

**BBA
SEMESTER - 3
BBAVAC307
INDIAN CONSTITUTION**



Message for the Students

Dr. Babasaheb Ambedkar Open (University is the only state Open University, established by the Government of Gujarat by the Act No. 14 of 1994 passed by the Gujarat State Legislature; in the memory of the creator of Indian Constitution and Bharat Ratna Dr. Babasaheb Ambedkar. We Stand at the seventh position in terms of establishment of the Open Universities in the country. The University provides as many as 54 courses including various Certificate, Diploma, UG, PG as well as Doctoral to strengthen Higher Education across the state.



On the occasion of the birth anniversary of Babasaheb Ambedkar, the Gujarat government secured a quiet place with the latest convenience for University, and created a building with all the modern amenities named 'Jyotirmay' Parisar. The Board of Management of the University has greatly contributed to the making of the University and will continue to this by all the means.

Education is the perceived capital investment. Education can contribute more to improving the quality of the people. Here I remember the educational philosophy laid down by Shri Swami Vivekananda:

“We want the education by which the character is formed, strength of mind is Increased, the intellect is expand and by which one can stand on one’s own feet”.

In order to provide students with qualitative, skill and life oriented education at their threshold. Dr. Babaasaheb Ambedkar Open University is dedicated to this very manifestation of education. The university is incessantly working to provide higher education to the wider mass across the state of Gujarat and prepare them to face day to day challenges and lead their lives with all the capacity for the upliftment of the society in general and the nation in particular.

The university following the core motto ‘स्वाध्याय : परमं तपः’ does believe in offering enriched curriculum to the student. The university has come up with lucid material for the better understanding of the students in their concerned subject. With this, the university has widened scope for those students who are not able to continue with their education in regular/conventional mode. In every subject a dedicated term for Self Learning Material comprising of Programme advisory committee members, content writers and content and language reviewers has been formed to cater the needs of the students.

Matching with the pace of the digital world, the university has its own digital platform Omkar-e to provide education through ICT. Very soon, the University going to offer new online Certificate and Diploma programme on various subjects like Yoga, Naturopathy, and Indian Classical Dance etc. would be available as elective also.

With all these efforts, Dr. Babasaheb Ambedkar Open University is in the process of being core centre of Knowledge and Education and we invite you to join hands to this pious *Yajna* and bring the dreams of Dr. Babasaheb Ambedkar of Harmonious Society come true.



Prof. Ami Upadhyay

Vice Chancellor,

Dr. Babasaheb Ambedkar Open University,
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UNIT-1

INTRODUCTION TO THE CONSTITUTION OF INDIA

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1.1 Introduction

Constitutional law is the fundamental law of the nation. The present system and future development of the nation are based on its provisions. In the framing of the constitution for the nation, therefore, the present and future of national life are reflected. – At the same time, its roots are rooted in the past. It is almost impossible to explore the future by keeping the present away from the shortcomings of the past. The constitution of every nation is framed from its history. Our constitution is no exception. Our history of thousands of years seems to peek somewhere in the provisions of the constitution.

The Indian Independence Act 1947 ended all forms of British Crown power in India after 182 years. History has hailed it as the noblest and greatest law enacted by the British Parliament. This law made India completely independent. But Greater India was divided into two independent nations, India and Pakistan. The native States were freed from the obligations of the agreements made with the Company Government. They were allowed to join any. Until a new constitution was framed, the country was to be governed according to the 1935 constitution. The option of continuing with the British Commonwealth was given. With the wisdom of Sardar Vallabhbhai Patel, the Indian States within the borders of India joined the Indian Union. The Constituent Assembly elected on the basis of the Cripps Mission plan worked for 165 days in a total of 11 meetings under the chairmanship of Dr. Rajendra Prasad to frame the constitution. The draft prepared by Dr. Bhimrao Ambedkar was accepted after discussion and the

people of India prepared a constitution with 22 parts, 395 articles and nine schedules and made it effective from 26th January 1950.

Our legislative and administrative system, parliamentary democracy, judicial system, abolition of untouchability and titles, minorities and backward classes, etc., all have some historical event buried somewhere. The detailed account of the provisions put on the anvil of discussion in the Constituent Assembly is still readily available in the published books on the subject. Constituent Assembly Debate is of great importance to the students of constitutional law but that is not the aim. The aim is to understand and evaluate the law and its provisions as they exist today in the context of the present.

1.2 Historical background to framing of the Constitution of India

1.2.1. Nation

When a community of people living within certain geographical boundaries live together due to religion, language, culture and tradition or any other geographical or historical factor and thus achieve unity, then that region and the community of people living on it collectively form a nation or country. The area of the region or the number of people living in it is not important. The population of a giant nation like China is more than one billion, while the population of a country made up of a small island called Pitcairn in the South Pacific is not even fifty people.

The creation of any nation is largely a historical event. From time immemorial to the present day, the long history of the origin and dissolution of nations has been inscribed in countless numbers. The history of the creation of nations like India, China or Egypt is centuries old while the history of countries like Pakistan, Bangladesh, etc. is only a few decades old. The history of the most powerful and prosperous island in the world like America is only three hundred years old. All the land on Earth is divided into one nation or the other, yet the territories of the North Pole and the South Pole are not suitable for human habitation due to their extreme weather. That is why they cannot be a part of any nation. No one lives on it; also no one can occupy it permanently and it cannot be part of any nation.

1.2.2. Requirement of Governance

All nations on earth thus have their own fixed geographical area and their own human societies. This human body is called national society, political society, people or people. There are laws of nature for the life of human beings, but in addition, nature has endowed them with speech, intelligence and thinking power. It has a unique affinity for property and power. Selfishness is a characteristic of his nature. Because of this, apart from the laws of nature, due to the constant dealings with other persons, some additional rules have been found necessary. Therefore, first of all considering it as a part of the family, the rules for Conventions, Customs, Usage existed and got used. As its prevalence increased, people living with them besides the family behaved according to the rules or were forced to behave accordingly. Unless the person who is the most powerful in the group, forces the other members to behave accordingly. If a person does not behave accordingly, action will be taken against him. It kept changing from time to time. In that process emerged the system of rule by ruler.

Three types of activities became an indispensable feature of a ruler : to enact or accept rules for life, to enforce them and if they are breached or other disputes arise then to investigate them and to take action against the guilty. The person who takes this kind of responsibility and in whom ancillary power is established is called the Government. A Government may be that of a hereditary monarch or dictator by one person himself or by the people as a whole or by representatives chosen by them. It has many forms. This entire process is not of a single person or a short period, but is the history of the entire mankind for thousands of years.

1.2.3. Organs of Governance

Whatever is the type or form of governance, but as mentioned earlier, it has three important functions. To formulate rules or laws to regulate the relations between individuals and the State, this is called its legislative function. The act of implementing those rules or laws is called the

executive-administrative function, and the act of investigating and deciding on the disputes arising from the violation of those laws is called the judicial function. The collective name of the power to perform these three types of functions is political power. All these powers are concentrated in a single person like a king or a dictator or is divided among a group of people or the entire society. The first type is monarchy or dictatorship while the second type is a democratic system.

1.2.4. Structure of Constitutional Law

The set of rules that determine all these functions is called constitutional law. Most often it is in the form of a written document, but sometimes it is also made up of unwritten customs, traditions and practices, and court decisions. The study of these three systems of governance is the study of constitutional law and the study of the constitutional law of any nation is the study of the basic rules that determine the structure, powers and duties and limitations of these three systems or organs of governance. This is also the core of the definition of constitutional law. In addition, in modern constitutions, provisions for the rights of the people and their protection are also ensured.

Different constitutional Scholars have tried to define constitutional law in their own way. It can be generally said that,

“Constitutional law establishes the fundamental, basic or main departments of Government or governance, specifies its structure, composition, powers and duties. It determines the mutual relations of those organs, besides regulating the relations of the citizens with those departments.”

According to Justice Holmes , the constitution is not only a textbook for discussion, but an instrument for regulating a progressive society. Its roots may lie in the past, but it is a factor leading to an unknown future.

Based on the above understanding and definitions, it can be said that the State constitution is a set of four basic rules of any country.

- (1) Who makes laws for that country and how?
- (2) Who enforces the laws so made and how?
- (3) Who decides the disputes by correct interpretation of the law when those laws are violated and what is its jurisdiction?
- (4) What basic rights are recognized for the people of that country is kept and how are such rights protected against the rulers.

The three branches of Government that perform these functions are called Legislature, Executive or Administration and Judiciary respectively.

1.2.5. Different forms of Constitution

Here the question will be that if the constitutions of every country include the same rules regarding these four matters, then how is the constitution of one country different from the constitution of another country? It can be said that the economic, social, historical and geographical conditions of every nation are different. Every nation, according to its situation and goals, gives more or less or equal importance to one or more of these four things in the governance of its country and from them different types of constitutions are created forms.

In England, the legislature-Parliament, which makes laws, is supreme. The executive is completely responsible and subordinate to it, and even the court cannot declare the law made by the parliament invalid. According to the US Constitution, all three types of powers are divided between the Central Government and the constituent State Governments. And these three systems of both levels of Government are almost completely independent of each other. However, in order to prevent the power of each system from becoming unlimited, some checks and balances are also imposed by the other systems. Although the directly elected president is not responsible to the legislature there, the legality of his actions can be checked by the judiciary. The form of the constitution of England is Parliamentary Democracy. The American form is Presidential form of Democracy. In the Russian system, since the administration was selected by the only political party in the country, the Communist Party,

before 1991, it was a communist form of constitution, but now a presidential democratic system has been entrusted there too.

Different types of constitutions are also formed based on the centralization and decentralization of political power. Where the entire population of a nation is bound by a single historical, linguistic, cultural or religious fabric and the territorial area is relatively small and compact, political power is vested entirely in a single Government at the centre. There are no autonomous units or parallel Governments of different levels. However, for the sake of administrative convenience, the entire country is divided into administrative divisions. These do not have any powers granted by the Constitution. These administrative units or divisions are called provinces or districts. This form is called **UNITARY SYSTEM**.

Many neighboring countries of India like Sri Lanka, Bangladesh, Nepal, Bhutan, Burma have a unitary State system. But in large countries like India, America, Russia, Canada or Australia, there are linguistic or cultural differences between different regions. In order to maintain the different characteristics of all of them and establish political unity in them, it is necessary to give legislative and administrative powers to each of those components regarding local matters. However, the power regarding matters affecting the entire nation regarding defense, foreign policy, finance, trade, communication etc. is concentrated in the Central Government. Such a form of sharing between two levels of Governments of the same nation is called a **FEDERAL SYSTEM**.

In addition, when two or more fully sovereign nations choose to join together for collective protection or such limited purpose while keeping their sovereignty intact, then such a system is called a **CONFEDERATION OF STATES**. This system also allows the constituent States to get rid of it if they wish. Earlier, during the time of President Nasser, Egypt, Syria and Iraq had formed a federation called the United Arab Republic (UAR). This system was very loose and ended within a few years. Currently, seven small sheikhdoms of the Arabian Gulf have formed the United Arab Emirates (U.A.E.) for the limited purposes of utilizing oil revenues and defense.

A similar federation can be imagined for India, Afghanistan, Bangladesh, Bhutan, Maldives, Nepal, Pakistan, and Sri Lanka. SAARC (South Asian Association for Regional Co-operation) can be considered the beginning of this direction. Federalism is a compromise system between a fully centralized unitary system and a decentralized federal system.

A Constitution is a living (organic) document that gives power to the Government and ensures its limits. The marking of powers and limits is the foundation of Constitution.¹

1.3 Why do we need a constitution?

At some point in the history of all nations, there is a need to determine the fundamentals of its system of Government. The struggle for independence of India ended on 15th August 1947, when the British Crown came to an end in India. The people of India established their own rule. Thus political independence was gained from foreign rule, but the task of gaining economic and social independence for the people was to begin later. The British Parliament framed one after the other six Constitutions for India. In all of them, special care was taken to preserve the political and economic interests of Britain which were against the interests of the people of India. After independence constitutional system became incompatible and new Constitution was a necessity to reshape the nation in the changed situation.

The Father of the Nation, Mahatma Gandhi, expressed his sentiments about what an independent India should be like in this way during the freedom movement.

“I will strive to create an India that is free from all forms of dependency or patronage. It has the right to sin if necessary. I want to create an India where even the poorest person feels confident that this is their country and has a contribution to its development, an India where there is no discrimination between high and low. People of all classes and castes live in complete harmony. Such an India will be free from untouchability, alcohol and drugs. Women will have the same place as men. Such an India will have peaceful coexistence with

¹ Schwartz-Constitutional law-A Text Book (P. 1)

all its neighbours, so it will need only a nominal army. Rights that are not contrary to the interests of crores of ignorant people will be diligently protected.

This is the India of my imagination. I will not accept anything less!”²

The Constituent Assembly formed by the people of India immediately after independence began the work of framing a Constitution that was necessary to embody this sentiment expressed by the Father of the Nation. Two and a half years At the end of the struggle, the new Constitution of India was prepared on 26th November 1949. And it came into effect on 26th January 1950. In the history of independent India, the day of 15th August was marked as Independence Day and the day of 26th January as Republic Day.

1.3.1. The nature of the polity

After gaining a basic understanding of the different forms of polity and the important constitutions of other nations, it will be easy for us to understand the nature of our own constitution and its peculiarities in comparison with others. According to the provisions of the Constitution of India, there are administrative bodies responsible to the legislatures consisting of elected representatives of the people at both the central and State levels. Its executive heads, the President and the Governors, are only nominal constitutional heads. The real power is vested in the Prime Minister and the Chief Ministers. It is a Parliamentary form of Democracy.

In a Unitary System, all the power to make laws on all subjects affecting the nation and its people, to implement them and to adjudicate in disputes related to them is vested in Central Government. There is no other level of parallel Government in it. Since the legislative power is entirely vested in a single central legislature, there is no question of any law enacted by it being beyond its authority. The supremacy of the legislative system or the executive system is accepted according to the historical role of that country. Here, the supremacy of constitutional law is not important. For the sake of administrative convenience, the country is divided into administrative divisions or sub-divisions (Provinces and Districts). The subordinate authorities are empowered to make by-laws or

² ‘Navjivan’ dated 31-9-1931. Quoted from Gandhiji’s Expectations-1 Navjivan Prakashan Mandir.

rules according to local conditions. Such power is given to them by the central legislature of the country through a special law and it is called delegated legislation. Provinces or Districts do not have any constitutional existence. Also, their authorities do not receive any power from the constitution. These departments have as much power as the Central Government wants. The roots of such a unitary system can also be in historical events. They are also found in a written constitution but the process of amending this power is not necessarily difficult.

The characteristics of a unitary system can be considered as follows.

- (1) There are two levels of independent governance or Governments for the governance of the Center and its Components (Union and its Units).
- (2) The jurisdiction of power regarding the formulation of laws and its implementation are divided between these two levels of Governments.
- (3) To make this division of power certain, it is necessary to have a written constitution.
- (4) Since the powers of both the levels of Government are determined by the constitution itself, both have to work within those fixed limits. Here, not any one system, but the constitutional law has supremacy.
- (5) Any act that goes beyond the fixed limits becomes a cause of dispute between the center and the constituents and there should be an impartial judiciary to resolve it.
- (6) Since both the levels of Government are given power by the constitution itself, if any change or amendment in the constitution affects that division, then the consent of both is necessary. The constitutional law of the federal system is thus rigid.

The features of the ideal federal system have been determined based on the polity of United States of America. A system has emerged to evaluate the federal constitutions of other countries using these tests.

1.3.2. The nature of the Constitution of India

India is a vast country, its population is equally vast and it is divided into different religions, languages, costumes and cultures. If the uniqueness of each of these regions is to be maintained, then a unitary system is not useful. Along with

this, India's historical and geographical need is for a strong central Government. Whenever the central Government has weakened in India, foreigners have taken full advantage of it. Between these two mutually contradictory factors, the Constituent Assembly had to find a suitable alternative in every way. And as a result - a special type of federal system with a strong center has been formed. Due to this, the supremacy of the Constitution, not of any one system, has been established. The approval of the State legislatures is also necessary to change or amend the provisions related to federalism. The Supreme Court has the special power to settle such federal disputes when there is encroachment by others in a specific area of mutual interest. In this way, all the tests for an ideal federal system can also be applied to the Indian federal system. However, some provisions that are possible only in a unitary system have been introduced in the Constitution to make the Centre more powerful and effective. Therefore, it cannot be called an ideal federal system of the American style.

(1) In the phrase “India shall be the Union of States”, “Federalism” could have been substituted for “Union”, but it instead, the Constituent Assembly has predicted that this structure will be somewhat different from the American federal system.

(2) The Central legislature- Parliament has full power to make any changes in the territories or names of the constituent States of the federation. There is a formality to know the wishes of the States, but the center can ignore it.

(3) Out of the three Lists made for the distribution of power, Parliament can make laws for 100 subjects of the Central List and 52 of the Concurrent List. In addition, Parliament can make laws on 61 subjects of the State List in special circumstance. Residuary Powers have been established in Parliament for any new subject beyond the three lists.

(4) Taxation: The Centre has extensive powers regarding taxation. While the States have only local and secondary income like land revenue, sales tax, excise duty etc. Hence, apart from the current administration, the States have to depend a lot on the Centre's assistance for development schemes.

(5) Governor, the constitutional head of the States, is not elected by the people, but appointed by the Central administration. And he can remain in office only as

long as the President wishes. As an agent of the Centre, he has to supervise the functioning of the States. There is a great possibility of misuse of this position to remove the State Governments by the opposition parties.

(6) The most important anomalous feature is the provision for emergency. With the declaration of a national emergency, the federal structure of the nation suddenly becomes a Unitary State. The President can impose central rule there on the basis of a report, true or false, that the State Government is not able to function constitutionally. Whatever the nature of the emergency, the central Government takes control over the legislative, administrative and financial powers of the States.³ Keeping the diverse heritage of the nation intact the members of the Constituent Assembly had carefully designed the federal system of the Union State to maintain unity. But the mere declaration of emergency destroys it.

All the elements of a federal system of Government are present in the Constitution of India and on other hand, there are features that can only be found in a unitary system. Due to this, there are differences of opinion among the scholars of constitutional law regarding its exact nature. Some consider it a federal system⁴ with a strong center, while others consider it a quasi-federal system.⁵

However, according to the architect of the Constitution, Dr. Ambedkar, despite many provisions that dominate the troubled States, it is a Federal Constitution. A transformable constitution, which, although federal in times of peace, can be easily changed to a Unitary System in the time of crisis. This new type of federal Constitution has been adopted in accordance with the special needs of India.

1.3.3. Special features of the Constitution of India

Constitutional law generally determines the structure of the three organs of the Government of the country, their powers, duties and limitations. It is the fundamental law. In addition, it also contains provisions for the special rights of the citizens and their protection. In this way, the constitution of a country should

³ Article 352-360

⁴ Sir Ivor Jennings-some characteristics of Indian Constitution P.1

⁵ K. C. Wheare federal Govt. (1951) P. 28

not be generally different from the constitutions of other countries. But every country - due to its historical, social and cultural and sometimes geographical situation - has one or the other of these three organs of governance

More importance and power are given to the three branches of Government. And therein lies its uniqueness. In the previous chapter, we have got the details of how the Parliament has been given more importance in Britain, the administration in the communist countries and the judiciary in America.

In the Constitution of India, these three branches of Government are not completely independent of each other. Each has been given the power to check and yet complement each other, and through this, the balance of power is maintained. It was framed in the end of the first half of the current century, so the experience of the constitutions of other countries was before its framers. Due to this, it has some special features.

1.3.3.1 Very extensive constitution

The last constitution framed for India by the British Parliament in 1935 is the closest and main source for the present constitution. The Constituent Assembly that framed the present constitution had bigger and complex questions i.e. diversity had to be maintained and yet unity had to be established. It had to provide basic rights to the citizens and give them opportunities for personal development. So it was to create an ideal society as per the sentiment expressed by Mahatma Gandhi. In addition to the structure of the central Government, it is the same constitution for the State Governments as well. Apart from the theoretical matters, it also includes formal matters like the oath-taking ceremony of the highest office bearers of the country. Due to all these reasons, it has become very extensive. It would be more appropriate to call it a whale's tail than an elephant's tail.

1.3.3.2 Parliamentary Democracy System

We had direct experience of British-style parliamentary democracy, which is responsible to the Parliament. So, the alternative of American style presidential democracy was before the Constituent Assembly. There were members who insisted on both. Out of these, a middle way was adopted. The

Parliament of India became The Parliament with limited powers unlike the British Parliament with all-powers. Instead of a hereditary monarchy, an indirectly elected President was made the constitutional head and the real power was given to the Prime Minister and his cabinet.

1.3.3.3 Fundamental Rights

Six basic rights have been reserved for the people of India to live a dignified life as citizens of an independent nation. Even the Parliament cannot reduce or abolish them without the reasons mentioned in the Constitution. If these rights are violated by any authority in an unauthorized manner, the right to complain directly to the High Court or the Supreme Court is also an important fundamental right. It is also the constitutional duty of the court to restore the displaced right.

1.3.3.4 Directive Principles of State Policy

Fundamental rights are the constitutionally recognized rights of the people. The State cannot violate them. In this way, it becomes a negative duty of the State. But the State has a positive duty to implement welfare schemes for the people and it has been included in Part 4 of the Constitution of India as “Directive Principles of State Policy”. The concept of fundamental rights is taken from the Constitutions of Western countries with free economic ideals, while the directive Policies are a light replica of the established rights of the people given and put into practice in the Constitutions of communist countries. The Constitution of India thus achieves a balance between the two extremes.

1.3.3.5 Judicial review of the acts of the State

Here, not the Parliament or the Executive, but the Constitution itself is supreme. The functioning of all the authorities should be consistent with the provisions of the Constitution. If there is a complaint that any act of the State is not consistent with the provisions of the Constitution, the Supreme Court and the High Court have the power to review it in the light of those provisions.

1.3.3.6 Secular State

A united India was partitioned in the name of religion. Pakistan, since its birth, has adopted Islam as its State religion and has made people of other faiths living there second-class citizens in this form of religious politics. Internal trends have also declared the non-Sunni Muslims of the country, who had played an important role in the formation of Muslim Pakistan, as non-Muslims and declared them as religious minorities. After partition, Hindus were and are 80 percent majority in India. Despite this, the Constituent Assembly has unanimously declared India a secular nation. It has adopted a liberal policy by giving all citizens the opportunity to live equally and with dignity without discrimination of religion, caste, language or gender. In addition, some special rights have also been given to minority communities. This is the most noble feature of the Constitution of India.

1.3.3.7 Federalism with a strong center

The most expensive lesson of India's thousand-year history is that whenever its central rule has weakened, foreign rulers have taken full advantage of it. There was a historical necessity to keep the central Government strong. Along with this, there was also a need to maintain the regional characteristics of language, culture, etc. These were contradictory. Keeping in mind the necessities, the framers of the Constitution have adopted a special form of federalism. However, when the existence of the nation and the Constitution is in danger, it can be easily changed into a dictatorial system by declaring an emergency.

1.3.3.8 Changeability of the Constitution

The written Constitution needs to be amended according to the needs of the time. The Constitution that can be amended by a simple majority of the Apex Legislature is flexible. The Constitution that can be amended only by a special majority or with the approval of the constituents or by popular vote is rigid and the Constitution that cannot be amended in any way is static.

A few provisions of the Constitution of India, such as changing the territories of the States, are changeable. Since 2/3 majority in Parliament is required to amend most of the provisions. It is unchangeable. The approval of the constituent States is also necessary to amend the provisions related to federalism. No part of the Constitution is unamendable. But the basic structure of the Constitution has become unamendable due to Judicial decisions.

1.4 Philosophy of the Constitution: The Preamble

A preamble is an introductory statement in a document that explains the document's philosophy and objectives. In a Constitution, it presents the intention of its framers, the history behind its creation, and the core values and principles of the nation.

The preamble basically gives idea of the following things/objects:

- Source of the Constitution
- Nature of Indian State
- Statement of its objectives
- Date of its adoption

Preamble of the Constitution of India

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.**

1.4.1. Definition and Purposes :

Pandit Jawaharlal Nehru had presented a Resolution of Objectives in the Constituent Assembly on 13th November 1946, outlining the new constitutional law to be framed before the members. Furthermore, he said, "This resolution is something more than a resolution for us; it is a declaration, a firm determination, a pledge." And in accordance with that goal, the preamble has been composed, and the detailed structure of the entire constitution has been devised to illustrate its purposes.

It can be seen from the Preamble that the Constitution was framed mainly for two purposes.

- (1) To make India a sovereign, socialist, secular, democratic republic. and
- (2) to secure the rights of justice, liberty and equality to all its citizens, and to preserve the dignity of man and the unity and integrity of the nation through the spirit of brotherhood.

1.4.2. Position and Importance:

In addition to providing information about the external structure of the constitution, the preamble reveals the spirit and philosophy behind its words. If the provisions of the constitution seem ambiguous, they can be interpreted correctly in the light of the spirit expressed in the preamble. The preamble is a key to unlock the minds of the framers of the constitution.⁶

According to the first words of the preamble, the constitution has been framed by the **People Of India** for themselves. However, the election of the members of the Constituent Assembly was actually done by only 14 percent of the people

⁶ Keshvanand Bharti v Kerala AIR 1973 S. C. 1461

qualified as per the 1935 Constitution. In the first election held in 1951 after the constitution came into force, most of the members of the Constituent Assembly were elected by a large majority. The people of India have, thus indirectly, approved the constitution.

However, Dr. Ambedkar, who is hailed as the architect of this constitution, lost the election from a constituency in Mumbai city. As a representative of the oppressed and backward classes, the Congress party elected him to the Constituent Assembly and made him the chairman of the very important drafting committee of the Constituent Assembly. In that place all the members saluted him for his brilliance. But as soon as that work was completed, in the Lok Sabha elections held on that basis, the Congress fielded a candidate who could be called a very ordinary person against him and Dr. Ambedkar was defeated.

The Constituent Assembly accepted all the Articles and Schedules of the Constitution on 26th November 1949. Some of its provisions came into force on the same day. However, the entire Constitution came into force on 26th January 1950.

All the provisions of the more than 395 articles of the Constitution and about ten Schedules are designed to embody these two objectives directly or indirectly. When a clear meaning is not directly obtained from its sentences or words, the clarity of meaning can be obtained on the basis of the touchstone of the Preamble. Only an interpretation consistent with the spirit of the Preamble has to be accepted.

However, in the Berubari case,⁷ the Supreme Court has taken a somewhat contrary view. Accordingly, the Preamble cannot be considered a part of the Constitution. Only the power derived from the express provisions of the Constitution can be meaningful and effective. **What is not in the Constitution, cannot be found in the Preamble.** The Preamble can be useful only where the words are obscure or ambiguous. Even if the express provisions are against the spirit of the Constitution, they cannot be changed. This view of the Supreme Court has changed in the subsequent judgment of Kesavanand Bharati⁸ case. The

⁷ In Re Berubari. AIR 1960 S. C. 845

⁸ Keshvanand Bharti v Kerala AIR 1973 S. C. 1461

Court has held that the Preamble is a part of the Constitution itself and has an important place in the Constitution, and the Constitution should be read and interpreted in accordance with the spirit expressed in it.

1.4.3. Objectives expressed in the Preamble

1.4.3.1.Sovereignty: The preamble declares the resolve to make India a sovereign, socialist, secular, democratic republic. Complete power over the governance of the country is the main feature of a Sovereign State. India will no longer have to rely on any external power. However, due to scientific discoveries, all the countries of the world, big and small, are inextricably linked with each other and have become interdependent. No country can remain detached from others in the ultimate concept of its sovereignty. International treaties, agreements and the orders of international organizations have to be accepted by all member countries. As members of groups of nations with different objectives like UNO, UNESCO, Commonwealth, ASEAN or NATO, each country has to follow some discipline. However, this association made with the consent of everyone for mutual benefit is not considered inconsistent with the concept of sovereignty.

1.4.3.2.Socialist:The word Socialist was introduced by the constitutional amendment of 1976. It has a resolution to reduce the inequalities in income, position and life style among individuals. Its basic goal is to provide security to the individual from birth to death. Is the spirit of socialist social structure contained in the separate provision of the preamble to make not only legal justice but also economic, social and political justice available to the citizens.

1.4.3.3.Secular:This feature was also introduced by the 1976 amendment. However, considering politics and religion as separate, apart from sarvadharmā sam bhava, it was intended only in the elaborate provisions regarding special protection and some privileges for religious minorities, so the formality of adding the word 'secularism' later was not necessary. The belated addition was a part of the underlying structure of the Constitution to achieve national unity in the face of religious diversity among the people of India.

1.4.3.4.Democratic: In a democratic State system, the Government derives its power from the Will of the people. The people choose the rulers and they have to be responsible to the people. There is a practice of direct or indirect election for selection. In small countries like Switzerland the practice of direct election for all office holders is possible but it is impractical for India. So the people elect their representatives, from whom the Government is formed and the Government becomes responsible to these representatives.

1.4.3.5.Republic: When all the political power is vested in the people and they elect one person as their head or president for a fixed period of time, then that system becomes a republican system as opposed to a monarchy system. First President of India Sh. Rajendra Prasad to present Smt. Droupadi Murmu total of 15 Presidents have taken over the responsibility of governance of India on behalf of the people as per the provisions of the Constitution.

1.4.3.6.Rights of the people: Another goal expressed in the Preamble is to provide justice, equality, liberty and fraternity to the citizens of India. The UN General Assembly has accepted the Universal Declaration of Human Rights on December 10, 1948. The freedom struggle against the British rulers was basically a struggle for such rights. The place of human rights in the constitution framed by the people of India after independence was inevitable.

After the Supreme Court held that the Preamble is also a part of the Constitution, all other ancillary provisions and limitations of the Constitution apply to the Preamble as well. It can be amended only as per Article 368. The sentiments expressed in it are its basic foundation. Even the Parliament of India did not have the authority to amend it in such a way that there was a drastic change in it.

❖ Exercise

1. Explain the salient features of Constitution of India.
2. Discuss the Preamble of the Constitution of India.
3. Examine the nature of Constitution of India.
4. Constitution of India provides a Federal form of Government with Strong Centre. – Explain.

5. Differentiate Unitary and Federal Form of Governments.

6. Solve the following MCQs.

1. Preamble of the Constitution of India declares India as :

- a. a Socialist Democratic Republic
- b. a Sovereign Socialist Secular Democratic Republic
- c. a Sovereign Democratic Republic
- d. a Socialist Secular Republic Democratic

Ans. B

2. Among the following which word was inserted in the Preamble of the Constitution by 42nd Constitutional Amendment Act?

- | | |
|---------------|--------------|
| a. Democratic | b. Sovereign |
| c. Integrity | d. Republic |

Ans. C

3. The Constituent Assembly adopted the Constitution of India on

- | | |
|------------------------|------------------------|
| a. 26th November, 1949 | b. 26th November, 1948 |
| c. 26th January, 1950 | d. 26th January, 1949 |

Ans. A

UNIT-2

FUNDAMENTAL RIGHTS

2.1 Objective

2.2 Introduction

2.3 Features of Fundamental Rights

2.4 Fundamental Rights

2.5 Summary

2.6 Keywords

2.7 Review Questions

2.8 Further Readings

2.1 Objective

After studying this unit, students will be able to:

- To understand the meaning of Indian Fundamental Rights.
- To know the importance of Fundamental Rights.
- To know the different fundamental rights with case studies.
- To aware the individual's rights are also liability for protecting rights to others.
- To understand indiscriminate approach of our Indian Constitution.

2.2 Introduction

The interpersonal relation between individual and state has always been complicated and this issue has gained special importance in the existing democratic setup. If on one side it is important to have a control on the lives of individuals in order to maintain peace and order then on the other hand, it is also necessary to exercise control on the state powers so that the state is unable to

work in its own way against the freedom and rights of individuals. Fundamental rights are an important measure to exercise control on the powers of the states in Favor of individuals' freedom and rights.



French revolution has given to the world a message of freedom, equality and humanity. After the revolution, the French National Assembly by including the Declaration of the Rights for Men in the new constitution of 1789 started the process of providing a constitutional shape to some of individual rights. Later on, in the constitution of United States of America the rights of individuals were made a part of the constitution through the first ten amendments in 1791. These amendments were collectively called “Bill of Rights”. This affected the constitutions of other European nations.

After the First World War, fundamental rights were included in the constitution of several old states as well as the newly formed states after the war. In this context, the Weimar constitution of Germany and the constitution of Ireland are explanatory. After the Second World War, the idea of fundamental rights became more popular and after the war fundamental rights was included in the constitution of all the nations like India, Burma, Japan etc whose constitution was framed.

Established in 1945, the international body, United Nations Organization on 10th December, 1948 accepted the international rights letter in the name of “Universal Declaration of Human Rights”. In India also, the International Human Rights Commission was established in 1993. In this way, the idea of fundamental rights has gained a universal resolution in present time.

Task: What do you understand by Fundamental Rights?

The Indian constitution is indebted to the American constitution for Fundamental Rights?

2.3 Features of Fundamental Rights

The features of fundamental rights given in the Indian constitution are as follows;

- 1. A detailed Bill of Rights:** The first feature of Indian Bill of Rights is that it is an extensive bill. In the Articles 23 which have further classes, the detailed explanation of Human rights has been given. For eg. In Article 29, individuals have been given right of freedom and it has six such parts which provides detailed description of six different types of freedom and their exceptions. Similar extensive description has been given in other articles too.
- 2. No Right outside the Rights given by the Constitution:** American constitution has a regulation that citizens not only have the rights mentioned in the constitution but they also possess the rights that the citizens have from ancient times. In other words, the American constitution indirectly provides recognition to natural rights principles.
- 3. Equal Rights to all:** Fundamental rights are available to all individuals irrespective of their caste, creed, race, color, sex etc. These are applicable to all equally and all meant for all individuals from legal point of view. The government cannot make any discrimination while exercising control on the fundamental rights.
- 4. Rights are not Absolute and Unlimited:** No right can be unlimited. Their use can be done only after considering the welfare of others. Rights are dependent and they can be used within the social context only. That is why our constitution provides necessary right to the government in accordance with time to exercise control on the fundamental right from the purview of states' safety, public order, public morality and public welfare.
- 5. Mostly Negative Rights:** Most of the rights mentioned in the Indian Bill

of Rights are negative. In other words, through these rights regulations and boundaries have been imposed on the states. For e.g. Regulation has been imposed on the states that they can neither make any discrimination on the basis of caste, color, sex etc nor any such discrimination at the time of appointment to the government. But some rights have been written in a positive way. For eg. Right to freedom provides the right to freedom of speech and expression, freedom to establishment of community, freedom to living and freedom of work.

6. Rights are binding Equally upon Union, States and other State's

Authority: In the section of fundamental rights only the constitution defines the word "State" and states that the word "State" refers to community, state and local authorities - state corporation and Panchayat. All these organizations have to work under the limitations of fundamental rights. By making this clear the Indian constitution makers have overcome the deficiencies of American constitution. There even now this argument arises whether fundamental rights provided by the constitution are applicable to the units of assembly along with the fundamental rights assembly.

7. Difference between citizens and Aliens: Indian constitution on the basis of fundamental rights differentiates between citizens and aliens. There are some fundamental rights which are provided to Indian citizens only and not to foreign nationals for example. Freedom of speech and expression, freedom of movement and freedom to live in any part of the country.

8. Rights can be suspended: Our constitution provides provision to suspend the fundamental rights during emergency. Many critics have condemned this system of the constitution but in our view, criticism is not wise. Welfare of the nation is the foremost. Therefore, suspension of rights for the welfare of the nation is appropriate.



President can impose emergency in entire nation or in some part in case of foreign attack or under conditions arising due to possibility of foreign attack and in such a situation right of citizens particularly the right to freedom (Art.19) and the right to constitutional remedies can be suspended.

9. Fundamental Rights are Justiciable: Fundamental rights are implemented by the court. For the implementation of fundamental rights, constitution has several provisions. Right to constitutional remedies is included in the fundamental rights in a special way. This implies that any citizen whose fundamental rights have been violated can appeal in High court or Supreme Court for the safety of his fundamental rights. High Court and Supreme Court provides a variety of writs for the protection of citizen's rights. If violation of fundamental rights is proved, then they can declare the wrong action taken by any individual, organization or government as illegal.

10. Parliament can curtail the Fundamental Rights: According to the constitution, Parliament along with the section of Fundamental Rights can amend the entire constitution. It is worth mentioning here that the Parliament cannot make any amendment in the Fundamental Rights through ordinary law. If the Parliament makes any such rule, then it will be cancelled by the Supreme Court. This implies that it can amend the fundamental rights only through the constitutional amendment. State Legislatures are not allowed to curtail the fundamental rights. Fundamental rights can be amended by the procedure given in Clause 368. For this it is necessary to have the majority of all the members and 2/3rd majority of members present and voting in each of the two Houses. In 1952 the Chief Justice of Supreme Court, Shastri, had said that "Article 368 grants the right to the Parliament without any restriction to amend the constitution". But in 1967 in the case of Golaknath, the Supreme Court had given the judgment that the Parliament does not have the right to curtail or abolish the fundamental rights. By the 24th amendment, the Parliament gave approval to this power and on 24th April, 1973, in the case of Keshavanand Bharti, the Supreme Court directed that the parliament can make amendments in the fundamental rights.

11. Special Rights for Minorities: In the Indian Bill of Rights, interest of minorities has been given special attention. Specially two rights – Right to Freedom of Religion and Cultural and Educational Rights have been written

to safeguard the interest of minorities. In an ideal democracy, majority does not crush the minority, instead provides opportunity to the minority for development. Through the Indian Bill of Rights, such a provision has been written in the form of rights for minorities.

12. Absence of Social and Economic Rights: In the Indian Bill of Rights, social and economic rights like Right to Work, Right of Rest and Leisure, Right to Social Security, etc. have not been included. Yes, these rights have been written under the Directive Principles.

13. Rights of Armed Forces can be Restricted: According to Section 33 of the Constitution, Parliament can make amendments in the Fundamental Rights in order to maintain discipline in the Armed Forces. Parliament can make suitable arrangements related to police, border security, etc.

14. Special Constitutional Provision for the Enforcement of Fundamental Rights: According to Article 226 of the Indian Constitution, for the reinforcement of our Fundamental Rights, we can approach the High Court of our State through special procedure and as per section 32, can approach the Supreme Court through special provision. We can file a Writ in this context. For e.g. Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari.

Conclusion: It is evident from the above reading that without Rights, complete development of human life is not possible. But when these can be limited by making amendments in the constitution and during the period of emergency can be abolished without making any amendments in the constitution, then why should they be called as Fundamental Rights? The answer to this was specified by the Supreme Court in its judgment, “Only Rights are fundamental, their restrictions cannot be fundamental”.

Self-Assessment

Fill in the blanks;

1. For Fundamental Rights, Indian Constitution is indebted to _____ Constitution.

2. Most of the Rights mentioned in the Indian Bill of Rights are _____ Rights.

3. As per the provisions given in Section_____, amendments can be made in the Fundamental Rights.

2.4 Fundamental Rights

As per the Indian Constitution, citizens of India have been given 6 Fundamental Rights. They are as follows:

1. Right to Equality (Article 14 to 18): Right to Equality is the pillar of Democracy, hence every individual has been granted Equality before Law, Equality of Employment under the government and social equality by the Indian Constitution and abolition of titles has been made for the establishment of equality.

(i) Equality before the Law (Article 14) – As per Article 14, amongst the Indian states, no state can deprive any individual of Equality before Law or Security by Law. In the first part of the Article the words “Equality before Law” is the legacy of British system and through this, restriction has been imposed on the states that law will be common to all individuals and will be implemented equally. According to Sir Iver Jennings this means that “Under similar circumstances, all individuals shall be treated equally before law”. The sentence “Equality before Law”, has been taken from American Constitution and this means that every individual can approach the court of law equally for safeguarding his rights.

Equality before law does not mean that on the basis of justification and acceptable by law, no provision for any discrimination cannot be done. If on imposing tax, law discriminates between rich and poor and between male and female in providing facilities, then this cannot be called as violation of Equality before Law.

(ii) Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Place of birth (Article 15): Along with Equality before Law in Article 15 it has been said that “No discrimination shall be made towards the individuals in any sphere of life by the states on the basis of religion, creed, race, sex, Birth place, etc”. It has been affirmed by law that no discrimination shall be made amongst the citizens in shops, hotels and public

places like wells, tanks, bathing places and roads, etc.

(iii) Equality of Opportunity in Matters of Public Employment (Article 16):

According to Article 16, “Every individual has Equality of Opportunity in matters of public employment and under this no discrimination shall be made on the basis of Religion, Caste, Race, Sex or Birth place or any of these while providing employment or post”. Under this state has the right to fix necessary eligibility for state services. Parliament by law can provide the right to all the states under the federation that the candidate for that post should be a domicile of that particular state. Similarly, seats can be reserved for the backward classes in the services.

(iv) Abolition of Untouchability (Article 17): In order to make social equality more complete, untouchability has been abolished. It has been said in Article 17 that “Implementation of any non-eligibility arising from untouchability shall be considered as a punishable offence”. In order to abolish the poison of untouchability from the Hindu society ‘Untouchability Offences Act’ was implemented in 1955 which is applicable in entire India. According to this law, untouchability has been declared a punishable offence.

(v) Abolition of Titles (Article 18): In the British age titles were given on the basis of property, etc which used to create discrimination in social life, hence these were abolished from the new constitution. In Article 18 there is a provision that “States cannot provide any title other than those related to armed forces and education”. Also, no Indian citizen can accept any title from a foreign nation without the permission of the President.

2. Right to Freedom (Article 19 to 22): The aim of the Indian Constitution is to affirm the freedom of thought, expression, faith, religion and worship; thus, citizens have been provided various degrees of freedom by the Constitution. In context to this, Article 19 is the most important. This right provides the following 6 degrees of freedom to the citizens;

(i) Indian citizens were provided 7 degrees of freedom by Article 19, in which 6th freedom was the freedom to acquire and sell property. But with the 44th amendment, Freedom of Property was abolished along with the Right to

property and therefore, under Article 19 now citizens have only 6 degrees of freedom which are as follows:

- (a) Right to Freedom of Speech and Expression.
- (b) Freedom to assemble peacefully and without arms.
- (c) Freedom to form Associations.
- (d) Freedom to move freely throughout the territory of India.
- (e) Freedom to reside and settle in any part of the territory of India.
- (f) Freedom to practice any profession or to carry on any occupation, trade or business.

Articles 20 to 22 have provided the citizens individual freedom. In Britain, the basis of individual freedom is the rule of law. Same principle has been adapted by India.



According to the Indian Constitution, Indian citizens were granted Fundamental rights, but with the 44th amendment of the constitution Right to Property has been removed from the list of Fundamental Rights

- (ii) (a) As per Article 20, any individual has to be convicted as per the law prevailing at that particular time.
 - (b) As per Article 20, any individual cannot be convicted twice for the same crime.
 - (c) As per Article 20, no individual can be forced to give evidence against himself.
- (iii) According to Article 21, no individual can be deprived of his life and his individual freedom without the Procedure Established by Law.
 - (a) No individual can be arrested without telling him about his crime.
 - (b) The arrested individual has to be presented before the Magistrate within 24 hrs of his arrest

- (c) The victim cannot be detained in the jail without the permission of the Magistrate.
- (d) The victim has full right to obtain legal advice.

3. Right Against Exploitation (Article 23 to 24): In Articles 23 and 24 of the Constitution, Right Against Exploitation has been described for the citizens. The aim of this right is that no powerful individual of the society can do injustice to a socially weaker person.

- (i) According to Article 23, no individual can be forced into human trade, to work without pay and against his wishes. Any violation of this rule will be considered as a punishable offence.
- (ii) According to Article 24, children below the age of 14 cannot be employed in any factory or mine nor can they be employed in any dangerous job. This indicates that children shall be imparted education rather than involving them in any work. That is why by Directive Principles in Article 4 of Indian Constitution, States are directed to arrange for compulsory and free education to all children up to the age of 14 years, Right to Education Act has also been constituted for this.

4. Right to Freedom of Religion (Article 25 to 28): In the next 4 Articles of the Constitution (25 to 28), provision has been made to make India a secular state. By the 42nd amendment along with this right given in Articles 25 and 26, the word “secular” has been included in the Preamble by the makers of Constitution.

- (i) ***Freedom to practice any Religion:*** Provision has been made in Article 25 that all citizens of India have the right to believe in, follow and propagate any religion.
- (ii) ***Freedom to manage Religious Affairs:*** Under Article 26, each religion has been given the right to establish and manage their religious institutions, to buy both Movable and Immovable properties and their management too as per the law of the land.

- (iii) ***Freedom as to payment of Taxes for promotion of any particular Religion:*** Article 27 states that none will be forced to pay any type of tax to promote one's religion
- (iv) ***Prohibition of giving Religious Instructions in Educational Institutions:*** Article 28 states that any institute owned by or aided by govt. can't impart any religious training/education. But it does not cover those Trusts which have been formed to promote any particular religion, even if it governed by Govt. Further it states that any person representing Govt. aided institutes/trust can't be forced to join any particular religious gathering or religious training/education.

5. Cultural and Educational Rights (Article 29-30): Under these rights Minority interest has been safeguarded so that they can develop themselves on the basis of their culture and language.

- (i) ***Under Article 29,*** all those living in any part/section of India who have their own language, script, culture, have been given the Right to protect it.
- (ii) ***Under Article 29,*** none can be denied entry to any govt. aided or owned educational institute on the basis of Religion, Caste, Creed or Language etc.
- (iii) ***Under Article 30,*** all Minorities (based on Religion and Language both) have the right to open, run and manage their own educational institutes.
- (iv) ***Under Article 30,*** while giving Grants/Aid, State shall not discriminate amongst them on the basis of their being Minorities (based on Religion and Language both). Under 44th amendment, it has been ensured that in case of taking over Institutes/Bodies run and managed by Minorities permanently, State would ensure that the amount thus fixed by Law does not affect them at all. This change happened as after 44th amendment (article 31 struck down), Right to Property has ceased to exist and it is now only a Legal Right.

6. Right to Constitutional Remedies (Article 32): Under Constitution, it has been emphasized to implement and execute Fundamental Rights, rather than only

writing them, else they would have become of no use. Makers of Constitution have thus given space to Constitutional Remedies with an objective of let the people of India take recourse from Supreme Court and High Court, in case of Infringement of Rights. These Courts can repeal/annul any law made by parliament or any work of Executives, if found unconstitutional. Dr. Ambedkar said while describing its importance; “if someone asks me about the most vital article of constitution without which it becomes a vacuum, then I can’t refer to any other article other than this (article 32). This is the heart and soul of Constitution”. Ex Chief Justice Rajendra Gadkar referred to it as Most Important Feature of Constitution” and “Foundation of Democratic House”.

