of attack by Pakistan.
- ✓ Even when this Emergency was in operation, a third proclamation of National Emergency was made in June 1975. Both the second and third proclamations were revoked in March 1977.
- ✓ The first two proclamations (1962 and 1971) were made on the ground of ‘external aggression’ while the third proclamation (1975) was made on the ground of ‘internal disturbance’, that is, certain persons have been inciting the police and the armed forces against the discharge of their duties and their normal functioning.
- ✓ The Emergency declared in 1975 (internal emergency) proved to be the most controversial.
- ✓ There was widespread criticism of the misuse of Emergency powers.
- ✓ In the elections held to the Lok Sabha in 1977 after the Emergency, the Congress Party led by Indira Gandhi lost and the Janta Party came to power.
- ✓ This government appointed the Shah Commission to investigate the circumstances that warranted the declaration of an Emergency in 1975. The commission did not justify the declaration of the Emergency. Hence, the 44th Amendment Act was enacted in 1978 to introduce a number of safeguards against the misuse of Emergency provisions.

President’s Rule

Grounds of Imposition

- ✓ Article 355 imposes a duty on the Centre to ensure that the government of every state is carried on in accordance with the provisions of the Constitution.
- ✓ It is this duty in the performance of which the Centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in state.

INDIAN POLITY-M.LAXMIKANTH

- ✓ This is popularly known as 'President's Rule'. It is also known as 'State Emergency' or 'Constitutional Emergency'.

The President's Rule can be proclaimed under Article 356 on two grounds—one mentioned in Article 356 itself and another in Article 365:

1. Article 356 empowers the President to issue a proclamation, if he is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the Constitution. Notably, the president can act either on a report of the governor of the state or otherwise too (i.e. even without the governor's report).
2. Article 365 says that whenever a state fails to comply with or to give effect to any direction from the Centre, it will be lawful for the president to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution.

Parliamentary Approval and Duration

- ✓ A proclamation imposing President's Rule must be approved by both the Houses of Parliament within two months from the date of its issue.
- ✓ However, if the proclamation of President's Rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha approves it in the meantime.
- ✓ If approved by both the Houses of Parliament, the President's Rule continues for six months.
- ✓ It can be extended for a maximum period of three years with the approval of the Parliament, every six months.
- ✓ However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuation of the President's Rule, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved its continuance.
- ✓ Every resolution approving the proclamation of President's Rule or its continuation can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that House present and voting.
- ✓ The 44th Amendment Act of 1978 introduced a new provision to put restraint on the power of Parliament to extend a proclamation of President's Rule beyond one year.
- ✓ Thus, it provided that, beyond one year, the President's Rule can be extended by six months at a time only when the following two conditions are fulfilled:
 1. a proclamation of National Emergency should be in operation in the whole of India, or in the whole or any part of the state; and
 2. The Election Commission must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.
- ✓ A proclamation of President's Rule may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Consequences of President's Rule

The President acquires the following extraordinary powers when the President's Rule is imposed in a state:

1. He can take up the functions of the state government and powers vested in the governor or any other

INDIAN POLITY-M.LAXMIKANTH

executive authority in the state.

2. He can declare that the powers of the state legislature are to be exercised by the Parliament.
3. He can take all other necessary steps including the suspension of the constitutional provisions relating to anybody or authority in the state.
 - ✓ When the President’s Rule is imposed in a state, the President dismisses the state council of ministers headed by the chief minister.
 - ✓ The state governor, on behalf of the President, carries on the state administration with the help of the chief secretary of the state or the advisors appointed by the President. This is the reason why a proclamation under Article 356 is popularly known as the imposition of ‘President’s Rule’ in a state.
 - ✓ Further, the President either suspends or dissolves the state legislative assembly.
 - ✓ The Parliament passes the state legislative bills and the state budget.

When the state legislature is thus suspended or dissolved:

1. the Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him in this regard,
2. the Parliament or in case of delegation, the President or any other specified authority can make laws conferring powers and imposing duties on the Centre or its officers and authorities,
3. the President can authorise, when the Lok Sabha is not in session, expenditure from the state consolidated fund pending its sanction by the Parliament, and the President can promulgate, when the Parliament is not in session, ordinances for the governance of the state.

<i>National Emergency (Article 352)</i>	<i>President’s Rule (Article 356)</i>
1. It can be proclaimed only when the security of India or a part of it is threatened by war, external aggression or armed rebellion.	1. It can be proclaimed when the government of a state cannot be carried on in accordance with the provisions of the Constitution due to reasons which may not have any connection with war, external aggression or armed rebellion.
2. During its operation, the state executive and legislature continue to function and exercise the powers assigned to them under the Constitution. Its effect is that the Centre gets concurrent powers of administration and legislation in the state.	2. During its operation, the state executive is dismissed and the state legislature is either suspended or dissolved. The president administers the state through the governor and the Parliament makes laws for the state. In brief, the executive and legislative powers of the state are assumed by the Centre.
3. Under this, the Parliament can make laws on the subjects enumerated in the State List only by itself, that is, it cannot delegate the same to any other body or authority.	3. Under this, the Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him. So far, the practice has been for the president to make laws for the state in consultation with the members of Parliament from that state. Such laws are known as President’s Acts.

INDIAN POLITY-M.LAXMIKANTH

4. There is no maximum period prescribed for its operation. It can be continued indefinitely with the approval of Parliament for every six months.	4. There is a maximum period prescribed for its operation, that is, three years. Thereafter, it must come to an end and the normal constitutional machinery must be restored in the state.
5. Under this, the relationship of the Centre with all the states undergoes a modification.	5. Under this, the relationship of only the state under emergency with the Centre undergoes a modification.
6. Every resolution of Parliament approving its proclamation or its continuance must be passed by a special majority.	6. Every resolution of Parliament approving its proclamation or its continuance can be passed only by a simple majority.
7. It affects fundamental rights of the citizens.	7. It has no effect on Fundamental Rights of the citizens.
8. Lok Sabha can pass a resolution for its revocation.	8. There is no such provision. It can be revoked by the President only on his own.

Cases of Proper and Improper Use

Imposition of President's Rule in a state would be proper in the following situations:

1. Where after general elections to the assembly, no party secures a majority, that is, 'Hung Assembly'.
2. Where the party having a majority in the assembly declines to form a ministry and the governor cannot find a coalition ministry commanding a majority in the assembly.
3. Where a ministry resigns after its defeat in the assembly and no other party is willing or able to form a ministry commanding a majority in the assembly.
4. Where a constitutional direction of the Central government is disregarded by the state government.
5. Internal subversion where, for example, a government is deliberately acting against the Constitution and the law or is fomenting a violent revolt.
6. Physical breakdown where the government willfully refuses to discharge its constitutional obligations endangering the security of the state.

The imposition of President's Rule in a state would be improper under the following situations:

1. Where a ministry resigns or is dismissed on losing majority support in the assembly and the governor recommends imposition of President's Rule without probing the possibility of forming an alternative ministry. Where the governor makes his own assessment of the support of a ministry in the assembly and recommends imposition of President's Rule without allowing the ministry to prove its majority on the floor of the Assembly.
2. Where the ruling party enjoying majority support in the assembly has suffered a massive defeat in the general elections to the Lok Sabha such as in 1977 and 1980.
3. Internal disturbances not amounting to internal subversion or physical breakdown.

INDIAN POLITY-M.LAXMIKANTH

4. Maladministration in the state or allegations of corruption against the ministry or stringent financial exigencies of the state.
5. Where the state government is not given prior warning to rectify itself except in case of extreme urgency leading to disastrous consequences.
6. Where the power is used to sort out intra-party problems of the ruling party, or for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution.

Financial Emergency

Grounds of Declaration

- ✓ Article 360 empowers the president to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.
- ✓ The 38th Amendment Act of 1975 made the satisfaction of the president in declaring a Financial Emergency final and conclusive and not questionable in any court on any ground.
- ✓ But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the president is not beyond judicial review.

Parliamentary Approval and Duration

- ✓ A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue.
 - ✓ However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
 - ✓ Once approved by both the Houses of Parliament, the Financial Emergency continues indefinitely till it is revoked. This implies two things:
 1. there is no maximum period prescribed for its operation; and
 2. repeated parliamentary approval is not required for its continuation.
 - ✓ A resolution approving the proclamation of financial emergency can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that house present and voting.
 - ✓ A proclamation of Financial Emergency may be revoked by the president at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.
- Effects of Financial Emergency

The consequences of the proclamation of a Financial Emergency are as follows:

1. The executive authority of the Centre extends (a) to directing any state to observe such canons of financial propriety as are specified by it; and (b) to directions as the President may deem necessary and adequate for the purpose.
2. Any such direction may include a provision requiring (a) the reduction of salaries and allowances of all or any class of persons serving in the state; and (b) the reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the state.

INDIAN POLITY-M.LAXMIKANTH

3. The President may issue directions for the reduction of salaries and allowances of (a) all or any class of persons serving the Union; and (b) the judges of the Supreme Court and the high court.
- ✓ During the operation of a financial emergency, the Centre acquires full control over the states in financial matters.
- ✓ No Financial Emergency has been declared so far, though there was a financial crisis in 1991.

PANCHAYATI RAJ

- ✓ The term panchayat raj in India signifies the system of rural local self government. It is created in all states in India by the acts of concerned state legislature to establish democracy at grass root level.
- ✓ It is entrusted with duties and the responsibility in the field of rural development. It was constitutionalized through 73rd amendment act of 1992.
- ✓ At the central level, the ministry of rural development looks after the matters relating to the panchayati raj bodies.
 - Local government is a subject of the state list
 - The fifth entry of the state list in the seventh schedule of the constitution of India deals with the local government.

Balwant Rai Mehta Committee

1. In January 1957, the government of India appointed a committee to examine the functioning of the community development programme (1952) and the national extension service (1953) and to suggest measures for their better performance.
2. The committee submitted its report in November 1957 and recommended the establishment of the scheme for democratic decentralization which ultimately came to be known as the Panchayat Raj.

The specific recommendations made by Balwant Rai Mehta committee are

1. Establishment of a three tier panchayati raj system which includes Zila Parishad at the District level, Panchayati Samiti at the block level and Gram Panchayat at the village level.
2. These tiers should be organically linked together through a device of indirect elections.
3. The village panchayat should be constituted with directly elected representatives, whereas the Panchayat Samiti and the Zila Parishad should be constituted with indirectly elected members.
4. All the planning and developmental activities should be entrusted to these bodies.
5. The panchayat Samiti should be the executive body while the Zila Parishad should be the advisory, coordinating and supervisory body.
6. The district collector should be the chairman of the Zila Parishad.
7. There should be a genuine transfer of power and responsibility to these democratic bodies.
8. Adequate resources should be transferred to these bodies to enable them to discharge their functions and fulfil their responsibilities.
9. A system should be evolved to effect further devolution of authority in future.
10. These recommendations were accepted by the National Development Council in January, 1958.
11. The council did not insist on a single rigid pattern and left it to the states to evolve their own patterns suitable to the local conditions.
12. But the basic principles and the broad fundamentals should be identical throughout the

INDIAN POLITY-M.LAXMIKANTH

country.

13. Rajasthan was the first state to establish the institution of panchayati raj.
14. The scheme was inaugurated by the then prime minister Pt Jawahar Lal Nehru on October 2, 1959 in Nagaur District.
15. Rajasthan was followed by Andhra Pradesh which also adopted the system in 1959.
16. Rajasthan adopted a three – tier system.

Exceptions

1. Tamil Nadu adopted a two – tier system
2. West Bengal adopted a four – tier system

Ashok Mehta Committee

1. In December 1977, the Janta Government appointed a committee on panchayat raj institutions under the chairmanship of Ashok Mehta.
2. It submitted its report in August 1978 and made 132 recommendations to revive and strengthen the declining panchayati raj system in the country.

Its main recommendations are

1. The three tier system of the panchayat raj should be replaced by two tier system, that is the Zila Parishad at the district level, and below it, the Mandal panchayat consisting of a group of villages comprising a population of 15000 to 20000.
2. A district should be the first point for the decentralisation under the popular supervision below the state level.
3. The Zila Parishad should be the executive body and be made responsible for responsible for planning at the district level.
4. There should be an official participation of the political parties at all the levels of panchayat elections.
5. The panchayati raj institutions should have compulsory powers for taxation to mobilise their own financial resources.
6. There should be a regular social audit by a district level agency and a committee of legislators to check whether the funds allotted for the venerable social and economic groups are actually spent on them.
7. The state government should not supersede the panchayati raj institutions. In case imperative super session, election should be held within six months from the time of super session.
8. The Nyaya panchayats should be kept as separate bodies from that of development panchayats. They should be presided over by a qualified judge.

The panchayati raj elections

1. Development functions should be transferred to the Zila Parishad and all the development staffs should work under its control and supervision.
2. The voluntary agencies should play an important role in mobilising the support of the people for the panchayati raj.
3. A minister for the panchayati raj should be appointed in the state council of ministers to look after the affairs of the panchayati raj institutions.

INDIAN POLITY-M.LAXMIKANTH

4. Seats for the SCs and STs should be reserved on the basis of their population.
5. Due to collapse of the Janta Government before the completion of its term, no action could be taken on the recommendations of Ashok Mehta committee at the central level.
6. The three states of Karnataka, West Bengal and Andhra Pradesh took steps to revitalize the panchayati raj, keeping in view some of the recommendations of the Ashok Mehta Committee.

GVK Rao Committee

1. In this respect, the G.V.K Rao committee report (1986) different from the Dantwala Committee report on Block – level planning (1978) and the Hanmantha Rao Committee report on the District Planning (1984).
2. The Hanumantha Rao committee differed in respect from the Balwant Rai Mehta Committee Administrative reforms commission of India.
3. The Ashok Mehta Committee and finally the G.V.R Rao committee which recommended reduction in the developmental role of district collector and assigned a major role to the panchayati raj in development administration.

LM Singhvi Committee

1. In 1986 Rajiv Gandhi Government appointed a committee on the revitalisation of the panchayati raj institutions for democracy and development under the chairmanship of L.M. Singhvi.

Its major recommendations are:

2. The panchayati raj institutions should be constitutionally recognized, protected and preserved. For this purpose a new chapter should be added in the constitution of India.
3. It also suggested some constitutional provisions to ensure regular, free and fair elections to the Panchayati raj bodies.
4. Nyaya Panchayats should be established for a cluster of villages.
5. The villages should be organized to make the gram panchayats more viable. It also emphasized the importance of the gram Sabha and called it as the embodiment of direct democracy.
6. The village panchayat should have more financial resources.
7. The judicial tribunals should be established in each state to eradicate controversies about election to the panchayati raj institutions, their dissolution and other matters related to their functioning.

Constitutionalization

1. The Narsimha Rao Government introduced the Constitutional Amendment Bill in the Loksabha in September 1991.
2. It was passed by the Loksabha on December 22, 1992 and by the Rajyasabha on December 23.
3. Later it was approved by the 17 state assemblies and received the assent of the president of India on April 20, 1993.

73RD AMENDMENT ACT OF 1992

This act corresponds to part IX of constitution of India.

- ✓ It is entitled as the panchayats and consists provision of Articles – 243 to 243 – Q.
- ✓ The act has also added the eleventh schedule to the constitution of India.
- ✓ It contains 29 functional items of the panchayats and deals with Article 243 – G.
- ✓ The act has given a practical shape to article 40 of the constitution.
- ✓ The act gives a constitutional status to the panchayat raj institutions.

INDIAN POLITY-M.LAXMIKANTH

- ✓ The state governments are under the constitutional obligation to adopt the new panchayati raj system in accordance with the provision of the act.
- ✓ Neither the formation of the panchayats nor the holding of elections at regular intervals depends on the will of the state government.
- ✓ The provisions of the act can be grouped into two categories – compulsory and voluntary.
- ✓ The compulsory provisions on the other hand, may be included at the discretion of the states.
- ✓ It transforms the representative democracy into the participatory democracy.

The salient features of the act

1. The three tier system: the act provides for a three – tier system of the panchayati raj in the states, that is panchayats at the village, the intermediate and the district level.
2. The act defines all the terms in the following manner:
3. Panchayat means an institution (by whatever name called) of local self – government for rural areas.
4. Village means a village specified by the governor through a public notification to be a village for this purpose, and includes a group of villages so specified.
5. Intermediate level between the village and district specified by the governor through a public notification for this purpose.
6. The act brings about uniformity in the structure of the panchayati raj throughout the country
7. A state having population not exceeding 20 lakh may not constitute panchayat at the intermediate level.

Gram Sabha

1. The act provides for a Gram Sabha as the foundation of the panchayati raj system.
2. It is a body consisting of persons registered in the electoral rolls of the village comprised within the area of the panchayat at the village level.
3. It is a village assembly consisting of all the registered voters in the area of a panchayat.
4. It shall exercise such powers and perform such functions at the village level as the state level legislatures determines.

Duration of panchayats

1. The act provided for a five – year term of office to the panchayat at every level.
2. However, it can be dissolved before the completion of its term.
3. Fresh election to constitute a panchayat shall be completed:
 - ✓ Before the expiry of its term: or
 - ✓ In case of dissolution, before the expiry of a period of six months from the date of its dissolution.

Disqualification

1. A person shall be disqualified for being chosen as or for being a member of the panchayat if he is so disqualified:
 - ✓ Under any law for the time being in force for the purposes of elections to the legislature of the state concerned, or
 - ✓ Under any law made by the state legislature
2. No person shall be disqualified on the grounds that he is less than 25 years of age if he had attained the age of 21 years.
3. All questions of disqualifications shall be referred to state legislature.

INDIAN POLITY-M.LAXMIKANTH

Reservation of seats

1. The act provided for the reservation of seats for the scheduled castes and the scheduled tribes in every panchayat (at all levels) in proportion of their population in the panchayat area.
2. The state legislature shall provide for the reservation of offices of the chairpersons in the panchayat at the village or any other level for the SCs and STs.
3. The act provides for the reservation of not less than one – third of the total number of seats for women (including the number of seats reserved for women belonging to the SCs and the STs).
4. Not less than one – third of the total number of offices of the chairpersons in the panchayats at each level shall be reserved for women.
5. The act authorizes the legislature of a state to make any provision for the reservation of seats in any panchayat of offices of the chairperson in the panchayat at any level in favour of the backward classes.

Election of the members and the chairpersons

1. All members of the panchayats at the village, intermediate and the district levels shall be elected directly by the people.
2. The chairpersons of the panchayats at the intermediate and district level shall be elected indirectly by and from amongst the elected members thereof.
3. The chairperson of a panchayat at the village level shall be elected in such a manner as the state legislature determines.

Powers and functions

1. The state legislature may endow the panchayats, with such powers and authority as may be necessary to enable them to function as institutions of self government.
2. Such a scheme may contain provisions for the devolution of powers and responsibilities upon panchayats at the appropriate level with respect to
 - ✓ Preparation of plans for economic development and social justice
 - ✓ The implementation of schemes for the economic development and social justice as may be entrusted to them, including those in relation to the 29 matters listed in the eleventh schedule.

State election commission

1. The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the panchayats shall be vested in the state election commission.
2. It consists of a state election commissioner who is to be appointed by the governor.
3. His conditions of service shall not be varied to his disadvantage after his appointment.

Finances The state legislature may

1. Authorize a panchayat to levy, collect and appropriate taxes, duties, tolls and fees;
2. Assign to a panchayat taxes, duties, tolls and fees levied and collected fund of the state;
3. Provide for constitution of funds for crediting all the financial requirements of the panchayats.

State finance commission

1. The governor of a state shall, after every five years, constitute a finance commission to review the financial position of the panchayats.
2. It shall make the following recommendations to the governor.

INDIAN POLITY-M.LAXMIKANTH

3. The principles which should govern the distribution between the states and the panchayats of the net proceeds of taxes, duties, tolls and fees levied by the state.
4. The principles which should govern the determination of taxes, duties, tolls and fees which may be assigned to the panchayats.
5. The principles which should govern the grants – in – aid to the panchayats from the consolidated fund of state.
6. The measures needed to improve the financial position of the panchayats.
7. Any other matter returned to the finance commission by the governor in the interest of sound finance of the panchayats.
8. The state legislature may provide for the composition of the commission, the required qualifications of its members and the manner of their selection.
9. The governor shall place the recommendations of the commission along with the action taken report before the state legislature.
10. The central finance commissioner shall also suggest the measures needed to augment the consolidated fund of state to supplement the resources of the panchayats in the states (on the basis of the recommendations made by the finance commission of state).
11. The president of India may direct that the provisions of this act shall apply to any (union territory) subject to such exceptions and modification as may specify.
12. The act does not apply the states of Jammu and Kashmir, Nagaland, Meghalaya and Mizoram and certain other areas.
13. These areas include the scheduled areas and the tribal areas referred to in Article 244 of the constitution, the hilly areas of Manipur for which a district council exists and Darjeeling district of West Bengal for which Dargeeling Gorkha hill council exists.
14. The state legislature may take provisions with respect to the maintenance of the accounts by the panchayats and the auditing of such accounts.
15. The date of commencement of this act was 24th April, 1993.

Problems in the working of Panchayats

- ✓ Panchayati raj in India faces problems at political, economic and social levels. These problems have stood in the way of efficient functioning of the panchayat raj institutions

At political level and administration level

1. Though the constitution provides elections after every five years, some of the states have tasted election after decades and in some election yet to take place.
2. Groupism, caste, class etc play a dominant role in the election and working of the representatives.
3. Political interference from the state governments and the administrative agencies has become a common phenomenon.
4. There is absence of clear functional jurisdiction of panchayats
5. There is absence of administrative autonomy to the panchayats.
6. There is absence of in – built structural and organizational strength to force the administrators to follow the decision.
7. Use of manpower, money power and muscle power in elections to panchayati raj system.

At social level

1. Caste, class, religion and other sectarian interest are playing a dominant role in the working of panchayati raj institutions.
2. The policy of reservation for weaker section has not been much use due to ignorance and illiteracy

INDIAN POLITY-M.LAXMIKANTH

of people and the representatives.

3. Anti – social and economically powerful people run the institution from backdoor.

At economic level

1. Paucity of funds and resources to the panchayati raj institutions.
2. There is absence of coherence between the responsibilities and resources.
3. Dependence upon the doles of the state government.
4. Lack of financial autonomy and power to impose taxes and charges.
5. Diversion of funds by the state governments which were embarked for development of panchayati raj institutions.
6. State government’s apathy towards local needs and demands for development.

THE PANCHAYATS

A-243. in this part, unless the context otherwise requires:-

- ✓ District means a district in state
- ✓ Gram Sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level;
- ✓ Intermediate level means a level between the village and district levels specified by the governor of a state by public notification to be the intermediate level for the purpose of this part
- ✓ Panchayat means an institution (by whatever name called) of self – government constituted under article 243B, for the rural areas.
- ✓ Panchayat area means the population as ascertained at the last preceding census of which the relevant figures have been published.
- ✓ Village means a village specified by the governor by public notification to be a village for the purposes of this part and includes a group of villages so specified.

243A. Gram Sabha

- ✓ A gram Sabha may exercise such powers and perform such functions at the village levels as the legislature may by law provide.

243B. Constitution of panchayats

- ✓ There shall be constituted in every state. Panchayats at the village, intermediate and district levels in accordance with the provisions of this part.
- ✓ Notwithstanding anything in clause (1). Panchayat at the intermediate level may not be constituted in a state having population not exceeding twenty lakhs.

243C. Composition of Panchayats

- ✓ Subject to the provisions of this part. The legislature of a state may by law make provisions with respect to the composition of panchayats.
- ✓ Provided that the ratio between the population of the territorial area of a panchayat at any level and the number of seats in such panchayat to be filled by election shall, so far as practicable, be the same throughout the state.
- ✓ All the seats in a panchayat shall be filled by a persons chosen by direct election from territorial constituencies in the panchayat area and, for this purpose, each panchayat area shall be divided into

INDIAN POLITY-M.LAXMIKANTH

territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the panchayat area.

- ✓ The legislature of a state may, by law, provide for the representation –
 - Of the chairpersons of the panchayats at the village level, in the panchayats at the intermediate level or, in the case of a state not having panchayats at the intermediate level, in the panchayat at the district level;
 - Of the chairpersons of the panchayats at the intermediate level, in the panchayats at the district level;
 - Of the members of the house of the people and the members of legislative assembly of the state representing constituencies which comprise wholly or partly a panchayat area at a level other than the village, in such panchayat;
 - Of the members of the house of the people and members of the legislative council of the state, where they are registered as elector within
 - ✓ A panchayat area at the intermediate level, in panchayat at the intermediate level;
 - ✓ A panchayat area at the district level, in panchayat at the district level.
- ✓ The chairperson of a panchayat and other members of a panchayat whether or not chosen by the direct election from territorial constituencies in the panchayat area shall have the right to vote in the meetings of the panchayats.

The chairperson of

- ✓ A panchayat at the village level shall be elected in such manner as the legislature of a state may by law provide
- ✓ A panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

243D. Reservation of seats

(1) Seats shall be reserved for

The scheduled castes

The scheduled tribes

In every panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that panchayat as the population of the scheduled castes in that panchayat area or of the schedule tribes in that area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a panchayat.

(2) Not less than one – third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the scheduled castes or as the case may be, the scheduled tribes.

(3) Not less than one –third (including the number of seats reserved for women belonging to the scheduled castes and the scheduled tribes) of the total number of seats to be filled by direct election in every panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a panchayat.

INDIAN POLITY-M.LAXMIKANTH

(4) The offices of the chairpersons in the panchayats at the village or any other level shall be reserved for the scheduled castes, the scheduled tribes and women in such manner as the legislature of a state may by law provide:

Provided that the number of offices of chairpersons reserved for the scheduled caste and scheduled tribes in the panchayats at each level in any state shall bear, as nearly as may be, the same proportion to the total number of such offices in the panchayats at each level as the population of the schedule castes in the state or of the scheduled tribes in the state bears to the total population of the state.

Provided further that not less than one – third of the total number of the offices of chairpersons in the panchayats at each level shall be reserved for women.

Provide also that the number of offices reserved under this clause shall be allotted by rotation to different panchayats at each level.

(5) The reservation of seats under clause (1) and (2) and the reservation of offices of chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this part shall prevent the legislature of a state from making any provision for reservation of seats in any panchayats or offices of chairpersons in the panchayats at any level in favour of backward class of citizens.

243E. Duration of panchayats etc.

(1) Every panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for the first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1)

(3) An election to constitute a panchayat shall be completed

- ✓ Before the expiry of its duration specified in clause (1)
- ✓ Before the expiration of a period of six months from the date of its dissolution:
- ✓ Provided that where the remainder of the period for which the dissolved panchayat would have continued in less than six months.

