ROSTRUMLEGAL CLASS NOTES

Constitutional Law

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CLAT PG MASTERCLASS

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The Sources of Indian Constitution

The Government of India Act 1935

- Emergency provisions
- Establishment of supreme court[judiciary]
- Public service commission
- Office of governor
- The federal scheme of government

United Kingdom

- Single citizenship
- Rule of law
- Legislative procedure
- Parliamentary privileges
- Writs

United States of America

- Fundamental rights
- Supremacy of the constitution
- Independence judiciary [Removal procedure of Supreme Court and High Court Judges]
- Judicial review
- Election of the head of the state
- Impeachment of president and its procedure
- Post of vice president
- Financial emergency

Canada

- Federalism with strong centre
- Centre appoints governor of the states
- Residency Powers vest with the centre
- Advisory jurisdiction of Supreme Court

Australia

- Concurrent list
- Division of powers between centre and state
- Freedom of trade and Commerce
- Joint sitting of the two houses of parliament

Ireland

- Directive Principles of State Policy
- Nomination of members in Rajya Sabha
- Method of election of president

Germany

- President's power during emergency
- Suspension of fundamental rights during emergency

Soviet Union [USSR]

- Fundamental duties
- The ideals of social, economy and justice

South Africa

- Election of members of Rajya Sabha
- Procedure of constitutional amendment

Japan

- Procedure established by law

France

- Republican system
- Ideas of Liberty, equality and fraternity

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SALIENT FEATURES OF INDIAN CONSTITUTION

1. **Lengthiest Written Constitution:** A written constitution is framed at a given time and comes into force on a fixed date as a document. Our constitution was framed in 2 years, 11 months and 18 days; it was **adopted** on **26th November, 1949** and **enforced** on **January 26, 1950.** It consisted of 22 parts, 395 articles and 8 schedules. (448 art,25 parts,12 schedules)

   - Geographical reasons(size, variety of race, religion, caste, diversity of India)
   - Common constitution (union/ state)
   - Made by a constituent assembly dominated by lawyers (covered the loopholes)
   - GOI Act, 1935(Interim constitution of India)
   - Various sources
   - Ransacking of constitution-American, British, Irish, Russian, Japan etc

2. **Rigid and Flexible:** The Indian Constitution is a unique example of combination of rigidity and flexibility. A constitution is called rigid or flexible on the basis of its amending procedure. In a rigid constitution, amendment of the constitution is not easy like the constitutions of **USA, Switzerland and Australia** are rigid constitutions. Whereas, the **British Constitution** is considered flexible because its amendment procedure is easy and simple. The Constitution of India has three categories of amendments ranging from simple to most difficult procedure depending on the nature of the amendment. (art. 368)

- Some provisions are easy to amend(flexible)

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- Some provisions are very difficult to amend(rigid)
- Most provisions are moderate

3. **Federal Polity:** India has a federal structure. In a federation there are two distinct levels of governments. There is one government for the whole country which is called the Union or Central Government and there is a government for each Unit or State. The USA is a federation whereas the UK (Britain) has a unitary form of government where there is only one government for the whole country and the power is centralized. The *Constitution of India does not use the term 'federal state'* but calls India a 'Union of States'. There is a proper distribution of powers between the Union/Central Government and the State Governments in form of Union List, State List and the Concurrent List.

4. **Quasi Federal:** It means a federal set up where despite having two clear sets of government – central and the states, more powers are given to the Central Government, supremacy of the judiciary is an essential feature of a federation so that the constitution could be interpreted impartially.

- Federal system with unitary bias (quasi federal)
- Federal features of Indian Constitution
- two governments + bicameralism +Supremacy of written constitution + division of power+ independence of judiciary result
- Unitary features of Indian Constitution
- strong Centre + single constitution + single citizenship + governor + all India services

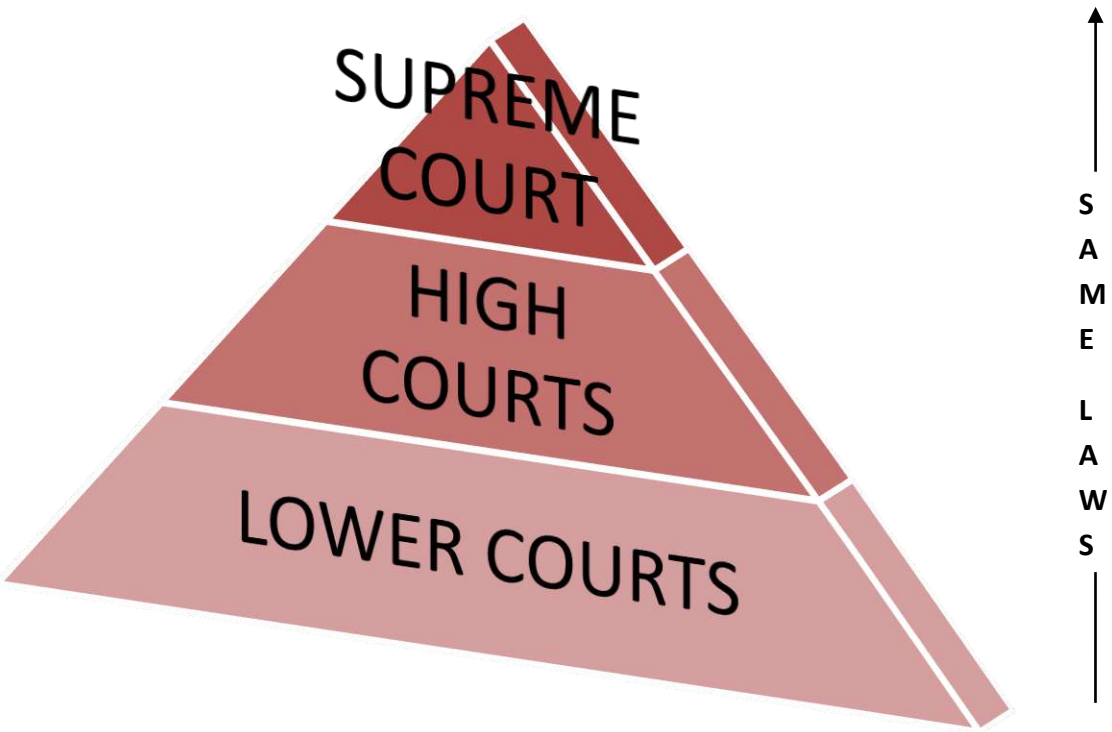
5. **Parliamentary Democracy:** India has a parliamentary form of democracy. This has been adopted from the British system. In a parliamentary democracy there is a close relationship between the legislature and the executive. The Cabinet is selected from among the members of legislature. The cabinet is responsible to the legislature. In this form of democracy, the Head of the State is nominal so in India, the President is the Head of the State. Constitutionally the President

has numerous powers but in practice the Council of Ministers headed by the PM, exercises these powers. The President has to act on the advice of the Prime Minister and the Council of Ministers.

- Parliamentary form of Government
- presence of nominal and real executive
- majority party rule (273+)
- collective responsibility of the executive to the Legislature(art 75)
- membership of ministers in the legislature(dual membership)
- leadership of prime minister for chief minister
- dissolution of lower house (lok Sabha or assembly)

6. **Single Integrated Judicial System:** India has a single integrated judicial system. The Supreme Court is the apex court of the judicial system. Below it are the High Courts which control and supervise the lower courts. The Indian judiciary is like a pyramid with the lower courts as the base, High Courts in the middle and the Supreme Court at the top.

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7. **Independence of Judiciary:** Indian judiciary is independent and impartial. It is free from the influence of the executive as well as the legislature. Its judges are appointed on the basis of their qualifications and cannot be removed easily neither can their terms of office be altered to their disadvantage.

- Independent and integral judiciary
- same law throughout India
- protection given to the judiciary (art. 124,125,126)
- One single apex court unlike USA

In India there is unique blend of **Parliamentary sovereignty with judicial Supremacy**

- Due process of law/ procedure established by law(art 21)
- Judicial review
- Provincial subjects reserved & transferred(residuary power with union)

8. **Fundamental Rights and Fundamental Duties:** The Constitution of India guarantees Fundamental rights. The Constitution provides for six Fundamental Rights which are justifiable and hence are protected by the judiciary.
   Fundamental Duties were added to our Constitution by the 42nd Amendment. It lays down a list of ten Fundamental Duties for all citizens of India. While the rights are given as guarantees to the people, the duties are obligations which every citizen is expected to perform.

Fundamental rights (adopted from USA-BILL OF RIGHTS first 10 amendments of BOR)

- Guaranteed rights to the individuals by the constitution of India enforceable by the courts against the state.
- present in part 3 of the constitution
- Writs (justifiable/ enforceable) (32/226)
- fundamental duties
- added by the 42nd constitutional amendment on Recommendation of Swaran Singh committee
- part 4A of the constitution (initially 10th, 11th fundamental duty added by the 86th amendment 2002)
- non enforceable

9. **Directive Principles of State Policy:** These have been adopted from the Irish Constitution, included in our Constitution to ensure social and economic justice to our people. Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few.

- Directive principles of State Policy
- socialistic, Gandhian, liberal, intellectual
- welfare state
- non justifiable
- Balance between fundamental rights and Directive principles

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10. **Single Citizenship:** Usually in a federal state the citizens enjoys double citizenship like in the USA. But in India there is only single citizenship which means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth. He/she is not a citizen of the Constituent State like Rajasthan, Uttaranchal or Chhattisgarh to which he/she may belong to. All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of the nation.

- single citizenship
- fraternity the sense of brotherhood
- unlike USA

11. **Universal Adult Franchise:** Indian democracy functions on the basis of 'one person one vote'. The Indian Constitution establishes political equality in India through the method of universal adult franchise. Every citizen of India who is 18 years of age or above is entitled to vote in the elections irrespective of caste, sex, race, religion or status.

- Universal adult franchise (7% literacy at time of independence)
- initially the age of voting was 21 years
- by the 69th Constitutional Amendment this age was made 18 years
- give equality to people
- equal opportunities to minority
- make the scope of parliament broad-based

12. **Emergency Provisions:** The Constitution makers expected that there could be situations when the government could not be run in usual manner due to difficult circumstances. To cope with such situations, the Constitution elaborated on emergency provisions. There are three types of emergency; A) emergency caused

by war, external aggression or armed rebellion; B) emergency arising out of the failure of constitutional machinery in states; and C) financial emergency.

- emergency provisions (Part 18)
- Concentration of powers
- article 352 national emergency
- article 356 presidential rule
- Article 360 financial emergency

13. Independent bodies

- Checks and balances
- Comptroller Auditor General article (148- 151)
- UPSC/ SPSC
- Election Commission of India(324-325)

14. Three tier government

- added by73rd(Panchayati Raj) and 74th (municipal government) constitutional amendment 1992
- Union + state + local(based on Gandhian Gram Swaraj model) 24/APRIL/1993
- Power given to people also

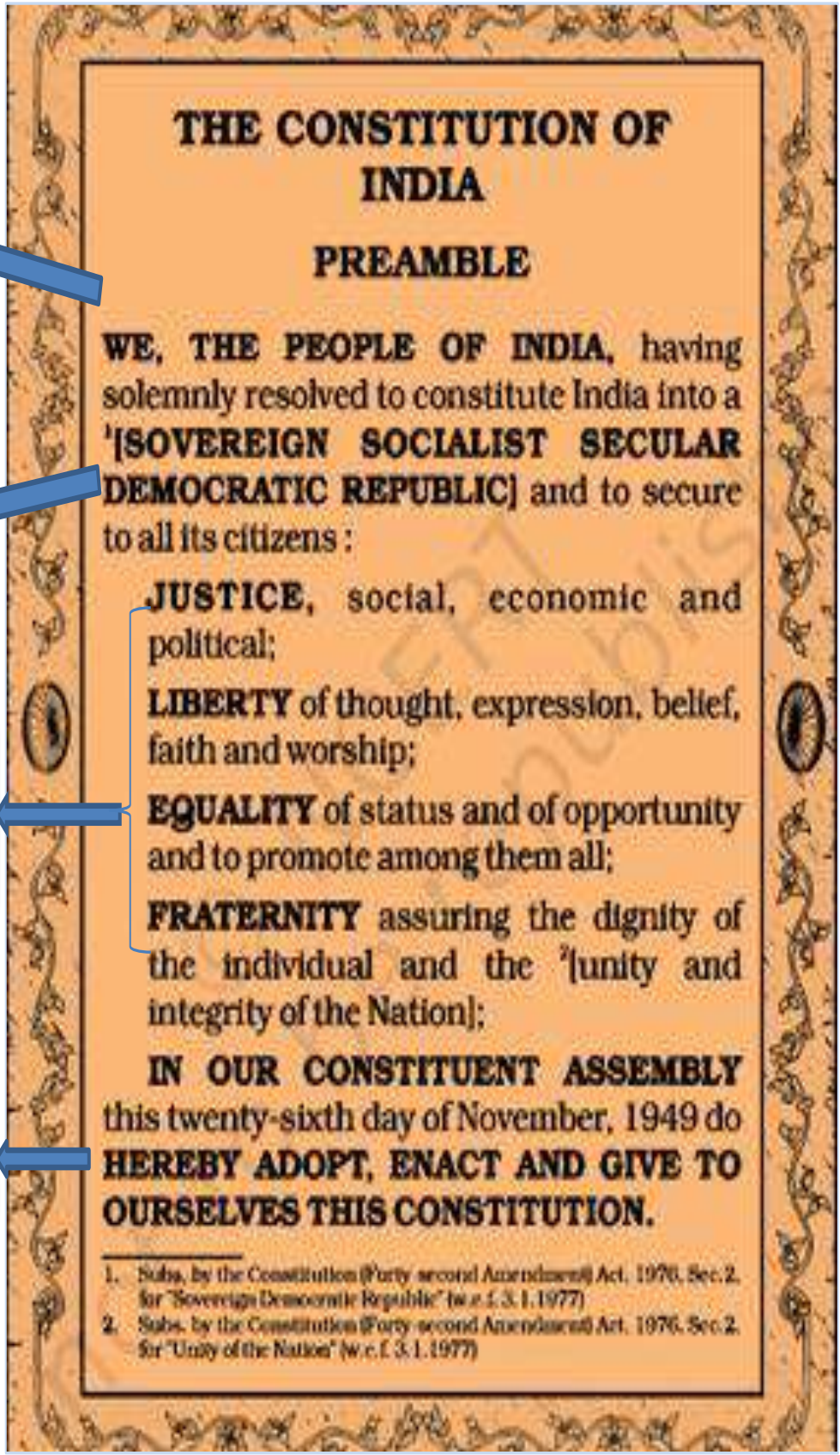
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SOURCE

NATURE

OBJECTIVES

DATE OF ADOPTION



THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [1][**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 [2][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. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec. 2, for "Sovereign Democratic Republic" (w.e.f. 3.1.1977)
2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec. 2, for "Unity of the Nation" (w.e.f. 3.1.1977)

Preamble to the Indian Constitution

- Derived from a Latin term *"PREAMBLUS"* which means "to go before".
- The idea of preamble is taken from the American Constitution
- It is the **summary of constitution**, essence/reflection of 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**

- **Soul of the Constitution by Thakur Das Bhargava**
- **Political horoscope of Indian Constitution by KM Munshi**
- **Identity card of the Constitution by N.A. Palkhivala**
- **Key note of constitution of India by Sir Ernest Barker**

History of the Preamble to Indian Constitution

- The ideals behind the Preamble to India's Constitution were laid down by **Jawaharlal Nehru's Objectives Resolution,** on 13, December 1946. It adopted by the Constituent Assembly on January 22, 1947.
- Although not enforceable in court, the Preamble states the objectives of the Constitution, and acts as an aid during the interpretation of Articles when language is found ambiguous.

Components of Preamble

- It is indicated by the Preamble that the **source of authority** of the Constitution lies with the **people of India.**
- Preamble declares India to be a **sovereign, socialist, secular and democratic republic.**
- The objectives stated by the Preamble are to **secure justice, liberty, equality to**

all citizens and promote fraternity to maintain unity and integrity of the nation.

- The date is mentioned in the preamble when it was adopted i.e. **November 26, 1949.**
- Article 394 of the Constitution states that Articles 5, 6, 7, 8, 9, 60, 324, 367, 379 and 394 came into force since the adoption of the Constitution on 26th November 1949 and the rest of the provisions on 26th January 1950.

Key words in the Preamble

We, the people of India: It indicates the **ultimate sovereignty of the people of India.** Sovereignty means the independent authority of the State, not being subject to the control of any other State or external power.

- **Sovereign:** The word sovereign refers to a state which is free to conduct its own affair both internally and externally. India became a sovereign on the date of 26th January 1950 before this India was a Dominion that means it had external influence of England Now India has its own independent authority and it is not a dominion of any other external power. In the country, the legislature has the power to make laws which are subject to certain limitations.
  India joining the Commonwealth of Nations is not India losing its sovereignty rather it is extra constitutional arrangement. India joining **United Nations** is also not violation of sovereignty because the decisions of UN are not binding on India.

- **Socialist:** The term means the **achievement of socialist ends through democratic** means (**democratic socialism**). Democratic socialism aims to remove poverty, ignorance, disease and in equality of opportunity. Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards Gandhian socialism. India has a unique idea of socialism, we don't purely follow communist or Marxist socialism, in which the state has full control over the resources and distributes them equally. In India we follow the Ghandhian socialism, here the state doesn't directly distribute the resources but gives equal opportunity to all individuals to earn the resources. It holds faith in a mixed economy where both private and public sectors co-exist side by side. It was added in the Preamble by 42nd Amendment, 1976. It means that we will have social

and economic equality.

- Social equality means everyone is equal despite what their caste, color, creed, sex, religion or language.
- Economic equality means that government will endeavor to make the distribution of wealth more equal and provide a decent standard of living for all.

- **In excel wear v. Union of India (1979)**

The Supreme Court found that with the addition of word socialist, a portal is opened to lean the judgments in favor of nationalization and state ownership of the industry. But the principle of socialism and Social Justice cannot ignore the interest of right of a different section of society that is the private owners.

- **In Minerva Mills Limited v. Union of India (1980)**

The constitutional bench had considered the meaning of the word "socialism" to crystallize a socialistic state securing to its people social economic Justice by interplay of fundamental rights and directive principle.

- **In D.S. Nakara v. Union of India (1983)**

The Supreme Court said that basic purpose of socialism is to provide the working people a decent standard of living and social security to people.

- **In Air India statutory corporation v. United labor Union (1996)**

The Supreme Court observed that the word socialist is added in the constitution to establish an egalitarian social order through rule of law.

- **Secular:** The term has a western meaning, it means divorce or no relation between the state and religion (panthnirpeksha) but in India secularism is used in a sense which means that all the religions in India get equal respect, protection and support from the state (sarva dharma sambhav).

  It was incorporated in the Preamble by 42nd Constitutional Amendment, 1976.

  BELIEVE, FAITH, & WORSHIP.

  - In **S.R. Bommai vs. Union of India (1994)**

    It was held that secularism is a part of the basic structure of the constitution.

  - In **St Xaviers College v. State of Gujarat and Anr (1974)**

The court said that secularism is neither anti god nor pro god. Secularism means elimination of God from the matters of the state and state has nothing to do with the religion of the people.

- In **Aruna Roy v. Union of India (2002)**
  The Supreme Court has said that secularism has a positive meaning and it means to develop understanding and respect towards different religions.

- **Democratic:** The term implies that the Constitution of India has an established form of Constitution which gets its authority from the will of the people expressed in an election. The people of India elect their governments (through free, fair and periodic elections at all levels Union, State and local) by a system of universal adult franchise; popularly known as 'One man one vote'.
- **Republic:** The term indicates that the head of the state is elected by the people. In India, the President of India is the elected head of the state.
  LEX REX (SUMPREMACY OF LAW), ELECTED HEAD, NO DYNASTY, PUBLIC OFFICES OPEN.

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Objectives of the Indian Constitution

The Constitution is the supreme law and it helps to **maintain integrity in the society** and to **promote unity among the citizens** to build a great nation.
The main objective of the Indian Constitution is to **promote harmony throughout the nation.**
The factors which help in achieving this objective are:

- **Justice:** It is the pinnacle achievement of the State. It is necessary to maintain order in society that is promised through various provisions of **Fundamental Rights** and **Directive Principles of State Policy** provided by the Constitution of India. It comprises three elements, which are **social, economic, and political (Tag line of Russian Revolution/constitution).**

a) **Social Justice –** Social justice means that the Constitution wants to create a society without discrimination on any grounds like caste, creed, gender, religion, etc. ART. 14-18
b) **Economic Justice –** Economic Justice means no discrimination can be caused by people on the basis of their wealth, income, and economic status.

Every person must be paid equally for an equal position and all people must get opportunities to earn for their living. ART. 39

c) **Political Justice –** Political Justice means all the people have an equal, free and fair right without any discrimination to participate in political opportunities. ART- 325,326(voting rights, electoral rights)

- **Liberty:** The term 'Liberty' means freedom for the people to choose their way of life, have political views and behavior in society. Liberty does not mean freedom to do anything; a person can do anything but in the limit set by the law. **Liberty means freedom to do anything which the law allows (Montesquieu)**
  - It is absence of restrain.
  - It gives opportunity of development to all individuals.
  - Liberty is not absolute but always qualified.

- **Equality:** The term 'Equality' means no section of society has any special privileges and all the people have given equal opportunities for everything without any discrimination. Everyone is equal before the law.

- **Fraternity:** The term 'Fraternity' means a feeling of brotherhood and an emotional attachment with the country and all the people. Fraternity helps to promote dignity and unity in the nation.

- The concept of Liberty, Equality, and Fraternity in our Preamble was adopted from the **French Motto of the French Revolution.**

Status of Preamble

- The preamble being part of the Constitution is discussed several times in the Supreme Court. It can be understood by reading the following two cases.

- **In Re Berubari Case 1960:**
  - It was used as a presidential reference under **Article 143(1)** of the Constitution which was on the implementation of the Indo-Pakistan Agreement related to the Berubari Union and in exchanging the enclaves which were decided for consideration by the bench consisting of eight judges.
  - Through the **Berubari case**, the Court stated that 'Preamble is the key to open the mind of the makers' but it **cannot be considered as part of the Constitution**.

Therefore it is not enforceable in a court of law.

- **Kesavananda Bharati Case 1973:**
  - In this case, for the first time, a bench of 13 judges was assembled to hear a writ petition. The Court held that:
  - The **Preamble of the Constitution** will now be considered **as part of the Constitution.**
  - The Preamble is not the supreme power or source of any restriction or prohibition but it plays an important role in the interpretation of statutes and provisions of the Constitution.
  - So, it can be concluded that preamble is part of the introductory part of the Constitution.
- In the case of **Union Government Vs LIC of India 1995** also, the Supreme Court has once again held that Preamble is the integral part of the Constitution but is **not directly enforceable** in a court of justice in India.

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Amendment of the Preamble

- **42nd Amendment Act, 1976:**
  - After the judgment of the Kesavanand Bharati case, it was accepted that the preamble is part of the Constitution.
  - As a part of the Constitution, preamble can be amended under **Article 368** of the Constitution, but the **basic structure** of the preamble cannot be amended.
  - As of now, the preamble is only amended once through the **42nd Amendment Act, 1976.**
  - The term 'Socialist', 'Secular', and 'Integrity' were added to the preamble through 42nd Amendment Act, 1976.
  - 'Socialist' and 'Secular' were added between 'Sovereign' and 'Democratic'. 'Unity of the Nation' was changed to 'Unity and Integrity of the Nation'.