Supreme Court and High Courts can issue following 5 types of Writs to protect Fundamental Rights:

- (i) **Habeas Corpus:** This is very vital for Individual Liberty. It is issued on the request of the person who deems that he has been arrested illegally. Under this Court orders Arresting Official to present the person at a defined place and time, so that court can analyse on the reasons of arrest. After hearing both sides, it can decide on whether the Arrest is legal or illegal and in case of it being an illegal arrest, it orders the official to release the person immediately. People arrested illegally or unfairly can take help from this Habeas Corpus paper.
- (ii) **Mandamus:** This is issued when an official does not discharge his/her duty well. This type of writ is used to order that official to do his/her duty.
- (iii) **Certiorari:** This is issued to transfer any particular dispute from a lower court to High Court so that there is no extra usage of its powers, which can cause an impediment in the way to justice. By using this tool, higher Courts can also ask lower courts to furnish some vital information on some of the disputes.
- (iv) **Prohibition:** this is issued by Supreme Court and High Courts to lower courts and quasi-judicial bodies instructing them to stop proceedings, as this particular case/dispute is out of their jurisdiction.

- (v) **Quo-warranto:** When someone works on a post, to which he is not entitled to, then Courts can ask him through this tool the basis of his/her doing this particular job and can be stopped from doing so, if they fail to give a satisfactory and justified reason for doing so.

Public can approach the Courts of Law only in case of normal condition to protect their Fundamental Rights and in case of War, Foreign Invasion or Internal Disturbance, when President has pronounced the State of Emergency, no one approach the Courts of Law. Therefore, during Emergency period, constitution ensures the suspension of Fundamental Rights.

Conclusion: Above mentioned analysis drives home the point that Fundamental Rights have an important role and place in the constitution. But some Scholars have severely criticized the concept of Fundamental Rights. They opine that in Chapter 3, non-inclusion of Social and Economical Rights is a big mistake and due to this, the Fundamental Rights are only and eyewash. They also criticize it on the premise that Government has immense powers to suspend these rights, but still there is no doubt that Fundamental Rights are the Foundation of our Democracy. There is no country in the world, which does not have provisions for suspension of the Fundamental Rights in justified situations. Fundamental Rights ensures the Individual Safety of our people and there have enough checks applied on Executive/ parliament. In India Executive/Parliament have been controlled effectively by Constitution and Individual Safety and Liberty is ensured. We must agree at the end with M.V. Paylee statement,” These fundamental rights, taken as a whole, remain a formidable sustaining basis of Indian Democracy”.

Self-Assessment

Multiple Choice Questions:

4. Right to Equality has been mentioned in which Articles of Constitution?

- (a) 14-18 (b) 16-24
(c) 18-20 (d) 21-25

5. Article 14 describes which of the following?

- (a) Religious liberty (b) Equality before law
(c) Equality of opportunity (d) Prohibition of untouchability

6. Which Article mentions Right to Constitutional Remedies?

- (a) Article 23 (b) Article 24
(c) Article 32 (d) Article 33

2.5 Summary

- ❖ Fundamental Rights are best tool to have a check on the powers of the State, so as to ensure protection of people's rights and liberties.
- ❖ On December 10, 1948 International Body United Nations (established in 1945) also accepted white paper on "Universal Declaration of Human Rights".
- ❖ In our constitution government has been authorized to curb the fundamental rights if it is required on the basis of State Protection, General administration, General Morality and Public Welfare.
- ❖ Right to Liberty, this allows people to Freedom of Expression and Speech, right to do any job/business and right to settle in any part of the country.
- ❖ Under Article 226, we can approach High Court in the Provinces to reinstate our Fundamental Rights and the door of Supreme Court can be knocked under Article 32.
- ❖ Right of Equality before law does not imply that on a justified ground also, there can be no discrimination. If the law has a differential taxing system for Rich and Poor and Men and Women, then it can't be termed as violation of Right of Equality before Law.
- ❖ Under Article 24, any child aged 14 years or less can't be put to work in any factory or mines, nor they can be employed at any dangerous/haphazard places of work.

- ❖ Constitution emphasizes on let people exercise their Fundamental rights, rather than only talk about it, in the absence of which it will be meaningless to have them. Constitution makers have included Right of Constitutional Remedies with an objective of let people approach Courts of Law to exercise their rights.

2.6 Keywords

- **Fundamental:** Original, Real, Basic (similar to basic principles of humans).
- **Minority:** Representing less population community.

2.7 Review Questions

1. Explain salient Features of Fundamental Rights given in India?
2. Which all Fundamental Rights are available to the people of India? Explain.

Answer: Self-Assessment

- | | |
|------------|-------------|
| 1. America | 2. negative |
| 3. 368 | 4. a |
| 5. b | 6. C |

2.8 Further Readings



1. Law of Fundamental Rights - *Chaudhary and Chaturvedi*
2. Fundamental Rights under the Indian Constitution - *Suresh Mani Tripathi*

UNIT-3

DIRECTIVE PRINCIPLES OF STATE POLICIES & FUNDAMENTAL DUTIES

3.1 Objectives

3.2 Introduction

3.3 Meaning

3.4 Definition

3.5 Concept

3.6 History

3.7 Features of Directive Principle of state policy (DPSPs)

3.8 Classification of Directive Principles of state policy

3.9 Difference between Directive Principles of State Policy and Fundamental rights

3.10 Relationship between Directive Principles of State Policy (DPSPs) and Fundamental Rights

3.11 Amendments to the Directive Principles of State Policy

3.12 Fundamental Duties

3.1 Objectives

- The main objective of this study is to understand concept of directive principle of state policy under constitution of India.
- To understand how DPSPs are useful in law and policy making in our India.
- To analyze DPSPs as best tool for good governance.
- To learn how to achieve economic democracy with the use of DPSPs.
- To understand relation between DPSPs and Fundamental Rights

3.2 Introduction

Dr. B. R. Ambedkar Described Directive Principles of state policy as “Novel Feature” for the constitution of India.¹

India was under colonial rule for 200 years newly become independent country was with widespread hunger, poverty, illiteracy and overall socio economic inequalities were deep rooted. That time framers of constitution thought that the legislators and the executives will need some directives or guidelines to frame new laws for independent country. So they have incorporated them in part-IV.

Directive principles of state policy are the guiding principles given under part IV of our Indian Constitution. These principles are covered under Articles 36 to 51. This special feature of our constitution we have adopted from Ireland. When Constituent assembly constituted the lengthiest constitution of India that time India was just separated state and was immature. As India was newly established state constituent assembly kept fundamental rights as priority to be followed for citizen of our country. So they are fundamental and enforceable in nature so state has to give those rights to the citizen of our country.

Directive principles of state policy are the set of principles which are non-justifiable in nature. DPSPs majorly cover principles of social and economic importance for citizen of the country, but they are important to achieve for overall development of the state.

There are various means to reached to the developed phase for state but as we are dealing with our Indian constitution. It includes in its preamble social, economic, political justice. Indian constitution in its Art-38 emphasize upon state to become welfare state. The welfare state means the type of government where state try to protect and promote social and economic wellbeing of the citizen of the country. As described in Art-38 India strives for that and so follows directive principle in a way to make maximum people oriented policies. Here state to fulfill all requirements of the citizens and provide them all social, economical and educational facilities to grow well.

¹ Das, S. Framing of the Indian Constitution: Contribution of Ambedkar. POLITICAL THOUGHT, 107.

3.3 Meaning

Directive principles of the state policy are the principles included in our constitution as guiding principles for government. These are ideals which shall be followed by Union or State government while making laws or rule for state. Though these principles are non-judicial but they are having referential value.

3.4 Definitions

Shi G. N. Joshi

“Directive principles constitute a very comprehensive political, social and economic program for modern democratic state”

Granville Austin

“The directive principles are aimed at furthering the goals of social revolution or to foster this revolution by establishing the conditions necessary for its achievement.”²

M.C. Chagla, Former Chief Justice of India,

“If all these principles are fully carried out, our country would indeed be a heaven on earth. India would then be not only democracy in the political sense, but also a welfare state looking after the welfare of its citizens.”³

Sir B. N. Rau

"The Directive principles are intended as moral precepts for the authorities of the state. They have at least an educative value".

M.C. Setalvad, the former Attorney General of India.

“I. they are like an 'instrument of instructions'

II. Serve as useful Beacon-Light to the courts.

III. Form the dominating background to all state actions and also guide the courts.

IV. Amplify the ideas of preamble-Justice, liberty, equality and fraternity.”⁴

² Granville Austin, *The Indian Constitution—Cornerstone of a Nation*, Oxford, 1966, P. 50–52

³ M.C. Chagla, *An Ambassador Speaks*, P. 35

⁴ M Laxmikanth, "Indian Polity", McGraw-Hill Education; latest sixth edition (29 September 2021), ISBN-10 : P.9389691982

L.M. singhavi, an Eminent Jurist and diplomat-

“The directives are the life giving provisions of the constitution they constitute the stuff of the constitution and its philosophy of social justice.”⁵

Dr. B. R. Ambedkar

"The directives have great value because they lay down that the goal of Indian polity is economic democracy as distinguished from political democracy."⁶

3.5 Concept

Concept of Directive Principles of State Policy (further will be referred as DPSPs) is considered as guiding principles. They are considered as administrative objectives to achieve good governance. These are directives for state to make rules, By-laws or regulation for their citizens. DPSPs are not as fundamental right which shall be given to the citizens for their basic existence of their being but they guide state superior how to make life of citizen better. So these are the major principles to achieve developed state.

State is to direct its policy in such a manner as to secure distribution of ownership and control of material resources of community to sub serve the common good, and to ensure that operation of economic system does not result in concentration of wealth and means of production to common detriment.

3.6 History

After World War-I all countries started incorporating social and economic policies in the formation of law for the citizen of their countries. India has adopted many characteristics of various country's constitution amongst them India adopted directive principle of state policy from Sec-45 of Irish constitution.⁷

⁵ Hogan, G. (2001). Directive principles, socio-economic rights and the Constitution. Irish Jurist (1966-), 36, 174-198.

⁶ Nayyar, D. (1998). Economic development and political democracy: interaction of economics and politics in independent India. Economic and Political Weekly, 3121-3131.

⁷ Rao, T. N. (1949). Directive principles of state policy. The Indian Journal of Political Science, 10(3), 1618.

Ideas of DPSPs have taken from Ireland further it can traced back to French declaration of human rights, America declaration, liberal and social philosophy of 19th century and our own gandhian philosophy of sarvodaya.

Directives of our constitution are same as "Instrument of Instruction" issued by governor general and to the governors of colonies of India by British government under government of India Act, 1935. At the time when constituent assembly prepared constitution they made directive principles non enforceable because that time our country was not having sufficient financial resourced to fulfill need of large population. Moreover diversity and lack of education in country was biggest hurdles for new independent country. So constitution makers made it non justifiable in form and kept scope open for further development in hands of future leaders.⁸

3.7 Features of Directive Principle of state policy (DPSPs)

Non-Justifiability- It means that those are not life fundamental rights which are enforceable by Law so in case of infringement of any right by any person citizen has right to go in court of law to ask for justice. Unlike fundamental rights DPSPs are Non- Justiciable nobody can go to the court if state is failing to follow any of the policies given under DPSPs.

Social order-This part of the constitution focuses upon achieving social order by promoting law and order in society or by providing social security to state. It is understood as states responsibility to preserve public safety, public peace and order. E.g. Sec-144 of Cr PC used to get imposed by executive authority in situation of riots or disturbance of public tranquility. So this feature specifically promotes safety and security for the citizen of our country.

Social Justice- DPSPs promotes social justice and specifically supports the principles of preamble of our constitution. Social justice refers to justice given to all individual equally not considering differences of gender, economic status, differences of education or deprived section.

⁸ Constituent Assembly Debates, volume VII, P. 476.

Equality- This is the indivisible feature of our constitution this have its place in fundamental rights too. Similarly in DPSPs also principle of equality plays a vital role as these are the guiding principles of the government so when government has to deal with whole of population every citizen shall be given equal right and opportunity to satisfy needs in their lives.

Economic Justice- This feature refers to the fundamental concept of equal distribution of resources or ensuring economic system shall not result in concentration of wealth. Rather distribution of ownership and material resources shall be achieved for common good.

3.8 Classification of Directive Principles of state policy

Directive principles of state policy have been classified based on their philosophy among three different groups namely Socialist, Gandhian and Liberal-Intellectual philosophy.

Art-36 defines “state” for this Part-IV, here it says in part IV also definition of the state will be considered same as defined in Art-12 of part-III.⁹ Here state includes union & state government, parliament of India, state legislations, local authorities and executive bodies within the territory of India and under the control of government of India.

Art-37 as per this Article directive principles are Non-justiciable in nature in Indian constitution. But they are fundamental to consider for law making by State.

Socialistic Principles-	38. State to secure a social order for the promotion of welfare of the people. 39. Certain principles of policy to be followed by the State. 39A. Equal justice and free legal aid. 41. Right to work, to education and to public assistance in certain cases. 42. Provision for just and humane conditions of work and maternity relief.
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⁹ Dr. J. N. Pandey, "constitutional law of India", Central Law Agency, 47th Edition.

	43. Living wage, etc., for workers. 43A. Participation of workers in management of Industries. 43B. Promotion of co-operative societies
Gandhian Principles	40. Organization of village panchayats. 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. 48. Organization of agriculture and animal husbandry. 48A. Protection and improvement of environment and safeguarding of forests and wild life.
Liberal-intellectual principles	44. Uniform civil code for the citizens. 45. Provision for early childhood care and education to children below the age of six years. 49. Protection of monuments and places and objects of national importance. 50. Separation of judiciary from executive. 51. Promotion of international peace and security. ¹⁰

1. Socialistic principles- These are the principles among state policy which focused on overall social and economic development of state by adopting these principles in to policies our country can achieve goal of welfare state.

As per Art-38 state shall strive to promote welfare of the people by providing them social order in all form as justice, social, economic and political. This can be achieved by eliminating inequalities from society in means of status, education, job, opportunity etc.

¹⁰ <https://legislative.gov.in/constitution-of-india/> (Constitution of India 2024 (English Version))

As per Art-39 all citizens shall be given equal and adequate means of livelihood. Rule of equal pay for equal work shall be followed. Material resources shall be distributed equally among all classes of individual. Ownership and economic system shall not result into the concentration of wealth. Children shall be protected against exploitation and shall be given health condition to grow.

As per Art-39 (a) equal justice and free legal aid shall be given to all citizens without any discrimination. No citizen shall be denied of justice for the sake of economic disability.

As per Art-41 state shall generate opportunities as per its economic capacity for development of education. In cases of public assistance state shall provide support for underprivileged, unemployed, sickness or disablement.

As per Art-42 state shall secure just and human condition at work. Women worker shall also be given maternity benefits.

As per Art-43, 43(a) & 43(B) State shall provide security and safety to workers. Legislation shall be prepared and executed. Rightful remuneration shall be given as per the type of work and they shall be given opportunity to live their life with leisure, social and cultural enjoyment. With this 43(a) covers workers participation in policymaking shall be included for maintaining healthy environment at workplace. Art-43(b) promotes formation and operation of cooperative societies. Above mentioned all articles promote social order and justice to all citizens. By analyzing all this we can analyze social justice can be gain by following economic democracy. This can be achieved by creating more opportunities for earning, by creating more jobs and healthy environment at workplace. By following this we can achieve distribution of material and resources across population and avoid concentration of resources.

2. Gandhian Philosophy- following principles are based on Gandhian philosophy. Those principles works on gandhian ideologies as rural development, agriculture and animal husbandry, upliftment of weaker section and protection of environment.

As per Art-40 Organization of village panchayat got place as constitutional authority. This has improved power and management of panchayat at villages.

73rd constitutional amendment Act, 1992 has made panchayati Raj as constitutional mandate.

As per Art-46 state shall Promote education and economic upliftment of weaker sections of the society as schedule caste and schedule tribe and state shall protect them from social injustice and exploitation.

As per Art-47 state shall promote health care of the people also for that state shall prohibit consumption of intoxicated drinks, drugs and alcohol. e.g. announcement of various health insurance schemes like Ayushman bharat yojana Comes under this article.

As per Art-48 state shall encourage agriculture, animal husbandry, cottage industry which gradually leads to rural development. State also shall prohibited practices like cow slaughter.

As per Art-48(A) state shall strive hard for protection of environment and conservation of wild life.

These are the principle which mainly focuses on rural development and upliftment of backward people.

3. Liberal and intellectual philosophy- this is considered as third ideology of directive principles which directly influence law making based on the clearer ideas of liberty, equality and justice to achieve welfare state in fullest form.

As per Art-44 state shall promote and formulate uniform civil code for all citizens of the country. This contains common laws for marriage, adoption, divorce and maintenance without having discrimination based on religion or cast. Dr. B.R. Ambedkar has proposed this at the time of formation of constitution that in India there is diversity in unity to maintain this law shall remain uniform for all religion.

As per Art-45 state shall ensure early childhood care and education of children up to the age of six. This will help children to have healthy life. 86th constitutional amendment Act, 2002 has changed this Article. Earlier free education shall be given up to 14 yrs. This has got converted as Fundamental right under Art-21 A. So in changed article early childhood care got inserted.

As per Art-49 state shall ensure protection of historical monuments of our country.

As per Art-50 state shall follow separation of power. This is very important feature of our constitution which separates authority among judiciary, executives and legislative body so that without intervention all three bodies can work efficiently for development of our country.

As per Art-51 state shall promote international peace and security. We are living in the global world where we all are having interdependency on each other so for our development it is important to maintain international relations with other countries.

These are the set of principles which are of liberal principle. They are best to achieve goal of vikshit bharat 2047. In our constitution this classification has not been given explicitly but we can understand it based on their philosophy. And government can follow it to make our country more liberal and progressive.

3.9 Difference between Directive Principles of State Policy and Fundamental rights

Directive principles of state policies are considered as positive rights which shall be followed by state while policy or law making. Adoption of these positive nature principles is possible to make our life better eg. Adoption of UCC uniform civil code can bring equality in civil and personal code. Fundamental rights are having negative nature; it means that they restrict state actions which can violates these rights. eg. Right to privacy, Freedom of speech. These fundamental rights impose duty on state as not to interfere or restrict actions of citizens.

Directive principles of state policies are Non Justiciable in nature, so they are not enforceable in court of law. Though they are fundamental for state in law making but for non fulfillment of any policies no one can go and fight in court. Fundamental rights are Justiciable in court so in case of infringement of fundamental rights citizen can go and fight in court of law. Fundamental Rights are enforceable in court of law so, court can made it obeyed by state.

Aim of the fundamental rights is to establish political democracy. And the aim of DPSPs is to establish economic and social democracy.

Fundamental rights promote welfare of individual person so they promote individualism on the other hand directive principles promote welfare of community so they promote socialism.

Fundamental rights are automatically can be enforced but a directive principle of state policy needs legislation to cover them so that they can be enforced.

3.10 Relationship between Directive Principles of State Policy and Fundamental Rights

Main objective of constitution are render justice, to promote equality and to provide equal opportunity to everyone. Which has been majorly covered under fundamental rights those are called as political right but the directive principles are guidelines given to the government to achieve the objective of the constitution enshrined in preamble in form of social and economic rights. So these social and economic rights shall be given to the citizens as and when time arises. DPSPs are aspirations of people of India. Though DPSPs are not binding principles in court of law they are in form of code of conduct to follow for legislators and executors.

The relationship between Directive principles and state policy and fundamental rights always remain under dispute. First time this has been discussed under ***State of Madras v. Champakam Dorairajan, (1951)*** in this case SC declared that Directive principles need to be conforming with and shall be subsidiary to Fundamental rights.¹¹ So here in this case Fundamental rights Art 15 given primacy and judgment held that FRs are superior to DPSPs. and Fundamental rights can be amended. Further to give effect to DPSP and to take affirmative actions for weaker section Constitution got amended several times in 1st amendment in year, 1951 17th amendment in yr 1964 and so on.

In 1967 in ***Golak Nath v. State of Punjab, (1967)*** SC held that Parliament cannot take away any of fundamental rights. This judgment also conveyed that fundamental rights cannot get amended for implementation of directive principles.¹² To reverse this judgment parliament came up with 24th and 25th

¹¹ State of Madras v. Champakam Dorairajan is AIR 1951 SC 226.

¹² I.C. Golaknath and Ors. v. State of Punjab (1967), is 1967 AIR 1643, 1967 SCR (2) 762.

Amendments in year 1971. And inserted Art-31 C in 25th amendment which says that no law made for giving effect to directives can be questioned in court.

Further in ***Kesavananda Bharati v. State of Kerala, (1973)*** judgment art 31(c) 2 declared unconstitutional and invalid on the ground that judicial review is feature of basic structure doctrine. And kept partial as, "No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b)²² and (c)²³ shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14 (equality before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc) or Article 31 (right to property)."¹³

Further in 42nd amendment Act, 1967 SC extended scope of 31 (C) by including that any law to implement DPSPs. so this way this amendment affirm primacy of DPSPs over Fundamental rights covered under Art 14, 19 and 31.

Finally in ***Minerva Mills v. Union of India, (1980)*** this extension to these articles declared unconstitutional. and DPSPs ones again maid subordinate to FRs. except Article 14 and 19 these two fundamental rights are considered subordinate to Art 39 (b) and (c) of DPSPs.

Here Supreme Court concluded that DPSPS and FRS are two wheels of one cart so they both have to work in synchronization to maintain harmony of constitution. Doctrine of harmonious construction shall be achieved in interpretation both. And to achieve goal set by state it is important to follow directives and those shall be followed without abrogation of fundamental rights.

Therefore the present position is fundamental rights are having supremacy over directive principles. But to achieve social and economic democracy directives shall get followed. The parliament can amend FRs to implement directive principles but it shall not damage or destroy basic structure of our constitution.

Following are case laws in brief which explains contradiction in interpretation of relationship between DPSPs and FRs.

¹³ Kesavananda Bharati Sripadagalvaru ... vs State Of Kerala And Anr on 24 April, 1973 (1973) 4 SCC 225; AIR 1973 SC 1461.

State of Madras v. Champakam Dorairajan, (1951)

In case state of Madras appealed in SC against HC judgment. Because High court has given judgment in favor of Smt Dorairajan. In this case Smt Dorairajan filed petition against Madras Medical College for not giving admission to her because she belongs to Brahmin community and the seats were reserved for Non- Brahmins. Here she pleaded that Communal Government Order for reservation of seat based on cast is abrogation of Art -15 and Art -29. As given in Art-15 state cannot discriminate based on sex, race, religion, cast and gender.

Here state has argued that state has followed Art-46 of Directive Principles of state policy which state that state shall promote educational and economic rights of weaker section and protect them from exploitation. To fulfill directives of this article state has passed this order.

SC upheld Madras HC's decision and overturns Government Communal Order and said that cast based reservation in education is violation of Fundamental right of Art-15. Here SC also established that whenever there will be conflict arise between Fundamental rights and DPSPs in that case DPSPs will be considered as secondary to Fundamental Rights and they shall be in conform with FRs. Moreover when state wants to take affirmative actions to follow DPSPs, actions shall be taken considering principle of social justice and principle of equality.

This ruling led to the First Amendment of the Indian Constitution in year 1951, added Art-15 (4) which allowed for affirmative action provisions for the backward classes, while upholding the principle of equality.

Minerva Mills v. Union of India, (1980)

The case arose from the nationalization of Minerva Mills, a textile undertaking, challenged the constitutionality of the 42nd Amendment, particularly the changes it made to Article 31C and 368 (4) and (5). These provisions were inserted by section-4 and Section-55 of 42nd Amendment Act. Section-55 have inserted as Art-368 (4) which says that any constitutional amendment cannot be questioned under judicial review. Further Art-368 (5) says that parliament has unlimited power to make laws so there is no limit to follow basic structure. And Art-31C says that to follow directive principles if any changes to the FRs are required to be done it shall be done.

This has been reversed after this judgment. In this judgment it has been established that art 368(4) and (5) was declared unconstitutional as it was against basic structure doctrine which has been settled under keshavanand bharti case. Further it has been decided that judicial review is indivisible character of basic structure doctrine so no amendment can curtail it. And parliament can make laws but within the limited power not amending basic structure and fundamental rights of constitution.

Further more in context to Section-4 was concluded to be unconstitutional which has inserted Art-31C to give primacy to directive principle of state policy. Here this judgment says that there shall be balance established between directive principles of state policy and fundamental rights. To implement any policies pertaining to directive principles of state policy there shall be harmonious construction between Directive principles of state policy and fundamental rights. So this judgment conveys that no policies can be made without protecting fundamental rights.

3.11 Amendments to the Directive Principles of State Policy

Directive Principles of state policy has been amended several times to reflect societal need of our country. Directive principles are not justifiable in court of law but they are fundamental in governance. And so the state has a duty to follow these principles in law making this has been given under Art-37. This makes us understand that DPSP are most important to establish good governance in our country.

Currently India is considered a developing country and from this stage to achieve this stage of development we need to create such an environment where every citizen of our country feels safe, confident, satisfied. This feeling can be felt by citizens when they get safety, security, employment, good life, health benefits and facilities, quality education, infrastructure development, culture, heritage, social association, Judicial system these basic facilities of life are expected from any state by citizens. And DPSPs are a set of principles to guide states on these lines. So whenever states make laws they have to consider these facilities are fundamental to the existence of better social and civil life. Considering ever changing dynamics of our society law has to change and update as per the

requirement. So following are the amendments that are adopted by the constitution from time to time to make our lives better.

42nd Amendment Act, 1976 Added following Directives in to the list of DPSP

Art-39(a) Equal Justice and free Legal Aid

This important Art 39 (a) was added as supplementary Art to Article 39 this specifically speaks for Free Legal Aid shall be provided to deprived or poor people. This Article conveys that in our country no one shall be left behind justice for the sake of financial incapacity to engage a lawyer, so as per this Article all needy people or persons below poverty line or persons under imprisonment can get free legal assistance by a lawyer appointed by Court. This article ensures that every citizen of our country has an equal right to access justice. It does not depend upon a person's economic status.

Art-43 (a) Participation of worker in management of industry

This Article conveys that the state shall take up responsibility and take up steps in the form of improvement of workers participation in management of industry. This concept of participation will be applicable in all types of industries, agriculture, and organizations. In all organizations people's participation will increase bonding. Organizational behavior or facilities can be improved as per the need of worker participants.

Art-48 (A) state shall endeavor to protect and improve the environment and safeguard the life of our country. This Article conveys that it is the state's responsibility to protect the environment and safeguard Forest and wildlife. To fulfill this obligation the state can tighten the state laws related to the environment. Also states take preventive action to control pollution prevailing in the country by making regulations.

44th Amendment Act, 1978 Added following provision-

Article-38(2) was added to DPSP which directs states to minimize inequalities and eliminate disparities among individuals. This amendment has aimed to promote social, political and economic justice through the welfare of the people.

86th Amendment Act, 2002 Added following provision-

Article -45 directs early childhood care and education to children below age of 6. Earlier this Directive had a different agenda which was focused on free and compulsory education to children up to age of 14. This has now become and added as fundamental right in Art-21(A). So this alteration was done in Art-45.

Unni krishnan Vs. state of Andra Pradesh, 1993

This case was filed by various private institutions against Mohini Jain's judgement. Where SC has denied colleges to take capitation fees and made right to education fundamental right. In this case petitioner's pleaded that we are not state and we run institution for profit making too and our right to occupation under 19(1)(g) is getting curtailed.

Here SC held that it is state's responsibility to give free education up to the age of 14 years as given under Art-45. Here court has allowed private colleges to charge fees as per upper limit decided by state. few seats will be reserved for state further state conveyed that it is not only state's responsibility to take care of education of citizens rather private institutions also can run some trust based education institute and contribute for welfare of citizen of our country. Here SC acknowledged private institution can become self financing but right to establish educational institution is not fundamental right but it is subject to some regulation here educational.

This judgment have big impact on regulating private educational institutions concerning restriction on capitation fees and limitation imposed to make education affordable for major population. Here SC clarified that Right to education under Art-21(a) is not absolute right but has its limitation. This right did not extend to professional educations or degrees.

This ruling leads to 86th Amendment of 2002 where Art-45 got altered and free education up to the age of 14 years become fundamental right under Art-21.¹⁴

¹⁴ Unni Krishnan, J.P. And Ors. Etc. vs State Of Andhra Pradesh And Ors. (1993) 1 SCC 645.,1993 AIR 2178, 1993 SCR (1) 594.

97th Amendment Act, 2011 Added following provision-

Article-43(B) Directs states to promote functioning and Development of cooperative societies. Specifically, the state shall promote autonomous and democratic functioning of this institution for rural development of locality.

3.12 Fundamental Duties

Fundamental Duties inserted in to the Indian constitution by 42nd amendment Act of 1967. fundamental duties are not enforceable by law but those are statutory obligations to get followed by citizens of our country. In Indian constitution concept of fundamental duties were taken from Soviet Union (USSR). This concept can be found in Ancient Indian culture in form of “kartavya” every member of family and society need to fulfill his obligation towards other family member or member of society. We also found another similar type of concept in form of patriotism so the person having feeling of patriotism performs his duties towards nation without asking for it. Fundamental duties were suggested by swaran singh committee.

In our constitution concept of Fundamental duties inserted in Part- IV-A with one article 51- A with 10 numbers of duties mentioned in it. Further one duty was added by 86th amendment Act, 2002 which says that it is duty of parent of guardian to provide opportunity for education to children of age 6 to 14. So now we are having 11 duties as fundamental duties in our constitution.

Following are fundamental duties-

- a) Every citizen shall be abiding by constitution more so they have to follow national Ideals, flag anthem etc.
- b) To cherish noble ideals have inspired us for national struggle of freedom.
- c) To uphold and protect sovereignty, unity and integrity of
- d) defend the country and render national services when called upon
- e) Developing the spirit of common brotherhood
- f) Preserve composite culture of the country
- g) Preserve natural environment
- h) Develop scientific temper and humanity
- i) Safeguard public property and avoid violence

- j) Strive for excellence in all spheres of life.
- k) Duty of all parents/guardians to send their children in the age group of 6-14 years to school.

Significance of Fundamental duties- they remind Indian citizens of their duty towards fellow citizens, they warn citizens against anti national activity, to inspire and promote sense of discipline, they help courts in examining and determining constitutional validity.

Fundamental duties to get enforced properly across country more awareness needs to get spread. Chapter related to duties shall be inserted in school syllabi to implement them at elementary level. So as citizens we have to follow our duty towards nation .

Solve- Test-1

Explain in detail

1. Discuss Classification of Directive Principles of State policy in constitution of India
2. Discuss various amendments occurred to the Directive principles till today.
3. Difference between Directive Principle of State policy and Fundamental rights
4. Discuss utility of Directive Principles under constitution of India.
5. Discuss Relationship between Directive Principles of state policy and Fundamental rights.

Solve- Test-2

Fill in the Blanks

1. Which article directs state to implement Uniform civil code for the citizens of India_____ (Art-42, Art-37, Art-44)
2. The idea of welfare state has been given under which of Indian constitution _____(FRs, DPSPs, Preamble)
3. Which of the following was part of directive principles of state policy as well as fundamental duties._____(UCC, guardians shall provide education opportunity for children, Uniform wages)

4. Directive principles of state policy comes under which Part of Indian Constitution _____(III, IV, IVA)
5. India has adopted feature of directive principle from which country_____(Ireland, UK , Russia)
6. Panchayati Raj institutions were given Constitutional Status by Amendment Act _____(72nd , 73rd, 42nd)
7. Directive principles of state policies are in _____nature (positive, negative, neutral)
8. Directive principles of state policies are having objective of achieving _____democracy in our country (Political, Cultural, Socio-economical)
9. Which of the following case law establish harmonious relationship between Directive principles and fundamental rights._____
(Kesavanand harati case, Minerava Mills Case, Champakam Dorairajan Case)
10. Which among the following amendment have altered Art-45 _____(86th , 73rd, 42nd)

UNIT-4

STRUCTURE AND FUNCTIONING OF THE INDIAN UNION

- 4.1. Union Executive**
 - 4.1.1. President of India**
 - 4.1.2. Vice-President of India**
 - 4.1.3. Prime Minister of India**
 - 4.1.4. Council of Ministers**
- 4.2. Union Legislature (Parliament of India)**
 - 4.2.1. Lok Sabha (House of the People)**
 - 4.2.2. Rajya Sabha (Council of States)**
- 4.3. Union Judiciary: The Supreme Court of India**
 - 4.3.1. Composition and Appointment**
 - 4.3.2. Tenure and Removal**
 - 4.3.3. Jurisdiction and Powers**
 - 4.3.4. Public Interest Litigation (PIL)**
 - 4.3.5. Supreme Court as the Court of Record – Article 129**
 - 4.3.6. Independence of the Judiciary**
 - 4.3.7. Judicial Activism and Accountability**
- 4.4. Exercise**
 - 4.4.1. Objective Type Questions (MCQs)**
 - 4.4.2. Descriptive Type Questions (Short Answer)**

4.1 Union Executive

The Union Executive is one of the most crucial pillars of the Indian democratic setup. It constitutes the President, the Vice-President, the Prime Minister, and the Council of Ministers. Together, they form the executive branch of the central government, responsible for the implementation of laws, policy formulation, and the day-to-day administration of the nation. Enshrined under Part V of the Indian Constitution (Articles 52 to 78), the Union Executive is structured to maintain a parliamentary form of government where real power vests in the Council of Ministers, headed by the Prime Minister, while the President remains the constitutional head.

4.1.1. President of India

The President is the constitutional head of the Union and is often referred to as the "First Citizen of India". Though the President performs a largely ceremonial role, he or she is a vital component of the legislative process and the functioning of the government. Under Article 52, there shall be a President of India, and

under Article 53, all executive powers of the Union shall be vested in the President.

The election of the President is conducted through an indirect election by an Electoral College composed of:

- Elected members of both Houses of Parliament, and
- Elected members of the State Legislative Assemblies (including those of Union territories like Delhi and Puducherry).

The system of proportional representation by means of single transferable vote ensures a fair balance between the Union and States. The President serves a term of five years (Article 56), although he/she is eligible for reelection any number of times.

While often described as a nominal or ceremonial head, the President exercises a wide range of constitutional powers categorized as:

- **Executive Powers:**

These include the power to make key appointments such as the Prime Minister, Governors of States, Judges of the Supreme Court and High Courts, the Attorney General, Comptroller and Auditor General, Chief Election Commissioner and other Election Commissioners, Finance Commission members, and Ambassadors. The President also has the power to dismiss these officials, subject to constitutional provisions. All Union executive actions are carried out in the name of the President.

- **Legislative Powers:**

The President is an integral part of the Parliament (Article 79), which consists of the President, the Lok Sabha, and the Rajya Sabha. The President summons, prorogues, and dissolves the Lok Sabha (Article 85), addresses both Houses at the commencement of the first session after each general election and each year (Article 87), and gives assent to Bills passed by Parliament (Article 111). The President may also withhold assent or return a non-money Bill for reconsideration, or reserve assent

altogether (in rare cases). Furthermore, under Article 123, the President is empowered to promulgate ordinances when either House is not in session.

- **Judicial Powers:**

Under Article 72, the President has the power to grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit, or commute the sentence of any person convicted of an offence. This power applies in cases involving the Union's executive power, court-martial, and capital punishment. This clemency power underscores the humanitarian and compassionate role of the President as the final arbiter of mercy petitions.

- **Military Powers**

The President is the Supreme Commander of the Defence Forces of India, and appoints the Chiefs of the Army, Navy, and Air Force. Although military decisions are taken on the advice of the Cabinet, the formal authority and symbolic leadership reside with the President, who also confers gallantry awards and commissions in the armed forces.

- **Emergency Powers:**

Perhaps the most significant latent powers of the President are visible during national emergencies. Under Article 352 (National Emergency), Article 356 (President's Rule in States), and Article 360 (Financial Emergency), the President may assume vast powers affecting the federal structure of the nation. During such emergencies, the President may legislate through ordinances, take over the functions of state governments, and ensure unified command. However, these powers are exercised on the aid and advice of the Council of Ministers, and are subject to judicial review and parliamentary control.

Powers and Functions of the President

Category	Details
Executive	Appoints PM, ministers, governors, judges, election commissioners, UPSC members, etc.
Legislative	Summons and dissolves Parliament, addresses first session, nominates members, gives assent to bills, ordinance-making power (Art. 123).

Judicial	Power to pardon, commute, remit sentences (Article 72).
Military	Supreme Commander of Armed Forces; appoints Chiefs of Army, Navy, Air Force.
Emergency	Can declare National, State, or Financial Emergency (Articles 352, 356, 360).
Diplomatic	Represents India in international affairs; signs treaties and agreements.

It is important to underscore that Article 74(1) mandates the President to act in accordance with the aid and advice of the Council of Ministers headed by the Prime Minister. This provision, reaffirmed through the 42nd Amendment (1976) and the 44th Amendment (1978), ensures that the President, though the constitutional head, does not act independently in executive matters. The Supreme Court of India, in landmark cases such as *Shamsher Singh v. State of Punjab* (1974 AIR 2192), clarified that the President's role is that of a constitutional figurehead bound by ministerial advice, unless acting in a personal capacity in rare discretionary matters (e.g., appointment of Prime Minister in a hung Parliament or dismissing a government when it loses majority).

In practice, while the office of the President appears ceremonial, the constitutional weight and moral authority of the office cannot be overstated. The President is expected to act as a guardian of the Constitution, a moderator in times of political instability, and a symbol of national unity above party politics. Instances like Dr. Rajendra Prasad's independence in approach, Dr. A.P.J. Abdul Kalam's engagement with youth, or President K.R. Narayanan's principled interventions during the Kargil War and political crises, reflect the evolving and often underestimated role of the Indian President. In short, the office combines symbolism with responsibility, restraint with authority, and tradition with constitutional fidelity, making it a vital organ of the democratic republic envisioned by the framers of the Constitution.

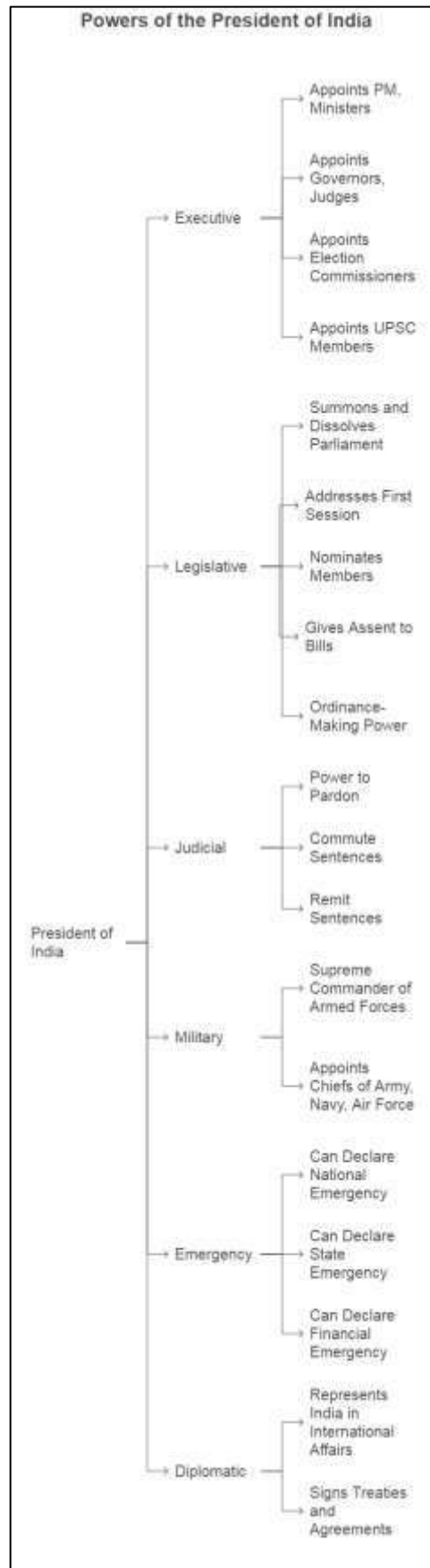


Image 1

4.1.2. Vice-President of India

The Vice-President of India holds the second highest constitutional office in the Republic, positioned just after the President in the order of precedence. The office is established under Article 63 of the Constitution of India, which mandates that “there shall be a Vice-President of India.” Although often perceived as a secondary figure in the Union Executive, the Vice-President plays a vital constitutional, legislative, and symbolic role in India’s democratic framework.

The Vice-President is elected for a term of five years by an Electoral College, which comprises only the members of both Houses of Parliament (Lok Sabha and Rajya Sabha). Unlike the President, the elected members of the State Legislative Assemblies do not participate in the election of the Vice-President. The election process is governed by Article 66, which mandates the use of the system of proportional representation by means of the single transferable vote through a secret ballot. This electoral system ensures equitable representation of the political will of both Houses of Parliament in the selection process.

The primary constitutional function of the Vice-President is to serve as the ex-officio Chairman of the Rajya Sabha, as provided under Article 64. In this legislative capacity, the Vice-President presides over the proceedings of the Rajya Sabha (Council of States), the upper house of the Indian Parliament. In this role, the Vice-President ensures orderly conduct of business, maintains discipline and decorum, and facilitates debates and discussions on key legislative matters. Though not a member of the House, the Vice-President plays a neutral and regulatory role, often guiding deliberations without direct partisan involvement. However, in the case of a tie in voting, the Vice-President has the casting vote, giving the office strategic significance during closely contested decisions.

The Vice-President does not exercise any direct executive authority in normal circumstances and thus remains relatively passive in terms of day-to-day governance. However, under Article 65, the Vice-President is constitutionally mandated to discharge the functions of the President in the event of a vacancy in the office of the President due to death, resignation, removal, impeachment, or

otherwise. In such cases, the Vice-President assumes the role of Acting President until a new President is elected and assumes office. However, the tenure of the Vice-President as Acting President shall not exceed six months, within which the election to the office of the President must be completed.

The eligibility criteria for becoming the Vice-President are almost identical to those for the President, with a few key distinctions. A candidate must be:

- ✓ A citizen of India,
- ✓ At least 35 years of age,
- ✓ Qualified to be elected as a member of the Rajya Sabha, and
- ✓ Must not hold any office of profit under the Union, State, or local government.

The removal of the Vice-President is governed by Article 67, which allows the Rajya Sabha to pass a resolution for removal by a majority of its total membership, and this resolution must then be agreed to by the Lok Sabha. Notably, unlike the President, the Vice-President is not impeached but rather removed through this legislative procedure. The process reinforces the role of Parliament in ensuring the accountability of the Vice-President.

Although the office may appear ceremonial, the institutional relevance of the Vice-President has evolved over the years, especially in politically fragmented times when the Rajya Sabha becomes a decisive forum for legislative scrutiny. Through impartial stewardship of the Upper House, the Vice-President upholds the parliamentary tradition of debate, dialogue, and democratic decision-making.

Thus, the Vice-President serves as a critical link between the executive and the legislature, and acts as a constitutional buffer in situations requiring continuity in presidential responsibilities. As the guardian of Rajya Sabha proceedings, the Vice-President contributes to the maintenance of India's bicameral parliamentary structure and indirectly plays a stabilizing role in the constitutional framework of the Union.

Key Notes for Understanding:

- ✓ Article 66 of the Indian Constitution governs the election of the Vice-President.
- ✓ Only Members of Parliament (MPs) from both Houses vote – no MLAs or State participation.
- ✓ Uses the Proportional Representation system with Single Transferable Vote (STV).
- ✓ Secret ballot is used to ensure free and fair voting.

Table: Differences Between the President and Vice-President of India

Criteria	President of India	Vice-President of India
Constitutional Provision	Article 52 to Article 62	Article 63 to Article 67
Position	Head of the State and the Union Executive	Second highest constitutional office; Ex-officio Chairman of Rajya Sabha
Mode of Election	Indirect election by an Electoral College comprising elected members of Parliament and elected MLAs of States/UTs	Indirect election by only the members of both Houses of Parliament
Electoral System	Proportional representation by single transferable vote (STV)	Proportional representation by single transferable vote (STV)
Executive Powers	Exercises all executive powers of the Union under Article 53	No executive powers
Legislative Role	Summons and prorogues Parliament; gives assent to bills	Presides over the Rajya Sabha as its Chairman
Judicial Powers	Can grant pardon, reprieve, respite, or remission under Article 72	No such powers
Military Powers	Supreme Commander of the Armed Forces	No military powers
Emergency Powers	Can declare National, State, and Financial Emergencies (Articles	No emergency powers

Criteria	President of India	Vice-President of India
	352, 356, 360)	
Tenure	Five years (Article 56); eligible for re-election	Five years (Article 67); eligible for re-election
Acting Role	Cannot act in place of the Vice-President	Can act as President in case of vacancy, up to six months (Article 65)
Oath Administered By	Chief Justice of India (or senior-most judge of the Supreme Court)	President of India
Removal Process	Impeachment under Article 61	Removed by a resolution passed by the Rajya Sabha and agreed to by Lok Sabha
Office of Profit Restriction	Must not hold any office of profit	Must not hold any office of profit
Eligibility	Citizen of India, 35+ years, qualified for Lok Sabha	Citizen of India, 35+ years, qualified for Rajya Sabha
Symbolic Role	Known as the "First Citizen of India"	Acts as a symbol of federal legislative balance

4.1.3. Prime Minister of India

The Prime Minister of India is the real executive authority in the Indian political system and serves as the chief architect of national policies. Unlike the President, who is the ceremonial head of the State, the Prime Minister is the de facto head of the government, exercising actual power and control over the administration. The Prime Minister derives authority from Article 75(1) of the Constitution, which states that the President shall appoint the Prime Minister. However, this appointment is not discretionary; the President must ensure that the person chosen can command the confidence of the Lok Sabha, the lower house of Parliament. In most cases, this implies appointing the leader of the majority party or coalition in the Lok Sabha.

The Prime Minister holds a position of central significance in both the executive and legislative branches of government. As the head of the Council of Ministers,

the Prime Minister plays a leading role in selecting ministers, allocating portfolios, and defining their roles. All key decisions of the government are taken with the Prime Minister's input, making him or her the pivotal figure in the policy-making process. The Prime Minister is also responsible for advising the President on various constitutional appointments such as governors, ambassadors, and heads of statutory bodies, and on legislative actions such as the summoning and proroguing of Parliament sessions.

In the domain of international relations, the Prime Minister represents India on global platforms, engages in bilateral and multilateral diplomacy, and speaks on behalf of the Indian government in international forums such as the United Nations, G20, and BRICS. Domestically, the Prime Minister serves as the chief spokesperson of the Union Government, articulating government policies, addressing the nation on important matters, and responding to major political and social issues.