✓ It shall not be necessary to hold any election under this clause for constituting the panchayat for such period

(4) A panchayat constituted upon the dissolution of a panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved panchayat would have continued under clause (1) had it not been so dissolved.

243F. Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of a panchayat

(a) If he is so disqualified by or under any law for the time being in force for the purposes of elections to the legislature of the state concerned:

INDIAN POLITY-M.LAXMIKANTH

Provided that no person shall be disqualified on the ground that he is less than twenty – five years of age, if he has attained the age of twenty – one years:

(b) If he is so disqualified by or under any law made by the legislature of the state.

(2) If any question arises as to whether a member of a panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the legislature of a state may, by law, provide.

ARTICLES OF PANCHAYATS

243G. Powers, authority and responsibilities of Panchayats

1. Subject to the provision of this constitution, the legislature of a state may, by law, endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self- government
2. And such law may contain provisions for the devolution of powers and responsibilities upon panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to –
3. The preparation of plans for economic developments and social justice
4. The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the eleventh schedule.

243H. Powers to impose taxes by and funds of the panchayat

1. The legislature of a state may by law
2. Authorise a panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits
3. Assign to a panchayat such taxes, duties, tolls and fees levied and collected by the state government for such purposes and subject to such conditions and limits
4. Provide for making such grants – in – aid to the panchayats from the consolidated fund of state
5. Provide for the constitution of such funds for crediting all moneys received, respectively, by or on behalf of the panchayats and also for the withdrawal of such moneys there from, as may be specified in the law.

243I Constitution of finance commission to review financial position

1. The governor of a state shall, as soon as may be within one year from the commencement of the constitution 73rd amendment act, 1992, and thereafter at the expiration of every fifth year, constitute a finance commission to review the financial position of the panchayats and to make recommendations to the governor as to –
 - a) The principles which should govern –
 - ✓ The distribution between the state and the panchayats of net proceeds of the taxes, duties, tolls and fee leviable by the state, which may be divided between them
 - ✓ Under this part and the allocation between the panchayats at all levels of their respective shares of such proceeds.
 - ✓ The determination of the taxes, duties, tolls and fees which may be assigned to or appointed by the panchayats.
 - ✓ The grants in aid to the panchayats from the consolidated fund of the state

INDIAN POLITY-M.LAXMIKANTH

- b) The measures needed to improve the financial position of the panchayat;
- c) Any other matter referred to the finance commission by the governor in the interests of sound finance of the panchayats.
2. The legislature of a state may, by law, provide for the composition of the commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.
3. The commission shall determine their procedure and shall have such powers in the performance of their functions as the legislature of the state may by law, confer on them.
4. The governor shall cause every recommendation made by the commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the legislature of the state.

243J Audit of accounts of Panchayats

1. The legislature of a state may by law make provision with respect to the maintenance of accounts by the panchayats and the auditing of such accounts.
2. 243K Elections to the Panchayats
3. The superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to the panchayats shall be vested in a state election commission consisting of a state election commissioner to be appointed by the governor.
4. Subject to the provisions of any law made by the legislature of a state, the conditions of service and tenure of office of the state election commissioner shall be such as the governor may by rule determine.
5. Provide that the state election commissioner shall not be removed from his office except in like manner and on the like grounds as a judge of a high court and the conditions of service of the state election commissioner shall not be varied to his disadvantage after his appointment.
6. The governor of a state shall, when so requested by the state election commission, make available to the state election commission such staffs as may be necessary for the discharge of the functions conferred on the state election commission by clause (1).
7. Subject to this provision of the constitution, the legislature of a state may by law, make provision with respect to all matters relating to, or in connection with, elections to the panchayats.

243L Application to union territories

1. The provision of this part shall apply to the union territories and shall, in their application to a union territory, have effect as if the references to the governor of a state were references to the administrator of the union territory appointed under article 239 and references to the legislature or the legislative assembly of a state were references, in relation to a union territory having a legislative assembly, to that legislative assembly.
2. Provided that the president may, by public notification, direct that the provisions of this part shall apply to any union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

243M Part not to apply to certain areas

1. Nothing in this part shall apply to the scheduled areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.
2. Nothing in this part shall apply to
 - a) The states of Nagaland, Meghalaya and Mizoram:
 - b) The hill areas in the state of Manipur for which district councils exist under any law for the

INDIAN POLITY-M.LAXMIKANTH

time being in force.

3. Nothing in this part
 - a) Relating to panchayats at the district level shall be apply to the hill areas of the district of Darjeeling in the state of West Bengal for which Darjeeling Gorkha hill Council exists under any law for the time being in force.
 - b) Shall be construed to affect the functions and powers of the Darjeeling Gorkaha Hill Council constituted under such law.
 - c) 210A [(3A) Nothing in article 243D relating to reservation of seats for the scheduled castes, shall apply to the state of Arunachal Pradesh].
4. Notwithstanding anything in this constitution
 - a) The legislature of a state referred to in sub clause (2) may, by law, extend this part to that state, except the areas, if any, referred to in clause (1). If the legislative assembly of that state passes a resolution to that effect by a majority of total membership of that house present and voting.
 - b) Parliament may by law extend the provisions of this part to the scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law and no such law shall be deemed to be an amendment of this constitution for the purposes of article 368.

243N Continuance of existing laws and Panchayats

1. Notwithstanding anything in this part, any provision of any law relating to panchayats in force in a state immediately before the commencement of the constitution 73rd Amendment Act, 1992.
2. Which is inconsistent with the provisions of this part, shall continue to be in force until amended or replaced by a competent legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier.
3. Provided that all the panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to effect by the legislative assembly of that state or, in case of a state having a legislative council, by each house of the legislature of that state.

243O Bar to interference by courts in electoral matters

Notwithstanding anything in this constitution

- a) The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K shall not be called in question in any court.
- b) No election to any panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided by or under any law made by the legislature of a state.

MUNICIPALITIES

243P. Definitions – In this part, unless the context otherwise requires

1. Committee means a committee constituted under article 243S
2. District means a district in state
3. Metropolitan area means an area having a population of ten lakhs or more, comprised in one or more districts consisting of two or more municipalities or panchayat of other contiguous areas.
4. Specified by Governor by public notification to be a metropolitan area for the purposes of this part

INDIAN POLITY-M.LAXMIKANTH

5. Municipal area means the territorial area of municipalities as is notified by the governor
6. Municipalities' means an institution of self government constituted under article 243Q
7. Panchayat means a panchayat constituted under article 243B.
8. Population means the population as ascertained at the last preceding census of which the relevant figures have been published.

243Q. Constitution of Municipalities

1. There shall be constituted in every state
 - a) A Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area
 - b) A municipal council for a smaller urban areas and
 - c) A municipal corporation for a larger area, in accordance with the provisions of this part

Provided that a municipality under this clause may not be constituted in such urban area or part thereof as the governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

2. In this article a territorial area a smaller urban area or a larger urban area means such area as the governor may, having regard to the population of the area.
3. The density of the population therein, the revenue generated for local administration, the percentage of employment in non agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this part.

243R. Composition of Municipalities

1. Says as provided in clause, all the seats in a municipality shall be filled by persons chosen by direct election from the territorial constituencies in the municipal area and for this purpose each municipal area shall be divided into territorial constituencies to be known as wards.
2. The legislature of a state may, by law provide
 - a) For the representation in a municipality of
 - I. Persons having special knowledge or experience in Municipal administration
 - II. The members of the house of the people and the members of the legislative Assembly of the state representing constituencies which comprise wholly or partly the municipal area
 - III. The members of the council of states and the members of the legislative council of the state registered as electors within the municipal area
 - IV. The chairpersons of the committees constituted under clause (5) of article 243S; provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the municipality;
 - b) The manner of election of the chairperson of a municipality

243S. Constitution and composition of wards committees etc.-

1. There shall be constituted wards committees, consisting of one or more wards, within the territorial area of a municipality having a population of three lakhs or more
2. The legislature of a state may, by law, make provision with respect to
 - a) The composition and the territorial area of a wards committee
 - b) The manner in which the seats in a wards committee shall be filled
3. A member of a municipality representing a ward within the territorial area of the wards committee

INDIAN POLITY-M.LAXMIKANTH

shall be a member of that committee.

4. Where a wards committee consist of
 - a) One ward, the member representing that ward in the municipality; or
 - b) Two or more wards, one of the members representing such wards in the municipality elected by the members of the wards committee, shall be the chairperson of that committee.
5. Nothing in this part shall be deemed to prevent the legislature of a state from making any provision for the constitution of committees in addition to the wards committees.

243T. Reservation of seats

1. Seats shall be reserved for the scheduled castes and the scheduled tribes in every municipality and the number of seats so reserved shall bear, as nearly as may be.
2. The same proportion to the total number of seats to be filled by direct election in that municipality as the population of the scheduled caste in the municipal area of the scheduled tribes in the municipal areas bears to be the total population of that area and such seats may be allotted by rotation to different constituencies in a municipality.
3. Not less than one third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the scheduled castes or, as the case may be, the scheduled tribes.
4. Not less than one third (including the number of seats reserved for women belonging to the scheduled castes and the scheduled tribes) of the total number of seats to be filled by direct election in every municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a municipality.
5. The offices of chairpersons in the municipalities shall be reserved for the scheduled castes, the scheduled tribes and women in such manner as the legislature of state may, by law provide.
6. The reservation of seats under clauses (1) and (2) and the reservation of offices of chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.
7. Nothing in this part shall prevent the legislature of state from making any provision for reservation of seats in any municipality or offices of chairpersons in the municipalities in favour of ward class of citizens.

243U. Duration of Municipalities etc.

1. Every municipality unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.
2. Provided that a municipality shall be given a reasonable opportunity of being heard before its dissolution
3. No amendment of any law for the time being in force shall have the effect of causing dissolution of a municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1)
4. An election to constitute a municipality shall be completed
 - a) Before the expiry of its duration specified in clause (1);
 - b) Before the expiration of a period of six month from the date of its dissolution;
 - c) Provided that where the remainder of the period for which the dissolved municipality have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the municipality for such period.
5. A municipality constituted upon the dissolution of a municipality would have continued under clause (1) had it not been so dissolved.

INDIAN POLITY-M.LAXMIKANTH

243V. Disqualification for membership

1. A person shall be disqualified for being chosen as, and for being a member of a municipality –
 - a) If he is also disqualified by or under any law for the time being in force for the purpose of elections to the legislature of the state concerned:
 - b) Provided that no person shall be disqualified on the ground that he is less than twenty five years of age, if he has attained the age of 21 years.
 - c) If he is so disqualified by or under any law made by the legislature of the state.
2. If any question arises as to whether a member of a municipality has become subject to any of the disqualification mentioned in clause (1). The question shall be referred for the decision of such authority and in such manner as the legislature of a state may, by law provide.

243W. Powers, authority and responsibilities of Municipalities, etc.

Subject to the provision of this constitution, the legislature of a state may, by law, endow –

- a) The municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon municipalities, subject to such conditions as may be specified therein, with respect to-
 - I. The participation of plans for economic development and social justice;
 - II. The performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the twelfth schedule;
- b) The committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the twelfth schedule.

ARTICLES OF MUNICIPALITIES

243X. Power to impose taxes by, and Funds of, the Municipalities.-

The Legislature of a State may, by law,-

- a) Authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- b) Assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
- c) Provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and
- d) Provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys there from as may be specified in the law.

243 Y. Finance commission-

1. The Finance Commission constituted under article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor as to-
 - a) The principles which should govern-
 - i. The distribution between the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Municipalities at all levels of their respective

INDIAN POLITY-M.LAXMIKANTH

shares of such proceeds;

ii. The determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities;

iii. The grants-in-aid to the Municipalities from the Consolidated Fund of the State;

b) The measures needed to improve the financial position of the Municipalities;

c) Any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Municipalities.

2. The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

243Z. Audit of accounts of Municipalities.-

✓ The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

243ZA. Elections to the Municipalities.-

1. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.
2. Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

243ZB. Application to Union territories.-

1. The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:
2. Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

243ZC. Part not to apply to certain areas.-

1. Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.
2. Nothing in this Part shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under any law for the time being in force for the hill areas of the district of Darjeeling in the State of West Bengal.
3. Notwithstanding anything in this Constitution, Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243ZD. Committee for district planning.-

1. There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.
2. The Legislature of a State may, by law, make provision with respect to-

INDIAN POLITY-M.LAXMIKANTH

- a) The composition of the District Planning Committees;
 - b) The manner in which the seats in such Committees shall be filled;
 - c) Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;
 - d) The functions relating to district planning which may be assigned to such Committees;
 - e) The manner in which the Chairpersons of such Committees shall be chosen.
3. Every District Planning Committee shall, in preparing the draft development plan,-
- a) Have regarded to-
 - i. Matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;
 - ii. The extent and type of available resources whether financial or otherwise;
 - b) Consult such institutions and organizations as the Governor may, by order, specify.
4. The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZE. Committee for Metropolitan planning.-

1. There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.
2. The Legislature of a State may, by law, make provision with respect to-
 - a) The composition of the Metropolitan Planning Committees;
 - b) The manner in which the seats in such Committees shall be filled;
 - c) Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;
 - d) The representation in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;
 - e) The functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;
 - f) The manner in which the Chairpersons of such Committees shall be chosen.
3. Every Metropolitan Planning Committee shall, in preparing the draft development plan,-
 - a) Have regarded to-
 - i. The plans prepared by the Municipalities and the Panchayats in the Metropolitan area;
 - ii. Matters of common interest between the Municipalities and the Panchayats, including coordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;
 - iii. The overall objectives and priorities set by the Government of India and the Government of the State;
 - iv. The extent and nature of investments likely to be made in the Metropolitan area

INDIAN POLITY-M.LAXMIKANTH

by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

- b) Consult such institutions and organisations as the Governor may, by order, specify.
4. The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZF. Continuance of existing laws and Municipalities.-

1. Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of THE CONSTITUTION (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:
2. Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

243ZG. Bar to interference by courts in electoral matters.-

Notwithstanding anything in this Constitution,-

- a) The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;
- b) No election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

CONSTITUTIONAL FRAMEWORK

CONTENTS

1. HISTORICAL BACKGROUND
2. MAKING OF THE CONSTITUTION
3. SALIENT FEATURES OF THE CONSTITUTION
4. PREAMBLE
5. UNION AND ITS TERRITORY
6. CITIZENSHIP
7. FUNDAMENTAL RIGHTS
8. DIRECTIVE PRINCIPALS OF STATE POLICY
9. FUNDAMENTAL DUTIES
10. BASIC STRUCTURE OF THE CONSTITUTION

OTHERS

CONTENTS

1. OFFICIAL LANGUAGE
2. ANTI-DEFECTION LAW

HISTORICAL BACKGROUND OF THE INDIAN CONSTITUTION

- ✓ ü The British came to India in 1600 AD as traders in the form of East India Company.
- ✓ ü East India Company was also known as East India Trading Company **or** English East India Company.
- ✓ ü The East India Company was founded in the year 1600 for persuading the trade with East Indies (South Asia and South East Asia).
- ✓ ü But the East India Company traded mainly in the Indian subcontinent and China.
- ✓ ü The East India Company has exclusive rights to trade in India.
- ✓ ü In the year 1765 the East India Company obtained “Diwani” (Rights over revenue and civil justice) of Bengal, Bihar and Orissa.
- ✓ ü In the year 1858 after the Sepoy mutiny, British crown assumed direct responsibility for the governance of India.
- ✓ ü This rule continued up to August 15, 1947. (India got independence).

THE COMPANY RULE (1773-1858): AND THE REGULATING ACT OF 1773

- ✓ ü This was the first step taken by British Government to control and regulate the affairs of East India Company in India.
- ✓ ü The political and administrative functions of the company were recognized for the first time.
- ✓ ü It laid the foundation of central administration in India.

FEATURES (CHARACTERISTICS) OF 1773 ACT:

- ✓ ü The Governor of Bengal was designated as the Governor-General of Bengal and the Executive council of the 4 members was created to assist the Governor-General.
- ✓ ü The **first Governor-General of Bengal was Lord Warren Hastings.**
- ✓ ü The 1773 act made the Governors of Bombay and Madras presidencies subordinate to the Governor-General of Bengal.
- ✓ ü The act provided for the establishment of Supreme Court at Calcutta in the year 1774.
- ✓ ü The Supreme Court comprised of a Chief Justice and 3 other judges.
- ✓ ü This act prohibited the servants of the company from engaging in any private trade or accepting presentations (gifts) or bribes from the natives (local people).
- ✓ ü The 1773 act strengthened the control of British government over the company by requiring the court the Directors to report on its revenue, civil and military affairs in India.

INDIAN POLITY BY M.LAXMIKANTH

- ✓ ü The 1781 act of Settlement – passed by the British parliament to rectify the defects of 1773 Act.

PITTS INDIA ACT OF 1784:

- ✓ ü The Pitts India act distinguished between commercial and political functions of the company.
- ✓ ü The Court of Directors entrusted with the responsibility to manage commercial affairs of the company.
- ✓ ü The Board of control was entrusted with the responsibility of political affairs.
- ✓ ü Thus the Pitts India act established the dual (double) government.
- ✓ ü The company territories in India were for the first time called British possessions in India.

CHARTER ACT OF 1833

- ✓ ü This is the final step towards centralization of power in India.

What is centralization?

This is the concentration of power in single authority.

- ✓ ü The Governor-General of Bengal was made the Governor-General of India.
- ✓ ü The **first Governor-General of India was Lord William Bentinck.**
- ✓ ü The laws that were made prior to 1833 were called regulation.
- ✓ ü The laws that were made under 1833 charter were called Acts.
- ✓ ü The East India Company purely became the administrative body.
- ✓ ü Commercial body> Administrative body.
- ✓ ü This act provided for the company's territories in India were held by it in trust for His Majesty, his heirs and successors.
- ✓ ü The superintendence, direction and control of whole civil and military government of all the British territories and revenues in India was expressly vested in 'The Governor General of India in Council'.
- ✓ ü For the first time the Governor-General's government was known as the Government of India.
- ✓ ü The council was known as 'Indian Council'.
- ✓ ü The council was enlarged for legislative work by the addition of a Law member in addition to the existing three.
- ✓ ü This act attempted to introduce a system of open competition for selection of civil servants. (This is an attempt only; open competition system was introduced later).

INDIAN POLITY BY M.LAXMIKANTH

- ✓ ü Indians were not debarred from holding any place, office and employment under the company, but negated because of the opposition from the court of directors.

CHARTER ACT OF 1853:

- ✓ ü This was the last charter act passed by the British Parliament between 1793 and 1853.
- ✓ ü This act created the Legislative council.
- ✓ ü The legislative council functioned as a mini Parliament.
- ✓ ü The **Charter Act of 1853 introduced Open competition system** of selection and recruitment of civil servants.
- ✓ ü This was also open to Indians. (Indians were permitted to take part in the competitive examination).
- ✓ ü Accordingly Macaulay Committee (Committee on the Indian civil services) was appointed in the year 1854.
- ✓ ü Satyendra Nath Tagore was the first Indian to join the civil services.

THE CROWN RULE (1858 – 1947)

THE GOVERNMENT OF INDIA ACT 1858

- ✓ This came into being after the Sepoy Mutiny of 1857.

· Regarding the Sepoy Mutiny we learn more during Indian History discussion.

- ✓ ü This act is also known as the Act for good government in India.
- ✓ ü This is the first statute enacted by the Parliament for the governance of India under the direct rule of the British government.
- ✓ ü The GOI Act abolished the East India Company.
- ✓ ü The British crown assumed sovereignty over India from the East India Company.
- ✓ ü The designation of Governor-General of India was changed to the Viceroy of India.
- ✓ ü The **last Governor-General of India** was Lord Canning.
- ✓ ü The **first Viceroy of India** was Lord Canning.
- ✓ ü The GOI act abolished the Board of Control and Court of Directors.
- ✓ ü A new position called Secretary of State for India was created and the powers of the crown were

RAJESH NAYAK

INDIAN POLITY BY M.LAXMIKANTH

exercised by the Secretary of State for India.

- ✓ ü The Secretary of state for India is a member of Cabinet and is responsible to the British Parliament.
- ✓ ü The Secretary of state for India was assisted by a council called 'Council of India' that contained 15 members.
- ✓ ü The Council of India was composed of exclusively of people from England.
- ✓ ü The secretary of state of India who was responsible to the British Parliament governed India through the Governor-General, assisted by an executive council which consisted of higher officials of the government.
- ✓ ü The administration of the country was unitary and rigidly centralized through 1858 Act.
- ✓ ü The provincial governments though existing headed by a Governor were mere the agents of the Government of India and functioned under the direct control of the Governor-General.
- ✓ ü There was no separation of functions. The legislative, executive, civil and military authority was vested in Governor-General in council of India who was responsible to the secretary of state for India.
- ✓ ü The control of the secretary of state of India over the Indian administration was absolute (complete, total).
- ✓ ü The machinery of the administration was totally unconcerned about the public opinion.

INDIAN COUNCILS ACT OF 1861:

- ✓ ü This act introduced a grain of popular element by including some non-official members in the executive council while transacting legislative business like legislative council.
- ✓ ü The Viceroy of India would nominate Indians to the legislative council.
- ✓ ü The functions of nominated members were confined exclusively to the consideration of the legislative proposals placed before it by the Governor-General (Viceroy).
- ✓ ü Even in the provinces for initiating legislations the prior sanction of the Governor-General (Viceroy) was necessary.
- ✓ ü In the year 1862 Lord Canning (first Viceroy of India) nominated Raja of Benaras, the Maharaja of Patiala and Sir Dinakar Rao to the legislative council.
- ✓ ü This act restored the powers of Bombay and Bengal presidencies.
- ✓ ü The Legislative Council for Bengal was created in the year 1862.
- ✓ ü The Legislative council for NWFP (North West Frontier Province) was created in the year 1866.

INDIAN POLITY BY M.LAXMIKANTH

NWFP is in present day Pakistan and the name is changed to “**Khyber-Pakhtoonkhwa**”.

- ✓ ü The Legislative Council for Punjab was created in the year 1897.
- ✓ ü This act gave recognition to the portfolio system. (Portfolio system means placing each member in charge of a specific department).
- ✓ ü **Lord Canning introduced Portfolio system in the year 1859.**
- ✓ ü This act also empowered the Viceroy to issue ordinances.
- ✓ ü What is **Ordinance**? We learn during the discussion of the President of India.

1892 ACT: (THE INDIAN COUNCILS ACT)

- ✓ ü This act gave the legislative councils the power of discussing the budget and addressing questions to the executive.
- ✓ ü This act also provided for the nomination of some non-official members to the legislative councils by the Viceroy.

Indian Councils ACT of 1909 (MORLEY – MINTO REFORMS):

- ✓ ü Minto was the then Viceroy.
- ✓ ü Morley was the then Secretary of State.
- ✓ ü This act increased the size of legislative councils by including elected non-official members.
- ✓ ü An element of election was introduced at the central legislative council but the official majority was maintained.
- ✓ ü The members of the legislative council were allowed to ask supplementary questions.
- ✓ ü The members were allowed to move the resolutions on budget or on any matter of public interest except subjects like armed forces, Foreign affairs and Indian states.
- ✓ ü This act provided the association of Indians with executive council of the viceroy and the Governor.
- ✓ ü The **first Indian to join the Viceroy's Executive Council** was Satyendra Prasad Sinha.
- ✓ ü The 1909 act introduced a system of communal representation for Muslims by accepting the concept of ‘**Separate Electorate**’.
- ✓ ü Under the ‘Separate Electorate’ the Muslim members were to be elected only by Muslim voters.

INDIAN POLITY BY M.LAXMIKANTH

- ✓ ü For the 1st time the seeds of separatism were sown.
- ✓ ü The 1909 act legalized communalism.
- ✓ ü Minto was regarded as the “**Father of Communal Electorate**”.
- ✓ ü The Minto-Morley reforms did not aim at establishing a parliamentary system of the government.
- ✓ ü The final decision on all matters was retained in the hands of the irresponsible executive.

THE GOVERNMENT OF INDIA ACT, 1919

- ✓ ü This act came into picture when the Indian National Congress became very active during the 1st World war and launched the ‘Home Rule’ movement.
- ✓ ü This is also called Montague – Chelmsford reforms.
- ✓ ü Chelmsford was the then Viceroy.
- ✓ ü Montague was the then Secretary of state.
- ✓ ü On August 20, 1917 the British Government made a declaration that the policy of His Majesty’s Government is that of increasing association of Indians in every branch of administration and the gradual development of self-governing of institutions with a view to progressive realization of responsible government in British India as an integral part of the British empire.
- ✓ ü Montagu-Chelmsford were entrusted with the responsibility of formulating proposals for the said policy and the GOI Act, 1919 gave a formal shape to the same.
- ✓ ü The report of Montague-Chelmsford led to the enactment of GOI of 1919.
- ✓ ü **The GOI Act 1919 introduced diarchy or dual government.**
- ✓ ü The **diarchy was introduced at the provinces** and not at the centre.
- ✓ ü This act demarcated the central and provincial subjects.
- ✓ ü The provincial subjects were further divided into transferred subjects and reserved subjects.
- ✓ ü Transferred subjects are those subjects that are administered by the Governor with the aid of ministers and responsible to the Legislative Council in which the proportion of elected members was raised to 70 percent.
- ✓ ü Hence, the foundation of responsible government was introduced in the narrow sphere in the form of transferred subjects.
- ✓ ü The reserved subjects on the other hand were to be administered by the Governor and his executive council without any responsibility to the Legislature.
- ✓ ü The source of revenue was also divided into 2 categories, so that the provinces could run the administration with the aid of revenue raised by the provinces by themselves.

INDIAN POLITY BY M.LAXMIKANTH

- ✓ ü Provincial budget was separated from the Central budget.
- ✓ ü The control of the Governor-General over provinces was retained by empowering the Governor to reserve the bill for the consideration of the Governor-General.
- ✓ ü Through the GOI Act of 1919 bicameralism (two houses i.e. Upper and Lower House) was introduced at the centre.
- ✓ ü The Upper House was called Council of state composed of 60 members of whom 34 were elected.
- ✓ ü The lower House was called Legislative Assembly composed of 144 members of whom 104 were elected.
- ✓ ü The powers of both the Upper and Lower Houses were equal except that the power to vote supply (budget) was given only to the Lower House.
- ✓ ü The concept of elections was introduced.
- ✓ ü The Indian Legislative council consists of the Upper House (Council of State) and the Lower house (Legislative Assembly).
- ✓ ü The majority of the members from both the houses are elected directly.
- ✓ ü The act of 1919 extended communal representation for Sikhs, Indian Christians, Europeans and Anglo-Indians. (**Remember** the 1909 act introduced communal representation only for Muslims and not for all communities). (These are the questions that are **asked in the examination**, read carefully).
- ✓ ü This act provided for the establishment of Public Service Commission.
- ✓ ü Accordingly the Public Service Commission was set up for recruiting Civil Servants.
- ✓ ü The act of 1919 also provided for the separation of provincial budget from the central Budget. (Province means a smaller area, just like a present day state. Today we have 2 budgets in the country, central and state budgets, this started with the 1919 Act and even after the commencement of the Constitution we continued with the same).
- ✓ ü The 1919 reforms failed to fulfill the aspirations of the people in India and this led to “Swaraj” or “Self-government” agitation under the leadership of Mahatma Gandhi.
- ✓ ü In the year 1927 a statutory commission was appointed under the chairmanship of Simon to inquire into and report on the working of the 1919 Act.