- **Some Additional case laws**
- **S R Bommai vs. Union of India 1918:** Supreme Court held that Preamble is the integral part of the constitution

- **Sajjan Singh vs. state of Rajasthan 1965:** The Supreme Court held that Preamble is the sum and substance of the features of the constitution. Also said Preamble represents the quintessence, the philosophy, the ideal, the soul of the entire constitution.
- **KK Bhaskaran vs. State of Tamil Nadu 2011:** Supreme Court held that the constitution should be interpreted in such a manner, so as to secure the goal of social, economic and political justice.
- **Nandini Sundar vs. State of Chhattisgarh 2011:** Supreme Court said that the promise to provide social, economic and political justice given in Preamble cannot be forgotten or neglected.

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PART I

THE UNION AND ITS TERRITORY

1. Name and territory of the Union.—

1. India that is **Bharat,** shall be a **Union of States**.
2. The States and the territories thereof shall be as specified in the **First Schedule**. **7TH CA 1956**
3. The territory of India shall comprise—
   a) the territories of the States;
   b) the Union territories specified in the First Schedule; and] **7TH CA 1956**
   c) such other territories as may be acquired.

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

2A. [*Sikkim to be associated with the Union.*] *Omitted by the Constitution* (*Thirty-sixth Amendment*) *Act,* 1975, s. 5 (*w.e.f.* 26-4-1975).

3. Formation of new States and alteration of areas, boundaries or names of existing States.—Parliament may by law—

(*a*) **Form a new** State by **separation** of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) **Increase** the area of any State;

(c) **Diminish** the area of any State;

(d) **Alter** the boundaries of any State;

(e) **Alter** the name of any State:

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

further period as the President may allow and the period so specified or allowed has expired.] **Subs. by the Constitution (Fifth Amendment) Act, 1955**

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

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

4. Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.—(*1*) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary**. (Simple majority)**

(2) **No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.**

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Creation of states

- At the commencement of the constitution states were classified into four main categories, Parts A, B, C and D. Thus, initially there were

• **Part 'A' - 9 states,**
• **Part 'B' - 9 states**
• **Part 'C'- 10 states**
• **Part 'D'- 1 state**

- After independence the demand for reorganization of States on the linguistic basis was raised from different regions. The constituent assembly appointed **the S K Dhar commission in 1947 to study the issue.**
- The Dhar commission recommended linguistic basis but it was rejected by congress
- Later Congress had to concede to the demand after violence started in Telugu speaking areas
- The state reorganization Commission was set up under **Faisal Ali Commission**. On the commission's recommendations the states were reorganized on a linguistic basis.
- **Andhra Pradesh** was the first state to be reorganized on linguistic basis in 1953.

- The **7th Constitutional Amendment Act, 1956** abolished these categories and placed all the states on the same footing as a result of reorganization of states under **States Reorganization Act, 1956.** Only two categories of states were kept.
- Parliament has enacted **Jammu And Kashmir Reorganization Act In 2019** which has bifurcated the state of Jammu and Kashmir in union territory of Ladakh and union territory of Jammu and Kashmir. Therefore presently there are **28 states and 9 union territories.**

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ARTICLE 1: NAME AND TERRITORY OF THE UNION

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

(2) The States and the territories thereof shall be as specified in the First Schedule. (7^{th} CAA, 1956)

(3) The territory of India shall comprise-

(a) the territories of the States;

(b) the Union territories specified in the First Schedule; and

(c) such other territories as may be acquired.

- **Union of States"- K.T. SHAH- suggested that the word federation should be used instead of union.**

According to **Dr Ambedkar,** the chairman of drafting committee, constitution may be Federal in a structure but the term "Union" has been used because of the two main reasons indicated

- Union of India is not a result of an agreement
- States have no right to secede from the Federation. Federation is union because it is Indestructible

- **Amar Singh Ji vs. State of Rajasthan 1955** the Supreme Court has ruled that any given point of time, the territory of India is the area which is specified in first schedule under article 1

ARTICLE 2: ADMISSION OR ESTABLISHMENT OF NEW STATES

Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Art. 2– Talks about external modification

Conditions as it thinks fit. (Power to redraw the map of India)

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- **R.C. Poudyal v. Union of India AIR 1993**- these terms and conditions should not be in violation of basic structure doctrine

ARTICLE 2A: SIKKIM TO BE ASSOCIATED WITH THE UNION

ARTICLE 3: FORMATION OF NEW STATES AND ALTERATION OF AREAS, BOUNDARIES OR NAMES OF EXISTING STATES

Parliament may by law –

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
(b) increase the area of any State;
(c) diminish the area of any State;
(d) alter the boundaries of any State;
(e) alter the name of any State:
[Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.] Subs. by the Constitution (Fifth Amendment) Act, 1955,

ARTICLE 3 - talks about internal modification

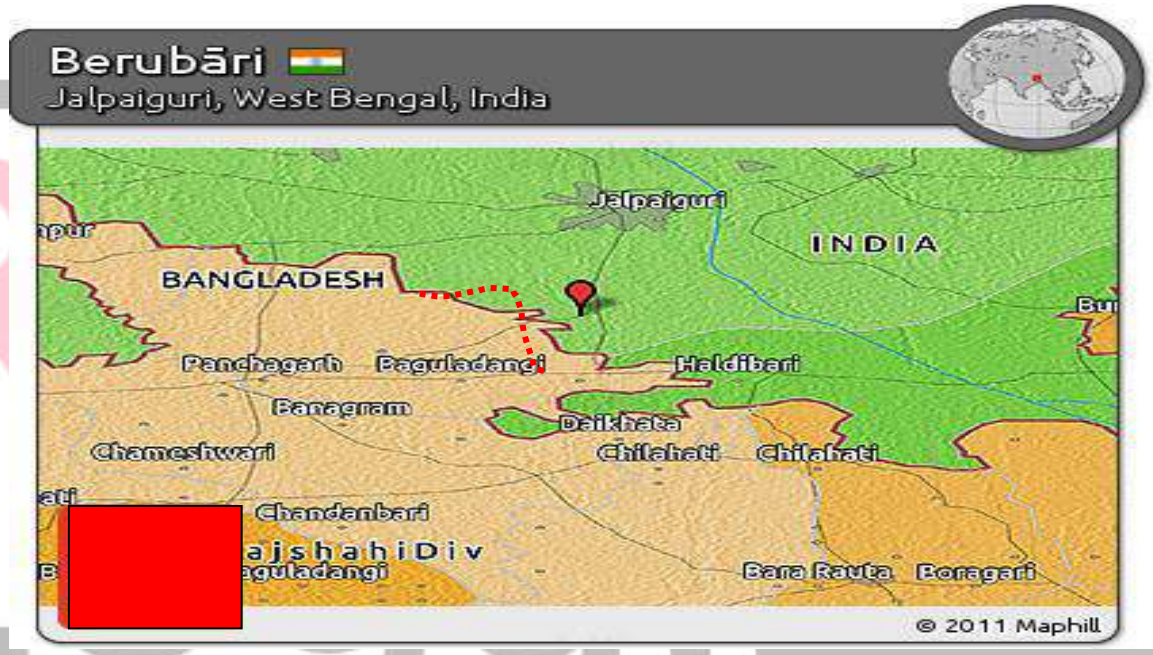
Step-1: Either House of the Parliament, only on the recommendation of the President, can introduce a Bill giving effect to any or all the changes stated above.

Step-2: If such a bill affects the boundary or name of a State, then the President will refer the Bill to the concerned State Legislature before introducing it in the Parliament for their opinion.

Step-3: If the State Legislature fails to express an opinion within the given time limit then it is deemed that it has expressed its views. Parliament is not bound to accept or act upon the views of the State Legislature even if State has submitted their views within the time period.

In the case of Union Territories, it is not necessary to seek the views of Legislatures of Union Territories before such Bill.

- **Does ART.3 include cession of territory?**



- **In the Re Berubari case 1960** the power of Parliament to diminish the area of state does not cover session of Indian Territory to a foreign state. The agreement could only be implemented by an amendment to the constitution under Article 368.
- **9CAA,1960**

- Similarly 100 CAA, 2015 was passed to ratify the Land boundary agreement between India and Bangladesh.

- **RC poudyal vs. Union of India 1993** even though the admission or establishment of new state will be on such terms and conditions as Parliament may think fit such conditions cannot be imposed which is against the basic structure of the constitution

ARTICLE 4: LAWS MADE UNDER ARTICLES 2 AND 3 TO PROVIDE FOR THE AMENDMENT OF THE FIRST AND THE FOURTH SCHEDULE AND SUPPLEMENTAL, INCIDENTAL AND CONSEQUENTIAL MATTERS

(1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be in amendment of this Constitution for the purposes of article 368.

Art 4 – protects art. 2 & 3

- **Shipan Lal Saxsena** the amendment should not be done by simple majority but by special majority. As may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.
- **(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.**

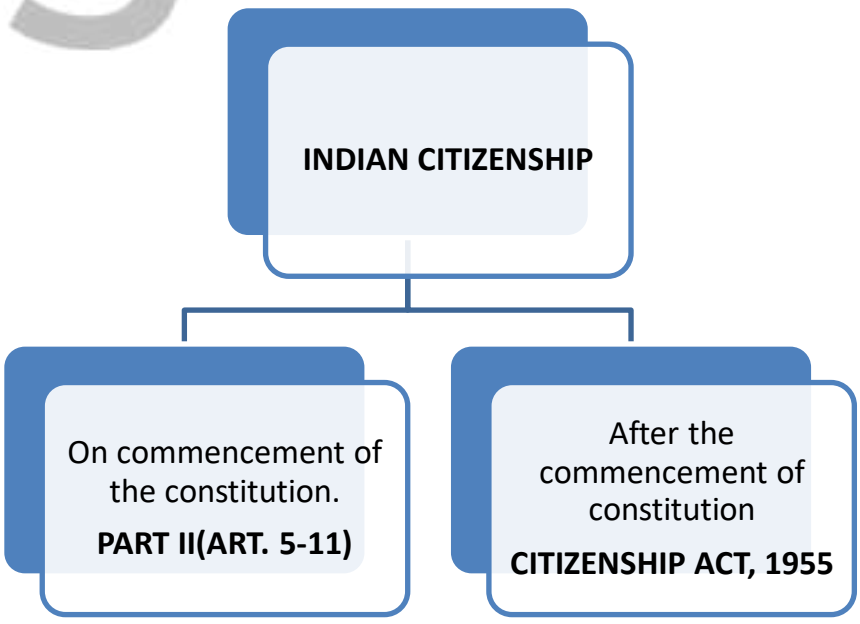
PART-II Citizenship of India

What is Citizenship?

- Constitution of India does not define the term *'citizenship'*.
- Citizenship signifies the relationship between individual and state.
- **Citizenship is an idea of exclusion as it excludes non-citizens.**
- Like any other modern state, India has two kinds of people—citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. **They enjoy all civil and political rights.**
- There are two well-known principles for the grant of citizenship:
- While ***'jus soli'*** confers citizenship on the basis of place of birth, ***'jus sanguinis'*** gives recognition to blood ties.

Constitutional Provisions

- The Constitution of India does not lay down a comprehensive law on citizenship. Part II of the Constitution Lays down the classes of persons to be the citizens of India. The entire Law relating to citizenship is to be regulated by the law of parliament



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- Citizenship is listed in the **Union List** under the Constitution and thus is under the Exclusive jurisdiction of **Parliament.**
- The Constitution does not define the term 'citizen' but details of various categories of persons who are entitled to **citizenship are given in Part 2 (Articles 5 to 11).**
- Unlike other provisions of the Constitution, which came into being on January 26, 1950, **these articles were enforced on November 26, 1949** itself, when the Constitution was adopted.

Article 5

- **Citizenship at the commencement of the Constitution:-**
- At the commencement of this Constitution every person who has his domicile in the territory of India and
- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years preceding such commencement, shall be a citizen of India

- It provided for **citizenship on commencement of the Constitution.**
- All those **domiciled and born in India** were given citizenship.
- Even those who were domiciled but not born in India, but **either of whose parent was born in India,** were considered citizens.
- Anyone who had been an **ordinary resident for more than five years,** too, was entitled to apply for citizenship.

- **Pradeep Jain vs. Union of India 1984**- It was held that the domicile of a person is in that country in which he either has or is deemed by law to have his permanent house.
- **Muhammad Raza vs. State of Bombay 1966**- the Supreme Court has held that the term domicile means a permanent house or place where the person concerned resides with intention of remaining for an infinite period.
- **Abdul Samad vs. state of West Bengal 1973-**The court held that to attract article 5 (c) of the constitution a person applying must have Indian domicile. The domicile denotes a connection with the territorial system of the law.

- **Dr Yogesh Bhardwaj vs. State of Uttar Pradesh 1991/ D.P Joshi vs. State of Madhya Bharat**- The Supreme Court has held that article 5 recognizes domicile of India. It does not recognize the concept of state domicile.

Article 6

- **Rights of citizenship of certain persons who have migrated to India from Pakistan:-**
- Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if
- (a) he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948 , he has been ordinarily resident in the territory of India since the date of his migration, or
- (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948 , he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India or at least six months immediately preceding the date of his application

- It provided rights of citizenship of certain persons who have **migrated to India from Pakistan.**
- Since Independence was preceded by Partition and migration, Article 6 laid down that anyone who migrated to India **before July 19, 1949**, would automatically become an Indian citizen if he or either of his parents or grandparents was born in India.
- But those who entered India after this date needed to register themselves.

Article 7

- 7. **Rights of citizenship of certain migrants to Pakistan:-**
- Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:
- Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948

• It Provides the Rights of citizenship of certain migrants to Pakistan. Those who had migrated to Pakistan after March 1, 1947 but subsequently returned on resettlement permits were included within the citizenship net.
• The law was more sympathetic to those who migrated from Pakistan and called them refugees than to those who, in a state of confusion, were stranded in Pakistan or went there but decided to return soon.

Article 8

- **Rights of citizenship of certain persons of India origin residing outside India:-**
- Notwithstanding anything in Article 5, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India

• It Provided Rights of citizenship of certain persons of Indian origin residing outside India.
• Any Person of Indian Origin residing outside India who, or either of whose parents or grandparents, was born in India could register himself or herself as an Indian citizen with Indian Diplomatic Mission.

Article 9

- **Person voluntarily acquiring citizenship of a foreign State not to be citizens**
- No person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State

• Provided that if any person voluntarily acquired the citizenship of a foreign State will no longer be a citizen of India.

Article10

- **Continuance of the rights of citizenship:-**
- Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

• It says that every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Article 11

- **Parliament to regulate the right of citizenship by law:-**
- Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship

• It empowers Parliament to make any provision with respect to the acquisition and termination of citizenship and all matters relating to it.

Rights and privileges available to citizen of India

• No discrimination on the basis of religion race caste sex place of birth [article 15]
• Right to Equality and opportunity in matters of public employment [article 16].
• Right to freedom enumerated in [Article 19].
• Cultural and educational rights [article 29 and 30]

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• Certain offices under the constitution can be occupied by citizens only like, President [article 58 (1) (a)] vice president [Article 66 (3) (a)] judges of supreme court and high court [article 124 (3), 217 (2)]; Attorney General of India article [76 (1)]; governor of state [article 157]; Advocate general of state [article 165] etc. CONSTITUTIONAL POSTS

• Right to vote for election of Parliament and state legislature. Only citizens can become members of parliament and state legislature.

Can a company or Corporation be regarded as a citizen?

• Company is a legal personality and not a natural person. Provisions related to citizenship in part II of the constitution and citizenship act 1955 deals with citizenship of natural persons.

• The Supreme Court in ***State Trading Corporation vs Commercial tax officer 1963*** held that a company is not a citizen of India and therefore cannot claim fundamental rights which have been conferred upon its citizens.

• The court further clarified that citizenship in part 2 is concerned with natural persons and not juristic persons.

Can a company become citizen through its shareholders?

- In ***Tata Engineering vs State of Bihar 1965*** it was contended by shareholders of the company, that though the company was not a citizen but shareholders for citizens and therefore the fundamental rights of a shareholder must be protected by lifting the corporate veil. The Supreme Court while rejecting the said contention held that what cannot be achieved directly cannot be achieved indirectly. Thus, the company does not receive the protection of fundamental rights through shareholders.

RC Cooper vs Union of India (Bank nationalisation case) [1970]. Even if all the members of company are citizens of India, till the company cannot be considered as a citizen of India, because even if all the members of the company are married, the company cannot be considered as married but If the state's action directly impairs the rights of shareholders and well as of the company they will be entitled to protection under article 19 from this case Supreme Court adopted a flexible approach in interpreting this aspect.

Bennett Coleman and Company Limited 1973: if the company is not a citizen of India but all the rights of citizenship are available to the company indirectly through its members who are citizens of India. If any governmental policy adversely affects the trade of the company, then it automatically affects the interest of its members who are citizens of India. Therefore, the company can invoke citizenship rights through the members who are citizens of India. To a citizen does not lose his citizenship by becoming a member of company

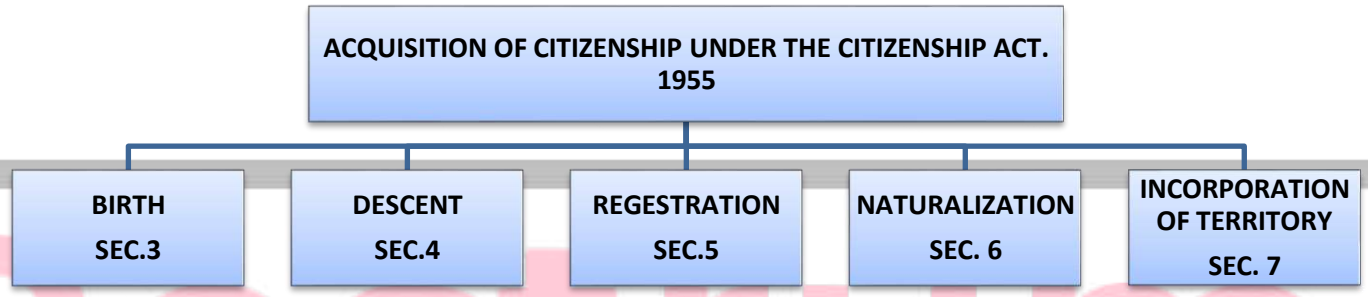
- In ***Godhra electricity company limited vs. State of Gujarat [1975]*** the supreme court held that though a company is not a citizen but a shareholder has a right to carry on business through agency of company.

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Citizenship Act, 1955 and Amendments

The Citizenship Act, 1955 provides for the **acquisition and termination** of Indian citizenship.

Modes Acquisition and termination of Indian Citizenship



There are **five ways** in which Indian citizenship can be acquired: **birth, descent, registration, naturalization and incorporation of territory.** The provisions are listed under the **Citizenship Act, 1955.**

By Birth: sec 3 of Citizenship Act

A person born in India:-

26 January 1950 → 1 July 1987(every person born in India)

1 July 1987 → 2 December 2003 (born in India+ either parent Indian Citizen)

After 3 December 2003 → 2 parents Indian/ 1 Indian+ not illegal migrant

- Every person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of his/her parents.
- Every person born in India between 01.07.1987 and 02.12.2003 is a citizen of India given either of his/her parents is a citizen of the country at the time of his/her birth.
- Every person born in India on or after 3.12.2003 is a citizen of the country given both his/her parents are Indians or at least one parent is a citizen and the other is not an illegal

migrant at the time of birth.

By Descent: sec 4 of Citizenship Act

A person born outside India

January 26, 1950	**December 10, 1992 (father Indian citizen)**
December 10, 1992	**December 3, 2004 (either parent Indian citizen)**
December 3, 2004	**No passport + registered within 1 year of birth**

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

By Registration: Sec. 5 of Citizenship Act

- **Person of Indian origin:-**he/ his parents were born in undivided India or he/ his parents were born in a territory which became a part of India after 15 August 1947

- Citizenship can also be acquired by registration. Some of the mandatory rules are:
- A **person of Indian origin** who has **been a resident of India for 7 years** before applying for registration.
- A person of Indian origin who is a resident of any country outside undivided India.
- A person **who is married to an Indian citizen** and is ordinarily **resident for 7 years** before applying for registration.
- **Minor children** of persons who are **citizens of India.**

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By Naturalization: sec 6 of Citizenship Act

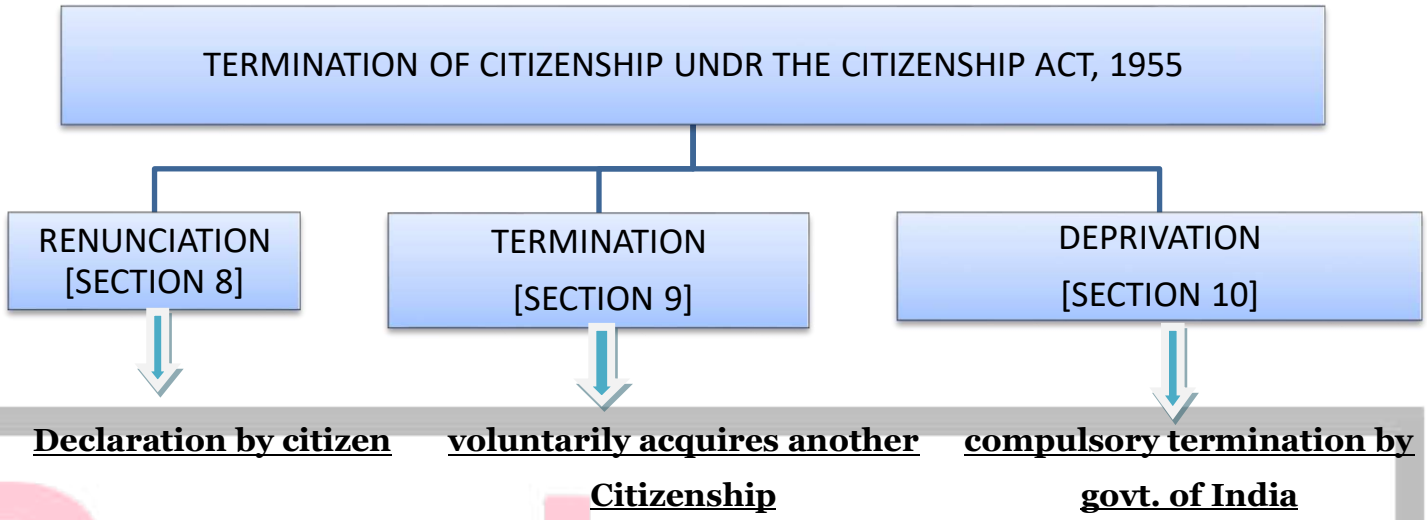
- Any person of full age and capacity not being an illegal migrant can apply for the grant of a certificate of naturalization to him, the Central Government may, if satisfied that the applicant is qualified for naturalization:
- A person can acquire citizenship by naturalization if **he/she is ordinarily resident of India for 12 years** (throughout 12 months preceding the date of application and 11 years in the aggregate) and fulfils all **qualifications in the third schedule** of the Citizenship Act.
- The Act does **not provide for dual citizenship or dual nationality (renounce any other citizenship)**.
- He should not be citizen of a country where Indians are prevented from taking citizenship
- Person of good character.
- Adequate knowledge of languages prescribed in the **8th schedule.**
- If certificate is issued, he should have intent to reside in India.
- If in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of **science, philosophy, art, literature, world peace or human progress generally**, it may waive all or any of the conditions specified in the Third Schedule.

Citizenship by incorporation of territory

- If any territory becomes a part of India, the Central Government may, by order notified in the Official Gazette, specify the persons who shall be citizens of India by reason of their connection with that territory; and those persons shall be citizens of India as from the date to be specified in the order.

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Loss of citizenship



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Renunciation of citizenship

(1)If any citizen of India of full age and capacity, who is also a citizen or national of another country, makes in the prescribed manner **a declaration** renouncing his Indian citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India:

Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.

(2)Where [a person] ceases to be a citizen of India under subsection (1), every minor child of that person shall thereupon cease to be a citizen of India:

Provided that any such child may, within one year after attaining full age, make a declaration that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

(3)For the purposes of this section, any woman who is, or has been, married shall be deemed to be of full age.