Beyond these public-facing roles, the Prime Minister also has a significant administrative function. One of the essential duties is to maintain coordination among various ministries, resolve inter-ministerial disputes, and ensure the smooth functioning of the executive machinery. As per Article 75(3) of the Constitution, the Council of Ministers is collectively responsible to the Lok Sabha. It is the Prime Minister who ensures this collective responsibility by ensuring that ministers adhere to Cabinet decisions and present a united front before the Parliament and the public.

The Prime Minister's Office (PMO) serves as the nerve center of government operations. It plays a crucial role in policy coordination, monitoring of key national programs, crisis management, and administrative communication. The PMO is staffed by senior bureaucrats and advisors, including the Principal Secretary to the Prime Minister, and functions as a central hub for the execution of policy and the Prime Minister's directives.

In conclusion, the Prime Minister is not only the administrative leader but also the political head of the Indian government. With powers that influence legislation, administration, diplomacy, and national policy, the Prime Minister

holds a position of unparalleled significance in India's democratic and constitutional framework.

4.1.4. Council of Ministers

The Council of Ministers is a vital component of the Union Executive in India and is established under Article 74 of the Constitution. It provides for a Council of Ministers, with the Prime Minister as its head, to aid and advise the President, who is the constitutional head of the State. Although the President exercises executive powers nominally, it is the Council of Ministers, headed by the Prime Minister, that holds real authority and is responsible for the day-to-day administration of the country.

A foundational principle of India's parliamentary democracy is the collective responsibility of the Council of Ministers to the Lok Sabha, as enshrined in Article 75(3). This means that if the Lok Sabha passes a vote of no-confidence, the entire Council, including the Prime Minister, is constitutionally bound to resign. This collective accountability ensures that the executive remains answerable to the elected representatives of the people and thereby to the citizens of the country.

The Council of Ministers is organized into a hierarchical structure, classified into three main categories based on their seniority and the nature of their responsibilities:

- **Cabinet Ministers** – These are the senior-most ministers who head key ministries such as Finance, Home Affairs, Defence, External Affairs, etc. They form the core decision-making body of the government and are responsible for framing and implementing major national policies.
- **Ministers of State (Independent Charge)** – These ministers handle specific ministries or departments that are not under the direct supervision of any Cabinet Minister. While they do not participate in Cabinet meetings, they are responsible for their portfolios and enjoy autonomy in decision-making within their spheres.

- **Ministers of State** – These are junior ministers who are assigned to assist Cabinet Ministers in various departments. They work under the guidance and supervision of the Cabinet Ministers and perform delegated functions.

Within this broader Council of Ministers exists a more compact and powerful unit known as the Cabinet. The Cabinet is the real center of executive authority, and it is responsible for formulating national policies, coordinating administration, and making crucial decisions on internal and external affairs. Cabinet meetings are frequent and confidential, where consensus is built, and policy direction is determined.

The functioning of the Council of Ministers in India is inspired by the Westminster model of parliamentary democracy, originating from the United Kingdom. However, over time, India has developed its own indigenous model, reflecting the country's unique political, social, and federal realities. For instance, coalition governments at the Centre have led to a multi-party structure within the executive, requiring consensus-building and negotiations within the Council itself. This has particularly been the case since the 1990s, marking the rise of coalition politics and greater state-level influence in national affairs.

The Union Executive, consisting of both ceremonial functionaries (President) and real executive authorities (Prime Minister and the Council of Ministers), is indispensable for ensuring political continuity, administrative efficiency, and constitutional governance. While the President symbolizes the unity and dignity of the Republic, it is the Prime Minister and the Council of Ministers who give effect to constitutional principles through concrete actions and policies.

Moreover, the Council of Ministers plays a significant role in the legislative process. Ministers introduce bills, answer questions in Parliament, and are accountable for the implementation of laws. They also have a say in framing ordinances, rules, and regulations under delegated legislation. Thus, the executive and legislative functions are closely interlinked through the working of the Council of Ministers.

The principle of collective responsibility strengthens unity within the executive and reinforces Cabinet solidarity. Even if individual ministers may privately disagree with decisions, they are constitutionally obliged to support Cabinet decisions publicly. This ensures that the government functions as a cohesive unit and presents a united front to the Parliament and the nation.

In conclusion, the Council of Ministers is the backbone of the Indian executive system. It ensures that the will of the elected legislature is translated into administrative action. Through its hierarchical structure, collective accountability, and functional diversity, it facilitates effective governance, policy coordination, and constitutional balance between different organs of the State.

Summary Table: President vs. Prime Minister vs. Vice-President

Feature	President	Prime Minister	Vice-President
Role	Ceremonial Head of the State	Real Executive Authority	Ex-officio Chairperson of Rajya Sabha
Constitutional Article	Articles 52–62	Article 75	Articles 63–67
Method of Appointment	Indirect election by Electoral College	Appointed by President (Leader of Lok Sabha majority)	Elected by MPs of both Houses
Executive Authority	Nominal	Actual	None
Tenure	5 years	Not fixed (as long as majority is held)	5 years
Resignation	To Vice-President	To President	To President
Powers	Legislative, Judicial, Emergency (formal)	Policy, Administration, Diplomacy, Crisis leadership	Presiding over Rajya Sabha, Acting as President when needed

4.2 Union Legislature (Parliament of India)

The Union Legislature of India, known as the Parliament, is the supreme law-making body of the country. It operates under Part V, Chapter II of the Indian Constitution and is constituted under Article 79, which states:

"There shall be a Parliament for the Union which shall consist of the President and two Houses, to be known respectively as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha)."

India follows a bicameral legislature at the central level, which ensures representation of both the people and the states in the law-making process. This structure reflects the federal character of the Constitution and also upholds democratic principles.

4.2.1. Lok Sabha (House of the People)

The Lok Sabha is the Lower House of the Parliament but holds significant powers in legislative and financial matters. It represents the citizens of India directly, as its members are elected by the people through universal adult suffrage and first-past-the-post system in general elections.

Composition and Tenure:

- According to Article 81, the Lok Sabha shall consist of not more than 552 members, comprising:
 - ✓ 530 members representing the states,
 - ✓ 20 representing the Union Territories,
 - ✓ And up to 2 members may be nominated by the President from the Anglo-Indian community (Note: This provision was abolished by the 104th Constitutional Amendment Act, 2019).
- The normal tenure of the Lok Sabha is five years (Article 83), but it can be dissolved earlier by the President on the advice of the Council of Ministers.

Powers and Functions:

- **Legislative Powers** – Most laws originate in Lok Sabha; it has the power to make laws on subjects in the Union List and Concurrent List.
- **Financial Powers** – The Lok Sabha has exclusive power to introduce and pass Money Bills (Article 110). The Rajya Sabha can only make recommendations, which the Lok Sabha may accept or reject.
- **Executive Control** – The Council of Ministers is collectively responsible to the Lok Sabha (Article 75), and the House can express lack of confidence by passing a no-confidence motion, thereby compelling the Council to resign.
- **Electoral Functions** – It participates in the election of the President (via Electoral College) and the Vice-President, along with Rajya Sabha and State Assemblies.
- **Amendment of Constitution** – It shares equal power with the Rajya Sabha in amending the Constitution under Article 368.

4.2.2. Rajya Sabha (Council of States)

The Rajya Sabha is the Upper House of the Indian Parliament and serves as the representative of the States and Union Territories. It plays a vital role in protecting federal interests and serves as a permanent body, unlike the Lok Sabha.

Composition and Tenure:

- As per Article 80, the Rajya Sabha can have a maximum of 250 members, comprising:
 - ✓ 238 elected members representing the States and Union Territories,
 - ✓ 12 nominated members by the President having special knowledge or practical experience in fields like literature, science, art, and social service.

- It is a permanent chamber; one-third of its members retire every two years. Thus, it is never dissolved.

Powers and Functions:

- **Legislative Role** – It can introduce and pass ordinary bills (except money bills) and has an equal role in most legislative matters.
- **Power over State List** – Under Article 249, it can authorize the Parliament to legislate on matters in the State List in the national interest with a two-thirds majority.
- **Checks and Balance** – Though not as powerful as the Lok Sabha in financial matters, it serves as a deliberative body that brings regional perspectives and expert opinion into national law-making.
- **Constitutional Amendments** – Rajya Sabha shares equal power with the Lok Sabha in amending the Constitution.
- **Electoral Functions** – Participates in the elections of the President and Vice-President.
- **Removal of Officials** – Along with the Lok Sabha, the Rajya Sabha plays a role in the impeachment of the President, removal of Supreme Court and High Court judges, and other constitutional positions.

Role of the President in the Union Legislature

The President of India, although not a member of either House, is an integral part of the Parliament. His/her functions in the legislative process are essential and constitutionally mandated.

Powers and Functions:

- **Summoning and Dissolution** – Under Article 85, the President summons and prorogues Parliament sessions and can dissolve the Lok Sabha.
- **Assent to Bills** – No bill can become law without the President's assent. The President can:

- ✓ Give assent,

- ✓ Withhold assent,
 - ✓ Or return a non-money bill (once) for reconsideration (Article 111).
- **Ordinance-Making Power** – Under Article 123, when Parliament is not in session, the President can promulgate ordinances that have the same force as laws passed by Parliament.
 - **Address and Messages** – Under Article 87, the President addresses the first session of each Parliament year and the first session after each general election, outlining the government's agenda.
 - **Nominating Members** – The President nominates 12 members to the Rajya Sabha and can also nominate 2 members to the Lok Sabha from the Anglo-Indian community (until 2020).

The Union Legislature of India plays a pivotal role in the democratic governance of the country. The Lok Sabha, being the House of the People, ensures that the will of the electorate is reflected in policy-making, while the Rajya Sabha safeguards regional interests and provides a forum for detailed deliberations. Together with the President, Parliament forms the nucleus of Indian democracy, facilitating law-making, oversight, and representation.

This bicameral structure promotes checks and balances, encourages collaborative federalism, and helps in maintaining the delicate balance of power among the different organs of the government.

4.3 Union Judiciary: The Supreme Court of India

The Union Judiciary, headed by the Supreme Court of India, is the highest judicial authority and the final interpreter of the Constitution. It is entrusted with the protection of the Constitution, enforcement of Fundamental Rights, and upholding of rule of law. The Supreme Court was established under Article 124 of the Indian Constitution and started functioning on 28th January 1950.

4.3.1. Composition and Appointment

- As per Article 124(1), the Supreme Court shall consist of the Chief Justice of India (CJI) and such number of judges as Parliament may by law prescribe.
- The current sanctioned strength is 34 judges, including the CJI (as per the Supreme Court (Number of Judges) Amendment Act, 2019).
- Appointment is made by the President of India after consultation with the CJI and senior judges (as per Article 124(2) and judicial precedents).
- The Collegium System, developed through judicial decisions (especially in the *Second Judges' Case*, 1993 and *Third Judges' Case*, 1998), governs the appointment and transfer of judges in the higher judiciary.

4.3.2. Tenure and Removal

- Judges hold office until the age of 65 years [Article 124(2)].
- A judge of the Supreme Court can be removed only by a presidential order passed after an address by Parliament supported by a special majority (Article 124(4)), on grounds of proved misbehavior or incapacity.
- The procedure is detailed in the Judges (Inquiry) Act, 1968.

4.3.3. Jurisdiction and Powers

The Supreme Court exercises multiple jurisdictions:

1. Original Jurisdiction – Article 131

- Exclusive jurisdiction in disputes between the Centre and one or more States, or between States inter se.
- Not applicable to disputes arising out of pre-Constitution treaties or agreements.

2. Writ Jurisdiction – Article 32

Article 32 of the Indian Constitution forms one of the most powerful and significant provisions in the realm of fundamental rights protection and judicial activism. Often hailed as the “heart and soul of the Constitution” by Dr. B.R. Ambedkar, this Article empowers any individual to directly approach the Supreme Court of India for the enforcement of Fundamental Rights guaranteed under Part III of the Constitution. Unlike many other jurisdictions where rights may be merely declaratory, Article 32 makes fundamental rights justiciable, i.e., enforceable by law. The presence of this remedy is a unique feature of the Indian Constitution and places an obligation on the Supreme Court to intervene whenever there is a violation or threat of violation of fundamental rights. This provision reflects the deep constitutional commitment to individual liberty, equality, and justice, thereby functioning as an effective mechanism for citizens to hold the State accountable. It provides not only a remedy but also acts as a deterrent against the arbitrary exercise of power by public authorities.

- The Court can issue writs:
 - ✓ Habeas Corpus – To produce a detained person before the court.
 - ✓ Mandamus – To compel a public authority to perform a duty.
 - ✓ Certiorari – To quash an unlawful order of a lower court or tribunal.
 - ✓ Prohibition – To prohibit an inferior court from exceeding jurisdiction.
 - ✓ Quo Warranto – To question the legality of a person’s claim to a public office.

1. Habeas Corpus

The writ of Habeas Corpus, literally meaning “*to have the body*”, is one of the most potent instruments in the hands of the judiciary to safeguard personal liberty against arbitrary detention. It is issued by the Supreme Court or High Courts to direct a person or authority who has detained another person to bring the detainee before the court, along with the cause of detention. If the court finds

the detention to be illegal or without just cause, it can order the immediate release of the individual. This writ serves as a bulwark against state excesses, ensuring that no person is deprived of liberty without due process of law.

Notably, any person — including a friend, family member, or even a stranger — can file a writ of Habeas Corpus on behalf of the detained individual, especially when the detainee is unable to access the court. In the landmark case of *Rudul Shah v. State of Bihar* (1983), the Supreme Court ordered compensation for a person who was illegally detained even after acquittal, thereby reinforcing the idea that such detention is not only unlawful but also actionable. Habeas Corpus has also been used in cases of preventive detention and custodial violence, thus becoming a powerful tool to uphold human rights and constitutional safeguards.

2. Mandamus

The writ of Mandamus, which in Latin means “*we command*”, is a judicial command directing a public authority, including government officials or institutions, to perform a public or statutory duty which it has failed or refused to perform. It ensures accountability in governance by compelling public authorities to act within their jurisdiction and discharge their lawful obligations.

This writ can be issued only against public authorities and not against private individuals or bodies. Moreover, Mandamus cannot be claimed as a matter of right unless there exists a legal duty that is not being performed. In *Praga Tools Corporation v. C.A. Imanuel* (1969), the Supreme Court held that Mandamus could not lie against a private corporation unless it is performing a public function. However, in *Bihar Eastern Cold Storage Ltd. v. Union of India* (1999), the Court reaffirmed that Mandamus is applicable in cases of non-performance of statutory duties by public officials. Through this writ, the judiciary ensures that rule of law prevails and public authorities remain accountable to the citizens they serve.

3. Certiorari

The writ of Certiorari, meaning “*to be informed*”, is issued by the Supreme Court or High Courts to quash the order or decision of a lower court, tribunal, or

quasi-judicial body when such body acts without or beyond its jurisdiction, or in violation of the principles of natural justice. It is both a corrective and supervisory remedy used to prevent judicial or administrative overreach.

The key condition for issuing Certiorari is that the body in question must have exercised judicial or quasi-judicial functions, and the challenged decision must have involved an error of law apparent on the face of the record or a jurisdictional defect. In *Hari Vishnu Kamath v. Syed Ahmad Ishaque* (1955), the Supreme Court elaborated on the scope of Certiorari, asserting that it can be used not just for jurisdictional errors but also for violations of procedural fairness. This writ is typically invoked after a decision has already been made, unlike Prohibition, which is preventive in nature. Certiorari reinforces judicial discipline and ensures that inferior courts or tribunals do not exceed their mandate.

4. Prohibition

The writ of Prohibition, as the name suggests, is a preventive writ issued by the Supreme Court or High Courts to restrain a lower court, tribunal, or quasi-judicial body from continuing with proceedings that are outside its jurisdiction or that contravene legal norms. This writ acts as a judicial check, ensuring that subordinate judicial bodies do not encroach upon jurisdictional boundaries or violate procedural justice.

Prohibition differs from Certiorari in terms of timing: while Certiorari is issued after the decision is made, Prohibition is issued before or during the proceedings, preventing an illegal act from being completed. In *East India Commercial Co. Ltd. v. Collector of Customs* (1962), the Supreme Court emphasized the importance of Prohibition in ensuring that judicial or quasi-judicial authorities stay within the limits prescribed by law. This writ upholds procedural propriety, fairness, and the division of judicial powers, thereby maintaining the sanctity of judicial functioning within the constitutional framework.

5. Quo Warranto

The writ of Quo Warranto, meaning “by what authority”, is issued to prevent a person from illegally occupying a public office to which they are not entitled under law. This writ is significant in ensuring transparency and legality in public administration, as it seeks to determine whether a person holding a public office has the legal authority to do so.

3. Appellate Jurisdiction – Articles 132 to 134 and Article 136

The appellate jurisdiction of the Supreme Court of India is a critical aspect of its constitutional role, as it acts as the highest court of appeal in the country. The Constitution empowers the Supreme Court to hear appeals from judgments, decrees, or final orders of the High Courts in civil, criminal, and constitutional matters. This jurisdiction is vested through Articles 132, 133, and 134, forming a structured appellate pathway ensuring justice through the review and correction of decisions made by lower courts. These provisions uphold the principle of fairness and ensure that questions involving substantial interpretation of the Constitution or matters of national legal importance are addressed by the apex judicial authority.

Under Article 132, the Supreme Court has appellate jurisdiction in constitutional matters. It states that an appeal shall lie to the Supreme Court from any judgment, decree, or final order of a High Court—whether in civil, criminal, or other proceedings—if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. This ensures that questions of constitutional interpretation, federalism, fundamental rights, or separation of powers, among others, are examined by the apex judicial forum, thus securing constitutional supremacy. The certificate of the High Court, under Article 134-A, is mandatory for invoking appellate jurisdiction under Article 132.

Article 133 deals with the Supreme Court's appellate jurisdiction in civil matters. Originally, this Article allowed appeals from High Courts in any civil proceeding where the value of the subject matter exceeded a specified amount. However, following the 30th Constitutional Amendment Act, 1972, the monetary requirement was removed, and now an appeal lies if the High Court certifies that the case involves a substantial question of law of general importance and that, in its opinion, the question needs to be decided by the Supreme Court. Thus, not all civil cases can be appealed to the Supreme Court; only those of wide legal significance or national interest qualify, preserving the Court's role as a constitutional and policy court rather than a regular forum of appeal.

In criminal cases, Article 134 provides limited appellate jurisdiction. It allows appeals to the Supreme Court in three scenarios: first, where the High Court, on appeal, has reversed an acquittal and sentenced the accused to death; second, where the High Court has withdrawn a case from a lower court and sentenced the accused to death; and third, where the High Court certifies under Article 134-A that the case is fit for appeal to the Supreme Court. The inclusion of a certification requirement serves to restrict the Supreme Court's docket to only the most serious and legally significant criminal matters, particularly those involving capital punishment or gross miscarriage of justice. This reflects the Court's role as a final arbiter of justice and protector of constitutional liberties.

In addition to the specific provisions under Articles 132 to 134, Article 136 of the Constitution confers on the Supreme Court a special and discretionary power to grant Special Leave to Appeal (SLA) from any judgment, decree, or order in any matter passed by any court or tribunal in India (except military courts or court-martials). This is one of the most far-reaching and extraordinary powers of the Supreme Court, providing it with the capacity to intervene in matters where there has been a gross miscarriage of justice, regardless of whether such matters meet the strict criteria of Articles 132 to 134. It is not a matter of right for the litigant but is left entirely to the discretion of the Supreme Court, which may decline to grant leave even if a substantial question of law is involved. Over the years, Article 136 has played a vital role in correcting arbitrary, capricious, or unjust decisions rendered by lower courts and tribunals, particularly in matters affecting public interest, civil liberties, or constitutional interpretation.

This comprehensive appellate framework ensures that the Supreme Court functions not merely as a court of correction but also as a guardian of the Constitution and a protector of justice. The combined effect of Articles 132, 133, 134, and 136 is to give the Supreme Court a flexible yet responsible role in maintaining the uniformity and coherence of Indian jurisprudence, preventing fragmentation of legal doctrines and reinforcing the rule of law.

4. Advisory Jurisdiction – Article 143

The Advisory Jurisdiction of the Supreme Court is enshrined under Article 143 of the Indian Constitution, which empowers the President of India to seek the

opinion of the apex court on questions of law or fact that are of public importance. This provision reflects the consultative role of the judiciary in the constitutional scheme of governance. It is a unique feature of the Indian Constitution, intended to promote harmony among the organs of the State by enabling the executive to obtain legal clarity on complex or sensitive matters before making significant decisions.

Article 143(1) provides that if at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such public importance that it is necessary to obtain the opinion of the Supreme Court, the President may refer the matter to the Court for consideration. The Supreme Court, after due deliberation, may report its opinion to the President. This enables the government to proactively address legal uncertainties or contentious issues with authoritative guidance, thereby preventing legal confusion or political controversy.

On the other hand, Article 143(2) empowers the President to seek the opinion of the Supreme Court regarding disputes arising out of pre-Constitution treaties, agreements, covenants, or engagements entered into by the Government of India with princely states. However, such references under clause (2) are rare and have limited contemporary relevance.

One of the key aspects of Article 143 is that the opinion rendered by the Supreme Court is not binding on the President or the government. It carries only persuasive value and does not have the same enforceability as a judgment in an ordinary adjudicatory case. Nonetheless, given the stature and authority of the Supreme Court, its advisory opinions are accorded great respect and usually followed by the executive.

Over the years, the Supreme Court has exercised its advisory jurisdiction in several landmark matters. A prominent example is the *Berubari Union Case* (1960), in which the President referred to the Court the question of whether the Government of India could transfer the Berubari Union (a territory in West Bengal) to Pakistan under a bilateral agreement. The Supreme Court opined that such a transfer would require a constitutional amendment under Article 368, as it would involve altering the territory of India. This opinion guided the Parliament

in enacting the necessary constitutional amendment to validate the territorial exchange.

Another significant use of advisory jurisdiction was in the Ayodhya Reference Case (1994). After the demolition of the Babri Masjid in 1992, the President referred a question to the Supreme Court under Article 143(1), asking whether a Hindu temple had existed at the disputed site before the construction of the mosque. The Court declined to answer the question, stating that it was not conducive to promoting secularism or resolving the dispute, and emphasized that such factual controversies should be resolved by appropriate judicial proceedings, not through advisory opinions.

The advisory jurisdiction thus serves as a non-binding yet authoritative mechanism through which the executive can engage with the judiciary on crucial national issues. It helps in obtaining legal certainty and promoting constitutionalism, especially in cases involving sensitive matters such as international agreements, electoral processes, religious disputes, or questions affecting federal relations. However, the judiciary has also exercised caution in ensuring that this advisory power is not misused for political or rhetorical purposes.

In conclusion, Article 143 stands as a testament to the collaborative relationship envisioned between the executive and judiciary in India's constitutional democracy. It provides a platform for legal consultation without litigation and reinforces the Supreme Court's role as a constitutional advisor in matters of national concern.

5. Review Jurisdiction – Article 137

- The Court has power to review its own judgments or orders.
- Used in cases involving gross miscarriage of justice or new evidence.

Judicial Review

Judicial Review is one of the most fundamental and powerful features of the Indian Constitution. It refers to the power of the judiciary, particularly the

Supreme Court and High Courts, to examine the constitutionality of legislative enactments and executive orders of both the Union and State governments. If any such law or action is found to be in conflict with the provisions of the Constitution, particularly the Fundamental Rights, the courts have the authority to declare them null and void. This doctrine flows directly from the supremacy of the Constitution and is rooted in the idea that the Constitution is the grundnorm — the supreme law of the land. Judicial Review in India is explicitly provided under several Articles of the Constitution including Article 13, Article 32, Article 131, Article 136, and Article 226, all of which empower the judiciary to act as the guardian of constitutional values.

Article 13 is foundational to Judicial Review. It declares that any law inconsistent with or in derogation of the Fundamental Rights shall be void to the extent of the contravention. This provision applies not only to existing laws but also to future legislations. Thus, Article 13 read with Articles 32 and 226 — which empower citizens to directly approach the Supreme Court and High Courts respectively for the enforcement of Fundamental Rights — ensures that the judiciary remains the ultimate protector of individual liberties against the arbitrary use of power. Article 131 grants the Supreme Court original jurisdiction in disputes between the Centre and the States, and in such cases, the Court can review the constitutionality of actions taken by either party. Article 136 empowers the Supreme Court to grant special leave to appeal from any judgment, decree, or order passed by any court or tribunal in India, thereby allowing it to examine the legality and constitutionality of such decisions. Together, these provisions constitute a comprehensive framework for judicial oversight over all organs of the State.

The doctrine of Judicial Review was cemented as a cornerstone of Indian constitutional law in the landmark judgment of *Kesavananda Bharati v. State of Kerala* (1973). In this case, a thirteen-judge constitutional bench of the Supreme Court delivered a historic verdict, holding that while Parliament has wide powers to amend the Constitution under Article 368, such powers are not unlimited. The Court propounded the Basic Structure Doctrine, ruling that Parliament cannot amend or destroy the "basic structure" or essential features of the Constitution, such as the rule of law, the separation of powers, the independence of the

judiciary, and the protection of Fundamental Rights. This doctrine acts as a safeguard against authoritarianism and constitutional subversion, ensuring that no authority can undermine the core philosophy of the Constitution under the guise of amendment or reform.

Judicial Review in India, though inspired by the American model, is uniquely tailored to suit the needs of a parliamentary democracy with a written Constitution. Unlike the United Kingdom, where the principle of Parliamentary Sovereignty prevails, India follows constitutional supremacy, making the judiciary the final interpreter of the Constitution. Over the years, the Supreme Court has not hesitated to strike down constitutional amendments, legislative enactments, and executive policies that violate constitutional provisions. Some notable examples include *Minerva Mills Ltd. v. Union of India* (1980), where the Court struck down amendments that gave unlimited power to Parliament, and *Indira Gandhi v. Raj Narain* (1975), where it invalidated provisions that sought to immunize certain actions from judicial scrutiny.

Thus, Judicial Review in India serves as a powerful mechanism of checks and balances, reinforcing the principle of constitutionalism — that the government must operate within the framework and limitations set by the Constitution. It ensures that the rights of individuals are not trampled by the whims of majoritarian politics or executive overreach. Moreover, it enables the judiciary to act as the sentinel on the qui vive — ever vigilant in preserving the sanctity of constitutional governance.

4.3.4. Public Interest Litigation (PIL)

Public Interest Litigation (PIL) is one of the most significant developments in the evolution of constitutional jurisprudence in India. Introduced in the late 1970s and early 1980s, PIL emerged as a judicial innovation to democratize access to justice and expand the reach of fundamental rights to the most marginalized and voiceless sections of society. Prior to this era, the traditional concept of *locus standi* (the right to bring a case) required that only a person whose legal right had been directly infringed could approach the court for redress. This restrictive approach, however, excluded large segments of the population—such as the poor, uneducated, bonded laborers, slum dwellers, women, and children—who

either lacked awareness or resources to approach the judiciary for the enforcement of their rights.

The turning point came with the landmark decision in *S.P. Gupta v. Union of India* (1981), in which Justice P.N. Bhagwati, a pioneering figure in the expansion of PIL, liberalized the rule of locus standi. He held that any public-spirited citizen could approach the court on behalf of those who were unable to do so themselves, provided the matter involved a question of public interest. This marked a radical shift in judicial philosophy from adversarial litigation to justice-oriented litigation, recognizing that in a welfare state, the judiciary must proactively respond to violations of rights affecting larger public interests.

Public Interest Litigation became an instrument of social transformation, with courts entertaining letters and postcards as writ petitions in appropriate cases. Over the decades, PILs have been effectively used to address a wide range of socio-economic issues including environmental degradation, bonded and child labor, custodial violence, corruption, food security, right to education, women's safety, prison reforms, and protection of the disabled. In many of these cases, the courts acted *suo motu* (on their own motion) or responded to newspaper reports, further emphasizing the proactive and responsive nature of Indian judicial activism.

Some landmark judgments in the field of PIL reflect the judiciary's commitment to uphold constitutional values and human dignity. In *Vishaka v. State of Rajasthan* (1997), the Supreme Court laid down the Vishaka Guidelines for the prevention of sexual harassment of women at the workplace, in the absence of any specific legislation. These guidelines were treated as law under Article 141 of the Constitution until the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Another celebrated line of PIL cases is the *M.C. Mehta* series, where environmental lawyer M.C. Mehta filed several petitions leading to groundbreaking environmental jurisprudence. For instance, in *M.C. Mehta v. Union of India*, the Court ordered the closure of tanneries and polluting industries near the Ganga River, mandated the use of CNG in Delhi public transport, and laid the

foundation of the “polluter pays” principle and precautionary principle in Indian environmental law.

Another iconic PIL is *People’s Union for Democratic Rights v. Union of India* (1982), where the Supreme Court addressed the exploitation of laborers during the construction of facilities for the 1982 Asian Games in Delhi. The Court held that non-payment of minimum wages violated the fundamental rights under Article 23 (prohibition of forced labor) and Article 21 (right to life). This case demonstrated how PILs could be utilized to secure social and economic justice in line with the Directive Principles of State Policy.

Through PIL, the Indian judiciary has expanded the ambit of Article 21, recognizing new rights such as the right to a clean environment, right to education, right to livelihood, and right to shelter as part of the fundamental right to life. It has also emphasized judicial accountability, mandating regular monitoring and implementation of its directions through continuing mandamus. However, the judiciary has also cautioned against the misuse of PILs for personal, political, or publicity-related motives. In recent years, the Supreme Court has reiterated that PIL should not become a tool for “publicity interest litigation” or “politics interest litigation.”

In conclusion, PIL has played a transformative role in Indian constitutionalism by bridging the gap between rights and remedies. It has empowered ordinary citizens and civil society organizations to participate in the judicial process for the betterment of society. While challenges such as judicial overreach and misuse of PILs remain, the contribution of Public Interest Litigation to the realization of social justice and good governance in India is both historic and unparalleled.

Doctrine of Continuing Mandamus

- In PILs and constitutional cases, the Supreme Court often uses continuing mandamus to ensure ongoing compliance and monitoring by executive authorities.

Evolution of Article 21 and Expansive Interpretation

Article 21 of the Indian Constitution, which reads, “*No person shall be deprived of his life or personal liberty except according to procedure established by law*”, has undergone a remarkable transformation in its interpretation over the decades. Originally viewed in a narrow and procedural sense, this article was confined merely to protection from unlawful detention or arbitrary deprivation of life and personal liberty by the State. However, with the changing times and progressive judicial activism, especially post-Emergency era, the Supreme Court of India has evolved Article 21 into one of the most vibrant and wide-ranging constitutional provisions. It now serves as the fountainhead of a variety of human rights and liberties, going well beyond its original textual limitations.

In its initial interpretation, particularly in the landmark case of *A.K. Gopalan v. State of Madras* (1950), the Court took a restrictive view, holding that “procedure established by law” did not require the law to be just, fair, or reasonable. This interpretation, however, was overruled in the seminal case of *Maneka Gandhi v. Union of India* (1978), where the Court held that the procedure depriving a person of life or liberty must be “just, fair and reasonable”, and not arbitrary, fanciful, or oppressive. This judgment became a constitutional watershed and opened the floodgates for expansive interpretations of Article 21.

Over the years, the judiciary has incorporated a wide range of unenumerated rights under Article 21, reading them as essential to the enjoyment of life and liberty. Among the most significant is the Right to live with human dignity, which the Supreme Court has emphasized repeatedly in cases such as *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981). In this case, the Court held that life under Article 21 is not merely the act of breathing or physical existence but includes the right to live with dignity and everything that goes along with it—such as adequate nutrition, clothing, shelter, and the right to carry out functions and activities essential to a person’s development as a human being.

One of the most recent and transformative judgments is *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), in which a nine-judge bench of the Supreme

Court unanimously held that the Right to Privacy is a fundamental right under Article 21. This judgment overturned earlier verdicts and underscored that privacy is intrinsic to life and liberty, thus laying the groundwork for further protection of personal data, bodily autonomy, and dignity in the digital age.

Similarly, in *Unni Krishnan v. State of Andhra Pradesh* (1993), the Supreme Court recognized the Right to Education as a part of Article 21. This led to the enactment of the Right of Children to Free and Compulsory Education Act, 2009, giving constitutional backing to educational access for children aged 6 to 14. This decision reflected the judiciary's proactive approach in recognizing socio-economic rights under the umbrella of Article 21.

Environmental jurisprudence in India has also flourished under Article 21. In cases like *M.C. Mehta v. Union of India*, the Court held that the Right to a clean and healthy environment is implicit in the right to life. It emphasized the importance of pollution control, sustainable development, and ecological balance as vital components of a dignified life. This has empowered citizens and environmental activists to seek judicial remedies through Public Interest Litigations.

Furthermore, the Right to Legal Aid, affirmed in *Hussainara Khatoon v. State of Bihar* (1979), has been recognized as fundamental to ensuring fair trials and access to justice, particularly for underprivileged and marginalized sections of society. The Court directed the State to provide free legal services at all stages of legal proceedings, thus making justice not merely a privilege of the affluent but a right of every individual.

In *Olga Tellis v. Bombay Municipal Corporation* (1985), the Court held that the Right to Shelter is also included in Article 21, asserting that no person can live without a roof over their head and that eviction without rehabilitation violates the right to life. Similarly, in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (1996), the Right to Health was declared an essential part of the right to life, mandating the State to provide timely and adequate medical treatment to all individuals.

In conclusion, Article 21 has evolved from a mere guarantee against illegal deprivation of life and liberty into a powerful tool for ensuring a wide array of human rights. This transformation, led by judicial interpretation, has not only deepened the scope of civil liberties in India but has also brought socio-economic rights within the constitutional fold. The expansion of Article 21 reflects the dynamic and living nature of the Indian Constitution, responsive to the changing needs and values of society.

4.3.5. Supreme Court as the Court of Record – Article 129

The Supreme Court of India, under Article 129 of the Constitution, is declared to be a “Court of Record”, which is a status of great constitutional and legal significance. The term “Court of Record” refers to a court whose acts, proceedings, and judgments are permanently recorded and preserved as authoritative evidence of the law. These records hold not only evidentiary value but also binding force, and they are recognized as legal precedents that lower courts must follow. The designation of the Supreme Court as a Court of Record underlines its institutional authority and central role in the development and preservation of the law in India.

Being a Court of Record means that the judgments, rulings, and orders passed by the Supreme Court become part of the legal record and can be cited in legal arguments and decisions. These records have evidentiary value and cannot be questioned when produced before any court of law. Moreover, these records are presumed to be accurate and authentic, ensuring consistency and continuity in the interpretation of the Constitution and statutory laws. The precedents set by the Supreme Court as a Court of Record play a critical role in the doctrine of stare decisis (the principle of adhering to precedent), which forms the bedrock of India’s common law legal system.

In addition to this, Article 129 also confers upon the Supreme Court the inherent power to punish for contempt of court. This means the Court can take action against any individual or authority that disrespects its authority, disobeys its orders, or acts in a way that undermines the dignity of the judiciary. The power to punish for civil or criminal contempt is essential for maintaining the majesty, independence, and effective functioning of the judiciary. It ensures that judicial

orders are followed and that the authority of the judiciary is upheld in the eyes of the public. Contempt jurisdiction acts as a safeguard against interference with the administration of justice.

There are two types of contempt recognized by Indian law: civil contempt, which involves willful disobedience of court orders or directions, and criminal contempt, which includes acts that scandalize the court, prejudice judicial proceedings, or obstruct the administration of justice. The Supreme Court, by virtue of being a Court of Record, does not require any statutory backing to exercise this power—it is an inherent and constitutionally granted authority. The Contempt of Courts Act, 1971 further elaborates and regulates this power but does not limit the constitutional power conferred by Article 129.

The significance of this power has been upheld in various cases by the Supreme Court. For example, in *Re: Vinay Chandra Mishra* (1995), the Court exercised its contempt powers and suspended the license of a senior advocate who had misbehaved in court, asserting that maintaining the decorum of the judiciary is paramount. Similarly, in *Arundhati Roy's case* (2002), the Court invoked its contempt powers to ensure that freedom of speech is exercised responsibly and does not infringe upon the dignity of the judiciary.

Thus, Article 129 empowers the Supreme Court not only to maintain an official and permanent legal record of its proceedings but also to protect the integrity of the judicial process. These powers are essential for ensuring that the judiciary functions independently and commands the respect it requires to effectively uphold the rule of law and constitutional governance in India. The designation of the Supreme Court as a Court of Record reflects its supreme authority and contributes significantly to the stability and continuity of the Indian legal system.

4.3.6. Independence of the Judiciary

The independence of the judiciary is a fundamental component of the Indian constitutional framework. It ensures that judges are free to decide cases impartially, without any external pressures or influence—particularly from the executive or legislative branches of the government. This concept is vital for maintaining the rule of law, upholding the fundamental rights of citizens, and

preserving the democratic fabric of the nation. The framers of the Indian Constitution recognized the importance of an autonomous judiciary and incorporated various structural and functional safeguards to protect judicial independence. These safeguards are both institutional and constitutional in nature and reflect a commitment to the doctrine of separation of powers.

One of the primary mechanisms to ensure judicial independence is the security of tenure for judges. According to Articles 124(4) and 217 of the Constitution, the judges of the Supreme Court and the High Courts can only be removed from office through a process of impeachment by Parliament on the grounds of proven misbehavior or incapacity. This removal process is deliberately made rigorous and complex to prevent arbitrary dismissal or political interference. It requires a special majority in both Houses of Parliament, ensuring that judges are not removed for delivering judgments unpopular with the government or political parties.

Another important safeguard is the fixed service conditions of judges. Their salaries, allowances, privileges, and rights are determined by law and are not subject to arbitrary changes by the executive. Furthermore, as per the Second Schedule of the Constitution, judges' emoluments are charged on the Consolidated Fund of India (for Supreme Court judges) and the respective state's Consolidated Fund (for High Court judges), making their salaries non-votable in Parliament or state legislatures. This financial independence is critical in shielding the judiciary from political or administrative pressures and in ensuring functional autonomy.

A unique feature reinforcing judicial impartiality is the prohibition on post-retirement practice for Supreme Court judges. Under Article 124(7), no person who has held office as a judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India. This rule exists to prevent any perception or possibility of bias or conflict of interest during a judge's tenure, thereby promoting integrity and independence. While High Court judges are allowed to practice in other High Courts or the Supreme Court after retirement, restrictions still apply to prevent misuse of former positions.

Additionally, judges enjoy immunity in the performance of their judicial functions, as enshrined in Article 121 and various provisions of the Judges (Protection) Act, 1985. No discussion can take place in Parliament regarding the conduct of any judge in the discharge of judicial duties, except in the context of removal proceedings. This constitutional provision ensures that judges are not subjected to threats, vilification, or undue pressure from elected representatives while discharging their responsibilities.

Article 50, a Directive Principle of State Policy, explicitly mandates the separation of the judiciary from the executive in the public services of the State. Although not directly enforceable, this provision acts as a guiding principle in structuring institutions to reduce executive influence over the judiciary. Over time, this principle has been operationalized, particularly in the lower judiciary, where efforts have been made to ensure that judicial magistrates are not under the control of executive authorities in administrative or disciplinary matters.

Furthermore, the process of judicial appointments, especially to the higher judiciary, has undergone significant evolution through a series of landmark judgments, known collectively as the Judges' Cases. The Second Judges Case (1993) led to the establishment of the Collegium System, wherein the judiciary has primacy in the appointment and transfer of judges. Though this system has been debated for lack of transparency, it has played a key role in insulating the judiciary from executive dominance.

In conclusion, the independence of the judiciary in India is not merely a constitutional promise but an essential requirement for democratic governance and the protection of individual rights. Through security of tenure, financial autonomy, prohibition on post-retirement practice, immunity from political pressures, and separation from the executive, the Indian Constitution and the judicial system work in tandem to uphold the sanctity and impartiality of the judiciary. As the ultimate guardian of the Constitution, the judiciary's independence ensures that justice is not only done but is also seen to be done in the world's largest democracy.

4.3.7. Judicial Activism and Accountability

The Indian judiciary, particularly the Supreme Court, has played an increasingly active role in interpreting and expanding constitutional provisions in a manner that has had far-reaching implications for governance, social justice, and civil liberties. This proactive role is often described as judicial activism, wherein the judiciary does not merely interpret the law but also attempts to fill legislative or executive gaps by issuing directions or laying down guidelines in the absence of legislation or governmental action.

Judicial activism in India gained momentum in the late 1970s and early 1980s, particularly during the post-Emergency era. The evolution of Public Interest Litigation (PIL) significantly contributed to this shift. In cases where the marginalized or voiceless segments of society could not approach the court, the judiciary took upon itself the role of a guardian of fundamental rights and a promoter of social justice. Landmark cases such as *Vishaka v. State of Rajasthan* (1997), where guidelines for the prevention of sexual harassment at the workplace were laid down, and *M.C. Mehta v. Union of India*, which ushered in a wave of environmental jurisprudence, are clear indicators of judicial activism in action. Similarly, the courts have intervened in matters involving child labor, custodial deaths, bonded labor, and education reforms, reaffirming their commitment to the constitutional goal of a just and equitable society.

However, this growing assertiveness of the judiciary has not been free from criticism. The concept of judicial accountability has gained prominence in response to the concerns raised over judicial overreach—a term used to describe instances where courts are perceived to have encroached upon the domains of the legislature or the executive. Critics argue that while the judiciary must ensure constitutional compliance, it must also respect the doctrine of separation of powers enshrined in the Constitution. For instance, in matters like policy formulation, budgetary allocations, or complex socio-economic schemes, the judiciary may lack the institutional capacity or democratic mandate to make decisions that fall within the legislative or executive domain.

A major area of concern has been the lack of transparency in judicial appointments, particularly in the higher judiciary. The existing Collegium

system, evolved through judicial pronouncements in the Second Judges' Case (1993) and reaffirmed in the Third Judges' Case (1998), vests the power of appointment and transfer of judges in the judiciary itself, with minimal executive interference. While this mechanism was developed to safeguard judicial independence, it has also attracted criticism for being opaque, unaccountable, and lacking in objective criteria.

In response to these concerns, Parliament enacted the National Judicial Appointments Commission (NJAC) Act, 2014 along with the 99th Constitutional Amendment Act. The NJAC proposed a six-member commission, including the Chief Justice of India, two senior-most judges of the Supreme Court, the Union Law Minister, and two eminent persons, to recommend appointments to the higher judiciary. The objective was to infuse transparency, accountability, and a broader consultative mechanism in judicial appointments.

However, in a landmark decision known as the Fourth Judges' Case (2015)—*Supreme Court Advocates-on-Record Association v. Union of India*, the Supreme Court struck down the NJAC Act and the 99th Constitutional Amendment as unconstitutional, holding that it violated the basic structure of the Constitution by undermining the independence of the judiciary. The Court reaffirmed the primacy of the judiciary in judicial appointments and restored the Collegium system, albeit with a promise to make it more transparent and accountable through internal reforms.

This judgment reignited the debate between judicial independence and judicial accountability. While it emphasized the need to protect the judiciary from executive or political interference, it also raised fundamental questions about the self-regulatory mechanisms within the judiciary itself. The demand for greater transparency in the functioning of the Collegium, publication of reasons for appointments and transfers, and institutional reforms have since become part of the ongoing discourse on judicial accountability.

In conclusion, judicial activism in India has been instrumental in expanding the horizons of rights-based jurisprudence and strengthening constitutional governance. At the same time, judicial accountability remains essential to ensure that the courts do not transgress their limits or operate without adequate checks

and balances. A balanced approach that protects the autonomy of the judiciary while ensuring transparency, efficiency, and responsibility is crucial for maintaining public trust in the justice delivery system of India.

The Supreme Court of India, as the apex judicial body, has not only acted as the guardian of the Constitution but has also evolved into a dynamic institution for social transformation. Through its judicial creativity, activism, and commitment to justice, it has broadened the scope of rights, maintained federal equilibrium, and ensured constitutional supremacy. Its independence and integrity form the cornerstone of Indian democracy and public confidence in rule of law.

4.4. Exercise

4.4.1. Objective Type Questions (MCQs)

1. Which part of the Indian Constitution deals with the Union and its territory?

- A) Part II
- B) Part I
- C) Part III
- D) Part IV

2. The Indian Parliament consists of which of the following?

- A) Lok Sabha and Rajya Sabha
- B) President, Lok Sabha, and Rajya Sabha
- C) President and Lok Sabha
- D) Lok Sabha only

3. Which Article of the Indian Constitution empowers Parliament to reorganize the boundaries of states?

- A) Article 1
- B) Article 2
- C) Article 3
- D) Article 4

4. What is the primary legislative function of the Union Parliament?

- A) Implementing laws
- B) Making laws on subjects in the Union and Concurrent Lists
- C) Conducting elections
- D) Amending the Constitution

5. Which list in the Seventh Schedule of the Constitution specifies subjects on which only the Union Government can legislate?

- A) State List
- B) Concurrent List
- C) Union List
- D) Residuary List

6. During a national emergency, who gets the power to legislate on State subjects?

- A) State Legislatures
- B) President
- C) Union Parliament
- D) Supreme Court

7. Which Article of the Constitution deals with the amendment process?

- A) Article 352
- B) Article 368
- C) Article 370
- D) Article 356

8. Who has the authority to appoint Governors of states in India?

- A) Chief Minister
- B) President
- C) Prime Minister
- D) Speaker of Lok Sabha

9. What is the role of the judiciary in the Indian federal system?

- A) Making laws
- B) Implementing policies
- C) Resolving disputes between the Centre and States
- D) Conducting elections

10. Which of the following best describes the nature of Indian federalism?

- A) Complete federalism with equal power
- B) Unitary system
- C) Federal system with a strong central government
- D) Confederation of states

4.4.2. Descriptive Type Questions (Short Answer)

1. Explain the composition of the Indian Parliament.
2. What is the significance of the Union List in the Indian Constitution?
3. Briefly describe the process of creating a new state in India.
4. What are the main functions of the President of India in the context of the Union government?
5. How does the Indian Constitution ensure the division of powers between the Centre and the States?
6. What is the role of the Rajya Sabha in the legislative process?
7. Explain the circumstances under which the Union Parliament can make laws on subjects in the State List.

BBA SEMESTER-3
INDIAN CONSTITUTION
BLOCK: 2

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5.1 Introduction

The concept of federalism refers to a system of governance in which powers and responsibilities are constitutionally divided between a central authority and various constituent units (usually states or provinces). This system ensures a balance between national unity and regional autonomy, enabling multiple levels

of government to function within their constitutionally assigned domains. Federalism seeks to prevent the concentration of power, promote democratic decentralization, and cater to the diverse needs of people living in different regions.