SIMON COMMISSION:

- ✓ ü The Simon Commission was appointed by the British Government in November 1927.
- ✓ ü This was a 7 member Commission.
- ✓ ü The Chairman of the Commission was Sir John Simon.
- ✓ ü The purpose of the commission was to report on the condition of India under the new constitution (GOI

INDIAN POLITY BY M.LAXMIKANTH

1919).

- ✓ ü All the members of the committee were British.
- ✓ ü Hence all the parties boycotted the Commission.
- ✓ ü The Simon Commission submitted the report in the year 1930.
- ✓ ü The Simon Commission recommended for the abolition of diarchy.
- ✓ ü This commission also recommended for the continuation of communal electorate.
- ✓ ü The British government convened three round table conferences to consider the proposals of Simon Commission.
- ✓ ü The conferences to be attended by the representatives of British Government, British India and Indian princely states. (Regarding the **round table conferences** we learn more during the study of National Movement).
- ✓ ü The three rounds table conferences held between 1930 and 1932.
- ✓ ü **Mahatma Gandhi attended the second round table conference only.**
- ✓ ü On the basis of these discussions a white paper on constitutional reforms was prepared and the same was submitted to the Parliament.
- ✓ ü The recommendations were incorporated in the GOI Act of 1935.

COMMUNAL AWARD OF 1932:

- ✓ ü On August 4, 1932 the communal award was announced by Ramsay MacDonald (The then British Prime Minister).
- ✓ ü This is meant for providing extending separate electorate to Scheduled Castes.
- ✓ ü In fact the concept of separate electorate for depressed classes was raised by Dr. B.R.Ambedkar.
- ✓ ü The proposal was accepted by the British and announced the Communal award.
- ✓ ü Gandhi opposed this on the grounds that this proposal would disintegrate the Hindu society.
- ✓ ü Mahatma Gandhi began indefinite hunger strike in Yeravada jail (Pune, Maharashtra) against the separate electorate for Scheduled Castes.

POONA PACT OF 1932:

- ✓ ü As Mahatma Gandhi went on to hunger strike Dr Ambedkar was under tremendous pressure to save the life Gandhi.

INDIAN POLITY BY M.LAXMIKANTH

- ✓ ü Hence Dr. Ambedkar accepted for an agreement.
- ✓ ü This is an agreement between the Dalits (Then called depressed classes) of India led by Dr. B.R.Ambedkar and the upper caste Hindus of India.
- ✓ ü This took place on September 24, 1932 at Yeravada jail.
- ✓ ü Under Poona pact of 1932 there shall be seats reserved for the depressed classes out of general electoral seats in the provincial legislature.

GOVERNMENT OF INDIA ACT OF 1935:

- ✓ ü The GOI Act 1935 prescribed a Federation.
- ✓ ü The GOI act 1935 divided the powers into
 - ✓ Federal List (59)
 - ✓ Provincial List (54)
 - ✓ Concurrent List (36)
- ✓ ü The residuary powers were vested with the Viceroy.
- ✓ ü The GOI act of 1935 **abolished the diarchy** in provinces.
- ✓ ü The GOI act of 1935 **provided the diarchy** at the centre. (This did not come into operation).
- ✓ ü The responsible government was introduced in provinces. The Executive authority of the province was also exercised by the Governor on behalf of the crown and not as a subordinate of the Governor-General.
- ✓ ü The GOI act of 1935 introduced bicameralism (2 house, Upper and lower) in 6 out of 11 provinces. This was Legislative Assembly and the Legislative Council.
- ✓ ü In the rest of the provinces the legislature was unicameral.
- ✓ ü This act extended separate electorate for depressed classes (SC's), Women and labor.
- ✓ ü This act extended the **franchise** (Right to vote). With this 10% of the population got the voting right.
- ✓ ü The GOI 1935 granted limited franchise on the basis of tax, property and education.
- ✓ ü The GOI act of 1935 provided for the establishment of Reserve Bank of India (RBI) in the year 1935.

INDIAN POLITY BY M.LAXMIKANTH

Establishment of RBI was recommended by **Hilton-Young Commission** in the year 1926.

The RBI in the year 1935 was set up at Calcutta (Kolkata).

In the year 1937 RBI was shifted to Bombay (Mumbai).

- ✓ ü The GOI act of 1935 provided for the establishment of Provincial and Joint Public Service Commission.
- ✓ ü The GOI act also provided for the establishment of Federal Court.
- ✓ ü The Federal Court was set up in the year 1937 in Delhi.
- ✓ ü **The seat of the Federal court was the Chamber of Princes in the Parliament building in Delhi.**
- ✓ ü The first Chief Justice of the Federal Court was Maurice Gwyer.
- ✓ ü (**Note:** The present Supreme Court was established on January 28, 1950).

INDIAN INDEPENDENCE ACT OF 1947:

- ✓ ü On February 20, 1947 the Prime Minister of England Sir Clement Atlee declared that the British rule in India would end by June 30, 1948.
- ✓ ü The Muslim League demanded for the partition.
- ✓ ü On June 3, 1947 the government announced that the constitution is not applicable to unwilling parts of the nation.
- ✓ ü Lord Mount Batten (then Viceroy) put forth the partition plan on the same day. It is called Mountbatten plan. (This is also called June 3 plan).
- ✓ ü This plan was accepted by both congress and Muslim league.
- ✓ ü The Indian Independence Act of 1947 ended the British rule and declared India as an independent and sovereign state from August 15, 1947.
- ✓ ü This act provided for the partition of the country into India and Pakistan.
- ✓ ü The office of Viceroy was abolished and provided for the Governor-General for each dominion (India and Pakistan) appointed by the king.
- ✓ ü This act also empowered the constituent assemblies to frame and adopt any constitution.
- ✓ ü The Central legislature of India composed of the legislative assembly and the council of states ceased to exist on August 14, 1947.
- ✓ ü The Indian Independence Act granted freedom to the princely states either to join India or Pakistan or to remain independent.

INDIAN POLITY BY M.LAXMIKANTH

- ✓ ü The civil servants were allowed to entitle all the benefits.
- ✓ ü Lord Mountbatten became the first Governor-General of independent India.
- ✓ ü Jawaharlal Nehru was sworn in as the first Prime Minister of India by Lord Mount Batten.
- ✓ ü Muhammad Ali Jinnah became the first Governor-General of Pakistan.

Making of the Constitution

Years:

- 1922 – Mahatma Gandhi’s demand
- 1928 – Nehru Report
- 1934 – M N Roy demand for Constituent Assembly
- 1939 – World War II
- 1940 – August offer
- 1942 - Cripps Mission
- 1942 - Quit India Movement
- 1945 - World War II (came to end)
- 1945 - Simla Conference
- 1946 - Cabinet Mission Plan
- 1946 - Constituent Assembly (Formation and first meeting)
- 1947 - Lord Mountbatten replaced Lord Wavell as Viceroy of India
- 1947 - June 3rd plan or Mountbatten Plan
- 1947 - Indian Independence Act was passed in the British parliament
- 1947 - Partition
- 1947 - Independence to Indian and Pakistan
- 1948 - Draft of Indian Constitution introduced
- 1949 - Constitution was adopted
- 1950 - Constitution came into force

Now start reading:

- ✓ ü 1922 - Mahatma Gandhi put forward the demand that India’s political destiny should be determined by the Indians themselves.

INDIAN POLITY BY M.LAXMIKANTH

- ✓ ü May 17, 1927 - At Bombay session Motilal Nehru moved a resolution calling up on the Congress working committee to frame a Constitution for India.
- ✓ ü May 19, 1928 – In all party conference a committee was set up under the Chairmanship of Motilal Nehru to determine the principles of the Constitution of India.
- ✓ ü Report was submitted on August 10, 1928 and was called **Nehru Report**.
- ✓ ü This was the 1st attempt by Indians to frame a full-fledged Constitution for India.
- ✓ ü MN Roy in the year 1934 put forward the idea of Constituent Assembly for India for the first time.
- ✓ ü In the year 1935, the Indian National Congress for the first time officially demanded for the CONSTITUENT ASSEMBLY.
- ✓ ü **August offer**: The demand for the **CONSTITUENT ASSEMBLY** was for the first time and authoritatively conceded by the British Government in the year **1940** through **August Offer**.
- ✓ ü 1940 - The coalition government in England recognized the principle that the Indians should themselves frame a new Constitution.
- ✓ ü 1942: **Cripps mission**: Sir Stafford Cripps(Cabinet Minister) came to India with a proposal of framing of Independent Constitution of India to be adopted after World War II provided that the 2 major political parties INC and the Muslim League could come to an agreement.
- ✓ ü The Muslim League rejected the same on the demand that India to be divided into 2 autonomous states on communal lines with 2 separate CONSTITUENT ASSEMBLYs.
- ✓ ü Hence political parties could not come to an agreement.
- ✓ ü This was followed by **Quit India Movement** in August 1942.
- ✓ ü After the World War II, the new labor party government came to the power in England.
- ✓ ü Simla Conference was held in the year 1945 at the instance of viceroy, Lord Wavell.

SIMLA CONFERENCE:

The Simla Conference of 1945 was arranged by Lord Archibald Wavell and the major political parties in India.

This was convened to agree up on the Wavell plan for Indian self Government to provide separate representation to Muslims.

The talks failed

- ✓ ü 1946 - **Cabinet Mission plan** (Lord Pethick Lawrence, Sir Stafford Cripps and A V Alexander) was sent on March 24, 1946 to India with a proposal of CONSTITUENT ASSEMBLY.
- ✓ ü **Note**: Remember the names of the members in the Cabinet Mission plan.
- ✓ ü The delegation rejected the claim for a separate Constituent Assembly and a separate state for Muslims.

INDIAN POLITY BY M.LAXMIKANTH

- ✓ ü The CONSTITUENT ASSEMBLY was constituted in November, 1946 with 389 members. (296 British India and 93 were from princely states).
- ✓ ü (**Please remember that the Constituent Assembly members were both elected (indirectly) and nominated.**)
- ✓ ü Out of **296 INC won 208 including all general seats except 9, Muslim League 73**, others and independent members 15. Princely states initially decided to stay away from the CONSTITUENT ASSEMBLY.
- ✓ ü **Kindly Note: (Except Mahatma Gandhi and Mohammed Ali Jinnah** all prominent persons were members in CONSTITUENT ASSEMBLY.
- ✓ ü The first meeting of the CONSTITUENT ASSEMBLY took place on December 9, 1946.
- ✓ ü Muslim League boycotted the meeting and insisted on separate state Pakistan.
- ✓ ü Meeting was attended by 211 members only.
- ✓ ü **Dr.Sachchidanand Sinha** - interim President of CONSTITUENT ASSEMBLY.
- ✓ ü December 11, 1946 - **Dr Rajendra Prasad** was elected as the President of the Constituent Assembly.
- ✓ ü H C Mukherjee - Vice President of the CONSTITUENT ASSEMBLY.
- ✓ ü **B N Rau** - Constitutional advisor.
- ✓ ü December 13, 1946 - “**Objectives Resolution**” was moved by Jawaharlal Nehru.
- ✓ ü The “Objective resolution” was **adopted on January 22, 1947**. (Who moved it? What are the dates? Important for the examination point of view).
- ✓ ü **Preamble was the modified version of the Objectives Resolution.** (Hence very important).
- ✓ ü Lord Mountbatten was sent to India as the Governor-General replacing Lord Wavell.
- ✓ ü Lord Mountbatten came out with a plan.
- ✓ ü This plan was given a formal shape by a statement made by British Government on June 3, 1947.
- ✓ ü This plan is known as Mountbatten plan or June 3 plan.
- ✓ ü On July 26, 1947 Lord Mountbatten announced the establishment of a separate Constituent Assembly for Pakistan.
- ✓ ü The Indian Independence bill was introduced in the British Parliament on July 4, 1947.
- ✓ ü The India Independence Act came into force from July 18, 1947.
- ✓ ü The Indian Independence Act of 1947 provided that from August 15, 1947 would be set up two

INDIAN POLITY BY M.LAXMIKANTH

independent dominions India and Pakistan.

- ✓ ü The Constituent Assembly reassembled on August 14, 1947 as the Sovereign Constituent Assembly for the Dominion of India.
- ✓ ü The members of the Pakistan area in the Constituent Assembly are ceased to be the members.
- ✓ ü When the Constituent Assembly reassembled on October 31, 1947 the membership was reduced to 299.
- ✓ ü With Indian Independence Act of 1947, CONSTITUENT ASSEMBLY became the sovereign body. (**India became sovereign on January 26, 1950**)
- ✓ ü **Note:** What is sovereign? we discuss in 'Preamble'.
- ✓ ü The CONSTITUENT ASSEMBLY became the **first parliament of free India**.
- ✓ ü The first speaker - G V Mavalankar.

ü CONSTITUENT ASSEMBLY adopted the

- ✓ **National Flag** on July 22, 1947.
- ✓ **Constitution** on November 26, 1949.
- ✓ **National Anthem** on January 24, 1950.
- ✓ **National Song** on January 24, 1950.
- ✓ ü Dr Rajendra Prasad was elected as the **first President** of India on January 24, 1950.
- ✓ ü January 24, 1950 was the **last session** of the CONSTITUENT ASSEMBLY.
- ✓ ü The Constituent Assembly continued as the provisional Parliament of India from January 26, 1950 to till the completion of first ever general elections in India. (1951-52)
- ✓ ü **Note:** All the above dates are very important.
- ✓ ü There were **22 committees** constituted in the CONSTITUENT ASSEMBLY
- ✓ ü 22 committees: 10 committees -procedural affairs and remaining 12 Committees were on Sustentative (Sustentative or Considerable) Affairs.
- ✓ ü Steering Committee chairman - K M Munshi.
- ✓ ü The Rules of procedure committee chairman - Dr Rajendra Prasad.
- ✓ ü Drafting committee chairman - Dr. B R Ambedkar.
- ✓ ü Union powers Committee chairman - Jawaharlal Nehru.

INDIAN POLITY BY M.LAXMIKANTH

- ✓ ü Committee on Union Constitution Chairman - Jawaharlal Nehru.
- ✓ ü Provincial Constitution Committee chairman - Sardar Patel.
- ✓ ü Committee of Fundamental Rights and Minorities head- Sardar Vallabhai Patel.
- ✓ ü The draft was prepared by B N Rau (Advisor to the Constituent Assembly).
- ✓ ü Drafting committee was set up on August 29, 1947 (**Very Important**).
- ✓ ü The Chairman of Drafting Committee - Dr. B R Ambedkar.
- ✓ ü The final draft was introduced in the CONSTITUENT ASSEMBLY by Dr B R Ambedkar on November 4, 1948 (1st reading).
- ✓ ü The 3rd reading was completed on November 26, 1949.
- ✓ ü The draft Constitution was declared adopted on November 26, 1949.
- ✓ ü The President and the members of the Constituent Assembly signed it.
- ✓ ü **Note:** Please remember this date is mentioned in the Preamble.
- ✓ ü The original Constitution contained 8 schedules and 395 Articles.
- ✓ ü Preamble was enacted after the enactment of the Constitution.
- ✓ ü (**Remember** “Preamble” was the last to be adopted and enacted).

Dr BR Ambedkar - The Father of the Constitution of India

Note: DR B.R Ambedkar was the first Law Minister of the Nation from August 15, 1947 to January 26, 1950).

- ✓ ü Constitution came into force on January 26, 1950.
- ✓ ü Since then January 26, 1950 is celebrated as the Republic day.
- ✓ ü In all it took 2 years 11 months and 18 days for the Constitution to get completed.
- ✓ ü The Provisional Parliament ceased to exist on April 17, 1952. The first elected Parliament (2 houses) came into being in May, 1952.
- ✓ ü The provisions related to Citizenship, elections, provincial Parliament, temporary and transitional provisions were given immediate effect. (November 26, 1949).
- ✓ ü The rest of the Constitution came into force on January 26, 1950.

SOURCES OF THE INDIAN CONSTITUTION

GOI (Government of India Act) 1935:

INDIAN POLITY BY M.LAXMIKANTH

Note: This is the major source of Indian Constitution.

- ✓ Federal Scheme.
- ✓ Office of Governor
- ✓ Public Service Commissions

US CONSTITUTION:

- ✓ Judicial Review
- ✓ Fundamental Rights
- ✓ Independent Judiciary
- ✓ Impeachment procedure of the President
- ✓ The Vice President acting as the Chairman of the Upper House
- ✓ Removal of the Supreme Court and High Court Judges.

BRITISH CONSTITUTION:

- ✓ Rule of law
- ✓ Parliamentary form of government
- ✓ Single Citizenship

- ✓ Cabinet system
- ✓ Legislative procedure
- ✓ Bicameralism.

IRISH CONSTITUTION (IRELAND):

- ✓ Directive Principles of State Policy
- ✓ Nomination of members to the Upper House
- ✓ Election method of the President.

CANADIAN CONSTITUTION:

- ✓ Residuary powers with the centre
- ✓ Federation with a strong centre
- ✓ Appointment of State Governors by the Central Government
- ✓ Advisory jurisdiction of the Supreme Court.

SOUTH AFRICAN CONSTITUTION:

- Amendment procedure of the Constitution.
- Method of election of the members to the Upper House.

USSR: (UNION OF SOVIET SOCIALIST REPUBLICS)

- Fundamental Duties
- Ideals of Justice (Social, Economic and Political).

FRANCE:

- Republic
- Ideals of Liberty, Equality and Fraternity in the Preamble.

INDIAN POLITY BY M.LAXMIKANTH

WEIMAR CONSTITUTION (GERMANY):

- Suspension of Fundamental Rights during emergency (National Emergency).

AUSTRALIAN CONSTITUTION:

- Concurrent list
- Joint sitting of 2 houses of the Parliament.

SILENT FEATURES OF THE INDIAN CONSTITUTION

Indian Constitution is a written Constitution.

- It is the largest Constitution. It is because
- It incorporated all the experiences gathered from the working of the all the known constitutions in the World.
- To avoid all defects and loopholes that might be anticipated from the light of other constitutions.
- To minimize uncertainty.
- Majority of the provisions were borrowed from the GOI (Government of India) act 1935 because people were familiar with the existing system.
- It is explained in detail manner otherwise the new democracy may be jeopardized (make vulnerable, risk).
- Vastness of the country.
- Multifarious challenges in the country.
- The division of powers between the union and states is so exhaustive.
- It is a single Constitution for the entire country except for Jammu and Kashmir.

INDIAN CONSTITUTION IS BOTH RIGID AND FLEXIBLE.

- It is rigid, means there a special procedure for amending the Constitution.
- It is flexible, means that with an ordinary procedure some areas in the constitution can be amended.

FEDERAL SYSTEM :

- It means the division of powers between centre and states.
- remember the word "Federation" is nowhere mentioned in the Constitution).
- Though India is a federation it also has unitary features.

PARLIAMENTARY FORM OF GOVERNMENT:

- This forms talks about the presence of nominal (Dejure) and real (defacto) executives.
- Majority party rule.
- Collective responsibility to the Lok Sabha.
- Leadership of the Prime Minister (Chief Minister at the state level).
- The dissolution of Lok Sabha. (This type of government is present at both central and state levels).

Fundamental rights:

- These are for the promotion of political democracy. T
- These are justiciable i.e they are enforceable by the courts for their violation.
- Originally 7 fundamental rights were mentioned in the constitution.
- Through the 44th amendment 'Right To Property' has been deleted from the list of Fundamental Rights.
- At present only 6 fundamental rights are mentioned.

INDIAN POLITY BY M.LAXMIKANTH

DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP):

- They seek to establish welfare state in India.
- These are **non-justiciable**. (Cannot be challenged in the court of law)
(*In the **Minerva Mills case of 1980** the Supreme Court held that the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and DPSP).

FUNDAMENTAL DUTIES:

- Added through 42nd amendment in the year 1976.
- They were added on the recommendations of swaran Singh Committee.
- Part IV A was added for accommodating Fundamental Duties.
- Originally 10 Fundamental Duties were added.
- 11th Fundamental Duty was added in the year 2002 through the 86th Constitutional amendment.
- At present 11 fundamental duties are mentioned in part IVA.

SECULAR STATE:

- (Equal respect to all religions).
- The Constitution does not uphold the any particular religion as the official religion.

UNIVERSAL ADULT FRANCHISE:

- All adults are permitted to vote.
- The original constitution permitted all the people who are not less than 21 years of age to vote.
- Through the 61st amendment voting age has been reduced from 21 to 18 in the year 1989.

EMERGENCY PROVISIONS:

- Provided for 3 types of emergencies.
- National Emergency
- State Emergency or President's Rule
- Financial Emergency
- During National emergency India from the state of Federation it becomes Unitary.

3 TIER GOVERNMENT:

- Through 73rd and 74th amendments 3 tier structures was created.
- Panchayati Raj and Municipalities are made the Constitutional bodies.

PREAMBLE

- Preamble is the introduction to the Constitution.
- This is the modified version of the '**Objectives Resolution**' that was moved by Jawaharlal Nehru on **December 13, 1946** and adopted by the Constituent Assembly on **January 22, 1947**.
- Note: Please remember the dates.

INDIAN POLITY BY M.LAXMIKANTH

We, **THE PEOPLE OF INDIA**, having solemnly resolved to constitute India into a Sovereign, **Socialist, Secular**, Democratic Republic and to secure to all its citizens:
JUSTICE, Social, Economic and Political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity; and to promote among them all;
FRATERNITY assuring the dignity of the individual and the unity and **integrity** of the Nation;
IN OUR CONSTITUENT ASSEMBLY this **twenty-sixth day of November, 1949**, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

- So far Preamble has been amended only once in the year 1976 through 42nd amendment.
- The 42nd amendment added 3 new words to the Preamble.

- SOCIALIST**
- SECULAR**
- INTEGRITY**

Note: Underlined

- The Constitution derives authority from the people (We the people...).
- Is preamble a part of the Constitution?** (Read carefully, many times there were questions from this area).
- 1960 – In the **Berubari case** the Supreme Court ruled that Preamble is not a part of Constitution.
- 1973 – In the **Kesavananda Bharati v. State of Kerala** case the Supreme Court rejected the earlier opinion and held that Preamble is a part of the Constitution. The Court said that the Constitution could not be amended so as to alter the basic elements.
- 1995 – In **LIC of India v. Consumer Education and Research centre** case the Supreme Court again held that the Preamble is an integral part of the Indian Constitution.
- Note: (Please remember **Preamble is non-justifiable**).

THE COMPONENTS OF THE PREAMBLE:

- The people of India are the source of the Constitution.
- The Preamble **declares** India to be of a
 - Sovereign
 - Socialist
 - Secular
 - Democratic
 - Republic
- The preamble specifies **the objectives** of the Constitution.
 - Justice
 - Liberty
 - Equality
 - Fraternity
- The date of adoption is mentioned in the Preamble is November 26, 1949.
- Note: Not the date on which the constitution came into force.
- The Preamble **indicates the source** from which the Constitution derived its authority.

INDIAN POLITY BY M.LAXMIKANTH

- The Preamble also states the objects which the Constitution seeks to establish and promote.

SOVEREIGN:

- Sovereign means independent authority of a state.
- This is the **absolute and supreme** power.
- This means that India has the power to legislate on any subject.
- India is **not subject to** the control of any external authority.
- India is neither dependency nor a dominion of any other nation but an independent state.

REPUBLIC:

- It means the head of the state is elected.

What is state?

This is explained by the Constitution under Articles 12 and 36.

ARTICLE 12: In this Part (Part III), unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

ARTICLE 36: In this Part (Part IV), unless the context otherwise requires, “the State” has the same meaning as in Part III.

- India has an elected President at the head for a fixed term of 5 years.
- NOTE:** The President is elected indirectly through the method of proportional representation by means of a single transferable vote.
- Every citizen with the qualifications mentioned in the constitution is eligible to contest in the election of the President. All offices including that of the President will be open to all citizens.

SOCIALIST:

- This is added through the 42nd amendment act of 1976.
- The word socialism means placing means of production and distribution in the hands of public control. (state).
- Socialism also means elimination of inequalities in income and status and standard of living.
- In India this is the Democratic Socialism.
- Here there is an existence of both **Public and Private** sectors. This is called mixed economy.
- The socialism strives to end inequality of opportunity.

SECULAR:

- The term secular was added through the 42nd amendment in the year 1976.
- This means the state has **no official religion**.
- All religions in the country have the same status and support.

DEMOCRATIC:

- (Demos = People; Kratia = Rule)
- Democracy means rule by the people.
- The people of the country elect their own representatives.
- In India it is a representative democracy.
- One man one vote is the concept in democracy.

INDIAN POLITY BY M.LAXMIKANTH

JUSTICE:

- Justice is harmonizing the interests between the individuals and between the individuals and groups and the interest of the community.
- This is not just confined to the legal justice.
- Social justice** implies that all citizens are treated equally irrespective of their status in society as a result of the accident of birth, race, caste, religion, sex, title etc.
- Article 38 says that the state should strive to promote the welfare of the people.

ECONOMIC JUSTICE: Rich and poor are treated alike.

- Article 39: Certain principles of policy to be followed by the state. (equal pay for equal work)

POLITICAL JUSTICE:

- Every citizen is given equal priority in the political sphere.
- Because of this irrespective of propriety or educational qualifications, every citizen is allowed to participate in the political system.
- All citizens have the right to participate in the political process.
- Articles **325 and 326** provide for the equal rights to all adults to participate in elections.
- ARTICLE 325:** No person to be ineligible for inclusion in or to claim to be included in a special, electoral rolls on grounds of religion, race, caste or sex.
- ARTICLE 326:** Elections to the House of People (Lok Sabha) and to the legislative assemblies of states to be on the basis of adult franchise.

LIBERTY:

- It is the Liberty of thought, expression, belief, faith and worship.
- Article 19 guarantees the freedom of speech, expression etc.
- Articles 25 to 28 (right to religion) of the constitution the freedom of religion including the belief, faith and worship.
- Note: All Fundamental Rights rights are granted with the reasonable restrictions.

EQUALITY:

- All citizens are equal before the law and enjoy equal protection of the law of the land.