9. Termination of citizenship

(1)Any citizen of India who by naturalization, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired, **the citizenship of another country** shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

(2)If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

10. Deprivation of citizenship

(1)A citizen of India who is such by naturalisation or by virtue only of clause (c) of Article 5 of the Constitution or by registration otherwise than under clause (b) (ii) of Article 6 of the Constitution or clause (a) of sub-section (1) of Section 5 of this Act, shall cease to be a citizen of India, if he is deprived of that citizenship by an order of the Central government under this section.

(2)Subject to the provisions of this section, the Central Government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied that

(a)the registration or certificate of naturalisation was obtained by means **of fraud, false representation or the concealment of any material fact; or**

(b)that citizen has shown himself by act or speech to be **disloyal or disaffected** towards the Constitution of India as by law established; or

(c)that citizen has, during any war in which India may be engaged unlawfully traded or **communicated with an enemy or been engaged in,** or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d)that citizen has, within **five years** after registration or naturalisation, been sentenced in any country to imprisonment for a term of not less **than two years; or**

(e)that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a Government in India or of an international organisation of which India is a member, nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.

(3)The Central Government shall not deprive a person of citizenship under this section unless it is satisfied that it is not conducive to the public good that the person should continue to be a citizen of India.

(4)Before making an order under this section, the Central Government shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made, and, if the order is proposed to be made on any of the grounds specified in sub-section (2) other than clause (e) thereof, of his right, upon making application therefor in the prescribed manner, to have his case referred to a committee of inquiry under this section.

(5)If the order is proposed to be made against a person on any of the grounds specified in sub-section (2) other than clause (e) thereof and that person so applies in the prescribed manner, the Central Government shall, and in and other case it may, refer the case to a Committee of Inquiry consisting of a chairman (being a person who has for at least ten years held a judicial office) and two other members appointed by the Central Government in this behalf.

(6)The Committee of Inquiry shall, on such reference, hold the inquiry in such manner as may be prescribed and submit its report to the Central Government; and the Central Government shall ordinarily be guided by such report in making an order under this section.

- The act has been **amended five times — in 1986, 2003, 2005, and 2015, 2019.**
- Through these amendments Parliament has narrowed down the wider and universal principles of citizenship based on the fact of birth.
- Moreover, the **Foreigners Act** places a heavy burden on the individual to prove that he/she is not a foreigner.

1986 amendment: Unlike the constitutional provision and the original Citizenship Act that gave citizenship on the **principle of jus soli** to everyone born in India(sec. 3)

- The amendment has added the condition that those who were born in India on or after January 26, 1950 but before July 1, 1987, shall be Indian citizen.
- Those born after July 1, 1987 and before December 4, 2003, in addition to one's own birth in India, can get citizenship only if either of his parents was an Indian citizen at the time of birth.

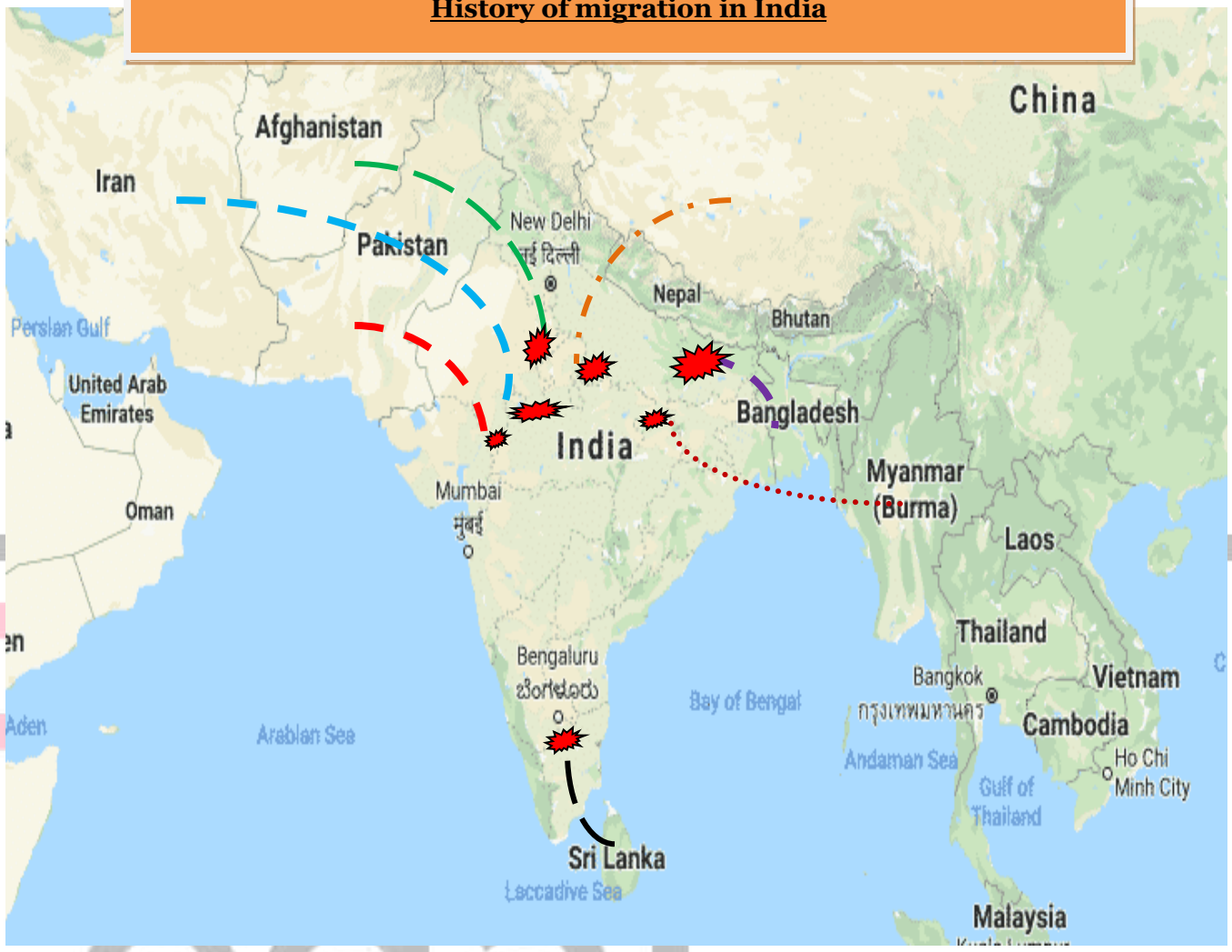
2003 amendment: The amendment made the above condition more stringent, keeping in view **infiltration from Bangladesh.**

- Now the law requires that for those born on or after December 4, 2004, in addition to the fact of their own birth, both parents should be Indian citizens or one parent must be Indian citizen and other **should not be an illegal migrant**. (Introduced the definition of illegal migrants).
- With these restrictive amendments, India has almost moved towards the **narrow principle of jus sanguinis or blood relationship.** This lays down that an **illegal migrant cannot claim citizenship by naturalization or registration** even if he has been a resident of India for seven years.

2005 amendment: Brought major changes in **Overseas Citizens of India**

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History of migration in India



Citizenship constitutional amendment Act 2019

Sec.2 (1) (b)

"illegal migrant" means a foreigner who has entered into India— without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or (ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;

Amendment in the definition (2019)

In the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in section 2, in sub-section (1), in clause (b), the following proviso shall be inserted, namely:— "Provided that any person belonging to **Hindu, Sikh, Buddhist, Jain, Parsi or Christian** community from **Afghanistan, Bangladesh or Pakistan**, who entered into India on or before the **31st day of December, 2014** and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made there under, shall not be treated as illegal migrant for the purposes of this Act;".

Members of six communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Pakistan, Bangladesh and Afghanistan — to continue to live in India if they entered India before December 14, 2014.

It also reduces the requirement for citizenship from **11 years to just 5 years.** Two notifications also exempted these migrants from the Passport Act and Foreigners Act.

A large number of organizations in Assam protested against this Bill as it may grant citizenship to **Bangladeshi Hindu illegal migrants.**

The justification given for the bill is that Hindus and Buddhists are minorities in Bangladesh, and fled to India to avoid religious persecution, but Muslims are a majority in Bangladesh and

so the same cannot be said about them.

- **Different Scenario in Assam**
- Assam witnessed large-scale **illegal migration from erstwhile East Pakistan** and, after 1971, from present-day Bangladesh.
- 1978- Death of Hira Lal Pathwari→reelection→ increase in number of voters→election cancelled
- This led to the six-year-long **Assam movement from 1979 to 1985,** for deporting illegal migrants.
- The All Assam Students' Union (AASU) led the movement that **demanded the updating of the NRC** and the deportation of all illegal migrants who had entered Assam after 1951.
- The Assam Movement against illegal immigration eventually led to the historic **Assam**
- **Accord of 1985**, signed by the Movement leaders and the Rajiv Gandhi government.
- It set March 25, 1971, as the **cut-off date** for the deportation of illegal migrants irrespective of their relegion.
- Since the cut-off date prescribed under articles 5 and 6 of the Constitution was July 19, 1949 - to give force to the new date, an amendment was made to the Citizenship Act, 1955, and **a new section (6A) was introduced.**
- **Section 6A**
- The section was **made applicable only to Assam.**
- It laid down that all persons of Indian origin who entered Assam before January 1, 1966 and have been ordinary residents will be deemed Indian citizens.
- Those who came after 1 January, 1966 but before **March 25, 1971,** and have been ordinary residents, will get **citizenship at the expiry of 10 years** from their detection as a foreigner.
- During this interim period, they will not have the **right to vote but can get an Indian passport.**

- Identification of foreigners as needed by Section 6A was to be done under the **Illegal**

Migrants (Determination by Tribunal) Act, (IMDT Act), 1983, which was applicable only in Assam while the **Foreigners Act, 1946** was applicable in the rest of the country.

- The provisions of the IMDT Act made it difficult to deport illegal immigrants. On the petition of Sarbananda Sonowal (now the Chief Minister of Assam), the Act was held unconstitutional and struck down by the Supreme Court in 2005. This was eventually replaced with the Foreigners (Tribunals for Assam) Order, 2006, which again was struck down in 2007.
- In the IMDT case, the court considered classification based on geographical considerations to be a **violation of the right to equality under Article 14.**

- In the run-up to the publication of the final **National Register of Citizens (NRC) in**
- **Assam,** the Supreme Court, in August, 2019 rejected a plea to include those born in India between **after March 24, 1971 and before July 1, 1987** in NRC unless they had **ancestral links** to India.

In any other Indian state, they would have been citizens by birth, but the
In this context, citizenship has become the most talked about topic in the country.

Law is different for Assam.

National Register of Citizens (NRC)

- The National Register of Citizens, 1951 is a register prepared **after the conduct of the Census of 1951** in respect of each village, showing the houses or holdings in a serial order and indicating against each house or holding the number and names of persons staying therein.
- The NRC of 1951 and the Electoral Roll of 1971 (up to midnight of 24 March 1971) are together called **Legacy Data.**
- Persons and their descendants whose names appeared in these documents are certified as Indian citizens.
- The National Register of Citizens (NRC) is a register of all Indian citizens whose creation is mandated by the 2003 amendment of the Citizenship Act, 1955. Its purpose is to

document all the legal citizens of India so that the illegal immigrants can be identified and deported. It has been implemented for the state of Assam starting in 2013–2014.

- Last NRC 2019 →Nineteen lakh illegal immigrant

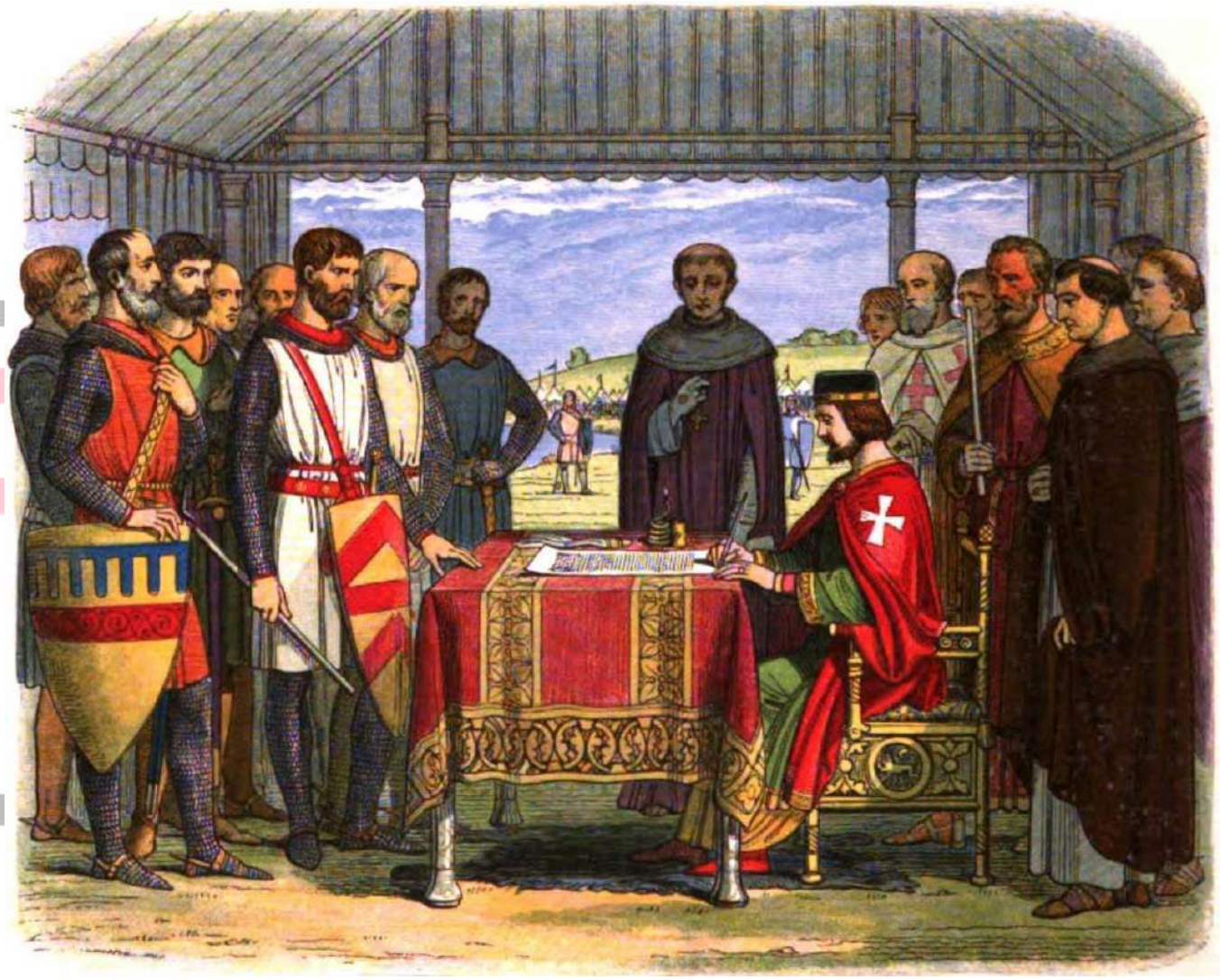
The National Population Register (NPR)

- **Introduction**
  The National Population Register (NPR) is a Register of usual residents of the country. It is being prepared at the local (Village/sub-Town), sub-District, District, State and National level under provisions of the Citizenship Act 1955 and the Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003. It is mandatory for every usual resident of India to register in the NPR. A usual resident is defined for the purposes of NPR as a person who has resided in a local area for the past 6 months or more or a person who intends to reside in that area for the next 6 months or more.
- **B. Objectives**
  The objective of the NPR is to create a comprehensive identity database of every usual resident in the country. The database would contain demographic as well as biometric particulars.

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Fundamental Rights

Origin and development of fundamental rights



- **Magna Carta(1215)** in England was the first written document which assured English people of certain basic rights and liberties
- America was the first country to give constitutional status to the **Bill of Rights (1789).**
- Framers of Indian constitution took inspiration from them and incorporated a dedicated **Part III** to fundamental rights.
- In France **Declaration of Rights of Man and Citizen 1789** declared natural, inalienable and sacred rights of man.

Meaning

- **Part III** of Constitution- This part is also known as "*Magna Carta of Indian constitution*".

India adopted the idea of Fundamental Rights from Constitution of USA. They Justifiable Rights which means they can be enforced in court of Law.

- *Rights given to the individual enforceable by the courts against the state.*
- These rights are regarded as fundamental because they are most essential for attainment of certain basic liberties and freedoms in order to live a dignified life.
- In **Maneka Gandhi VS Union of India 1978** the Supreme Court observed that *"fundamental rights represent the basic values cherished by the people of India and they protect the dignity of an individual and create conditions in which every human being can develop his personality to fullest extent."*

All articles under Part III of Constitution

Right to Equality (Articles 14-18)	a) Equality before law and equal protection of law (Article 14) b) Prohibition of discrimination on Grounds of religion, race, cast, sex or place of birth [article 15] c) Equality of opportunity in matters of public employment [article 16] d) Abolition of untouchability and prohibition of its practice [Article 17] **e)** Abolition of titles except military and academic [Article 18]
Right to freedom (Article 19- 22)	a) Protection of six rights regarding freedom of (i) speech and expression,(ii) Assembly, (iii) Association, (iv)movement, (v)residence, and (vi)profession [article 19] b) Protection in respect of conviction for offences [article 20] c) Protection of life and personal liberty [article 21] d) Right to Elementary Education [article 21A] e) Protection against arrest and detention of in certain cases[Article 22]
Rights against exploitation (Articles 23 -24)	a) Prohibition of traffic in human beings and forced labour [article 23] b) Prohibition of employment of children in factories [article 24]
Right to freedom of religion (article 25- 28)	a) Freedom of conscience and free profession, practice and propagation of religion [article 25] b) Freedom to manage religious affairs [article 26] c) Freedom from payment of taxes for promotion of any religion [article 27] d) Freedom from attending religious instruction or worship in certain educational institution [article 28]
Cultural and educational rights (article 29-30)	a) Protection of language, script and culture of minorities b) Right of minorities to establish and administer educational institution [article 30]

Right to constitutional remedies (article 32)	a) Right to move to the supreme court for enforcement of fundamental rights including the writs Habeas Corpus, mandamus, prohibition, certiorari, quo warranto

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Article 12 – State under Constitution of India

- Fundamental Rights are one of the most important provisions of the Constitution. F'R's are enforceable through writs. Writs can only be issued against state.
- Part III of our constitution consists of a long list of fundamental rights; it starts right from Article 12 to Article 35.
- The purpose behind having our fundamental rights rests in the need for having a just society i.e. a nation ruled by law and not by a tyrant.
- With great power comes a greater risk of abuse and in order to safeguard the rights and freedom of individuals it needs constitutional protection from the acts of the state itself.
- It is very important to know, what all is covered under the definition of 'STATE', so article 12 of Part III talks about State,
- This definition is applicable only to part III & part IV of the Indian constitution..

Rostrum Legal

Article 12 gives Definition of State

Definition- In this part, unless the context otherwise requires, "the State" includes the **Government and Parliament of India** and the **Government and the Legislature** of each of the States and all **local or other authorities** within the territory of India or under the control of the Government of India.

Article 12 defines "State" as:

- **Union Legislature & Executive**

- Union Legislature: Parliament (President, LokSabha and RajyaSabha)
- Union Executive: President, Vice-President, and the Council of Ministers with the Prime Minister

- **State Legislature & Executive**

- State Legislature: Governor, State legislative assembly and the State legislative council
- State Executive: Governor and the Council of Ministers with the Chief Minister

- **All local authorities**

According to Webster's Dictionary; "Authority" means **a person or body exercising power to command**. In context of Article 12, the word authority means the power to make laws (or

orders, regulations, bye-laws, notification etc.) which have the force of law. It also includes the power to enforce those laws

Local Authority: As per Section 3(31) of the General Clauses Act, 1897,

"*Local Authority shall mean a municipal committee, district board, body of commissioner or other authority legally entitled to or entrusted by the Government within the control or management of a municipal or local fund.*"

The term Local authority includes the following:

1. **Local government:** According to Entry 5 of the List II of VII Schedule 'local government' includes a municipal corporation, improvement trust, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
2. **Village Panchayat:** In the case of ***Ajit Singh v. State of Punjab***, it was held that within the meaning of the term local authority, village panchayat is also included.

- **Other Authorities**

The term '*other authorities*' in Article 12 has not been defined in the Constitution nor in the general clauses Act, 1897 or in any other statute of India. Therefore, its interpretation has caused a good deal of difficulty, and judicial opinion has undergone changes over time.

Dispute and discussion:

Around phrase of Article 12 i.e. "other authorities", this has evolved over time:

- Earlier, a **restrictive interpretation** was given to this term, i.e, the authorities exercising governmental or sovereign function would only be covered under other authorities.
- The **liberal interpretation** says that it is not necessary for an authority to be engaged in sovereign or governmental function to come under the definition of the state. The bodies like State Electricity Board, LIC, ONGC and IFC also come under "other authorities".

➢ ***University of Madras v. Shantha Bai 1953***

Madras High Court evolved the principle of '***ejusdem generis'*** i.e. of the like nature. It means that only those authorities are covered under the expression 'other authorities' which perform governmental or sovereign functions. Further, it cannot include persons, natural or juristic, for example, unaided universities.

- ***Ujjammabai v. the State of U.P.* 1962**

The court rejected the above restrictive scope and held that the '*ejusdem generis*' rule could not be resorted to the in interpreting 'other authorities'. The bodies named under Article 12 have no common genus running through them and they cannot be placed in one single category on any rational basis.

- **Rajasthan Electricity Board v. Mohan Lal 1967,**

The Supreme Court held that 'other authorities' would include all authorities created by the constitution or statute on which powers are conferred by law. Such statutory authority need not be engaged in performing government or sovereign functions. The court emphasized that it is immaterial that the power conferred on the body is of a commercial nature or not.

- **Sukhdev v. Bhagatram (1975)**

The Corporations are State when they enjoy Power to make regulation and those regulations have force of law. So LIC, IFC (Industrial Finance Corp.) and ONGC were held to be State because they were performing very close to governmental or sovereign functions

- **R.D Shetty v. International Airport authority (1979)**

Court held that following factors would determine whether a body comes under the definition of State as defined in Article 12 of the Constitution:

1. The entire share capital is held by the government.
2. Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation
3. Deep and pervasive control of the State
4. The functions of the corporation are of public importance and closely related to governmental functions,
5. A department of Government transferred to a corporation.
6. Enjoys "monopoly status" which State conferred or is protected by it.

The SC concluded International Airport Authorities undoubtedly an instrumentality or agency of the Central Government and falls within the definition of 'State'.

- **Some Prakash v. Uol (1980)**

Question was where a statutory company Indian Petroleum Corporation is a state under Article 12 or not. It was observed that merely because a legal corporation has a legal personality of its own, it does not mean that the corporation is not an agent or instrumentality of the state if it is

subject to governmental control for all important matters. A public performs duties and carries out its transactions for the benefit of the state. Therefore, the said body was held to be 'state'.

Some of the tests laid down by this Court for deciding whether a body is State within the meaning of Article 12 are:

1. Financial resources of the state are the chief funding source of the corporation
2. Functional character of government in essence
3. Plenary Control in the hands of government
4. Prior history of the same activity being carried out by the government and made over to the new body

- **Ajay Hasia v. Khalid Mujib (1981)**

Petitioner gave a viva-voce exam in which he was given exceptionally low marks because of which he did not get admission in the regional Engineering colleges, Srinagar even though he scored really well in the written tests. He filled for violation of Article 14. Question arose whether Regional Engineering College, Srinagar is state within the meaning of other Authorities under article12.
Court approved of the tests laid down in R.D Shetty case and on basis of the tests held that Regional Engineering College, Srinagar is State under 'other authorities'
Court also added that these tests are not conclusive, they are merely indication which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities" it must be realized that it should not be stretched so far as to bring in very autonomous body which has some nexus with the government within the sweep of the expression. A wide enlargement of the meaning must be limited by wise limitation.