The Constitution of India, though not explicitly labeling India as a "federation," adopts several federal features. Article 1 of the Constitution declares that "India, that is Bharat, shall be a Union of States." The deliberate choice of the word "Union" instead of "Federation" reflects the intention of the Constitution's framers to establish a polity that, while federal in structure, retains a strong unitary bias. Dr. B.R. Ambedkar, Chairman of the Drafting Committee, clarified during the Constituent Assembly Debates that the Indian federation is not the result of an agreement among states, and the states have no right to secede from the Union—thereby justifying the use of the term "Union."

Unlike classical federations such as the United States, which are formed by a voluntary compact among sovereign states, the Indian federation is the outcome of a single Constitution that governs both the Centre and the States. The Centre-State relationship in India is not static; it has evolved through constitutional amendments, judicial interpretations, political developments, and administrative reforms. Indian federalism reflects a unique blend of rigid and flexible structures, where the dominance of the Centre is evident in matters of legislation, finance, and emergency administration, yet States have constitutionally guaranteed spheres of authority.

Several constitutional mechanisms ensure the division of powers and responsibilities between the Union and the States. These include the three-fold distribution of legislative subjects into the Union, State, and Concurrent Lists; the financial arrangements under Part XII of the Constitution; and the institutional mechanisms such as the Inter-State Council and Finance Commission. At the same time, emergency provisions (Articles 352–360) allow for temporary centralization of power in times of national crisis, further demonstrating the elasticity of Indian federalism.

Despite its centralizing tendencies, Indian federalism has also embraced the ideals of co-operative and competitive federalism, particularly after economic liberalization in the 1990s and the advent of Goods and Services Tax (GST) reforms. States have increasingly demanded greater fiscal and administrative

autonomy, and the Union has responded by promoting collaboration and consultation through bodies like the GST Council and NITI Aayog.

Thus, the federal structure of India is not a rigid or doctrinaire replication of any single model. Rather, it is an adaptive and dynamic framework designed to accommodate India's vast socio-cultural diversity, complex polity, and evolving democratic aspirations. This chapter aims to provide a detailed understanding of the nature of Indian federalism, the constitutional division of powers, financial relations between the Union and the States, and the impact of emergency provisions on the federal balance.

5.2 The Nature of the Indian Federation

5.2.1 Introduction

The Constitution of India does not use the term “federation” in its title. Instead, Article 1 describes India as a “Union of States.” This terminology indicates the intent of the framers to create a strong Centre with indestructible unity, unlike a loose confederation.

5.2.2 Key Features of Indian Federation

- **Single Constitution:** India has one Constitution applicable to both Union and States.
- **Indestructible Union:** States can be reorganized by the Parliament under Article 3.
- **Strong Centre:** More powers are vested in the Union than in the States.
- **Asymmetric Federalism:** Special provisions exist for certain states (e.g., Articles 370, 371).
- **Independent Judiciary:** Ensures the balance of powers and resolves disputes.
- **Dual Polity:** The existence of Union and State governments.

Single Constitution

One of the most defining characteristics of Indian federalism is the presence of a single Constitution that governs both the Union and the States. Unlike the classic federal models, such as the United States of America where each state has its own constitution, India follows a uniform constitutional framework for the entire nation. This means that both the Union and the states derive their authority from the same document—the Constitution of India. The Indian Constitution provides for the structure, powers, and functions of both levels of government, ensuring consistency and cohesion in the legal and administrative framework of the country. This single constitutional scheme promotes national unity, reduces

inter-governmental friction, and ensures that all citizens, regardless of the state they reside in, are governed by common principles and rights enshrined under the Constitution, such as the Fundamental Rights and Directive Principles of State Policy. However, the Constitution does make room for exceptions in the form of special provisions for certain states, yet these are incorporated within the same constitutional text.

Indestructible Union

The phrase “an indestructible Union of destructible States” captures the essence of the Indian federal structure. Under Article 3 of the Constitution, the Parliament has the authority to form new states, alter the boundaries of existing states, change the names of states, or even merge or bifurcate them. This demonstrates that the constituent units of the Indian federation—i.e., the states—do not possess inviolable sovereignty. Unlike federations formed by a compact or agreement among independent states (e.g., the United States), Indian states were not sovereign entities prior to the Constitution, and their existence and territorial integrity are not beyond the authority of the central legislature. The Union, on the other hand, is considered permanent and indestructible. This feature was highlighted in the landmark Supreme Court case *S.R. Bommai v. Union of India* (1994), where the Court affirmed the federal character of the Constitution while reiterating the supremacy of the Union in preserving the integrity of the nation. This power of the Parliament has been used on numerous occasions, such as the reorganization of states in 1956 based on linguistic lines and the creation of Telangana in 2014.

Strong Centre

The Indian federation has been described by scholars as “quasi-federal” or “federal with a strong unitary bias”. This characterization arises from the fact that the Union government is significantly more powerful than the state governments in legislative, financial, and administrative domains. The distribution of legislative powers under the Seventh Schedule of the Constitution clearly tilts in favor of the Union. The Union List contains more subjects (currently 100) compared to the State List (currently 61), and the Concurrent List (currently 52) allows both the Union and the States to legislate, but in case of a conflict, the Union law prevails under Article 254. Financially, the Union controls major sources of revenue and distributes funds to states, which creates a

degree of dependence. During emergencies, the Constitution allows for even greater centralization of power. While federalism is intended to promote decentralization and regional autonomy, the Indian model ensures that the Centre remains strong enough to maintain sovereignty, stability, and uniformity, particularly in the face of internal or external threats.

Asymmetric Federalism

India's federalism is not completely symmetrical; rather, it accommodates asymmetric federal features to deal with the diverse needs and circumstances of various regions. This asymmetric federalism is constitutionally recognized through special provisions made for certain states under Articles 370, 371, and other related provisions. These provisions grant varying degrees of autonomy in legislative and administrative matters to specific states due to historical, cultural, ethnic, or political reasons. For example, Article 370 (prior to its abrogation in 2019) accorded special status to Jammu & Kashmir, allowing it to have its own Constitution and autonomy in most areas except defense, foreign affairs, and communications. Similarly, Article 371 and its sub-clauses provide special arrangements for states like Nagaland, Mizoram, Sikkim, and Maharashtra to protect their distinct cultures, customs, and administrative setups. This differential treatment reflects the flexible nature of Indian federalism and its ability to integrate diverse regions while acknowledging their unique identities and challenges.

Independent Judiciary

A vital pillar in the federal structure of India is the Independent Judiciary, which plays a key role in maintaining the balance of power between the Union and the States. The Supreme Court of India, as the guardian and interpreter of the Constitution, ensures that both levels of government act within their respective spheres as defined by the Constitution. It has the authority to resolve disputes between the Union and one or more States or among States themselves under Article 131 of the Constitution. The judiciary also exercises the power of judicial review to strike down laws that violate the Constitution or encroach upon the jurisdiction of another level of government. This independence is guaranteed by constitutional provisions related to the appointment, tenure, and removal of judges, as well as the security of their salaries and conditions of service. Cases such as *Kesavananda Bharati v. State of Kerala* (1973) and *State of West Bengal*

v. Union of India (1962) underscore the judiciary's role in defining the contours of federalism in India. The impartial and autonomous nature of the judiciary reinforces the rule of law and the federal equilibrium envisioned by the framers of the Constitution.

Dual Polity

The concept of Dual Polity forms the very foundation of Indian federalism. It implies the existence of two levels of government—the Union Government and the State Governments—each operating within its own sphere of authority and responsibility. Both are constitutionally independent of each other in their respective domains, although the Union enjoys a certain superiority in practice. The Union Government handles matters of national importance such as defense, foreign affairs, and interstate trade, while the State Governments manage issues concerning local governance such as public health, police, and agriculture. This dual governance structure ensures decentralization, allows for better responsiveness to regional needs, and enhances democratic participation by bringing governance closer to the people. The doctrine of dual polity is reinforced by the separation of legislative powers under the Seventh Schedule and the establishment of separate executives and legislatures at the Union and State levels. While the Union may override in certain exceptional circumstances, the concept of dual polity remains central to India's constitutional framework, striking a dynamic balance between unity and diversity.

5.2.3 Judicial View

The Indian judiciary has played a pivotal role in interpreting and shaping the contours of Indian federalism. A landmark pronouncement on this subject was delivered by the Supreme Court in *S.R. Bommai v. Union of India* (1994), which remains a cornerstone judgment in understanding the federal character of the Indian Constitution. In this case, the Court was called upon to examine the validity of the imposition of President's Rule under Article 356 in several states ruled by opposition parties. While adjudicating upon the matter, the Supreme Court emphatically held that federalism forms a part of the "basic structure" of the Constitution, thereby placing it beyond the reach of parliamentary amendment under Article 368. This affirmation meant that any attempt to destroy or significantly alter the federal character of the Constitution would be unconstitutional. However, the Court also recognized that Indian federalism is

sui generis—distinct from classical federal models—and is characterized by a centralizing tendency. The Court acknowledged that the Indian federation is not an agreement between independent states, but rather a union of states where the Centre is given primacy in matters of national importance. Therefore, while the structure is federal in spirit and design, it retains unitary features to ensure national integrity and coordinated governance. The judgment emphasized that such a balance of power is both necessary and intentional, given India's historical, cultural, and political diversity. It also underscored the need for judicial scrutiny in matters where the Centre encroaches upon State autonomy, thus reinforcing the role of the judiciary as a guardian of federal equilibrium. The *S.R. Bommai* case thus not only reaffirmed federalism as a basic structure but also established judicial safeguards against its misuse, particularly in the context of emergency powers and political manipulation.

5.3 Division of Powers: Union List, State List, and Concurrent List

5.3.1 Introduction

The division of legislative powers is a fundamental feature of any federal Constitution, and in India, it forms the core of Centre-State relations. A clear demarcation of responsibilities between the Union and State governments is essential to ensure smooth governance and prevent jurisdictional conflicts. Recognizing this necessity, the framers of the Indian Constitution adopted a comprehensive scheme for the distribution of legislative powers under Article 246, read in conjunction with the Seventh Schedule. This framework envisages a three-fold classification of subjects into the Union List, the State List, and the Concurrent List, thereby defining the spheres of authority for both levels of government. The Union List, containing matters of national importance, is entrusted solely to the Parliament, while the State List comprises issues of local or regional significance, falling within the domain of State Legislatures. The Concurrent List includes subjects where both the Centre and States are competent to legislate, subject to the rule of federal supremacy. This system is designed not merely to allocate powers but also to uphold the spirit of cooperative federalism. However, it must be noted that the Indian model leans towards a quasi-federal structure, where the Union enjoys a position of superiority in cases of conflict or overlap. The constitutional framework also provides mechanisms for resolving such disputes, including the doctrine of

repugnancy under Article 254. Moreover, the distribution of powers is not static; it is subject to constitutional amendments, judicial interpretations, and changing socio-political dynamics, all of which have contributed to the evolving nature of Indian federalism. This three-tiered distribution remains one of the most intricate and significant aspects of the Indian Constitution, deeply influencing governance, policy-making, and federal balance in the country.

5.3.2 Union List (List I)

- Contains 97 subjects (originally) over which only Parliament has exclusive power to legislate.
- Examples: Defence, Foreign Affairs, Atomic Energy, Railways.
- Emphasis is on national importance.

The Union List, enumerated in List I of the Seventh Schedule of the Constitution of India, represents the exclusive domain of the Parliament to legislate on matters of national and international significance. Originally containing 97 subjects (now 100 after the 42nd Constitutional Amendment), the Union List ensures that key issues requiring uniformity, central coordination, and a unified policy framework are governed by the Union government. This list is a reflection of the strong Centre bias in the Indian federal structure, intended to preserve the sovereignty, unity, and integrity of the nation, especially in matters that transcend state boundaries.

Subjects under the Union List include areas such as Defence of India and every part thereof, Foreign Affairs, Citizenship, Atomic Energy, Railways, Banking, Insurance, Inter-State Trade and Commerce, and Telecommunications, among others. These are subjects that necessitate a centralized authority for effective governance and national security. For example, Defence and Foreign Affairs require a unified command and consistent diplomatic policies, which would be impracticable if individual states had the authority to frame laws in these domains. Similarly, the regulation of inter-state commerce and communication cannot be left to individual states, as it would disrupt economic unity and administrative coherence.

Article 246(1) of the Constitution empowers the Parliament to make laws "with respect to any of the matters enumerated in List I in the Seventh Schedule," notwithstanding anything in clauses (2) and (3), which relate to the Concurrent and State Lists respectively. This non-obstante clause ensures the exclusive supremacy of the Union Parliament over these subjects. Additionally, in matters

involving residuary powers—subjects not enumerated in any of the three lists—the power to legislate also lies solely with the Union under Article 248, further consolidating the dominance of the Centre in the legislative sphere.

The Union List thus reflects the intentional centralization built into the Indian federal system, which is often justified by the diverse and plural nature of Indian society, the threats to national security, and the need for cohesive policy frameworks in an increasingly globalized world. Over the years, the interpretation and application of Union List subjects have been shaped by judicial decisions that reaffirm the Centre’s pre-eminence while cautioning against excessive encroachment into State matters, thereby striving to maintain the federal balance.

5.3.3 State List (List II)

- Contains 66 subjects (originally) reserved for state legislatures.
- Examples: Police, Public Order, Health, Agriculture.
- Ensures regional autonomy.

The State List, enumerated as List II in the Seventh Schedule of the Constitution of India, represents subjects over which the State Legislatures have exclusive power to legislate, under the authority of Article 246(3). This list originally contained 66 subjects, though amendments and constitutional developments have slightly altered the number. The primary objective of this list is to ensure regional autonomy, allowing the states to exercise legislative authority over matters that are local in nature, thereby recognizing and respecting the diversity of India's vast federal structure.

Subjects under the State List include matters such as Police, Public Order, Public Health and Sanitation, Agriculture, Irrigation, Land Revenue, Fisheries, and Markets and Fairs. These are issues that are best administered at the state level due to their context-specific nature and the need for regional variations in policy implementation. For instance, agricultural practices differ widely across India due to climatic and geographical diversity, making it appropriate for states to frame their own laws and regulations on the subject. Similarly, matters related to law and order are often closely linked to local socio-political conditions, necessitating state-specific governance.

The exclusive legislative competence of the states over these subjects is, however, not absolute. The supremacy of Parliament under certain exceptional

circumstances is acknowledged in the Constitution. For instance, under Article 249, Parliament can legislate on a State List subject if the Rajya Sabha passes a resolution by a two-thirds majority that it is necessary in the national interest. Similarly, during a national emergency under Article 250, Parliament is empowered to legislate on State List subjects for the duration of the emergency. Furthermore, if a state legislature passes a resolution requesting Parliament to legislate on a State subject, Parliament can do so under Article 252. These provisions indicate a unitary bias in exceptional scenarios but do not negate the day-to-day autonomy of the states in handling subjects under List II.

Despite these qualifications, the State List remains crucial in preserving the federal character of the Indian polity, as it provides the States with the space to cater to the unique needs and aspirations of their people. It also fosters innovation in governance, as states are free to experiment with policies and laws within their domain. However, challenges persist, especially due to overlapping with the Concurrent List, central schemes intruding into state domains, and issues arising from inadequate financial autonomy. Nevertheless, the State List is a vital pillar of Indian federalism, embodying the spirit of decentralization and cooperative governance.

5.3.4 Concurrent List (List III)

- Contains 47 subjects (originally) on which both Union and States can legislate.
- Examples: Criminal law, Marriage and Divorce, Education.
- In case of conflict, Union law prevails (Article 254).

The Concurrent List, provided under List III of the Seventh Schedule of the Constitution of India, contains subjects on which both the Parliament and the State Legislatures have the authority to legislate. This list initially had 47 subjects, but amendments have increased the number over time. The very existence of this list reflects the cooperative aspect of Indian federalism, where both levels of government work together on important subjects that require uniformity across the country, yet may also demand local flexibility in their implementation. It serves as a bridge between the centralising tendencies of the Union List and the regional autonomy guaranteed under the State List.

Key subjects in the Concurrent List include criminal law and procedure, marriage and divorce, adoption and succession, transfer of property other than

agricultural land, education, forests, and trade unions, among others. These matters are of shared concern, often involving both national significance and regional considerations. For instance, while criminal law must retain a basic uniformity across the nation to maintain justice and order, states may need to adapt procedural aspects or enforcement mechanisms to local conditions. Similarly, education is both a tool of national development and a reflection of local culture and language, warranting legislation by both levels of government.

However, when both the Union and the State make laws on a Concurrent List subject and a conflict arises, the doctrine of repugnancy under Article 254 of the Constitution comes into play. According to Article 254(1), if there is an inconsistency between a Union law and a State law on the same subject, the Union law shall prevail, and the State law shall be held void to the extent of the repugnancy. Nonetheless, under Article 254(2), if a State law that conflicts with an existing Union law has been reserved for the President's consideration and receives his assent, it can prevail in that state. Even then, Parliament retains the power to override such a State law by subsequently enacting a new law on the same matter.

The Concurrent List embodies the dynamic balance between unity and diversity in Indian governance. It promotes a dialogue between the Centre and the States, allowing them to collaborate on vital issues while providing the flexibility to cater to regional diversities. However, it also reveals the asymmetry in Indian federalism, as the Union ultimately retains supremacy even in matters of joint competence. The judiciary has played a significant role in interpreting Article 254 and resolving disputes on the extent of legislative competence, thus maintaining a fine balance between cooperative and coercive federalism.

5.3.5 Residuary Powers

- Under Article 248, all subjects not mentioned in any list (residuary matters) are vested in the Union.
- Example: Cyber Law, Space Research.

A significant feature of the Indian federal structure lies in the assignment of residuary powers—that is, the authority to legislate on matters not enumerated in any of the three lists (Union, State, or Concurrent). Unlike classical federations such as the United States, where residuary powers are typically vested in the

constituent states, the Indian Constitution, under Article 248, assigns residuary powers exclusively to the Union Parliament. This is yet another reflection of the strong centralizing tendency in Indian federalism.

Article 248 states that Parliament has the power to make laws with respect to any matter not enumerated in the State List or the Concurrent List, including the power to levy taxes on such matters. The constitutional rationale behind this allocation is rooted in the need to ensure national unity, uniformity in policy-making, and legislative efficiency in dealing with emerging and unforeseen subjects, especially in a rapidly changing socio-technological environment. In a diverse and evolving society like India, not all subjects could have been foreseen at the time of the framing of the Constitution. Hence, to avoid legislative vacuum, the framers chose to vest these powers with the Centre.

Examples of subjects that have been dealt with using residuary powers include cyber law, space exploration, internet regulation, and genetic engineering. These were not envisioned at the time the Constitution was enacted and therefore do not figure in any of the three lists. Consequently, the Union Parliament enacted laws such as the Information Technology Act, 2000 to regulate digital communication and cyber crimes. Similarly, laws governing satellite communication and atomic energy research have also been enacted under Parliament's residuary powers.

The Supreme Court of India has played an important role in clarifying the scope of residuary powers. In cases like *Union of India v. H.S. Dhillon* (1972), the Court upheld the exclusive competence of the Union to legislate on residuary matters, reinforcing the constitutional intent. This jurisprudence affirms that the Union's domain is dynamic and ever-expanding, especially in a globalized world where new areas of governance emerge constantly.

Therefore, the concept of residuary powers highlights the flexible and adaptive nature of the Indian federal system, ensuring that legislative authority on novel and critical matters is centralized for uniformity, security, and rapid implementation. It also underscores the quasi-federal character of the Indian Constitution, where the Centre enjoys a broader sphere of legislative competence compared to the states.

Table: Comparative Summary of Legislative Powers under Indian Federalism

Feature	Union List (List I)	State List (List II)	Concurrent List (List III)	Residuary Powers
Constitutional Provision	Article 246 (Schedule VII)	Article 246 (Schedule VII)	Article 246 (Schedule VII)	Article 248
Number of Subjects (originally)	97 subjects	66 subjects	47 subjects	Not specified; includes subjects not mentioned in any list
Legislative Authority	Parliament exclusively	State Legislatures exclusively (subject to exceptions)	Both Parliament and State Legislatures can legislate	Parliament exclusively
Examples	Defence, Atomic Energy, Railways, Foreign Affairs	Police, Public Order, Health, Agriculture	Criminal Law, Marriage & Divorce, Education, Forests	Cyber Laws, Space Research, Biotechnology
In Case of Conflict	Parliament's law prevails	Parliament may override under certain circumstances	Union law prevails over State law (Article 254)	Parliament has full and final authority
Amendability / Flexibility	Requires constitutional amendment to alter	Can be modified by Parliament (e.g., during Emergencies)	Flexible; Both can legislate, but Centre retains overriding power	Expansive and flexible, allows Centre to respond to new challenges
Judicial Interpretation	Confirmed exclusive domain in multiple cases	Subject to Parliament's power in national interest or emergencies	Courts interpret conflicts under Article 254	Interpreted broadly in Union's favor (e.g., <i>H.S. Dhillon Case</i> , 1972)

5.2.6 Judicial Interpretation

In *State of West Bengal v. Union of India* (1963), the Supreme Court reiterated that the Indian Constitution is not truly federal in the traditional sense due to the dominance of the Union in legislative matters.

5.4 Financial Relations between Union and States

5.4.1 Introduction

In a federal system of governance, the division of financial powers and responsibilities is as critical as the division of legislative powers. Financial autonomy ensures that both the Union and the State governments can effectively discharge their respective constitutional functions. In India, the framework for financial relations between the Union and the States is embedded in Part XII of the Constitution, which comprises Articles 264 to 293. This part lays down the principles for the distribution of revenues, grants-in-aid, borrowing powers, and the role of institutions such as the Finance Commission.

The Indian Constitution recognizes that economic and fiscal centralization is necessary for maintaining national unity and equitable development, especially in a diverse country with wide inter-regional disparities. At the same time, it strives to maintain a balance by ensuring financial accountability and autonomy for States to manage their own affairs effectively. The scheme of financial relations in India is characterized by a vertical division of revenue sources—between the Centre and the States—and a horizontal distribution among the States, based on principles of equity and need.

Financial matters are broadly divided into three categories: (1) Allocation of taxing powers between the Union and the States, (2) Sharing of Union revenue with the States, and (3) Grants-in-aid to States for fulfilling their socio-economic responsibilities. The Constitution provides a list of Union taxes (such as customs, income tax, and excise duties), State taxes (such as land revenue, state excise, and sales tax), and Concurrent revenue mechanisms that ensure fiscal coordination.

Additionally, the Constitution mandates the establishment of a Finance Commission under Article 280, which is tasked with recommending the distribution of net proceeds of taxes between the Centre and the States, and among the States themselves. This institution plays a key role in maintaining cooperative federalism by ensuring a fair and transparent allocation of financial resources.

The Indian model of fiscal federalism, though tilted towards the Centre, includes corrective mechanisms such as intergovernmental transfers, centrally sponsored

schemes, and financial commissions, which aim to address the fiscal imbalance and empower States. Over the years, debates on fiscal decentralization, the role of the Goods and Services Tax (GST), and State borrowing have gained prominence, reflecting the evolving nature of Centre-State financial relations in India's dynamic constitutional setup.

In sum, financial relations in the Indian federal structure are grounded in the need to harmonize national economic objectives with regional developmental needs, thereby ensuring the constitutional promise of justice, equality, and balanced growth across all States and Union Territories.

5.4.2 Taxation Powers

In a federal system, the division of taxation powers between the Union and the State governments is fundamental to maintaining their respective financial independence. The Constitution of India clearly outlines this division in the Seventh Schedule, through three lists—Union List, State List, and Concurrent List. These provisions aim to prevent overlapping of taxation authority, ensure clarity in fiscal responsibilities, and avoid conflicts between the Union and States.

Union List and Central Taxation

The Union List contains subjects over which only the Parliament has the exclusive authority to levy and collect taxes. These taxes generally cover national functions and inter-state matters, and they are intended to ensure the financial strength of the Central Government. Prominent taxes under the Union List include:

- **Income Tax (except on agricultural income):** The Central Government levies and collects income tax on individuals and companies, which is one of the major sources of revenue for the Union.
- **Customs Duties:** These are levied on imports and exports and are vital for regulating foreign trade and generating revenue.
- **Excise Duties** on goods manufactured or produced in India (excluding alcoholic liquors for human consumption, which fall under State jurisdiction).

- **Corporation Tax, Service Tax** (merged under GST), and **Taxes on Capital Value of Assets** (other than agricultural land) also fall under this list.

These taxes are often redistributed to the States through various revenue-sharing mechanisms as recommended by the Finance Commission.

State List and State-Level Taxation

The State List comprises taxes over which only the State Legislatures have authority. These are generally taxes that relate to matters of local importance and directly affect the citizens within a particular State. Important taxes under the State List include:

- **Land Revenue:** A traditional source of income for States, especially in rural and agrarian regions.
- **Stamp Duty**, except those on documents included in the Union List.
- **Taxes on Goods and Passengers** carried by roads or inland waterways.
- **Excise on Alcoholic Liquor for Human Consumption:** This remains a significant revenue source for States.
- **Taxes on Vehicles, Property Tax, Agricultural Income Tax, and Entertainment Tax** (now subsumed under GST except for local bodies) are also included in this list.

These taxes are crucial for maintaining the functional autonomy of States and funding regional development projects.

Concurrent List and Limited Taxation Role

The Concurrent List primarily deals with subjects on which both Parliament and State Legislatures can legislate. However, in terms of taxation, this list offers very limited scope. Taxation is predominantly divided only between the Union and State Lists, but one important example under the Concurrent List includes:

- **Taxes on Succession to Property other than Agricultural Land:** Both the Union and States may legislate, but in case of conflict, the Union law prevails as per Article 254 of the Constitution.

Impact of Goods and Services Tax (GST)

It is important to note that with the introduction of GST through the 101st Constitutional Amendment Act, 2016, many indirect taxes previously levied by both Union and State governments—such as VAT, Service Tax, Central Excise, Entry Tax—have been merged into a unified GST regime. The GST is administered by a GST Council (under Article 279A), ensuring cooperative federalism in fiscal matters. This marked a significant reform in India's taxation structure, promoting uniformity and ease of doing business while retaining the revenue interests of both the Union and the States.

In conclusion, the taxation powers in India reflect a deliberate constitutional design—giving the Union Government a stronger revenue base while allowing States sufficient financial autonomy to fulfill their responsibilities. The system, supported by institutional mechanisms like the Finance Commission and the GST Council, aims to strike a balance between national priorities and regional needs.

5.4.3 Distribution of Revenue

In a federal system like India, where the division of powers is pivotal to balancing national unity with regional autonomy, the distribution of financial resources becomes a core constitutional concern. Since the Union government is assigned more lucrative sources of revenue, while States bear a greater burden of expenditure—especially in implementing welfare schemes and public service delivery—the Constitution provides several mechanisms to ensure an equitable distribution of financial resources. This fiscal arrangement is governed by Articles 268 to 281 of the Constitution, ensuring both accountability and cooperative federalism.

Article 268: Duties Levied by the Union but Collected by the States

Under Article 268, certain duties are levied by the Union but collected and appropriated by the States in which they are levied. These duties include:

- **Stamp Duties** on financial documents like bills of exchange, promissory notes, insurance policies, and transfer of shares.
- **Excise Duties** on medicinal and toilet preparations containing alcohol or narcotic substances.

This provision reflects a shared financial interest, where the legislative power rests with the Union, but the operational collection benefits the States directly. It aims to empower States with necessary financial resources, especially those without large industrial tax bases.

Article 269: Taxes Levied and Collected by the Union but Assigned to States

Article 269 covers taxes that are levied and collected by the Union but are assigned to the States, ensuring the States receive the revenues generated from inter-State economic activities. A prime example under this Article is:

- **Taxes on the sale or purchase of goods in the course of inter-State trade or commerce** (now subsumed under IGST under the GST regime).

This arrangement is crucial in a country where inter-State commerce is vibrant, as it prevents a revenue monopoly by the Union and ensures equitable sharing of tax proceeds derived from economic activity across State boundaries.

Article 270: Taxes Levied and Collected by the Union and Distributed Between Union and States

Article 270 is one of the most significant financial provisions in the Indian Constitution. It deals with taxes that are:

- Levied and collected by the Union but are shared with the States based on the recommendation of the Finance Commission.

Key taxes under this provision include:

- Income Tax (excluding agricultural income),
- Union Excise Duties (before GST),
- A portion of Goods and Services Tax (GST) collected by the Centre, as per the recommendation of the GST Council and Finance Commission.

The share of States in the divisible pool of taxes is revised periodically by the Finance Commission, taking into account parameters such as population, income distance, fiscal discipline, and area. The 15th Finance Commission, for instance, recommended a 41% share for States in the divisible pool of taxes for the period 2021–26.

Article 280: The Finance Commission

To ensure an impartial and systematic method of revenue sharing, Article 280 provides for the establishment of a Finance Commission by the President every five years. The primary responsibilities of the Commission include:

- Recommending the distribution of net proceeds of taxes between the Union and the States,
- Advising on the principles governing grants-in-aid to States from the Consolidated Fund of India,
- Addressing any other financial matters referred to it by the President.

The Finance Commission acts as a constitutional mediator that upholds fiscal federalism and provides periodic adjustments to revenue-sharing mechanisms in light of changing economic realities and regional disparities.

In summary, the Indian Constitution ensures a comprehensive and flexible system of revenue distribution between the Union and the States. Through the combination of levy, collection, and appropriation provisions, alongside the recommendations of a quasi-judicial body like the Finance Commission, India's financial federalism seeks to balance the fiscal strength of the Union with the developmental needs and autonomy of the States. This nuanced distribution of revenue plays a critical role in sustaining the unity, integrity, and cooperative character of Indian federalism.

5.4.4 Grants-in-Aid

The provision of grants-in-aid is a critical feature of India's fiscal federalism, intended to address the vertical and horizontal imbalances that naturally emerge in a federal setup. While States are responsible for major areas of public service delivery—such as health, education, agriculture, and infrastructure—their revenue-generating capacities often remain limited. To mitigate such disparities and ensure minimum standards of governance across the country, the Constitution empowers the Union to extend financial assistance to States through grants-in-aid.

Under Article 275 of the Constitution, the Parliament may provide, by law, for grants-in-aid from the Consolidated Fund of India to such States as are in need of assistance. These grants are:

- Discretionary in nature, although guided by the recommendations of the Finance Commission.

- Often directed toward developing backward areas, addressing social justice concerns, or supporting States facing temporary revenue shortfalls.
- Crucial for enhancing the administrative and developmental capacity of economically weaker States.

However, while these grants aim at promoting equity, they also introduce a degree of financial dependency of the States on the Union. This dependency, in certain cases, may result in a dilution of fiscal autonomy, as the Centre exercises discretion in determining the quantum, conditions, and allocation of funds. Some scholars argue that such a structure may be misused for political leverage or may lead to central overreach, particularly if grants are tied to specific policy choices or performance benchmarks dictated by the Centre.

Additionally, under Article 282, both the Union and the States may make grants for any public purpose, even if it falls outside their legislative competence. These grants are often utilized for centrally sponsored schemes (CSS), further entrenching the interdependence between both tiers of government.

Thus, while grants-in-aid serve the vital function of promoting balanced regional development, they must be deployed with transparency and equity to preserve the federal spirit and ensure accountability in inter-governmental fiscal transfers.

5.4.5 Goods and Services Tax (GST)

The introduction of the Goods and Services Tax (GST) through the 101st Constitutional Amendment Act, 2016, brought about a paradigm shift in India's fiscal federalism. It sought to create a unified, indirect taxation regime by subsuming various Central and State taxes under a single framework, thereby simplifying tax structures and enhancing compliance. This change significantly altered the traditional taxation powers of both the Union and the States and gave birth to a new model of collaborative federalism.

At the heart of this framework lies the GST Council, established under Article 279A, which is a constitutional body responsible for making recommendations on all key aspects of GST, including tax rates, exemptions, model laws, and dispute resolution. The Council comprises:

- The Union Finance Minister as Chairperson,
- The Union Minister of State for Finance,
- The Finance Ministers of all States.

This ensures equal representation of both the Union and States in decision-making, embodying the principle of cooperative federalism.

GST represents a shared taxation model, wherein both the Union and States simultaneously levy tax on the same transaction. The structure includes:

- CGST (Central GST) levied by the Union,
- SGST (State GST) levied by individual States, and
- IGST (Integrated GST) on inter-State transactions, collected by the Union and apportioned between Centre and States.

One of the most notable aspects of GST is that it has blurred the rigid boundaries between the Union and State tax jurisdictions, encouraging fiscal dialogue and coordination. It also created a common national market, eliminated tax cascading, and improved ease of doing business.

However, challenges remain. The compensation mechanism for States (guaranteeing 14% annual growth in revenue post-GST implementation) and subsequent delays in compensation have sparked debates about the financial independence of States. Some critics argue that GST, while structurally cooperative, has shifted greater control to the Centre, especially in the context of rate-setting and revenue sharing.

In conclusion, GST is a landmark reform in India's federal financial structure. It represents both cooperation and centralization, requiring constant negotiation, trust, and balance between the Centre and States to ensure that the spirit of federalism is preserved in its fiscal operations.

5.5 Emergency Provisions and their Impact on Federalism

5.5.1 Introduction

The emergency provisions enshrined in Part XVIII of the Constitution of India (Articles 352 to 360) are a distinctive feature of Indian federalism, reflecting its quasi-federal nature. These provisions empower the Union government to assume sweeping powers in situations of national peril—be it war, external aggression, armed rebellion, financial instability, or constitutional breakdown in states. While such provisions are essential for maintaining the unity, integrity, and security of the nation, they also have profound implications for the federal structure, as they temporarily reconfigure the balance of power between the Centre and the States.

In essence, the Constitution envisages a federal structure with a strong unitary bias, and this unitary tilt becomes most pronounced during emergencies. Under normal circumstances, the Centre and States operate within their respective spheres of authority, demarcated by the Seventh Schedule. However, during an emergency, this division collapses, and the Centre is vested with the authority to override state autonomy in legislative, executive, and financial domains.

The framers of the Constitution, while drawing from the Government of India Act, 1935, and influenced by global constitutional experiences, especially that of the Weimar Republic and British legal traditions, incorporated emergency provisions to safeguard national stability. However, they also sought to build safeguards and checks to prevent the arbitrary use of these powers, especially in light of concerns voiced during the Constituent Assembly Debates regarding the potential misuse of such sweeping authority.

The three types of emergencies provided under the Constitution—

1. National Emergency under Article 352,
2. State Emergency (President's Rule) under Article 356, and
3. Financial Emergency under Article 360 —

Serve different purposes but uniformly centralize power in the hands of the Union. Each of these emergencies has historically reshaped Centre-State relations, often eroding the federal spirit temporarily.

The judicial interpretation of emergency provisions, especially post-1975 (Emergency era), further highlights the delicate tension between national interest and federal autonomy. The landmark judgments in cases like *S.R. Bommai v. Union of India* and *Minerva Mills v. Union of India* have attempted to reassert constitutionalism by limiting the misuse of emergency powers and reaffirming federal ideals as part of the basic structure of the Constitution.

This section of the chapter will delve into the types of emergencies, the procedural and substantive changes that occur during their proclamation, and a doctrinal analysis of their impact on the federal structure of India. It will also discuss the checks and balances, judicial safeguards, and contemporary debates regarding reform of emergency powers to ensure a more federally balanced and constitutionally compliant approach.

5.5.2 Types of Emergencies

5.5.2.1 National Emergency (Article 352)

Article 352 of the Constitution of India empowers the President of India to proclaim a National Emergency in the event of war, external aggression, or armed rebellion, or if there is an imminent threat thereof. The original expression used in the Constitution was "internal disturbance", but this was later substituted with the more narrowly defined term "armed rebellion" by the 44th Constitutional Amendment Act, 1978, to curb the misuse of this provision as witnessed during the 1975 Emergency.

A National Emergency leads to a complete restructuring of federal relations, effectively transforming the federal character of the Constitution into a unitary system. During the operation of a National Emergency, the autonomy of the states is significantly curtailed, and the Centre acquires overriding powers to legislate and administer across all subjects, including those falling under the State List (List II of the Seventh Schedule).

Procedure and Duration

The proclamation of National Emergency is made by the President, but only upon receiving a written recommendation from the Union Cabinet, not merely the Prime Minister. This provision was added by the 44th Amendment to avoid the unilateral declaration of Emergency as seen during 1975. Once proclaimed, the Emergency must be approved by both Houses of Parliament within one month. Upon approval, it remains in force for six months and can be repeatedly extended for six months at a time with parliamentary approval. Importantly, such a continuation requires a special majority: i.e., a majority of the total membership and a two-thirds majority of members present and voting.

Impact on Federalism

1) Legislative Centralization:

During a National Emergency, the Parliament is empowered to make laws on subjects enumerated in the State List (Article 353(b)). This erodes the legislative domain of the States and consolidates authority at the Union level.

2) Executive Control:

The Union government can issue executive directions to any State, regarding the manner in which its executive powers are to be exercised. This effectively subordinates the State executive to the Centre.

3) Suspension of Fundamental Rights:

Under Article 358, as amended, the rights under Article 19 are automatically suspended when the Emergency is declared on the grounds of war or external aggression (not armed rebellion). Additionally, under Article 359, the President can suspend the right to approach the courts for enforcement of other fundamental rights (excluding Articles 20 and 21), thereby weakening judicial review.

4) Financial Control:

The Centre may also alter the manner of distribution of financial resources and grants to the states, further enhancing its control.

5) Political Consequences:

In practice, the period of Emergency (1975–1977) demonstrated that this provision could be used as a tool for political centralization, thereby undermining federal democracy and infringing upon civil liberties. The misuse of Emergency powers led to widespread criticism and triggered important reforms through the 44th Amendment.

Judicial Perspective

The Supreme Court of India in *Minerva Mills v. Union of India* (1980) and *S.R. Bommai v. Union of India* (1994) emphasized that while the declaration of Emergency is within the discretion of the executive, it is subject to judicial review. The Court ruled that federalism is a basic feature of the Constitution, and any arbitrary or mala fide use of emergency provisions would be unconstitutional.

Thus, while Article 352 is a vital tool for national integrity and crisis management, its implications for Indian federalism are profound. It temporarily dismantles the autonomous functioning of States and creates a highly centralized governmental structure. The evolution of constitutional safeguards and judicial interpretations reflect an ongoing attempt to balance national security with

federal autonomy, ensuring that Emergency provisions serve their intended purpose without undermining the democratic and federal ethos of the Indian Constitution.

5.5.2.2 State Emergency (President's Rule) – Article 356

Article 356 of the Constitution of India, often referred to as President's Rule, empowers the President to assume control over a State's governance if the constitutional machinery in that State fails. This form of emergency differs from the National Emergency in that it pertains to individual States, and is not predicated on war, aggression, or rebellion, but on a failure of constitutional governance within a State.

Constitutional Basis and Procedure

Article 356(1) states that if the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, he may issue a proclamation to:

- Assume to himself the functions of the State Government.
- Declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament.
- Make incidental and consequential provisions necessary to give effect to the proclamation.

Like Article 352, the proclamation of President's Rule under Article 356 must be approved by both Houses of Parliament within two months. If so approved, it remains in force for six months, and can be extended every six months for a maximum of three years with specific conditions laid down in Article 356(4) and 356(5).

Impact on Federalism

1) Central Assumption of State Powers:

When President's Rule is imposed, the elected government of the State is dismissed, and the executive authority is exercised by the Governor on behalf of the President. The State Legislative Assembly may be suspended or dissolved, and legislative powers are exercised by the

Parliament, thus significantly weakening the federal structure and reducing the State to an administrative unit under the Centre.

2) Governor's Role:

The Governor becomes the key figure in recommending the imposition of Article 356. Critics argue that political bias or misuse of this provision often stems from partisan reports by Governors, thereby compromising the neutrality of this constitutional office and shaking the federal equilibrium.

3) Judicial Safeguards and Review:

Originally, the validity of a proclamation under Article 356 was not justiciable. However, the landmark judgment in *S.R. Bommai v. Union of India* (1994) altered the legal landscape. The Supreme Court ruled that:

- The proclamation under Article 356 is subject to judicial review.
- The President's satisfaction is not absolute and can be challenged in a court of law.
- Floor tests must be used to ascertain the majority of the State Government, not the Governor's subjective assessment.

This judgment introduced important constitutional safeguards against arbitrary use of Article 356 and reaffirmed the federal spirit of the Constitution.

4) Political and Historical Context:

Since independence, Article 356 has been invoked over 100 times, with some critics arguing that it has been abused for political gains. Notably, during the Congress regime in the late 1960s and 1970s, State governments led by opposition parties were frequently dismissed under the pretext of constitutional breakdown. The Sarkaria Commission (1988), set up to examine Centre-State relations, recommended that Article 356 should be used only in rare and unavoidable circumstances, and that a constitutional breakdown must be clearly established.

5) Federalism vs. Unity Debate:

While defenders of Article 356 argue that it is necessary to maintain constitutional governance and national unity, critics view it as a **threat to the** federal autonomy of States. The provision effectively nullifies the democratic mandate of State electorates when misused, thus disturbing the federal balance envisaged by the Constitution.

President's Rule under Article 356 is a powerful constitutional tool intended to safeguard the functioning of democracy and rule of law in the States. However, its historical misuse and political manipulation have led to intense criticism and demands for reform. Judicial intervention and constitutional commissions have played a vital role in restoring the federal fabric and ensuring that this provision is not used as a means of political subjugation but as a constitutional safeguard in genuine crises. The evolution of this provision illustrates the tension between unity and federalism, a hallmark of India's constitutional journey.

5.5.2.3 Financial Emergency (Article 360)

Financial Emergency under Article 360 of the Indian Constitution is a provision designed to safeguard the financial stability and credit of the country. Unlike National Emergency (Article 352) or President's Rule (Article 356), which have been invoked multiple times in independent India, a Financial Emergency has never been declared so far. Nevertheless, it remains a significant component of the emergency provisions, symbolizing the framers' foresight to ensure economic stability and protect the constitutional order during extraordinary financial distress.

Constitutional Framework and Declaration Procedure

Article 360 empowers the President of India to proclaim a Financial Emergency if he is satisfied that the financial stability or credit of India or any part thereof is threatened. The declaration must be approved by both Houses of Parliament within two months of its issuance. Unlike other emergency types, there is no time-limit on the duration of a Financial Emergency once approved by the Parliament—it remains in force until revoked.

Consequences and Implications on Federalism

Upon the declaration of a Financial Emergency, the following consequences ensue:

1) Centralization of Financial Authority:

The Union government assumes significant control over the financial matters of both the Union and the States, thereby eroding the financial autonomy of the States. The President can issue directions to States regarding:

- Reduction in the salaries and allowances of persons serving in connection with the affairs of the State.
- Reservation of all money bills and other financial bills for the President's consideration.

2) Impact on Government Servants and Judiciary:

The President is authorized to direct the reduction of salaries and allowances of all civil servants, including judges of the Supreme Court and High Courts. This provision underscores the gravity of the financial crisis envisioned under this article and highlights the exceptional nature of the powers conferred during such an emergency.

3) Suspension of Financial Federalism:

Financial Emergency effectively dismantles the principle of fiscal federalism by placing State financial administration under the direct control of the Centre. The ability of State legislatures to make independent fiscal decisions is severely restricted, which may compromise the principle of federal autonomy guaranteed under the normal scheme of the Constitution.

4) Preservation of Economic Stability:

The provision was included in the Constitution to guard against macroeconomic instability, excessive indebtedness of States, or collapse of public finance systems. It reflects the framers' commitment to constitutional economic governance, inspired in part by the Weimar

Republic experience in Germany, where uncontrolled inflation and fiscal mismanagement contributed to political instability.

Doctrinal Perspective and Comparative Insight

From a doctrinal standpoint, Article 360 exemplifies a unitary tilt in Indian federalism during economic crises. Unlike in some other federal constitutions like the U.S. Constitution, where the financial autonomy of States is relatively more protected, the Indian model allows for an integrated and centralized fiscal intervention mechanism.

The Sarkaria Commission (1988) observed that though this provision had never been used, its existence served as a deterrent against fiscal indiscipline by States. Similarly, the Punchhi Commission (2010) reiterated the importance of maintaining a delicate balance between financial accountability and State autonomy in a federal structure.

Criticism and Concerns

Despite its preventive utility, scholars and political observers have raised concerns about the sweeping nature of the powers conferred under Article 360:

- The clause lacks clear criteria or financial indicators for determining when the "credit or financial stability" is threatened.
- There is no express role of the States in the consultation process before such an emergency is proclaimed, leading to concerns about unilateral centralization.
- The possibility of curtailing judicial salaries under this provision has also been criticized as it could potentially impact the independence of the judiciary, a fundamental feature of the Constitution.

In conclusion, Article 360 reflects a deeply embedded precautionary mechanism within the constitutional framework to address systemic financial crises. Though never invoked, its presence ensures the Union has the constitutional tools to maintain macroeconomic stability and fiscal discipline, even if it means temporarily suspending the federal distribution of financial powers. Like other emergency provisions, it demands utmost restraint, transparency, and accountability in its invocation and execution. The doctrinal significance of Article 360 lies not in its usage, but in its potential to redefine federal relations in times of financial adversity.