NOTE:

1. Equality before law – borrowed from UK
 2. Equal protection of Laws – borrowed from the USA.
- There can be no discrimination between one person and another on the grounds of religion, race, caste, sex, place of birth in matters related to access to public places and public employment.
 - All citizens enjoy equal political rights.
 - Article **14 TO 18** of the Indian Constitution talks about right to equality.

FRATERNITY:

- This means promoting brotherhood among all the citizens.
- Single citizenship is directed towards promoting the fraternity.
- The fundamental rights that are guaranteed also promote the fraternity.
- The Directive Principles of State Policy talks about the promotion of harmony.
- The objective of the Dignity of the individual was to improve the quality of life for the individuals.
- The unity and integrity of the nation is possible through the dignity of the individual.
- ARTICLE 51 A** (Fundamental Duties) makes it the duty of every citizen to uphold and protect the sovereignty, unity and integrity of India and promote harmony and brotherhood.

UNION AND ITS TERRITORIES

UNION AND ITS TERRITORY:

- The Union and its territory are mentioned under Part – I of the Indian Constitution.
- The concerned Articles are from 1 to 4.

ARTICLE 1:

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

1 (2): The States and UTs thereof shall be as specified in the first schedule

1 (3) (a): Territories of states

1 (3) (b): UTs as specified in the first schedule

1(3) (c): Such other territories as may be acquired

- The words ‘Union of states’ is preferred over the ‘Federation of States’ (Why?)
- The territory of India consists of
 - The territories of the states
 - The Union Territories
 - Any territories that may be acquired by India
- As on today there are 28 states and 7 Union territories in the country.
- The 7 Union territories
 - Delhi
 - The Andaman and Nicobar Islands
 - Lakshadweep
 - Dadra and Nagar Haveli
 - Daman and Diu
 - Pondicherry
 - Chandigarh
- The names of the states and the Union territories and the territories covered by each of them have been described in the **first schedule** of the Constitution.
- The **other countries possessions** can be added to India through Constitutional amendments.
- Through **10th amendment** of the Constitution in the year 1962 the Portuguese enclaves (possessions) of Dadra and Nagar Haveli was constituted into a Union territory.

INDIAN POLITY BY M.LAXMIKANTH

- Similarly Goa, Daman and Diu was added as a Union territory by the 12th Constitutional amendment in the year 1962.
- The Pondicherry together with Karaikal, Mahe and Yanam were ceded to India by the French government in the year 1954.
- In the year 1962 through the 14th Constitutional amendment Pondicherry together with Karaikal, Mahe and Yanam, the French possessions was added as a Union territory.

ARTICLE 2:

Parliament may by law admit new states into the union of India or establish new states on such terms and conditions as it thinks fit.

- The Article 2 of the Indian Constitution provides two powers to the Parliament.
- The power to admit the new states into the Union of India

And

- The power to establish new states.
- In the year 1974, the Sikkim Assembly passed the Government of Sikkim Act, 1974.
- This act empowered the Government of Sikkim to seek participation and representation of the people of Sikkim in the Indian political institutions for the speedy development of Sikkim.
- The resolution also meant for the representation of the people of Sikkim in the Indian Parliamentary system.
- In the year 1974 the 35th Constitution amendment act was passed by the Parliament to give effect to the resolution.
- The main provisions of the 35th amendment act is Sikkim will be an 'associate state' of India.
- There was a criticism regarding the 35th amendment of the Constitution, since the original Constitution did not mention about the 'associated state'.
- The Parliament passed the 36th amendment act.
- Sikkim has been admitted into the Union of India as a state.
- The 36th amendment act came into effect from April 26, 1975.
- Article 371F inserted to make some special provisions relating to the admission of Sikkim.

ARTICLE 3:

The parliament may by law is empowered to Form a new state

3 (a): By separation of territory from ant state

OR

by uniting 2 or more states or parts of states

OR

By uniting any territory to a part of any state.

3 (b): Increase the area of any state

3 (c): Diminish the area of any state

INDIAN POLITY BY M.LAXMIKANTH

3 (d): Alter the boundaries of any state

3 (e): Alter the name of any state

- The Constitution empowered the Parliament **to reorganize** the boundaries of the states by a **simple majority**.
- Article 3 lays down **two conditions** in the formation of new states.
 - 1) The bill can be introduced in the Parliament only with the **prior recommendation** of the President.
 - 2) The President shall before giving recommendation refer the bill to the legislature of the state which is going to be affected by the changes proposed in the bill.
 - The state legislature must express its view in the time specified by the President.
 - The President is **not bound** by the view of the state legislature.
 - It is not necessary to make afresh reference to the state legislature every time an amendment to the bill is moved and accepted in the Parliament.
 - In case of Union territory, no reference need be made to the concerned legislature to ascertain its views and the Parliament can itself take any action as it deems fit.

ARTICLE 4:

4 (1): Any law referred to Article 2 or 3 shall contain such provisions for the amendment of the first schedule and fourth schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemented, incidental and consequential provisions.

4 (2): No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purpose of Article 368.

- It means these can be passed without resorting to any special procedure.
- This can be done by a simple majority of the parliament like any other piece of ordinary legislation.

THE NAMES OF THE STATES CAN BE CHANGED

THROUGH THE PROVISION OF ARTICLE 3

- In the year 1950 the states United Provinces was renamed Uttar Pradesh.
- In the year 1969 Madras was renamed "Tamil Nadu". This was done through Madras State (Alteration of name) Act, 1968 with effect from January 14, 1969.
- In the year 1973 Mysore was renamed 'Karnataka'. This was done through Mysore State (Alteration name) Act, 1973.
- In the year 1973 Laccadive, Minicoy and Amindivi Islands renamed 'Lakshadweep'.
- In the year 1992 the Union territory of Delhi was re-designated as the 'National Capital Territory of Delhi'. This was done through 69th amendment act, 1991 with effect from February 1, 1992.

MISCELLANEOUS:

- The name of the country was discussed in the Constituent Assembly. While "Bharat" was the ancient name and India was the modern name. As a member of United Nations also the name of the country was India and

INDIAN POLITY BY M.LAXMIKANTH

all the international agreements were entered in that name. As a compromise 'India' that is 'Bharat' was accepted.

- No state in India could secede from the Union.
- The Parliament's power to diminish the area of any state does not cover cession of Indian Territory to a foreign state.
- In the Berubari (West Bengal) case of 1960 on a presidential reference the Supreme Court expressed the opinion that no cession of territory could be made without a constitutional amendment. To give effect to an agreement with Pakistan for transfer of part of the Berubari territory, the 9th constitutional amendment took place in the year 1960.
- In the year 1969 the Supreme Court ruled that settlement of a boundary dispute between India and another country does not require a constitutional amendment. It can be done by an executive action since it does not involve cession of Indian Territory to a foreign country.
- India is an indestructible Union of destructible states.
- The country is described as the 'Union' although the Constitution is federal in structure.
- At the time of independence India comprised two categories of political units, namely the British provinces and princely states.
- The Indian independence Act, 1947 gave 3 options to the princely states, either to join India or Pakistan or remain independent.

- Out of 552 princely states 549 integrated with India by the efforts of Sardar Vallabhbhai Patel.
- The Hyderabad state was integrated through Police action.
- Junagarh was integrated through referendum.
- Kashmir was integrated through Instrument of Accession.
- The Indian Constitution of 1950 contained 29 states.
- The 29 states were classified into 4 parts.
- Part A contained 9 erstwhile governor's provinces of British India.
- Part B contained 9 erstwhile princely states with legislatures.
- Part C contained 10 states. (Erstwhile Chief Commissioner's provinces of British India and some of the erstwhile princely states).
- In Part D the Andaman and Nicobar Islands were kept as the solitary (lonely).
- In January 2012, the DMK (Dravida Munnetra Kazhagam) demanded that the taluks of Devikulam and Peermedu, now in Kerala and forming parts of catchment of Periyar river be merged with Tamil Nadu. This demand was first made by DMK way back in 1956 and 1957.
- The decision for the creation of a new state "Telenagana" has been announced by the Congress Working Committee on July 30, 2013. At the same time the dormant demands from various states have been surfaced.
- Paschimanchal, Harit Pradesh, Bundelkhand, Awadh Pradesh and Purvanchal in the state of Uttar Pradesh.
- Vidarbha in Maharashtra
- Gorkhaland in West Bengal
- Bodoland and Karbi Anglong in Assam
- On December 4, 2013 the GoM (Group of Ministers) submitted its final recommendations to the Cabinet.

CITIZENSHIP

- The Citizenship is mentioned in Part II of the Indian Constitution.
- The Citizenship provisions are covered under articles 5 to 11 of the Indian Constitution.
- The Citizenship provides
- full political membership in the state
- permanent allegiance to the state

AND

- Official recognition by the state of his integration into the political system.

RAJESH NAYAK

INDIAN POLITY BY M.LAXMIKANTH

- The citizen pledges loyalty to the state
- The state protects the citizens.
- The Citizenship to an individual also brings
- Rights
- Duties
- Privileges

And

- Obligations
- (All these do not belong to aliens)
- The Public (government) offices are open only to the citizens.
- Only the citizens are eligible for the offices of
- The President - (Article 58(1)(a))
- The Vice President - (Article 66(3)(a))
- The Judge of the Supreme Court - (Article 124(3))
- The Judge of a High Court - (Article 217(2))
- The Attorney-General - (Article 76(2))
- The Governor of a State - (Article 157)
- The Advocate-General - (Article 165)
- The right of suffrage (vote) for the election to the House of the people (Lok sabha) and the Legislative assembly of every state - (Article 326)
- Right to become a member of Parliament - Article (84)
- Right to become a member of a state legislature – Article (191(d))
- The citizens are eligible for recruitment to all public services.
- Only the citizens have the right to vote
- The concept of Citizenship came into existence since the adoption of the Constitution on November 26, 1949.
- The Constitution of India laid down the law in regard to who would be the citizens of India at the time of commencement of the Constitution.
- The Constitution of India has **not provided** for the mode of acquisition and termination of citizenship.
- As per Article 11 of the Indian Constitution the parliament could regulate the right of citizenship by law.
- The Parliament passed the Citizenship Act, 1955 for acquisition and termination of the Citizenship.

WHO ARE THE CITIZENS OF INDIA?

- As per the Article 11 of the Indian citizenship Act, the Parliament has enacted the Citizenship Act, 1955.
- The Citizenship Act, 1955 has been amended in 1986, 1992, 2003 and 2005.
- The Articles 5 to 8 of the Indian Constitution confers the citizenship on the people at the time of the commencement of the Indian Constitution.
- Persons domiciled in India
- Persons migrated from Pakistan
- Persons migrated to Pakistan but later returned to India
- Persons of Indian origin residing outside India
- Article 5:** This provides that a person becomes entitled to the citizenship of India if,
- at the commencement of the Constitution he has his domicile in the territory of India,

Or

- he or either of his parents were born in India

Or

INDIAN POLITY BY M.LAXMIKANTH

- He has been ordinarily resident in the territory of India for not less than 5 years immediately before the commencement of the Constitution.

DOMICILE:

The term Domicile is not defined in the Indian Constitution.
Domicile is a person's residence where he intends to live on a permanent basis.

Permanent residence
And
Intention to reside indefinitely
Constitutes the Domicile.

- **Article 6:** This provides for citizenship rights of migrants from Pakistan before the commencement of the Constitution.
- This provides 2 types of distinctions.
- The people migrating to India before July 19, 1948
And
- The people migrating to India after July 19, 1948
- Note: Permit system for migration was introduced on July 19, 1948.
- A person migrated before July 19, 1948 shall be deemed to be a citizen of India on the commencement of the Constitution if.
- The person
Or
- His parents (born in India as defined by the GOI Act, 1935)
OR
- Any of grandparents (born in India as defined by the GOI Act, 1935)
And
- Has been ordinarily residing in India since the date of the migration.
- In case of migration after July 19, 1948
- He should have been registered as a citizen of India by an officer appointed for the purpose by the government of India.
And
- Has been residing in India for at least 6 months immediately preceding the date of application.
- **Article 7:** A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become a citizen of India.
- For this the person he had to be the resident of India for 6 months preceding the date of his application for registration.
- Note: the meaning of Migration mentioned in Article 7 is the migration before the commencement of the Constitution.

INDIAN POLITY BY M.LAXMIKANTH

- The person migrating from Pakistan to India, after January 26, 1950 are governed by the Citizenship Act, 1955.
- Article 8:** This Article provides that
 - A person
 - Or**
 - Any of his parents
 - Or**
 - any of his grand parents
 - born in India as defined by the Government of India Act, 1935
 - but ordinarily residing outside India shall become a citizen of India if registered as a citizen of India by the diplomatic representative of India in that country.
- This is with respect to before or after the commencement of the Constitution of India.
- Article 9:** This provides that if a person voluntarily acquired the citizenship of another country, he shall forfeit the right of the citizenship of India.
- The above clause is applicable to cases arising before the commencement of the Indian Constitution.
- Such type of cases arising after the commencement of the Constitution shall be dealt by the Citizenship Act, 1955.
- Note:** whether a person has lost the citizenship of India after acquiring the Citizenship of the other country is to be decided by the government of India.
- Article 10:** this provides that every person who is or is deemed to be a citizen of India under any of the provisions in the articles 5 to 10 shall continue to be a citizen of India.
- This is subject to the provisions of any law made by the parliament.
- Article 11: This article provides for the Parliament to enact legislations pertaining to the acquisition and termination of the citizenship of India.
- The Parliament passes Citizenship Act, 1955 providing for the acquisition and termination of the citizenship.
- The citizenship can be **acquired** by **5** ways.
 - By Birth
 - By Descent
 - By Registration
 - By Naturalization
 - By incorporating a territory
- The citizenship can be **terminated** in **3** methods.
 - Renunciation
 - Termination
 - Deprivation

ACQUIRING THE CITIZENSHIP OF INDIA:

- BY BIRTH:**
 - This was amended in the year 1986.
 - A person is the citizen of India by birth if
 - He is born in India on or after January 26, 1950 but before June 30, 1987
 - OR**
 - He is born in India on or after July 1, 1987 but at the time of the birth either of his parents was a citizen of India.
 - Note: The children of foreign diplomats posted in India and enemy aliens cannot acquire the Indian citizenship by birth.

BY DESCENT:

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- A person born outside India was entitled to Indian citizenship if his father was an India citizen.
- NOTE:** Not Mother
- This was amended in the year 1992.
- A person born outside India on or after January 26, 1950 is a citizen of India by descent if, at the time of his birth **either of his parents** was an Indian citizen.

BY REGISTRATION:

- Certain categories of persons can be registered as Indian citizens.
- Persons of Indian origin who are ordinarily resident in India for 5 years immediately before making an application for registration
- Persons of Indian origin who are ordinarily resident in any country or place outside India
- Persons who are married to citizens of India and who are ordinarily resident in India for 5 years immediately before making an application for registration
- Minor children of persons who are citizens of India

And

- Persons who are citizens of commonwealth countries
- (Note: The period of acquisition of citizenship by registration was increased from 6 months to five years).

BY NATURALIZATION:

- A foreigner can acquire the citizenship of India by naturalization if
- He renounces the citizenship of other country
- He is of good character
- He has an adequate knowledge of a language mentioned in the **8th schedule** of the Indian Constitution
- He is not a citizen of a country where Indian citizens cannot become naturalized citizens
- The government can waive all above conditions if a person has rendered distinguished service to the science, art, literature, world peace or human progress.

BY INCORPORATION OF TERRITORY:

- If any foreign territory becomes a part of India, then the government specifies through notification that the people of that territory shall be the citizens of India.

HOW THE CITIZENSHIP IS LOST?

BY RENUNCIATION:

- This is a voluntary act by which a person holding the citizenship of India as well as that of another country may give up one of them.
- When a person renounces the citizenship every minor child of his ceases to be an Indian citizen

INDIAN POLITY BY M.LAXMIKANTH

- But, the child within one year after attaining 18 years of age may resume Indian citizenship.

BY TERMINATION:

- When an Indian citizen acquires the citizenship of other country voluntarily, the Indian citizenship is automatically terminated.

BY DEPRIVATION:

- This is a compulsory termination of the Indian citizenship by the central government if
- The citizen has obtained the citizenship by fraud

Or

- The citizen has shown the disloyalty to the constitution of India

Or

- The citizen has unlawfully traded or communicated with the enemy during a war

Or

- The citizen has, within 5 years of registration or naturalization been imprisoned in any country for 2 years

Or

- The citizen has been ordinarily resident out of India for 7 years continuously.
- NOTE:** This is not applicable to students and employees who are serving in the international organizations. If a person registers annually at the Indian consulate his intention to retain the Indian citizenship.

MISCELLANEOUS:

- The Constitution avoided the dual citizenship.
- There is only once citizenship related to the domicile in the territory of whole India and not in a part of the country.
- Note:** In US there is dual citizenship.
- The Citizenship act of 1955 provided for the Commonwealth Citizenships. But this provision was repealed by the Citizenship (Amendment) Act, 2003.
- The PIO (Person of Indian Origin) card entitles a person to visit India without a visa.

FUNDAMENTAL RIGHTS

- These are enshrined in Part III of the Indian Constitution under Articles 12 to 35.
- These were borrowed from the US constitution (Bill of Rights).
- According to Dr. B R Ambedkar it is the most criticized part of the Constitution.
- The fundamental rights are justifiable.
- In the original Constitution 7 Fundamental Rights are mentioned.

- **Right to Equality (14-18)**
- **Right to Freedom (19-22)**

INDIAN POLITY BY M.LAXMIKANTH

- **Right Against Exploitation (23-24)**
- **Right to Freedom of Religion (25-28)**
- **Cultural and Educational Rights (29-30)**
- **Right to property (31) (Deleted through the 44th amendment)**
- **Right to Constitutional Remedies (32).**

- In the year 1978, through 44th amendment act Right to property was deleted from the list of Fundamental Rights.
- Now it is a legal right under Article 300 A in part XII of the constitution.
- The numbers of Fundamental Rights are 6 in the present day Constitution.
- The state can impose restrictions on Fundamental rights. (They are not absolute but qualified).
- Except Fundamental rights guaranteed under Articles 20 and 21 remaining Fundamental rights can be suspended during operation of National Emergency.
- Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression and not on the grounds of armed rebellion.

- Article 12 explains the state. The state includes
 - The government and the parliament of India
 - The government and the state legislature
 - All local authorities (municipalities, Panchayat Raj, District boards, etc)
 - Other statutory and non statutory authorities (LIC, ONGC etc).

- The actions of the state (all the above said) can be challenged in the courts as the violation of Fundamental Rights.
- Article 13: All laws that are inconsistent with or in derogation of any of the Fundamental Rights shall be void.
- This article expressly provides for the doctrine of judicial review. This power is conferred to SC (**Article 32**) and High Courts (**Article 226**) that can declare a law unconstitutional and invalid on the grounds of contravention of any of the fundamental Rights.

- Note: The words "**Judicial Review**" are not mentioned in the Constitution.

- **RIGHT TO EQUALITY (14-18)**

- **Article 14:** Equality before law and equal protection of laws.
 - Equality before law: The absence of any special privileges in favor of any person
 - Note: Equality before law is taken from the British Constitution.
 - Equal Protection of Laws: The equality of treatment under equal circumstances.
 - Note: This is taken from the US Constitution.

- **Article 15:** Prohibition of **discrimination** on the grounds **only** of religion, race, caste, sex, or place of birth. (Access to various places).

- **Exceptions:**
 - Special provisions for children and Women
 - Socially and economically backward sections
 - Scheduled castes
 - Scheduled Tribes

INDIAN POLITY BY M.LAXMIKANTH

- Article 16:** Equality of opportunity in matters of Public employment.
- Article 16(4) empowers the state to make special provisions for the reservation of appointments or posts in favour of any “backward class of citizens” which in the opinion of state are not adequately represented in the services of the state.
- Article 17:** Abolition of un-touch-ability and prohibition of its practice.
- Accordingly the Parliament passed Untouchability (offences) Act, 1955.
- In the year 1976, this act is renamed as Civil Rights Act, 1955.

- ARTICLE-18:** Abolition of titles except military and academic.

Note: On December 23, 2013 the High Court of Andhra Pradesh ordered two cinema personalities Mohan Babu and Bramhanandam to surrender 'Padma Sri' to the President.

- RIGHT TO FREEDOM (19-22):**

- ARTICLE 19:** Protection of 6 rights.

Right to freedom of speech and expression 19 (1) (a)
(freedom of expression means the right to express one’s opinion by words of mouth, writing, printing, picture, or in any other manner)

- Right to assemble peacefully and without arms
- Right to form associations
- Right to move freely throughout the territory of India
- Right to reside and settle in any part of the territory of India
- Right to practice any profession or to carry on any occupation, trade or business
- Right to acquire, hold, and dispose of property (deleted through 44th amendment)

Note: On November 20, 2012 the Maharashtra police arrested 2 women (Shaheen and her friend) for twitting in Facebook for the expression of their opinion after the demise of Shivasena leader Bal Thackery. This was objected many as the violation of article 19 (1) (a) of the Indian Constitution.

- Article 20:** Protection in respect of conviction for offences.
- No ex-post-facto Legislation:
- No Double Jeopardy
- No Self-incrimination
- Article 21:** Protection of life and personal liberty except in accordance with the procedures established in law.
- Right to live with human dignity, decent environment, privacy, free education up to 14 years etc.

INDIAN POLITY BY M.LAXMIKANTH

- Article 21 A:** Right to free and compulsory education for all the children.
- Note:** This was present in Article 45 of the constitution. Through 86th amendment in 2002 it was made a fundamental right. This came into force on April 1, 2010.

- Article 22:** Protection against arrest and detention in certain cases.

- Under punitive detention: right to be informed of the grounds of arrest, consult a legal practitioner, and produce before the magistrate within 24 hours.

- Under preventive detention: grounds of detention should be communicated, provide an opportunity to make representation.

- RIGHT AGAINST EXPLOITATION (23-24):**
- Article 23:** Prohibition of traffic in human beings and forced labor.

- Article 24:** Prohibition of employment of children in factories.

- RIGHT TO FREEDOM OF RELIGION (25-28):**
- Article 25:** All persons are equally entitled to
 - ✓ freedom of conscience,
 - ✓ the right to freely
 - ✓ profess
 - ✓ practice
 - ✓ And propagate religion.
 - ✓ Note: Propagation does not include 'forced conversions'.

- Article 26:** Freedom to Manage Religious Affairs:
 - To establish and maintain institutions for religious and charitable purposes
 - Own and acquire movable and immovable property
 - Right to administer the property

- Article 27:** Freedom for Taxation for promotion of a religion.
 - No person shall be compelled to pay taxes for the promotion and maintenance of any religion.

- Article 28:** Freedom from attending religious instruction.
 - No religious instruction shall be provided in any educational institute wholly maintained out of state funds.
 - Religious instructions permitted if it is established by endowments or trust.

- Article 28(3): No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.
- CULTURAL AND EDUCATIONAL RIGHTS (29-30):**

INDIAN POLITY BY M.LAXMIKANTH

Article 29: Right to conserve language, script or culture.

- The Article 29 grants protection to both religious and linguistic minorities.
- **Article 30:** Right of Minorities to Establish and administer Educational Institutions:
- All Minorities have the right to establish and administer educational institutions of their choice.

RIGHT TO CONSTITUTIONAL REMEDIES (32):

- The Supreme Court and High Courts can issue writs.
- Right to move Supreme Court for the enforcement of Fundamental Rights including the writs of Habeas corpus, Mandamus, Prohibition, Certiorari and Quo warren to.
- Under Article 359 of the constitution provides the right to move Supreme Court can be suspended during national emergency.

According B R Ambedkar Article 32 is the **heart and soul** of the Indian Constitution.

ü **HABEAS CORPUS: (TO PRODUCE THE BODY).**

- ü This means produce the body.
- ü It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it. Hence this is against arbitrary detention. This can be issued to a private person or public authorities.
- ü **Mandamus:** (To Command): Issued to a public official asking him to perform his official duties that he has failed or refused to perform. (this cannot be issued against President or Governor or CJ of a HC or against any private person).
- ü **Prohibition:** (to forbid): Issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.
- ü **Certiorari** (To be certified or to be informed): Issued by a higher court to a lower court or tribunal either to transfer case pending with the latter to it or to squash the order of the latter in a case.
- ü **Quowarranto** (By what Authority?): It is issued by a court to enquire into the legality of claim of a person to a public office.
- ü **NOTE:** Under Representation of Peoples Act of 1951 a person is allowed to contest from not more than 2 constituencies. In the year 2001 the leader of AIADMK Jayalalitha contested from 4 constituencies (Andipatti, Krishnagiri, Bhuvanagiri and Pudukottai). On November 20, 2012 the Supreme Court quashed a criminal proceeding against CM J Jayalalitha initiated for filing 4 nomination papers in the 2001 assembly polls and asked Madras High Court to re-examine its order to lodge the case against her.
- ü Note: As per SC the HC of Madras did not consider the 2 reports of the Returning Officer were not considered while passing the order.
The SC asked HC to examine the issue in 4 months. The SC order came on Jayalalitha's plea against the HC order to Election Commission to register a criminal case.
- ü Note: All the 4 nominations of Jayalalitha were rejected as she had been disqualified from contesting the polls at that time due to her conviction in the TANSI land deal case. A former DMK MP C Kuppaswamy

INDIAN POLITY BY M.LAXMIKANTH

moved HC against her and the HC in June 2007 directed the EC to register a case and the same was stayed by the SC in July 2007.

- ü The HC held that jayalithaas declaration in 3rd and 4th constituencies (Bhuvanagiri and Pudukottai) that she has not been nominated from more than 2 segments was false to her own knowledge and amounts to violation of section 33 (7) (b) of the RPA as per which a candidate cannot contest from more than 2 constituencies.
- ü **Article 33:** The Parliament is empowered to abrogate the fundamental rights of the members of armed forces, Para-military forces, police forces, intelligence agencies and other related agencies.
- ü Note: The law made by the Parliament under Article 33 cannot be challenged in the court of law
- ü **Article 34:** This provides for the restriction of the fundamental rights while martial law is in force in any area within the territory of the country.
- ü **Article 35:** The Parliament makes laws to give effect to certain specified fundamental rights shall vest only in Parliament and not in the state legislature.
- ü As per the provisions of the Article 35 the Parliament prescribes residence as a condition for certain employments or appointments in a state or union territory or local authority. (Article 16).
- ü The Parliament can empower the lower courts (Other than Supreme Court and High Courts) to issue directions, orders, and writs of all kinds for the enforcement of the fundamental rights.