- **Chander Mohan Khanna v. National Council of Educational Research and Training (1992)**

In this case, the question arose whether the National Council of Educational Research (NCERT) was a "State" as defined under Article 12 of the Constitution. NCERT is a society registered under the Societies Registration Act. After considering the provisions of its memorandum of association as well as the rules of NCERT, this Court came to the conclusion that since NCERT were not wholly related to governmental functions and that the governmental control was confined only to the proper utilization of the grant and since its funding was not entirely from government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution.

- **Zee Telefilms v. Union of India (2005)**

Question raised was whether Board of Control for Cricket in India (BCCI) is State within

meaning of Art 12. The majority Court held that the BCCI would not come within the definition of State under Article 12.

The facts established in this case:-

1. Board is not created by a statute.
2. No part of the share capital of the Board is held by the Government.
3. Practically no financial assistance is given by government to meet the whole or entire expenditure of the Board.
4. The board does enjoy a monopoly status in the field of cricket but such status is not State conferred or State protected.
5. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to governmental functions.
6. The Board is not created by transfer of a Government owned corporation. It is an autonomous body.

On the other hand, the minority Court held that the BCCI would fall within the ambit of the definition of "State" under Article 12. The minority in Zee Telefilms opined that keeping in view the fact that the BCCI discharges an important public function and that its actions may impinge on the fundamental rights of the players, the actions of the body are subject to judicial review. Interestingly, the minority Court in the same breath also opined that in time of privatization and liberalization where in most of the Governmental functions are being relegated to private bodies; the actions of such private bodies would also be amenable to the write jurisdiction of the Court.

- **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (2002)**

7 judge bench held that the ultimate test in determing whether an entity would be an instrumentality of the State would be whether functionally, financially and administratively the body was under the deep and pervasive control of the State. Mere regulatory control by the Government will not suffice to fulfill the requirements of Article 12.

Recently Delhi High Court has given judgment in **Sanjaya Bahel v. Union of India & Others** case, that the **United Nations** is **not a "State"** within the meaning of Article 12 of the Constitution of India and is not amenable to the jurisdiction of the Court under Article 226 of the Constitution of India. The court says, by no stretch of the imagination an organization of the United Nations which is an international body be treated as "instrumentality" and or an "agency" of the Government."

Whether Judiciary Is State

- The Judiciary is not expressly mentioned in Article 12 and a great amount of dissenting opinions exist on the same matter. Bringing judiciary entirely under Article 12 causes a great deal of confusion as it comes with an attached inference that the very guardian of

our fundamental rights is himself capable of infringing them

- Jurists like **H.M.Seervai, V.N.Shukla consider judiciary to be State**. Their view is supported by **Articles 145 and 146** of the Constitution of India.
- (i) The Supreme Court is empowered to make rules for regulating the practice and procedure of Courts.
- (ii) The Supreme Court is empowered to make appointments of its staff and servants; decide the its service conditions.
- In **Prem Garg v/s Excise Commissioner H.P.** the Supreme Court held that when rule making power of judiciary is concerned, it is State.
- Other jurists say that since judiciary has not been specifically mentioned in Article 12, it is Not State.
- In **Rati Lal v/s State of Bombay**, it was held that judiciary is not State for the purpose of Article12. In **A.R.Antulay v/s R.S.Nayak and N.S.Mirajkar v/s State of Maharashtra,** it has been observed that when rule making power of judiciary is concerned it is State but when exercise of judicial power is concerned it is not State.

➢ **Rupa Ashok Hurra v. Ashok Hurra 2002** the Apex Court reaffirmed and ruled that no judicial proceeding could be said to violate any of the Fundamental rights and that it is a settled position of law that superior courts of justice did not fall within the ambit of 'state' or 'other authorities' under Article 12.
This gave the rationale that a Superior Judicial body when acting "Judicially" would not fall under the definition of State but when it performs any **administrative or similar functions** e.g conducting examination, it will fall under the definition of "state" and that remedy could be sought in that context only in case of violation of fundamental rights.

Rostrum Legal

Article 13 of Indian Constitution

Introduction to article 13

- When we were making our constitution we already had a lot of nations as an example which adopted Democratic and humanitarian concepts .Founding fathers endeavored to formulate something which reflects multiple things like Rights of minority, principle of UDHR, a struggle for independence etc. Therefore, while making the constitution part 3 was discussed for 38 days
- Part 3 exist with the objective that our rights and freedom should be protected Against State's arbitrary invasion.
- So this means that States action should be judged on the basis of their impact on the rights and freedom of the people. This entire concept is article 13.

Article 13 of the constitution talks about the four principles relating to fundamental rights. Fundamental rights do exist from the date on which the Indian constitution came into force i.e. on 26th January 1950 hence fundamental rights became operative from this date only.

13. Laws inconsistent with or in derogation of the fundamental rights

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

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

(3) In this article, unless the context otherwise requires law includes any Ordinance, order, by law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368 Right of Equality. (24th CAA1971)

Article 13- Laws inconsistent with or in derogation of the fundamental rights.

Article 13(1)

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

article 13(1) talks about the pre-constitutional laws i.e. the day from which the constitution came in existence there were many laws in the country and when the constitution came into existence fundamental rights do came, therefore the **laws** before the existence of the constitution must prove their compatibility with the fundamental rights, only then these laws would be considered to be valid otherwise they would be declared to be void.

For example article 15 of the constitution do gives the right to education to all without any discrimination on the basis of caste, sex, religion, etc, but an Education act which came in existence in 1930 says that a particular group of kids would not be provided education on the basis of their caste'. As this particular clause of the act is inconsistent with that of the fundamental rights therefore it is declared to be null and void.

Article 13(1) is prospective in nature but not retrospective i.e. the article will be in effect from the day when constitution came in effect.(26th jan,1950) and the person who committed offence afterwards will be prosecuted according to the laws of Indian constitution but not according to the pre-constitutional laws.

CaseLaw

Keshva Madhav Menon v. State of Bombay, Air 1951

In this case the petitioner published a pamphlet which was in violation of the pre-constitutional laws in 1949 but as the Indian constitution came in effect from 1950 it gave the freedom of speech and expression under article 19 of the Indian constitution, the apex court held that the petitioner's trial would not be effected, benefit of article 13 could not be availed as article 13 is not retrospective in nature.

Rostrum Legal

Article 13(2)

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

article 13 (2) talks about the post constitutional laws i.e. it says that once the constitution is framed and came in effect then any of the state may not make laws that takes away or abridges the fundamental rights of an individual and if done so then it would be void till the extent of contravention.

Doctrine of severability:

The doctrine says that if some parts of the statue are inconsistent with that of the fundamental rights, then the whole statue would not be declared to be void but that particular clause would be treated to be void by the court of law.

A.K Gopalan v. State of Madras, AIR 1950

In this case section 14 of Preventive detention act, 1950 was challenged. Section 14 of the act says that if any person is being detained under this act then he or she may not disclose the grounds of his or her detention in court of law, this particular statement is inconsistent with that of fundamental rights as per **article 22(5)** of the Indian constitution, The court applied the doctrine of severability so the whole act (preventive detention act,1950) was not declared as void but only section 14 of the act was declared as void as it was inconsistent with the fundamental rights.

In Romesh Thapar vs. State of Madras 1950

Supreme Court held that where the law authorizes restriction on fundamental rights which is wide enough to cover restriction both within and without the limits provided by constitution and it is not possible to separate the two then the whole law is to be struck down.

Kihota Holahan vs. Zachillhu 1992

Supreme Court held that only Para 7 of 10 schedule is unconstitutional the rest of the act remains valid and constitutional the remaining provision of 10th schedule are complete in themselves and workable.

State of Bombay Vs FN Balsara 8 provisions of Bombay prohibition act were held to be unconstitutional

RMDC vs. Union of India 1957

In this case Section 2(d) of price competition act which was wide enough to provide gambling as well as game of skill. The power of the court to strike out invalid provisions of an Act must not be exercised beyond the necessity of the case. But sometimes valid and invalid portions of the act are so intertwined that they cannot be separated from one another. In such cases the invalidity of caution must result in the invalidity of the act in its entirety. The intention of the Legislature is determining factor if the valid parts of the statute are severable from invalid parts.

Doctrine of eclipse

The doctrine says that if some laws are violating fundamental rights , they would not be declared void ab-initio but would be unenforceable for a time being i.e. they would be in dormant state, such laws are over-shadowed by the fundamental rights.

These dormant laws are applicable to non-citizens.

Thus doctrine of severability states that all the pre-existing constitutional laws are to be filtered out in respect with that of the fundamental rights so as to make them valid and the laws which do not respect the fundamental rights would not be declared void completely but would be over shadowed by fundamental rights and in future if any amendment is made related to such a law, it becomes valid provided that the pre-constitutional law must be consistent with that of the fundamental right.

Bhikaji Narain Dhakras vs State of MP 1955

CP and Berar motor vehicle Amendment Act 1947 was amended which were related to article 19 but the Act was passed prior to the commencement of the constitution.

The petitioners contended that the law having become void for unconstitutionality was dead and could not be vitalized by subsequent amendment of the Constitution remove in the constitution objection unless it was re-enacted.

The court held that under this doctrine the law is overshadowed by fundamental right and remains dormant; it becomes enforceable against citizens as constitutional impediment is removed. The law is merely eclipse from for the time being and soon as eclipse is removed the law begins to operate.

Applicability of doctrine of eclipse to post constitutional laws

- **In Sagir Ahmed vs. State of Uttar Pradesh 1954** the Supreme Court held that the *doctrine of eclipse is only applicable to pre constitutional laws* and not to post constitutional laws. The court reasoned that post constitutional laws if they contravene part 3 are *void ab initio* and a subsequent Constitutional Amendment cannot revive them.
- The view was endorsed by the court in **Deep Chand vs. State of UP 1959 and Mahendra Lal Jain vs State of UP.**
- **In state of Gujarat vs. Ambika Mills** the court modified its views expressed in the **Deep Chand's** Case, **Mahendra Lal jain's** case and **Sagir Ahmed** case. The court held that post constitutional laws which are inconsistent with the fundamental rights are not void ab initio for all purpose.
- **State of Gujrat v. Ambika mills, AIR 1974**

  Here a certain labor welfare fund act was challenged, as certain sections in it were against the fundamental rights. Since the fact that the laws made by the state after the constitution is framed would be declared void if those laws are against the fundamental rights, but here the question arose that fundamental rights are only granted to citizens but what will happen in the case of non-citizens or a company (company here is the respondent i.e. Ambika mills). It was held by the apex court that since the fundamental rights are only granted to the citizens but

not to the company or any non-citizen, therefore the labour welfare fund act is valid.

- Void under article 13 means void against persons whose fundamental right has been taken away. If a post constitutional law takes away right conferred by article 19 then such law will be void only with respect to the citizens. Such law will validly operate with respect to non-citizens because rights conferred under article19 are only available to citizens**.**

Doctrine of waiver

- In India no person can waive or abandon his fundamental rights. The doctrine of waiver has no application in part 3 of the constitution.
- Supreme Court in **Bashesher Nath vs Income Tax commissioner 1959** held that these rights have not only been enriched in constitution for personal benefit but also for the benefit of entire society.
- Court has said in clear words that American doctrine of waiver does not apply to Indian Constitution.

Rostrum Legal

Article 13(3)

- In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

article 13(3) talks about the meaning of law i.e. the laws whether by laws, notifications, rules, regulations, customs, usage, etc if do effect the legal rights of the citizens do come

under the definition of law, thus would be considered as laws under article 13 but there are two exceptions to the same, firstly the administrative and the executive orders are being covered under article 13 but if their nature is just to give instructions or guidelines then they would not be covered under article 13. Second exception is the personal laws which are not being covered under article 13.

Article 13(4)

Nothing in this article shall apply to any amendment of this Constitution made under Article 368

This clause of article 13 do says that any of the amendment made in article 368 of the Indian constitution would not be challenged under article 13 moreover if the amendment so made would be against the fundamental rights then also it would not be challenged under article 13.

Rostrum Legal

Judicial Review

Judicial review

- The concept of Judicial review was evolved in America from the case of **marbury vs Madison**
- The power of Judicial review is the power of the court under which they check the constitutionality of the act passed by the Legislature.
- power of Judicial review has not been expressly named in the constitution but it is implicit in article 13
- Being the custodian of constitution and the final interpreter, the Supreme Court has been given the power of judicial review under article 13. This power has not only provided to Supreme court under **article 32** but also to high courts under **article 226**
- With this power the Supreme Court and the high court can declare any act passed by the legislature as unconstitutional which is incompatible with the fundamental right.

- In the case of **Keshavnandan Bharati vs State of Kerala 1973** justice Khanna said that the power of Judicial review is not limited to only deciding Whether the legislative bodies have worked within the boundaries of certain legislative list in making the required law but it is necessary whether the laws have been made in accordance with the articles of the constitution and they do not violate any other provision of the constitution.

- **Minerva Mills V. Union of India AIR 1980**
  In this case, further Judicial Review was added to the list of Basic Structure of the constitution along with the balance between Fundamental Rights and Directive Principles.

- **I.R. Coelho V. State of Tamil Nadu AIR 2007**
  In this case the court held that any act inserted in Schedule 9 can be judicially scrutinized but only those enactments which are inserted after 24th April 1973.

- **L. Chandra Kumar vs. Union of India 1997** the supreme court held that the power of Judicial review given to the supreme court and high court under A-32 and A-226 is a part of the basic structure of constitution and it cannot be terminated by statutory amendment under Article 368

Article 13 v. 368/Basic Structure Doctrine

Article 13 (4) gave birth to a landmark doctrine to our constitution moreover it prohibits the parliament to make laws or amendments which are inconsistent to the fundamental rights. The doctrine being mentioned above is the **Basic Structure Doctrine.**

While discussing about this doctrine two most important articles do comes into the picture, one is article 13, which acts as the protector of the fundamental rights and another one is article 368, which holds the power to amend the constitution. The

doctrine is merely a big tussle of power between the judiciary and the parliament of India i.e. as the power of amending the laws exercised under article 368 do gives the power to the parliament to amend the constitution, fundamental rights and the preamble too? Or the Indian judiciary is supreme which do acts as the protector of law.

Article 368. Power of Parliament to amend the Constitution and procedure therefor

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in

(a) Article 54, Article 55, Article 73, Article 162 or Article 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article, the amendment shall also require to be ratified by the Legislature of not less than one half of the States by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent

(3) Nothing in Article 13 shall apply to any amendment made under this article (24CAA, 1971)

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article PART XXI TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS

- 1st Amendment (1951) → Shankari Prasad v. UOI (1951)
- 17th Amendment (1964) → Sajjan Singh v. State of Rajasthan (1964), Golaknath v. State of Punjab (1967)
- 24th, 25th, 26th, 29th Amendment→Kesavanada Bharti v. State of Kerela (1973) , Raj Narain v. State of Uttar Pradesh (1975)
- 39th Amendment (1975)→ Indira Gandhi v. Raj Narain (1975)
- 42th Amendment (1976)→ Minerva Mills v. UOI and Ors. (1980), WamanRao v. UOI (1980), IR Coelho Case(2007)

1st Amendment (1951)

- Article 31A, 31B and 9th Schedule were added 31A provided that the state could take over estates, corporations for public interest and could also extinguish and modify right of people relating to such estates and corporations.
- 31B provided immunity from judicial review to everything put in 9th schedule
- 9th Schedule was a new constitutional device, introduced to protect against laws that are contrary to the constitutionally guaranteed fundamental rights under Article 13.

Shankari prasad v. Union of India, AIR 1951

- Here in the case a question arose that as per article 13, if parliament makes any law which is inconsistent to fundamental rights would be considered invalid but if any amendment done by parliament under article 368 would be considered as valid or not? So, while answering this question it was held that in article 13 does not cover constitutional amendments in its ambit.
- It was held that Article 13 only talks about ordinary laws and not amendments to the constitution (which is a special law) so, 1st amendment is valid

Sajjan Singh v. State of Rajasthan (1964)

- 17th Amendment was challenged (1964): More provisions were added to 31A, more entries were added in 9th Schedule. A five judge bench (Decision was 3:2) Confirmed decision given in Shankari Prasad Case

Restrum Legal

I.C. Golaknath v. State of Punjab, AIR 1967

- In this case the court over-ruled it's judgment given in Shankari prasad and held that parliament cannot abridge FR (subject to limitation and judicial review. Art. 13 will apply to constitution amendments which means parliament cannot make any law or make any constitutional amendments which is inconsistent to fundamental rights.
- In order to nullify this judgment parliament passed **24th amendment**, 1971 by saying that any amendment made under article 368 would not be considered as law and hence article 13(4) is different from the word **law** used in article 13(3).

24TH Amendment (1971)

- It Added Art.13 (4) and Art. 368(3), now parliament can amend any part of Constitution
- Article 13(4): Nothing in this article shall apply to any amendment of this Constitution made under article 368
- Article 368(3): Nothing in article 13 shall apply to any amendment made under this article. This made Parliaments power unlimited in regard to amending the constitution.

25th Amendment (1972)

- Added Article 31C- Dividing 31C in two parts we get
  i. No law which gives effect to the directive principles can be declared invalid and unconstitutional on the grounds that it is violating fundamental rights namely Article 14 (equality before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc) & Article 31 (right to property).
  ii. *No law containing a declaration for giving effect such policy shall be questioned in any court on the ground that it does not give effect to such a policy.*

26th Amendment (1971): Abolition of Privy Purses

29th Amendment (1972): Place land reform acts and amendments to these acts under Schedule 9 of the constitution.

Restrum Legal

- This 24th amendment was challenged in the case of **Kesavananda bharti v. state of Kerala**, AIR 1973, the apex court was of the view that 24th amendment is valid and confirmed that Parliament can amend the constitution but except the Basic Structure.

KesavanandaBharti v. State of Kerela (1973)

- 13 Judge Bench (Decision was 7:6, headed by CJ Sikri)
- Most Landmark judgment so remember its date too i.e. **24th April 1973**, you will understand why this date is important later.
- Gave Doctrine of Basic Structure
- Upheld the validity of the amendment and confirmed that Parliament can amend the constitution but except the Basic Structure. So in 31C the (ii) part (underlined above) was declared unconstitutional, because part (ii) was in contravention of basic structure as it was restricting judicial review.
- To find out if anything is covered under basic structure, you need to find out the intention of constitution makers.

Raj Narain v. State of Uttar Pradesh (1975)

- Case was heard by the Allahabad High Court that found the Prime Minister of India Indira Gandhi guilty of electoral malpractices.
- While the appeal was pending in Supreme Court Indira Gandhi's Govt. declared emergency and added 39th

39th Amendment (1975)

Added 329A which took away power of Supreme Court's power to try Electoral Disputes relating to election of President, Vice president, Prime minister and Speaker of Lok Sabha

39th Amendment was challenged in:

Indira Gandhi v. Raj Narain (1975)

- This was the first landmark judgment in which Kesavananda Bharti was applied by the Supreme court
- It declared the newly added 329A clause 4 as unconstitutional because it violated the basic Structure.
- Mathew J. said this clause destroyed essential democratic feature of the Constitution viz. the resolution of an election dispute by ascertaining the

adjudicative facts and applying the relevant laws, a healthy democracy can only function when there is possibility of a contest of free & fair elections.

- Chandrachud J. found the said amendment violative of the principle of separation of power as it intently transferred a pure judicial function into the hands of legislature.

After the introduction of the basic structure of the constitution, the parliament introduced **42nd amendment, 1976** which is also called as the **mini constitution**, It inserted Article 368(4) and 368(5) which conferred unlimited amending power to the parliament and amended Article 31-C amended therefore gave power to the parliament to amend any law in the constitution including the basic structure of the constitution, but this was again over-ruled in **Minerva Mills v. Union of India**, **AIR 1980**, as it Declared 368(4) and 368(5) unconstitutional because it is taking away judicial review which is a basic feature, Article 31-C also restored to per 1976 position. It held that Amending power of parliament can't be unlimited, limited amending power is in itself part of basic structure.

Rostrum Legal

42nd Amendment (1976)

- Mini Constitution of India
- Added Article **368(4) and 368(5)** which conferred unlimited amending power to the parliament
- Article 31-C amended again

Minerva Mills vs. UOI and Ors (1980)

- Chief Justice Y.V. Chandrachud, delivered the majority judgment (4:1)
- Declared 368(4) and 368(5) unconstitutional because it is taking away judicial review which is a basic feature, Article 31-C also restored to per 1976 position
- It held that Amending power of parliament can't be unlimited, limited amending power is in itself part of basic structure
- This case evolved 'Basic Structure Doctrine'

WamanRao v. UOI (1980)

- 5 Judge bench
- Basic Structure doctrine is applicable prospectively and not retrospectively.

- It was held (retrospectively) that any law put in 9th schedule after 24th of April 1973 (date of forming of Basic Structure Doctrine by Kesavnanada Bharti case) shall be under the purview of judicial review,

IR Coelho Case (2007)

- 9 judge bench reiterated Waman Rao's Judgment that all laws put in 9th Schedule after 24th April 1973 shall be under the purview of judicial review.
- Laws placed in the ninth schedule were challenged; it was argued that any 'unconstitutional' law even in 9th schedule (Which is immune to judicial review) should be removed.

Rostrum Legal

RIGHT T EQALITY

RULE OF LAW

- **A v dicey** in his book **The Constitution** of England developed the concept of *rule of law*. According to this rule every individual whether of any status does anything against the legal framework would be equally liable under the legislations of law and would be treated equally. According to rule of law Supremacy does not belong to any person there is always Supremacy of law.
- **Article 7 of the Universal Declaration of Human Rights 1948,** declares that all are equal before the law and entitled without any discrimination to equal protection of law.
- **Article 14** embodies the idea of equality expressed in the **Preamble**. The succeeding article 15 16 and 17 down specific applications of general rules laid down in Article 14.

- ***Article 14 reads the state shall not deny to any person equality before the law or the equal protection of laws within the territory of India.***

- While equality before law is somewhat a negative concept implying the absence of any special privilege in favor of individuals and equal subject of all classes to ordinary law. Equal protection of law is a more positive concept implying equality of treatment in equal circumstances. The rule is that like should be treated alike and not that unlike should be treated alike.
- Article 14 provides that 'the state shall not deny any person equality before law and equal protection of law within the territory of India'.
- The expression '**equality before law**' is of *English* and the expression **'equal protection law'** has been taken from the *14th amendment of American constitution*.
- According to Dicey the expression *equality before law* is a *negative concept* and implies the absence of any special privilege in favor of individuals.
- The expression equal *protection of law* is a *positive concept* implying equality of treatment in equal circumstances.

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- The Supreme Court in **State of West Bengal vs Anwar Ali Sarkar 1952** held that the second expression is a corollary to the first and it is difficult to imagine a situation in which the violation of equal protection of law will not be violation of equality before law.

Equality before law-

- It envisages the absence of any special privilege by reason of birth, creed or the like in favor of any individual. Among equal the law should be equal and should be equally administered. in other words '***like should be treated alike***'.
- Equality before law is an aspect of *Dicey's rule of law* in England. rule of law requires that no person shall be subject to Harsh and discriminatory treatment. Thus , rule of law envisages-
  1. Supremacy of law and absence of arbitrary power
  2. Equality before law
  3. constitution is the result of ordinary law of the land
- The first two aspects of rule of law apply in Indian legal system. The last effect does not apply to our system.

Equal Protection Of Law-

- It means that similarly circumstanced people shall be treated alike both in the privileges conferred and the liabilities imposed. This concept is similar to the one embodied in the 14th amendment of American constitution.
- In **Indira Nehru Gandhi VS Raj Narain 1975** Supreme Court held that rule of law embodied in article 14 of the Constitution is the basic feature of the constitution and it cannot be destroyed by the amendment of the constitution.