Table: Comparative Analysis of the Three Types of Emergencies in India

Criteria	National Emergency	State Emergency (President's Rule)	Financial Emergency
Article	Article 352	Article 356	Article 360
Grounds for Proclamation	War, External Aggression, or Armed Rebellion	Failure of constitutional machinery in a State	Threat to financial stability or credit of India or any part thereof
Who Proclaims	President of India	President of India	President of India
On Whose Advice	Union Cabinet (in writing)	Governor's report or otherwise	Union Cabinet
Parliamentary Approval	Required within 1 month (earlier 2 months); continues for 6 months and can be extended with approval every 6 months indefinitely	Required within 2 months; valid for 6 months, can be extended up to a maximum of 3 years (with special conditions)	Required within 2 months; no time limit once approved
Impact on Federalism	Transforms India into a unitary system; Centre gains legislative, executive, and financial powers over states	Suspension of state autonomy; President governs the State via Governor	Centre gains financial control over States; State autonomy over finance is curtailed
Effect on Legislative Powers	Parliament can legislate on State List matters	State Assembly is either suspended or dissolved	Directions can be issued to States on financial matters
Effect on Executive Powers	Centre can issue binding directions to States	President (through Governor) assumes State executive powers	Centre can direct State Governments on financial matters
Effect on Fundamental Rights	Suspension of FRs under Article 19 (only during war/aggression); other FRs under Article 359 can be suspended	No direct suspension of Fundamental Rights	No direct suspension of Fundamental Rights
Effect on Judiciary	Judiciary's power to enforce certain FRs may be suspended under Article 359	Judiciary continues to function normally	President may direct reduction in salaries of judges of SC and HCs
Role of	Minimal	Crucial: Governor's report	Minimal

Criteria	National Emergency	State Emergency (President's Rule)	Financial Emergency
Governor		often basis for proclamation	
Duration	Indefinite (subject to periodic approval every 6 months)	Max 3 years (with conditions after 1 year)	Indefinite (no time limit specified)
Historic Instances	1962 (China War), 1971 (Pakistan War), 1975–77 (Internal Emergency)	Over 100+ instances; misuse led to judicial scrutiny (S.R. Bommai case)	Never declared so far
Judicial Review	Yes; subject to limited review (Minerva Mills, 1980)	Yes; S.R. Bommai v. Union of India (1994) laid strict conditions	Yes, though no proclamation has been tested in courts
Key Impact on Democracy	Curtails democracy, centralizes power, risk of authoritarianism	Undermines State autonomy, risk of partisan misuse	Risk of fiscal centralization, weakening States' financial independence
Checks and Safeguards	Written advice of Cabinet; parliamentary approval; judicial review	Parliamentary approval; 3-year time cap; judicial review	Parliamentary approval; judicial review

This comparative framework clearly highlights how emergency provisions reshape the federal character of the Indian Constitution by allowing centralization of powers during extraordinary circumstances. However, judicial pronouncements and constitutional amendments have introduced checks and balances to prevent potential misuse.

5.5.3 Effects on Federalism

The emergency provisions enshrined in Part XVIII of the Indian Constitution (Articles 352 to 360) have a profound and transformative impact on the federal character of the Indian polity. Although India is a federal polity in structure, the invocation of emergency powers often results in a substantial shift toward a unitary system, thereby diluting the autonomy of the States and altering the constitutional equilibrium between the Union and the States.

1. Legislative Centralization under Article 353

One of the most significant impacts is visible during a National Emergency, wherein Article 353 enables the Parliament to make laws on any subject in the

State List. Under normal circumstances, legislative competence over subjects in the State List is exclusively reserved for State legislatures under Article 246(3). However, during an emergency, this clear division of legislative authority is suspended, and the Union Parliament assumes plenary powers over State matters. Although such laws cease to operate six months after the emergency ends, the very act of superseding State legislatures reflects a drastic centralization of legislative power.

2. Executive Takeover under Article 356

The imposition of President's Rule under Article 356 further compromises federalism by allowing the President to assume the executive functions of a State. In effect, the elected State government is either suspended or dissolved, and the State is administered by the Governor as an agent of the Union. This shifts the executive control from a democratically elected State government to a centrally appointed figure, effectively nullifying the concept of dual polity, a cornerstone of federalism. The misuse of Article 356, particularly prior to the judicial safeguards laid down in *S.R. Bommai v. Union of India* (1994), became a contentious issue and was often perceived as a tool for political subjugation of opposition-ruled States by the Centre.

3. Erosion of Financial Autonomy under Article 360

During a Financial Emergency, Article 360 empowers the President to issue directions to States regarding the reduction of salaries and allowances of civil servants and even judges of High Courts. This deeply intrudes into the domain of State autonomy over its financial administration. Further, the Union can require States to reserve all financial and money bills for Presidential consideration, effectively paralyzing independent fiscal policymaking at the State level. Although no Financial Emergency has ever been declared, the potential implications of this provision point towards a serious compromise of the federal structure.

4. Overall Unitary Bias of Emergency Provisions

The cumulative effect of Articles 353, 356, and 360 is that during emergencies, India ceases to function as a federation and assumes the characteristics of a quasi-unitary state. Dr. B.R. Ambedkar, while defending the emergency provisions, had described them as "a necessary evil" to ensure national integrity

and democratic survival in times of crisis. However, their application and potential for misuse have raised academic concerns regarding the structural balance of power. Critics argue that the emergency provisions, particularly the ease with which they can be invoked, reflect a unitary bias embedded in the Indian federal scheme.

5. Judicial Interpretation and Safeguards

The judiciary has played a crucial role in reinforcing the federal balance through strict interpretation of emergency powers. In *Minerva Mills Ltd. v. Union of India* (1980) and *S.R. Bommai v. Union of India* (1994), the Supreme Court laid down doctrinal safeguards and held that federalism is part of the basic structure of the Constitution, hence cannot be abrogated even during emergencies. These rulings have somewhat mitigated the extent of central overreach and restored faith in the federal scheme.

Emergency provisions, while essential for the unity and integrity of the nation in extraordinary times, pose serious challenges to the federal architecture of the Indian Constitution. Their existence is a reminder of the flexible, pragmatic, and centrally tilted nature of Indian federalism. As such, academic discourse continues to evolve around striking the right balance between necessary centralization during crises and the preservation of State autonomy in a vibrant federal democracy.

5.5.4 Judicial Safeguards

The Constitution of India, while providing wide-ranging emergency powers to the Union government under Part XVIII, also upholds the supremacy of constitutional morality and the rule of law. Judicial oversight serves as a critical counterbalance to prevent arbitrary central intervention in State affairs. Among the most significant judicial pronouncements in this regard is the landmark judgment in *S.R. Bommai v. Union of India* (1994), which played a pivotal role in reinforcing federal principles and limiting the misuse of Article 356.

S.R. Bommai v. Union of India (1994): A Milestone for Federalism

This case arose from the arbitrary dismissal of several State governments by the President on the advice of the Union Council of Ministers, often for political reasons rather than constitutional breakdown. The core issues before the Supreme Court included:

- Whether the President's Proclamation under Article 356 is subject to judicial review.
- Whether dissolution of a State Legislative Assembly prior to parliamentary approval of the Proclamation is valid.

The nine-judge Constitution Bench, in a majority opinion, laid down several path-breaking guidelines:

Key Doctrinal Principles Laid Down:

1) Federalism is Part of the Basic Structure:

- The Court unequivocally declared that federalism is an inviolable feature of the basic structure of the Constitution. Hence, any action taken under Article 356 must respect the essence of State autonomy and cannot be used as a tool to achieve political ends.

2) Judicial Review of Article 356 Proclamation:

- The Court held that the President's satisfaction under Article 356 is not beyond judicial scrutiny. If the reasons for imposing President's Rule are found to be mala fide, irrelevant, or based on no evidence, the Proclamation can be struck down as unconstitutional.

3) Legislative Assembly Cannot Be Dissolved Immediately:

- The Court ruled that dissolution of the State Assembly cannot take place until the Proclamation has been approved by Parliament. This ensures that democratic institutions are not dismantled without oversight.

4) Floor Test as the Ultimate Test:

- In case of a dispute about majority in the Assembly, the proper course is to conduct a floor test. A Governor's report alleging a loss of majority cannot be the sole basis for invoking Article 356.

5) Burden of Proof Lies on the Centre:

- In case of a challenge, the Union government must justify the imposition of President's Rule with credible material evidence.

Impact on Federalism

The Bommai judgment has been hailed as a constitutional safeguard against Centre-State imbalance. It laid down a robust judicial framework for the use of Article 356, which had been misused over 90 times before 1994, often to dismiss State governments run by opposition parties.

Post-Bommai, the frequency of arbitrary imposition of President's Rule has considerably declined. The judgment is regarded as a bulwark against central authoritarianism and a reaffirmation of the democratic federal spirit of the Constitution.

Other Relevant Judgments Supporting Federal Balance

- Rameshwar Prasad v. Union of India (2006): Reiterated that dissolution of the Assembly based on presumptions is unconstitutional.
- Minerva Mills Ltd. v. Union of India (1980): Reinforced the doctrine of basic structure, including federalism as a fundamental feature.
- State of Rajasthan v. Union of India (1977): Earlier held that political instability in a State is not a valid ground for Article 356; although the Court did not strike down the proclamations, it hinted at judicial restraint being exercised.

The judicial safeguards enunciated in *S.R. Bommai* have created a constitutional check on the potential misuse of emergency powers by the Union government. By upholding the judicial reviewability of Article 356, the Supreme Court ensured that India's federal structure is not sacrificed at the altar of political expediency. This doctrinal intervention by the judiciary thus plays a pivotal role in preserving cooperative federalism, democratic governance, and constitutional propriety.

5.6 Conclusion

The federal structure envisaged by the framers of the Indian Constitution was crafted not merely as a mechanical distribution of power, but as a living, adaptable framework that could withstand the diverse and complex socio-political realities of India. Unlike classical federations such as the United States, India's model is characterized by a deliberate blend of federal and unitary features, earning it the epithet of a "quasi-federal" or "federal with a unitary bias" system.

While core federal attributes such as a written Constitution, division of powers (via the Union, State, and Concurrent Lists), bicameralism, and an independent judiciary support the autonomy of States, the Indian Constitution also endows the Union government with overriding powers in key areas, especially during times of crisis. Emergency provisions, the power to legislate on State List subjects under certain conditions, and financial dependency of States on the Centre, all contribute to this unitary tilt.

At the same time, India's federalism is not rigid—it is inherently dynamic and evolving. This is evident in the progressive shift towards co-operative federalism, especially following the implementation of the Goods and Services

Tax (GST) regime via the 101st Constitutional Amendment. The creation of the GST Council under Article 279A institutionalizes a shared decision-making platform, promoting fiscal dialogue and collaborative policy formulation between the Union and the States.

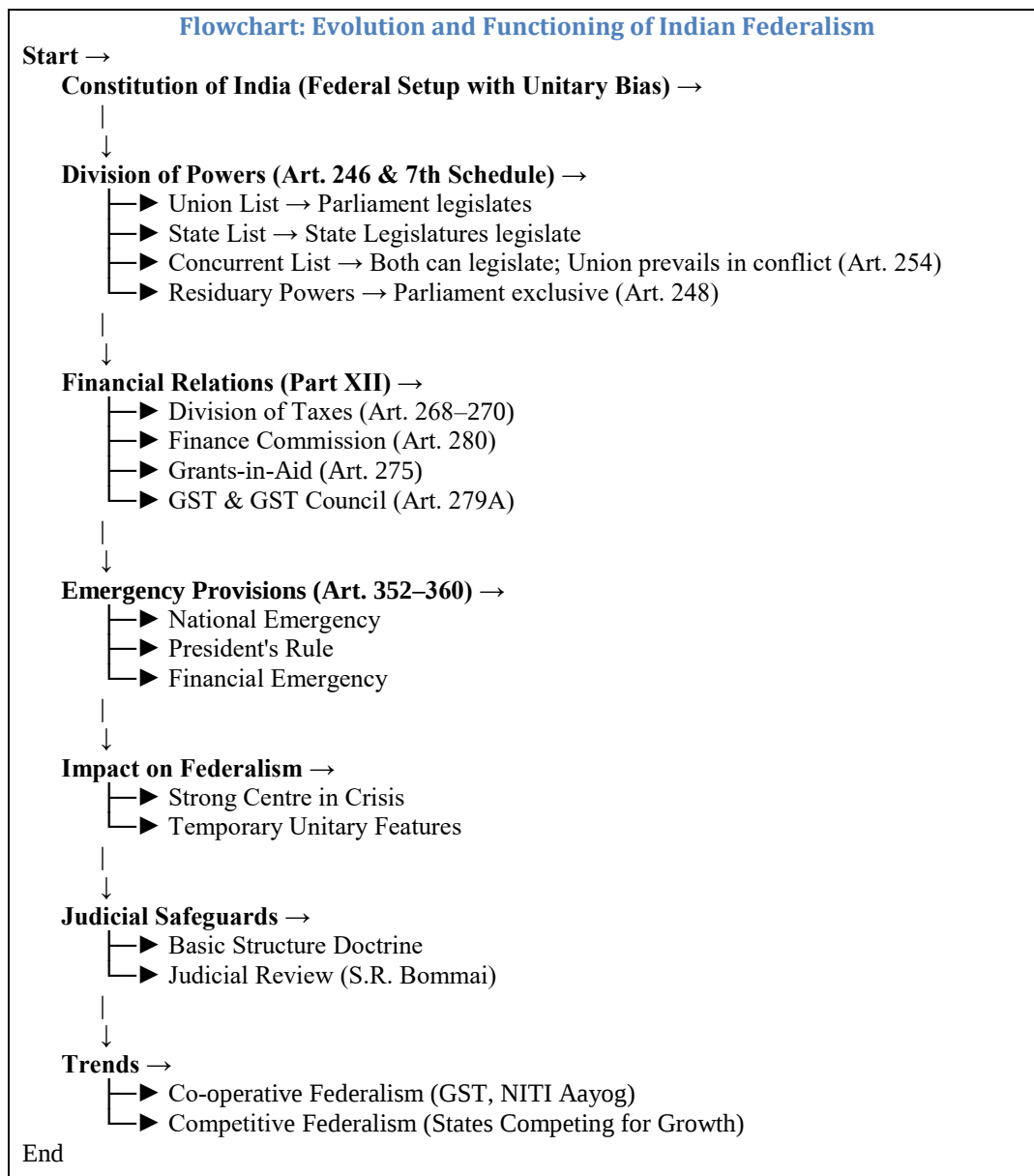
Furthermore, judicial pronouncements—particularly in *S.R. Bommai v. Union of India* (1994)—have significantly bolstered constitutional safeguards against arbitrary encroachments by the Centre. The judiciary has played a vital role in defining the contours of federalism, treating it as a part of the basic structure doctrine, thereby insulating it from potential constitutional amendments that might compromise State autonomy.

The emergence of competitive federalism in recent years—where States are encouraged to compete in attracting investment, delivering public services, and improving governance—marks a new phase in Centre-State relations. This approach, while driven by economic pragmatism, reinforces the federal spirit by acknowledging the unique capacities and aspirations of different regions.

In sum, Indian federalism is not a static construct but a constitutional mosaic, designed to reconcile the centripetal forces of national unity with the centrifugal demands of regional diversity. As India continues to grow and diversify, the federal model must constantly evolve—anchored in constitutionalism, guided by judicial oversight, and fueled by co-operative governance.

Summary Comparison Table: Core Aspects of Indian Federalism

Aspect	Union Government	State Government	Shared / Notes
Legislative Power	Union List (97 Subjects)	State List (66 Subjects)	Concurrent List (47 Subjects) – Article 246
Residuary Power	Vested in Parliament (Art. 248)	—	Cyber laws, Space, Digital Economy
Taxation Power	Income Tax, Excise, Customs	Land Revenue, Agricultural Income Tax	Succession Duties (Concurrent)
Revenue Distribution	Finance Commission (Art. 280)	Receives grants and shared taxes	Articles 268, 269, 270
Emergency Power	Can override state functions (Art. 352)	May be dissolved/suspended (Art. 356)	Financial restrictions (Art. 360)
Judicial Oversight	Supreme Court ensures checks	High Courts under Supreme Court	Federalism is part of Basic Structure
Recent Trends	Co-operative role in GST Council	State roles in GST Council decisions	Promotes unity with diversity



5.7. Exercise

5.7.1. Objective Type Questions (MCQs)

1. Which Article of the Indian Constitution describes India as a Union of States?

- A) Article 1
- B) Article 2
- C) Article 3
- D) Article 4

2. The division of powers between the Centre and States in India is provided by which Schedule of the Constitution?

- A) Fifth Schedule
- B) Sixth Schedule
- C) Seventh Schedule
- D) Eighth Schedule

3. Which list in the Seventh Schedule contains subjects on which only the State can legislate?

- A) Union List
- B) State List
- C) Concurrent List
- D) Residuary List

4. Residuary powers in India are vested in:

- A) State governments
- B) Central government
- C) Both State and Central governments
- D) Local governments

5. India follows which type of federal system?

- A) Dual federalism
- B) Cooperative federalism
- C) Confederal system
- D) None of the above

6. Which of the following is NOT a federal feature of the Indian Constitution?

- A) Division of powers
- B) Single citizenship
- C) Written constitution
- D) Supremacy of the constitution

7. The power to make laws relating to subjects in the Union List lies with:

- A) Local Government
- B) State Government
- C) Central Government
- D) Both State and Union

Answer: C) Central Government

8. The major step towards decentralization in India was taken in:

- A) 1990
- B) 1991
- C) 1992
- D) 1993

9. Which of the following statements about Indian federalism is correct?

- A) The Constitution provides for bifurcation of legislative, executive, financial and judicial power between Centre and States.\
- B) The Constitution provides for division of legislative, executive and financial power, but not judicial power.
- C) The Constitution divides only financial powers.
- D) The Constitution does not divide any powers.

10. Which country's federal system served as a model for the Indian Constitution's federal features?

- A) USA
- B) Canada

- C) Australia
- D) Switzerland

5.7.2. Descriptive Type Questions (Short Answer)

1. Define federalism and explain how it is implemented in the Indian context.
2. What are the main features of the federal structure as provided by the Indian Constitution?
3. Discuss the significance of the Seventh Schedule in the Indian federal system.
4. How does the Indian Constitution ensure the supremacy of the Constitution in Centre-State relations?
5. Explain the concept of 'quasi-federalism' with reference to India.
6. What role does the Supreme Court play in maintaining the federal balance in India?
7. Identify and briefly discuss two major challenges faced by India's federal structure today.

- 6.1 Introduction**
- 6.2 Meaning and Definition of Constitutional amendment (Amendment of Constitution)**
- 6.3 Concept and source of Constitutional provisions of Amendment**
 - 6.3.1. Article 368**
- 6.4 Types of Amendments under the Indian Constitution**
- 6.5 Procedure for Indian Constitution Amendment**
- 6.6 Criticisms of the Constitutional Amendment Procedure**
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- 6.9. Exercise**
 - 6.9.1. Objective Type Questions (MCQs)**
 - 6.9.2. Descriptive Type Questions (Short Answer)**

6.1 Introduction

The Constitution of India, adopted on January 26, 1950, is a dynamic and living document that provides the legal foundation for the world's largest democracy. While it lays down the framework for governance, justice, and fundamental rights, it also recognizes the necessity of change and adaptation through its provision for amendments. The power to amend the Constitution is a critical aspect that ensures its relevance in the face of evolving social, economic, and political conditions.

Constitutional amendments serve as instruments for reform, enabling the legal and institutional structures of the country to respond to new challenges and aspirations. From the First Amendment in 1951 to the most recent changes, these revisions reflect the nation's journey through various phases of development, judicial interpretations, political shifts, and public discourse.

This chapter delves into the nature, scope, and procedure of constitutional amendments in India. It explores the theoretical basis behind constitutional flexibility and rigidity, the method of amendment as outlined in Article 368, and the significant amendments that have shaped the Indian polity. Special attention is given to landmark cases such as *Kesavananda Bharati v. State of Kerala*,

which laid down the 'basic structure doctrine', thereby placing substantive limits on Parliament's amending powers. Through a comprehensive analysis, this chapter aims to provide an in-depth understanding of how constitutional amendments have played a pivotal role in balancing continuity with change, and how they continue to influence the constitutional evolution of India.

6.2 Meaning and Definition of Constitutional amendment (Amendment of Constitution)

The Amendment of the Constitution refers to the formal process through which changes are made to the provisions of the Constitution. This includes the addition of new articles, modification or variation of existing provisions, or repeal of outdated or unnecessary parts, all carried out in accordance with the procedure prescribed in the Constitution itself. In India, this process is governed by Article 368, which outlines the methods and requirements for different types of amendments.

The primary purpose of constitutional amendments is to ensure that the Constitution remains dynamic and responsive to the evolving needs and aspirations of society. As social, economic, political, and technological conditions change over time, certain provisions of the Constitution may need to be updated or reinterpreted to remain effective and relevant. Amendments provide the legal mechanism to bring about such changes without compromising the integrity of the constitutional framework.

At the same time, the amendment process is designed to safeguard the fundamental values and principles enshrined in the Constitution—such as democracy, secularism, federalism, and the rule of law. This balance between flexibility and stability ensures that the Constitution remains a living document, capable of growth and transformation while preserving its core identity.

6.3 Concept and source of Constitutional provisions of Amendment

The concept of constitutional amendment in India is inspired by several international sources and legal traditions. Primarily, it draws from the **Government of India Act, 1935**, which allowed limited modifications by the British Parliament. The **U.S. Constitution** influenced the idea of a written and rigid constitution with a formal amendment process involving special majorities.

From **Canada**, India borrowed the idea of requiring **state consent for certain federal amendments**, while **South Africa** contributed to the structured legal procedure for amendments. The **Irish Constitution** inspired the inclusion of **Directive Principles** and the notion of democratic adaptability. Together, these influences helped the framers of the Indian Constitution design a flexible yet robust amendment process under **Article 368**, ensuring the Constitution remains a living and evolving document. The Constitution of India, often described as a living document, is designed to evolve with the changing needs and aspirations of society. To accommodate new developments, social transformations, and emerging challenges in governance, the Constitution includes a well-defined mechanism for its amendment. The comprehensive provisions regarding the amendment of the Constitution are enshrined in Article 368, which is part of Part XX of the Constitution. This Article grants Parliament the authority to initiate and carry out amendments to the Constitution.

6.2.1. Article 368

Article 368 of the Indian Constitution provides the procedure for amending the Constitution. It grants Parliament the power to make amendments, ensuring that the Constitution remains relevant and adaptable to changing circumstances. The amendment process begins with the introduction of a bill in either House of Parliament, which can be done by a minister or a private member. The bill must be passed by a special majority, which requires a two-thirds majority of the members present and voting, along with a majority of the total membership of each House. If the amendment involves federal provisions, it must also be ratified by the legislatures of at least half the states by a simple majority. Once the bill passes Parliament and, if necessary, is ratified by the states, it is presented to the President for assent. The President is bound to give assent to the bill, and cannot withhold or return it. After the President's assent, the amendment becomes a law and the Constitution is considered amended accordingly. The power to amend is not absolute. The Supreme Court, in the landmark case of *Kesavananda Bharati v. State of Kerala* (1973), established the basic structure doctrine, which holds that while Parliament can amend the Constitution, it cannot alter or destroy its fundamental features. Thus, amendments are limited by the basic structure of the Constitution, which includes essential principles like democracy, federalism, and separation of

powers. This ensures that the core values and structure of the Constitution remain intact, even as it evolves to meet the needs of society.

6.4 Types of Amendments under the Indian Constitution

Article 368 of the Indian Constitution outlines the procedures for amending the Constitution and provides for two formal types of amendments:

1. **Amendment by a Special Majority of Parliament** – This requires a majority of the total membership of each House of Parliament, along with a two-thirds majority of the members present and voting.
2. **Amendment by a Special Majority of Parliament along with Ratification by Half of the States** – In this case, after being passed by a special majority in Parliament, the amendment must be ratified by at least 50% of the state legislatures by a simple majority.

In addition to these, there is another category of amendment that can be carried out by a **Simple Majority of Parliament**. However, such amendments are **not considered amendments under Article 368**. These are used for making changes to provisions like the formation of new states, salaries of MPs, and others not affecting the core of the Constitution.

Thus, the Constitution of India can be amended in **three distinct ways**:

1. **By a Simple Majority of Parliament,**
2. **By a Special Majority of Parliament, and**
3. **By a Special Majority of Parliament along with Ratification by Half of the State Legislatures.**

Each of these methods is applied based on the nature and significance of the constitutional provisions being amended.

1. By a Simple Majority of Parliament,

The simple majority of Parliament refers to a majority of more than 50% of the members who are present and voting in either House of Parliament at the time of voting. This is the most basic form of majority used for passing ordinary bills in Parliament and also applies to certain constitutional provisions that do not require the procedure laid down in Article 368. Therefore, such changes, though part of the Constitution, are not considered formal constitutional amendments. These amendments are passed in the same manner as ordinary legislation, requiring only a simple majority in both the Lok Sabha and the Rajya Sabha, followed by the President's assent. They do not affect the federal structure,

distribution of powers, or fundamental features of the Constitution. Provisions that can be amended this way include the creation of new states or alteration of existing boundaries (Article 3), admission or establishment of new states (Article 2), changes related to citizenship, salaries and allowances of Members of Parliament, Governors, President, and Judges, the functioning and structure of Union Territories, and delimitation of constituencies. For example, the States Reorganisation Act, 1956, which reorganized states based on linguistic lines, was enacted through a simple majority. This method ensures that less significant or administrative changes can be made efficiently and flexibly by the Parliament without going through the rigid procedures required for deeper constitutional reforms.

The following provisions of the Indian Constitution can be amended through a simple majority of the Parliament. These do not require the special procedure outlined in Article 368 and are considered ordinary legislative procedures:

- Admission or establishment of new states – Article 2
- Formation of new states and alteration of the area, boundaries, or names of existing states – Article 3
- Amendments to the Second Schedule relating to emoluments, allowances, and privileges of constitutional functionaries
- Abolition or creation of Legislative Councils in the states – Article 169
- Quorum in the Parliament – Article 100
- Salaries and allowances of Members of Parliament – Article 106
- Rules of procedure in Parliament – Article 118
- Use of English language in the Parliament
- Determination of the number of puisne judges in the Supreme Court
- Privileges of Parliament, its members, and committees – Article 105
- Extension of jurisdiction of the Supreme Court – Article 138
- Use of official language – Article 343
- Provisions related to citizenship – Articles 5 to 11
- Matters relating to elections to Parliament and State Legislatures
- Delimitation of constituencies – Article 82
- Administration and governance of Union Territories
- Provisions of the Fifth Schedule – Article 244(1)
- Provisions of the Sixth Schedule – Article 244(2)

2. By a Special Majority of Parliament

The special majority of Parliament is required for amending most provisions of the Constitution under Article 368. This type of amendment demands a more rigorous procedure compared to a simple majority. A special majority means that the amendment bill must be passed by each House of Parliament with a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting. This ensures broader consensus and prevents any single political party or group from unilaterally changing important constitutional provisions. After the bill is passed by both Houses with the required majority, it is presented to the President for assent. Once the President gives assent, the amendment becomes part of the Constitution. This method is used to amend provisions that are significant but do not alter the federal structure of the Constitution. Examples include changes to the Fundamental Rights, Directive Principles of State Policy, the powers and functions of the President, the structure and functioning of Parliament, the Union and State judiciary, and other central features of the Constitution. An example of such an amendment is the 42nd Constitutional Amendment Act, 1976, which made sweeping changes to the Constitution during the Emergency period. The special majority procedure is designed to safeguard the essential features of the Constitution and ensure that substantial amendments reflect a wider consensus among the elected representatives.

Following provisions can be amended by Special Majority

- ✓ Fundamental Rights.
- ✓ DPSPs.
- ✓ All other provisions which are not covered by the first and third categories.

3. By a Special Majority of Parliament along with Ratification by Half of the State Legislatures.

The provisions of the Indian Constitution related to the federal structure of the Indian polity require an amendment process that involves two key steps: a special majority of Parliament and the consent of half of the state legislatures by a simple majority. This procedure ensures that amendments to the federal provisions, which affect the distribution of powers between the Union and the

States, are passed with broad support at both the central and state levels. The process begins with the introduction of the amendment bill in either House of Parliament (Lok Sabha or Rajya Sabha). The bill must be passed by a special majority in both Houses, which requires a majority of the total membership of each House (more than half of the total number of members) and a two-thirds majority of the members present and voting. This means that at least two-thirds of the members who are present and voting must support the amendment. Once the amendment bill passes through Parliament with the required special majority, it must be sent to the state legislatures for ratification. However, it is not required for all states to give their consent. The Constitution mandates that half of the states must ratify the amendment by a simple majority in each state legislature. A simple majority means that the majority of members present and voting in each state legislature must agree to the amendment. Once half of the states approve the bill, the amendment process is considered complete.

An important aspect of this process is that the Constitution does not specify a time limit within which the states must ratify the amendment. Therefore, the state legislatures have the flexibility to approve the amendment at their own pace. This allows states to deliberate and act on constitutional changes in a manner suited to their local governance needs. The provisions that deal with the federal structure and division of powers between the central government and the states require this more complex process of amendment. Some of the provisions that can be amended by a special majority of Parliament and the ratification of half the states include the election of the President and the manner in which the election process is carried out (Article 54 and 55). This is a federal matter as it affects the distribution of power between the states and the central government. Similarly, the extent of executive powers of the Union and the States (Article 73 and 162) can be amended through this procedure, as changes to the powers and functions of the Union and the States affect the central-state relationship. Provisions related to the Supreme Court and High Courts, such as the appointment of judges and the jurisdiction of courts (Articles 124 to 147), also require this process as they impact the balance of power between the Union and the States. This process ensures that any amendments affecting the federal structure of the Constitution are made with broad-based approval from both the central and state governments, reflecting the cooperative nature of Indian

federalism. The requirement for state ratification serves as a safeguard to prevent unilateral changes that might undermine the balance of power between the Union and the States. This system allows the Constitution to evolve with time while maintaining the integrity of the federal system.

Type of Amendment	Procedure Required	Applicability / Examples
1. Simple Majority of Parliament	⇒ More than 50% of members present and voting ⇒ Not covered under Article 368	⇒ Creation of new states ⇒ Salaries of MPs ⇒ Delimitation of constituencies
2. Special Majority of Parliament	⇒ Majority of total membership of each House ⇒ 2/3rd of members present and voting	⇒ Amendment to Fundamental Rights ⇒ Directive Principles ⇒ Parliamentary structure
3. Special Majority + Ratification by Half of States	⇒ Special majority in Parliament ⇒ Ratification by 50% of State Legislatures	⇒ Amendment affecting federal provisions (e.g., election of President, powers of states)

6.5 Procedure for Amendment of the Indian Constitution

The procedure for amending the Constitution of India, as outlined in Article 368, involves a detailed process that must be followed to ensure that any changes made to the Constitution are legitimate and reflect the consensus of the people's representatives.

The process begins with the introduction of an amendment bill in either house of Parliament. The bill can be introduced by a minister or a private member, and there is no requirement for prior permission from the President for the introduction. This allows for flexibility and ensures that the amendment process can be initiated by any member of Parliament. Once the bill is introduced, it must

be passed in both Houses of Parliament. For the bill to pass, it must receive a special majority, which means it requires:

A majority of the total membership of each House, meaning more than 50 percent of the total members must be in favor.

A two-thirds majority of the members present and voting, meaning that at least two-thirds of those present and voting must support the amendment.

Each House must pass the bill separately. In case of disagreement between the two Houses, there is no provision for holding a joint sitting. Each House must resolve the issue independently. This ensures that both Houses maintain their constitutional integrity and independence. If the proposed amendment relates to federal provisions, which involve the division of powers between the Union and the States, the bill must also be ratified by the legislatures of half of the states. The ratification by the states requires a simple majority, which means a majority of the members present and voting in each state legislature. After the bill is passed by both Houses of Parliament and, if necessary, ratified by the state legislatures, the bill is sent to the President for assent. The President is required to give his assent to the bill. It is important to note that the President cannot withhold assent or return the bill to Parliament for reconsideration, unlike in ordinary legislation. Once the President assents to the bill, it becomes an Act, known as a Constitutional Amendment Act. This means that the Constitution is officially amended, and the changes made by the amendment are incorporated into the Constitution. This entire procedure ensures that any changes to the Constitution are made with the approval of both Parliament and, when necessary, the states, reflecting a democratic process and maintaining the integrity of the constitutional framework.

6.6. Significance of Amendment

The provision for amending the Indian Constitution holds significant importance for various reasons, each contributing to the adaptability and progress of the nation's legal framework.

First and foremost, adaptability in governance is a key aspect of constitutional amendments. India is a diverse and constantly evolving nation, and its needs change over time due to shifting social, political, and economic conditions. A rigid Constitution would fail to address these changing needs. The ability to amend the Constitution allows the government to make necessary adjustments in

governance practices and policies to reflect new realities, ensuring that the document remains relevant and effective in guiding the nation. Another critical significance is the accommodation of new rights. As awareness of rights among citizens increases, new groups in society begin to assert their rights. For example, the LGBT community in India has been advocating for equal rights and recognition. Through constitutional amendments, provisions can be made to address the rights of these communities, ensuring that the Constitution remains in line with contemporary human rights values and social progress.

Evolution of new rights is another important outcome of constitutional amendments. As societal norms evolve, new interpretations of existing provisions can lead to the recognition of additional rights. A notable example is the expansion of the Right to Life and Personal Liberty under Article 21 of the Constitution, which, through judicial interpretation, led to the recognition of the Right to Privacy as a fundamental right. Constitutional amendments make it possible to formally include such evolving rights, ensuring that the Constitution reflects the changing values and concerns of society. The ability to amend the Constitution also helps in addressing emerging issues. As new societal challenges arise, such as concerns about vigilantism, hate crimes, environmental threats, or technological advancements, the Constitution must be flexible enough to address these issues. The amendment process allows for the creation of laws and provisions that respond to these emerging challenges, providing legal solutions to modern-day problems that the framers of the Constitution could not have anticipated. the promotion of social reform is a fundamental aspect of constitutional amendments. Over time, some social practices and cultural norms may become outdated or oppressive, and the Constitution's flexibility allows for reforms that bring the country into alignment with modern values. For instance, the amendment process played a crucial role in abolishing practices like untouchability and child marriage, thus driving social progress and ensuring that the nation adheres to principles of equality, justice, and human dignity. In conclusion, the provision for amending the Constitution ensures that it remains a dynamic document capable of evolving in response to the changing needs and aspirations of the country. It allows for the protection and expansion of rights, addresses emerging challenges, and fosters social reform, thereby helping India

progress in a way that aligns with its democratic values and the needs of its citizens.

6.7 Criticisms of the Constitutional Amendment Procedure

The procedure for amending the Indian Constitution has faced criticism on several fronts. One major criticism is the lack of a dedicated body for constitutional amendments, such as a Constitutional Convention or Constituent Assembly. Instead, the power to amend the Constitution is vested in the Parliament and, in some cases, the state legislatures. This concentration of power in the hands of the legislature raises concerns about the fairness and inclusiveness of the amendment process.

Another point of criticism is the absence of a special, distinct process for constitutional amendments. Apart from the requirement for a Special Majority in Parliament, the amendment process follows a legislative procedure similar to that of ordinary laws. This has led some to argue that constitutional amendments, which are meant to be more significant and impactful, should be handled through a separate and more transparent process. The power to initiate amendments lies solely with the Parliament, with limited involvement from the states. While states can play a role in specific amendments, such as those affecting federal provisions, the consent of state legislatures is only required in a few cases, and that too, by a simple majority from only half the states. This concentration of power in Parliament has been seen as limiting the role of states in the constitutional amendment process. Further, a major portion of the Constitution can be amended by Parliament alone, which has led to concerns that this might undermine the federal structure of the country. The need for state ratification is limited to a few areas, leading critics to argue that the federal nature of the Constitution could be compromised. the lack of a provision for a joint sitting of both Houses of Parliament in cases of disagreement on a constitutional amendment bill can lead to deadlock situations, further complicating the amendment process. In cases where the two Houses do not reach an agreement, no clear resolution mechanism exists. the amendment procedure's provisions are often considered too vague, leaving room for disputes. This lack of clarity can lead to legal challenges and necessitate judicial intervention, which could potentially alter the original intent of the amendment. Despite these criticisms,

the amendment procedure plays a crucial role in ensuring the Constitution remains relevant and adaptable to the evolving needs of Indian society. Constitutional amendments have shaped India's governance and legal framework, allowing the Constitution to remain a living document that reflects the aspirations, challenges, and evolving values of its people. The flexibility of the amendment process is essential to ensure the Constitution's continued efficacy in guiding the nation for generations to come.

Sr. No.	Year	Number and Types of Amendment	Landmark Case	Issue Addressed
1	1951	First Amendment – Modified freedom of speech and imposed restrictions.	Romesh Thapar v. State of Madras (1950)	Restrictions on freedom of speech, reasonable limits on expression.
2	1952	Second Amendment – Redistribution of states' representation in Parliament.	None	Adjusted representation in Parliament post-First General Elections.
3	1954	Third Amendment – Empowered Parliament to prescribe qualifications for election commissioners.	None	Empowered Parliament to prescribe qualifications for election commissioners.
4	1955	Fourth Amendment – Property rights and preventive detention.	Gopalan v. State of Madras (1950)	Preventive detention, property rights restrictions.
5	1956	Fifth Amendment – Related to the states' reorganization (boundaries).	None	Redefined states and union territories' boundaries.
6	1965	Sixth Amendment – Made official language provisions more flexible.	None	Language policy flexibility in states.
7	1966	Seventh Amendment – Adjusted the structure of states and union territories.	None	Altered the structure and composition of states and union territories.
8	1967	Eighth Amendment –	None	Judicial review

		Exempted certain laws from judicial review.		powers in relation to laws.
9	1971	Ninth Amendment – Related to land reforms and retrospective validation.	K.K. Verma v. Union of India (1963)	Land reform laws and retrospective validation.
10	1972	Tenth Amendment – Restricted legal recourse against state laws.	None	Restrictions on judicial review of state laws.
11	1975	Eleventh Amendment – Further empowered Parliament on judicial matters.	None	Further strengthened Parliament's powers on judicial appointments.
12	1976	Forty-Second Amendment – Fundamental rights, procedures, and Preamble.	Minerva Mills v. Union of India (1980)	Extended emergency powers and reduced fundamental rights during Emergency.
13	1985	Forty-Fourth Amendment – Restored the rights curtailed by the 42nd Amendment.	None	Restored constitutional provisions limited during Emergency.
14	1986	Fifty-Second Amendment – Political party disqualification rules.	K.K. Verma v. Union of India (1967)	Introduced anti-defection laws for party discipline.
15	1991	Seventy-Third Amendment – Empowered Panchayati Raj Institutions.	None	Empowerment of local self-governments in rural areas.
16	1992	Seventy-Fourth Amendment – Urban local bodies governance.	None	Strengthened urban local governance.
17	2002	Ninety-First Amendment – Related to disqualifying members of	Kihoto Hollohan v. Zachillhu (1992)	Anti-defection law, disqualification of members.

		Parliament.		
18	2005	Ninety-Seventh Amendment – Changes to the governance of co-operative societies.	None	Reform in the governance of co-operatives.
19	2010	Ninety-Ninth Amendment – Judicial appointments.	Supreme Court Advocates-on-Record Association v. Union of India (2015)	National Judicial Appointments Commission (NJAC) and judicial independence.
20	2021	Hundred Fifth Amendment – Strengthening affirmative action.	None	Strengthening affirmative action in relation to educational institutions.

6.8 Important Amendments of Constitution of India

1. 1st Amendment Act of 1951

The 1st Amendment Act of 1951 was a response to judicial challenges that sought to invalidate land reform laws and other socio-economic policies. It introduced the Ninth Schedule to the Constitution, which lists certain laws, both Central and State, that cannot be challenged in courts even if they violate fundamental rights. This amendment was crucial for protecting laws related to land reforms, which were essential for social welfare and economic equality. Additionally, the amendment allowed for restrictions on freedom of speech and expression, permitting the government to impose limitations for reasons such as the sovereignty and integrity of India, public order, and national security.

2. 42nd Amendment Act of 1976

The 42nd Amendment Act of 1976 was one of the most significant and controversial amendments in Indian constitutional history. It introduced important changes, such as adding the terms "Socialist," "Secular," and "Integrity" to the Preamble of the Constitution, emphasizing India's commitment to social and economic equality, religious tolerance, and national unity. It also introduced Fundamental Duties for citizens under Part IVA, outlining responsibilities such as respect for the Constitution, preserving the environment, and promoting national harmony. The amendment greatly increased the powers of the central government, particularly during times of emergency, and curtailed

judicial review, effectively limiting the scope of checks and balances. However, many of its provisions were later partially reversed by the 44th Amendment after the Emergency period.

3. 44th Amendment Act of 1978

The 44th Amendment Act of 1978 sought to restore democratic rights after the imposition of the Emergency in 1975. One of its key provisions was replacing the term "internal disturbance" with "armed rebellion" in Article 352, thus restricting the grounds for declaring a National Emergency to only situations of armed rebellion. This limitation aimed to prevent the misuse of emergency powers for political purposes. Another crucial change was the removal of the Right to Property from the list of Fundamental Rights (Part III) and making it a Legal Right under Article 300A. This reduced the government's power to acquire property arbitrarily while still allowing for public interest acquisition with due process. The 44th Amendment was an important step toward restoring the democratic structure of governance and curbing the centralization of power.

4. 61st Amendment Act of 1988

The 61st Amendment Act of 1988 marked a significant shift in India's electoral framework by lowering the voting age from 21 years to 18 years. This was a response to the growing realization that young adults, being economically and socially active, should be given the opportunity to participate in elections and shape the future of the nation. By lowering the voting age, the amendment enabled a broader demographic to engage in the democratic process, thus increasing political participation among the youth and fostering a more inclusive electoral system.

5. 73rd Amendment Act of 1992

The 73rd Amendment Act of 1992 was a landmark reform that introduced provisions related to Panchayati Raj Institutions (PRIs), with the goal of decentralizing power to the grassroots level. The amendment ensured that rural local bodies, such as Panchayats, became constitutionally mandated, empowering them to function more independently. It provided for direct elections at the village, intermediate, and district levels, ensuring that people could choose their representatives directly. Additionally, the amendment

mandated reservation of one-third of the seats for women and ensured that these institutions would be given sufficient powers and responsibilities related to agriculture, education, health, and rural development. The 73rd Amendment aimed to promote participatory governance, transparency, and accountability at the local level.

6. 74th Amendment Act of 1992

The 74th Amendment Act of 1992 mirrored the provisions introduced by the 73rd Amendment but focused on urban local bodies such as Municipalities and Municipal Corporations. It provided constitutional status to Urban Local Bodies (ULBs), thus enhancing their role in urban governance and development. Like the Panchayati Raj system, the amendment introduced direct elections for urban local body representatives and reservations for women and marginalized communities. It also gave urban local bodies powers over urban planning, land use, infrastructure development, and local economic matters, helping to improve urban governance and create more efficient and accountable municipal systems. This amendment brought urban areas under the constitutional framework of democratic governance, empowering municipal bodies to cater to the growing needs of urban populations.

7. 86th Amendment Act of 2002

The 86th Amendment Act of 2002 was a milestone in India's educational reform journey. It inserted Article 21A into the Constitution, making free and compulsory education a fundamental right for all children between the ages of 6 and 14 years. This provision aimed to bridge the education gap in India, particularly in rural and economically disadvantaged areas. The 86th Amendment laid the foundation for the Right to Education Act (RTE), which was later enacted in 2009, ensuring that children had access to quality education. This move aligned India with international human rights frameworks, such as the UN Convention on the Rights of the Child, and emphasized the importance of education in the nation's development.

8. 97th Amendment Act of 2011

The 97th Amendment Act of 2011 was a significant change that granted Constitutional status to cooperative societies. Prior to this amendment, cooperative societies, which are voluntary associations formed to meet the mutual needs of their members, were primarily regulated by state laws. However, the amendment elevated their importance by inserting Article 243ZH to 243ZT in the Constitution, which made provisions related to cooperative societies more uniform and standardized across the country. Article 19(1)(c) was amended to include the right to form cooperative societies as part of the fundamental rights of the citizens. The amendment ensures that cooperative societies have democratic control, providing for the election of members to governing bodies in a fair and transparent manner. It also requires state laws to align with the model laws for cooperative societies as laid down by the Parliament. This amendment was important for enhancing the role of cooperative societies in the Indian economy, especially in rural areas. Cooperatives are key in sectors like agriculture, dairy, and housing, and this constitutional status provides them with greater protection and recognition. It aimed at improving governance and transparency within these societies, ensuring that they operate effectively and meet the needs of their members.

9. 101st Amendment Act of 2016

The 101st Amendment Act of 2016 was a major milestone in India's tax reforms, as it introduced the Goods and Services Tax (GST). GST is a comprehensive indirect tax reform aimed at simplifying and streamlining the existing complex tax structure. It replaced multiple central and state taxes such as sales tax, VAT, excise duty, and service tax, and unified them into one single tax regime, levied on the supply of goods and services. Article 246A was inserted, providing exclusive powers to Parliament and State Legislatures to legislate on the GST. The GST Council was established, consisting of the Union Finance Minister and state finance ministers, to decide the tax rates, exemptions, and other key aspects of GST. The GST system introduced a dual GST model, with

both the Central GST (CGST) and State GST (SGST) applicable to intra-state transactions, and Integrated GST (IGST) for inter-state transactions. The implementation of GST was aimed at reducing the cascading effect of taxes (tax on tax), simplifying tax compliance, and promoting economic integration within the country. It also aimed at boosting the ease of doing business by creating a unified tax system that applies across India. This reform is seen as a game-changer for the Indian economy, improving the efficiency of tax collection and increasing tax compliance by bringing more businesses into the formal tax regime.

10. 102nd Amendment Act of 2018

The 102nd Amendment Act of 2018 gave Constitutional status to the National Commission for Backward Classes (NCBC). Prior to this amendment, the NCBC was a statutory body established under an act of Parliament in 1993, but it lacked constitutional backing. With the 102nd Amendment, the Commission was now placed under Article 338B of the Constitution, thus giving it constitutional recognition and safeguarding its autonomy. National Commission for Backward Classes (NCBC) was given a constitutional status, similar to the National Commission for Scheduled Castes (NCSC) and National Commission for Scheduled Tribes (NCST). The Commission was empowered to investigate and monitor matters related to the backward classes and make recommendations regarding their welfare and progress. It was also empowered to add or remove communities from the list of backward classes based on its recommendations. This amendment strengthened the legal and constitutional standing of the NCBC, ensuring that backward classes receive the appropriate attention in matters of social justice, welfare, and affirmative action. It also provided greater power to the Commission in terms of recommending policies for the upliftment of these communities and protecting their rights.

11. 103rd Amendment Act of 2019

The 103rd Amendment Act of 2019 was introduced to provide 10% reservation in government jobs and educational institutions for Economically Weaker Sections (EWS) in the general category. This amendment aimed to provide support to individuals from economically disadvantaged backgrounds who do not fall under existing reservation categories for Scheduled Castes (SCs),

Scheduled Tribes (STs), and Other Backward Classes (OBCs). The amendment introduced a provision for 10% reservation for the EWS category, which is based on income and not caste or community. It allowed for this reservation in both educational institutions and government employment, aiming to provide economic opportunities to those who are economically disadvantaged but are not eligible for other types of reservations. The upper-income limit for eligibility was defined as an annual income of less than Rs. 8 lakh (as of the time of the amendment), and certain other conditions related to landholding and property ownership were also considered for eligibility. This amendment was seen as a step toward social justice by addressing the economic disparity that exists even among those who are not classified under existing affirmative action categories. The EWS reservation has been a contentious issue, with supporters arguing that it provides an opportunity for the economically disadvantaged in the general category to access educational and employment opportunities, while critics argue that it might dilute the impact of caste-based reservations.