MISCELLANEOUS:

- ✓ ü The concept of Martial Law has been borrowed from the English Common Law.
- ✓ ü The words “Martial law” is not defined in the Constitution. The literal meaning is military rule.
- ✓ ü Martial law is imposed to restore the breakdown of law and order due to any reason.
- ✓ ü The concept of “Equality before law” is taken from UK.
- ✓ ü The concept of “Equal Protection of Laws” taken from USA.
- ✓ ü The term ‘untouchability’ is not defined in the constitution.
- ✓ ü The term minority is not described in the constitution.
- ü The writs were borrowed from English law and they are known as prerogative writs.
- ✓ ü Right to Privacy (Article 21): The Supreme Court in the PUCL vs Union of India in 1997, had ruled that telephone conversation in private, without interference, would come within the purview of right to privacy as mandated in the Constitution; and unlawful means of phone tapping amounted to invasion of privacy and were uncivilized and undemocratic in nature.
- ✓ ü The Supreme Court ruled that the right to life under Article 21 of the Constitution would include a pollution free environment.
- ✓ ü In January 2012 the Supreme Court observed that the right to life and liberty guaranteed to a citizen under Article 21 of the Constitution cannot be taken away without following the due procedure. The mere apprehension of the authorities that an accused was likely to be released on bail was not a ground for passing preventive detention orders.
- ✓ ü As per the directions given by the Supreme Court, under RTE (Right To Education) Act all the Private schools will have to provide 25 percent reservation for poor students from the academic year 2012 -13.
- ü **Bombay High Court (October 29, 2013) on Article 28 (3):** In 2008 Sanjay Salve an English teacher in Savitri Bhai Phule secondary school, Nasik was refused to fold his hands at prayer time in the school. The school has frozen his increments. He took the school to the court. The court ruled that the folding of hands at prayer time

INDIAN POLITY BY M.LAXMIKANTH

in state-funded schools could not be imposed on individuals as it went against Article 28 (3). Justice Abhay oka ruled that salve should respectfully remain present at prayers.

DIRECTIVE PRICIPAL OF STATE POLICY

DIRECTIVE PRINCIPLES OF STATE

POLICY (PART IV, Articles 36-51)

- ü The Directive Principles are the needs of the community.
- ü DPSP was borrowed from Irish Constitution.
- ü These are the recommendations to the state in Legislative, Executive and Administrative matters. (State means Legislative and Executive organs of the Central and State governments, all local authorities and all other public authorities in the country).
- ü In GOI (Government of India) 1935 Act “Instruments of Instructions” enumerated and in the Indian Constitution they are called Directive Principles of State Policy.
- ü DPSP embody the concept of a welfare state.
- ü The Directive Principles are the operative part of the Constitution.
- ü The Directive Principles of State Policy constitute a very comprehensive economic, social and political program for modern democratic stste.
- ü The idea of the principles is that realizing the high ideals of Justice, liberty, equality and Fraternity as outlined in the Preamble.
- ü Directive Principles of State Policy are non-justifiable in nature. (They are not legally enforceable by the courts for their violation).
- ü Article 36: It defines the state. It has the same meaning as given in Article 12 of Part III (fundamental rights) of the Indian Constitution.
- ü Article 37: The Directive Principles are “fundamentals in the governance of the country”. It shall be the duty of the state to apply these principles in making laws.
- ü Article 37 also contains a clause of that mentions the non-justiciability of the Directive Principles. It made it clear that the Judiciary should not compel the state to perform a duty under the directive principles of state policy.
- ü Article 38: The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of social life.
- ü **Note:** Article 38 is the key stone or the core of the Directive principles.
- ü Article 39: The Right to adequate means of livelihood for all citizens, equal Pay for equal work for both men and women.
- ü Article 40: To organize Village Panchayats.
- ü Article 41: Right to work, Public Assistance in the event of unemployment.
- ü Article 42: The provision for just and humane conditions of work and maternity leave.
- ü Article 43: Living wage for workers.
- ü Article 44: Uniform Civil Code for the whole country.
- ü Article 45: Provision for early childhood care and education to children below the age of 6 years.
- ü Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other backward classes.
- ü Article 47: To prohibit the consumption of intoxicating drinks and drugs. It is the duty of the state to raise the level of nutrition and the standard of living to improve public health.
- ü **Note:** In India Gujarat, Manipur, Mizoram, Nagaland and Lakshadweep prohibited manufacture, sale and consumption of alcohol. In Gujarat the law is in force since May 1, 1960. Gujarat is the only state in India that has the death penalty for those who found guilty of making and selling spurious (fake) liquor which causes death. This was done by amending the Bombay Prohibition (Gujarat Amendment) Bill 2009.

INDIAN POLITY BY M.LAXMIKANTH

- ü Note: the Bombay Prohibition Act 1949 is still in operation in both Maharashtra and Gujarat.
- ü Note: The **Bangaram** Island is the only place in Lakshadweep where the consumption is permitted.
- ü Impact of Prohibition in Haryana: After the 1996 assembly elections the HVP (Haryana Vikas Party) imposed ban on liquor by the CM Bansilal and it had a very bad impact in the 1998 Lok Sabha elections where it won only 1 Lok Sabha seat from the state (Out of 10). In the year 1998 the government lifted the ban.
- ü Article 48: Organization of agriculture and animal husbandry and prohibition of cow slaughter.
- ü Article 49: Protection of monuments, places and objects of National importance.
- ü Article 50: Separation of Judiciary from Executive.
- ü Article 51: To promote international peace and security, just and honorable between nations, respect for international law.
- ü **86th Amendment of 2002 changed the subject matter of Article 45 and also made elementary education a fundamental right under Article 21 A.** (This came into effect on April 1, 2010). With this the Children between the age group of 6 and 14 are entitled for free education.
- ü B N Rau (Constitutional advisor) recommended that the rights to be divided into justifiable and non-justifiable. Accordingly Part III and Part IV came into the picture.
- ü In **Champakam Dorairajan case (1951)** the Supreme Court ruled that in case of any conflict between Fundamental Rights and DPSP, the Fundamental rights would prevail.
- ü In **Golaknath case (1967)** the Supreme Court held that Fundamental Rights cannot be amended for the implementation of DPSP.
- ü In **Keshavananda Bharati case (1973)**: The Supreme Court declared that there is no essential dichotomy between the Fundamental rights and the Directive principles. They complement and supplement each other.
- ü 42nd amendment of 1976 accorded supremacy to Directive Principles of State Policy over Fundamental rights.
- ü In Minerva Mills (1980) case the status of Directive Principles of State Policy was made subordinate to the Fundamental rights.

MISCELLANEOUS:

- ü **DR B R AMBEDKAR:** The Directive Principles are the novel feature of the Indian Constitution. The Directive Principles along with the Fundamental rights contain the Philosophy of the Constitution and is the soul of the Constitution.
- ü **DR BR AMBEDKAR:** A state just awakened from freedom with its many preoccupations might be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them.
- ü **JAWAHARLAL NEHU'S STATEMENT IN 1951:** The DPSP represent a dynamic move towards a certain objective. The Fundamental rights represent something static, to preserve certain rights which exist. Both are right. But, somehow and sometime it might so happen that dynamic movement and that static standstill do not quite fit into each other.
- ü Article 38 is the key of the Directive Principles.
- ü Dr B R Ambedkar was strongly in favor of Uniform Civil Code.
- ü In S R Bommai vs Union of India case in 1994 the Supreme Court urged the government to enact a Uniform Civil Code to promote National Integration.
- ü The Supreme Court (1994) stated that the Article 44 had remained a dead letter.
- ü The Preamble, Fundamental Rights and the DPSP are the integral parts of the Indian Constitution. All the three are meant for building an egalitarian (equal) society and in the concept of socio-economic justice.
- ü If The Fundamental Rights represent the don'ts, the DPSP represents the Do's of the executive and legislature then there is conflict.
- ü **JAWAHARLAL NEHU'S STATEMENT IN PARLIAMENT IN 1955:** The responsibility for economic and social welfare policies of the nation should lie with the Parliament and not with the Courts. In case of

INDIAN POLITY BY M.LAXMIKANTH

contradiction it was for Parliament to remove the contradiction and make Fundamental rights sub serve the Directive Principles of State Policy.

- ü **A Sessions Court in Delhi on forced marriage of a Muslim woman:** The statements were given on January 1, 2013 while dismissing an anticipatory bail application moved by a maulvi accused of forcing a young Muslim girl into a wedding with a married man who allegedly raped her subsequently. According to maulvi the Shariah permitted a Muslim to keep 4 wives at a time and that the girl consented to the marriage. The judge Kamini Lau noted that the girl had not signed the marriage certificate. Her parents were not present nor were there any witness. According to the judge the Indian Legal system provides sufficient space for religious freedom but whenever any such regressive religious practice come into conflict with the rights of the citizens as enshrined in the Indian Constitution, it becomes obligatory for courts to ensure that it is the majesty of law and the constitutional mandate that prevails. Judge made it very clear that in Islamic societies Polygamous marriages are permitted but only in certain circumstances, that is primarily in situations where a man's death has left his widow with no means or support. Polygamy is neither mandatory nor encouraged but merely permitted. The Korans conditional endorsement stresses that self interest or sexual desire should not be the reason for entering into a polygamous marriage. It is a practical duty that is associated with the social duty of Islamic men to protect the social and financial standing of widow and orphans in their community.

FUNDAMENTAL DUTIES

(Part IV A, Article 51 A)

1. These were added on the recommendation of Swaran Singh Committee (1976).
2. This committee recommended for the inclusion of 8 fundamental duties, the amendment included 10 fundamental duties.
3. The Fundamental Duties are borrowed from erstwhile USSR.
4. The 10 Fundamental Duties were added to the Constitution in the year 1976 through 42nd amendment.
5. The 11th Fundamental Duty was added in the year 2002 through the 86th amendment of the Indian Constitution.

THE 11 FUNDAMENTAL DUTIES:

These duties are laid down in the Article 51A.

- a) To abide by the Constitution and respect its ideals and institutions, the National Flag and National Anthem
- b) To cherish and follow the noble ideals which inspired our national struggle for freedom.
- c) To uphold and protect the sovereignty, unity and integrity of India.
- d) To defend the country and render national service when called upon so
- e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women.
- f) To value and preserve the rich heritage of our composite culture.
- g) To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures
- h) To develop scientific temper, humanism and the spirit of inquiry and reform
- i) To safeguard public property and abjure violence.
- j) To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.

INDIAN POLITY BY M.LAXMIKANTH

- k) Every parent or guardian is to provide opportunities for education to his/her child or ward between the age of 6 and 14.

AMENDMENT OF THE INDIAN CONSTITUTION

- ü Amendment is nothing but modification of the Constitution.
- ü Amendment means
 - ü Addition
 - ü Deletion
 - ü Modification of that already existing in the Constitution.
- ü The amendment of the Indian constitution is mentioned in **PART XX** of the constitution.
- ü The procedure is mentioned under **article 368** of the Indian Constitution.
- ü The parliament is empowered to amend the constitution.
- ü Indian Constitution is both rigid and flexible.
- ü The constitution is **rigid means** it is amended with a **special majority**.
- ü The Constitution is **flexible** means it is amended with a **simple majority**.

NOTE: The Parliament cannot amend the basic features of the Constitution.

- ✓ ü This was ruled by the Supreme Court in the Keshavananda Bharati case of 1973.
- ✓ ü Various judgments of the Supreme Court have given many points that constitute the basic structure of the Constitution.
- ✓ ü From various judgments of the Supreme Court the basic structure of the Constitution can be
- ✓ ü The supremacy of the Constitution.

- ✓ ü Sovereign, Democratic and Republic nature of the Indian Polity
- ✓ ü Secularism
- ✓ ü Separation of powers between legislature, executive and Judiciary
- ✓ ü Federal character
- ✓ ü Judicial review
- ✓ ü Freedom and dignity of the individual
- ✓ ü Rule of law
- ✓ ü Unity and Integrity of the nation
- ✓ ü Balance between Fundamental Rights and Directive Principles of State Policy
- ✓ ü The Principle of equality
- ✓ ü Free and fair elections
- ✓ ü Independence of Judiciary

INDIAN POLITY BY M.LAXMIKANTH

- ✓ ü Limited powers of the Parliament to amend the Constitution
- ✓ **Please Note:** All the above case laws I discuss in a separate chapter.

HOW MANY METHODS ARE MENTIONED TO AMEND THE CONSTITUTION?

- ü The article 368 provides for two types of amendments.
 - By a Special majority of the Parliament.
 - By a special majority of the Parliament and consent by at least half the states by simple majority.

Note : Some other articles in the Constitution also provides for the amendment of the Constitution.

- ü Hence, the Constitution of India can be amended in three ways.
- ü **Note:** Please remember Article 368 provided 2 methods only. Amendment with simple majority is mentioned **outside the purview Article 368** where ever it is required.
- § Amendment by simple majority of the Parliament.
- § Amendment by a special majority of the Parliament.
- § Amendment by a special majority of the Parliament and ratification (consent) by at least half the states legislatures.

WHAT IS THE PROCEDURE FOR AMENDMENT OF THE CONSTITUTION?

- ü The procedure for the amendment is initiated in the Parliament (Lok Sabha or Rajya Sabha) only.
- ü The amendment is initiated only by introducing a bill in the Parliament.
- ü The procedure **cannot** be initiated in the state legislatures.
- ü The bill can be introduced either by a public member (Minister) or by a Private member (who is not a Minister, but a member of the house).
- ü The amendment bill **does not** require the prior permission of the President.
- ü The amendment bill must be passed in each house by a special majority.
- ü **Special majority:** A majority of more than 50 percent of the total membership of the house and a majority of 2/3rd of members of the house present and voting.
- ü The bill must be passed in each house separately.
- ü If there is a disagreement between the Lok sabha and Rajya Sabha the bill is considered to be rejected.
- ü There is **no provision of the Joint Session** in the Constitution for the purpose of passing a constitution amendment bill.
- ü **Note:** Joint session is summoned by the President only when there is a disagreement between two houses of the parliament with reference to **ordinary bills** only.
- ü If the amendment bill seeks to amend the federal provisions of the constitution, the bill must be ratified by the legislatures of half of the states by a simple majority.
- ü The bill is presented to the President after it is passed by the Parliament and the state legislatures (in case of federal provisions).
- ü The President must give assent to the constitution amendment bill.
- ü The President **cannot** withhold the assent to the bill.
- ü The President **cannot** return the bill for the reconsideration of the Parliament.

INDIAN POLITY BY M.LAXMIKANTH

- ü Note: The 24th constitutional amendment of 1971 made obligatory on the part of the President to give the assent for the constitutional amendment bill.
- ü After the assent of the President the amendment bill becomes an act.

Types of Amendments

the Constitution can be amended in three ways:

- (a) Amendment by simple majority of the Parliament,
- (b) Amendment by special majority of the Parliament, and
- (c) Amendment by special majority of the Parliament and the ratification of half of the state legislatures.

By Simple Majority of Parliament

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

1. Admission or establishment of new states.
2. Formation of new states and alteration of areas, boundaries or names of existing states.
3. Abolition or creation of legislative councils in states.
4. Second Schedule—emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
5. Quorum in Parliament.
6. Salaries and allowances of the members of Parliament.
7. Rules of procedure in Parliament.
8. Privileges of the Parliament, its members and its committees.
9. Use of English language in Parliament.
10. Number of puisne judges in the Supreme Court.
11. Conferment of more jurisdiction on the Supreme Court.
12. Use of official language.
13. Citizenship—acquisition and termination.
14. Elections to Parliament and state legislatures.
15. Delimitation of constituencies.
16. Union territories.
17. Fifth Schedule—administration of scheduled areas and scheduled tribes.
18. Sixth Schedule—administration of tribal areas.

AMENDMENT BY SPECIAL MAJORITY OF PARLIAMENT:

INDIAN POLITY BY M.LAXMIKANTH

ü The majority of the provisions in the constitution need to be amended by special majority.

ü What is special majority?

ü This is the majority of the total membership of each house

And

ü a majority of 2/3rd of the members of each house present and voting.

ü The important provision that can be amended through special majority are

- Fundamental Rights
- Fundamental Duties
- Directive Principles of State Policy

By Special Majority of Parliament and Consent of States

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill.

The following provisions can be amended in this way:

1. Election of the President and its manner.
 2. Extent of the executive power of the Union and the states.
 3. Supreme Court and high courts.
 4. Distribution of legislative powers between the Union and the states.
 5. Any of the lists in the Seventh Schedule.
 6. Representation of states in Parliament.
- Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

FEDERAL PROVISIONS:

- ü Election of the President and its manner
- ü Extent of the executive powers of the union and the states
- ü Distribution of legislative powers between the union and the states
- ü Extension of reservation for Scheduled caste, Scheduled Tribes and Anglo-Indians in the Parliament and the state legislatures.
- ü Representation of states in the Parliament.
- ü Power of the Parliament to amend the Constitution and its procedure.

MISCELLANEOUS:

- ü December 20, 2012: The Constitution amendment bill to include a new article 371 (J) in the Indian Constitution to provide a special status to the backward Hyderabad – Karnataka regions got its nod for the 2nd time in the LS with members unanimously approving it after a division of votes as a small correction had to be made. The Bill Constitution (Ninety Ninth Amendment) Act 2012 was brought in again with the new

RAJESH NAYAK

INDIAN POLITY BY M.LAXMIKANTH

numbering The Constitution (Ninety Eighth Amendment) Act 2012. The new numbering had to be made as the bill providing quota for SC /ST in government jobs which was earlier numbered 98 could not sail through in the LS. The region that gets the special status includes Gulbarga, Yadgir, Raichur, Bidar, Koppal and Bellary will get special grants from central and state governments. There would be a reservation for the people of the area in the government jobs and education.

OFFICIAL LANGUAGE

- ü The Official languages are mentioned in the **8th Schedule** of the Constitution.
- ü The official language is mentioned in the **part XVII** of the Indian Constitution.
- ü The original Constitution mentioned **14 languages** as the official languages.
- ü This is covered in the articles from **343 to 351**.
- ü **Hindi** is the official language of the Union.
- ü The English language was permitted for not more than a period of **15 years** from the date of commencement of the Constitution for all the official purposes of the Union.

- ü **OFFICIAL LANGUAGE ACT, 1963:** The English language was continued as the official language along with Hindi by enacting Official Language Act, 1963.

- ü **ARTICLE 343:** The official language of the Union shall be **Hindi in Devanagari** script.

- ü The Official Language Commission is appointed by the President.
- ü The first Official Language Commission was appointed in the year 1955.
- ü B G Kher was the chairman of the first Official Language Commission.
- ü Every bill that is introduced in the Parliament is also accompanied by a Hindi translation.
- ü The language that is used in **SUPREME COURT** is English only.
- ü The state legislatures were permitted to adopt any one or more than one languages.
- ü **NOTE:** A state can adopt more than one language.
- ü The Parliament can provide that all the proceedings in Supreme Court and High Courts are to be in English.
- ü The Governor with the prior consent of the President can authorize the use of Hindi or any other language of the state in the proceedings of the concerned High Court.
- ü All bills, acts, ordinances, orders, rules, regulations and Bye-laws at the central and states to be in English.
- ü The state legislature can prescribe the use of any language other than English with respect to bills, acts, ordinances, orders, rules, regulations, or bye-laws, but a translation of the same in the English language is to be published.
- ü An aggrieved person who belongs to the **linguistic minorities** has the right to submit a representation in any language used in the Union or states for the redress of grievances to any authority under the central or state government.
- ü Every state should provide adequate facilities for instruction in the mother tongue at the primary stage of education.
- ü The President should appoint a special officer for linguistic minorities to investigate all matters relating to the constitutional safeguards for linguistic minorities and to report to him.
- ü These reports are placed in front of the Parliament and sent to the concerned state governments.

HOW MANY LANGUAGES ARE PRESENT IN THE 8TH SCHEDULE?

- ü In the original constitution only **14 languages** were mentioned.
- ü At present the number of languages mentioned in the 8th schedule is **22**.

- ü **Sindhi** was the 15th language added through **21st amendment** in the year 1971.

INDIAN POLITY BY M.LAXMIKANTH

- ü **Konakani, Nepali and Manipuri** languages were added through the **71st amendment** in the year 1992.
- ü The next 4 languages that added to the 8th schedule were **Bodo, Dogri, Maitihli and Santhali**.
- ü The last four languages were added through **100th amendment**.

THE LIST OF THE LANGUAGES MENTIONED IN THE 8TH SCHEDULE.

- ü Assamese
- ü Bengali
- ü Bodo
- ü Dogri
- ü Gujarati
- ü Hindi
- ü Kannada
- ü Kashmiri
- ü Konkani
- ü Maithili
- ü Malayalam
- ü Manipuri
- ü Marathi
- ü Nepali
- ü Oriya
- ü Punjabi
- ü Sanskrit
- ü Santhali
- ü Sindhi
- ü Tamil
- ü Telugu
- ü Urdu

Miscellaneous:

In the year 2010 the Gujarat High Court observed that though the majority of the people in India have accepted Hindi as a national language there was nothing on record to suggest that any provision has been made or order issued declaring Hindi as a national language of the country.

ANTI DEFECTION LAW

PLEASE NOTE: The anti defection law is applicable only to the current (present) members of

Lok Sabha
Rajya Sabha
State Legislative Assemblies
State Legislative Councils

- ü Before the year 1985 there is no provision for disqualifying a member if he joins other political party.
- ü This is considered to be an insult to the democracy where the people have a voted for a person by looking at the party.
- ü This was seriously discussed hence the 10th schedule of the Indian Constitution.

INDIAN POLITY BY M.LAXMIKANTH

- ü Defections mean jumping from one political party to the other after getting elected.
- ü The anti-defection law is meant for disqualification of members of Parliament or State Legislatures on the grounds of defections from one political party to the other.
- ü These provisions are added to the Constitution of India through the 52nd amendment.
- ü A new schedule in the form of 10th schedule has been added to the Constitution.
- ü The 10th schedule was added to the constitution in the year 1985 through 52nd amendment.
- ü In Parliament and State Legislatures there are three categories of members present.
- ü Political Party members
- ü Independent members (Most of the times these members are present)
- ü Nominated members
- ü All categories of members can be disqualified under the grounds of defections.

DISQUALIFICATION OF MEMBERS OF POLITICAL PARTIES:

- ü Note: A political party member is a person who contests in the election on the name of a political party and gets elected.
- ü A member of a political party can be disqualified
- ü If that member after getting elected voluntarily resigns to the political party on whose ticket he/she got elected to the house

OR

- ü if the member votes against to the **whip** (Direction) issued by the concerned political party

OR

- ü If the member abstains against the direction issued by the concerned political party without permission from the party.

EXCEPTIONS:

- ü A member going out of a party through **Split** is **not** disqualified on the grounds of defections.

WHAT IS SPLIT?

- ü If minimum **1/3rd** members of a political party gets separated from the parent party and forms a new party it is called Split.

- ü The speaker or the chairman if satisfied recognizes the split group as a new party.
- ü **Note:** The Split group **cannot join** any political party. If so, the group is disqualified.
- ü **Please Note:** The Split by 1/3rd members of a party have been deleted through the 91st amendment Act of 2003. This means the members can no more take shelter under the split.

WHAT IS MERGER?

- ü If a 2/3rd of a political party forms a separate group and joining another political party is called merger.

INDIAN POLITY BY M.LAXMIKANTH

- ü If a member goes out as a result of **merger**, the member is **not** disqualified.
- ü If a member after being elected as the Presiding officer of the house, voluntarily gives up the membership of the party and rejoins it after he ceases to hold that office.
- ü A member may be suspended by the political party for violating the discipline of the party. A suspended member from a political party is not disqualified from the membership of the house.

INDEPENDENT MEMBERS:

WHO IS AN INDEPENDENT MEMBER?

ü An independent member is **an elected member** of the house who does not belong to any political party. She/he got elected because of their personal image among the people of the respective constituency.

- ü If an independent member joins any political party then the member is disqualified from the membership of the house.
- ü Note: An independent member can continue as an associated member of a political party.

NOMINATED MEMBERS:

- ü These are the members who are nominated by the President for Parliament and by the Governors for the State Legislatures.

DO YOU REMEMBER?

The President nominates **2 members** who belong to the Anglo-Indian community to the Lok Sabha.

The President nominates **12 members** with special knowledge or practice experience to the Rajya Sabha.

The Governor nominates **1 member** of who belongs to Anglo-Indian to the state Assembly.

The Governor nominates **1/6th** of the total members to the State Legislative Council.

- ü A nominated member is disqualified for being a member of a house if the member joins any political party after the expiry of 6 months from the date on which he takes his seat in the house.

EXCEPTION FOR A NOMINATED MEMBER:

- ü If a nominated member joins a political party within 6 months of his nomination to the house is not disqualified.

WHO IS THE DECIDING AUTHORITY REGARDING THE DISQUALIFICATION OF A MEMBER:

- ü The deciding authority is the Presiding officer (Speaker/chairman).
- ü Initially the decision of the chair was not subjected to the judicial review.

INDIAN POLITY BY M.LAXMIKANTH

- ü In the year **1993, in Kihoto Hollohan V. Zachilhu** case the Supreme Court declared that this provision is unconstitutional on the ground that it seeks to take away the jurisdiction of Supreme Court and High Courts.
- ü Hence since 1993, the decision chair is subject to the judicial review.
- ü It means the disqualification of a member can be challenged in a court of law on the grounds of malafides.

Miscellaneous:

- ü The Presiding officer can take up a defection case only when he/she receives a complaint from a member of the house.
- ü The speaker need not take the decision immediately.
- ü Before taking the final decision the presiding officer must give a chance to the member against whom the complaint has been made.
- ü In the year 2007 in Uttar Pradesh 13 MLA's (BSP) were disqualified under Anti-defection law.
- ü In the year 2010 then Karnataka Assembly Speaker K G Bopaiah 11 BJP and 5 independent MLAs. Then the MLAs moved the Karnataka High Court and the court upheld the decision of the Speaker. Later the disqualified MLAs moved the Supreme Court and the Apex Court ordered for the reinstating of the MLAs and thus avoided the possible by elections in Karnataka.
- ü In the year 2013 in Andhra Pradesh Assembly 15 MLAs have been disqualified for defying their respective party whips.

PARLIAMENT

- Articles 79 to 122 in Part V of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the Parliament.

Organisation of Parliament

- The Parliament of India consists of three parts viz, the President, the Council of States and the House of the People.
- In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively.
- The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House).
- The RS represents the states and union territories of the Indian Union, while the LS represents the people of India as a whole.
- The President of India is not a member of either House of Parliament and does not sit in the Parliament to attend its meetings, he is an integral part of the Parliament. This is because a bill passed by both the Houses of Parliament cannot become law without the President's assent.
- The president summons and pro- rogues both the Houses, dissolves the Lok Sabha, addresses both the Houses, issues ordinances when they are not in session, and so on.