Exception to the rule of equality

- The rule of equality is not an absolute rule. There are certain exceptions to it.
  1. It does not mean that powers of private citizens are the same as powers of public officials. Public officials are sometimes given wider powers under certain standards for enforcement/ implementation of loss.
  2. Certain special classes of persons are subject to special rules. Article 361 of Constitution provides that the president and the governor of the state shall not be answerable to any code for exercise of their powers and performance of their duties.

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No criminal proceeding process for arrest of president of the Governor shall be instituted.

Reasonable classification

- Classification is necessary for better public welfare. To protect this classification from undue influence a test was formulated in the case of **State Of Bombay V. F.N. Balsasra 1951**. Test list down two essential conditions necessary to establish the reasonable classification:

  1) *intelligible differentia*
  2) *rational Nexus*

- In **RG Garg vs. Union of India 1981** the Supreme Court held that Article 14 forbids class legislation but it does not prohibit reasonable classification.
- The classification must not be arbitrary, artificial or evasive. for the classification to be reasonable following two conditions must be satisfied:
  1. the classification must be based on intelligible differentia which distinguishes person or things that are grouped together from others left out of the group and
  2. The differentia must be a rational relation to the object sought to be achieved.
- In the **State of West Bengal vs Anwar Ali Sarkar 1952** Supreme Court held that differentia which is the basis of classification and the object of act are two different things. It is important to have a Nexus between the basis of classification and object of the act.

Application Of Law To Single Individual

- The Supreme Court in **Chiranjit Lal versus Union of India 1961** held that law even though it applies to a single individual on account of special circumstances. That single individual may be treated as a class. The presumption of constitutionality is always in the favour of the statute and the person whose challenges the constitutionality has to show that law is arbitrary and unreasonable.

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- In **DS Nakara vs. Union of India in 1983** Supreme Court held the doctrine of classification was evolved to sustain legislation to state in order to help weaker sections of the society.

The new concept of equality

- Article 14 spells the traditional concept of equality which is based on reasonable classification.
- The Supreme Court in **EP Royappa vs State of Tamil Nadu 1974** laid down a new concept of equality which is different from the traditional concept of reasonable classification.
- The Supreme Court held that *equality is a dynamic concept and it cannot be cabined for confined to the traditional or doctrinaire limits. Equality is antithesis to arbitrariness.*
- In **Maneka Gandhi VS Union of India 1978** the supreme court again reiterated the concept laid down in **EP Royappa's case** and held that Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment of people. Principle of reasonable reasonableness provides Article 14.
- In ***Javed vs State of Haryana 2003*** the apex court upheld the constitutional validity of certain provisions of Haryana Panchayati Raj act 1994 which disqualified a person for holding office of Sarpanch or a Panch of Gram Panchayat, etc. if he had no more if he had more than two living children. the provision was held to be not discriminatory and the classification made by it that is (person having two or more children and persons having not more than two children) is based on intelligible differentia having Nexus with the object of popularization of family program for stop the provision also does not violate article 25 of the constitution.
- ***Danial latifi versus Union of India 2001*** the petitioner challenge the constitutional validity of the Muslim women (protection of rights on divorce) act 1986 under which section 125 of CrPC providing for maintenance of wife (including divorced women) by their former husband, was made inapplicable to divorced Muslim women. The Act was said to be in violation of article 14, 15 and 21 of the Constitution of India. Upholding the act the apex court said that a careful reading of the provision of the act would indicate that a Muslim husband is liable to make reasonable and fair provisions for the future of a divorced wife which obviously includes her maintenance as well. Even under the act the provision of section 125 CrPC Would Still Be attracted.

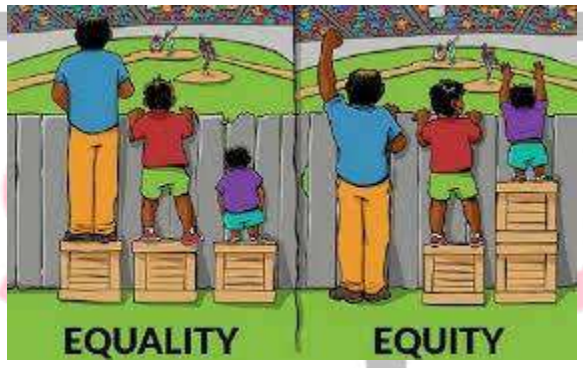
Rostrum Legal

- ***John Vallamatton vs Union of India 2003*** the Supreme Court held that section 118 of *Indian succession act 1926* is discriminatory and thus violative of article 14. The important provision places certain restrictions upon Indian Christian to bequeath with their property for religious or charitable purposes.

Rostrum Legal

Reservation

- Reservation is a form of positive discrimination, created to promote equality among marginalized sections, so as to protect them from social and historical injustice.
- Generally, it means giving preferential treatment to marginalized sections of society in employment and access to education.
- It was also originally developed to correct years of discrimination and to give a boost to disadvantaged groups.
- In India, people have been historically discriminated on the basis of caste



- Reservation is a system of affirmative action in India that provides historically disadvantaged groups representation in education, employment and politics. based on provisions in Indian Constitution, it allows the Indian government to set reserved quota for seat which will lower the qualification needs in exams jobs opening except for '**socially and economically backward citizen'**
- Reservation is primarily given to three groups- **scheduled castes, scheduled tribes, other backward classes**

RL Legal

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

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.
(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
(a) Access to shops, public restaurants, hotels and palaces of public entertainment; or
(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
(3) Nothing in this article shall prevent the State from making any special provision for women and children.
(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes
(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.
(6) Nothing in this article or sub-clause (*g*) of clause (1) of Article 19 or clause (2) of Article 29 shall prevent State from making:
(*a*) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and
(*b*) any special provision for the advancement of any economically weaker sections of citizens other than the clauses mentioned in clauses (4) and (5) insofar as such special provisions relate to their admissions to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.
Explanation.— For the purpose of this article and Article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantages.

- **Article 15** of the constitution provides for a specific application of equality. It states that state shall not discriminate against any Citizen on the ground of religion, caste, sex, place of birth or any of them.
- Fundamental rights under article 15 is available to *citizens only* and not to any person as mentioned under article 14.

- In **Kathi Ranning vs State of saurashtra 1952** Supreme Court held that when a law comes within the provision of article 15 it cannot be validated by recourse to Article 14 by applying the principle of reasonable classification.
- **Article 15 (1)** prohibits the state from discriminating citizens on the ground of religion race cast sex place of birth or any of them
- **Article 15 (2)** declares that no citizen shall be subject to any *disability, restriction or condition on the grounds only of religion race, cast, place of birth or any of them* with regards to access of shops, hotels etc. and all places of public entertainment or use of Wells, tanks bathing Ghats, roads and places of public Resort.
- **Article 15 (1)** prohibits discrimination by State while article 15 to prohibits both states and private individuals from making any discrimination.
- **Article 15 (3)** and **15 (4)** exception to the general rule laid down in clauses (1) and (2).
- **Article 15 (3)** provides that nothing in article 15 shall prevent the state from making any special provisions for women and children. It talks about positive discrimination. Women and children sometimes require special attention and care and therefore, any special provision intended to be benefited to them shall not offend article 15(1) 15 (2).
- In **Yousuf Abdul Aziz v. State of Bombay 1954**, **Section** *497 of Indian Penal Code* which only punishes man for adultery and exempts the woman from punishment even though she may be equally guilty as an abettor was held to be valid since the classification was not based on the ground of sex alone.
- Similar provisions apply to **children**. The provision of free education for children or measure for prevention of their exploitation would also not come within the inhibition of Article 15 (1). It has, however, been held that Article 15 (3) provides for only special provisions for the benefits of women and children and does not require that absolutely identical treatment as those enjoyed by males in similar matters must be afforded to them.
- But recently the Supreme Court in ***Joseph Shine v. Union of India,2018*** struck down Section 497 as unconstitutional being violative of Art 14, 15 and 21 of the Indian constitution and held that Section 198(2) of CrPC shall be unconstitutional to the extent of its applicability to Sec 497 IPC.

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- The stated sections are held to be discriminative as there is no provision or right of a woman to prosecute her husband who indulges in adultery and it does not punish a woman in adultery not even as an abettor

- **Article 15 (4)** enables the state to make special provisions for protection of interest of backward classes of citizens.
- It was added by constitution (first Amendment) Act 1951. it was inserted to nullify the effect of decision in **State Of Madras Vs Champakam Dorairajan 1951**
- In **Champakam Dorairajan Vs State Of Madras 1951** the supreme court declared void the government order by Madras government which reserved seats in state Medical and engineering colleges for different communities on the basis of religion, race and caste. The Supreme Court nullified it because it classified students on the basis of caste and religion.
- The principle behind article 15 (4) is that preferential treatment can be given validly when *socially and educationally backward* classes in need of it. This provision is only an enabling provision.
- In **Balaji vs. State of Mysore 1973** the Supreme Court held that this provision only confers discretion to make special provision on backward classes of citizens. In **Balaji vs State of Mysore 1963** Supreme Court held that
- *Caste of a person cannot be the sole test* for ascertaining whether a particular class is backward class or not Poverty, occupation etc. are other relevant factors to be taken into consideration. But if the entire 'cast' is found to be socially and educationally backward it may be included in the list of backward classes.
- In this case for the first time 50% ceiling limit was put on reservation.
- It also said that further categorization of backward class into more backward class is not valid.
- This decision was majorly overruled in **Indira Sawhney vs Union of India 1993.** majority opinion of the court is summarized as follows:
    1. Backward classes of citizens in 16 (4) can be identified on the basis of caste and not only on economic basis but caste alone cannot be the basis for consideration.
    2. The Court struck down economic criteria for reservation on the ground that article 16 (4) does not mention it.

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3. Reservation can be made under article 16 (1). Court overruled decision in **Balaji vs State of Mysore** in which it was held that **article 16 (4)** is an exception to **article 16 (1)**
4. backward classes in article 16 (4) are not similar to socially and educationally backward in article 15(4) it is much wider than socially and educationally backward classes. Certain classes may not qualify for article 15 (4) but they may qualify for 16 (4). Court overruled Balaji's decision on this point in which it was held that backward classes of citizens under article 16 (4) are the same as socially and educationally backward classes.
5. *Creamy layer* must be excluded from backward classes.
6. Article 16 (4) permits classification of backward classes into backward and more backward classes.
7. Reservation shall not exceed 50%. In extraordinary situations it may be relaxed in favour of people living in far-flung and remote areas of the country.

- **Article 15 (5)** was inserted by *Constitution 93rd Amendment Act, 2005*. It enables the state to make special provisions for *advancement of socially and educationally backward classes of citizens including schedule caste and Scheduled Tribes for admission in educational institutions including private educational institutions*.
- Prior to this amendment the supreme court in **Indira Sawhney vs Union of India**, in **T M A Pai Foundation Vs State Of Karnataka** and in **P A Inamdar vs State of Maharashtra** held *that state could not make reservations of seat in admission in privately run educational institution and higher educational institutions. 93rd Constitutional Amendment was brought to nullify the effect of these observations.*
- This amendment was challenged in **Ashok Kumar Thakur vs Union of India 2008**. The Supreme Court in this case upheld the constitutionality of this amendment. The court however, held that benefits of reservation cannot be given to creamy layer candidates.
- Supreme Court in **Pramati Educational And Cultural Trust Vs Union Of India 2014** held that classification of unaided private educational institutions and aided private educational institutions is not violative of article 14.
- **Article 15 (5)** is not an exception to article 15 but it is an enabling provision to make equality of opportunity and raised in the Preamble a reality.

Rostrum Legal

- **Article 15 (6)** enables the state to make special provisions for advancement of any economically weaker section of citizen other than those mentioned in article 15 (4) and 15 (5).
- It further provides that special provisions with respect to reservation in educational institutions including private educational institutions will be in addition to the existing maximum of 10% of the total seats in each category.
- This provision was inserted by **constitution (103 Amendment) Act 2019**

Equality of opportunity in matters of public employment article 16

16. Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment

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

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. (4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class

of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent Reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

(6): Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.

- **Article 16** deals equality of opportunity in matters of **public employment**. It embodies the particular application of the general rule of equality laid down in Article 14 with reference to employment for appointment under the state.
- **Article 16 (1)** provides for equality of opportunity for all citizens in matter of employment for appointment to any post under the state.
- **Article 16 (2)** for the states that citizens shall not be discriminated in respect to any employment under the state on the ground of religion race cast sex decent place of work residence or any of them.
- **Article 16 (3)** enables the state to make laws with respect to any class of employment for appointment under state or Union Territory or local authorities, prescribing requirements as to **residence** within the state or union territory. (*residence as a ground of reservation*)
- **Article 16 (4)** enables the state to make provisions for reservation of post in government jobs in favor of any backward classes of citizens which in the opinion of the states are not adequately represented in the service of the state. (Reservation for backward classes).
- **Article 16 (4-A)** was added by the **77th constitutional amendment 1995**. it empowers the state to make any provisions for reservation in matters of promotions for SCs and STs.

- The 85thConstitutional Amendment 2001 the provision for reservation in promotion with Consequential seniority was added.
- **Article 16 (4-B)** was added by the 81st constitutional amendment act 2000. it sought to end the 50% reservation limit for SC ST and other backward classes. it enables the state to fill backlog vacancies of previous years without considering the 50% ceiling limit
- **article 16 (5)** states that law which provides that incumbent of the office in connection with the affairs of any religious domination and institution will be formed from a particular religion or denomination shall not be affected by clause (1) and (2) of article 16.
- **Article 16 (6)** was added by **103 rd Constitutional Amendment, 2019.** it enables the state to make any provisions for reservation of appointment or post in favour of any economically weaker sections of citizens other than those mentioned in clause 4 in addition to the existing reservation and subject to the maximum of 10% of the post in each category.
- Clauses (3),(4),(4-A) for 5 of the article 16 are exceptions to the general rule of equality in matters of employment or appointment.
- In the **state of Bihar versus Chandrashekhar Pathak 2014** the Supreme Court held that in the case of state service and equality of opportunity means equality before members of the same class of employees and not equality between members of separate and independent classes.
- In **Balaji vs State of Mysore 1963** Supreme Court held that caste of a person cannot be the sole test for ascertaining whether a particular class is backward class or not Poverty, occupation etc. are other relevant factors to be taken into consideration. But if the entire 'cast' is found to be socially and educationally backward it may be included in the list of Backward classes. It Was held that 16 (4) would apply to the person who would qualify these two condition
- person should be from socially and educationally backward class
- This Backward class does not have adequate representation in services under the state
- **Devdasan vs Union of India 1964 carry forward rule was struck down.**

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- **article 16 (4)** must be interpreted in the light of **Article 335** which says that claims of scheduled caste and Scheduled Tribes be taken into consideration consistently with maintenance of efficiency of Administration.
- Scope and extent of article 16 (4) was examined through by Supreme Court in **Indra Swamy vs Union of India 1993.** majority opinion of the court is summarized as follows:

1. Backward classes of citizens in 16 (4) can be identified on the basis of caste and not only on economic basis but caste alone cannot be the basis for consideration.
2. The Court struck down economic criteria for reservation on the ground that article 16 (4) does not mention it.
3. **Article 16 (4)** is not an exception to article 16 (1). It is an instance of classification. Reservation can be made under article 16 (1). Court overruled decision in **Balaji vs State of Mysore** in which it was held that **article 16 (4)** is an exception to **article 16 (1)**
4. backward classes in article 16 (4) are not similar to socially and educationally backward in article 15(4) it is much wider than socially and educationally backward classes. Certain classes may not qualify for article 15 (4) but they may qualify for 16 (4). Court overruled Balaji's decision on this point in which it was held that backward classes of citizens under article 16 (4) are the same as socially and educationally backward classes.
5. *Creamy layer* must be excluded from backward classes.
6. Article 16 (4) permits classification of backward classes into backward and more backward classes.
7. Reservation shall not exceed 50%. In extraordinary situations it may be relaxed in favour of people living in far-flung and remote areas of the country.
8. Court overruled **Devdasan vs Union of India 1964** and held that the *carry forward rule is valid provided it should not result in breach of the 50% rule.*
9. Court held that reservation under article 16 [4] cannot be made in promotions.

- Parliament enacted the *77thConstitution Amendment Act, 1995* in order to counter the court's ruling on the point that no reservation can be made and promotions.
- It inserted **Clause (4-A) article 16** and made provision to enable the state to make provisions for reservation in matters of promotion to any clerk or classes of post in service of the state in favor of scheduled castes and Scheduled Tribes.

Rostrum Legal

- *Indra Sawhney's* case Mandate that 50% limit on reservation will apply to current as well as backlog vacancies. Parliament by 81st Constitution Amendment Act, 2000 the effect of this law by inserting clause 4-B after clause 4-A
- **clause (4-B)** provided that the vacancies which could not be filled UP due to non liability of candidates shall be treated as a separate class of vacancies and will be filled up in succeeding years and shall not be considered together with trick in series of the Year, even if they go beyond the limit of 50%.
- Supreme Court in **Union of India vs. Virpal Singh 1995** held that caste Criterion for promotion is violative of article 16(4) of constitution. Seniority between reserved category candidates and general candidates would continue to be governed by their panel position prepared at the time of selection. Accelerate Promotion Does not give accelerated or consequential seniority. The court held article 16 4 and 16 4A does not Mandate seniority over general category as a matter of right.
- After Virpal Singh's case the Parliament passed 85th Constitutional Amendment 2001 and amended clause 4 A. in clause 4A for the words 'in matter of promotions to any class' the word 'in matter of promotion with constitutional seniority to any class' was inserted.
- The aim of the amendment was to extend the benefit of reservation in favour of SC and ST in matters of promotion with constitutional seniority.
- Clause 4A & class 4B we were challenged in **M Nagaraj vs Union of India 2007.** Supreme Court held that article 16 (4-A)
- and 16 (4-B) flow from article 16 and do not alter the basic structure of article 16 (4)

Judicial Scrutiny of Reservation

- **Indira Sawhney vs. Union of India**
- **Article 16 (4A) -77TH AMENDMENT**
- **Union of India vs. Virpal Singh Chauhan**
- **Ajit Singh vs. State of Punjab**
- **S Vinod Kumar vs. Union of India**
- **Article 16(4B) and carry forward rule-81st amendment**

- **Provisions to Article 335- 82nd constitutional amendment**
- **Article 16 4A a and consequential seniority for SC/STS 85th amendment**
- **M Nagaraj vs. Union of India**
- **Journals in vs. Lakchmi Narayan Gupta**
- **BK Pavitra vs. Union of India II**

- **Indira Sawhney versus Union of India 1993**

➢ The maximum limit of reservation cannot exceed 50%. However in extraordinary situations it may be relaxed in favour of people living in Far flung and remote areas of the country.

➢ The reservation under article 16(4) cannot be made in promotion and the reservation is confined to the initial appointment.

➢ Carry forward rule is valid provided it should not result in breach of 50% rule.

- **Article 16 (4A) - 77TH AMENDMENT 1995**

➢ In 1995 the government nullified the effect of Indira Sawhney by introducing article 16 4A through the 77th amendment of constitution.

➢ The article 16 4A allowed the state to provide reservation to SC/ST in matters of promotion, as long as the state believes that SC /ST are not **adequately represented** in government services.

- **Union of India Vs Virpal Singh Chauhan 1996**

➢ Facts - What is the Catch up rule?

➢ Suppose there is a General candidate who is senior to a reserved candidate both being in the same job level.

➢ Through reservation in promotion the reserved candidate gets promoted before the general category candidate this makes the reserved candidates senior over the general candidate.

➢ Now whenever the general candidate is promoted he would become senior to the already promoted reserved candidate,' catching up' his seniority back.

➢ Held:

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- The court held that article 16 (4) and 15 (4A) are only in the nature of enabling provisions wasting discretion in the state to consider providing reservation if the circumstances mentioned so warranted.
- The that the candidates recruited under the reservation quota cannot continue to claim seniority over general category as a matter of right

- **Ajit Singh Juneja versus State of Punjab 1999**
- In this case similar to virpal Singh the apex court held that when the senior general candidate is promoted, he will regain his seniority over the junior reserve candidate, who was promoted to the higher post earlier than the general candidate as result of reservation policy.
- It was also held that consequential seniority on promotion post is not covered by article 16 4A

No relaxation in reservation in promotion

- **S. Vinod Kumar versus Union of India 1996**
- **Facts:** the constitutionality of memorandum was challenged which provided for relaxation in qualifying marks and Standards of evaluation for persons from SC and ST in matters of reservation in promotion.
- **Held:** the court held that relaxation in matters of reservation in promotion was not permissible under 16 4 of the Constitution in the view of provision contained in Article 335 of the constitution. The law on the subject has already been decided in Indira Swamy and required no revision.

- **Removal of 50% reservation ceiling limit Article 16 (4B)**
- Through the **81st amendment** 2000the government introduce article 16 (4B) which allowed reservation in promotion to Breach the 50% ceiling limit set on regular reservation by the case of Indira Sawhney.
- The amendment allowed the state to carry forward unfilled vacancies from previous years.
- article 16 (4B) *[The State may consider] any unfilled vacancies of a year which are reserved for being filled up in that year... as a separate class of vacancies to be*

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filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year."

- **Relaxation of standards for reservation Article 335 (82nd constitutional amendment, 2000)**
  - In 2000 the state amended the constitution for the second time. in 82nd amendment, the state added a provision to Article 335. according to Article 335, the claim of SC ST to services and posts have to be consistent with overall administrative efficiency.
  - In a way the 82 amendment removed the efficiency requirement.
  - It introduce a provision which held that nothing in Article 335 would prevent the state from relaxing the qualifying marks for lowering the standard of evaluation for reservation in matters of promotion to members of SC and ST community.
  - The provision to Article 335 watered down the Supreme Court's judgment in Vinod Kumar, which specifically ruled against relaxation in qualifying marks in matters of reservation in promotion.

- **Consequential seniority for SC/ST Article 16 (4A) (85th Constitutional Amendment 2001)**
  - In 2001 Parliament navigated the catch up rule that the court had introduced in Virpal Singh 1995 And Ajit Singh 1996. In the 85th amendment Parliament amended article 16 4A and introduced the principle of consequential seniority to promoted SC and ST categories of candidates.
  - subsequently the text of article 16 4A was amended such that " in matters of promotion to any class" became " in matters of promotion with consequential seniority to any class"

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- **M Nagaraj vs Union of India 2007**

  - **The 77, 81st 82nd and 85th amendment of the Indian Constitution was challenged before the Supreme Court.**
  - The court validated the 77, 81st and 82nd and 85th constitutional amendments. Court held "the provision of article 16 4A and 16 4B float from article 16(4) which do not alter the basic structure of article 16 4 and are valid" while upholding the constitutional validity of Art 16(4A) held that any such reservation policy in order to be constitutionally valid shall satisfy the following three constitutional requirements:
  - The SC and ST communities should be socially and educationally backward.
    1. The SC and ST communities are not adequately represented in public employment.
    2. Such a reservation policy shall not affect the overall efficiency of the administration.

- In **Jarnail Singh vs Lachhmi Narain Gupta case of 2018,**

- The Supreme Court held that reservation in promotions does not require the state to collect quantifiable data on the further backwardness of the Scheduled Castes and the Scheduled Tribes.
- The Court held that creamy layer exclusion extends to SC/STs and, hence the State cannot grant reservations in the promotion to SC/ST individuals who belong to the creamy layer of their community.

- **BK Pavitra versus Union of India II**

- In an earlier judgment of BK Pavitra I the Court struck down the reservation Act 2002. It held that the state had failed to provide completing evidence justifying the consequential seniority policy.
- After the following decision the state of Karnataka created the Ratnaprabha committee to submit the quantitative report demonstrating the three M.