12. 104th Amendment Act of 2020

The 104th Amendment Act of 2020 made provisions for the reservation of seats in the Lok Sabha (House of the People) and State Legislative Assemblies for members of Scheduled Castes (SCs) and Scheduled Tribes (STs) until 25th January 2030. This amendment extended the reservation for these groups, which was originally set to expire after 70 years, ensuring continued political representation for these communities.

The amendment extended the reservation for Scheduled Castes (SCs) and Scheduled Tribes (STs) in the Lok Sabha and State Legislative Assemblies until 25th January 2030. It also provided for the continuation of the provision for the reservation of seats for the Anglo-Indian community in the Lok Sabha and State Assemblies, though this provision was later rendered redundant with the introduction of this amendment. The 104th Amendment ensured the continued political empowerment of historically marginalized communities by reserving a proportionate number of seats for SCs and STs. This was aimed at ensuring political participation and representation, which is vital for addressing the socio-economic and educational disadvantages faced by these communities. The extension of reservation until 2030 allowed for their continued inclusion in the legislative process, reflecting India's commitment to affirmative action and equal representation.

13. 105th Amendment Act of 2021

The 105th Amendment Act of 2021 restored the power of State Governments to identify Socially and Educationally Backward Classes (SEBCs). Before this

amendment, the identification of SEBCs, which are groups that do not fall under Scheduled Castes or Scheduled Tribes but are still socially and economically disadvantaged, was the sole responsibility of the Union Government through a centralized process. The 105th Amendment empowered State Governments and Union Territories to identify SEBCs for the purpose of reservation in educational institutions and government jobs within their jurisdiction. It also restored the power of states to include communities in the SEBC category without requiring a central directive. This was particularly important as states were more familiar with the local socio-economic conditions and could make more accurate assessments of backwardness.

The amendment also sought to make the identification process more inclusive, flexible, and responsive to the regional needs of backward classes. This amendment was seen as a step toward empowering state governments to cater to the specific needs of backward classes at the regional level. By restoring this power, the 105th Amendment allowed states to address the local socio-economic inequalities more effectively. It also emphasized the principle of federalism, where state governments were entrusted with more autonomy in determining which communities require affirmative action.

14. 106th Amendment Act of 2023

The 106th Amendment Act of 2023 introduced a groundbreaking provision for gender equality in Indian politics by reserving one-third of all seats for women in the Lok Sabha (the Lower House of Parliament), State Legislative Assemblies, and the Legislative Assembly of the National Capital Territory (NCT) of Delhi. This provision applies not only to general seats but also to those reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs). One-third of the total seats in the Lok Sabha, State Legislative Assemblies, and Delhi Legislative Assembly were reserved for women.

The reservation applies to seats reserved for SCs and STs as well, thereby ensuring that the reservation benefits women from these communities as well. The amendment also created a framework for the reservation to rotate every election, ensuring that the representation of women in legislative bodies is spread across different regions and constituencies. The 106th Amendment marked a historic step toward achieving gender equality in Indian politics. It addressed the gender disparity in political representation, as women have traditionally been underrepresented in legislative bodies. By ensuring that one-third of seats are reserved for women, the amendment provided them with a platform to actively participate in the political process, thereby contributing to decision-making at the national and state levels. The inclusion of SCs and STs in this reservation made it a highly inclusive measure, ensuring that marginalized women have equal access to political representation. This is expected to not only empower women but also encourage more diverse viewpoints in policymaking, benefiting the nation's development as a whole.

6.8 Conclusion

In conclusion, constitutional amendments play a pivotal role in adapting the Indian Constitution to meet the evolving needs of society. They reflect the country's commitment to justice, equality, and inclusivity by addressing issues such as social, economic, and political disparities. These amendments enhance the functioning of democratic institutions, ensuring that marginalized communities are represented and their rights are protected. Through consistent constitutional reforms, India strives to create a more equitable and progressive society. Overall, these amendments are integral to upholding the spirit of the Constitution and promoting national unity.

6.9. Exercise

6.9.1. Objective Type Questions (MCQs)

1. **Which Article of the Indian Constitution deals with the procedure for its amendment?**
 - A) Article 352
 - B) Article 368
 - C) Article 370
 - D) Article 356
2. **From which country did India borrow the procedure for amendment of its Constitution?**
 - A) United Kingdom
 - B) South Africa
 - C) United States
 - D) Australia
3. **Which part of the Constitution contains provisions regarding its amendment?**
 - A) Part XIX
 - B) Part XX
 - C) Part XXI
 - D) Part XXII
4. **Which of the following amendments introduced the 'basic structure' doctrine?**
 - A) 24th Amendment
 - B) 42nd Amendment
 - C) Kesavananda Bharati Case
 - D) 44th Amendment
5. **Which of the following requires ratification by at least half of the state legislatures besides a special majority in Parliament?**
 - A) Amendment to Fundamental Rights
 - B) Amendment affecting federal character
 - C) Amendment to Directive Principles
 - D) Amendment to preamble
6. **A Constitutional Amendment Bill can be introduced in:**
 - A) Only Lok Sabha
 - B) Only Rajya Sabha
 - C) Either House of Parliament
 - D) Joint Session of Parliament
7. **Which of the following is NOT a type of amendment under the Indian Constitution?**
 - A) By simple majority

- B) By special majority
 - C) By referendum
 - D) By special majority and ratification by states
8. **Which amendment is known as the ‘Mini Constitution’ due to its comprehensive changes?**
- A) 24th Amendment
 - B) 42nd Amendment
 - C) 44th Amendment
 - D) 52nd Amendment
9. **Who must give assent to a Constitutional Amendment Bill after it is passed by Parliament?**
- A) Prime Minister
 - B) President
 - C) Chief Justice of India
 - D) Speaker of Lok Sabha
10. **Which of the following statements is correct regarding the amendment of Fundamental Rights?**
- A) They cannot be amended
 - B) They can be amended by a simple majority
 - C) They can be amended by a special majority
 - D) They can be amended only by referendum

6.9.2. Descriptive Type Questions (Short Answer)

1. Define constitutional amendment. Explain the meaning and significance of amending the Constitution in a democratic country like India.
2. Describe the sources and constitutional provisions that empower the Indian Parliament to amend the Constitution.
3. Explain in detail the procedure for amending the Constitution of India under Article 368.
4. Discuss the different types of amendments provided under the Indian Constitution, giving examples for each.
5. What is the significance of the ‘basic structure doctrine’ as evolved by the Supreme Court in the Kesavananda Bharati case?
6. Critically evaluate the criticisms leveled against the amendment procedure of the Indian Constitution.
7. Discuss the importance and impact of any two landmark amendments to the Indian Constitution.
8. Compare the amendment procedure of the Indian Constitution with that of another country (such as the USA or UK).
9. What role does the President of India play in the constitutional amendment process? Can the President refuse assent to an amendment bill?
10. Examine the contemporary debates and judicial perspectives on constitutional amendments in India.

UNIT-7

ELECTORAL SYSTEM AND REPRESENTATION

- 7.1 Introduction**
- 7.2 Election Commission of India: Structure and functions**
 - 7.2.1. History of the Election Commission of India**
 - 7.2.2. Structure of the ECI**
 - 7.2.3. Functions of the Election Commission of India (ECI)**
 - 7.2.4. Judicial interpretation**
 - 7.2.5. Importance of the Election Commission of India (ECI)**
- 7.3 Types of elections: Lok Sabha, Rajya Sabha, State Legislative Assemblies**
 - 7.3.1. Lok Sabha elections (House of the People)**
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 - 7.3.4. Comparative analysis**
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- 7.9 Conclusion**
- 7.10 Exercise**
 - 7.10.1. Objective Type Questions (MCQs)**
 - 7.10.2. Descriptive Type Questions (Short Answer)**

7.1. Introduction

The foundation of any democracy lies in its electoral process and the way in which its people are represented in governance. The Indian electoral system is one of the largest and most intricate in the world, catering to over 90 crores eligible voters across diverse linguistic, cultural, religious, and socio-economic backgrounds. The democratic process in India empowers its citizens to choose their representatives at various levels—Union, State, and local—through a systematic and periodic electoral mechanism.

Elections in India serve as the bedrock of its representative democracy, ensuring that the will of the people is expressed through periodic, free, and fair elections. These elections are not only a means to constitute a government but also act as instruments for holding elected representatives accountable to the public. The electoral process facilitates peaceful political transitions, public participation in policy direction, and upholds the principles of equality and political justice as enshrined in the Preamble to the Constitution.

India follows a parliamentary form of government, where the executive is drawn from the legislature, and elections play a vital role in determining the composition of both Union and State legislatures. The sanctity and integrity of the electoral process are maintained through the independent functioning of constitutional authorities like the Election Commission of India, which supervises and monitors all aspects of electoral conduct.

Representation is the cornerstone of democratic governance. The legitimacy of laws, policies, and executive actions stems from the representative mandate that the elected government receives from the electorate. India primarily follows the First-Past-the-Post (FPTP) system, a majoritarian electoral model. However, certain institutions like the Rajya Sabha and the President's election involve elements of Proportional Representation, showcasing the versatility of the Indian electoral framework.

Over the decades, electoral reforms, judicial interventions, and civil society activism have contributed significantly to strengthening the democratic process. Voter education campaigns, use of technology like Electronic Voting Machines (EVMs) and Voter Verifiable Paper Audit Trail (VVPAT), and legal safeguards against malpractices have enhanced transparency and efficiency.

This unit provides an in-depth understanding of the electoral process and the representation mechanism in India, focusing on the institutional, legal, historical, and functional aspects of elections. It delves into the composition and functions of the Election Commission, the types of elections conducted in the country, a comparative analysis of electoral systems, and the critical role played by voters in the sustenance of democracy.

7.2 Election Commission of India : Structure And Functions

The Election Commission of India (ECI) is a permanent and independent constitutional body entrusted with the responsibility of administering election processes in India. Its primary function is to ensure that elections to the Parliament, State Legislatures, and the offices of the President and Vice-President of India are conducted in a free, fair, and impartial manner. The ECI derives its authority from Article 324 of the Constitution of India, which empowers it with the superintendence, direction, and control of the entire electoral process.

7.2.1. History of Election Commission of India

The Election Commission was established in accordance with the Constitution on 25th January 1950, a day which is now celebrated annually as National Voters' Day. Initially, it was a single-member body, with Mr. Sukumar Sen as the first Chief Election Commissioner. He conducted the first general elections in India in 1951-52, which involved over 17.3 crores voters and marked a historic beginning for the world's largest democracy.

The need for a multi-member commission was felt over time due to the increasing complexity and volume of elections. As a result, the Election Commission was made a three-member body in 1989 by amending the Election

Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991.

Today, the Commission is a multi-member body, designed to uphold neutrality and provide institutional strength in the conduct of elections across the country.

7.2.2. Structure of the Election Commission of India

The Election Commission of India (ECI) is a constitutional body established under Article 324 of the Constitution of India.

Composition

- Article 324(2) provides for the appointment of the Chief Election Commissioner (CEC) and such number of other Election Commissioners as the President may fix from time to time.
- Currently, it includes:
 - ✓ One Chief Election Commissioner (CEC)
 - ✓ Two Election Commissioners

Decision-Making

- All members have equal powers and function as a collective body.
- Decisions are made by majority vote in case of disagreement among members.

Appointment

- Appointed by the President of India under Article 324(2).
- The Constitution does not prescribe qualifications, tenure, or procedure of appointment—these are governed by conventions and laws such as the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991.

Tenure and Removal

- Tenure: 6 years or until the age of 65 years, whichever is earlier.
- Removal of CEC: Can only be removed in the same manner as a Supreme Court judge, i.e., by a special majority of both Houses of Parliament on grounds of proved misbehaviour or incapacity (Article 324(5) and Article 124(4)).
- Removal of Election Commissioners: Can be removed by the President on the recommendation of the CEC.

Status and Remuneration

- As per the 1991 Act, the CEC and ECs enjoy equal status and receive salary, allowances, and other conditions of service equivalent to a judge of the Supreme Court.

Secretariat

- The Commission is supported by a Secretariat in New Delhi.
- Staff is drawn from the civil services and other departments.
- The Secretariat handles planning, execution, and administrative duties during elections..

7.2.3. Functions of the Election Commission of India (ECI)

The Election Commission of India (ECI) is a constitutional authority under Article 324 of the Constitution. It is entrusted with the superintendence, direction, and control of the entire process of elections to the Parliament, State Legislatures, and the offices of the President and Vice-President of India.

Its responsibilities are broad-based, and include constitutional, administrative, advisory, and quasi-judicial functions. The ECI is central to ensuring that elections are free, fair, and impartial, and that the democratic will of the people is accurately reflected in governance.

The **key functions** of the ECI in detail:

1. Conduct of Elections

The primary and most crucial function of the ECI is the conduct of free and fair elections. It involves preparation and regular revision of electoral rolls to ensure accuracy, including adding eligible voters and deleting names of deceased or ineligible individuals. The ECI also notifies election schedules after consulting with stakeholders, scrutinizes nominations for eligibility under the Representation of the People Act, 1951, allots election symbols under the 1968 Order, deploys necessary personnel and security forces, supervises polling using EVMs and VVPATs, and declares official election results. *Example: In the 2019 General Elections, the ECI managed elections involving over 90 crores voters and over 1.1 crores officials.*

2. Enforcement of the Model Code of Conduct (MCC)

The ECI enforces the Model Code of Conduct to ensure a level playing field for all political parties during elections. It monitors the behavior of political parties and candidates to prevent hate speech, caste or religious appeals, and the misuse of government resources. The MCC is enforced from the announcement of elections until their completion. *Example: In 2021, the ECI took action against several leaders for violations like using religious symbols and making hate speeches.*

3. Registration and Recognition of Political Parties

The ECI regulates the registration and recognition of political parties under Section 29A of the Representation of the People Act, 1951. It grants recognition to political parties as National or State parties based on electoral performance and allocates symbols accordingly. The ECI also has the authority to suspend or freeze party symbols in case of disputes or non-compliance. *Example: BJP and INC are recognized as National Parties, whereas DMK is a recognized State Party in Tamil Nadu.*

4. Monitoring of Election Expenditure

The ECI monitors election expenditure to prevent the undue influence of money in politics. It sets statutory expenditure limits for candidates, appoints Expenditure Observers, and ensures timely submission and auditing of accounts by both candidates and political parties. Non-compliance may result in disqualification. *Example: In 2021, the ECI debarred several candidates for failing to submit expenditure statements.*

5. Electoral Reforms

The ECI plays a crucial role in proposing and implementing electoral reforms. It advises the government and Law Commission on legal amendments to improve transparency and integrity. Key proposals include decriminalization of politics, state funding of elections, simultaneous elections, and expanded use of VVPATs. Implemented reforms include the introduction of NOTA and mandatory disclosure of candidates' criminal records and assets.

6. Advisory and Quasi-Judicial Functions

The ECI performs important advisory and quasi-judicial roles under the Constitution and election laws. It advises the President or Governor on disqualification matters under Articles 102(1) and 191(1). In cases related to anti-defection, while the Speaker/Chairman has primary authority, the ECI may be consulted. It also adjudicates internal party disputes, especially regarding symbol allocation and leadership recognition. *Example: In 2023, the ECI resolved the Shiv Sena leadership dispute and allotted the party name and symbol to the Eknath Shinde faction.*

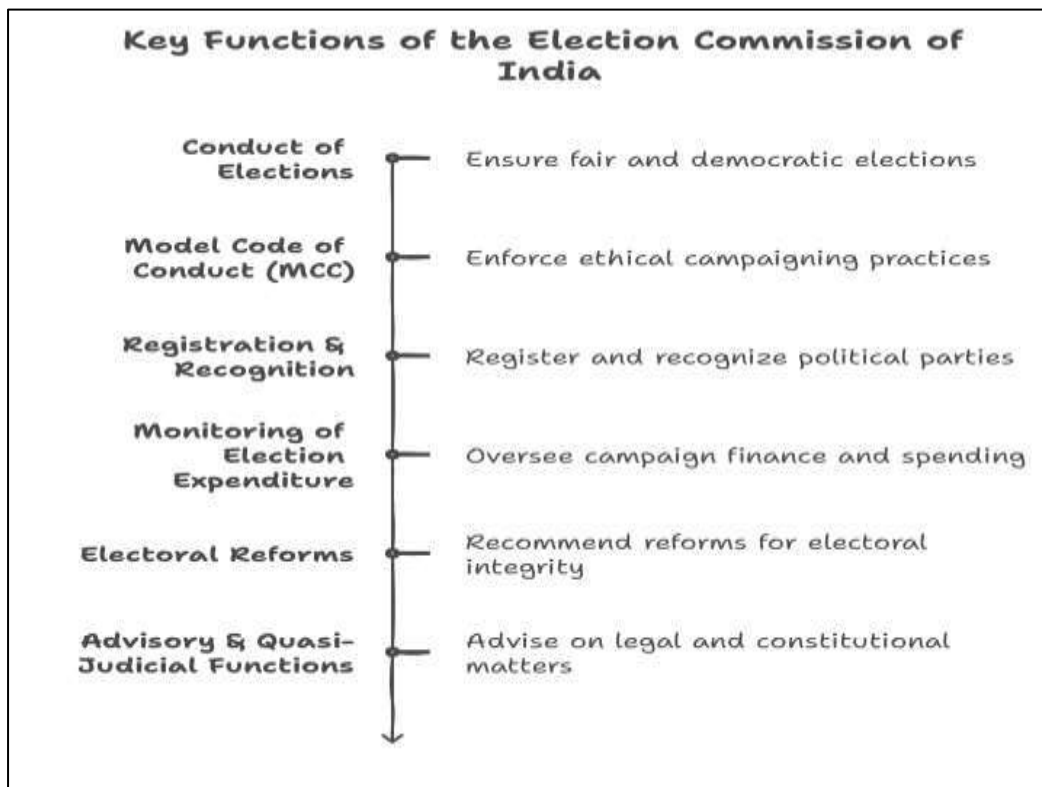


Image 1

7.2.4. Judicial Interpretation

The Election Commission of India (ECI) plays a pivotal role in safeguarding the democratic process. Over time, Indian courts—especially the Supreme Court—have interpreted the powers and functions of the ECI to affirm its autonomy, impartiality, and constitutional significance. These judicial interpretations help clarify ambiguities and expand the scope of Article 324 of the Constitution.

Below are some **landmark judgments** that have shaped the legal understanding of the ECI's powers:

1. **S.S. Dhanoa v. Union of India:** Citation: (1991) 3 SCC 567

Key Issue: Whether the Chief Election Commissioner (CEC) is subordinate to the executive and bound by government directives.

Judgment Summary: The Supreme Court emphasized that the Election Commission is a constitutional authority, not subordinate to the executive branch. It clarified that the CEC and Election Commissioners exercise quasi-judicial powers, particularly when dealing with electoral disputes, disqualifications, and the conduct of elections.

Significance: This case reaffirmed the independence of the ECI and protected it from undue political or executive pressure.

2. T.N. Seshan v. Union of India: Citation: (1995) 4 SCC 611

Key Issue: Whether the Chief Election Commissioner has supremacy over other Election Commissioners, particularly after the 1993 amendment introducing multi-member Election Commissions.

Judgment Summary: The Court held that the CEC is not superior to other Election Commissioners. All commissioners hold equal powers and decisions are to be made by majority vote in the Commission.

Significance: Ensured collegial functioning of the Commission. Prevented centralization of power in the hands of one individual. Upheld the spirit of cooperative functioning within the ECI.

3. Mohinder Singh Gill v. Chief Election Commissioner: Citation: (1978) 1 SCC 405

Key Issue: Whether the Election Commission can act beyond statutory provisions under the Constitution.

Judgment Summary: The Supreme Court gave a broad interpretation of Article 324, ruling that the ECI has plenary powers to ensure free and fair elections, even in matters where the Representation of the People Act or other laws are silent.

Famous Quote: "When the law is silent, Article 324 is not mute."

Significance: Recognized the residual and overriding powers of the ECI. Empowered the ECI to take proactive measures in the interest of electoral integrity. Expanded the doctrinal scope of Article 324.

4. Election Commission of India v. Union of India (2023): Citation: *Writ Petition (Civil) No. 104 of 2015*

Key Issue: The process of appointment of the Chief Election Commissioner and Election Commissioners.

Judgment Summary: The Supreme Court held that appointments to the Election Commission must be made by a committee comprising the Prime Minister, Leader of the Opposition, and the Chief Justice of India, until a law is enacted by Parliament.

Significance: Strengthened the independence and neutrality of the ECI. Prevented partisan appointments. Laid down a transparent process of selection.

5. Union of India v. Association for Democratic Reforms: Citation: (2002) 5 SCC 294

Key Issue: Whether the Election Commission can mandate the disclosure of criminal records, assets, and liabilities by candidates.

Judgment Summary: The Supreme Court held that voters have a right to know the antecedents of the candidates. It supported the ECI's initiatives to bring more transparency in elections.

Significance: Empowered the ECI to play a proactive role in electoral reforms. Strengthened voter rights under the doctrine of informed choice.

6. Indira Nehru Gandhi v. Raj Narain: Citation: (1975) Supp SCC 1

Key Issue: Validity of the 39th Constitutional Amendment that placed the election of the Prime Minister beyond judicial scrutiny.

Judgment Summary: The Supreme Court struck down the amendment, emphasizing that free and fair elections are part of the basic structure of the Constitution. It acknowledged the centrality of the Election Commission in maintaining this structure.

Significance: Reiterated that elections are judicially reviewable, and attempts to immunize electoral processes from scrutiny violate the basic structure doctrine. Implied the pivotal role of ECI in preserving democratic ethos.

7. Kanhiya Lal Omar v. R.K. Trivedi: Citation: (1985) 4 SCC 628

Key Issue: Challenge to the constitutional validity of the Election Symbols (Reservation and Allotment) Order, 1968 issued by the ECI.

Judgment Summary: The Court upheld the constitutional validity of the ECI's authority to allot, reserve, and freeze symbols for political parties, calling it a necessary power for the conduct of orderly elections.

Significance: Recognized the ECI's power to regulate political symbols, an essential element of electoral identity. Upheld the binding nature of ECI-issued notifications under the 1968 Order.

8. People's Union for Civil Liberties (PUCL) v. Union of India: Citation: (2003) 4 SCC 399

Key Issue: Whether voters have the right to negative voting or the "None of the Above" (NOTA) option.

Judgment Summary: The Court upheld the right of voters to express dissatisfaction with all candidates by choosing NOTA. It directed the ECI to provide the NOTA option in EVMs and ballot papers.

Significance: Strengthened voter rights and electoral choice. Affirmed the ECI's role in enabling free expression in the electoral process. Advanced transparency and accountability in electoral democracy.

9. N.P. Ponnuswami v. Returning Officer, Namakkal Constituency: Citation: (1952) SCR 218

Key Issue: Whether the rejection of a nomination paper can be challenged in a court before the completion of the entire election process.

Judgment Summary: The Supreme Court held that judicial intervention is barred until the entire election process is completed. The only remedy is through an election petition after results are declared.

Significance: Established the principle of "election matters are sui generis". Recognized the primacy of the ECI in conducting elections without judicial interference until completion.

10. Abhiram Singh v. C.D. Commachen: Citation: (2017) 2 SCC 629

Key Issue: Whether an appeal to religion, caste, community, or language during election campaigns violates Section 123(3) of the Representation of the People Act, 1951.

Judgment Summary: The Supreme Court held that seeking votes in the name of religion, caste, community, or language amounts to a corrupt practice and violates secular principles.

Significance: Empowered the ECI to take action against communal and divisive campaigning. Strengthened the Commission's authority to enforce the Model Code of Conduct in accordance with secularism—a part of the basic structure of the Constitution.

Table: Judicial Interpretations Related to the Election Commission of India

Sr. No.	Case Name	Citation	Key Contribution
1	S.S. Dhanoa v. Union of India	(1991) 3 SCC 567	Upheld ECI's quasi-judicial character and independence from executive control.
2	T.N. Seshan v. Union of India	(1995) 4 SCC 611	Clarified that all Election Commissioners have equal powers; CEC is not superior.
3	Mohinder Singh Gill v. Chief Election Commissioner	(1978) 1 SCC 405	Recognized ECI's plenary powers under Article 324 to ensure free and fair elections.
4	A.C. Jose v. Sivan Pillai	(1984) 2 SCC 656	Held that ECI must act within the framework of laws made by Parliament.
5	Union of India v. Association for Democratic Reforms	(2002) 5 SCC 294	Directed ECI to collect and disclose candidate information to voters for transparency.

6	Indira Nehru Gandhi v. Raj Narain	(1975) Supp SCC 1	Affirmed elections as part of the basic structure and underscored the ECI's central role.
7	Kanhiya Lal Omar v. R.K. Trivedi	(1985) 4 SCC 628	Upheld ECI's authority to allocate and freeze symbols under the 1968 Order.
8	PUCL v. Union of India	(2003) 4 SCC 399	Introduced NOTA; affirmed voter's right to express dissatisfaction.
9	N.P. Ponnuswami v. Returning Officer	(1952) SCR 218	Barred judicial interference until completion of the entire election process.
10	Abhiram Singh v. C.D. Commachen	(2017) 2 SCC 629	Held that using religion/caste during campaigning is a corrupt practice; strengthened MCC.

7.2.5. Importance of the Election Commission of India (ECI)

The Election Commission of India (ECI) is not merely a regulatory body that conducts elections; it is the bedrock of India's democratic governance. By maintaining the sanctity of the electoral process, the ECI ensures that "*We, the People*" remain at the centre of political power.

Let's examine the multifaceted importance of the ECI in greater depth:

1. Ensuring Free and Fair Elections: A Constitutional Mandate

Article 324 of the Indian Constitution vests in the ECI the power to supervise, direct, and control the entire process of elections to Parliament, State Legislatures, and the offices of the President and Vice-President. A free and fair election is the foundation of a functioning democracy. The ECI acts as a neutral referee, ensuring that no political party, group, or individual can gain undue advantage.

Example: Through strong enforcement of the Model Code of Conduct (MCC), the ECI curtails misuse of government machinery during election campaigns.

2. Prevention of Electoral Malpractices

Electoral frauds like booth capturing, rigging, vote-buying, and impersonation threaten the legitimacy of democracy. The ECI has developed robust mechanisms such as the deployment of Central Armed Police Forces (CAPF) in sensitive areas, the use of Electronic Voting Machines (EVMs) and VVPATs to prevent manipulation, and real-time surveillance including the c-VIGIL mobile app for citizens to report violations.

Case Reference: *Mohinder Singh Gill v. CEC* [(1978) 1 SCC 405] – The Supreme Court held that ECI has plenary powers to ensure free and fair elections, even in areas where laws are silent.

3. Upholding Political Equality and Universal Adult Suffrage

The ECI ensures the implementation of Article 326, which guarantees the right to vote to every citizen above the age of 18, irrespective of caste, creed, gender, religion, or economic status. Through periodic revision of electoral rolls, it protects against the exclusion of genuine voters and the inclusion of bogus entries. By maintaining neutrality and inclusivity, the ECI safeguards political equality, ensuring every vote carries equal weight.

4. Platform for Peaceful Transfer of Power

In a democracy, elections replace violence as a means of political change. The ECI's smooth conduct of elections assures a non-violent, peaceful, and legal transition of power at all levels. It protects political stability in a diverse country like India, where societal differences could otherwise lead to unrest.

5. Promoting Voter Education and Participation

The ECI's Systematic Voters' Education and Electoral Participation (SVEEP) program is designed to increase voter awareness and turnout, encourage informed and ethical voting behavior, and reach underrepresented groups such as women, youth, and persons with disabilities.

Example: Campaigns like “*Chunav Ka Parv, Desh Ka Garv*” aim to inspire civic responsibility and pride in electoral participation.

6. Institutional Independence and Integrity

The ECI has often acted with firmness and impartiality, even under pressure from powerful political actors. Its actions—including cancellation of polls in cases of excessive malpractice, reprimanding high-profile leaders, or disqualifying candidates—underscore its autonomy.

Judicial Endorsement: *S.S. Dhanoa v. Union of India* [(1991) 3 SCC 567] – The Supreme Court upheld the quasi-judicial and independent nature of the ECI.

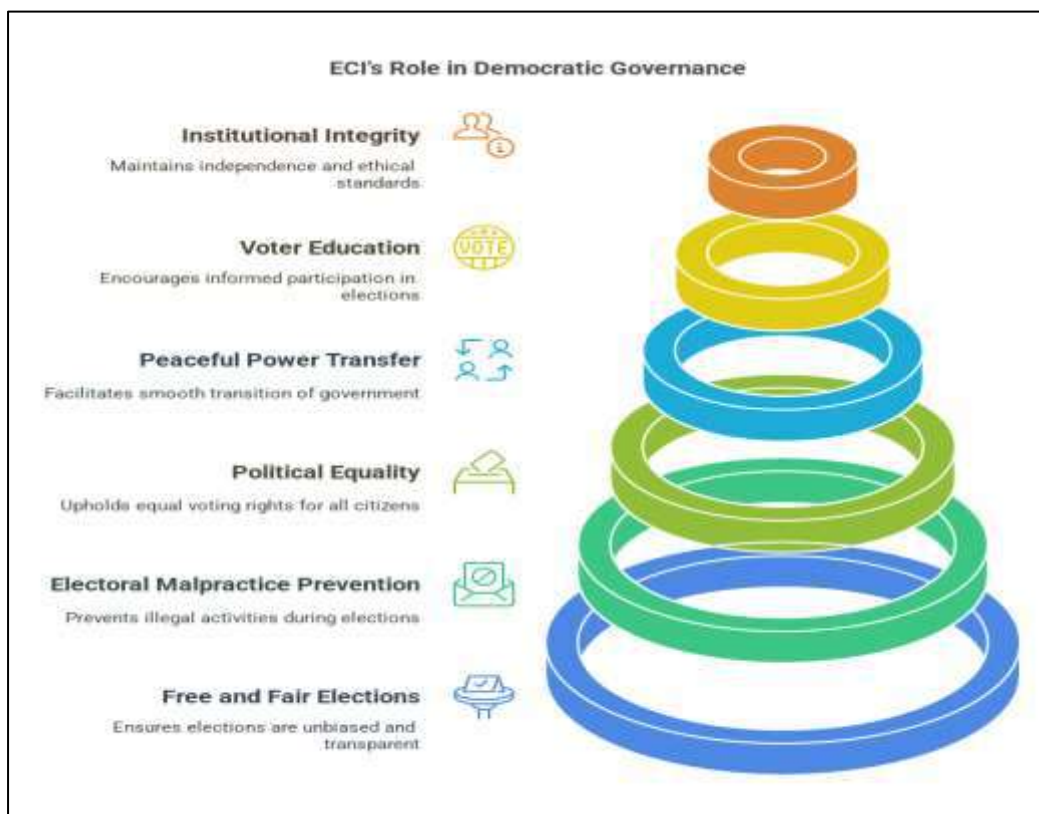
The Election Commission of India stands as a pillar of India's constitutional democracy. From being a single-member body in 1950 to a multi-member robust institution today, it has evolved to meet the complexities of a rapidly changing political, social, and technological environment.

Its success is not merely in conducting elections, but in safeguarding the very soul of Indian democracy—free choice, fairness, transparency, inclusivity, and trust.

To preserve and enhance this legacy, it is crucial that:

- The ECI remains independent and impartial,
- It adapts to new challenges like deepfakes, digital misinformation, and social media manipulation,
- Citizens and future legal professionals like you act as watchdogs of democracy, upholding the sanctity of elections.

Final Thought: *"The strength of a democracy lies not merely in voting, but in the trust the people place in the process itself. The Election Commission of India is the guardian of that trust."*



7.3 Types of Elections: Lok Sabha, Rajya Sabha, State Legislative Assemblies

India, as a sovereign, socialist, secular, democratic republic, functions on the principle of representative democracy, wherein the sovereignty of the people is exercised through free and fair elections to various legislative bodies. These elections are a constitutional imperative and serve as the primary mechanism for accountability and legitimacy in governance.

The electoral framework is primarily governed by:

- The Constitution of India
- The Representation of the People Act, 1950 (deals with delimitation and electoral rolls)
- The Representation of the People Act, 1951 (deals with conduct of elections and election disputes)
- Rules, orders, and notifications issued by the Election Commission of India (ECI) under Article 324 of the Constitution.

7.3.1 Lok Sabha Elections (House of The People)

1. Introduction

The Lok Sabha, or House of the People, is the lower chamber of the Indian Parliament and is constituted under Articles 81 to 84 of the Constitution of India. It is the principal legislative body that directly represents the people of India and is central to the functioning of Indian democracy.

2. Composition of the Lok Sabha

As per Article 81(1), the maximum strength of the Lok Sabha is 552 members, categorized as follows:

- 530 members elected directly from the States;
- 20 members from the Union Territories;
- 2 members could be nominated by the President from the Anglo-Indian community (This provision was abolished by the 104th Constitutional Amendment Act, 2019).

The allocation of seats to each state is based on population, and constituency boundaries are decided by the Delimitation Commission of India, an independent body established under the Delimitation Acts.

3. Tenure of the Lok Sabha

Under Article 83(2) of the Constitution, the normal term of the Lok Sabha is five years, unless:

- It is dissolved earlier by the President, usually on the advice of the Council of Ministers, or
- In case of emergency, the term can be extended by Parliament for one year at a time (not beyond six months after the emergency ceases).

4. Electoral System and Process

Lok Sabha elections are conducted on the basis of universal adult suffrage using the First-Past-the-Post (FPTP) system. Key aspects include:

- Single-member constituencies: One representative per constituency.
- Candidate with the highest votes wins, irrespective of securing a majority.
- Elections are held every five years or sooner in case of premature dissolution.

5. Eligibility Criteria for Candidates

To contest a Lok Sabha seat, a person must:

- Be a citizen of India.
- Be at least 25 years old.
- Be a registered voter in any parliamentary constituency.
- Not be disqualified under the Constitution or any law (e.g., due to criminal conviction, unsound mind, insolvency, etc.).

6. Presiding Authority: Speaker of Lok Sabha

After the general elections, the newly elected members choose a Speaker from among themselves to preside over Lok Sabha sessions. The Speaker plays a vital role in maintaining decorum, deciding on points of order, and ensuring orderly conduct of business.

7. Conduct of Lok Sabha Elections

The conduct of Lok Sabha elections in India is overseen by the Election Commission of India (ECI), a constitutional authority established under Article 324 of the Constitution. These elections are organized in accordance with the provisions of the Representation of the People Act, 1951. The process begins with the issue of notification, which is initiated by the President of India under Section 14 of the said Act. Following this, candidates are required to file their

nominations, including details such as a security deposit and information about their proposers. After the submission phase, the scrutiny of nominations is carried out by the Returning Officer to verify the legal validity and eligibility of each candidate. Once the nominations are scrutinized, candidates are given a window within which they may withdraw their candidature voluntarily.

The election campaign follows, which is governed by the Model Code of Conduct (MCC) issued and enforced by the ECI to ensure free and fair elections. Polling is then conducted across constituencies using Electronic Voting Machines (EVMs) along with the Voter Verified Paper Audit Trail (VVPAT) system to enhance transparency and voter confidence. After polling, the counting of votes takes place in a secure and transparent manner, culminating in the declaration of results, which are then published in the Official Gazette. This multi-stage process ensures a democratic and structured approach to electing representatives to the Lok Sabha.

8. Recent Trends and Innovations in Lok Sabha Elections

Over the years, the conduct of Lok Sabha elections in India has undergone significant transformation, marked by technological advancements and innovative electoral practices. One of the major developments is in technological advancements, which include the widespread use of Electronic Voting Machines (EVMs) and Voter Verified Paper Audit Trail (VVPAT) systems to enhance transparency and accuracy. Additionally, the Election Commission of India (ECI) has implemented webcasting and CCTV monitoring at sensitive polling stations to ensure greater security and surveillance during the voting process.

There has also been a remarkable focus on voter participation initiatives, leading to a noticeable rise in voter turnout—particularly among the youth, women, and urban populations. Efforts have also been made to make the process more inclusive for senior citizens, persons with disabilities (PwDs), and migrant voters, thereby strengthening democratic participation across diverse groups.

In the digital age, social media and digital campaigning have become prominent tools for political outreach. Political parties now use these platforms strategically, while the ECI actively engages in countering fake news and misinformation through robust digital campaigns. Furthermore, the ECI's

Systematic Voters' Education and Electoral Participation (SVEEP) program has played a crucial role in promoting electoral awareness, especially among marginalized communities and in remote areas.

Another important trend is the emphasis on monitoring election expenditure. Measures such as the imposition of spending limits, mandatory financial disclosures, and the deployment of vigilance squads have been introduced to curb the influence of black money and ensure fairer electoral practices. Together, these trends and innovations reflect a progressive shift in the way Lok Sabha elections are conducted in India, enhancing both credibility and inclusivity in the electoral process.

9. Significance of Lok Sabha Elections

- **Formation of Central Government:** The outcome decides the ruling party/coalition and selection of the Prime Minister.
- **Political Representation:** Directly represents the people's will and public opinion at the national level.
- **Democratic Accountability:** Elected members are accountable to their constituents.
- **Global Example:** Due to its scale, inclusivity, and transparency, India's Lok Sabha elections are seen as a model for democratic governance.

India has over 90 crores eligible voters, making its general elections the largest democratic exercise in the world.

The Lok Sabha elections embody the spirit of representative democracy and federal governance. From constitutional provisions to ground-level execution, they reflect the robustness, complexity, and evolution of India's electoral system. The increasing use of technology, emphasis on inclusion, and voter awareness campaigns ensure that the Lok Sabha continues to be a truly representative and effective institution in India's parliamentary democracy.

7.3.2. Rajya Sabha Elections (Council of States)

The Rajya Sabha, or the Council of States, forms the Upper House of the Indian Parliament. It plays a crucial role in India's bicameral legislative system, working alongside the Lok Sabha (Lower House). Unlike the Lok Sabha, which directly represents the people, the Rajya Sabha serves as the representative institution for the States and Union Territories, thereby embodying India's federal structure. The constitutional provisions relating to the Rajya Sabha are enshrined in Articles 80 to 84 of the Constitution of India.

1. Composition of the Rajya Sabha

According to Article 80 of the Constitution, the maximum strength of the Rajya Sabha is 250 members. Of these, 238 members are elected to represent the States and Union Territories, while 12 members are nominated by the President of India. The nominated members are selected based on their special knowledge or practical experience in the fields of literature, science, art, and social service. As of 2024, the total strength of the Rajya Sabha is 245 members, though this may change with reorganization of states or territories.

Each state is allocated seats based on its population, meaning larger states like Uttar Pradesh have more representation compared to smaller states. Union Territories such as Delhi and Puducherry also elect members, provided they have their own legislative assemblies.

2. Method of Election

Rajya Sabha members are not directly elected by the public. Instead, they are chosen through an indirect election process that uses the proportional representation system by means of a Single Transferable Vote (STV). This method ensures fair representation of various political parties in accordance with their strength in the State Legislative Assemblies.

The Electoral College for the Rajya Sabha comprises the elected members of the State Legislative Assemblies (MLAs). These MLAs vote for Rajya Sabha candidates by ranking them in order of preference. The winning candidate must

secure a specific number of votes, known as the quota, which is calculated using the formula:

$$Quota = \left(\frac{\text{Total Number of Valid Votes}}{\text{Number of Seats to be filled} + 1} \right) + 1$$

This system allows for minority representation and discourages absolute domination by a single party.

3. Distinctive Features of the Rajya Sabha

One of the key distinguishing features of the Rajya Sabha is its permanent nature. It is not subject to dissolution, unlike the Lok Sabha. However, one-third of its members retire every two years, and elections are held to fill those vacancies. This ensures continuity and experience in the legislative process.

The Rajya Sabha serves as a platform to uphold federalism by giving states a voice in central legislation. States with higher populations have more representation, balancing the need for equality and proportionality. It also enables experienced individuals and experts to contribute to policymaking, even if they do not participate in direct elections.

4. Legislative and Constitutional Functions

The Rajya Sabha shares legislative responsibilities with the Lok Sabha. It can initiate, debate, and pass bills, except for money bills, which must originate in the Lok Sabha. However, it plays an essential role in constitutional amendments and in enacting laws related to State List subjects under Article 249, when it deems it necessary in the national interest.

Further, the Rajya Sabha acts as a deliberative chamber, offering in-depth discussions and reviews of legislation. This checks the populist tendencies of the Lok Sabha and prevents hasty legislative decisions.

5. Judicial Insights and Reforms

In the landmark case of *Kuldip Nayar v. Union of India* [(2006) 7 SCC 1], the Supreme Court upheld the open ballot system for Rajya Sabha elections, ruling

that it did not violate the principle of free and fair elections. The Court also clarified that the requirement of domicile for contesting elections to the Rajya Sabha was not essential to federalism, reinforcing that representation in the Upper House is not strictly territorial but also functional.

This decision was seen as a significant move toward transparency and accountability, reducing the chances of cross-voting and corruption in the election process.

6. Importance of the Rajya Sabha in a Democracy

The Rajya Sabha plays an indispensable role in a mature democracy. It acts as a check on the Lok Sabha, especially during times when the ruling party holds an overwhelming majority. It helps prevent the tyranny of the majority and ensures that decisions are taken after deliberate discussion. Additionally, it provides a space for nominated experts, enabling non-political intellectuals and leaders in various fields to contribute meaningfully to national policy.

Its permanent nature, expertise-driven composition, and federal character make the Rajya Sabha a vital institution for ensuring balanced and informed law-making in India.

7.3.3. State Legislative Assembly Elections (Vidhan Sabha)

India, being a union of states with a federal structure, empowers each state to have its own legislature. The elections to these State Legislative Assemblies play a vital role in promoting representative democracy at the regional level. The constitutional provisions governing these elections are primarily contained in Articles 168 to 212 and Part XV of the Constitution of India.

1. Constitutional Basis and Structure

Every state in India is mandated to have a Legislative Assembly (Vidhan Sabha), which serves as the direct representative body of the people at the state level. In six states—Andhra Pradesh, Bihar, Karnataka, Maharashtra, Telangana, and Uttar Pradesh—a Legislative Council (Vidhan Parishad) also exists, creating a bicameral legislature. The structure, functioning, and powers of State

Legislatures are clearly defined in the Constitution, and the same democratic principles that apply at the central level are replicated at the state level.

2. Composition of the Assembly

The number of seats in each Legislative Assembly varies depending on the population and size of the respective state. For instance, Uttar Pradesh has the largest Assembly with 403 seats, while Goa has only 40 seats. Members are elected from single-member territorial constituencies, ensuring local representation across the state's geography. Earlier, the Governor had the power to nominate one member from the Anglo-Indian community, but this provision was removed by the 104th Constitutional Amendment Act, 2019, thereby making the assembly fully elected.

3. Method of Election

Members of the Legislative Assembly (MLAs) are elected through direct elections based on universal adult suffrage, using the First-Past-the-Post (FPTP) system. Under this method, the candidate who receives the highest number of valid votes in a constituency is declared the winner, regardless of whether they secure an absolute majority. The electoral process is managed by the Election Commission of India (ECI) in accordance with the Representation of the People Acts of 1950 and 1951, and relevant state rules.

4. Tenure and Dissolution

The normal tenure of a State Legislative Assembly is five years, unless it is dissolved earlier due to political instability, loss of majority by the ruling party, or other constitutional crises. In exceptional cases, such as during a state of emergency under Article 356, the term may be extended by Parliament in one-year increments. Fresh elections are conducted under the supervision of the ECI to reconstitute the assembly when its term ends or it is prematurely dissolved.

5. Legislative Powers and Functions

The State Legislative Assembly holds significant legislative powers within the state. It can make laws on matters enumerated in the State List and Concurrent

List of the Seventh Schedule to the Constitution. These include subjects like police, public health, education, agriculture, local governance, etc. Moreover, the Assembly plays a crucial role in budget-making, controlling public expenditure, and enacting state-level policies.

6. Executive Accountability

The Assembly ensures executive accountability through tools like question hour, adjournment motions, no-confidence motions, and budget debates. The Council of Ministers, led by the Chief Minister, is collectively responsible to the Assembly. Hence, the Assembly serves as a key mechanism for checking executive power and promoting good governance at the state level.

7. Role in Federal Framework

State Legislative Assemblies play an important role in strengthening India's federal character. One of their significant responsibilities is to elect representatives to the Rajya Sabha, the Upper House of Parliament. The MLAs of a state form the electoral college that elects Rajya Sabha members through proportional representation by means of a single transferable vote, thereby linking state interests to national policymaking.

8. Electoral Reforms and Recent Trends

Recent years have witnessed several reforms in the conduct of State Assembly elections. The widespread use of Electronic Voting Machines (EVMs) and Voter Verified Paper Audit Trails (VVPATs) has enhanced the transparency and credibility of the process. Programs such as SVEEP (Systematic Voters' Education and Electoral Participation) have encouraged higher voter turnouts, especially among women, youth, and marginalized communities. Additionally, digital campaigns and social media outreach are increasingly shaping political narratives during state elections.

9. Judicial Oversight

The Indian judiciary plays a critical role in safeguarding the sanctity of State Legislative Assembly elections. Landmark judgments such as Kihoto Hollohan

v. Zachillhu (1992 Supp (2) SCC 651) upheld the constitutionality of the anti-defection law under the Tenth Schedule. Courts have also intervened in matters of election disputes, delimitation, and voter rights, thereby reinforcing the democratic ethos.

In essence, State Legislative Assembly elections are the bedrock of India's democratic decentralization. They empower citizens to influence policymaking at the regional level, ensure political accountability, and uphold the federal spirit of the Constitution. A vibrant, inclusive, and transparent electoral process at the state level is indispensable for the holistic functioning of Indian democracy.