Composition of the Two Houses

Composition of Rajya Sabha

- The maximum strength fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president.
- The Fourth Schedule of the Constitution deals with the allocation of seats in the Rajya Sabha to the states and union territories.

1. Representation of States

- The representatives of states elected by the elected members of state legislative assemblies.
- held in accordance with the system of proportional representation by means of the single transferable vote.
- The seats are allotted to the states on the basis of population.

2. Representation of Union Territories

- The representatives of each union territory are indirectly elected by members of an electoral college specially constituted for the purpose.
- election is also held in accordance with the system of proportional representation by means of the single transferable vote.
- Out of the seven union territories, only two (Delhi and Puducherry) have representation in Rajya Sabha.
- The populations of other five union territories are too small to have any representative in the Rajya Sabha.

3. Nominated Members

- The president nominates 12 members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service.

Composition of Lok Sabha

INDIAN POLITY-M.LAXMIKANTH

- The maximum strength fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and 2 members are to be nominated by the president from the Anglo-Indian community.

1. Representation of States

- The representatives of states are directly elected by the people from the territorial constituencies in the states.
- based on the principle of universal adult franchise.
- Every Indian citizen who is above 18 years of age and who is not disqualified under the provisions of the Constitution or any law is eligible to vote at such election.
- The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.

2. Representation of Union Territories

- The Constitution has empowered the Parliament to prescribe the manner of choosing the representatives of the union territories in the Lok Sabha.
- Accordingly, the Parliament has enacted the Union Territories (Direct Election to the House of the People) Act, 1965, by which the members of Lok Sabha from the union territories are also chosen by direct election.

3. Nominated Members

- The president can nominate two members from the Anglo-Indian community if the community is not adequately represented in the Lok Sabha.
- Originally, this provision was to operate till 1960 but has been extended till 2020 by the 95th Amendment Act, 2009.

System of Elections to Lok Sabha

The various aspects related to the system of elections to the Lok Sabha are as follows:

Territorial Constituencies

In this respect, the Constitution makes the following two provisions:

1. Each state is allotted a number of seats in the Lok Sabha in such a manner that the ratio between that number and its population is the same for all states. This provision does not apply to a state having a population of less than six millions.
2. Each state is divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state.

Duration of Two Houses

Duration of Rajya Sabha

- The Rajya Sabha (first constituted in 1952) is a continuing chamber, that is, it is a permanent body and not subject to dissolution.
- one-third of its members retire every second year.
- Their seats are filled up by fresh elections and presidential nominations at the beginning of every third year.
- The retiring members are eligible for re-election and renomination any number of times.
- the Parliament in the Representation of the People Act (1951) provided that the term of office of a member of the Rajya Sabha shall be six years.

Duration of Lok Sabha

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

Membership of Parliament

Qualifications

The Constitution lays down the following qualifications for a person to be chosen a member of the Parliament:

1. He must be a citizen of India.
2. He must make and subscribe to an oath or affirmation before the person authorised by the election commission for this purpose. In his oath or affirmation, he swears
 - (a) To bear true faith and allegiance to the Constitution of India
 - (b) To uphold the sovereignty and integrity of India
3. He must be not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years of age in the case of the Lok Sabha.
4. He must possess other qualifications prescribed by Parliament.

The Parliament has laid down the following additional qualifications in the Representation of People Act (1951).

1. He must be registered as an elector for a parliamentary constituency.
2. He must be a member of a scheduled caste or scheduled tribe in any state or union territory, if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

Disqualifications

Under the Constitution, a person shall be disqualified for being elected as a member of Parliament:

1. if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by Parliament).
2. unsound mind and stands so declared by a court, undischarged insolvent, not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state; and disqualified under any law made by Parliament.

The Parliament has laid down the following additional disqualifications in the Representation of People Act (1951):

1. He must not have been found guilty of certain election offences or corrupt practices in the elections.
2. He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
3. He must not have failed to lodge an account of his election expenses within the time.
4. He must not have any interest in government contracts, works or services.
5. He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
6. He must not have been dismissed from government service for corruption or disloyalty to the State.

INDIAN POLITY-M.LAXMIKANTH

7. He must not have been convicted for promoting enmity between different groups or for the offence of bribery.
 8. He must not have been punished for preaching and practising social crimes such as untouchability, dowry and sati.
- ✓ On the question whether a member is subject to any of the above disqualifications, the president's decision is final. However, he should obtain the opinion of the election commission and act accordingly.

Disqualification on Ground of Defection The Constitution also lays down that a person shall be disqualified from being a member of Parliament if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule. A member incurs disqualification under the defection law:

1. if he voluntarily gives up the membership of the political party on whose ticket he is elected to the House;
 2. if he votes or abstains from voting in the House contrary to any direction given by his political party;
 3. if any independently elected member joins any political party; and
 4. if any nominated member joins any political party after the expiry of six months.
- ✓ The question of disqualification under the Tenth Schedule is decided by the Chairman in the case of Rajya Sabha and Speaker in the case of Lok Sabha (and not by the president of India).
- ✓ In 1992, the Supreme Court ruled that the decision of the Chairman/Speaker in this regard is subject to judicial review.

Vacating of Seats

In the following cases, a member of Parliament vacates his seat.

1. Double Membership A person cannot be a member of both Houses of Parliament at the same time. Thus, the Representation of People Act (1951) provides for the following:

- (a) If a person is elected to both the Houses of Parliament, he must intimate within 10 days in which House he desires to serve. In default of such intimation, his seat in the Rajya Sabha becomes vacant.
- (b) If a sitting member of one House is also elected to the other House, his seat in the first House becomes vacant.
- (c) If a person is elected to two seats in a House, he should exercise his option for one. Otherwise, both seats become vacant.

Similarly, a person cannot be a member of both the Parliament and the state legislature at the same time. If a person is so elected, his seat in Parliament becomes vacant if he does not resign his seat in the state legislature within 14 days.

2. Resignation: A member may resign his seat by writing to the Chairman of Rajya Sabha or Speaker of Lok Sabha, as the case may be. The seat falls vacant when the resignation is accepted. However, the Chairman/Speaker may not accept the resignation if he is satisfied that it is not voluntary or genuine.

3. Absence: A House can declare the seat of a member vacant if he is absent from all its meetings for a period of **sixty days** without its permission. In computing the period of sixty days, no account shall be taken of any period during which the House is prorogued or adjourned for more than four consecutive days.

Oath or Affirmation

- ✓ Quite Similar

INDIAN POLITY-M.LAXMIKANTH

- ✓ Each House of Parliament has its own presiding officer. There is a Speaker and a Deputy Speaker for the Lok Sabha and a Chairman and a Deputy Chairman for the Rajya Sabha. A panel of chairpersons for the Lok Sabha and a panel of vice-chairpersons for the Rajya Sabha is also appointed.

Speaker of Lok Sabha

Election and Tenure

- ✓ The Speaker is elected by the Lok Sabha from amongst its members (as soon as may be, after its first sitting).
- ✓ Whenever the office of the Speaker falls vacant, the Lok Sabha elects another member to fill the vacancy.
- ✓ The date of election of the Speaker is fixed by the President.

Usually, the Speaker remains in office during the life of the Lok Sabha. However, he has to vacate his office earlier in any of the following three cases:

1. if he ceases to be a member of the Lok Sabha;
 2. if he resigns by writing to the Deputy Speaker; and
 3. if he is removed by a resolution passed by a majority of all the members of the Lok Sabha. Such a resolution can be moved only after giving 14 days' advance notice.
- ✓ When a resolution for the removal of the Speaker is under consideration of the House, he cannot preside at the sitting of the House, though he may be present.
 - ✓ However, he can speak and take part in the proceedings of the House at such a time and vote in the first instance, though not in the case of an equality of votes.
 - ✓ It should be noted here that, whenever the Lok Sabha is dissolved, the Speaker does not vacate his office and continues till the newly-elected Lok Sabha meets.

Role, Powers and Functions

- ✓ The Speaker is the head of the Lok Sabha, and its representative.
 - ✓ He is the guardian of powers and privileges of the members, the House as a whole and its committees.
 - ✓ He is the principal spokesman of the House, and his decision in all Parliamentary matters is final.
 - ✓ He is thus much more than merely the presiding officer of the Lok Sabha.
 - ✓ In these capacities, he is vested with vast, varied and vital responsibilities and enjoys great honour, high dignity and supreme authority within the House.
 - ✓ The Speaker of the Lok Sabha derives his powers and duties from three sources, that is, the Constitution of India, the Rules of Procedure and Conduct of Business of Lok Sabha, and Parliamentary Conventions (residuary powers that are unwritten or unspecified in the Rules). Altogether, he has the following powers and duties:
1. maintains order and decorum in the House for conducting its business and regulating its proceedings.
 2. the final interpreter of the provisions of (a) the Constitution of India, (b) the Rules of Procedure and Conduct of Business of Lok Sabha, and (c) the parliamentary precedents, within the House.
 3. adjourns the House or suspends the meeting in absence of a quorum. The quorum to constitute a meeting of the House is one-tenth of the total strength of the House.
 4. does not vote in the first instance. But he can exercise a casting vote in the case of a tie. In other words, only when the House is divided equally on any question, the Speaker is entitled to vote. Such vote is called casting vote, and its purpose is to resolve a deadlock.
 5. presides over a joint sitting of the two Houses of Parliament. Such a sitting is summoned by the President to settle a deadlock between the two Houses on a bill.
 6. allow a 'secret' sitting of the House at the request of the Leader of the House. When the House sits in secret, no stranger can be present in the chamber, lobby or galleries except with the permission of the

INDIAN POLITY-M.LAXMIKANTH

Speaker.

7. decides whether a bill is a money bill or not and his decision on this question is final. When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the President for assent, the Speaker endorses on the bill his certificate that it is a money bill.
8. decides the questions of disqualification of a member of the Lok Sabha, arising on the ground of defection under the provisions of the Tenth Schedule. In 1992, the Supreme Court ruled that the decision of the Speaker in this regard is subject to judicial review.
9. acts as the *ex-officio* chairman of the Indian Parliamentary Group of the Inter-Parliamentary Union. He also acts as the *ex-officio* chairman of the conference of presiding officers of legislative bodies in the country.
10. appoints the chairman of all the parliamentary committees of the Lok Sabha and supervises their functioning.
11. He is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

Independence and Impartiality

The following provisions ensure the independence and impartiality of the office of the Speaker:

1. can be removed only by a resolution passed by the Lok Sabha by an absolute majority (ie, a majority of the total members of the House) and not by an ordinary majority (ie, a majority of the members present and voting in the House).
2. This motion of removal can be considered and discussed only when it has the support of at least 50 members.
3. He is given a very high position in the order of precedence. He is placed at seventh rank, along with the Chief Justice of India. This means, he has a higher rank than all cabinet ministers, except the Prime Minister or Deputy Prime Minister.

Deputy Speaker of Lok Sabha

- ✓ the Deputy Speaker is also elected by the Lok Sabha itself from amongst its members.
- ✓ elected after the election of the Speaker has taken place. The date of election of the Deputy Speaker is fixed by the Speaker.
- ✓ Whenever the office of the Deputy Speaker falls vacant, the Lok Sabha elects another member to fill the vacancy.

Like the Speaker, the Deputy Speaker remains in office usually during the life of the Lok Sabha. However, he may vacate his office earlier in any of the following three cases:

1. if he ceases to be a member of the Lok Sabha;
 2. if he resigns by writing to the Speaker; and
 3. if he is removed by a resolution passed by a majority of all the members of the Lok Sabha. Such a resolution can be moved only after giving 14 days' advance notice.
- ✓ acts as the Speaker when the latter is absent from the sitting of the House. In both the cases, he assumes all the powers of the Speaker.
 - ✓ also presides over the joint sitting of both the Houses of Parliament, in case the Speaker is absent from such a sitting.
 - ✓ The Deputy Speaker has one special privilege, that is, whenever he is appointed as a member of a parliamentary committee, he automatically becomes its chairman.
 - ✓ When the Speaker presides over the House, the Deputy Speaker is like any other ordinary member of the House. He can speak in the House, participate in its proceedings and vote on any question before the House.

INDIAN POLITY-M.LAXMIKANTH

- ✓ Upto the 10th Lok Sabha, both the Speaker and the Deputy Speaker were usually from the ruling party. Since the 11th Lok Sabha, there has been a consensus that the Speaker comes from the ruling party (or ruling alliance) and the post of Deputy Speaker goes to the main opposition party.
- ✓ The Speaker and the Deputy Speaker, while assuming their offices, do not make and subscribe any separate oath or affirmation.
- ✓ The institutions of Speaker and Deputy Speaker originated in India in 1921 under the provisions of the Government of India Act of 1919 (Montague–Chelmsford Reforms). At that time, the Speaker and the Deputy Speaker were called the President and Deputy President respectively and the same nomenclature continued till 1947.

Panel of Chairpersons of Lok Sabha

- ✓ Under the Rules of Lok Sabha, the Speaker nominates from amongst the members a panel of not more than ten chairpersons.
- ✓ Any of them can preside over the House in the absence of the Speaker or the Deputy Speaker. He has the same powers as the Speaker when so presiding. He holds office until a new panel of chairpersons is nominated.
- ✓ When a member of the panel of chairpersons is also not present, any other person as determined by House acts as the Speaker.
- ✓ It must be emphasized here that a member of the panel of chairpersons cannot preside over the House, when the office of the Speaker or the Deputy Speaker is vacant.
- ✓ During such time, the Speaker's duties are to be performed by such member of the House as the President may appoint for the purpose. The elections are held, as soon as possible, to fill the vacant posts.

Speaker Pro Tem

- ✓ As provided by the Constitution, the Speaker of the last Lok Sabha vacates his office immediately before the first meeting of the newly- elected Lok Sabha.
- ✓ the President appoints a member of the Lok Sabha as the Speaker *Pro Tem* .
- ✓ Usually, the senior most member is selected for this.
- ✓ The President himself administers oath to the Speaker *Pro Tem*.
- ✓ the office of the Speaker *Pro Tem* is a temporary office, existing for a few days.

Chairman of Rajya Sabha

- ✓ The presiding officer of the Rajya Sabha.
- ✓ The vice-president of India is the *ex-officio* Chairman of the Rajya Sabha.
- ✓ During any period when the Vice-President acts as President or discharges the functions of the President, he does not perform the duties of the office of the Chairman of Rajya Sabha.
- ✓ The Chairman of the Rajya Sabha can be removed from his office only if he is removed from the office of the Vice-President.
- ✓ As a presiding officer, the powers and functions of the Chairman in the Rajya Sabha are similar to those of the Speaker in the Lok Sabha. However, the Speaker has two special powers which are not enjoyed by the Chairman:
 1. The Speaker decides whether a bill is a money bill or not and his decision on this question is final.
 2. The Speaker presides over a joint sitting of two Houses of Parliament.
- ✓ Unlike the Speaker (who is a member of the House), the Chairman is not a member of the House. But like the Speaker, the Chairman also cannot vote in the first instance. He too can cast a vote in the case of an equality of votes.
- ✓ The Vice-President cannot preside over a sitting of the Rajya Sabha as its Chairman when a resolution for his removal is under consideration.

INDIAN POLITY-M.LAXMIKANTH

- ✓ he can be present and speak in the House and can take part in its proceedings, without voting, even at such a time (while the Speaker can vote in the first instance when a resolution for his removal is under consideration of the Lok Sabha).

Deputy Chairman of Rajya Sabha

- ✓ The Deputy Chairman is elected by the Rajya Sabha itself from amongst its members. Whenever the office of the Deputy Chairman falls vacant, the Rajya Sabha elects another member to fill the vacancy.

The Deputy Chairman vacates his office in any of the following three cases:

1. if he ceases to be a member of the Rajya Sabha;
 2. if he resigns by writing to the Chairman; and
 3. if he is removed by a resolution passed by a majority of all the members of the Rajya Sabha. Such a resolution can be moved only after giving 14 days' advance notice.
- ✓ The Deputy Chairman performs the duties of the Chairman's office when it is vacant or when the Vice-President acts as President or discharges the functions of the President.
 - ✓ He also acts as the Chairman when the latter is absent from the sitting of the House. In both the cases, he has all the powers of the Chairman.
 - ✓ He is directly responsible to the Rajya Sabha.

Panel of Vice-Chairpersons of Rajya Sabha

- ✓ Under the Rules of Rajya Sabha, the Chairman nominates from amongst the members a panel of vice-chairpersons.
- ✓ Any one of them can preside over the House in the absence of the Chairman or the Deputy Chairman. He has the same powers as the Chairman when so presiding.
- ✓ He holds office until a new panel of vice-chairpersons is nominated.

Leaders in Parliament

Leader of the House

- ✓ Under the Rules of Lok Sabha, the 'Leader of the House' means the prime minister, if he is a member of the Lok Sabha, or a minister who is a member of the Lok Sabha and is nominated by the prime minister to function as the Leader of the House.
- ✓ There is also a 'Leader of the House' in the Rajya Sabha. He is a minister and a member of the Rajya Sabha and is nominated by the prime minister to function as such.

Leader of the Opposition

- ✓ In each House of Parliament, there is the 'Leader of the Opposition'.
- ✓ The leader of the largest Opposition party having not less than one-tenth seats of the total strength of the House is recognised as the leader of the Opposition in that House.
- ✓ In a parliamentary system of government, the leader of the opposition has a significant role to play. His main functions are to provide a constructive criticism of the policies of the government and to provide an alternative government. Therefore, the leader of Opposition in the Lok Sabha and the Rajya Sabha were accorded statutory recognition in 1977.
- ✓ They are also entitled to the salary, allowances and other facilities equivalent to that of a cabinet minister. It was in 1969 that an official leader of the opposition was recognised for the first time. The same functionary in USA is known as the 'minority leader'.

INDIAN POLITY-M.LAXMIKANTH

Whip

- ✓ the offices of the leader of the House and the leader of the Opposition are not mentioned in the Constitution of India, they are mentioned in the Rules of the House and Parliamentary Statute respectively.
- ✓ The office of ‘whip’, on the other hand, is mentioned neither in the Constitution of India nor in the Rules of the House nor in a Parliamentary Statute.
- ✓ It is based on the conventions of the parliamentary government.
- ✓ Every political party, whether ruling or Opposition has its own whip in the Parliament.
- ✓ He is appointed by the political party to serve as an assistant floor leader.
- ✓ He is charged with the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favour of or against a particular issue.
- ✓ He regulates and monitors their behaviour in the Parliament.
- ✓ The members are supposed to follow the directives given by the whip. Otherwise, disciplinary action can be taken.

Sessions of Parliament

Summoning

- ✓ The president from time to time summons each House of Parliament to meet.
1. The maximum gap between two sessions of Parliament cannot be more than six months.
- ✓ the Budget Session (February to May);
 - ✓ the Monsoon Session (July to September); and
 - ✓ the Winter Session (November to December).

	<i>Adjournment</i>		<i>Prorogation</i>
1.	It only terminates a sitting and not a session of the House.	1.	It not only terminates a sitting but also a session of the House.
2.	It is done by presiding officer of the House.	2.	It is done by the president of India.
3.	It does not affect the bills or any other business pending before the House and the same can be resumed when the House meets again.	3.	It also does not affect the bills or any other business pending before the House. However, all pending notices (other than those for introducing bills) lapse on prorogation and fresh notices have to be given for the next session. In Britain, prorogation brings to an end all bills or any other business pending before the House.

Adjournment

- ✓ A sitting of Parliament can be terminated by adjournment or adjournment *sine die* or prorogation or dissolution (in the case of the Lok Sabha).
- ✓ An adjournment suspends the work in a sitting for a specified time, which may be hours, days or weeks.

Adjournment *Sine Die*

- ✓ Adjournment *sine die* means terminating a sitting of Parliament for an indefinite period.

INDIAN POLITY-M.LAXMIKANTH

- ✓ In other words, when the House is adjourned without naming a day for reassembly, it is called adjournment *sine die*.
- ✓ The power of adjournment as well as adjournment *sine die* lies with the presiding officer of the House.
- ✓ He can also call a sitting of the House before the date or time to which it has been adjourned or at any time after the House has been adjourned *sine die*.

Prorogation

- ✓ The presiding officer (Speaker or Chairman) declares the House adjourned *sine die*, when the business of a session is completed.
- ✓ Within the next few days, the President issues a notification for prorogation of the session.
- ✓ However, the President can also prorogue the House while in session.

Dissolution

- ✓ Rajya Sabha, being a permanent House, is not subject to dissolution.
- ✓ Only the Lok Sabha is subject to dissolution.
- ✓ Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after general elections are held. The dissolution of the Lok Sabha may take place in either of two ways:
 1. Automatic dissolution, that is, on the expiry of its tenure of five years or the terms as extended during a national emergency; or
 2. Whenever the President decides to dissolve the House, which he is authorised to do. Once the Lok Sabha is dissolved before the completion of its normal tenure, the dissolution is irrevocable.
- ✓ When the Lok Sabha is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committees lapse.
- ✓ must be reintroduced in the newly-constituted Lok Sabha.
- ✓ However, some pending bills and all pending assurances that are to be examined by the Committee on Government Assurances do not lapse on the dissolution of the Lok Sabha. The position with respect to lapsing of bills is as follows:
 1. A bill pending in the Lok Sabha lapses (whether originating in the Lok Sabha or transmitted to it by the Rajya Sabha).
 2. A bill passed by the Lok Sabha but pending in the Rajya Sabha lapses.
 3. A bill not passed by the two Houses due to disagreement and if the president has notified the holding of a joint sitting before the dissolution of Lok Sabha, does not lapse.
 4. A bill pending in the Rajya Sabha but not passed by the Lok Sabha does not lapse.
 5. A bill passed by both Houses but pending assent of the president does not lapse.
 6. A bill passed by both Houses but returned by the president for reconsideration of Houses does not lapse.

Quorum

- ✓ Quorum is the minimum number of members required to be present in the House before it can transact any business.
- ✓ It is one-tenth of the total number of members in each House including the presiding officer.
- ✓ It means that there must be at least 55 members present in the Lok Sabha and 25 members present in the Rajya Sabha, if any business is to be conducted.
- ✓ If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Rights of Ministers and Attorney General

- ✓ In addition to the members of a House, every minister and the attorney general of India have the right to speak and take part in the proceedings of either House, any joint sitting of both the Houses and any committee of Parliament of which he is a member, without being entitled to vote.
- ✓ There are two reasons underlying this constitutional provision:
 1. A minister can participate in the proceedings of a House, of which he is not a member. In other words, a minister belonging to the Lok Sabha can participate in the proceedings of the Rajya Sabha and vice-versa.
 2. A minister, who is not a member of either House, can participate in the proceedings of both the Houses. It should be noted here that a person can remain a minister for six months, without being a member of either House of Parliament.

Lame-duck Session

- ✓ It refers to the last session of the existing Lok Sabha, after a new Lok Sabha has been elected.
- ✓ Those members of the existing Lok Sabha who could not get re-elected to the new Lok Sabha are called lame-ducks.

Devices of Parliamentary Proceedings

Question Hour

- ✓ The first hour of every parliamentary sitting is slotted for this.
- ✓ During this time, the members ask questions and the ministers usually give answers.
- ✓ The questions are of three kinds, namely, starred, unstarred and short notice.

A **starred question** (distinguished by an asterisk) requires an oral answer and hence supplementary questions can follow.

An **unstarred question**, on the other hand, requires a written answer and hence, supplementary questions cannot follow.

A **short notice question** is one that is asked by giving a notice of less than ten days. It is answered orally.

Zero Hour

- ✓ Unlike the question hour, the zero hour is not mentioned in the Rules of Procedure.
- ✓ it is an informal device available to the members of the Parliament to raise matters without any prior notice.
- ✓ The zero hour starts immediately after the question hour and lasts until the agenda for the day (ie regular business of the House) is taken up.
- ✓ In other words, the time gap between the question hour and the agenda is known as zero hour.
- ✓ It is an Indian innovation in the field of parliamentary procedures and has been in existence since 1962.

Motions

- ✓ No discussion on a matter of general public importance can take place except on a motion made with the consent of the presiding officer.
- ✓ The House expresses its decisions or opinions on various issues through the adoption or rejection of motions moved by either ministers or private members.

The motions moved by the members to raise discussions on various matters fall into three principal categories:

1. **Substantive Motion:** It is a self-contained independent proposal dealing with a very important matter like impeachment of the President or removal of Chief Election Commissioner.

INDIAN POLITY-M.LAXMIKANTH

2. **Substitute Motion:** It is a motion that is moved in substitution of an original motion and proposes an alternative to it. If adopted by the House, it supersedes the original motion.
3. **Subsidiary Motion:** It is a motion that, by itself, has no meaning and cannot state the decision of the House without reference to the original motion or proceedings of the House. It is divided into three sub-categories:
 - (a) **Ancillary Motion:** It is used as the regular way of proceeding with various kinds of business.
 - (b) **Superseding Motion:** It is moved in the course of debate on another issue and seeks to supersede that issue.
 - (c) **Amendment:** It seeks to modify or substitute only a part of the original motion.

Closure Motion

- ✓ It is a motion moved by a member to cut short the debate on a matter before the House.
- ✓ If the motion is approved by the House, debate is stopped forthwith and the matter is put to vote. There are four kinds of closure motions:
 - (a) **Simple Closure:** It is one when a member moves that the ‘matter having been sufficiently discussed be now put to vote’.
 - (b) **Closure by Compartments:** In this case, the clauses of a bill or a lengthy resolution are grouped into parts before the commencement of the debate. The debate covers the part as a whole and the entire part is put to vote.
 - (c) **Kangaroo Closure:** Under this type, only important clauses are taken up for debate and voting and the intervening clauses are skipped over and taken as passed.
 - (d) **Guillotine Closure:** It is one when the undiscussed clauses of a bill or a resolution are also put to vote along with the discussed ones due to want of time (as the time allotted for the discussion is over).

Privilege Motion

- ✓ It is concerned with the breach of parliamentary privileges by a minister.
- ✓ It is moved by a member when he feels that a minister has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts.
- ✓ Its purpose is to censure the concerned minister.

Calling Attention Motion

- ✓ It is introduced in the Parliament by a member to call the attention of a minister to a matter of urgent public importance, and to seek an authoritative statement from him on that matter.
- ✓ Like the zero hour, it is also an Indian innovation in the parliamentary procedure and has been in existence since 1954.
- ✓ However, unlike the zero hour, it is mentioned in the Rules of Procedure.

	<i>Censure Motion</i>		<i>No-Confidence Motion</i>
1.	It should state the reasons for its adoption in the Lok Sabha.	1.	It need not state the reasons for its adoption in the Lok Sabha.
2.	It can be moved against an individual minister or a group of ministers or the entire council of ministers.	2.	It can be moved against the entire council of ministers only.