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Nagraj criteria. On the basis of the report Karnataka passed the 2018 reservation act.

- The court observed that the need for reservation lies within the domain of Executive and legislature the court would only strike down a legislation if it is found that the Ratnaprabha committee relied on external and arbitrary consideration and also help the reservation act of 2018 is not a legislative overruling but it a corrective legislation

Recent approach of Supreme Court on reservation

- On 11th June 2020, in the case of **Umedsinh P. Chavda vs. Union of India and Ors.**, the political parties of Tamil Nadu challenged the policy of Central Government according to which the Central Government has decided to not give the reservation to the Other Backward Classes (OBC). A petition was filed under **article 32** of the Indian Constitution under the argument that the fundamental rights of OBC candidates are violated. However, the Supreme Court of India held that the reservation is not a fundamental right and hence this petition cannot be filed under article 32 as article 32 is available only for violation of a fundamental right. Therefore, a three-judge bench led by justice L.N. Rao ordered the petitioners to withdraw their petitions.

- In February 2020 as well, the Supreme Court of India observed the same in the case of **Mukesh Kumar and Anr. vs. The State of Uttarakhand and Ors.** In this case, the argument of reserved category candidates was given under the decision of **M. Nagraj vs. UOI (2006)** that the government of Uttarakhand has not given reservation to Scheduled Castes and Scheduled Tribes whereas the State is bound to give reservation according to the report submitted in M. Nagraj Case which said about unsatisfactory of SCs and STs in government jobs that time.

- The Supreme Court held that Reservation programmes allowed in the Constitution are derived from "**enabling provisions**" and are not rights as such.
- It held that no mandamus can be issued by the court directing state governments to provide reservations.

- In other words, it argued that there is **neither a basic right to reservations nor a duty by the State government to provide it.**

SUB CLASSIFICATION

- **E.V. Chinnaiah v. State of A.P (2005)**
  - Issue: Whether Sub classification or micro classification of scheduled caste for the purpose of reservation is violative of article 14 of the Constitution or not?
  - The Supreme Court held that Sub classification is violative of article 14 of the constitution. Referring to the constituent assembly debates and article 341 of the constitution the court observed that the constitution provided for only one list of scheduled castes to be prepared by the president with Limited power of inclusion and by parliament.
  - The court held that only Parliament and not state legislature can exclude cast Deemed to be scheduled caste from presidential list under article 341 of the constitution.
- **Davinder Singh v. State of Punjab 2020**
  - On 27th August 2020 a 5 judge bench decided to refer E.V. Chinnaiah v. State of A.P to a larger bench.
  - The court noted that article 16 4 has a wide scope. It empowers the state to provide reservation for *backward classes* in public employment and the term *backward classes* could be understood to not only include socially and educationally backward classes but also caste.
  - Relying on Indira Sawhney vs Union of India 1993 the court noted *that scheduled caste Scheduled tribe and other backward classes stand on the same footing and they cannot be treated as different from others"*
  - The insertion of article 342 a in 2018 for the restrictions of this argument article **342A** allows the President to identify socially and educationally backward classes of a state or union territory. This provision is similar to article 341 and 342 which empowers the President to identify scheduled caste and Scheduled Tribes respectively and **therefore denial of subclassification is direct denial of equality**. Invoking the Jarnail Singh and others versus Lacchmi Narain Gupta and others the

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court noted that if creamy layer exception equally is applied to SC and ST category then sub classification should also be extended.

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Abolition of untouchability [Article 17]

Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law

- **Article 17** provides that untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with the law.
- In **Jai Singh vs. Union of India case** Rajasthan High Court and **Devrajiah vs B. Padmana case** of Madras High Court defined the word untouchability.
- The court said that in article 17, the word 'Untouchability' is placed under inverted commas, which means the word is not to be taken by its literal or grammatical interpretation. The meaning of the word is to be derived from historical development and historical practices.
- Untouchability refers to the social disability imposed on certain classes of a person because of their birth in a specific backward class. Hence, it does not cover any social boycott of a few individuals or their exclusion from religious services, etc.
- Therefore the word untouchability in article 17 only means 'Caste-based untouchability'.
- **Article 17 – Anyone who practices untouchability shall be punished.**
- **Article 35 – In entire fundament rights if any punishment is prescribed, then it can be given through section 35.**

- **Article 17** Has been protected by the **protection of civil rights act 1955 w**hose earlier name was **untouchability (offences) act, 1955.**
- In **People's Union of democratic rights vs. Union of India 1982** also known as **ASIAD Project Workers** case Supreme Court held that right under Article 17 is available against private individuals also.
- In **State of Karnataka vs Appa Balu Ingale case,** the supreme court said that the objective of the article 17 is to remove all forms of disability, restrictions and disability on the sole basis of caste and religion.

- Apart from the Civil Rights Protection act, there is one more law that describes the punishment for the untouchability, i.e. 'ST-SC Prevention of Atrocities Act, 1989. This Act also provides other crucial information such as how the trial has to be conducted, what is the relief's available, the formation of special courts, etc.

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Abolition of titles [article 18]

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

- **Article 18(1)** prohibits the state to confer any title except military or academic distinction.
- **Article 18 (2)** to provide that no cry citizen of India shall accept any title from any foreign state.
- **Article 18 (3)** provides that non citizens holding any office of profit or trust under state shall not accept any title from any foreign state except with the consent of president.
- **Article 18(4)** provides that no person holding any office of profit or trust under the state shall, without the consent of the president, accept any present emolument, for office or any kind from or under any foreign office.
- In **Balaji Raghavan vs. Union of India 1996** Supreme Court held that ‘national awards’ would not amount to title within article 18. The court also held that national awards shall not be used as suffixes and prefixes.

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RIGHT TO FREEDOMS Article 19

19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) To freedom of speech and expression;

(b) To assemble peaceably and without arms;

(c) To form associations or unions;

(d) To move freely throughout the territory of India;

(e) To reside and settle in any part of the territory of India; and

(f) Omitted by **44th amendment act**. (It was right to acquire, hold and dispose of property)

(g) To practice any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) The professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or

(ii) The carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

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Freedom of Speech and Expression

- The English Bill of Rights, 1689 adopted freedom of speech as a constitutional right and it is still in effect. Similarly, at the time of the French revolution in 1789, the French had adopted the Declaration of the Rights of Man and of Citizens.
- The UN General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948 under Article 19 which recognized the freedom of speech and expression as one of the human rights.
- According to Article 19 of the International Covenant on Civil and Political Rights (ICCPR), the freedom to seek, receive, and convey information and all kinds of ideas irrespective of boundaries, either orally or in the form of writing, print, art or through any other media of their choice are included in the right to freedom of speech and expression.
- Meaning of freedom of speech and expression: *The right to express one's own ideas, thoughts and opinions freely through writing, printing, picture, gestures, spoken words or* ***any other means*** *is the essence of freedom of speech and expression*. It includes the expression of one's ideas through visible representations such as gestures, signs and other means of the communicable medium. *It also includes the right to propagate one's views through print media or through any other communication channel.*
- This implies that **freedom of the press** is also included in this category. The Constitution does not make any special / specific reference to the Freedom of Press. The protagonists of the "free Press" called it a serious lapse of the Drafting committee. However, the freedom of expression includes freedom of press. **Dr. Ambedkar** in this context had said on speaking behalf of the Drafting Committee that the press had no special rights which are not to be given to an individual or a citizen. **Dr. Ambedkar** further said that the "*editors or managers of press are all citizens of the country and when they chose to write in newspapers they are merely expressing their right of expression*".

- So, the word expression covers the Press. In modern times it covers the blogs and websites too.

- The right that is mentioned above, guaranteed by our constitution, is regarded as one of the most basic elements of a healthy democracy because it allows citizens to participate in the social and political process of a country very actively.

Article 19: Protection of certain rights regarding freedom of speech, etc

- Article 19 is the most important and key article which embodies the "basic freedoms".
- Article 19(1) provides that *all citizens* shall have the right- (originally 7, now 6)
- to freedom of speech and expression;
- to assemble peaceably and without arms;
- to form associations or unions;
- to move freely throughout the territory of India;
- to reside and settle in any part of the territory of India;
- Omitted by 44thamendment act. (it was right to acquire, hold and dispose of property)
- To practice any profession, or to carry on any occupation, trade or business.

However, Freedom of speech and expression is not absolute. As of now, there are 8 restrictions on the freedom of speech and expression. These are in respect of the sovereignty and integrity of the country. These 8 restrictions were:

1. Security of the state and public order- Public order means public peace, safety and tranquility.
2. Friendly relations with foreign states
3. Public Order
4. Decency or morality
5. Contempt of Court
6. Defamation
7. Incitement to offence

Exception – Parliamentary Privileges under Art. 105 And Art. 194 Of Constitution

8. Sovereignty and integrity of India.

The 1st Constitutional Amendment Act 1951 added public order, friendly relations with foreign states and incitement to an offence as a ground for restriction.

- When a proclamation of emergency is made under article **352**, article 19 remains suspended. **ART- 358**

Some landmark Supreme Court Judgments regarding the Freedom of press

- **Romesh Thapar v. State of Madras, (1950)**: Freedom of speech and of the press laid at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible."
- **Prabha Dutt v. Union of India ((1982) :**Supreme Court directed the Superintendent of Tihar Jail to allow representatives of a few newspapers to interview Ranga and Billa, the death sentence convicts, as they wanted to be interviewed.
- **Indian Express v. Union of India (1985):** Press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom.
- In **Sakal Papers v/s Union of India** the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price was held to be violative of freedom of press and not a reasonable restriction under the Article 19(2)
- In a **Rajgopal vs. state of Tamil Nadu 1994** the Supreme Court held that government has no authority in law to impose prior restraint upon publication of the defamatory material against its officials.
- **Maneka Gandhi v. Union of India, (1978):** Freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also.

Various facets of freedom of speech and expression

- *right to telecast/ broadcast* - Supreme court In **Secretary Ministry Of I & B Vs Cricket Association Of Bengal 1995** held that government has no Monopoly on electronic media and a citizen has come under article 19 1 (a) right to telecast and broadcast through electronic media
- **Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana**, the Supreme Court held that the right of the citizens to display films on state channels such as Doordarshan came under the purview of fundamental rights guaranteed under Article 19 of the Indian Constitution.

- *Rights of voters to know about their candidates:* in **Union of India vs Association of Democratic reforms 2002** the Supreme Court held that voters' right to know about their candidate is a fundamental right. The Supreme Court directed the election commission to make it compulsory for candidates to disclose their education Assets and liabilities criminal antecedents etc.
- *Commercial advertisement:* in **Tata press Limited vs Mahanagar Telephone Nigam Limited 1995** Supreme Court held that commercial speech/ advertisement is a part of freedom of speech and expression.
- Hamdard Dawakhana v. Union of India1959: This case challenged the validity of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1956, on the ground of restriction that it took away or abridged this freedom. The Supreme Court held that an advertisement is a form of speech only if every advertisement was held to be dealing with commerce and trade and not for propagating any idea.
- *calling for bundhs*: Supreme Court in **Communist Party Of India(M) Versus Bharat Kumar And Others 1998** held that calling for bundh by a political party or organization is unconstitutional bundhs do not fall within fundamental right to speech.

- *Film censorship:* Supreme Court in **K A Abbas Vs Union Of India 1971** held that censorship of film was justified under article 19 (2) on the ground that films have to be treated separately from other forms of art.
- *Freedom of silence:* in **Bijoy Emmanuel vs State of Kerala 1986** Supreme Court held that no person can be compelled to sing National Anthem if he has genuine

objections based on his religious faith. The court held that a person should stand respectfully when the National Anthem is being played.

- *Right to express gender identity:* **National Legal Services Authority Vs Union Of India 2014** Supreme Court held that transgender has a freedom to express his gender identity through various means.
- *Right hoist the national flag:* In Naveen Jindal vs. Union of India, the high court held that the restrictions that the Flag Code imposed on citizens on hoisting the National Flag were not permissible under clause (2) of Article 19 of the Indian Constitution. The court has also stated that displaying a flag is an expression of pride as well as an expression of genuine enthusiasm and it can only be restricted in accordance with what has been prescribed in the Constitution, otherwise, the restriction would discourage the citizens or Indian nationals from identifying with the flag of the country.
- *Right to Criticize:* In **Kedar Nath Singh v. The State of Bihar**, the Supreme Court held that mere criticism of the government is not sedition unless this criticism leads to incitement of violence or breach of public order.
- *Right to Expression beyond Boundaries: In* **Maneka Gandhi v. Union of India**, the Supreme Court analyzed whether Article 19(1)(a) of the Indian Constitution was confined to the Indian territory and finally held that the freedom of speech and expression was not confined to the national boundaries.

- *State v. Disha A. Ravi 2021- while granting bail order the court held the freedom of speech and expression includes the right to seek a global audience. There are no geographical barriers on communication. A Citizen has the fundamental rights to use the best means of imparting and receiving communication, as long as the same is permissible under the four corners of law and as such have access to audience abroad". Creation of a WhatsApp group or being editor of an innocuous Toolkit is not an offence*

RIGHT TO INTERNET

- In **Faheema Shirin RK vs. State of Kerala and others 2019** Hon'ble High Court stated that Right to access internet is a part of Right to education and Right to Privacy under Article 21A and Article 21 of the Constitution of Indian respectively. Internet Access not only enhances the opportunities of students to acquire knowledge but also enhances the quality of education
- In **Anuradha Bhasin vs. Union of India and Ors 2020**.Apex Court in its recent judgement observed that freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys Constitutional protection under Article 19(1)(a) and Article 19(1)(g), but the restriction of such fundamental rights should be according to Article 19(2) and (6) of the Constitution, inclusive of the test of proportionality. Internet is an imperative tool for trade and commerce and plays an important role in carrying e-commerce business as it provides a virtual platform to a businessman which is more affordable.
- **Foundation of Media Professionals vs. Union of India 2020** Appeal was made to restore the 4G internet in the area of Jammu and Kashmir which was imposed on connectivity black out in 2019 August by the central government this ban on 3G and 4G services was challenged.
- The court held that the right to freedom of speech and expression, health, education and Entrepreneurship must be balanced against national security concerns.

Grounds of restriction

- It is necessary to preserve freedom of speech and expression in a democratic country. And it is also necessary to restrict this freedom to maintain social order otherwise some people might misuse this freedom. There are some restrictions imposed through Clause (2) of Article 19 on freedom of speech and expression on certain grounds.

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- Article 19(2) states that "*nothing in sub-clause (a) of clause (1) shall affect the operation of the existing law, neither can it prevent the State from making any law, in so far as such type of law imposes reasonable restrictions on the exercise of the right bestowed by the said sub-clause in the interests of the sovereignty and integrity of India, public order, friendly relations with foreign states, the security of the State, decency or morality or in relation to contempt of court, defamation or incitement to an offence*".
- *The ground for restriction is as follows:*

1. **Security of the state**

- Article 19(2) imposes reasonable restrictions on the freedom of speech and expression in the interest of the state. The term 'security of the state' should be distinguished from 'public order' as security of the state includes an aggravated form of public order. For e.g., waging war against the state, rebellion, insurrection, etc. The term 'security of the state' in Article 19(2) does not only mean danger to the security of the entire country but it also implies danger to the security of a part of states or threat to a part of states.

2. **Friendly relations with a foreign state**

- This ground of restriction was added through the Constitutional First Amendment, 1951. The main objective behind adding this provision was to forbid unrestrained vitriolic propaganda against a foreign-friendly state, which could jeopardize the maintenance of good relations between India and that state. If the freedom of speech and expression disturbs or hampers the friendly relations of India with foreign states, the government has the right to impose a reasonable restriction.

3. **Public order**

- This ground of restriction was also added through the Constitutional First Amendment, 1951. A situation had arisen in the case of *Romesh Thapar* by the Supreme Court and to meet that situation, this ground had been added in the constitution. The word 'public order' depicts the sense of public safety, public peace, and peace of the community. In ***Om Prakash v. Emperor***,it has been said by the judge that anything that whatever disturbs public peace can be said to

disturb public order automatically. There is also a test that determines whether an act affects law and order or public order.

4. **Decency and Morality**

- The word to express or say something should be a decent one that it should win the heart of the opposite person and it should not affect the morals of the society. So our Constitution has considered this view and added this ground in our Constitution. On the ground of decency and morality, **Sections 292 to 294** of the Indian Penal Code, 1860 provides an example of a restriction on the freedom of speech and expression. These are the terms of variable content having no fixed meaning or we can also say that these words are of wide meaning. It varies from society to society and time to time depending upon the morals prevailing in contemporary society. The word morality and decency is not confined to sexual morality only; it has a broader scope.

5. **Contempt of court**

- In a democratic country, we know that the judiciary plays an important role in governing a country in a peaceful manner so in such types of situation it is important to respect the institution and its order. What hampers the administrative law? How does anything interfere with justice? We know that there is a limitation in a judicial proceeding and anything that curtails its freedom leads to hampering of the administrative law and also anything can interfere with the decision of justice.
- Contempt of court can be defined in two categories i.e., civil contempt and criminal contempt. Contempt of court has been defined in section 2(a) of the contempt of court act, 1971. Initially 'truth' was not a defense under contempt of court but in 2006 an amendment was made to add 'truth' as a defense. In the *Indirect Tax Practitioner Assn. v. R.K. Jain* case, the court has held that truth which is based on the facts should be allowed as a valid defence.
- Elements or essential needed to establish contempt:
  1. Making of a valid court order.
  2. The respondent should have knowledge of that order.
  3. The respondent should have the ability to render compliance.
  4. Intentionally or willfully disobey the order.

6. **Defamation**

- Article 19(2) prevents any person from making any statement that defames the reputation of another person. One who gets the freedom of any type should not misuse that freedom to hurt or affect the reputation or status of another person. Generally, a statement that injures the reputation of a man results in defamation. The right to free speech is not qualified. So it does not mean to hurt any person's reputation which is protected under Article.

7. **Incitement to an offence**

- This ground was also added by the Constitutional First Amendment act, 1951. It is obvious that freedom of speech and expression does not include the right to incite people to commit an offence. The word 'offence' has been described under section 40 of the Indian Penal Code, 1860.
- Any type of offence takes place in two ways:
  1. By the commission of an act
  2. By the omission of an act

8. **Sovereignty and Integrity of India**

- To maintain the sovereignty and integrity of a state is the main duty of a government. This ground has been added by the Constitution (Sixteenth Amendment) Act, 1963.
- From the above analysis, it can be stated that grounds contained in Article 19(2) show that they are all concerned with national interest or in the interest of the society.

Freedom to assemble peacefully and without arms [art. 19 1 (b) and 19 (3)

- The constitution guarantees right to hold meetings and take out processions. The processions and meetings should be unarmed and peaceful. This right may be

restricted in the interest of the *public order or sovereignty and integrity of the country*.

- Section 144 of the Sub-section (6), of the Code of Criminal Procedure can be imposed by the government in certain areas which makes the assembly of 5 or more people an unlawful assembly. This section was challenged in the Supreme Court via **Kamla Kant Mishra and ors. vs State Of Bihar And ors. Case (1962),** on the basis that it violates article 19(1) of the constitution and thus is invalid. The Supreme Court in its judgment held that power conferred upon the State Government under Section 144, Sub-section (6), of the Code of Criminal Procedure, is constitutionally valid.
- **Section 129** of the Code of Criminal Procedure authorizes the police to disperse any unlawful assembly which may cause disturbance to public peace.

Freedom to form Associations and unions or co-operative society [Art. 19 1(c) and Art. 19(4)]

- Article 19 1 (c) guarantees the citizen the freedom to form Association or unions for cooperative societies.
- the word **'cooperative societies' were added by 97th Constitutional Amendment** 2011
- It includes the right to form companies, societies partnership, trade Union and political parties. It also includes the right not only to form Association but also to continue with Association as such.
- In **Damyanti vs Union of India 1971** the Supreme Court held that the right to form Association Necessarily implies that persons forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law by which members are introduced in a voluntary Association without any option been given to members to keep them out for any law which takes away membership of those who have voluntarily joined it will be a law violating the right to form Association.
- Grounds of restriction article 19 (4) provides the following Grounds on which state put reasonable restriction
  1. unity and integrity of India

2. public order
3. morality

Right to protest

- **Amit Sahani V. Commissioner Of Police (Shaheen Bagh Case)** - Supreme Court in said public places cannot be occupied indefinitely. Such occupation of public places through is not acceptable protest "and the administration ought to take action to keep the areas clear of encroachment or obstructions".
- The Supreme Court, however, clarified that: "Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone. The present case was not even one of protests taking place in an undesignated area, but was a blockage of a public way which caused grave inconvenience to commuters."
- **Mazdoor Kisan Shakti Sangathan V. Union of India 2018**- The right of the protestors Under Article 19(1)(a) and 19(1)(b) of the Constitution and the rights of the residents Under Article 21 of the Constitution, as both the rights are fundamental rights. The principle of primacy cannot be given to one right whereby the right of the other gets totally extinguished. Total extinction is not balancing.The rights under Article 19 (1) (a) and 19 (1) (b) of the Constitution are not free and are unlimited in scope. Article 19 (2) to (6) establishes a specific provision to impose reasonable restrictions on the rights that confer restrictions on the exercise of those rights

- **Ramlila Maidan Incident V. Home Secretary, UOI & Ors. (2012)-** the Supreme Court had stated, "Citizens have a **fundamental right to assembly and peaceful protest** which cannot be taken away by an arbitrary executive or legislative action."
- EXCEPTION: UAPA

Freedom to move freely throughout the territory of India [19 (1) (d) and 19 (5)]

- Freedom to move freely throughout the territory of India is guaranteed in **19 1 (d)** is in addition to the right to personal liberty guaranteed under **article 21**.
- The basic principle for this right is that the Constitution lays stress that the entire territory is one unit as far as citizens are concerned.
- **Grounds of restriction article 19 (5)** Provides the following Grounds on which the state may put on reasonable restriction:
    1. interest of general public
    2. protection of interest of any scheduled tribe

Freedom to reside and settle in any part of the territory of India article 19 1(e) and article 19 (1) (5)

- Article 19 1 (a) provides that citizens have the right to decide and settle in any part of territory of India.
- The Object is to remove internal barriers within the country.
- **Grounds of restriction 19 (5)** provides the following Grounds on which the state may put reasonable restriction:
    1. interest of general public
    2. protection of interest of any scheduled tribe

Freedom to practice any profession, or to carry on any occupation trade or business article 19 (1) (g) and article 19 (6)

- Article **19 [1][g]** provides that all citizens shall have the right to practice any profession or to carry on any occupation trade or business.
- The right to carry on business also includes the right to close the business. The state cannot compel a person to carry on business against his will.
- In **Sodan Singh vs New Delhi Municipal committee 1989** Supreme Court held that hawkers have fundamental right to carry on trade on pavement of roads. However their right is subject to reasonable restriction mentioned in article 19 (6)

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- In **Khoday Distilleries Limited Vs State Of Karnataka 1995** Supreme Court held that a citizen has no right to carry on trade or business in liquors or beverage. The state has a power to prohibit the manufacture, sale, possession and distribution except in cases of medicinal purpose.
- In **B.R. Enterprise Versus State Of UP 1999** Supreme Court held that lottery cannot be construed as a trade or business within the meaning of article 19 1 (g). it contains an element of chance and therefore it is a gambling.
- In **Om Prakash vs State** of up the Supreme Court held that the ban on sale of eggs within the municipal limit of Rishikesh is valid as it contains reasonable restriction. The reason ability must be construed from the point of view of culture and religious background of the town.
- in **Ghodawat Pan Masala Products Private Limited versus Union of India 2004** supreme court held that ban on Pan Masala and Gutka containing tobacco to underage persons is not violative article 19 1 (g)
- in **State Of Gujarat Versus Mirzapur Moti Qureshi Kassab Jamat 2006** Supreme Court held that ban on slaughter of cows and ka and other milch and draught cattle is not violated of article 19 1 (g). It is reasonable restrictions as cows and her progeny are backbone of Indian agriculture and economy.