7.3.4. Comparative Analysis

Aspect	Lok Sabha	Rajya Sabha	State Legislative Assembly (Vidhan Sabha)
Mode of Election	Direct election by the people through universal adult suffrage.	Indirect election by members of State Legislative Assemblies using proportional representation with Single Transferable Vote (STV).	Direct election by the people of the state.
Term	5 years, unless dissolved earlier.	Permanent body; 1/3rd members retire every 2 years.	5 years, unless dissolved earlier.
Electoral System	First-Past-the-Post (FPTP) – the candidate with the most votes wins.	Proportional Representation (STV) system ensures fair representation of political parties.	First-Past-the-Post (FPTP) system.
Representation	Represents the entire population of India.	Represents the States and Union Territories at the federal level.	Represents the people of a particular state.
Minimum Age to Contest	25 years.	30 years.	25 years.
Nominated	None after 104th Constitutional	12 members nominated by the	Earlier, 1 Anglo-Indian member

Aspect	Lok Sabha	Rajya Sabha	State Legislative Assembly (Vidhan Sabha)
Members	Amendment, which abolished nomination of Anglo-Indian members.	President for their expertise in literature, science, art, and social service (Article 80).	could be nominated by the Governor (abolished by the 104th CAA, 2019).
Presiding Officer	Speaker of the Lok Sabha, elected by its members.	Vice-President of India is the ex-officio Chairman; a Deputy Chairman is also elected.	Speaker of the Assembly, elected by MLAs.
Total Membership	Maximum strength is 552 (currently 543 elected members).	Maximum strength is 250 (currently 245 members).	Varies from state to state (e.g., 403 in UP, 182 in Gujarat).
Legislative Powers	Has more financial powers; Money Bills can be introduced only in Lok Sabha.	Can suggest amendments to Money Bills but cannot reject or amend them conclusively.	Can pass state laws on matters in the State List and Concurrent List.
Dissolution	Can be dissolved by the President on the advice of the Council of Ministers.	Cannot be dissolved; it is a continuing body.	Can be dissolved by the Governor on the advice of the Chief Minister or due to constitutional failure.
Constitutional Articles	Articles 79–123 cover the Parliament; Lok Sabha is under Articles 81–84.	Covered under Articles 79–122; Rajya Sabha under Article 80.	Covered under Articles 168–212.
Role in Constitutional Amendment	Equal powers with Rajya Sabha; requires special majority in both Houses.	Same as Lok Sabha in constitutional amendments.	No role in constitutional amendments.
Control Over Executive	Exercises direct control over the executive; the	Less control over executive; may debate policies but	State executive is directly accountable to the

Aspect	Lok Sabha	Rajya Sabha	State Legislative Assembly (Vidhan Sabha)
	Council of Ministers is responsible to Lok Sabha.	cannot remove the government.	Assembly.
Money Bill	Can be introduced only in Lok Sabha; Rajya Sabha has only advisory power.	Cannot amend/reject Money Bill; can only recommend changes.	Same rule as Lok Sabha at the state level.
No-Confidence Motion	Can remove the government through a No-Confidence Motion.	No such power; government's survival is not dependent on Rajya Sabha.	Can remove the State government through a No-Confidence Motion.
Special Powers	Can approve or reject budget, money bills, and motion of confidence.	Can authorize Parliament to make laws on State List under Article 249, and approve President's Rule under Article 356.	Can pass state budget, laws, and approve or reject confidence motions.
Sessions	Summoned and prorogued by the President.	Same as Lok Sabha.	Summoned and prorogued by the Governor.

Dominance of Lok Sabha: In case of a conflict between Lok Sabha and Rajya Sabha on ordinary legislation, the joint sitting (Article 108) is summoned, where Lok Sabha has numerical superiority.

Rajya Sabha's Unique Role: Although it cannot remove the executive, it plays a vital role in reviewing, debating, and delaying legislation and has exclusive power to initiate laws on State List (under emergency situations).

- **State Assemblies:** Their role is limited to the state jurisdiction; however, they are crucial for grass-root democratic governance.
- **Dissolution Power:** Rajya Sabha's continuity ensures institutional stability, unlike Lok Sabha or State Assemblies which can be dissolved.

7.3.5. Judicial And Statutory Framework

- **Representation of the People Act, 1950:** Deals with the allocation of seats, delimitation of constituencies, and preparation of electoral rolls.
- **Representation of the People Act, 1951:** Covers conduct of elections, qualifications/disqualifications, electoral offenses, corrupt practices, etc.
- **Notable Cases:**
 - ⇒ *Indira Nehru Gandhi v. Raj Narain* (1975): Affirmed judicial review in electoral disputes.
 - ⇒ *Kuldip Nayar v. Union of India* (2006): Upheld open ballot system for Rajya Sabha elections.

7.3.6. Contemporary Issues And Debates

- **Simultaneous Elections:** The idea of “One Nation, One Election” is under debate to ensure cost efficiency and continuity in governance.
- **Criminalization of Politics:** Concerns over candidates with criminal backgrounds contesting elections.
- **Electoral Bonds:** Questions on transparency in political funding.
- **Use of Technology:** Increasing dependence on EVMs and VVPAT and debates on possible vulnerabilities.

Understanding the types of elections in India is essential to comprehend the functioning of its democratic machinery. Each level of election — be it Lok Sabha, Rajya Sabha, or State Legislative Assemblies — plays a distinct and crucial role in maintaining federal balance, public representation, and constitutional governance. The architecture of these electoral processes reflects the spirit of participatory democracy, ensuring that governance in India remains rooted in the will of its people.

7.4 Meaning of Electoral System

The electoral system refers to the method and rules used to elect representatives or leaders in a democracy. It includes how votes are cast, counted, and how

winners are determined. Common types include first-past-the-post, proportional representation, and mixed systems.

In a democracy, the person or party who gets the majority of votes in an election wins. This can mean:

- In a presidential system: the candidate with the most votes becomes the president.
- In a parliamentary system: the party (or coalition) with the majority of seats forms the government.

The key idea is that the people choose their leaders through free and fair elections.

7.5 Types of Electoral System

- **First-Past-the-Post (FPTP):** The candidate with the most votes in a constituency wins; used in India and the UK.
- **Proportional Representation (PR):** Seats are distributed according to the percentage of votes each party receives.
- **Mixed Electoral System:** Combines FPTP and PR to balance constituency representation and proportionality.
- **Run-off System:** If no candidate gets a majority, top candidates compete in a second round.
- **Single Transferable Vote (STV):** Voters rank candidates by preference; votes are transferred until all seats are filled.
- **Party-List System:** Voters choose a party, and parties get seats based on their vote share from a pre-decided list.

7.5.1. Electoral System: First-Past-The- Post VS. Proportional Proportional Representation

Elections in a democracy are not merely a means of choosing representatives but also a mechanism for translating public will into legislative strength. The electoral system, which governs how votes are converted into seats, plays a pivotal role in shaping the nature of representation, governance, and political accountability. India primarily adopts the First-Past-the-Post (FPTP) system,

while Proportional Representation (PR) is used in specific contexts such as Rajya Sabha elections and Presidential elections. This section delves into both systems, their features, functioning, comparative merits, and challenges within the Indian democratic framework.

7.5.1.1. First-Past-The- Post System (FPTP)

Meaning and Mechanism

Also known as the simple majority system, under the FPTP electoral system:

- The country is divided into single-member constituencies.
- Voters cast their vote for one candidate.
- The candidate who secures the highest number of votes, regardless of whether it constitutes an absolute majority (i.e., more than 50%), is declared the winner.

Application in India

- Lok Sabha elections.
- State Legislative Assembly elections.

Constitutional Basis

- Not explicitly mentioned but enabled through Article 81, Article 170, and the Representation of the People Acts, 1950 and 1951.

Features

- Direct elections ensure public participation.
- Single-member constituencies.
- Simple and quick counting of votes.
- Focuses on individual candidates rather than party lists.

Advantages

- **Simplicity:** Easy for voters to understand and for authorities to administer.

- **Stable Governments:** Often leads to a clear majority and formation of stable governments.
- **Strong Voter-Representative Link:** Creates a direct bond between the voter and the elected representative.
- **Prevents Fragmentation:** Limits the influence of small and fringe parties.

Criticism

- **Disproportionate Results:** A party can win a majority of seats without securing a majority of votes.
- **Wasted Votes:** Votes cast for losing candidates do not influence representation.
- **Underrepresentation of Minorities:** Smaller parties and marginalized groups may get fewer or no seats despite significant vote shares.
- **Encourages Identity Politics:** Can intensify caste, regional, or religious voting patterns.

7.5.1.2. Proportional Representation System (PR)

- **Meaning and Mechanism:**

The Proportional Representation (PR) system is an electoral mechanism designed to allocate seats in proportion to the number of votes secured by candidates or political parties. Unlike the first-past-the-post system that uses single-member constituencies, the PR system generally employs multi-member constituencies. Depending on the variant, voters may cast their votes for a political party's list or for individual candidates. The primary objective of this system is to ensure that the composition of the elected body mirrors the political preferences of the electorate as closely as possible.

- **Variants of the PR System:**

There are two major variants of the Proportional Representation system. The List System involves voters casting their votes for party lists rather than individual candidates. The seats are then allocated to each party in proportion to the votes they receive. On the other hand, the Single

Transferable Vote (STV) system allows voters to rank candidates in order of preference. Votes are initially allocated to each voter's top choice, and surplus votes or those from eliminated candidates are transferred until all seats are filled. This method ensures that a broader spectrum of voter preferences is reflected in the final result.

- **Application in India:**

India adopts the Proportional Representation system in specific elections. Most notably, members of the Rajya Sabha (Council of States) are elected by the elected members of State Legislative Assemblies through the Single Transferable Vote (STV) system with proportional representation. Similarly, the President and Vice-President of India are elected indirectly using the PR-STV system. In addition, certain Legislative Council elections in Indian states also follow this method, especially where graduates or teachers' constituencies are involved.

- **Constitutional Basis:**

The constitutional foundation for the Proportional Representation system in India is found in Article 80(4), which deals with the composition of the Rajya Sabha, and Article 55, which governs the election of the President. These provisions are supported by detailed procedures laid out in the Representation of the People Act, 1951, which provides the legislative framework for conducting these elections.

- **Advantages of PR System:**

One of the key advantages of the PR system is that it ensures fair representation, as political parties gain seats in proportion to their actual support base. It also promotes inclusivity, enabling better representation of minorities, women, and smaller or regional parties. Since more votes translate into actual representation, it reduces the number of wasted votes, enhancing the value of each vote. Moreover, the PR system encourages coalition politics, fostering a political culture of consensus, negotiation, and moderation.

- **Criticism of PR System:**

Despite its advantages, the PR system is not without criticism. It often leads to coalition governments, which can result in political instability and policy compromises due to fractured mandates. Additionally, the PR

system is more complex compared to the first-past-the-post system, making it difficult for average voters to fully understand and for electoral authorities to administer efficiently. Another criticism is that it weakens the direct link between voters and representatives, as the system does not emphasize constituency-based representation. Furthermore, the method may contribute to fragmentation by encouraging the rise of multiple small parties, leading to regionalism and the dilution of national consensus.

7.5.1.3. Comparative Analysis

Feature	First-Past-the-Post (FPTP)	Proportional Representation (PR)
Basis of Representation	Plurality – highest votes	Proportion of total votes
Type of Constituency	Single-member	Multi-member
Simplicity	Simple and easy to understand	Complex; requires understanding of vote transfer
Outcome	Often leads to majority governments	Coalition governments common
Vote Wastage	High	Low
Representation of Minorities	Low	Higher
Accountability	High (to constituency)	Low (to party lists or broader electorate)
Examples in India	Lok Sabha, State Assemblies	Rajya Sabha, President & Vice-President elections

7.5.1.4. Mixed Electoral System

India predominantly follows the First-Past-The-Post (FPTP) system for elections to the Lok Sabha and State Legislative Assemblies, where the candidate securing the highest number of votes in a constituency is declared elected, irrespective of whether they achieve a majority. However, discussions around electoral reforms have frequently highlighted the potential of a Mixed Electoral System as a way to address some of the limitations of FPTP—such as the underrepresentation of

smaller parties and vote-share disparities. Though not currently implemented in India, the mixed model, which combines FPTP with Proportional Representation (PR), is considered by scholars and commissions (such as the Law Commission of India and the Second Administrative Reforms Commission) as a viable method to enhance both local constituency representation and proportionality in party strength. The Rajya Sabha (Upper House), in contrast to the Lok Sabha, already adopts a proportional representation system by means of the single transferable vote, indicating India's partial use of mixed mechanisms in different electoral contexts.

7.5.1.5. Run-Off System

Similarly, the Run-off System, which mandates a second round of voting between the top two candidates if no one secures an absolute majority in the first round, is not currently a feature of Indian elections. However, this model has been proposed as a reformative alternative, especially in Presidential and direct mayoral elections, to ensure that the elected candidate commands a true majority support. Critics of the current FPTP system argue that in many constituencies, a candidate can win with less than 30% of the vote share, thus questioning the depth of electoral mandate. The Run-off System could potentially address such issues by requiring a broader base of voter support, thereby strengthening democratic legitimacy.

Although India has not yet adopted either the mixed or run-off systems for its general elections, academic debates and electoral reform reports continue to explore these models as tools to improve representational fairness, inclusivity, and electoral mandate in the world's largest democracy.

7.5.1.6. Single Transferable Vote (STV) System

The Single Transferable Vote (STV) is a proportional representation electoral system in which voters rank candidates in order of preference—first, second, third, and so on. Under this system, a candidate must achieve a certain quota of votes to be elected, and votes are transferred from surplus or eliminated candidates to others based on voter preferences until all seats are filled. This ensures that as many votes as possible contribute to the election of a candidate,

thereby minimizing the wastage of votes and promoting fairer representation of diverse political viewpoints.

In the Indian context, the STV system is constitutionally and statutorily used for elections to certain important bodies. Most notably, elections to the Rajya Sabha (Council of States) and the Legislative Councils of States (where applicable) are conducted through the STV system under proportional representation, as prescribed by Article 80(4) of the Constitution and the Representation of the People Act, 1951. Additionally, Presidential elections and elections to the Vice-President of India also use the STV system with the single transferable vote and secret ballot, as mandated under the Presidential and Vice-Presidential Elections Act, 1952.

The adoption of STV in these elections ensures that minority opinions are represented and the results reflect a broader consensus, rather than being dominated by the majority alone. It also encourages coalition-building, cross-party support, and thoughtful voting by legislators. However, due to its complexity and administrative requirements, STV is currently limited to indirect elections in India and is not used in direct elections like those to the Lok Sabha or State Assemblies.

7.5.1.7 Party-List System

The Party-List System is a form of proportional representation where voters cast their vote for a political party rather than an individual candidate. Each party presents a pre-decided list of candidates, and the number of seats a party secures in the legislature is proportional to the percentage of votes it receives in the election. This system is widely used in many countries—such as South Africa, Israel, and parts of Europe—where it helps ensure that smaller or regional parties gain fair representation in proportion to their public support.

In India, the Party-List System is not used in general elections to the Lok Sabha or State Assemblies, which are based on the First-Past-The-Post (FPTP) model. However, the concept of proportionality, which underlies the party-list method, is partially reflected in Rajya Sabha elections, where parties nominate candidates based on their strength in the State Legislative Assemblies. While these are not

pure party-list elections, the allocation of seats based on party strength resembles the logic behind the party-list system.

Several electoral reform committees—including the Law Commission of India and the National Commission to Review the Working of the Constitution—have suggested considering elements of the party-list system to improve representational fairness and reduce the distortion caused by FPTP in multi-party contexts. Such reforms could help address issues where parties receive a large share of the national vote but fewer seats, or vice versa.

Although not yet adopted for direct elections in India, the party-list system remains an important reference point in debates around introducing proportional representation mechanisms to strengthen the inclusiveness and legitimacy of India’s democratic processes.

7.6 Debates on Electoral Reforms

The debate between **FPTP vs. PR** in India has been reignited in recent years due to:

- Disproportionate seat-to-vote ratios.
- Underrepresentation of women and marginalized groups.
- Growing calls for Mixed Electoral Systems, as seen in Germany or New Zealand.

Law Commission Reports, including the **170th Report (1999)**, have recommended:

- Exploring Partial PR systems for better representation.
- Introducing reserved seats for women through party list PR.

7.7 Judicial Perspectives

- In *Kuldip Nayar v. Union of India*, [(2006) 7 SCC 1], the Supreme Court upheld the constitutional validity of the open ballot system for Rajya Sabha elections under PR.

- In *Indira Gandhi v. Raj Narain*, [(1975) Supp SCC 1], the Court emphasized free and fair elections as a basic feature of the Constitution, implicitly recognizing the importance of electoral systems.

The choice of an electoral system directly affects the nature of democracy and representation. While FPTP ensures strong and stable governments and a clear connection with constituencies, it often falls short in ensuring proportional representation. On the other hand, PR fosters inclusivity and fairer outcomes but may dilute political stability. India's hybrid use of both systems — FPTP for popular legislatures and PR for indirect elections — reflects a constitutional attempt to balance governability with representation, simplicity with inclusivity, and individual choice with systemic equity.

7.8 Voter Rights and Duties

The strength of a democracy lies not only in its institutions but also in the active participation of its citizens, particularly through the exercise of voting. In India, universal adult suffrage is the cornerstone of the electoral process, giving every adult citizen the right to vote regardless of caste, creed, religion, gender, or economic status. However, the mere possession of voting rights is not sufficient; there must also be a sense of civic duty to participate actively and responsibly in the electoral process. This section explores the rights and duties of voters, their legal and constitutional basis, the mechanisms for enforcement, and their importance in sustaining democratic governance.

7.8.1. Constitutional Basis of the Right to Vote

The right to vote is not a fundamental right but a statutory right, as affirmed by the Supreme Court in several decisions. It is granted and regulated by the Representation of the People Act, 1950 and 1951.

- Article 326 of the Constitution of India: Provides for elections to the House of the People and State Legislative Assemblies based on universal adult suffrage.

“The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage...”

- Every Indian citizen who is:
 - 18 years or older, and
 - Not disqualified under the law, is entitled to be registered as a voter.

Judicial Interpretation:

- In *People's Union for Civil Liberties (PUCL) v. Union of India*, [(2003) 4 SCC 399], the Supreme Court held that the right to know the background of candidates is a facet of the freedom of expression under Article 19(1)(a), thereby linking voter rights to constitutional values.

7.8.2. Voter Rights in India

In a democracy, voters are not mere participants—they are the sovereign authority. To empower citizens and protect the integrity of the electoral process, Indian law grants several fundamental rights to voters. These rights ensure that electoral participation is not only accessible but also meaningful, informed, and dignified.

1. Right to Vote (Statutory Right)

The right to vote is a statutory right granted to Indian citizens under the Representation of the People Act, 1950 and 1951. Every citizen of India, who is 18 years or above and not otherwise disqualified, is entitled to cast a vote in elections. This right empowers citizens to directly influence governance by choosing their representatives in Parliament and State Legislatures.

2. Right to be Informed (Right to Know)

The right to make an informed choice is a cornerstone of democratic participation. Voters are entitled to access key information about candidates, including their criminal background, educational qualifications, and details of assets and liabilities. The Election Commission mandates such disclosures through affidavits, enabling transparency and informed decision-making.

3. Right to Secrecy of Ballot

The secrecy of the ballot is vital to maintaining the independence and integrity of voting. Protected under Rule 49-M of the Conduct of Election Rules, 1961, this right ensures that voters can cast their votes confidentially, without fear of coercion, social pressure, or retaliation. It preserves the sanctity of personal choice in a democratic setup.

4. Right to NOTA (None of the Above)

Introduced following the landmark Supreme Court judgment in *People's Union for Civil Liberties (PUCL) v. Union of India* (2013), the NOTA option empowers voters to express dissatisfaction with all contesting candidates. Though NOTA currently does not lead to re-election, it symbolizes the voter's right to reject, enhancing democratic expression.

5. Right to Challenge Malpractices

Voters play a vital role in safeguarding electoral integrity. If malpractices such as rigging, bribery, or impersonation are observed, voters have the right to file complaints with the Election Commission of India. Moreover, under the Representation of the People Act, 1951, aggrieved citizens can also file election petitions challenging unfair election practices.

6. Right to Vote Freely and Fairly

Democracy demands that voting be both free and fair. This right is enforced through the Model Code of Conduct (MCC) and electoral laws that strictly prohibit intimidation, bribery, coercion, and any form of undue influence. The Election Commission ensures that voters are able to exercise their franchise in an environment of safety and equality.

7. Right to Enrolment and Correction in Electoral Roll

Every eligible citizen has the right to be enrolled in the electoral roll of their constituency. This includes the right to apply for inclusion, make corrections in existing entries, and request the deletion of names of deceased or shifted individuals. The continuous updation of electoral rolls ensures accuracy and prevents electoral fraud.

Voter Rights in India	
Right	Description
 Vote	Statutory right to cast ballot
 Be Informed	Right to know about candidates
 Secrecy	Confidentiality of ballot is guaranteed
 NOTA	Option to reject all candidates
 Challenge	Contest unfair election practices legally
 Freely/Fairly	Ability to vote without coercion
 Enrollment	Correct electoral roll information access

Image 2

7.8.3. Duties of a Voter

While rights empower the citizen, duties uphold the spirit of democracy. Voter duties are not just legal responsibilities but moral and civic obligations, essential for strengthening the democratic framework of the nation.

1. Duty to Vote:

Voting is not merely a right conferred by the Constitution; it is a solemn responsibility every citizen must uphold. By choosing not to vote, citizens weaken the democratic mandate and risk enabling unrepresentative governance. Participation in elections is the most direct way for citizens to influence the laws and policies that shape their lives.

2. Duty to Make Informed Choices:

A responsible voter must make decisions based on a thorough understanding of the candidates and political parties. This includes reviewing candidates' backgrounds, examining party manifestos, and evaluating their stance on national and local issues. An informed vote strengthens accountability and ensures the election of capable and ethical leaders.

3. Duty to Uphold Democratic Values:

Democracy thrives not only on voting but also on the values that surround the electoral process. Voters must respect the free choice of others and refrain from indulging in or supporting hate speech, spreading misinformation, or participating in electoral violence. Upholding these values ensures a peaceful and dignified democratic environment.

4. Duty to Encourage Participation:

Civic responsibility also includes motivating others to participate in the electoral process. Voters, particularly those who are experienced, should encourage first-time voters, women, and members of marginalized communities to exercise their franchise. This promotes inclusivity and strengthens the representative nature of democracy.

5. Duty to Resist Corrupt Practices:

Voters must actively resist any form of inducement, including money, liquor, or gifts offered in exchange for votes. Accepting such bribes compromises the integrity of the election. Additionally, voters should report any observed electoral malpractices to the relevant authorities, thereby acting as guardians of

the

democratic

process.

Voter's Civic Responsibilities	
Duty	Description
Vote	Exercise your right to vote
Informed Choices	Research candidates and issues thoroughly
Democratic Values	Support fairness, equality, and justice
Encourage Participation	Motivate others to engage in elections
Resist Corruption	Reject bribery and unethical behavior

Image 3

7.8.4. Initiatives for Voter Awareness and Education

The Election Commission of India has undertaken various programs to increase voter literacy and participation:

- **Systematic Voters' Education and Electoral Participation (SVEEP)**
A flagship program to spread awareness, promote ethical voting, and increase voter turnout.
- **National Voters' Day (25th January)** Celebrated to encourage young voters and celebrate democracy.
- **cVIGIL App** A mobile app for reporting election code violations in real time.

7.8.5. Challenges to Voter Rights and Participation

Challenges	Impact
Low Voter Turnout	Weakens legitimacy of elected bodies
Electoral Malpractices	Corrupts the fairness of the process
Voter Apathy	Leads to indifference and bad governance
Misinformation & Fake News	Misleads the electorate
Voter Exclusion	Due to errors in electoral rolls

7.8.6. Recommendations and Reforms

- **Compulsory Voting Debate:** Some advocate mandatory voting to ensure greater participation (e.g., Gujarat Local Bodies Act attempted this).
- **Digital Literacy Campaigns:** To counter misinformation and boost e-awareness.
- **Reform of Electoral Rolls:** Using Aadhaar linkage for accuracy and security.
- **Enhanced NOTA Option:** Some propose re-elections if NOTA gets majority votes.

7.9 Conclusion

A vibrant democracy requires active, informed, and responsible voters. While the Indian Constitution provides the legal and institutional framework for exercising voting rights, it is the civic consciousness of the citizens that ultimately sustains democracy. Voter empowerment, ethical voting practices, and widespread participation are essential for ensuring that governance truly reflects the will of the people.

As Dr. B.R. Ambedkar rightly emphasized:

“The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State, but the factors on which the working of those organs depend are the people and their political parties.”

7.10 EXERCISE

7.10.1. Objective Type Questions (MCQs)

1. Under which Article of the Indian Constitution is the Election Commission of India (ECI) established?

- A) Article 320
- B) Article 324
- C) Article 330
- D) Article 356

2. What is the maximum strength of the Lok Sabha as per the Constitution of India?

- A) 543
- B) 552
- C) 545
- D) 500

3. Which electoral system is used for Lok Sabha elections in India?

- A) Proportional Representation
- B) Single Transferable Vote
- C) First-past-the-post
- D) Mixed System

4. Who appoints the Chief Election Commissioner of India?

- A) Prime Minister
- B) President
- C) Supreme Court
- D) Parliament

5. Elections held to fill a vacancy in a Lok Sabha seat between general elections are called:

- A) General Elections
- B) By-elections
- C) Mid-term Elections
- D) Special Elections

6. Which system is also known as 'single-member plurality voting'?

- A) Proportional Representation
- B) First-past-the-post
- C) Run-off System
- D) Party-List System

7. The Rajya Sabha members are elected by which method?

- A) Direct election by the people
- B) Proportional Representation by means of Single Transferable Vote
- C) First-past-the-post
- D) Lottery system

8. Which of the following is a key function of the Election Commission of India?

- A) Conducting elections to Parliament and State Legislatures
- B) Appointing the Prime Minister
- C) Passing laws
- D) Forming government

9. The right to vote in India is based on which principle?

- A) Hereditary right
- B) Adult suffrage
- C) Property qualification
- D) Education qualification

10. What is NOTA in the context of Indian elections?

- A) National Organization for Tax Administration

- B) None Of The Above
- C) National Overseas Travel Authority
- D) National Office of Technical Assistance

7.10.2. Descriptive Type Questions (Short Answer)

1. Explain the historical development and significance of the Election Commission of India.
2. Describe the structure and key functions of the Election Commission of India (ECI).
3. Compare the methods of election for the Lok Sabha, Rajya Sabha, and State Legislative Assemblies.
4. What is meant by the term 'electoral system'? Briefly explain its significance in a democracy.
5. Differentiate between the First-Past-the-Post (FPTP) and Proportional Representation (PR) systems.
6. Discuss major contemporary debates and judicial perspectives on electoral reforms in India.
7. What are the constitutional basis, rights, and duties of voters in India? Explain the challenges faced in ensuring voter participation.

UNIT-8

JUDICIAL SYSTEM AND CONSTITUTIONAL INTERPRETATION

8.1 Introduction

8.2 Definition of judicial system

8.3 A Brief History of the Indian Judicial System

8.4 Ancient and Medieval Period

8.5 British Colonial Rule and Legal Reforms

8.6 Post-Independence and the Indian Constitution

8.7 Judicial System in the Indian Constitution

8.8 Structure of the Indian Judicial System

8.8.1 Supreme Court of India (Articles 124-147, Part V, Chapter IV)

8.8.2 High Courts (Articles 214-231, Part VI, Chapter V)

8.8.3 Subordinate Courts (Articles 232-237, Part VI, Chapter VI)

8.9 Judicial Review and its Role in Upholding the Constitution

8.10 Landmark Judgments and Their Impact on Constitutional Law

8.11 Public Interest Litigation (PIL) and Access to Justice

8.12 Exercise

8.1. Introduction

The judicial system is an important part of democracy, ensuring fairness, justice, and the rule of law. It has different levels, including the Supreme Court, High Courts, and lower courts, which help protect people's rights and solve legal disputes. Constitutional interpretation helps in understanding and applying the law as society changes over time. Judges use different methods, such as reading the exact words of the Constitution, following the original intent, or adapting it

to modern times. Important legal rules, like judicial review and the basic structure doctrine, help keep the Constitution strong and prevent unfair changes. Courts must balance between being active in shaping laws and being careful not to overstep their role. However, there are challenges like political pressure, delays in justice, and different court rulings on the same issue. New developments, like using artificial intelligence in law and following international legal trends, are changing how courts work. Despite these challenges, the judiciary plays a key role in protecting democracy, ensuring justice, and upholding constitutional values.

The judiciary plays a crucial role in interpreting the Constitution to ensure justice, uphold rights, and maintain the rule of law. As one of the three pillars of democracy, alongside the legislature and executive, the judiciary safeguards constitutional values and ensures laws align with democratic principles. Constitutional interpretation is essential for adapting legal provisions to contemporary societal needs. As a pillar of democracy, the judiciary ensures checks and balances, prevents authoritarianism, and maintains democratic integrity. Its role in constitutional interpretation is vital for delivering justice, protecting freedoms, and upholding the vision of the Constitution. As the **guardian of the Constitution**, the judiciary keeps a check on government power, stops unfair rule, and protects democracy. Its role in interpreting the Constitution is crucial for ensuring justice, safeguarding rights, and preserving the core values of the nation.

8.2 Definition of judicial system

The **judicial system** is the framework of courts and legal institutions responsible for interpreting and applying the law, ensuring justice, and resolving disputes. It includes different levels of courts, such as the **Supreme Court, High Courts, and lower courts**, which work to uphold the **rule of law**, protect citizens' rights, and maintain legal order in a country. The judiciary functions independently to ensure fairness, equality, and justice in society.

The **judiciary** is responsible for interpreting and applying the law, ensuring justice, and upholding the Constitution. It consists of courts and judges who resolve disputes, protect rights, and maintain the rule of law. An independent

judiciary acts as a **guardian of the Constitution**, providing checks and balances on legislative and executive powers to ensure fairness and justice in society.

8.3 A Brief History of the Indian Judicial System

The Indian judicial system has evolved over thousands of years, shaped by different historical influences, including ancient Hindu and Islamic traditions, British colonial rule, and post-independence constitutional reforms. Today, it stands as an independent and robust institution, ensuring justice and the rule of law in the country.

8.4 Ancient and Medieval Period

The earliest form of justice in India can be traced back to the Vedic period (1500–500 BCE), where legal principles were derived from religious texts like the **Dharmaśāstras**. Kings acted as the supreme authority in legal matters, assisted by councils and priests who interpreted sacred law. The **Manusmriti**, one of the oldest legal texts, laid down rules for civil, criminal, and family matters. During the Maurya (321–185 BCE) and Gupta (319–550 CE) empires, a well-organized judicial system existed, with separate courts for civil and criminal cases. Judges were appointed based on their knowledge of law and righteousness, ensuring a fair system of justice.

With the advent of Islamic rule in India, beginning with the Delhi Sultanate (1206–1526) and later the Mughal Empire (1526–1857), the judicial system underwent significant changes. Islamic law, or **Sharia**, became the guiding principle for justice. The Mughal emperor, assisted by **Qazis** (judges), administered justice, and courts functioned under different levels of governance. However, customary laws of Hindus and other communities continued to be recognized in matters related to personal law.

8.5 British Colonial Rule and Legal Reforms

The modern structure of the Indian judiciary was largely shaped during British rule. The British East India Company initially administered justice through local councils, but with time, they established a structured judicial system. The

Regulating Act of 1773 led to the creation of the **Supreme Court of Calcutta**, the first British-style court in India. This court was later supplemented by Supreme Courts in Bombay and Madras.

Further legal reforms followed with the introduction of the **Indian Penal Code (IPC) in 1860**, which laid the foundation for criminal law in India. The **Code of Civil Procedure (CPC) in 1908** and the **Code of Criminal Procedure (CrPC) in 1898** formalized the process of legal proceedings. The **Government of India Act, 1935**, introduced the idea of a Federal Court, which functioned as the highest appellate authority before independence.

8.6 Post-Independence and the Indian Constitution

After gaining independence in 1947, India adopted its **Constitution on January 26, 1950**, which established a democratic and independent judiciary. The **Supreme Court of India** was created as the apex judicial authority, with High Courts in states and a network of subordinate courts. The judiciary was given the power of **judicial review**, enabling it to strike down unconstitutional laws and acts. Over time, landmark judgments have strengthened the principles of **fundamental rights, social justice, and constitutional morality**.

- **Judicial System in the Indian Constitution**

The **Indian judicial system** is established under the Constitution of India, ensuring an **independent, integrated, and hierarchical judiciary**. The provisions related to the judiciary are mainly found in **Part V (The Union Judiciary)** and **Part VI (The State Judiciary)**, covering **Articles 124 to 237**.

1. Supreme Court of India (Articles 124-147, Part V, Chapter IV)

The Supreme Court is the **apex court** of the country and has **original, appellate, and advisory jurisdiction**. It serves as the **guardian of the Constitution** and has the power to interpret laws. It ensures the protection of **fundamental rights** and has the authority to settle disputes between the **Union and States**.

2. High Courts (Articles 214-231, Part VI, Chapter V)

High Courts function as the **highest judicial authority** in a **state or group of states**. They have **original, appellate, and supervisory jurisdiction** over subordinate courts. High Courts can issue **writs** under **Article 226** for the enforcement of **fundamental rights and other legal rights**.

3. Subordinate Courts (Articles 232-237, Part VI, Chapter VI)

Subordinate courts operate at the **district and lower levels**, functioning under the supervision of High Courts. These courts include **District Courts, Civil Courts, Sessions Courts, Magistrate Courts, and other tribunals**. They handle **civil, criminal, and administrative cases** as per their jurisdiction.

8.8 Structure of the Indian Judicial System

8.8.1. Supreme Court of India (Articles 124-147, Part V, Chapter IV)

Establishment of the Supreme Court of India

Article 124(1) of the Constitution provides for the establishment of the Supreme Court of India, consisting of the Chief Justice of India (CJI) and a number of other judges as prescribed by Parliament. Initially, the sanctioned strength of the Supreme Court was eight judges, including the CJI. Over the years, this number has been increased to address the rising demand for justice. As of today, the sanctioned strength of the Supreme Court is **34 judges**, including the Chief Justice of India.

Appointment of Supreme Court Judges

Article 124(2) of the Indian Constitution provides that judges of the Supreme Court are appointed by the President of India. The appointment process involves consultation with the Chief Justice of India (CJI) and other judges of the Supreme Court and High Courts, as the President may deem necessary. This provision ensures that judicial appointments are made with due deliberation and expertise. Over time, the method of appointment has undergone significant evolution, primarily through judicial interpretations and constitutional developments. Initially, under the pre-collegium system, the President exercised

discretion in appointing judges, based on recommendations made by the Council of Ministers, in consultation with the Chief Justice. However, this approach was gradually modified through a series of landmark judgments by the Supreme Court.

Evolution of the Appointment Process

1. First Judges Case (1981) – S.P. Gupta v. Union of India: The Supreme Court ruled that the term "consultation" in Article 124(2) does not mean concurrence, meaning that the President was not bound to follow the Chief Justice's recommendation. This judgment gave the Executive greater power in judicial appointments.
2. Second Judges Case (1993) – Supreme Court Advocates-on-Record Association v. Union of India: This case established the collegium system, where the Chief Justice of India and a group of senior judges would recommend appointments, and the President was required to act in accordance with these recommendations. It significantly reduced executive influence over judicial appointments.
3. Third Judges Case (1998): The Supreme Court further refined the collegium system, ruling that the CJI must consult a panel of four senior-most judges before making recommendations. If even two judges disagreed, the recommendation would not be forwarded.
4. NJAC Case (2015) – Fourth Judges Case: The 99th Constitutional Amendment had introduced the National Judicial Appointments Commission (NJAC) to replace the collegium system. However, in 2015, the Supreme Court struck down the NJAC, declaring it unconstitutional and reaffirming the primacy of the judiciary in judicial appointments.

Current Appointment Process

Currently, under the collegium system, the Chief Justice of India and four senior-most Supreme Court judges recommend appointments to the Supreme Court. The recommendations are forwarded to the President of India, who, after consultation with the Union Government, appoints the judges. The President can send the recommendations back for reconsideration, but if the collegium reiterates its decision, the President is bound to approve the appointment. This

system ensures judicial independence by minimizing executive interference, although it has been debated for its lack of transparency and accountability.

Qualifications for appointment as a judge of the Supreme Court.

As per Article 124(3) of the Indian Constitution, a person must meet certain qualifications to be eligible for appointment as a judge of the Supreme Court. The individual must be a citizen of India and must have either served as a judge of a High Court (or multiple High Courts in succession) for at least five years or have been an advocate in a High Court (or multiple High Courts in succession) for at least ten years. Additionally, the President of India may appoint a person who is recognized as a distinguished jurist. Notably, the Constitution does not specify a minimum age requirement for appointment, allowing flexibility in selecting candidates based on merit and legal expertise. The tenure of Supreme Court judges is governed by Article 124(2) of the Constitution. Judges hold office until they reach the age of 65 years, ensuring a balance between judicial experience and opportunities for new legal talent. A judge may resign by submitting a written resignation to the President of India. However, removal from office is a rigorous process outlined under Article 124(4), which requires an impeachment procedure conducted by Parliament, ensuring judicial independence and accountability.

Removal of Supreme Court Judges

The removal of a Supreme Court judge in India is governed by Article 124(4) and (5) of the Constitution, ensuring judicial independence and protection from arbitrary dismissal. A judge can only be removed on the grounds of proved misbehaviour or incapacity through a rigorous impeachment process. The process begins with a removal motion initiated in either the Lok Sabha or Rajya Sabha, which must be signed by at least 100 members of the Lok Sabha or 50 members of the Rajya Sabha before being submitted to the Speaker or Chairman. Once admitted, a three-member committee is formed to investigate the allegations, consisting of a Supreme Court judge, a Chief Justice of a High Court, and a distinguished jurist. If the committee finds the judge guilty, the motion is taken up for discussion in Parliament. To be successful, the motion must be approved by a special majority (two-thirds of members present and

voting) in both Houses of Parliament, and a majority of the total membership of each House. If passed in one House, it moves to the other House for approval under the same conditions. Once both Houses approve the motion, it is sent to the President of India, who issues an order for the judge's removal. This multi-step process ensures a fair and transparent mechanism for removing a Supreme Court judge, preventing undue political or executive influence while upholding the integrity of the judiciary.

Oath or affirmation for Judge

Under Article 124(6) of the Indian Constitution, every judge of the Supreme Court is required to take an oath or affirmation before entering office. This oath is administered by the President of India or a representative appointed by the President. In taking the oath, the judge solemnly affirms to bear true faith and allegiance to the Constitution of India, uphold the sovereignty and integrity of the country, discharge duties impartially without fear, favour, affection, or ill will, and to uphold the Constitution and the laws of India. The format of the oath is prescribed in the Third Schedule of the Constitution.

Salaries, allowances and etc. of Judges

Article 125 of the Indian Constitution deals with the financial aspects of Supreme Court judges, ensuring that their salaries, allowances, and privileges are determined by law. It guarantees that judges receive fair remuneration for their services, thereby maintaining judicial independence. The salaries, allowances, and other conditions of service of Supreme Court judges are determined by Parliament through legislation. Once a judge is appointed, their salary and service conditions cannot be altered to their disadvantage, ensuring protection against financial or political pressure. However, during a financial emergency declared under Article 360, salaries may be temporarily reduced. Judges are also entitled to pensions and other post-retirement benefits as prescribed by law. By securing financial stability, Article 125 ensures that judges remain impartial and are not influenced by external forces.

Appointment of Acting Chief Justice

Article 126 provides a mechanism for appointing an Acting Chief Justice of India in case the Chief Justice is unable to perform their duties due to absence,

leave, or any other reason. The President of India has the power to appoint the senior most available judge of the Supreme Court as the Acting Chief Justice when the Chief Justice of India is unable to discharge duties. This appointment is temporary and remains valid until the Chief Justice Resumes office or a new Chief Justice is appointed. The Acting Chief Justice exercises all the powers and performs the duties of the Chief Justice, ensuring that important cases, constitutional matters, and court administration continue without disruption. Article 126 plays a crucial role in maintaining continuity and stability in the Indian judicial system by providing a clear framework for temporary leadership in the Supreme Court.

Article 127 provides for the appointment of ad hoc judges in the Supreme Court when there is a lack of quorum. This ensures that judicial work continues without interruption. Such appointments help maintain efficiency in the court's functioning.

Article 128 allows the Chief Justice of India to invite retired judges to serve temporarily in the Supreme Court with their consent. This provision utilizes the expertise of experienced judges. It ensures that complex cases benefit from their knowledge and insights.

Contempt of Court-- Article 129 designates the Supreme Court as a court of record with the power to punish for contempt. The Supreme Court of India has the power to punish for contempt under Article 129 of the Constitution, which declares it as a "Court of Record" with the authority to penalize those who undermine its dignity. This power is essential to uphold the rule of law and maintain the court's authority, ensuring that judicial orders are respected and implemented. Contempt of court can be classified into two categories: civil contempt and criminal contempt.

Civil contempt refers to the willful disobedience of any judgment, decree, direction, or order of the court. When an individual or entity fails to comply with the court's decision, it is considered an act of defiance, and the court can take necessary legal action against them. Criminal contempt, on the other hand, includes acts that scandalize or lower the authority of the court, interfere with judicial proceedings, or obstruct the administration of justice. This can involve

making derogatory remarks about judges, publishing misleading reports about court cases, or any other conduct that threatens the integrity of the judiciary.

The Contempt of Courts Act, 1971, further defines and regulates this power, specifying procedures and punishments for contemptuous acts. However, the law also recognizes certain defences, such as truth as a valid defence if it is made in the public interest, and the power of the courts to excuse an apology if it is made in good faith. While the Supreme Court uses its contempt power cautiously, it remains a crucial tool to uphold judicial independence, maintain respect for the judiciary, and ensure that justice is administered without any external influence or defiance. Article 130 permits the Chief Justice, with the President's approval, to determine the seat of the Supreme Court. This flexibility ensures accessibility for litigants and the efficient functioning of the court. While Delhi is the permanent seat, sessions may be held elsewhere if needed.

- **Jurisdiction of the Supreme Court**

Original Jurisdiction

The Supreme Court has the authority to hear certain cases directly, without them being presented in lower courts first. Under Article 131, the court has exclusive jurisdiction over disputes between the central government and one or more states, or between different states. Additionally, Article 32 empowers the Supreme Court to protect fundamental rights, allowing citizens to directly approach the court for their enforcement. Matters related to the interpretation of the Constitution may also be heard under this jurisdiction.

Appellate Jurisdiction

The Supreme Court functions as the highest appellate authority in India, hearing appeals from High Courts and other lower courts. Article 132 provides for appeals in constitutional matters, while Article 133 deals with civil appeals where a substantial question of law is involved. Similarly, Article 134 governs criminal appeals under specific conditions. Additionally, Article 136 grants the Supreme Court the power to allow appeals from any court or tribunal in the country through a special leave petition.

Advisory Jurisdiction

Under Article 143, the President of India can seek the Supreme Court's opinion on legal or constitutional matters. The Supreme Court may provide its advice, though it is not binding on the government. This provision ensures that complex legal questions can be resolved with the highest judicial guidance.

Article 137 of the Indian Constitution grants the Supreme Court the authority to review its judgments or orders. This provision ensures that the Court has the power to rectify any errors or reconsider its decisions if necessary. The review is subject to the rules made under Article 145 and other applicable laws. Judicial review, a fundamental feature of the Constitution, enables the judiciary to assess the validity of legislative and executive actions. Under Article 137, the Supreme Court may review cases where there is an apparent error on the record, safeguarding justice, constitutional supremacy, and the rights of individuals.

Article 138 enables Parliament to extend the Supreme Court's jurisdiction beyond what is explicitly provided in the Constitution. Under this provision, Parliament may, by law, grant additional jurisdiction concerning any matter listed in the Union List. Furthermore, if an agreement is reached between the Government of India and a State government, the Supreme Court may also be given jurisdiction over matters included in the State List. This ensures that the judiciary's reach can be expanded in specific situations to maintain uniform legal interpretation and justice.

Article 139 empowers Parliament to confer additional powers on the Supreme Court, particularly in issuing writs beyond those granted under Article 32 for the enforcement of Fundamental Rights. This provision allows Parliament to enhance the Supreme Court's role in upholding constitutional principles and legal remedies, ensuring its continued relevance in addressing evolving governance and legal challenges.

Together, Articles 138 and 139 highlight the adaptability of India's judicial system, allowing the Supreme Court to expand its authority and reinforce its role in safeguarding justice and constitutional order. Article 140 empowers the Parliament to confer additional ancillary powers upon the Supreme Court to ensure it can perform its constitutional duties effectively. These powers must be

necessary and incidental to the Court's primary functions, ensuring that it can dispense justice efficiently. This article helps in administrative and procedural matters concerning the Supreme Court.

Article 141: Law Declared by Supreme Court to be binding on All Courts

Article 140 empowers the Parliament to confer additional ancillary powers upon the Supreme Court to ensure it can perform its constitutional duties effectively. These powers must be necessary and incidental to the Court's primary functions, ensuring that it can dispense justice efficiently. However, such additional powers are subject to laws made by Parliament, meaning the judiciary cannot assume powers beyond what is legislated. This article helps in administrative and procedural matters concerning the Supreme Court. For example, if the Parliament enacts a law providing the Supreme Court with certain procedural powers to regulate appeals, writ petitions, or review mechanisms, such powers would be considered ancillary under Article 140.

Article 142: Enforcement of Decrees and Orders of Supreme Court

Article 142 is a unique and powerful provision that grants the Supreme Court extraordinary powers to do "complete justice" in any case. This allows the Supreme Court to go beyond procedural and statutory limitations if it finds that existing laws do not provide a just resolution. The orders and decrees issued under Article 142 are binding and enforceable throughout India. This article is often invoked in cases where existing laws do not adequately address a situation, enabling the Supreme Court to create solutions that ensure justice. The key aspects of this article include complete justice, where the Supreme Court can go beyond strict legal provisions to ensure fairness in extraordinary cases; binding effect, meaning any order passed under Article 142 is directly enforceable across India; and parliamentary regulation, which allows the manner of enforcement to be prescribed by laws enacted by Parliament.

Article 143 of the Indian Constitution grants the President the authority to seek the opinion of the Supreme Court on matters of public importance or legal complexities. This provision underscores the Supreme Court's role as a constitutional advisor, ensuring clarity in governance and legal interpretation. Under Article 143(1), the President may refer a question of law or fact to the

Supreme Court if it appears to be of public importance. The Supreme Court, in turn, provides its advisory opinion, which is not binding but holds significant constitutional value. This mechanism helps the government make informed decisions on legal and policy matters. Article 143(2) allows the President to seek the Supreme Court's opinion concerning disputes arising out of pre-constitutional treaties, agreements, or other matters. This provision ensures legal continuity and helps resolve complex historical or constitutional issues.

Article 144: All civil and judicial authorities in India must act in aid of the Supreme Court. This ensures that the Court's orders are respected and implemented across all levels of government. It reinforces the Supreme Court's authority as the highest judicial body.

Article 145: The Supreme Court has the power to frame rules regarding its practice and procedure. These rules govern aspects like appeals, review petitions, and general court administration. However, they are subject to laws made by Parliament.