INDIAN POLITY-M.LAXMIKANTH

3.	It is moved for censuring the council of ministers for specific policies and actions.	3.	It is moved for ascertaining the confidence of Lok Sabha in the council of ministers.
4.	If it is passed in the Lok Sabha, the council of ministers need not resign from the office.	4.	If it is passed in the Lok Sabha, the council of ministers must resign from office.

Adjournment Motion

- ✓ It is introduced in the Parliament to draw attention of the House to a definite matter of urgent public importance, and needs the support of 50 members to be admitted.
- ✓ As it interrupts the normal business of the House, it is regarded as an extraordinary device.
- ✓ It involves an element of censure against the government and hence Rajya Sabha is not permitted to make use of this device.
- ✓ The discussion on an adjournment motion should last for not less than two hours and thirty minutes.

The right to move a motion for an adjournment of the business of the House is subject to the following restrictions:

1. It should raise a matter which is definite, factual, urgent and of public importance;
2. It should not cover more than one matter;
3. It should be restricted to a specific matter of recent occurrence and should not be framed in general terms;
4. It should not raise a question of privilege;
5. It should not revive discussion on a matter that has been discussed in the same session;
6. It should not deal with any matter that is under adjudication by court; and
7. It should not raise any question that can be raised on a distinct motion.

No-Confidence Motion

- ✓ the Lok Sabha can remove the ministry from office by passing a no-confidence motion. The motion needs the support of 50 members to be admitted.

Censure Motion

- ✓ A censure motion is different from a no-confidence motion as shown in Table 22.2.

Motion of Thanks

- ✓ The first session after each general election and the first session of every fiscal year is addressed by the president.
- ✓ In this address, the president outlines the policies and programmes of the government in the preceding year and ensuing year. This address of the president, which corresponds to the 'speech from the Throne in Britain', is discussed in both the Houses of Parliament on a motion called the 'Motion of Thanks'. At the end of the discussion, the motion is put to vote.
- ✓ This motion must be passed in the House.
- ✓ Otherwise, it amounts to the defeat of the government. This inaugural speech of the president is an occasion available to the members of Parliament to raise discussions and debates to examine and criticise the government and administration for its lapses and failures.

No-Day-Yet-Named Motion

INDIAN POLITY-M.LAXMIKANTH

- ✓ It is a motion that has been admitted by the Speaker but no date has been fixed for its discussion.
- ✓ The Speaker, after considering the state of business in the House and in consultation with the leader of the House or on the recommendation of the Business Advisory Committee, allots a day or days or part of a day for the discussion of such a motion.

Point of Order

- ✓ A member can raise a point of order when the proceedings of the House do not follow the normal rules of procedure.
- ✓ A point of order should relate to the interpretation or enforcement of the Rules of the House or such articles of the Constitution that regulate the business of the House and should raise a question that is within the cognizance of the Speaker.
- ✓ usually raised by an opposition member in order to control the government.
- ✓ an extraordinary device as it suspends the proceedings before the House.
- ✓ No debate is allowed on a point of order.

Half-an-Hour Discussion

- ✓ It is meant for discussing a matter of sufficient public importance, which has been subjected to a lot of debate and the answer to which needs elucidation on a matter of fact.
- ✓ The Speaker can allot three days in a week for such discussions. There is no formal motion or voting before the House.

Short Duration Discussion

- ✓ It is also known as two-hour discussion as the time allotted for such a discussion should not exceed two hours. The members of the Parliament can raise such discussions on a matter of urgent public importance.
- ✓ The Speaker can allot two days in a week for such discussions.
- ✓ There is neither a formal motion before the house nor voting. This device has been in existence since 1953.

Special Mention

- ✓ A matter which is not a point of order or which cannot be raised during question hour, half-an hour discussion, short duration discussion or under adjournment motion, calling attention notice or under any rule of the House can be raised under the special mention in the Rajya Sabha. Its equivalent procedural device in the Lok Sabha is known as 'Notice (Mention) Under Rule 377'.
- ✓ Resolutions The members can move resolutions to draw the attention of the House or the government to matters of general public interest. The discussion on a resolution is strictly relevant to and within the scope of the resolution. A member who has moved a resolution or amendment to a resolution cannot withdraw the same except by leave of the House.

Resolutions are classified into three categories:

1. **Private Member's Resolution:** It is one that is moved by a private member (other than a minister). It is discussed only on alternate Fridays and in the afternoonsitting.
2. **Government Resolution:** It is one that is moved by a minister. It can be taken up any day from Monday to Thursday.
3. **Statutory Resolution:** It can be moved either by a private member or a minister. It is so called because it is always tabled in pursuance of a provision in the Constitution or an Act of Parliament.

INDIAN POLITY-M.LAXMIKANTH

Resolutions are different from motions in the following respects:

“All resolutions come in the category of substantive motions, that is to say, every resolution is a particular type of motion. All motions need not necessarily be substantive. Further, all motions are not necessarily put to vote of the House, whereas all the resolutions are required to be voted upon.”¹⁷

Youth Parliament

The scheme of Youth Parliament was started on the recommendation of the Fourth All India Whips Conference. Its objectives are:

1. to acquaint the younger generations with practices and procedures of Parliament;
2. to imbibe the spirit of discipline and tolerance cultivating character in the minds of youth;and
3. to inculcate in the student community the basic values of democracy and to enable them to acquire a proper perspective on the functioning of democratic institutions.

The ministry of parliamentary affairs provides necessary training and encouragement to the states in introducing the scheme.

Legislative Procedure in Parliament

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

	<i>Public Bill</i>		<i>Private Bill</i>
1.	It is introduced in the Parliament by a minister.	1.	It is introduced by any member of Parliament other than a minister.
2.	It reflects of the policies of the government (ruling party).	2.	It reflects the stand of opposition party on public matter.
3.	It has greater chance to be approved by the	3.	It has lesser chance to be approved by the
			Parliament.
4.	Its rejection by the House amounts to the exp-	4.	Its rejection by the House has no
5.	Its introduction in the House requires seven days’	5.	Its introduction in the House requires one
6.	It is drafted by the concerned department in consultation with the law department.	6.	Its drafting is the responsibility of the member concerned.

The bills introduced in the Parliament can also be classified into four categories:

1. Ordinary bills, which are concerned with any matter other than financial subjects.
2. Money bills, which are concerned with the financial matters like taxation, public expenditure, etc.
3. Financial bills, which are also concerned with financial matters (but are different from money bills).
4. Constitution amendment bills, which are concerned with the amendment of the provisions of the Constitution.

The Constitution has laid down separate procedures for the enactment of all the four types of bills. The procedures with regard to ordinary bills, money bills and financial bills are explained here. The procedure with regard to Constitution amendment bills is explained in detail in Chapter 10.

Ordinary Bills

Every ordinary bill has to pass through the following five stages in the Parliament before it finds a place on the Statute Book:

1. First Reading

2. Second Reading

Stage of General Discussion, Committee Stage, Consideration Stage

3. Third Reading

4. Bill in the Second House In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading. There are four alternatives before this House:

- (a) it may pass the bill as sent by the first house (ie, without amendments);
 - (b) it may pass the bill with amendments and return it to the first House for reconsideration;
 - (c) it may reject the bill altogether; and
 - (d) it may not take any action and thus keep the bill pending.
- ✓ If the second House passes the bill without any amendments or the first House accepts the amendments suggested by the second House, the bill is deemed to have been passed by both the Houses and the same is sent to the president for his assent.
 - ✓ On the other hand, if the first House rejects the amendments suggested by the second House or the second House rejects the bill altogether or the second House does not take any action for six months, a deadlock is deemed to have taken place.
 - ✓ To resolve such a deadlock, the president can summon a joint sitting of the two Houses. If the majority of members present and voting in the joint sitting approves the bill, the bill is deemed to have been passed by both the Houses.

5. Assent of the President Every bill after being passed by both Houses of Parliament either singly or at a joint sitting, is presented to the president for his assent. There are three alternatives before the president:

- (a) he may give his assent to the bill; or
 - (b) he may withhold his assent to the bill; or
 - (c) he may return the bill for reconsideration of the Houses.
- ✓ If the president gives his assent to the bill, the bill becomes an act and is placed on the Statute Book. If the President withholds his assent to the bill, it ends and does not become an act.
 - ✓ If the President returns the bill for reconsideration and if it is passed by both the Houses again with or without amendments and presented to the President for his assent, the president must give his assent to the bill. Thus, the President enjoys only a “suspensive veto.”

Money Bills

Article 110 of the Constitution deals with the definition of money bills. It states that a bill is deemed to be a money bill if it contains ‘only’ provisions dealing with all or any of the following matters:

1. The imposition, abolition, remission, alteration or regulation of anytax;
2. The regulation of the borrowing of money by the Union government;

INDIAN POLITY-M.LAXMIKANTH

3. The custody of the Consolidated Fund of India or the contingency fund of India, the payment of moneys into or the withdrawal of money from any such fund;
4. The appropriation of money out of the Consolidated Fund of India;
5. Declaration of any expenditure charged on the Consolidated Fund of India or increasing the amount of any such expenditure;
6. The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money, or the audit of the accounts of the Union or of a state; or
7. Any matter incidental to any of the matters specified above.

However, a bill is not to be deemed to be a money bill by reason only that it provides for:

1. the imposition of fines or other pecuniary penalties, or
 2. the demand or payment of fees for licenses or fees for services rendered; or
 3. the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.
- ✓ If any question arises whether a bill is a money bill or not, the decision of the Speaker of the Lok Sabha is final. His decision in this regard cannot be questioned in any court of law or in the either House of Parliament or even the president.
 - ✓ When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the president for assent, the Speaker endorses it as a money bill.
 - ✓ A money bill can only be introduced in the Lok Sabha and that too on the recommendation of the president. Every such bill is considered to be a government bill and can be introduced only by a minister.
 - ✓ The Rajya Sabha has restricted powers with regard to a money bill. It cannot reject or amend a money bill. It can only make the recommendations. It must return the bill to the Lok Sabha within 14 days, with or without recommendations. The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha.
 - ✓ If the Rajya Sabha does not return the bill to the Lok Sabha within 14 days, the bill is deemed to have been passed by both the Houses in the form originally passed by the Lok Sabha. Thus, the Lok Sabha has more powers than Rajya Sabha with regard to a money bill.
 - ✓ On the other hand, both the Houses have equal powers with regard to an ordinary bill.
 - ✓ Finally, when a money bill is presented to the president, he may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the Houses. Normally, the president gives his assent to a money bill as it is introduced in the Parliament with his prior permission.

Financial Bills

- ✓ Financial bills are those bills that deal with fiscal matters, that is, revenue or expenditure. However, the Constitution uses the term 'financial bill' in a technical sense. Financial bills are of three kinds:
 1. Money bills—Article 110
 2. Financial bills (I)—Article 117 (1)
 3. Financial bills (II)—Article 117 (3)
- ✓ money bills are simply a species of financial bills. Hence, all money bills are financial bills but all financial bills are not money bills.
- ✓ Only those financial bills are money bills which contain exclusively those matters which are mentioned in Article 110 of the Constitution.

INDIAN POLITY-M.LAXMIKANTH

- ✓ These are also certified by the Speaker of Lok Sabha as money bills. The financial bills (I) and (II), on the other hand, have been dealt with in Article 117 of the Constitution.

	<i>Ordinary Bill</i>		<i>Money Bill</i>
1.	It can be introduced either in the Lok Sabha or the Rajya Sabha.	1.	It can be introduced only in the Lok Sabha and not in the Rajya Sabha.
2.	It can be introduced either by a minister or by a private member.	2.	It can be introduced only by a minister.
3.	It is introduced without the recommendation of the president.	3.	It can be introduced only on the recommendation of the President.
4.	It can be amended or rejected by the Rajya Sabha.	4.	It cannot be amended or rejected by the Rajya Sabha. The Rajya Sabha should return the bill with or without
			recommendations, which may be accepted or rejected by the Lok Sabha.
5.	It can be detained by the Rajya Sabha for a maximum period of six months.	5.	It can be detained by the Rajya Sabha for a maximum period of 14 days only.
6.	It does not require the certification of the Speaker when transmitted to the Rajya Sabha (if it has originated in the Lok Sabha).	6.	It requires the certification of the Speaker when transmitted to the Rajya Sabha.
7.	It is sent for the President's assent only after being approved by both the Houses. In case of a deadlock due to disagreement between the two Houses, a joint sitting of both the houses can be summoned by the president to resolve the deadlock.	7.	It is sent for the President's assent even if it is approved by only Lok Sabha. There is no chance of any disagreement between the two Houses and hence, there is no provision of joint sitting of both the Houses in this regard.
8.	Its defeat in the Lok Sabha may lead to the resignation of the government (if it is introduced by a minister).	8.	Its defeat in the Lok Sabha leads to the resignation of the government.
9.	It can be rejected, approved, or returned for reconsideration by the President.	9.	It can be rejected or approved but cannot be returned for reconsideration by the President.

Financial Bills (I)

- ✓ contains not only any or all the matters mentioned in Article 110, but also other matters of general legislation.
- ✓ a bill that contains a borrowing clause, but does not exclusively deal with borrowing. In two respects, a financial bill (I) is similar to a money bill—(a) both of them can be introduced only in the Lok Sabha and not in the Rajya Sabha, and (b) both of them can be introduced only on the recommendation of the president.
- ✓ In all other respects, a financial bill (I) is governed by the same legislative procedure applicable to an ordinary bill.

INDIAN POLITY-M.LAXMIKANTH

- ✓ Hence, it can be either rejected or amended by the Rajya Sabha (except that an amendment other than for reduction or abolition of a tax cannot be moved in either House without the recommendation of the president).
- ✓ In case of a disagreement between the two Houses over such a bill, the president can summon a joint sitting of the two Houses to resolve the deadlock.

Financial Bills (II)

- ✓ A financial bill (II) contains provisions involving expenditure from the Consolidated Fund of India, but does not include any of the matters mentioned in Article 110.
- ✓ It is treated as an ordinary bill and in all respects, it is governed by the same legislative procedure which is applicable to an ordinary bill. The only special feature of this bill is that it cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the bill.
- ✓ financial bill (II) can be introduced in either House of Parliament and recommendation of the President is not necessary for its introduction. It can be either rejected or amended by either House of Parliament. In case of a disagreement between the two Houses over such a bill, the President can summon a joint sitting of the two Houses to resolve the deadlock.

Joint Sitting of Two Houses

- ✓ Joint sitting is an extraordinary machinery provided by the Constitution to resolve a deadlock between the two Houses over the passage of a bill. A deadlock is deemed to have taken place under any one of the following three situations after a bill has been passed by one House and transmitted to the other House:
 1. if the bill is rejected by the other House;
 2. if the Houses have finally disagreed as to the amendments to be made in the bill; or
 3. if more than six months have elapsed from the date of the receipt of the bill by the other House without the bill being passed by it.
- ✓ In the above three situations, the president can summon both the Houses to meet in a joint sitting for the purpose of deliberating and voting on the bill.
- ✓ It must be noted here that the provision of joint sitting is applicable to ordinary bills or financial bills only and not to money bills or Constitutional amendment bills.
- ✓ In the case of a money bill, the Lok Sabha has overriding powers, while a Constitutional amendment bill must be passed by each House separately.
- ✓ In reckoning the period of six months, no account can be taken of any period during which the other House (to which the bill has been sent) is prorogued or adjourned for more than four consecutive days.
- ✓ If the bill (under dispute) has already lapsed due to the dissolution of the Lok Sabha, no joint sitting can be summoned.
- ✓ But, the joint sitting can be held if the Lok Sabha is dissolved after the President has notified his intention to summon such a sitting (as the bill does not lapse in this case). After the President notifies his intention to summon a joint sitting of the two Houses, none of the Houses can proceed further with the bill.
- ✓ The Speaker of Lok Sabha presides over a joint sitting of the two Houses and the Deputy Speaker, in his absence.
- ✓ If the Deputy Speaker is also absent from a joint sitting, the Deputy Chairman of Rajya Sabha presides.
- ✓ If he is also absent, such other person as may be determined by the members present at the joint sitting, presides over the meeting. It is clear that the Chairman of Rajya Sabha does not preside over a joint sitting as he is not a member of either House of Parliament.

INDIAN POLITY-M.LAXMIKANTH

The Constitution has specified that at a joint sitting, new amendments to the bill cannot be proposed except in two cases:

1. those amendments that have caused final disagreement between the Houses; and
2. those amendments that might have become necessary due to the delay in the passage of the bill.

Since 1950, the provision regarding the joint sitting of the two Houses has been invoked only thrice.

Budget in Parliament

- ✓ The Constitution refers to the budget as the 'annual financial statement'. In other words, the term 'budget' has nowhere been used in the Constitution.
- ✓ It is the popular name for the 'annual financial statement' that has been dealt with in Article 112 of the Constitution.
- ✓ The budget is a statement of the estimated receipts and expenditure of the Government of India in a financial year, which begins on 1 April and ends on 31 March of the following year.

In addition to the estimates of receipts and expenditure, the budget contains certain other elements. Overall, the budget contains the following:

1. Estimates of revenue and capital receipts;
 2. Ways and means to raise the revenue;
 3. Estimates of expenditure;
 4. Details of the actual receipts and expenditure of the closing financial year and the reasons for any deficit or surplus in that year; and
 5. Economic and financial policy of the coming year, that is, taxation proposals, prospects of revenue, spending programme and introduction of new schemes/projects.
- ✓ The Government of India has two budgets, namely, the Railway Budget and the General Budget. While the former consists of the estimates of receipts and expenditures of only the Ministry of Railways, the latter consists of the estimates of receipts and expenditure of all the ministries of the Government of India (except the railways).

The Railway Budget was separated from the General Budget in 1921 on the recommendations of the Acworth Committee. The reasons or objectives of this separation are as follows:

1. To introduce flexibility in railway finance.
2. To facilitate a business approach to the railway policy.
3. To secure stability of the general revenues by providing an assured annual contribution from railway revenues.
4. To enable the railways to keep their profits for their own development (after paying a fixed annual contribution to the general revenues).

Constitutional Provisions

The Constitution of India contains the following provisions with regard to the enactment of budget:

1. Parliament can reduce or abolish a tax but cannot increase it.
2. The Constitution has also defined the relative roles or position of both the Houses of Parliament with regard to the enactment of the budget in the following way:
 - (a) A money bill or finance bill dealing with taxation cannot be introduced in the Rajya Sabha—it

INDIAN POLITY-M.LAXMIKANTH

must be introduced only in the Lok Sabha.

- (b) The Rajya Sabha has no power to vote on the demand for grants; it is the exclusive privilege of the Lok Sabha.
 - (c) The Rajya Sabha should return the Money bill (or Finance bill) to the Lok Sabha within fourteen days. The Lok Sabha can either accept or reject the recommendations made by Rajya Sabha in this regard.
3. The estimates of expenditure embodied in the budget shall show separately the expenditure charged on the Consolidated Fund of India and the expenditure made from the Consolidated Fund of India.
 4. The budget shall distinguish expenditure on revenue account from other expenditure.

Charged Expenditure

The budget consists of two types of expenditure—the expenditure ‘charged’ upon the Consolidated Fund of India and the expenditure ‘made’ from the Consolidated Fund of India. The charged expenditure is non-votable by the Parliament, that is, it can only be discussed by the P a r l i a m e n t , while the other type has to be voted by the Parliament. The list of the charged expenditure is as follows:

1. Emoluments and allowances of the President and other expenditure relating to his office.
2. Salaries and allowances of the Chairman and the Deputy Chairman of the Rajya Sabha and the Speaker and the Deputy Speaker of the Lok Sabha.
3. Salaries, allowances and pensions of the judges of the Supreme Court.
4. Pensions of the judges of high courts.
5. Salary, allowances and pension of the Comptroller and Auditor General of India.
6. Salaries, allowances and pension of the chairman and members of the Union Public Service Commission.
7. Administrative expenses of the Supreme Court, the office of the Comptroller and Auditor General of India and the Union Public Service Commission including the salaries, allowances and pensions of the persons serving in these offices.
8. The debt charges for which the Government of India is liable, including interest, sinking fund charges and redemption charges and other expenditure relating to the raising of loans and the service and redemption of debt.
9. Any sum required to satisfy any judgement, decree or award of any court or arbitral tribunal.

Any other expenditure declared by the Parliament to be so charged. Stages in Enactment

The budget goes through the following six stages in the Parliament:

1. Presentation of budget.
2. General discussion.
3. Scrutiny by departmental committees.
4. Voting on demands for grants.
5. Passing of appropriation bill.
6. Passing of finance bill.

1. Presentation of Budget The budget is presented in two parts—Railway Budget and General Budget. Both are governed by the same procedure.

The introduction of Railway Budget precedes that of the General Budget. While the former is presented to the Lok Sabha by the railway minister in the third week of February, the latter is presented to the Lok Sabha by the finance

INDIAN POLITY-M.LAXMIKANTH

minister on the last working day of February.

- The Finance Minister presents the General Budget with a speech known as the 'budget speech'. At the end of the speech in the Lok Sabha, the budget is laid before the Rajya Sabha, which can only discuss it and has no power to vote on the demands for grants.

2. General Discussion

3. Scrutiny by Departmental Committees

4. Voting on Demands for Grants

- In the light of the reports of the departmental standing committees, the Lok Sabha takes up voting of demands for grants. The demands are presented ministry wise. A demand becomes a grant after it has been duly voted.
- Two points should be noted in this context. One, the voting of demands for grants is the exclusive privilege of the Lok Sabha, that is, the Rajya Sabha has no power of voting the demands. Second, the voting is confined to the votable part of the budget—the expenditure charged on the Consolidated Fund of India is not submitted to the vote (it can only be discussed).
- While the General Budget has a total of 109 demands (103 for civil expenditure and 6 for defence expenditure), the Railway Budget has 32 demands.
- Each demand is voted separately by the Lok Sabha. During this stage, the members of Parliament can discuss the details of the budget.
- They can also move motions to reduce any demand for grant. Such motions are called as 'cut motion', which are of three kinds:

(a) Policy Cut Motion It represents the disapproval of the policy underlying the demand. It states that the amount of the demand be reduced to Re 1. The members can also advocate an alternative policy.

(b) Economy Cut Motion It represents the economy that can be affected in the proposed expenditure. It states that the amount of the demand be reduced by a specified amount (which may be either a lumpsum reduction in the demand or omission or reduction of an item in the demand).

(c) Token Cut Motion It ventilates a specific grievance that is within the sphere of responsibility of the Government of India. It states that the amount of the demand be reduced by Rs 100.

A cut motion, to be admissible, must satisfy the following conditions:

- (i) It should relate to one demand only.
- (ii) It should be clearly expressed and should not contain arguments or defamatory statements.
- (iii) It should be confined to one specific matter.
- (iv) It should not make suggestions for the amendment or repeal of existing laws.
- (v) It should not refer to a matter that is not primarily the concern of Union government.
- (vi) It should not relate to the expenditure charged on the Consolidated Fund of India.
- (vii) It should not relate to a matter that is under adjudication by a court.
- (viii) It should not raise a question of privilege.
- (ix) It should not revive discussion on a matter on which a decision has been taken in the same session.
- (x) It should not relate to a trivial matter.

- ✓ In total, 26 days are allotted for the voting of demands. On the last day the Speaker puts all the remaining demands to vote and disposes them whether they have been discussed by the members or not. This is

known as 'guillotine'.

5. Passing of Appropriation Bill The Constitution states that 'no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law'. Accordingly, an appropriation bill is introduced to provide for the appropriation, out of the Consolidated Fund of India, all money required to meet:

- (a) The grants voted by the Lok Sabha.
 - (b) The expenditure charged on the Consolidated Fund of India.
- ✓ The Appropriation Bill becomes the Appropriation Act after it is assented to by the President. This act authorises (or legalises) the payments from the Consolidated Fund of India. This means that the government cannot withdraw money from the Consolidated Fund of India till the enactment of the appropriation bill. This takes time and usually goes on till the end of April. But the government needs money to carry on its normal activities after 31 March (the end of the financial year). To overcome this functional difficulty, the Constitution has authorised the Lok Sabha to make any grant in advance in respect to the estimated expenditure for a part of the financial year, pending the completion of the voting of the demands for grants and the enactment of the appropriation bill. This provision is known as the 'vote on account'. It is passed (or granted) after the general discussion on budget is over. It is generally granted for two months for an amount equivalent to one-sixth of the total estimation.

6. Passing of Finance Bill The Finance Bill is introduced to give effect to the financial proposals of the Government of India for the following year. It is subjected to all the conditions applicable to a Money Bill. Unlike the Appropriation Bill, the amendments (seeking to reject or reduce a tax) can be moved in the case of finance bill. According to the Provisional Collection of Taxes Act of 1931, the Finance Bill must be enacted (i.e., passed by the Parliament and assented to by the president) within 75 days.

The Finance Act legalizes the income side of the budget and completes the process of the enactment of the budget.

Other Grants

In addition to the budget that contains the ordinary estimates of income and expenditure for one financial year, various other grants are made by the Parliament under extraordinary or special circumstances:

Supplementary Grant

- ✓ granted when the amount authorised by the Parliament through the appropriation act for a particular service for the current financial year is found to be insufficient for that year.

Additional Grant

- ✓ granted when a need has arisen during the current financial year for additional expenditure upon some new service not contemplated in the budget for that year.

Excess Grant

- ✓ granted when money has been spent on any service during a financial year in excess of the amount granted for that service in the budget for that year. It is voted by the Lok Sabha after the financial year. Before the demands for excess grants are submitted to the Lok Sabha for voting, they must be approved by the Public Accounts Committee of Parliament.

Vote of Credit

- ✓ granted for meeting an unexpected demand upon the resources of India, when on account of the magnitude

INDIAN POLITY-M.LAXMIKANTH

or the indefinite character of the service, the demand cannot be stated with the details ordinarily given in a budget. Hence, it is like a blank cheque given to the Executive by the Lok Sabha.

Exceptional Grant

- ✓ granted for a special purpose and forms no part of the current service of any financial year.

Token Grant

- ✓ granted when funds to meet the proposed expenditure on a new service can be made available by reappropriation. A demand for the grant of a token sum (of Re 1) is submitted to the vote of the Lok Sabha and if assented, funds are made available. Reappropriation involves transfer of funds from one head to another. It does not involve any additional expenditure.

Funds

The Constitution of India provides for the following three kinds of funds for the Central government:

1. Consolidated Fund of India (Article 266)
2. Public Account of India (Article 266)
3. Contingency Fund of India (Article 267)

Consolidated Fund of India

- ✓ It is a fund to which all receipts are credited and all payments are debited. In other words, (a) all revenues received by the Government of India; (b) all loans raised by the Government by the issue of treasury bills, loans or ways and means of advances; and (c) all money received by the government in repayment of loans forms the Consolidated Fund of India.
- ✓ All the legally authorised payments on behalf of the Government of India are made out of this fund. No money out of this fund can be appropriated (issued or drawn) except in accordance with a parliamentary law.