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Protection In Respect Of Conviction for Offences. [Article 20]

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

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Protection against Ex Post facto laws article 20 (1)

- Article 20(1) provides that no person shall be convicted of any offence except for violation of law in force at the time of commission of the act charged as an offence, not be subjected to Greater penalty which might have been inflicted under the law in force at the time of commission of offence.
- **Article 20 (1)has two parts**

1. *No conviction for offences except for violation of law at the time of commission of act charged*
2. *The no penalty greater than that at the time of commission of offence.*

- Ex Post facto means a law which imposes penalty retrospectively article 20 (1 imposes restriction on law making power of Legislature.
- Generally the legislature has plenary power to make laws i.e. It can make laws both retrospectively as well as prospectively. But it cannot make criminal laws retrospectively.

- **No Conviction for offence except for violation of law at the time of commission of act charged:** it means that if the act is not an offence at the date of its Commission it cannot be an office subsequent to it.

✓ The protection is only against conviction and sentence and not against trial.

✓ Sec304B of IPC was enacted on19/11/1986 making dowry death as a punishable offence. Because of art20 (1), this section would not be applicable to the dowry death cases which took place prior to this enactment

✓ ***Chief Inspector of Mines v. Karam Chand Thapar (1983***): A law was made in 1923, and certain rules were made there under. The act was replaced in 1952 by another act, but the old rules were deemed to be the rules under the new act.

✓ It was held: as these rules had been operative all along and did not constitute retrospective legislation, if any offence committed in 1955 could be punishable under them as these rules were factually existed at the date of the commission of the offence

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- **No penalty greater than that at the time of commission of offence:** it means that if at the date of commission of offence the penalty was less but subsequently it was increased to some greater extent than the person cannot be subject to greater penalty. He will be liable for that much penalty which was there at the time of commission of offence. Hence no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

✓ ***Kedar Nath v. State of west Bengal (1953):*** an accused committed an offence in 1947, under the act, the offence was punishable by imprisonment or fine or both. Amendment in act 1949 enhanced the punishment for the same offence. Court Held that the enhanced punishment could not be applicable to the act committed by accused in 1947.

✓ ***Shiv Dutt Rai Fateh chand v. UOI (1984):*** it was held that imposing or increasing a penalty with retrospective effect for a violation of a taxing statute does not infringe article 20(1).

- **Rule of Beneficial Construction**

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- ✓ **Rattan lal v. State of Punjab (1965)** If a particular law makes a provision which reduces the punishment of an offence, though retrospective in operation, it will be valid. Sc under the rule of reduced the punishment the benefit construction, of the young offender.

Double Jeopardy 20(2)

- ***Meaning of Jeopardy***: The word Jeopardy refers to the "danger" of loss, harm or conviction. No person shall be prosecuted and punished for the same offence more than once.
- ***Objective***: to avoid harassment, which must be caused for successive criminal proceedings, where the person has committed only one crime.
- ***Nemo debet bis vexari*** : a man must not be put twice in peril for the same offence.
- *Constitution bars double punishment for the same offence. The conviction for such offence does not bar for subsequent trial and conviction for another offence and it does not matter the some ingredients of these two offences are common.*
- This rule has been recognized under **sec 300 of Code of Criminal Procedure**
- Two aspects of Doctrine of Jeopardy:
  1. ***Autrefois convict*** means that the person has been previously convicted in respect of the same offence.
  2. ***The Autrefois acquit*** means that the person has been acquitted on a same charge on which he is being prosecuted but under Art. 20(2) this principle is not incorporated as the article may be invoked *when there has been prosecution and punishment at the instance*
- **Essentials:**
  1. *Prosecuted and punished*: The prosecution and punishment should co-exist for Art.20 (2) to be operative. A prosecution without punishment would not bring the case under the said article.
  2. Under article 20(2) the prosecution against the double jeopardy is given only when the accused has been prosecuted and punished. This is narrower than what is under American constitution. Under the American constitution the protection is available irrespective of whether the accused is acquitted or convicted.
  3. *Before a court of law or tribunal*: though not specifically found in the article; nevertheless have been read there in.
  4. An accused must be *prosecuted and punished* in the previous proceedings.
  5. *The offence must be the same* for which he was prosecuted and punished in the previous proceedings.
- **Inquiry could not regarded as a prosecution for a criminal offence-** When a civil servant is dismissed from governmental service on the ground of misbehavior after a departmental inquiry, his later prosecution on the same charges on which he had been punished by dismissal would not be barred by the said article.

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- ✓ **Venkataraman v. Union of India,(1954)** An enquiry was made before the enquiry commissioner on the appellant under the Public Service Enquiry Act,1960 & as a result, he was dismissed from the service. He was later on, charged for committed the offence under Indian Penal Code & the Prevention of Corruption Act. The court held that the proceeding held by the enquiry commissioner was only a mere enquiry & did not amount to a prosecution for an offence. Hence, the second prosecution did not attract the doctrine of Double Jeopardy or protection guaranteed under Fundamental Right Article 20 (2).
- ✓ **Maqbool Husain v. State of Bombay (1953)**: SC held that the sea customs authorities were not a court or a judicial tribunal and the adjudicating of confiscation under the sea customs act did not constitute a judgment of judicial character, which is necessary to take the plea of double jeopardy. Hence the prosecution under the Foreign Exchange Regulation Act is not barred.

Self – incrimination 20(3)

- No person accused of any offence shall be compelled to be a witness against himself.
- The term 'self-incrimination' means the act of accusing oneself of a crime for which a person can then be prosecuted. Self-incrimination can occur either directly or indirectly: directly, by means of interrogation where information of a self-incriminatory nature is disclosed; indirectly, when information of a self-incriminatory nature is disclosed voluntarily without pressure from another person.
- Based on a legal maxim: ***Nemo tenture prodere accussare seipsum-*** *no man bound to accuse himself.*
- **Universal Declaration of Human Rights, 1948**. **Art. 11.1** *"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."*
- **The International Covenant on Civil and Political Rights, 1966** *to which India is a party states in Art. 14(3) (g) "Not to be compelled to testify against himself or to confess guilt".*
- **The European Convention for the Protection of Human Rights and Fundamental Freedoms states in Art. 6(1)** *that every person charged has a right to a 'fair' trial and Art. 6(2) thereof states:*
- "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."At the first instance it appears that the right is absolute. But as the Constitution of India prevents absolutism, it is provided under the Indian Evidence Act, 1872 that if any substance or object or material is in the possession of the accused, in the absence of which process of investigation shall not be completed, he may be put under pressure, for example, DNA sample for paternity test.
- To ensure fair trial the Act also provides that this protection is available only to the accused, not to witnesses who may be asked incriminating questions to find out the truth.
- The characteristics features of these provisions are –That the accused is presumed to be innocent, that it is for the prosecution to establish his guilt, and that the accused need not make any statement against his will.
- **Three components**
  1. It is a right pertaining to a person accused of an offence
  2. It is a protection against compulsion to be a witness;
  3. It is a resulting in protection against his giving evidence such compulsion against himself.
- All the three components shall be co-exist of the before protection of the said article.

➢ **Person accused of an offence-** A person accused of an offence means a "person against whom a formal accusation relating to the commission of an offence has been leveled, which may result in prosecution".

- Formal accusation in India can be brought by lodging of an F.I.R or a formal complaint, to a competent authority against the particular individual accusing him for the commission of the crime.
- "A person cannot claim the protection if at the time he made the statement, he was not an accused but becomes an accused thereafter."
- *Article 20 (3) does not apply to departmental inquiries into allegations against a government servant, since there is no accusation of any offence within the meaning of Article 20 (3).*

➢ ***Not available for the witnesses-***The right is only available to a person accused of a offence. Under American constitution the right is also available to the witness.

- **Narayanlal Bansi lal v. Maneck Fhiroz Mistri (1961):** sc denied that the appellant could not get immunity under article 20(3) and pointed out that the privilege was available to an accused person only and as no formal accusation was laid against him, he could not claim the privilege under this article.

➢ **Protection against compulsion to be a witness** The protection contained in Article 20(3) is against compulsion "to be a witness" against oneself.

- In **M.P Sharma v. Satish Chandra (1954)** the Supreme Court gave a wide interpretation of the expression "to be a witness" which was inclusive of oral, documentary and testimonial evidence. The Court also held that the protection not only covered testimonial compulsion in the Court room but also included compelled testimony previously obtained from him.

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- **Exception-**It follows that giving thumb impressions, or impression of foot or palm or fingers or specimens of writings or exposing body for the purpose of identification are not covered by the expression 'to be a witness' under Article 20(3).

➢ **Compulsion to give evidence "against himself-** The protection under Article 20(3) is available only against compulsion of the accused to give evidence against himself. Thus, if the accused voluntarily makes an oral statement or voluntarily produces documentary evidence, incriminatory in nature, Article 20(3) would not be attracted.

- The term compulsion under Article 20(3) means 'duress'. Thus, compulsion may take many forms. If an accused is beaten, starved, tortured, and harassed etc. To extract a confession out of him/her then protection under Article 20(3) can be sought.
- **Mohd. Dastagir v. State of Madras (1960)**: where the appellant went to the residence of the Deputy Superintendent of Police and handed him an envelope. On opening the envelope, the DSP found cash in it, which meant that the appellant had come to offer bribe to the officer. The DSP refused it and asked the appellant to place the envelope and the notes on the table, and he did as told, after which the cash was seized by the Police.The Supreme Court held that, the accused wasn't compelled to produce the currency notes as no duress was applied on him. Moreover the appellant wasn't even an accused at the time the currency notes were seized from him. Hence in this case the scope of Article 20(3) was not applicable.

➢ **Right to silence**

- The right to silence has various facets.
  1. The burden is on the State or rather the prosecution to prove that the accused is guilty.
  2. An accused proved to be is presumed to be innocent till he is guilty.
  3. The right of the accused against self incrimination, namely, the right to be silent and that he cannot be compelled to incriminate himself.
- There are also exceptions to the rule. An accused can be compelled to submit to investigation by allowing his photographs taken, voice recorded, his blood sample tested, his hair or other bodily material used for DNA testing etc.
- **State Of Bombay V. Kathi Kalu Oghad 1961** The Apex Court held that handwriting exemplars, fingerprints, thumbprints, palm prints, footprints or signatures were considered to be outside the scope of Article 20(3)
- **Nandini Sathpathy vs P.L.Dani (1978)** the appellant, a former Chief Minister of Orissa was directed to appear at Vigilance Police Station, for being examined in connection to a case registered against her under the Prevention of Corruption Act, 1947 and under S. 161/165 and 120-B and 109 of The Indian Penal Code, 1860. Based on this an investigation was started against her and she was interrogated with long list of questions given to her in writing. She denied to answer and claimed protection under Article 20(3). The Supreme Court ruled that the objective of Article 20(3) is to protect the accused from unnecessary police harassment and hence it extends to the stage of police investigation apart from the trial procedure.

➢ **Tape Recording of statements made by the accused-** If statements recorded are made by the accused, without any duress, with or without his knowledge are not hit by Article 20(3).

- **R M Malkani v. State of MH (1973)**, the telephonic conversation were recorded by the police officer with the permission of the one party, that case is not hit by the said article.

➢ **Scientific tests admissible when voluntary**

- Narcoanalysis- a method of psychological investigation in which the conscious or unconscious unwillingness of a subject to express memories or feelings is diminished by the use of a barbiturate drug.
- Polygraphy -The use of a polygraph to record several physiological characteristics simultaneously; the interpretation of data from a polygraph.(Lie detector test)
- **Selvi v. State of Karnataka(2010)-** In this case the Hon'ble Chief Justice, Justice K.G Balakrishnan spoke of behalf of the Apex Court, and drew the following conclusions:

✓ The right against self-incrimination and personal liberty are non-derogable rights, their enforcement therefore is not suspended even during emergency.

✓ The right of police to investigate an offence and examine any person do not and cannot override constitutional protection in Article 20(3)

✓ The protection is available not only at the stage of trial but also at the stage of investigation;

- ✓ That the right protects persons who have been formally accused, suspects and even witnesses who apprehend to make any statements which could expose them to criminal charges or further investigation
- ✓ Article 20(3) proceedings cannot be that cannot invoked by witnesses be characterized as during criminal proceedings
- ✓ Compulsory narco-analysis test amounts to 'testimonial compulsion' and attracts protection under Article 20(3);
- ✓ Conducting DNA profiling is not a testimonial act, and hence protection cannot be granted under Article 20(3);
- ✓ That acts such as compulsory obtaining signatures and handwriting samples are testimonial in nature, they are not incriminating by themselves if they are used for the purpose of identification or corroboration
- ✓ That subjecting a person to polygraph test or narco-analysis test without his consent amounts to forcible interference with a person's mental processes and hence violates the right to privacy for which protection can be sought under Article 20(3);
- ✓ Those courts cannot permit involuntary administration of narco-tests, unless it is necessary under public interest.

Conclusion

- Art. 20 provides right of protection to a person in respect of conviction for offences against police authorities.
- Applicable only to the criminal offences.
- Applicable to citizens and non-citizens as well as corporations.
- Article 20 also constitutes the limitation on the legislative powers of the Union and State legislatures.
- The article20 (3) also known as Protective Umbrella against the testimonial compulsion.

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Protection of Life and Personal Liberty [Article 21]

- Article 21 provides that no person shall be deprived of his life and personal liberty except according to procedure established by law**.**
- Right under this article is available to citizens **as well as non citizens.**
- **Difference Between Procedure Established By Law And Due Process Of Law**
- American constitution follows due process of law. it checks whether any law in question is fair and not arbitrary. The due process of law gives wide scope to the court to Grand protection to the rights of its citizens. Under due process, it is a legal requirement that states must respect all of the legal rights that are owed to a person and laws that state and act must confirm to the laws of the land.
- Procedure established by law means that a law that is duly enacted by the Legislature of the body in question is valid if the procedure to establish it has been correctly followed. are rigid and flexible following of the procedure established by law may rise the risk of compromise to life and personal liberty of individual due to unjust laws made by the law making authorities.
- The scope of article 21 was expanded by the Supreme Court in **Maneka Gandhi VS Union of India 1978**. Therefore, for the purpose of convenience we will study the scope and Ambit of article 21 from a standpoint.

1. Position prior to Maneka Gandhi case.
2. position after Maneka Gandhi case

Position prior to Maneka Gandhi's case

- Scope of article 21 came up for consideration in **A K Gopalan Vs Union of India 1950.**

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- **AK Gopalan vs State of Madras 1950**

  He was a communist leader who was detained under preventive detention act 1950, he challenged his detention on the ground that his civil liberty was being hampered, Supreme Court held that he was detained according to the procedure established by law.

  At the time of this case the Supreme Court only provided remedy against arbitrary action of the executive as long as the law was made by procedure established by law it was a valid law. this was a narrow view taken by the Supreme Court but this was changed in the case of Maneka Gandhi.

- The court in the **AK Gopalan v Union of India** held that 'personal liberty' under article 21 means nothing more than Liberty of the physical body that is freedom from arrest and detention without authority of law.

- The court held that law means a state made law and does not include *jus natural*. The court further held that articles 19 and 21 deal with different aspects of Liberty.

- Thus, the court in A K Gopalan case gave a restrictive interpretation of 'personal liberty' and 'law'

<u>Position after to Maneka Gandhi's case</u>

- In Maneka Gandhi's case the Supreme Court overruled A.K. Gopalan case and widened the scope of article 21.

- **Maneka Gandhi vs. Union of India 1978**
- The passport of Gandhi was impounded under passport act 1967 and she was not given any reason for the impounding. Without a passport one can travel outside of India, so Manika Gandhi filed a writ petition under article 32 for violating her personal liberty under article 21.

  The seven judge bench of the Supreme Court involved not just article 21 but also article 19 and 14, the Court was of opinion that article 19 and 21 go hand in hand and the procedure established by law restricting these rights should stand the scrutiny of other provisions of the Constitution as well including Article 14.

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- The Supreme Court overruled AK Gopalan case and ruled that a loss should be ***just fair and reasonable*** and article 21 can be involved against arbitrary executive as well as arbitrary legislative action if the action is not just fair and reasonable
- The court held that procedure contemplated under article 21 could not be unfair and unreasonable. it should be *just fair and reasonable*. Similarly 'law' under article 21 should embody the *principles of natural justice*.
- Article 21 is controlled by article 19. The law must satisfy the requirements of article 19 also.
- The court elaborated that the right to life is not merely confined to Physical existence but it includes the right *to live with human dignity.*
- In **Francis Coralie versus Union Territory of Delhi 1981,** the Supreme Court held that the right to life is not limited to mere animal existence. It is something more than just physical survival right to life includes the right to choice and dignity.
- Article 21 requires the following conditions to be fulfilled:
- There must be a valid law.
- The procedure provided in law must be just, fair and reasonable.
- Law must satisfy the requirements of article 14 and 19.

Various aspects of right to life and personal liberty

- *Right to privacy*: In **Justice K S Puttaswamy and Anr Vs. Union Of India And ors. 2017** Supreme Court held that right to privacy is a fundamental right and it is protected under article 21. Court overruled **MP Sharma** case and **Khadak Singh's case** to the extent that they held the right to privacy is not a fundamental right.

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- **Kharak Singh vs. State of Tamilnadu (1963)**, this issue was raised for the first time. Justice Subba Rao it is Minority judgement said that the right to privacy flows from the expression personal liberty. This minority judgment paved path for the development.

- In **PUCL vs. Union of India (1997)**, Telephonic conversation, the court said, was a part of modern man's life and and important faces of a man's private life. Therefore, the Court ruled that telephone tapping would attract article 21, unless it was permitted under the procedure established by law.

- In **Selvi vs. State of Karnataka**, it was held that in involuntary subjection of person to test such as narco analysis, polygraph examination also violates the right to privacy.

- *Aadhar held to be constitutional*: **Justice KS Puttaswamy vs. Union of India 2018** Supreme Court upheld the constitutional validity of Aadhaar after reading down and striking down certain provisions.

- *Offence of adultery is unconstitutional*: In **Joseph Shine vs Union of India 2018** the Supreme Court scrapped down section 497 of Indian penal code as unconstitutional. Court held that it is violative of women's right to dignity and hence it infringed article 21.

- *Homosexual as our constitutional*; **Navtej Singh Johar vs Union of India 2019** Supreme Court declared Section 377 of Indian penal code, unconstitutional insofar as it criminalize is sexual acts between consenting adults.

- *Nonpayment of minimum wages*: in **People's Union for democratic rights vs. Union of India 1982** Court held that nonpayment of minimum wages is violative of article 21

- *Right to livelihood*: In **Olga tellis vs. Bombay Municipal Corporation 1986**, Supreme Court held that right to life includes right to livelihood also.

- *Right to shelter*: in **Chameli Singh vs. State of UP 1996** Supreme Court held that right to shelter is a fundamental right under article 21

- *Reproductive choices*: in **Suchitra Srivastava vs. Chandigarh administration 2010** Supreme Court held that right to make reproductive choices(decision to produce child or not) is included in article 21.

- *Right to health*: In **Parmanand Katara vs. Union of India 1989** Supreme Court held that all doctors (private or government) or employees are obliged to extend medical assistance to person injured immediately without asking for legal formalities.

- *Right to sleep*: in **RamLila Maidan Versus Home Secretary Union Of India Supreme** Court held that right to sleep is a fundamental right as it is biological and essential element of basic necessities of life.

- *Arrest of judgment debtor:* In **Jolly George Varghese vs. State Bank of cochin**: Supreme Court held that arrest And attention of honest judgment debtor, in absence of willful failure to pay despite sufficient means is violative of article 21.

- *Bonded labor*: In **Neerja Chowdhury vs State of Madhya Pradesh 1984** Supreme Court held that bonded labour should be identified and rehabilitated.

➢ **Bandhua Mukti Morcha v. Union of India and others** respect of bonded labour and weaker section of the society.

- *Right to die:*

- **P. Rathinam vs. Union of India 1994**
- Keeping article 21 as well as the principle of natural justice in mind, the Court ruled that right to life also included the right to die.

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- **Gian Kaur vs. state of Punjab 1996** Supreme Court held that right to life does not include right to die.

- *Passive Euthanasia*: in **Aruna Ramchandra shanbaug vs Union of India, 2014** Supreme Court held that in certain cases passive Euthanasia is allowed.

- **Common Cause (A Registered Society) vs. Union Of India 2015**
  a constitutional bench decided that right to life with dignity under article 21 includes right to die with dignity and introduced the concept of living will

- *Self determination of gender*: **National legal service authority versus Union of India 2014** Supreme Court held that self determination of gender is a part of personal liberty guaranteed under article 21.

- *Child rights*: In **Bachpan Bachao Andolan vs Union of India 2011** Supreme Court held that sexual, physical and emotional abuse of children detained in circus is violation of article 21.

- *Right to free Legal Aid*- **MH Hoskot vs. State Of Maharashtra, 1978** Supreme Court held that right to free Legal Aid is a part and parcel of right to life and liberty.

- *Right to speedy trial:* **Hussainara Khatoon Vs State Of Bihar 1979** Supreme Court held that right to speedy trial is a fundamental right and it is implicit in article 21.

- *Fair investigation*: In **Nirmal Singh Kahlon Vs State Of Punjab 2009** Supreme Court held that their trials include fair investigation.

- *Keeping under trials with Convicts*: In **Sunil Batra vs. Delhi administration 1980** Supreme Court held that keeping undertrials with Convicts in jail offends article 21.

- *Right against handcuffing*: In **Prem Shankar vs Delhi administration 1980** Supreme Court held that handcuffing is prima facie inhuman,

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arbitrary and unreasonable. Handcuffing should be resorted to when there is clear and present danger of escape.

- *Use of third degree methods*: In **Kishore Singh versus state of Rajasthan 1981** Supreme Court held that use of third degree method by police is violative of article 21.

- *Ban on smoking in public places*: In **Murali S There Vs. Union Of India 2002** Supreme Court directed the government to issue orders banning smoking in public places considering the adverse effect of smoking on non smokers.

- *Public hanging*: In **Attorney General Of India Vs Lakshmi Devi 1986** Supreme Court held that execution of death sentence by public hanging is violative of article 21.

- *Hanging by rope*: In **Deena Vs Union Of India 1983** Supreme Court held that hanging by a rope does not violate article 21

- *Delay in execution of death sentence:* In **TV Vatheeswaran V. State Of Tamil Nadu** 1981 Supreme Court held that delay in execution of death sentence is violative of article 21.

- *Custodial torture / death*: In **Nilabati Behera Vs State Of Orissa 1993** Supreme Court awarded compensation to the family of deceased who died in police custody due to beating.

➢ In **Dk Basu Vs State Of West Bengal 1997** Supreme Court laid down guidelines to be followed by investigating agencies in cases of arrest and detention.

➢ In **Joginder Kumar Vs State Of UP 1994** Supreme Court laid down guidelines providing arrest of person during investigation.

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- *Compensation for violation of article 21*: **Rudal Shah Vs State Of Bihar 1983**, Supreme Court held that courts have power to award compensation in appropriate cases of violation of article 21.

- *Prevention of sexual harassment in workplaces*: In **Vishaka Vs State Of Rajasthan** 1997 Supreme Court laid down guidelines to prevent sexual harassment of working women in workplaces.