Article 146: The Chief Justice of India has the authority to appoint officers and staff necessary for the Supreme Court's functioning. The salaries and expenses of these employees are drawn from the Consolidated Fund of India. This provision safeguards judicial independence from executive control.

- **Constitutional Interpretation**

Article 147: This article defines how the Supreme Court interprets the Constitution in revenue and legal disputes. It clarifies that "law" includes parliamentary, state, and pre-Constitution laws relevant to such cases. This provision plays a key role in tax and financial disputes.

Meaning and Process of Constitutional Interpretation

The process of constitutional interpretation differs from that used for other statutes and is defined as the development of a set of rules and regulations that citizens are expected to follow. Judicial review is an integral part of constitutional interpretation, allowing the Constitution to adapt to new conditions and societal needs over time. The Supreme Court of India follows a three-stage approach in its interpretations. The first phase involves **grammatical or literal**

interpretation, also known as textualism, which requires reading each phrase and comparing it to the Constitution. The second phase follows an **eclectic or conceptual approach**, where interpretation extends beyond the literal text to consider broader themes and underlying principles embedded in the Constitution. These two stages culminate in the third phase, known as **careful thinking**, where judges deliberate and present reasoning, often sitting in benches of two or three judges. Ultimately, the Court's decisions are influenced by its own preconceptions, leading to the adoption of diverse internal interpretive methodologies, which at times result in inconsistencies within constitutional law.

Theories of Constitutional Interpretation:

Constitutional interpretation is guided by various theories that help judges and legal scholars analyse and apply constitutional provisions. These include:

- **Originalism or Intentionalism** – This approach interprets the Constitution based on the original intent of its framers, seeking to understand what the drafters intended at the time of enactment.
- **Textualism** – Focuses strictly on the literal meaning of the Constitution's text, avoiding external influences such as historical context or legislative intent.
- **Doctrinalism** – Relies on judicial precedents and established legal doctrines to interpret constitutional provisions, ensuring consistency in legal decisions.
- **Structuralism** – Examines the broader structure and framework of the Constitution, interpreting provisions in a way that maintains the integrity of the overall constitutional system.
- **Purposive or Progressive Approach** – Considers the evolving nature of law and society, interpreting the Constitution in a way that aligns with contemporary values and changing circumstances.
- **Prudentialism** – Weighs the practical consequences of different interpretations, ensuring that judicial decisions are sensible and do not lead to undesirable outcomes.

- **Harmonious Construction** – Aims to interpret various constitutional provisions in a way that avoids conflict, ensuring that all parts of the Constitution are read together harmoniously.

Doctrines Applied by the Supreme Court in Constitutional Interpretation:

- **Doctrine of Severability** – If a part of a law is unconstitutional, only that portion is struck down, while the rest remains valid. This ensures that valid sections of the law continue to operate.
- **Doctrine of Waiver** – A person can voluntarily waive a right granted by law, except for fundamental rights, which cannot be waived as they are essential to individual freedoms.
- **Doctrine of Eclipse** – A law that becomes unconstitutional due to a conflict with fundamental rights is not void but remains inactive until the conflict is removed.
- **Doctrine of Territorial Nexus** – A law enacted by a state can have extraterritorial operation if a sufficient connection exists between the state and the subject matter.
- **Doctrine of Pith and Substance** – When determining legislative competence, the true nature and substance of a law are examined rather than its incidental effects.
- **Doctrine of Colourable Legislation** – A law may appear to be within legislative competence but is actually an attempt to legislate beyond its jurisdiction in disguise.
- **Doctrine of Implied Powers** – The Constitution grants certain powers implicitly even if not explicitly mentioned, as they are necessary to carry out express powers.
- **Doctrine of Incidental and Ancillary Powers** – Legislatures can enact laws on subjects not directly mentioned in their power list if they are necessary to exercise their main powers.
- **Doctrine of Precedent** – Judicial decisions serve as binding precedents for future cases, ensuring consistency and stability in constitutional interpretation.

- **Doctrine of Occupied Field** – If the Centre has legislated on a subject in the Concurrent List, state laws on the same subject become void to avoid conflict.
- **Doctrine of Prospective Overruling** – A new legal interpretation applies only to future cases and does not affect past judgments, ensuring legal stability.
- **Doctrine of Harmonious Construction** – Conflicting constitutional provisions should be interpreted in a way that allows them to coexist without nullifying each other.
- **Doctrine of Liberal Interpretation** – Constitutional provisions should be interpreted broadly to fulfil their purpose, rather than being limited to a narrow reading.

8.8.2. High Courts (Articles 214-231, Part VI, Chapter V)

Origin and Establishment of High Courts in India

The High Court system in India was established in 1862 under the Indian High Courts Act of 1861, leading to the formation of High Courts in Calcutta, Bombay, and Madras, with a fourth High Court set up in Allahabad in 1866. Over time, every province in British India had its own High Court. After Independence, the existing High Courts of various provinces became the High Courts for the corresponding states. While the Indian Constitution originally envisioned a separate High Court for each state, the Seventh Amendment Act of 1956 empowered Parliament to establish a common High Court for two or more states or for a state and a union territory. The territorial jurisdiction of a High Court generally aligns with the boundaries of the respective state, but in the case of a common High Court, its jurisdiction extends across the territories of the concerned states and union territories.

Article 214 provides that each state shall have its own High Court. However, as of 2023, there are 25 High Courts in India. Among them, only three High Courts have jurisdiction over more than one state.

High Court as a Court of Record

Article 215 of the Indian Constitution designates every High Court as a court of record. A court of record has two significant characteristics: Permanent Records – The High Court's judgments, proceedings, and acts are recorded for perpetual reference and are recognized as legal precedents. Power to Punish for Contempt – As a court of record, the High Court has inherent authority to punish individuals for contempt if there is any act that disrespects its dignity, authority, or obstructs justice. This ensures the independence, integrity, and effectiveness of the judiciary.

Composition of High Court

Article 216 states that every High Court shall consist of a Chief Justice and such number of other judges as the President of India deems necessary. The strength of High Court judges is not fixed by the Constitution; instead, it is determined by factors such as caseload, workload, and recommendations from the Chief Justice of the High Court, Governor, and Chief Justice of India. The President, based on these considerations, appoints judges to maintain the efficiency and effectiveness of judicial administration.

Appointment and Qualifications of High Court Judges

Article 217 of the Indian Constitution governs the appointment and qualifications of High Court judges. The President of India appoints the judges of the High Court after consulting the Chief Justice of India, the Governor of the respective state, and, in some cases, the Chief Justice of the concerned High Court. To be eligible for appointment as a High Court judge, a person must be a citizen of India and must have either served as a judicial officer in India for at least ten years or practiced as an advocate in a High Court (or multiple High Courts in succession) for at least ten years. These provisions ensure that only experienced and qualified individuals are appointed to the High Court.

Removal of High Court Judges

Article 218: The removal of High Court judges follows the same procedure as that of Supreme Court judges under Article 124(4). A High Court judge can only be removed by the President of India on the grounds of proven misbehavior or incapacity. The removal process requires a motion to be passed by both Houses of Parliament with a special majority. This safeguard ensures judicial independence by preventing arbitrary removal and upholding the integrity of the judiciary.

Oath and Affirmation by High Court Judges

Article 219: Before assuming office, every High Court judge must take an oath or affirmation before the Governor of the state, as required by Article 219. The oath includes a pledge to uphold the Constitution of India, maintain the sovereignty and integrity of the country, and discharge judicial duties faithfully and impartially. This provision reinforces the constitutional commitment and ethical responsibility of High Court judges.

Restriction on Practice after Retirement

Article 220 imposes restrictions on retired High Court judges, prohibiting them from practicing as advocates in any court where they previously served. However, they are permitted to practice in the Supreme Court or in other High Courts where they have not held office. This provision is intended to prevent undue influence and maintain the impartiality of the judiciary even after retirement.

Salaries and Allowances of High Court Judges

Article 221 : The salaries and allowances of High Court judges are determined by Parliament and are protected from reduction, except during a financial emergency under Article 360. As per the latest revisions, the Chief Justice of a High Court receives ₹2,50,000 per month, while other judges receive ₹2,25,000 per month, along with benefits such as pensions, housing allowances, and other

entitlements. This financial security is crucial for maintaining judicial independence and preventing external influence on judges.

Transfer of High Court Judges

Article 222 empowers the President, in consultation with the Chief Justice of India, to transfer a judge from one High Court to another. In such cases, the transferred judge is entitled to a compensatory allowance to cover the financial impact of relocation. This provision helps in the effective distribution of judicial resources across different High Courts and ensures an equitable workload.

Appointment of Acting Chief Justice

Article 223: *When the office of the Chief Justice of a High Court is vacant, or if the Chief Justice is unable to perform duties due to absence or other reasons, the President has the authority to appoint one of the existing judges of that High Court to act as the Chief Justice. This ensures that judicial administration is not disrupted and the High Court continues to function efficiently.*

Appointment of Additional and Acting Judges

Article 224: *If there is a temporary increase in the workload of a High Court due to a rise in cases or pending arrears, the President can appoint additional judges for a maximum term of two years to manage the extra burden. These appointments are made from individuals who meet the necessary qualifications for High Court judges. If a High Court judge (other than the Chief Justice) is unable to perform duties due to absence or other reasons, or if a judge is appointed temporarily as Chief Justice, the President may appoint an acting judge to fill the position until the permanent judge resumes duty. No additional or acting judge can continue in office beyond the age of sixty-two years, ensuring a fixed retirement age and maintaining judicial efficiency.*

Appointment of Retired Judges to High Courts

Article 224A: *The Chief Justice of a High Court, with prior approval from the President, can request a retired judge of that High Court or any other High Court to serve as a judge for temporary periods. These retired judges, while*

performing their duties, will have the same jurisdiction, powers, and privileges as sitting judges. However, they are not deemed to be permanent judges of the court. Their service is voluntary, and they are entitled to allowances determined by the President. Additionally, no retired judge can be compelled to serve unless they give their consent. This provision helps in managing the workload of High Courts by utilizing experienced judges when required.

Jurisdiction and Powers of Existing High Courts (Original Jurisdiction)

Article 225: *The jurisdiction, powers, and rules of High Courts remain the same as they were before the commencement of the Constitution unless modified by parliamentary or state legislation. This provision ensures continuity in the functioning of the judiciary. Additionally, any restrictions that were imposed on the original jurisdiction of High Courts in revenue-related matters before the Constitution came into force are no longer applicable. This allows High Courts to exercise a broader scope of authority over revenue disputes and other matters.*

Power of High Courts to Issue Writs (Writ Jurisdiction)

Article 226 of the Indian Constitution grants High Courts the power to issue writs for the enforcement of fundamental rights and other legal rights. This provision makes High Courts a crucial institution in protecting individual liberties and ensuring justice. Unlike Article 32, which limits the Supreme Court's writ jurisdiction to fundamental rights, Article 226 allows High Courts to issue writs for broader purposes, including legal rights violations.

Scope and Jurisdiction Wider Jurisdiction than Article 32: While the Supreme Court under Article 32 can only issue writs for fundamental rights violations, High Courts under Article 226 can issue writs for both fundamental rights and other legal rights.

Territorial Jurisdiction: High Courts can issue writs against individuals, authorities, or governments within their territorial jurisdiction. If the cause of action partly arises within the High Court's jurisdiction, it can still entertain the writ petition.

Discretionary Power: The High Court has the discretion to refuse writ petitions if an alternative remedy is available, except in cases of fundamental rights violations.

Types of Writs under Article 226

The High Courts can issue the following writs to enforce rights and ensure justice:

- ***Habeas Corpus ("You may have the body")*** This writ is used to challenge unlawful detention or imprisonment. If a person is wrongfully detained, the High Court can order their release. This writ can be filed by the detained person or someone on their behalf.
- ***Mandamus ("We command")*** This writ is issued to public officials, institutions, or authorities directing them to perform a duty they are legally obligated to do. It ensures that public duties are performed as required by law. However, it cannot be issued against private individuals or companies.
- ***Prohibition ("To forbid")*** This writ is issued by a High Court to a lower court or tribunal, preventing it from exceeding its jurisdiction. It ensures that lower courts do not act beyond their legal authority. However, it cannot be issued against administrative or legislative bodies.
- ***Certiorari ("To be certified")*** This writ is used to quash orders or decisions of lower courts, tribunals, or quasi-judicial bodies that act beyond their authority or violate principles of natural justice. Unlike prohibition, which prevents future actions, certiorari is used to nullify past wrongful decisions.
- ***Quo Warranto ("By what authority")*** This writ is issued to prevent an individual from unlawfully holding a public office. The High Court can question a person's authority to occupy a public position and remove them if necessary. It ensures that only qualified persons hold public offices.

Limitations of Article 226

- **Discretionary Nature:** High Courts may refuse to entertain a writ petition if an alternative remedy, such as an appeal or review, is available.

- **Jurisdictional Limits:** A High Court can issue writs only within its territorial jurisdiction, unlike the Supreme Court, which has nationwide jurisdiction.
- **Cannot be issued against Private Individuals:** Most writs under Article 226 apply to public officials and authorities, not private individuals, except in certain exceptional circumstances.

Here is a comparative table between **Article 32 and Article 226** of the Indian Constitution:

Feature	Article 32 (Supreme Court)	Article 226 (High Courts)
Provision	Grants the Supreme Court the power to issue writs for the enforcement of fundamental rights.	Grants High Courts the power to issue writs for the enforcement of both fundamental rights and other legal rights.
Jurisdiction	Nationwide jurisdiction.	Limited to the territorial jurisdiction of the respective High Court.
Writs Issued	Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto (Only for Fundamental Rights).	Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto (For Fundamental Rights & Other Legal Rights).
Scope	Limited to cases involving fundamental rights.	Covers both fundamental rights and other legal rights violations.
Discretionary Power	Supreme Court cannot refuse a petition if a fundamental right is violated.	High Court has discretion and may refuse to hear a petition if an alternative remedy is available.
Alternative Remedy	No alternative remedy required; one can directly approach the Supreme Court for fundamental rights enforcement.	If an alternative remedy (such as an appeal or review) is available, the High Court may refuse the writ petition.
Binding Nature	The Supreme Court's decisions apply across the entire country.	High Court's decisions apply within its territorial jurisdiction.
Applicability	Supreme Court can be approached under Article 32 for fundamental rights violations only.	High Court can be approached under Article 226 for violations of fundamental and other legal rights.
Power to Refuse Writ	Supreme Court cannot deny issuing writs in fundamental rights cases.	High Courts may refuse if an alternative remedy is available.
Hierarchy	Supreme Court is the highest authority for constitutional interpretation.	High Courts act as the first level of constitutional remedy before approaching the Supreme Court.

- **Article 32** is a fundamental right itself and provides a guaranteed remedy for the enforcement of fundamental rights through the Supreme Court.
- **Article 226** is broader in scope, allowing High Courts to issue writs for both fundamental and legal rights, but it is discretionary.
- The Supreme Court has national jurisdiction, while High Courts operate within their respective states or union territories.

This comparison highlights how both provisions serve as crucial tools for judicial review and constitutional enforcement in India.

Power of superintendence over all courts by the High Court (Supervisory Jurisdiction)

Under Article 227, High Courts have appellate jurisdiction in criminal matters and supervisory jurisdiction over subordinate courts and tribunals. Appeals from the Sessions Court and Additional Sessions Court can be brought before the High Court if the sentence exceeds seven years. Additionally, any death sentence or capital punishment awarded by a Sessions Court must be confirmed by the High Court before execution, regardless of whether an appeal has been filed. The supervisory jurisdiction of the High Court extends over all courts and tribunals within its territorial limits, except military courts. This power applies to courts whether or not they fall under the appellate jurisdiction of the High Court. Supervisory jurisdiction includes judicial and administrative superintendence, revisional authority over lower courts, and **suo-motu** intervention, allowing the High Court to act on its own without an application.

Suo-motu is a Latin term meaning "on its own motion." In the context of judicial proceedings, it refers to the power of a court to take action on a matter without any party filing a petition or application. This means that the court can initiate legal proceedings or intervene in an issue on its own if it deems necessary, particularly in cases of public interest, violation of fundamental rights, or contempt of court. High Courts and the Supreme Court in India have **suo-motu** powers under Articles 32, 136, 142, and 226 to ensure justice is served even when no formal complaint has been made.

Transfer of Certain Cases to High Court

Article 228: This provision empowers a High Court to withdraw a case from a subordinate court if it involves a substantial question of law concerning the interpretation of the Constitution. The High Court may either decide the case

itself or return it to the subordinate court with its interpretation on the legal question.

Officers and Servants and the Expenses of High Courts

Article 229: This article grants the Chief Justice of a High Court the authority to appoint officers and staff of the court, subject to legal provisions. It also states that expenses related to High Courts shall be charged upon the Consolidated Fund of the State, ensuring financial independence.

Extension of Jurisdiction of High Courts to Union Territories

Article 230: Parliament has the power to extend the jurisdiction of a High Court to any Union Territory or to exclude its jurisdiction from a state. This allows flexibility in judicial administration for Union Territories that do not have their own High Courts.

Establishment of a Common High Court for Two or More States

Article 231: This article authorizes Parliament to establish a single High Court for two or more states or for states and Union Territories combined. This provision ensures judicial efficiency in regions where maintaining separate High Courts may not be feasible.

Comparison of Supreme Court and High Court Provisions.

The table below compares the key constitutional provisions related to the **Supreme Court** and **High Courts** in India:

Provision	Supreme Court (Articles)	High Court (Articles)
Establishment and Constitution	Article 124	Article 214
Number of Judges	Decided by Parliament (124(1))	Decided by Parliament (216)
Appointment of Judges	Article 124(2)	Article 217
Tenure of Judges	Until age 65 (124(2))	Until age 62 (217)
Removal of Judges	Article 124(4), 124(5)	Article 217(1)(b), 218
Jurisdiction and Powers	Articles 131, 132, 133, 136, 143	Articles 226, 227
Writ Jurisdiction	Article 32	Article 226
Advisory Jurisdiction	Article 143	Not applicable

Contempt of Court Powers	Article 129	Article 215
Review Power (Re-examine own decision)	Article 137	Not explicitly mentioned
Enforcement of Court Orders	Article 142	Not explicitly mentioned
Binding Nature of Decisions	Article 141 (Binding on all courts)	Not binding on Supreme Court
Special Leave Petition (SLP)	Article 136	Not applicable
Dispute Resolution Between States	Article 131	Not applicable
Superintendence Over Subordinate Courts	Not applicable	Article 227
Power Over Subordinate Judiciary	Not applicable	Article 235
Salaries and Conditions of Service	Article 125	Article 221
Acting Judges	Article 127	Article 224
Transfer of Judges	Article 222	Article 222

Key Differences between Supreme Court and High Courts

1. **Jurisdiction** – The Supreme Court has original, appellate, and advisory jurisdiction, while High Courts mainly have original and appellate jurisdiction but no advisory role.
2. **Binding Decisions** – Supreme Court rulings are binding on all courts (Article 141), but High Court rulings are not binding on the Supreme Court or other High Courts.
3. **Age of Retirement** – Supreme Court judges retire at 65, whereas High Court judges retire at 62.
4. **Writ Jurisdiction** – The Supreme Court's writ jurisdiction (Article 32) applies only to fundamental rights, while High Courts (Article 226) can issue writs for both fundamental and other legal rights.

5. **Superintendence Powers** – High Courts have supervisory authority over lower courts (Article 227), while the Supreme Court does not.
6. **Advisory Role** – The Supreme Court can advise the President under Article 143, while High Courts do not have such a provision.
7. **Special Leave Petition (SLP)** – Only the Supreme Court has discretionary power to hear appeals in special cases (Article 136).

8.8.3. Subordinate Courts (Articles 232-237, Part VI, Chapter VI)

Subordinate courts, also known as district and lower courts, function under the High Courts and form the lower judiciary in India. They derive their powers and jurisdiction from the Constitution of India, as well as various laws enacted by the legislature. The provisions governing subordinate courts are primarily found in **Articles 233 to 237** of the Indian Constitution.

Article 232 was originally part of the Indian Constitution but was later repealed by the Constitution (Seventh Amendment) Act, 1956. This article dealt with judicial and administrative provisions concerning Part B States, which included princely states and other territories that joined India after independence.

Appointment of District Judges

Article 233: The appointment, posting, and promotion of district judges in any state are carried out by the Governor in consultation with the High Court. To be eligible for appointment as a district judge, a person must have at least seven years of legal practice as an advocate or pleader. This provision ensures that only experienced legal professionals hold the position of district judge.

Recruitment of Persons to the Judicial Service

Article 234: Apart from district judges, the recruitment of other judicial officers in the state judiciary is done by the Governor. The appointments are made following rules prescribed by the Governor in consultation with the State Public Service Commission and the High Court. This ensures a structured and merit-based appointment process for judicial officers.

Control Over Subordinate Courts

Article 235: The High Court has supervisory control over district courts and subordinate judiciary, including their administrative and disciplinary matters. This provision helps maintain the independence and efficiency of the lower judiciary by ensuring that it functions without external interference.

Interpretation of Terms

Article 236: This article provides definitions for key judicial terms: **District Judge** includes judges of city civil courts, additional district judges, session judges, chief judges of small cause courts, and other similar positions. **Judicial Service** refers to a specialized service dedicated solely to judicial functions and separate from executive roles. These definitions clarify the roles and responsibilities within the subordinate judiciary.

Application of Provisions to Certain Magistrates

Article 237: The Governor has the authority to extend provisions related to the subordinate judiciary to magistrates performing judicial functions. This enables better integration of magistrates into the judicial system and allows them to work under the control of the High Court, ensuring consistency in judicial administration.

Hierarchy of Subordinate Courts

The subordinate courts function under the supervision of the High Court and are structured as follows:

- **District Courts** – The principal civil and criminal courts in a district, led by a District Judge in civil matters and a Sessions Judge in criminal cases.
- **Subordinate Civil Courts** – Includes Senior Civil Judge Courts and Junior Civil Judge Courts, which handle civil disputes at different levels.
- **Subordinate Criminal Courts** – Includes Chief Judicial Magistrate Courts, Judicial Magistrate Courts, and Executive Magistrate Courts, which deal with various criminal matters.

8.9 Judicial Review and its Role in Upholding the Constitution

Judicial review Meaning

Judicial review is the authority of the judiciary to assess whether legislative enactments and executive orders issued by the Central and State governments comply with the Constitution. If, upon examination, the judiciary determines that these laws or orders violate constitutional provisions (*ultra vires*), they are declared illegal, unconstitutional, and invalid (null and void). As a result, such laws or orders cannot be enforced by the government. This power ensures that all government actions remain within constitutional limits, safeguarding the rule of law and protecting citizens' rights.

Types of Judicial Review

Judicial review is classified into three main categories based on the scope of its application.

- ***Review of Legislative Actions***

This type of judicial review examines whether laws enacted by the legislature comply with the provisions of the Constitution of India, 1950. If a law is found unconstitutional, the judiciary has the power to declare it invalid and unenforceable.

- ***Review of Administrative Actions***

This ensures that administrative bodies and agencies act within their designated authority and follow constitutional principles while exercising their powers. It serves as a safeguard against arbitrary, unfair, or unlawful administrative decisions.

- ***Review of Judicial Decisions***

This review enables the judiciary to revisit and correct its own previous rulings. If a prior decision is found to be flawed or inconsistent with constitutional principles, it can be modified to ensure justice is served.

The scope of judicial review

The scope of judicial review allows the Supreme Court and High Courts to examine the constitutional validity of legislative enactments and executive orders. A law or order can be challenged if it infringes upon Fundamental Rights guaranteed under Part III of the Constitution, ensuring that individual rights and freedoms are protected. Additionally, judicial review applies when a law or executive action exceeds the jurisdiction or authority of the body that enacted or implemented it, preventing misuse of power. Furthermore, if any legislative or executive measure is inconsistent with or contradicts constitutional provisions, the judiciary has the power to declare it unconstitutional and unenforceable.

The limitations of judicial review

The limitations of judicial review arise from its potential to interfere with the functioning of the government. Excessive judicial intervention can create obstacles in policy implementation and decision-making, restricting the efficiency of the executive and legislative branches. At times, judicial review may overstep its constitutional boundaries by invalidating laws or executive actions without sufficient constitutional justification, leading to conflicts with the legislative process. In India, where there is a separation of functions rather than a strict separation of powers, judicial review often results in an overlap of authority among different branches of government. Additionally, judicial decisions create binding precedents, which can sometimes lead to rigid interpretations of the law, limiting judicial flexibility in future cases. There is also a risk of personal bias or misuse of judicial authority, which may influence verdicts in ways that do not always serve the larger public interest. Moreover, frequent judicial interference in government policies can weaken public trust in the efficiency and effectiveness of governance, as it may be perceived as undermining the authority of elected representatives.

Constitutional Provisions for Judicial Review

The Constitution of India does not explicitly grant the power of judicial review to the courts; however, several provisions support and establish the process of judicial review.

Article 372(1) provides for the continuation of pre-constitution laws while allowing the judiciary to review and determine their validity. Article 13 explicitly states that any law violating the provisions of Part III (Fundamental Rights) shall be deemed void. Articles 32 and 226 empower the Supreme Court and High Courts, respectively, to act as the protectors and guarantors of fundamental rights.

In cases of conflict between Union and State laws, Articles 251 and 254 declare that State laws shall be void if they contradict Central laws. Article 246(3) ensures the exclusive legislative authority of state legislatures on matters listed in the State List. Article 245 mandates that the law-making powers of Parliament and State legislatures remain subject to constitutional provisions.

Articles 131 to 136 confer upon the judiciary the authority to adjudicate disputes involving individuals, the state, and the Union. In such cases, the Supreme Court's interpretation of constitutional provisions becomes binding across all courts. Finally, Article 137 grants the Supreme Court the power to review its own judgments or orders. However, in criminal cases, an order can only be reviewed and set aside if there is an apparent error on record.

The doctrine of judicial review is a fundamental pillar of democracy. Despite facing challenges and criticisms, it plays a crucial role in upholding constitutional governance and preventing the misuse of power. It ensures that the Constitution remains the highest law of the land and that government actions adhere to its principles.

8.10 Landmark Judgments and Their Impact on Constitutional Law

Shankari Prasad v. Union of India (1951)

This case was the first to examine the scope of Parliament's power to amend the Constitution, particularly Fundamental Rights. The petitioner, Shankari Prasad, challenged the First Constitutional Amendment Act, 1951, which introduced reservations in education and land reform laws by amending Article 31A and Article 31B. The Supreme Court held that Parliament has the absolute power to amend the Constitution, including Fundamental Rights, under Article 368. The

court reasoned that the term “law” in Article 13 refers to ordinary laws and does not include constitutional amendments. Thus, Parliament’s power to amend Fundamental Rights was upheld.

Sajjan Singh v. State of Rajasthan (1965)

This case further reaffirmed the Supreme Court’s decision in Shankari Prasad, ruling that Parliament has the power to amend Fundamental Rights. Sajjan Singh, the petitioner, challenged the 17th Constitutional Amendment Act, 1964, which added several laws related to land reforms to the Ninth Schedule, making them immune from judicial review. The Supreme Court, by a 3:2 majority, upheld Parliament’s authority to amend the Constitution, including Fundamental Rights, under Article 368. However, two dissenting judges (Justice Hidayatullah and Justice Mudholkar) expressed concerns about the unlimited amending power of Parliament and hinted at the need to protect the basic structure of the Constitution. This dissent later influenced future cases.

Golak Nath v. State of Punjab (1967)

In a landmark judgment, the Supreme Court overruled the decisions in Shankari Prasad and Sajjan Singh. The case arose when Henry and William Golak Nath, owners of agricultural land in Punjab, challenged the Punjab Security and Land Tenures Act, which imposed landholding restrictions. The Supreme Court ruled that Parliament cannot amend Fundamental Rights, as they are essential to the basic structure of the Constitution. The court held that Article 13 applies to both ordinary laws and constitutional amendments, meaning that any amendment violating Fundamental Rights would be invalid. This judgment limited Parliament’s power and led to the 24th Constitutional Amendment Act, 1971, which sought to restore Parliament’s amending authority.

Kesavananda Bharati v. State of Kerala (1973)

This landmark case is one of the most significant rulings in Indian constitutional history, as it introduced the Basic Structure Doctrine, which limits Parliament’s power to amend the Constitution. The case was filed by Kesavananda Bharati, the head of the Edneer Mutt in Kerala, who challenged the Kerala Land Reforms Act, 1963, arguing that it violated his fundamental rights under Articles 14, 19,

and 25. The case questioned whether Parliament had unrestricted power under Article 368 to amend any part of the Constitution, including Fundamental Rights.

A 13-judge bench of the Supreme Court delivered a historic verdict with a 7:6 majority, ruling that while Parliament has the power to amend the Constitution, it cannot alter its “basic structure.” The court did not provide an exhaustive list of what constitutes the basic structure, but it mentioned elements like the supremacy of the Constitution, democracy, secularism, separation of powers, and judicial review. This doctrine prevented Parliament from making changes that would destroy the essence of the Constitution. The judgment struck a balance between parliamentary sovereignty and constitutional supremacy, ensuring that no government could dilute fundamental principles such as democracy, rule of law, and individual rights.

Maneka Gandhi v. Union of India (1978)

This case significantly expanded the scope of Article 21, which guarantees the Right to Life and Personal Liberty. The case arose when Maneka Gandhi, a journalist and political activist, had her passport impounded by the government without being given any reason. When she sought an explanation, the government refused to provide one, citing “public interest.” She challenged this decision under Articles 14 (Right to Equality), 19 (Freedom of Speech and Expression), and 21 (Right to Life and Personal Liberty).

The Supreme Court ruled in favor of Maneka Gandhi, declaring that the right to life and personal liberty under Article 21 is not confined to mere physical existence but includes the right to live with dignity. The court also held that any law affecting personal liberty must be “just, fair, and reasonable” and must follow due process. This judgment broadened the interpretation of Article 21 and established that the procedure prescribed by law must also meet the standards of fairness, justice, and reasonableness. It further connected Article 21 with Articles 14 and 19, stating that they must be read together to ensure greater protection of individual rights.

Minerva Mills v. Union of India (1980)

The Minerva Mills case further strengthened the Basic Structure Doctrine established in *Kesavananda Bharati v. State of Kerala* (1973). The case arose

when Minerva Mills, a textile company in Karnataka, challenged the constitutional validity of certain amendments made by the 42nd Amendment Act, 1976. The amendments gave unlimited power to Parliament to amend the Constitution and put the Directive Principles of State Policy above Fundamental Rights. The petitioners argued that this undermined the Constitution's basic structure and violated the principles of democracy and judicial review.

A five-judge bench of the Supreme Court ruled that Parliament's power to amend the Constitution is limited and cannot be exercised in a way that destroys or damages the Constitution's basic structure. The court struck down clauses of Article 368, which had barred judicial review of constitutional amendments, reaffirming that judicial review is a fundamental part of the Constitution. The judgment also emphasized that Fundamental Rights and Directive Principles must be harmonized, ensuring that neither is given absolute primacy over the other. This case reinforced the balance between individual rights and state policies, preventing the concentration of excessive power in the hands of the government.

M.C. Mehta v. Union of India (1986)

This case played a crucial role in shaping India's environmental jurisprudence by introducing the Absolute Liability Principle. It arose after the Bhopal Gas Tragedy of 1984, in which a gas leak from the Union Carbide plant in Bhopal caused thousands of deaths and long-term health complications for many others. The petitioner, M.C. Mehta, a renowned environmental activist, filed a Public Interest Litigation (PIL) seeking stringent environmental regulations and corporate accountability.

The Supreme Court ruled that industries dealing with hazardous substances have an absolute and non-delegable duty to ensure that no harm is caused to the public. It introduced the Absolute Liability Principle, stating that in cases involving hazardous industries, companies cannot escape liability even if they took all possible precautions. This principle differs from the previous Strict Liability Rule, which allowed exceptions if the harm was caused by an act of God, a third party, or the plaintiff's negligence. This judgment significantly strengthened environmental law in India, leading to stricter industrial regulations

and the enactment of environmental protection laws, including the Environment Protection Act, 1986. The ruling ensured that companies engaging in dangerous activities are held strictly accountable for any harm caused, setting a strong precedent for environmental and industrial safety laws.

Shah Bano Case (Mohd. Ahmed Khan v. Shah Bano Begum) (1985)

The Shah Bano case was a landmark judgment in India's legal history, particularly concerning the rights of Muslim women. Shah Bano, a 62-year-old Muslim woman, was divorced by her husband, Mohd. Ahmed Khan, after 40 years of marriage. After the divorce, she sought maintenance under Section 125 of the Code of Criminal Procedure (CrPC), which provides for the financial support of divorced women who are unable to maintain themselves. Her husband argued that under Muslim personal law, he was only obligated to provide maintenance during the iddat period (a three-month waiting period after divorce).

The Supreme Court ruled in favor of Shah Bano, stating that Section 125 CrPC applies to all women, regardless of religion. It held that a divorced Muslim woman is entitled to maintenance beyond the iddat period if she cannot sustain herself. The court emphasized that personal laws cannot override constitutional protections and fundamental rights. The judgment sparked significant political and religious controversy, leading to the passage of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which diluted the Supreme Court's ruling by limiting a Muslim woman's right to maintenance. However, the case remains a milestone in India's legal history, as it highlighted the need for gender justice, uniform civil laws, and the balance between personal laws and constitutional rights.

Bachan Singh v. State of Punjab (1980)

The Bachan Singh case was a landmark judgment that upheld the constitutional validity of the death penalty in India while introducing the "rarest of rare" doctrine. The case arose when Bachan Singh, convicted of murdering three people, challenged his death sentence under Article 21 of the Constitution, arguing that capital punishment violated the fundamental right to life and personal liberty.

A five-judge bench of the Supreme Court ruled that the death penalty is constitutional as long as it is imposed in the "rarest of rare" cases. The court emphasized that capital punishment should be awarded only when alternative sentences, such as life imprisonment, are unquestionably inadequate. The judgment set important criteria for sentencing, requiring courts to consider the nature of the crime, the circumstances of the offender, and the possibility of reform. This case established a crucial precedent in India's criminal justice system, ensuring that the death penalty is imposed sparingly and only for the most heinous crimes. It has since been a guiding principle in sentencing decisions, reinforcing the need for a careful and balanced approach to capital punishment.

Indira Sawhney v. Union of India (1992) (Mandal Commission Case)

The Indira Sawhney case was a landmark judgment on reservations and affirmative action in India. The case arose after the implementation of the Mandal Commission report, which recommended 27% reservation for Other Backward Classes (OBCs) in government jobs. This led to widespread protests and legal challenges, with opponents arguing that such reservations violated the principles of equality under Article 14 of the Constitution.

A nine-judge bench of the Supreme Court upheld the validity of OBC reservations but introduced significant safeguards. The court ruled that reservations should not exceed 50%, thereby maintaining a balance between affirmative action and merit-based opportunities. It also struck down the reservation of posts in promotions, stating that reservation should apply only at the initial stage of employment. This judgment played a crucial role in shaping India's reservation policy, ensuring that affirmative action benefits the socially and educationally backward without compromising the principle of equality. It remains a cornerstone case in discussions on social justice and reservation policies in India.

Vishaka v. State of Rajasthan (1997)

The Vishaka case was a landmark judgment that laid down guidelines for the prevention of sexual harassment at the workplace in India. The case was filed by social activist groups after the brutal gang rape of a social worker, Bhanwari

Devi, in Rajasthan. The lack of legal provisions to address workplace sexual harassment prompted the Supreme Court to intervene.

The court ruled that sexual harassment at the workplace is a violation of women's fundamental rights under Articles 14, 15, 19, and 21 of the Constitution. In the absence of a specific law, the court formulated the Vishaka Guidelines, which mandated preventive measures, grievance redressal mechanisms, and employer responsibilities to ensure a safe working environment for women. This case was a turning point in gender justice and workplace safety in India. It led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013, ensuring legal protection against workplace harassment.

Puttaswamy v. Union of India (2017) (Right to Privacy Case)

The Puttaswamy case was a historic judgment that recognized the Right to Privacy as a fundamental right under Article 21 of the Constitution. The case arose when Justice K.S. Puttaswamy, a retired High Court judge, challenged the government's Aadhaar scheme, arguing that mandatory biometric identification violated citizens' privacy. A nine-judge bench of the Supreme Court unanimously ruled that privacy is an intrinsic part of the fundamental right to life and personal liberty. The judgment overturned previous rulings that denied privacy as a fundamental right and set the foundation for future cases concerning data protection, surveillance, and personal autonomy. This ruling had far-reaching implications, influencing India's legal framework on digital privacy, data protection laws, and the regulation of government surveillance programs. It reinforced the importance of individual dignity and freedom in the digital age.

Triple Talaq Case (Shayara Bano v. Union of India) (2017)

The Triple Talaq case was a landmark judgment that declared the practice of instant Triple Talaq (Talaq-e-Bid'ah) unconstitutional. The case was filed by Shayara Bano, who challenged the validity of her divorce, which was pronounced instantly and unilaterally by her husband. She argued that this practice violated her fundamental rights under Articles 14, 15, and 21 of the Constitution.

A five-judge bench of the Supreme Court ruled, by a 3:2 majority, that instant Triple Talaq was unconstitutional, arbitrary, and not an essential practice of Islam. The court emphasized that the practice violated the rights of Muslim women and was incompatible with constitutional principles of gender equality and justice. This judgment was a significant step in gender justice and personal law reform in India. It led to the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized the practice and provided legal protection for Muslim women against arbitrary divorce.

Navtej Singh Johar v. Union of India (2018)

The Navtej Singh Johar case was a historic judgment that decriminalized Section 377 of the Indian Penal Code, effectively legalizing consensual LGBTQ+ relationships in India. The case was filed by dancer Navtej Singh Johar and others, challenging the constitutional validity of Section 377, which criminalized same-sex relationships as "unnatural offenses." A five-judge bench of the Supreme Court unanimously ruled that Section 377, to the extent it criminalized consensual adult relationships, was unconstitutional as it violated fundamental rights under Articles 14, 15, 19, and 21. The court emphasized the principles of dignity, equality, and personal autonomy, recognizing LGBTQ+ individuals' right to live with freedom and without discrimination. This judgment marked a significant step toward inclusivity and equal rights, setting a precedent for future legal advancements in LGBTQ+ rights in India.

Ayodhya Verdict (M. Siddiq v. Mahant Suresh Das) (2019)

The Ayodhya verdict settled the long-standing Ram Janmabhoomi-Babri Masjid dispute, one of the most contentious religious conflicts in Indian history. The case involved claims by Hindus and Muslims over the disputed site in Ayodhya, where the Babri Masjid stood before being demolished in 1992. A five-judge bench of the Supreme Court unanimously ruled that the disputed land would be handed over to a government trust to construct a Ram temple, while an alternative five-acre plot would be provided to the Muslim community for constructing a mosque. The judgment was based on archaeological, historical, and legal evidence, emphasizing that the decision was not based on faith but on legal principles. The verdict aimed to promote communal harmony and put an end to a decades-old legal battle, playing a crucial role in shaping India's socio-political landscape..

8.11 Public Interest Litigation (PIL) and Access to Justice

Introduction

Public Interest Litigation (PIL) is a legal mechanism that enables individuals and organizations to file cases in courts on behalf of those whose rights have been violated but who may not have the means or ability to approach the judiciary. PIL plays a crucial role in promoting access to justice by allowing courts to address issues that affect large sections of society, particularly marginalized and disadvantaged groups. It serves as a tool for judicial activism, helping to uphold constitutional values and protect fundamental rights.

Evolution and Concept of PIL

The concept of PIL originated in the United States but was later adopted and expanded in India. It was formally recognized in India during the late 1970s and early 1980s when the Supreme Court allowed petitions from public-spirited individuals to be heard, even if they were not directly affected by the issue. This marked a departure from traditional litigation, where only aggrieved parties could seek judicial remedies. The Indian judiciary, under Article 32 and Article 226 of the Constitution, used PIL to provide justice to disadvantaged groups who could not approach the courts themselves.

Legal Framework Governing PIL in India

PIL in India is primarily governed by constitutional provisions and judicial precedents. Articles 32 and 226 empower the Supreme Court and High Courts, respectively, to issue writs for the enforcement of fundamental rights. The judiciary has also laid down guidelines to prevent the misuse of PIL, ensuring that it is used for genuine public causes rather than personal or political gains. The Supreme Court has the discretion to admit PIL cases and has set criteria to ensure that the petitions serve a public interest.

Key Features of PIL

PIL differs from ordinary litigation in several ways. Unlike private lawsuits, PIL is not limited to the aggrieved party and can be filed by any person or organization in the interest of justice. Courts adopt a liberal approach in

procedural matters, allowing even letters and newspaper reports to be converted into PILs. Additionally, PIL cases often involve broad issues such as human rights violations, environmental protection, and governance accountability, making them a vital instrument for social justice.

Landmark PIL Cases in India

Several landmark PIL cases have significantly influenced public policy and social justice in India. The case of *Hussainara Khatoon v. State of Bihar* (1979) highlighted the plight of undertrial prisoners and led to significant reforms in the criminal justice system. In *MC Mehta v. Union of India* (1986), the Supreme Court laid down principles for environmental protection and industrial safety. *Vishaka v. State of Rajasthan* (1997) established guidelines for preventing sexual harassment in workplaces, leading to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. These cases demonstrate the transformative power of PIL in ensuring justice and shaping policies.

Role of Judiciary in Promoting PIL

The judiciary has played a proactive role in expanding the scope of PIL to include social and economic justice. The Supreme Court and High Courts have interpreted PIL broadly, allowing issues related to bonded labor, environmental protection, corruption, and consumer rights to be addressed through judicial intervention. This has helped bridge the gap between law and justice, making the legal system more accessible to the common people. However, the judiciary has also cautioned against the misuse of PIL for political or personal agendas, emphasizing that it should be used as a tool for genuine public interest.

Challenges and Criticism of PIL

Despite its many advantages, PIL faces several challenges. The misuse of PIL by individuals and organizations for personal, commercial, or political motives has raised concerns. Some PIL cases burden the judiciary with frivolous petitions, diverting attention from more pressing legal issues. Additionally, there is criticism that PIL often leads to judicial overreach, where courts interfere in matters that should be decided by the legislature or executive. These concerns highlight the need for a balanced approach in entertaining PIL cases.

PIL and Access to Justice

PIL has significantly contributed to enhancing access to justice by removing procedural barriers and allowing courts to take suo motu cognizance of matters affecting public interest. It has empowered marginalized communities, including the poor, women, children, and workers, by giving them a legal platform to seek redressal. The flexibility of PIL ensures that justice is not restricted to those with financial resources or legal knowledge but is extended to all sections of society.

Public Interest Litigation has emerged as a powerful instrument in the Indian legal system, bridging the gap between law and social justice. While it has played a crucial role in addressing systemic issues and protecting fundamental rights, the potential for misuse calls for careful judicial scrutiny. By ensuring that PIL serves genuine public causes, the judiciary can continue to uphold the principles of justice, equality, and the rule of law, making legal remedies accessible to all.

8.12 Exercise

Q-1 Long Questions

1. Discuss the composition, powers, and jurisdiction of the Supreme Court of India under Articles 124 to 147 of the Constitution.
2. Explain the procedure for the appointment and removal of judges of the Supreme Court and High Courts under the Indian Constitution.
3. Describe the structure, powers, and functions of the High Courts in India as provided under Articles 214 to 231.
4. Examine the constitutional provisions relating to the Subordinate Judiciary under Articles 233 to 237 of the Indian Constitution.
5. Critically analyze the provisions ensuring the independence of the judiciary in India under Articles 124 to 147 and 214 to 237.

Q-2 Short Questions

1. Trace the development of the Indian judicial system from the colonial period to the present structure.
2. Write a short note on the features of the Federal Court established before Independence.

3. Explain how Judicial Review ensures the supremacy of the Constitution in India.
4. What are the qualifications required for appointment as a Judge of the Supreme Court under the Constitution of India?
5. Explain the procedure for the removal of a High Court Judge.

Q-3 MCQs

1. **Article 124** of the Constitution deals with —

- a) High Courts
- b) Supreme Court establishment
- c) Subordinate courts
- d) Tribunals

Ans: b) Supreme Court establishment

2. The Chief Justice of India is appointed by —

- a) Parliament
- b) Prime Minister
- c) President
- d) Law Minister

Ans: c) President

3. The number of judges in the Supreme Court (excluding CJI) can be changed by —

- a) Constitutional amendment
- b) President's order
- c) Parliament by law
- d) Supreme Court itself

Ans: c) Parliament by law

4. **Article 136** provides for —

- a) Advisory jurisdiction
- b) Special leave to appeal
- c) Original jurisdiction
- d) Revisional jurisdiction

Ans: b) Special leave to appeal

5. **Article 137** gives the Supreme Court power to —

- a) Review its own judgments
- b) Enact laws
- c) Impeach judges
- d) Frame policies

Ans: a) Review its own judgments

યુનિવર્સિટી ગીત

સ્વાધ્યાય: પરમં તપ:

સ્વાધ્યાય: પરમં તપ:

સ્વાધ્યાય: પરમં તપ:

શિક્ષણ, સંસ્કૃતિ, સદ્ભાવ, દિવ્યબોધનું ધામ
ડૉ. બાબાસાહેબ આંબેડકર ઓપન યુનિવર્સિટી નામ;
સૌને સૌની પાંખ મળે, ને સૌને સૌનું આભ,
દશે દિશામાં સ્મિત વહે હો દશે દિશે શુભ-લાભ.

અભણ રહી અજ્ઞાનના શાને, અંધકારને પીવો ?
કહે બુદ્ધ આંબેડકર કહે, તું થા તારો દીવો;
શારદીય અજવાળા પહોંચ્યાં ગુર્જર ગામે ગામ
ધ્રુવ તારકની જેમ ઝળહળે એકલવ્યની શાન.

સરસ્વતીના મયૂર તમારે ફળિયે આવી ગહેકે
અંધકારને હડસેલીને ઉજાસના ફૂલ મહેંકે;
બંધન નહીં કો સ્થાન સમયના જવું ન ઘરથી દૂર
ઘર આવી મા હરે શારદા દૈન્ય તિમિરના પૂર.

સંસ્કારોની સુગંધ મહેંકે, મન મંદિરને ધામે
સુખની ટપાલ પહોંચે સૌને પોતાને સરનામે;
સમાજ કેરે દરિયે હાંકી શિક્ષણ કેરું વહાણ,
આવો કરીયે આપણ સૌ
ભવ્ય રાષ્ટ્ર નિર્માણ...
દિવ્ય રાષ્ટ્ર નિર્માણ...
ભવ્ય રાષ્ટ્ર નિર્માણ

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