Public Account of India

- ✓ All other public money (other than those which are credited to the Consolidated Fund of India) received by or on behalf of the Government of India shall be credited to the Public Account of India.
- ✓ This includes provident fund deposits, judicial deposits, savings bank deposits, departmental deposits, remittances and so on.
- ✓ This account is operated by executive action, that is, the payments from this account can be made without parliamentary appropriation. Such payments are mostly in the nature of banking transactions.

Contingency Fund of India

- ✓ The Constitution authorised the Parliament to establish a 'Contingency Fund of India', into which amounts determined by law are paid from time to time.
- ✓ the Parliament enacted the contingency fund of India Act in 1950.
- ✓ This fund is placed at the disposal of the president, and he can make advances out of it to meet unforeseen expenditure pending its authorisation by the Parliament. The fund is held by the finance secretary on behalf of the president. Like the public account of India, it is also operated by executive action.

Multifunctional Role of Parliament

In the 'Indian politico-administrative system', the Parliament occupies a central position and has a multifunctional

INDIAN POLITY-M.LAXMIKANTH

role. It enjoys extensive powers and performs a variety of functions towards the fulfilment of its constitutionally expected role. Its powers and functions can be classified under the following heads:

1. Legislative Powers and Functions
2. Executive Powers and Functions
3. Financial Powers and Functions
4. Constituent Powers and Functions
5. Judicial Powers and Functions
6. Electoral Powers and Functions
7. Other powers and functions.

1. Legislative Powers and Functions

- ✓ The primary function of Parliament is to make laws for the governance of the country.
- ✓ It has exclusive power to make laws on the subjects enumerated in the Union List (which at present has 100 subjects, originally 97 subjects) and on the residuary subjects (that is, subjects not enumerated in any of the three lists).
- ✓ With regard to Concurrent List (which has at present 52 subjects, originally 47 subjects), the Parliament has overriding powers, that is, the law of Parliament prevails over the law of the state legislature in case of a conflict between the two.

The Constitution also empowers the Parliament to make laws on the subjects enumerated in the State List (which at present has 61 subjects, originally 66 subjects) under the following five abnormal circumstances:

- (a) when Rajya Sabha passes a resolution to that effect.
 - (b) when a proclamation of National Emergency is in operation.
 - (c) when two or more states make a joint request to the Parliament.
 - (d) when necessary to give effect to international agreements, treaties and conventions.
 - (e) when President's Rule is in operation in the state.
- ✓ All the ordinances issued by the president (during the recess of the Parliament) must be approved by the Parliament within six weeks after its reassembly.
 - ✓ An ordinance becomes inoperative if it is not approved by the parliament within that period.
 - ✓ The Parliament makes laws in a skeleton form and authorises the Executive to make detailed rules and regulations within the framework of the parent law. This is known as **delegated legislation** or executive legislation or subordinate legislation. Such rules and regulations are placed before the Parliament for its examination.

2. Executive Powers and Functions

- ✓ the Parliament exercises control over the Executive through question-hour, zero hour, half-an-hour discussion, short duration discussion, calling attention motion, adjournment motion, no-confidence motion, censure motion and other discussions. It also supervises the activities of the Executive with the help of its committees like committee on government assurance, committee on subordinate legislation, committee on petitions, etc.

The Lok Sabha can also express lack of confidence in the government in the following ways:

- (a) By not passing a motion of thanks on the President's inaugural address.
- (b) By rejecting a moneybill.

INDIAN POLITY-M.LAXMIKANTH

- (c) By passing a censure motion or an adjournment motion.
- (d) By defeating the government on a vital issue.
- (e) By passing a cutmotion.

3. Financial Powers and Functions

- ✓ The budget is based on the principle of annuality, that is, the Parliament grants money to the government for one financial year. If the granted money is not spent by the end of the financial year, then the balance expires and returns to the Consolidated Fund of India. This practice is known as the 'rule of lapse'.
- ✓ It facilitates effective financial control by the Parliament as no reserve funds can be built without its authorisation.
- ✓ However, the observance of this rule leads to heavy rush of expenditure towards the close of the financial year. This is popularly called as 'March Rush'.

4. Constituent Powers and Functions

- ✓ The Parliament is vested with the powers to amend the Constitution by way of addition, variation or repeal of any provision.
- ✓ The major part of the Constitution can be amended by the Parliament with special majority, that is, a majority (that is, more than 50 per cent) of the total membership of each House and a majority of not less than two-thirds of the members present and voting in each House. Some other provisions of the Constitution can be amended by the Parliament with simple majority, that is, a majority of the members present and voting in each House of Parliament. Only a few provisions of the Constitution can be amended by the Parliament (by special majority) and with the consent of at least half of the state Legislatures (by simple majority).
- ✓ However, the power to initiate the process of the amendment of the Constitution (in all the three cases) lies exclusively in the hands of the Parliament and not the state legislature. There is only one exception, that is, the state legislature can pass a resolution requesting the Parliament for the creation or abolition of the legislative council in the state. Based on the resolution, the Parliament makes an act for amending the Constitution to that effect. To sum up, the Parliament can amend the Constitution in three ways:

- (a) By simple majority;
- (b) By special majority; and
- (c) By special majority but with the consent of half of all the state legislatures.

5. Judicial Powers and Functions

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

- (a) It can impeach the President for the violation of the Constitution.
- (b) It can remove the Vice-President from his office.
- (c) It can recommend the removal of judges (including chief justice) of the Supreme Court and the high courts, chief election commissioner, comptroller and auditor general to the president.
- (d) It can punish its members or outsiders for the breach of its privileges or its contempt.

6. Electoral Powers and Functions

7. Other Powers and Functions

The various other powers and functions of the Parliament include:

- (a) It serves as the highest deliberative body in the country. It discusses various issues of national and international significance.
- (b) It approves all the three types of emergencies (national, state and financial) proclaimed by the President. It can create or abolish the state legislative councils on the recommendation of the concerned state legislative assemblies.
- (c) It can increase or decrease the area, alter the boundaries and change the names of states of the Indian Union.
- (d) It can regulate the organisation and jurisdiction of the Supreme Court and high courts and can establish a common high court for two or more states.

Position of Rajya Sabha

The Constitutional position of the Rajya Sabha (as compared with the Lok Sabha) can be studied from three angles:

1. Where Rajya Sabha is equal to Lok Sabha.
2. Where Rajya Sabha is unequal to Lok Sabha.

Where Rajya Sabha has special powers that are not at all shared with the Lok Sabha Equal Status with Lok Sabha

In the following matters, the powers and status of the Rajya Sabha are equal to that of the Lok Sabha:

1. Introduction and passage of ordinary bills.
2. Introduction and passage of Constitutional amendment bills.
3. Introduction and passage of financial bills involving expenditure from the Consolidated Fund of India.
4. Election and impeachment of the president.
5. Election and removal of the Vice-President. However, Rajya Sabha alone can initiate the removal of the vice-president. He is removed by a resolution passed by the Rajya Sabha by a special majority and agreed to by the Lok Sabha by a simple majority.
6. Making recommendation to the President for the removal of Chief Justice and judges of Supreme Court and high courts, chief election commissioner and comptroller and auditor general.
7. Approval of ordinances issued by the President.
8. Approval of proclamation of all three types of emergencies by the President.
9. Selection of ministers including the Prime Minister. Under the Constitution, the ministers including the Prime Minister can be members of either House. However, irrespective of their membership, they are responsible only to the Lok Sabha.
10. Consideration of the reports of the constitutional bodies like Finance Commission, Union Public Service Commission, comptroller and auditor general, etc.
11. Enlargement of the jurisdiction of the Supreme Court and the Union Public Service Commission.

Unequal Status with Lok Sabha

In the following matters, the powers and status of the Rajya Sabha are unequal to that of the Lok Sabha:

1. A Money Bill can be introduced only in the Lok Sabha and not in the Rajya Sabha.
2. Rajya Sabha cannot amend or reject a Money Bill. It should return the bill to the Lok Sabha within 14 days, either with recommendations or without recommendations.
3. The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha. In both the cases, the money bill is deemed to have been passed by the two Houses.
4. A financial bill, not containing solely the matters of Article 110, also can be introduced only in the Lok Sabha and not in the Rajya Sabha. But, with regard to its passage, both the Houses have equal powers.
5. The final power to decide whether a particular bill is a Money Bill or not is vested in the Speaker of the Lok Sabha.
6. The Speaker of Lok Sabha presides over the joint sitting of both the Houses.
7. The Lok Sabha with greater number wins the battle in a joint sitting except when the combined strength of the ruling party in both the Houses is less than that of the opposition parties. Rajya Sabha can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the Lok Sabha).
8. A resolution for the discontinuance of the national emergency can be passed only by the Lok Sabha and not by the Rajya Sabha.
9. The Rajya Sabha cannot remove the council of ministers by passing a no-confidence motion. This is because the Council of ministers is collectively responsible only to the Lok Sabha. But, the Rajya Sabha can discuss and criticise the policies and activities of the government.

Special Powers of Rajya Sabha

Due to its federal character, the Rajya Sabha has been given two exclusive or special powers that are not enjoyed by the Lok Sabha:

1. It can authorise the Parliament to make a law on a subject enumerated in the State List (Article 249).
2. It can authorise the Parliament to create new All-India Services common to both the Centre and states (Article 312).

Even though the Rajya Sabha has been given less powers as compared with the Lok Sabha, its utility is supported on the following grounds:

1. It checks hasty, defective, careless and ill-considered legislation made by the Lok Sabha by making provision of revision and thought.
2. It facilitates giving representation to eminent professionals and experts who cannot face the direct election. The President nominates 12 such persons to the Rajya Sabha.
3. It maintains the federal equilibrium by protecting the interests of the states against the undue interference of the Centre.

Public Accounts Committee

- ✓ setup first in 1921 under the provisions of the Government of India Act of 1919 and has since been in existence.
- ✓ At present, it consists of 22 members (15 from the Lok Sabha and 7 from the Rajya Sabha).

INDIAN POLITY-M.LAXMIKANTH

- ✓ The members are elected by the Parliament every year from amongst its members according to the principle of proportional representation by means of the single transferable vote.
- ✓ Thus, all parties get due representation in it.
- ✓ The term of office of the members is one year.
- ✓ A minister cannot be elected as a member of the committee.
- ✓ The chairman of the committee is appointed by the Speaker from amongst its members.
- ✓ Until 1966–67, the chairman of the committee belonged to the ruling party. However, since 1967 a convention has developed whereby the chairman of the committee is selected invariably from the Opposition.
- ✓ The function of the committee is to examine the annual audit reports of the comptroller and auditor general of India (CAG), which are laid before the Parliament by the president. The CAG submits three audit reports to the president, namely, audit report on appropriation accounts, audit report on finance accounts and audit report on public undertakings.

Estimates Committee

- ✓ The first Estimates Committee in the post-independence era was constituted in 1950 on the recommendation of John Mathai, the then finance minister.
- ✓ Originally, it had 25 members but in 1956 its membership was raised to 30.
- ✓ All the thirty members are from Lok Sabha only.
- ✓ The Rajya Sabha has no representation in this committee.
- ✓ These members are elected by the Lok Sabha every year from amongst its members, according to the principles of proportional representation by means of a single transferable vote.
- ✓ Thus, all parties get due representation in it. The term of office is one year.
- ✓ A minister cannot be elected as a member of the committee. The chairman of the committee is appointed by the Speaker from amongst its members and he is invariably from the ruling party.

In more detail, the functions of the committee are:

1. To report what economies, improvements in organisation, efficiency and administrative reform consistent with the policy underlying the estimates, can be affected.
2. To suggest alternative policies in order to bring about efficiency and economy in administration.
3. To examine whether the money is well laid out within the limits of the policy implied in the estimates.
4. To suggest the form in which the estimates are to be presented to Parliament.

Committee on Public Undertakings

- ✓ it had 15 members (10 from the Lok Sabha and 5 from the Rajya Sabha).
- ✓ However, in 1974, its membership was raised to 22 (15 from the Lok Sabha and 7 from the Rajya Sabha).
- ✓ The members are elected by the Parliament every year from amongst its members according to the principle of proportional representation by means of a single transferable vote.
- ✓ Thus, all parties get due representation in it.
- ✓ The term of office of the members is one year.
- ✓ A minister cannot be elected as a member of the committee.

INDIAN POLITY-M.LAXMIKANTH

- ✓ The chairman of the committee is appointed by the Speaker from amongst its members who are drawn from the Lok Sabha only.
- ✓ Thus, the members of the committee who are from the Rajya Sabha cannot be appointed as the chairman.

The functions of the committee are:

1. To examine the reports and accounts of public undertakings.
2. To examine the reports of the comptroller and auditor general on public undertakings.
3. To examine whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices.
4. To exercise such other functions vested in the public accounts committee and the estimates committee in relation to public undertakings which are allotted to it by the Speaker from time to time.

The committee is not to examine and investigate any of the following:

1. Matters of major government policy as distinct from business or commercial functions of the public undertakings.
2. Matters of day-to-day administration.
3. Matters for the consideration of which machinery is established by any special statute under which a particular public undertaking is established.

Departmental Standing Committees

- ✓ On the recommendation of the Rules Committee of the Lok Sabha, 17 departmentally related standing committees were set-up in 1993.
- ✓ In 2004, seven more such committees were set-up, thus increasing their number from 17 to 24.
- ✓ The standing committees assist the Parliament in debating the budget more effectively. The main objective is to secure more accountability of the Executive to the Parliament, particularly financial accountability.
- ✓ The 24 standing committees cover under their jurisdiction all the ministries / departments of the Central Government.
- ✓ Each standing committee consists of 31 members (21 from Lok Sabha and 10 from Rajya Sabha).
- ✓ The members of the Lok Sabha are nominated by the Speaker from amongst its members, while the members of the Rajya Sabha are nominated by the Chairman from amongst its members.
- ✓ Out of the 24 standing committees, 8 committees work under the Rajya Sabha and 16 committees work under the Lok Sabha.

The functions of each of the standing committees are:

1. To consider the demands for grants of the concerned ministries/departments before they are discussed and voted in the Lok Sabha. Its report should not suggest anything of the nature of cut motions.
2. To examine bills pertaining to the concerned ministries/departments.
3. To consider annual reports of ministries/departments.
4. To consider national basic long-term policy documents presented to the Houses.

Business Advisory Committee

- ✓ The Lok Sabha committee consists of 15 members including the Speaker as its chairman.
- ✓ In the Rajya Sabha, it has 11 members including the Chairman as its *ex-officio* chairman.

INDIAN POLITY-M.LAXMIKANTH

Committee on Private Members' Bills and Resolutions

- ✓ This is a special committee of the Lok Sabha and consists of 15 members including the Deputy Speaker as its chairman.
- ✓ The Rajya Sabha does not have such a committee.
- ✓ The same function in the Rajya Sabha is performed by the business advisory committee of that House.

Committee on Government Assurances

- ✓ In the Lok Sabha, it consists of 15 members and in the Rajya Sabha, it consists of 10 members. It was constituted in 1953.

Committee on Subordinate Legislation

- ✓ In both the Houses, the committee consists of 15 members. It was constituted in 1953.

Committee on Welfare of SCs and STs

- ✓ It consists of 30 members (20 from Lok Sabha and 10 from Rajya Sabha). Its functions are: (i) to consider the reports of the National Commission for the SCs and the National Commission for the STs; (ii) to examine all matters relating to the welfare of SCs and STs like implementation of constitutional and statutory safeguards, working of welfare programmes, etc.

Committee on Absence of Members

- ✓ It considers all applications from members for leave of absence from the sittings of the House; and examines the cases of members who had been absent for a period of 60 days or more without permission. It is a special committee of the Lok Sabha and consists of 15 members.
- ✓ There is no such committee in the Rajya Sabha and all such matters are dealt by the House itself. Rules Committee
- ✓ It considers the matters of procedure and conduct of business in the House and recommends necessary amendments, or additions to the Rules of the House. The Lok Sabha committee consists of 15 members including the Speaker as its *ex-officio* chairman. In Rajya Sabha, it consists of 16 members including the Chairman as its *ex-officio* chairman.

General Purposes Committee

- ✓ It considers and advises on matters concerning affairs of the House, which do not fall within the jurisdiction of any other parliamentary committee.
- ✓ In each House, the committee consists of the presiding officer (Speaker/Chairman) as its *ex-officio* chairman, Deputy Speaker (Deputy Chairman in the case of Rajya Sabha), members of panel of chairpersons (panel of vice-chairpersons in the case of Rajya Sabha), chairpersons of all the departmental standing committees of the House, leaders of recognised parties and groups in the House and such other members as nominated by the presiding officer.

Committee of Privileges

- ✓ Its functions are semi-judicial in nature.
- ✓ It examines the cases of breach of privileges of the House and its members and recommends appropriate action.
- ✓ The Lok Sabha committee has 15 members, while the Rajya Sabha committee has 10 members.

INDIAN POLITY-M.LAXMIKANTH

Joint Committee on Salaries and Allowances of Members

- ✓ It was constituted under the Salary, Allowances and Pension of Members of Parliament Act, 1954.
- ✓ It consists of 15 members (10 from Lok Sabha and 5 from Rajya Sabha). It frames rules for regulating payment of salary, allowances and pension to members of Parliament.

House Committee

- ✓ It deals with residential accommodation of members and other amenities like food, medical aid, etc. accorded to them in their houses and hostels in Delhi.
- ✓ Both the Houses have their respective House committee. In the Lok Sabha, it consists of 12 members.

Committee on Petitions

- ✓ It examines petitions on bills and on matters of general public importance. It also entertains representations from individuals and associations on matters pertaining to Union subjects.
- ✓ The Lok Sabha committee consists of 15 members, while the Rajya Sabha committee consists of 10 members.

Library Committee

- ✓ It considers all matters relating to library of Parliament and assist the members in utilising the library services. It consists of nine members (six from Lok Sabha and three from Rajya Sabha).

Ethics Committee

- ✓ It was constituted in Rajya Sabha in 1997 and in Lok Sabha in 2000. It enforces the code of conduct of members of Parliament. It examines the cases of misconduct and recommends appropriate action
- ✓ Thus, it is engaged in maintaining discipline and decorum in Parliament.

Committee on Empowerment of Women

- ✓ It was constituted in 1997 and consists of 30 members (20 from Lok Sabha and 10 from Rajya Sabha).
- ✓ It considers the reports of the National Commission for Women and examines the measures taken by the Union government to secure status, dignity and equality for women in all fields.

Committee on Papers Laid on the Table

- ✓ It was constituted in 1975.
- ✓ The Lok Sabha Committee has 15 members, while the Rajya Sabha Committee has 10 members.
- ✓ It examines all papers laid on the table of the House by ministers to see whether they comply with provisions of the Constitution, Act or Rule.
- ✓ It does not examine statutory notifications and orders that fall under the jurisdiction of the Committee on Subordinate Legislation.

Joint Committee on Offices of Profit

- ✓ It examines the composition and character of committees and other bodies appointed by the Central, state and union territory governments and recommends whether persons holding these offices should be disqualified from being elected as members of Parliament or not.
- ✓ It consists of 15 members (10 from Lok Sabha and 5 from Rajya Sabha).

INDIAN POLITY-M.LAXMIKANTH

Consultative Committees

- ✓ The consultative committees are attached to various ministries / departments of the Central Government. They consist of members of both the Houses of Parliament. The Minister/Minister of State in-charge of the Ministry concerned acts as the chairman of the consultative committee of that ministry.
- ✓ These committees provide a forum for informal discussions between the ministers and the members of Parliament on policies and programmes of the government and the manner of their implementation.
- ✓ These committees are constituted by the Ministry of Parliamentary Affairs. The guidelines regarding the composition, functions and procedures of these committees are formulated by this Ministry. The Ministry also makes arrangements for holding their meetings both during the session and the inter-session period of Parliament.
- ✓ These committees are normally constituted after the new Lok Sabha is constituted, after general elections for the Lok Sabha. After the constitution of the 14th Lok Sabha, 29 consultative committees were constituted in October 2004. Subsequently, three more consultative committees were constituted, thus raising their number to 32.
- ✓ In addition, the separate Informal Consultative Committees of the members of Parliament are also constituted for all the Railway Zones. The members of Parliament belonging to the area falling under a particular Railway Zone are nominated on the Informal Consultative Committee of that Railway Zone. After the constitution of 14th Lok Sabha, 16 Informal Consultative Committees for the 16 Railway Zones have been constituted.

Unlike the Consultative Committees attached to various ministries/departments, the meetings of the Informal Consultative Committees are to be arranged during the session periods only.

Parliamentary Privileges

Meaning

- ✓ Parliamentary privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members.
- ✓ They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their parliamentary responsibilities.
- ✓ The Constitution has also extended the parliamentary privileges to those persons who are entitled to speak and take part in the proceedings of a House of Parliament or any of its committees. These include the attorney general of India and Union ministers.
- ✓ It must be clarified here that the parliamentary privileges do not extend to the president who is also an integral part of the Parliament.

Classification

Parliamentary privileges can be classified into two broad categories:

1. those that are enjoyed by each House of Parliament collectively, and
2. those that are enjoyed by the members individually.

Collective Privileges The privileges belonging to each House of Parliament collectively are:

1. It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same. The 44th Amendment Act of 1978 restored the freedom of the press to publish true reports of parliamentary proceedings without prior permission of the House. But this is not

INDIAN POLITY-M.LAXMIKANTH

applicable in the case of a secret sitting of the House.

2. It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
3. It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
4. It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
5. It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
6. It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.
7. The courts are prohibited to inquire into the proceedings of a House or its committees.
8. No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

Individual Privileges

- ✓ The privileges belonging to the members individually are:
 - ✓ They cannot be arrested during the session of Parliament and 40 days before the beginning and 40 days after the end of a session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
1. They have freedom of speech in Parliament. No member is liable to any proceedings in any court for anything said or any vote given by him in Parliament or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament.
 2. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when Parliament is in session.

Breach of Privilege and Contempt of the House

“When any individual or authority disregards or attacks any of the privileges, rights and immunities, either of the member individually or of the House in its collective capacity, the offence is termed as breach of privilege and is punishable by the House.”

- ✓ Any act or omission which obstructs a House of Parliament, its member or its officer in the performance of their functions or which has a tendency, directly or indirectly to produce results against the dignity, authority and honour of the House is treated as contempt of the House.
- ✓ Though the two phrases, ‘breach of privilege’ and ‘contempt of the House’ are used interchangeably, they have different implications. ‘Normally, a breach of privilege may amount to contempt of the House. Likewise, contempt of the House may include a breach of privilege also. Contempt of the House, however, has wider implications. There may be a contempt of the House without specifically committing a breach of privilege’.
- ✓ Similarly, ‘actions which are not breaches of any specific privilege but are offences against the dignity and authority of the House amount to contempt of the House’. For example, disobedience to a legitimate order of the House is not a breach of privilege, but can be punished as contempt of the House.

Sources of Privileges

Originally, the Constitution (Article 105) expressly mentioned two privileges, that is, freedom of speech in Parliament and right of publication of its proceedings.

INDIAN POLITY-M.LAXMIKANTH

It should be noted here that the Parliament, till now, has not made any special law to exhaustively codify all the privileges. They are based on five sources, namely,

1. Constitutional provisions,
2. Various laws made by Parliament, Rules of both the Houses,
3. Parliamentary conventions, and
4. Judicial interpretations.

Sovereignty of Parliament

- ✓ The doctrine of 'sovereignty of Parliament' is associated with the British Parliament. Sovereignty means the supreme power within the State. That supreme power in Great Britain lies with the Parliament. There are no 'legal' restrictions on its authority and jurisdiction.
- ✓ Therefore, the sovereignty of Parliament (parliamentary supremacy) is a cardinal feature of the British constitutional system. According to AVDicey, the British jurist, this principle has three implications:
 1. The Parliament can make, amend, substitute or repeal any law. De Lolme, a British political analyst, said, 'The British Parliament can do every thing except make a woman a man and a man a woman'.
 2. The Parliament can make constitutional laws by the same procedure as ordinary laws. In other words, there is no legal distinction between the constituent authority and the legislative authority of the British Parliament.
 3. The Parliamentary laws cannot be declared invalid by the Judiciary as being unconstitutional. In other words, there is no system of judicial review in Britain.
- ✓ The Indian Parliament, on the other hand, cannot be regarded as a sovereign body in the similar sense as there are 'legal' restrictions on its authority and jurisdiction. The factors that limit the sovereignty of Indian Parliament are:

1. Written Nature of the Constitution

- ✓ The Constitution is the fundamental law of the land in our country. It has defined the authority and jurisdiction of all the three organs of the Union government and the nature of interrelationship between them. Hence, the Parliament has to operate within the limits prescribed by the Constitution.
- ✓ There is also a legal distinction between the legislative authority and the constituent authority of the Parliament. Moreover, to effect certain amendments to the Constitution, the ratification of half of the states is also required. In Britain, on the other hand, the Constitution is neither written nor there is anything like a fundamental law of the land.

2. Federal System of Government

- ✓ India has a federal system of government with a constitutional division of powers between the Union and the states. Both have to operate within the spheres allotted to them.
- ✓ Hence, the law-making authority of the Parliament gets confined to the subjects enumerated in the Union List and Concurrent List and does not extend to the subjects enumerated in the State List (except in five abnormal circumstances and that too for a short period). Britain, on the other hand, has a unitary system of government and hence, all the powers are vested in the Centre.
- ✓ System of Judicial Review The adoption of an independent Judiciary with the power of judicial review also restricts the supremacy of our Parliament. Both the Supreme Court and high courts can declare the laws enacted by the Parliament as void and *ultra vires* (unconstitutional), if they contravene any

INDIAN POLITY-M.LAXMIKANTH

provision of the Constitution. On the other hand, there is no system of judicial review in Britain.

- ✓ The British Courts have to apply the Parliamentary laws to specific cases, without examining their constitutionality, legality or reasonableness.

3. Fundamental Rights

- ✓ The authority of the Parliament is also restricted by the incorporation of a code of justiciable fundamental rights under Part III of the Constitution. Article 13 prohibits the State from making a law that either takes away totally or abrogates in part a fundamental right. Hence, a Parliamentary law that contravenes the fundamental rights shall be void.
- ✓ In Britain, on the other hand, there is no codification of justiciable fundamental rights in the Constitution. The British Parliament has also not made any law that lays down the fundamental rights of the citizens. However, it does not mean that the British citizens do not have rights.
- ✓ Though there is no charter guaranteeing rights, there is maximum liberty in Britain due to the existence of the Rule of Law.