- *Right to clean environment*: In following cases Supreme Court held that right to clean environment is fundamental right protected under article 21. Consequently supreme court also give various directions regarding upkeep of environment it and control of pollution

- In ***M.C. Mehta v. Union of India* (1988),** the Supreme Court ordered the closure of tanneries that were polluting water.
- In ***M.C. Mehta v. Union of India* (1997),** the Supreme Court issued several guidelines and directions for the protection of the Taj Mahal, an ancient monument, from environmental degradation.
- In ***Vellore Citizens Welfare Forum v. Union of India*,** the Court took cognizance of the environmental problems being caused by tanneries that were polluting the water resources, rivers, canals, underground water, and agricultural land. The Court issued several directions to deal with the problem..
- In ***M.C. Mehta v. Union of India* (2006),** the Court held that the blatant and large-scale misuse of residential premises for commercial use in Delhi violated the right to salubrious sand decent environment. Taking note of the problem the Court issued directives to the Government on the same.
- In ***Murli S. Deora v. Union of India*,** the persons not indulging in smoking cannot be compelled to or subjected to passive smoking on account of the act of smokers. Right to Life under Article 21 is affected as a non-smoker may become a victim of someone smoking in a public place.

- **In Re: Noise Pollution,** the court held noise pollution caused by obnoxious levels of bursting of crackers during Diwali sentence is violative of article 21.

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Right to Education [Article 21A]

- Article 21A provides that the state shall provide free and compulsory education to all the citizens of the **age of 6 to 14 years in** such manner as the state may by law determine.
- This article was inserted by the **86th Constitutional Amendment Act 2002**
- **Mohini Jain vs. State of Karnataka 1992** the supreme court held that right to education at all levels is a fundamental right flowing from article 21
- In **Unni Krishnan versus state of Andhra Pradesh** 1993 the supreme court held that the right to education is a fundamental right flowing from article 21 but right to free education is available to children until they complete the age of 14 years. After that the obligation of the state to provide education is subject to economic capacity and development.
- In **State Of Tamil Nadu Versus K Shyam Sundar 2011** Supreme Court held that the right to education should be extended to have quality education without discrimination on the grounds of economic social and cultural backgrounds.

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Protection against arrest and detention in certain cases

(1) No person who is arrested shall be detained in custody without **being informed**, as soon as may not be, of the **grounds for such arrest** nor shall he be denied the **right to consult**, and to be defended by, a **legal practitioner** of his choice

(2) Every person who is arrested and detained in custody shall be produced before the **nearest magistrate within a period of twenty four hours** of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate

(3) Nothing in clauses (1) and (2) shall apply (a) to any person who for the time being is an **enemy alien**; or (b) to any person who is arrested or detained under any law providing for **preventive detention**

(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than **three months** unless

(a) An Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, **Judges of a High Court** has reported before the expiration of the said period of three months that there is in its **opinion sufficient cause** for such detention:

Provided that nothing in this sub-clause shall authorize the detention of any person beyond the **maximum period prescribed by any law made by the parliament** under sub- clause (b) of clause (7)

(b) such person detained in accordance with the provisions of any law made by the parliament under subclause (a) and (b) of clause (7); or

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, **communicate to such person the grounds** on which the order has been made and shall afford him the earliest opportunity of making a representation against the order

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be **against the public interest to disclose**

(7) Parliament may by law prescribe

(a) the **circumstances** under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for **preventive detention without obtaining the opinion of an Advisory Board in accordance** with the provisions of sub clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub clause (a) of clause (4)

Preventive Detention

There are two types of detention:

1. Punitive
2. Preventive

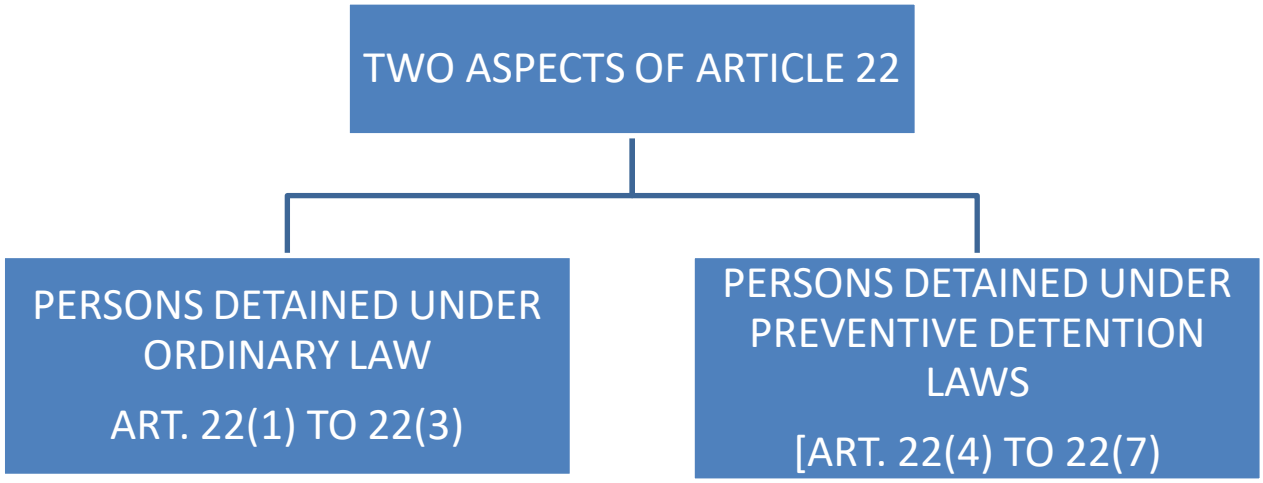
- Punitive detention is detention after a trial. Preventive detention is detention without trial. The idea behind this is to prevent an individual from committing a crime. This means that persons can be detained on grounds of suspicion. The

rights of people arrested in this manner are governed by preventive detention laws.

- **Francis coralie Mullin vs administrator Union 1981**
  The difference between preventive and punitive detention was discussed. Punitive detention is to punish a person for an offence committed by him after trial and conviction in the court. Preventive detention on the other hand means detention of a person without trial and conviction by the court, its purpose is not to punish a person for a past offence but to prevent him from committing an offence in near future. so preventive detention is only a precautionary measure and based on suspicion. our constitution recognises preventive detention but also provide safeguards for it in article 21 and 22

- An 'arrest' is done when a person is charged with a crime. An arrested person is produced before a magistrate within the next 24 hours.
- In case of preventive detention, a person is detained as he/she is simply restricted from doing something that might deteriorate the law and order situation.
- Under Section 151 of The Criminal Procedure Code, 1973 (CrPC) preventive detention is action taken on grounds of suspicion that some wrong actions may be done by the person concerned.

- *The observations of Alladi Krishnaswamy Ayyar, a distinguished jurist is typical: he described preventive detention a necessary evil*



Persons detained under ordinary law [article 22(1) to 22(3)]

- Article 22 (1) and 22(2) provide the following rights:-

1. right to be informed of Grounds of arrest [Art. 22(1)]
2. Right to be consulted and represented by a lawyer of choice [article 22(1)]
3. Right to be produced before the magistrate within 24 hours of arrest [article 22(2)]
4. No detention in custody beyond 24 hours except with the order of the magistrate.
5. Article 22 provides minimum procedural safeguards that must be provided in any law enacted by the State.

- Article 22 provides minimum procedural safeguards that must be provided in any law enacted by the State.
- Article 22(3) provides that clause 1 and 2 shall not apply to any alien and person arrested detained under preventive detention laws.

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Persons detained under preventive detention laws article 22 (4) to article 22 (7)

- **Article 22 (4) to 22 (7)** lay down the procedure to be followed in case of a person is determined under preventive detention laws.
- The object of preventive detention is to intercept the person before he commits a crime. Arrest in such a law is made on the basis of suspicion or reasonable probability of commission of offence.
- Article 22(4) provides that no law providing for preventive detention shall authorise the detention of a person for a longer period than 3 months unless the advisory body reports that detention beyond the period of three months is necessary.
- Advisory board shall consist of persons who are or have been or are qualified to be appointed as judges of the High Court.
- Article 22(5) provides that the authority making an order under preventive detention laws shall communicate the grounds on which the order is made and shall afford him the opportunity to make representation against order.
- Article 22(6) provides that authority may refrain from disclosing such facts which in its opinion are against public interest to disclose.
- Article 22(7) enables the Parliament to make laws of preventive detention prescribing:-
- Circumstances under which and classes of persons who may be detained for a period longer than three months without obtaining the opinion of the advisory body.
- maximum period of which a person may be detained under preventive detention laws
- Procedure to be followed by the advisory board.

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- 44th constitutional amendment 1987 changed certain rules in article 22 (4) relating to preventive detention but this amendment has not been brought into force.

- **A.K. Gopalan Vs. The State of Madras** **The preventive Detention Act, 1950**, with the exception of section 14 thereof did not contravene any of the Articles of the Constitution and even though section 14 was ultra vires inasmuch as it contravened the provisions of Article 22 of the Constitution, as this section was severable from the remaining sections of the Act, the invalidity of Section 14 did not affect the validity of the Act as a whole and the detention of the petitioner was not illegal.

- In **A K Roy vs Union of India 1982** Supreme Court laid down following guidelines relating to arrest under preventive detention laws:

1. After detention the family members of detenue should be informed about detention and place of detention

2. detenue must be detailed in a place where he had actually resides unless in certain exceptional circumstances detention at other places is feasible

3. return you must be and title to books writing materials on food and visits from family and friends

- **Ahmed Noor Mohamad Bhatti V. State of Gujarat, AIR 2005** while upholding the validity of the power of the Police under section 151 of the Criminal Procedure Code 1973 to arrest and detention of a person without a warrant to prevent the commission of a Cognizable offense ruled that a provision could not be held to be unreasonable as arbitrary and therefore unconstitutional merely because the Police official might abuse his authority.

  This preventive detention act is a necessary tool in the hands of the executive which authorizes them to arrest any person from whom reasonable suspicious arises that he can commit any cognizable offense or his activities are prejudicial to law and order to state and the police can arrest that person without warrant

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1. **Preventive Detention Act was passed in the year of 1950**.

- The validity of this act was challenged in the Supreme Court in the **Gopalan v/s State of the Madras Court.** *In fact,* the Supreme Court held this act constitutionally valid except the some provisions. However, this act expired in the year of 1969, and also before it expired, it was amended for approx 7 times, each expansion was to make it valid for 3 more years and also this it was extended till 31 December in the year of 1969.

2. **Armed Forces (Special Powers) Act, 1958 (AFSPA)**
3. **Unlawful Activities (Prevention) Amendment Act, 1967 (UAPA), amended in 2004 and 2008.**
4. **Maintenance of Internal Security Act (MISA), 1971:** MISA was basically a modified version of the PDA Act. It was abolished in the year of 1978. (***repealed)***
5. **The conservation of the Foreign exchange and also the Prevention of Smuggling Activities (COFEPOSA)** was enacted in the year of 1974 and it continued.
6. **National Security Act (NASA), 1980.**
7. **Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act (ESMA) in 1980.**
8. **Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985. Repealed in 1995. *(Repealed).***
9. **The prevention of Illicit Traffic in the Narcotic Drugs and also the Psychotropic Substances Act (PITNDPSA), 1988.**
10. **Prevention of Terrorism Act (POTA), 2002. (Repealed in 2004).**

Right against exploitation article 23- 24

- **Article 23 and 24** deals with right against exploitation
- **Article 23** deals with prohibition of traffic in human beings and forced labour
- **Article 24** deals with prohibition of employment of children and factories etc.

Prohibition of traffic in human beings and forced labour [Article 23]

- **Article 23 (1)** provides that traffic in human beings and beggars and other forms of force deliver are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- **Article 23 (2)** provides that state can impose compulsory service for public purposes.
- Traffic in human beings means selling and buying human beings as goods for Immoral or other purposes. Beggar means in voluntary work without payment.
- Right under article 23 is available not only against the state but also against private individuals.
- In **People's Union for Democratic Rights vs. Union of India 1982** Supreme Court held that a person who provides labour or service to another for less than minimum wage also amounts to forced labour.
- **Deena vs Union Of India 1983** Supreme Court held that labour taken from prisoners without paying proper enumeration is violative of article 23.

Prohibition of Employment of Children in Factories Etc Article 24

- **Article 24** provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. [(read with art. 39(f)]
- **Employment of children act, 1934 –** a child means a person less than 12 years of age.

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- The **Child Labour (Prohibition and Regulation) Act 1986** was enacted to prohibit children from engagement in certain hazardous conditions. It contains a list of occupations such as *bidi* making, manufacturing of match boxes, explosives and fireworks, etc. where employment of children is prohibited.

- The law was further amended in 2016 to increase its scope. It now prohibits the employment of a child in the age group of 14-18 years in hazardous jobs. However, it allows a child upto 14 years of age to work in family enterprises. Further, it allows a child in the age group of 14-18 years to work non-hazardous jobs

- Child Labour (Prohibition and Regulation) Act 1986 [A Changing Provision]

a) Hazardous

b) Non hazardous (2012 amendment)

c) Right to education (2016 amendment)

d) Entertainment industry

- **The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986**-

  Sec.3- Prohibition of employment of children in any occupation and process.— (1) No child shall be employed or permitted to work in any occupation or process. (2) Nothing in sub-section (1) shall apply where the child, — (a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations; (b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed: Provided that no such work under this clause shall effect the school education of the child.

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sec 14— Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.

- In **People's Union for Democratic Rights Vs Union of India 1982** Supreme Court held that the construction work is a dangerous work and Employment of children in construction industry amounts to violation of article 24.
- In **MC Mehta Vs Union of India 1997** Supreme Court held that children below the age of 14 years cannot be employed in any hazardous industry, or other works. The court laid down guidelines to protect economic, Social and humanitarian rights of children.(shivakashi firecracker)

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Right to Freedom of Religion Article 25- 28

- **Article 25- 28** deals with the right to freedom of religion.
- Provides for freedom of conscience and free profession, practice and propagation of religion.
- **Article 26** provides for freedom to manage religious affairs.
- **Article 27** provides freedom as to payment of taxes for promotion of any particular religion.
- **Article 28** provides for freedom as to attendance at religious instruction or religious worship in certain educational institutions.

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Freedom of conscience and free profession, practice and propagation of religion article 25

- **Article 25 (1)** provide that all persons are equally and title to freedom of concise and the right really to Profess, practice and propagate religion.
- **Freedom of Conscience**: it is enough freedom of an individual to mould his relationship with God in whatever manner he likes.
- **Freedom to Profess**: religion means to declare openly and freely one's and belief.
- **Freedom to Propagate** religion means to spread and publisher is the religious views.

- The right is subject to following restrictions
  1. **Public order**
  2. **Morality**
  3. **Health**
  4. **Other provisions of part 3**

- India is a secular state and it is expressly provided in the Preamble. Secular state treats all religions alike.
- In **S R Bommai Vs Union of India 1994** Supreme Court held that secularism is the basic feature of constitution. Indian constitution embodies a positive concept of secularism. In matters of religion, the state is neutral and treats every religion equally.
- In **Aruna Roy Vs Union of India Supreme Court** held that study of religion in school is not against secular philosophy of constitution. Secularism is susceptible to positive meaning that is developing understanding and respect towards different religions

- **The Commissioner, Hindu Religious Endowments, Madras vs.Shri Lakshmindar TirthaSwamiyar of Shri Shirur Mutt" case or, theShirur Mutt case.1954**
- A 7-Judge Bench of the Supreme Court held that what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. The court held that "religion" in Article 25 covers all rituals and practices that are "integral" or "essential" to a religion, but the litigants have to prove these essential feature

- In **Ismail Faruqui versus Union of India 1994** Supreme Court held that offer of prayer for worship is religious practice but offering at every location where such there can be offered would not be an essential religious practice.
- **Church Of God (Full Gospel) Of India versus KKRMC Welfare Association 2000** Supreme Court held that no person can be allowed to create noise pollution or disturb the peace of other while exercising religious freedom. Religious prayers through loudspeakers are not an essential element of any religion.
- **Article 25(2)** provides that the state can make law for regulating or restricting Economic, financial, Political or other secular activities associated with religious

practice and also for social welfare and Reform for throwing open of Hindu religious institution of public character to all classes and sections of Hindus.

- **Indian Young Lawyer Association & Ors. Vs. State of Kerala & Ors. 2018**
- On 28th September 2018, the court delivered its verdict in this case by 4:1 majority which held that the practice violated the fundamental rights to equality, liberty and freedom of religion, Article 14, 15, 19(1), 21 and 25(1). It struck down Rule 3(b) of the Kerala Hindu Places of Public Worship Act as unconstitutional. Rule 3(b) allowed for Hindu denominations to exclude women from public places of worship, if the exclusion was based on custom.
- The apex court has allowed entry of women of all age groups to the Sabarimala Temple, and held that "Devotion cannot be subjected to Gender Discrimination"

- Kantaru Rajeevaru Vs. Indian Young Lawyers Association [review petion case]

Freedom to Manage Religious Affairs Article 26

- **Article 26** provides that subject to public order morality and health every religious denomination or any section there of shall have the right.

1. To establish and maintain Institutions for religious and charitable purposes.
2. To manage its own affairs in matters of religion.
3. To own and acquire movable and immovable property.
4. To administer such property in accordance with law.

- In **SP Mittal versus Union of India 1983** Supreme Court held that religious denominations must satisfy the following requirements.
- It must be a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well-being.
- It must have a common organization.
- It must be designated by distinctive name.

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Freedom as To Payment of Taxes for Promotion of Any Particular Religion Article 27

Article 27 provides that no person shall be compelled to pay taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denominations.

Freedom as To Attendance at Religious Instruction or Religious Worship in Certain Educational Institutions Article 28

Article 28 (1) provides that no religious instruction shall be provided in any educational institution wholly maintained out of the state fund.

Article 28 (2) provides that clause (1) shall not apply to any educational institution which is administered by State but it has been established by any endowment or trust which requires that religious instruction shall be imparted in such institutions.

Article 28 (3) provides that no person shall be required to take part in any religious instruction in any e educational institution recognized by state or receiving aid out of state fund unless such person or his guardian has given his consent

Rostrum Legal

Cultural and Educational Rights Article 29- 30

- **Article 29 – Protection of Interests of Minorities**

- **Article 29(1):** This provides all citizen groups that reside in India having a distinct culture, language, and script, the right to conserve their culture and language. This right is absolute and there are no 'reasonable restrictions' in the interest of the general public here.
- **Article 29(2):** The State shall not deny admission into educational institutes maintained by it or those that receive aids from it to any person based on race, religion, caste, language, etc. This right is given to individuals and not any community.

- In terms of religious minority communities, Section 2(c) of **The Minorities Act 1992** recognizes 5 religions as minority communities namely Muslims, Sikhs, Christians, Buddhists, and Zoroastrians (NCMA).

- **In Re Kerala education bill** where the supreme court held that minority means a community which is numerically less than 50% of total population. But the question arose that whether the total population is the population of the state or the population of the whole country; this was resorted to in **TMA Pai Foundation case.** The supreme court confirmed the position that minority status of a community is to be decided with reference to the state population

- Provides that no citizen shall be denied admission in any educational institution maintained by state or receiving aid out of the state funds on Grounds only of religion, race, caste, language or any of them.

- **Article 30 – Right of Minorities to Establish and Administer Educational Institutions**

- **30. Right of minorities to establish and administer educational institutions**
- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice
- (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause
- (2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language..

- This right is given to minorities to form and govern their own educational institutions. Article 30 is also called the **"Charter of Education Rights"**.

- **Article 30 (1)** provides that all minorities, whether based on religion or language shall have the right to establish and **administer educational institutions of their choice.**

- **Article 30 (2)** provides that state shall not discriminate educational institutions on Grounds of minority in granting it to them.

- **In Frank Anthony Public School Employees Association Vs Union of India 1987 Supreme** Court held that idea of giving special rights to minorities is to give them a sense of security and feeling of confidence.

Relationship between Article 29 (1) And 30 (1)

- **St Xaviers College Vs State Of Gujarat 1974** Supreme Court held that
  a) Article 29 (1) confers right on any section of citizens, including minorities while article 30(1) confirm write only on religious or linguistic minorities.

b) Article 29 (1) is concerned with language, Script and culture while article 31 deals with minorities based on language and religion.
c) Article 29 (1) deal with right to conserve language while article 30(1) deals with right to administer educational institutions.

- Right to administer educational institution consists of following four matters:

1. Right to choose managing for governing body
2. Right to choose teachers
3. Right to admit students of their choice subject to reasonable regulations as to academic qualifications
4. Right to use the properties and assets for benefit of Institution Saint Xavier College Vs State Of Gujarat 1974

- In **Frank Anthony Public School Employees Association Vs Union of India** and 1987 it was held that regulatory measures aimed at making minority institution effective instruments for imparting education, without nullifying management right are permissible.

- In **T M A Pai Foundation Vs State Of Karnataka 2002** Supreme Court laid down the following

1. State is to be regarded as a unit for determining linguistic as well as religious minority
2. Institutes which receive aid from state could be subject to government rules and regulations.
3. In respect of an aided institution only regulation which the government may put is regarding the qualifications and minimum conditions of eligibility of teachers and principal.
4. Conditions of recognition and affiliation by or to a board or university are to be complied with.
5. An aided institution has to admit a reasonable number of non minority students.
6. Minority Institutions may have its own procedure and method of admission but the procedure must be fair and transparent.

Rostrum Legal

- In **Islamic Academy Of Education Vs State Of Karnataka 2003** Supreme Court held that educational institutions can have their own fee structure but there must be no profiteering and caption fee cannot be charged.

- In **P A Inamdar vs. State of Maharashtra**- The supreme court held that the policy of reservation to admit students is not applicable to a minority Institution and the policy of reservation and terms of employment is not applicable to a minority institution
- **SP Mittal versus Union of India**- the Supreme Court stated that the benefit of article 30 can only be demanded by religious or linguistic minority community and their organization; the Auroville community in this case was not held to be a religious or linguistic minority.
- **National Commission for Minority Educational Institution (NCMEI):** It was established on 11th November 2004 which later got replaced by the new act passed on December 2004. Its main function is to provide protection to an interest of minorities in terms of minority educational institution.
- Functions: Giving advice to state government and central government on any query related to the education of minorities.
    i. Interfering in any proceeding related to deprivation or violation of the educational right of the minorities before the court.
    ii. Measures to protect the minority status and character of the institution. Take decision for all questions concerning the status of any minority educational institution.
    iii. It recommends to the government to implement schemes for the minority educational institution.

Restrium Legal

Right to constitutional remedies [article 32]

Article 32 under Part III of the Indian Constitution allows all the citizens to move to the Supreme Court in case of violation of Fundamental Rights.

During the Constituent Assembly debates in December 1948, a discussion on this fundamental right (in the draft, it is referred to as Article 25), Dr B R Ambedkar had said, "If I was asked to name any particular Article in this Constitution as the most important — an Article without which this Constitution would be a nullity — I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it..." He said the rights invested with the Supreme Court through this Article could not be taken away unless the Constitution itself is amended and hence it was "one of the greatest safeguards that can be provided for the safety and security of the individual".

Article 32 of the Indian Constitution

32. Remedies for enforcement of rights conferred by this Part

(1) The right to **move the Supreme Court by appropriate proceedings** for the enforcement of the rights conferred by this Part is guaranteed.

(2) The **Supreme Court shall have the power to issue directions or orders or writs,** including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto and certiorari,* whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), **Parliament may by law empower any other court to exercise within the local limits of its jurisdiction** all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The **right guaranteed by this Article shall not be suspended** except as otherwise provided for by this Constitution.

- **Article 32 (1)** provides the **right to move the supreme court** by for enforcement of rights conferred by part III of the constitution.
- **Article 32(2)** to empower the **Supreme Court to issue directions**, orders or red including the red of *Habeas Corpus, mandamus, prohibition, quo warranto and certiorari* for enforcement of rights conferred by part 3 of constitution.
- **Article 32(3)** provide that Parliament may by law empower any other Court to exercise the rights exercisable by supreme court under article 32(2)
- **Article 32 (4)** provides that the rights guaranteed by this article **shall not be suspended except otherwise provided in the constitution.**

Significance of Article 32:

1- Article 32 makes the **Apex Court both the guarantor and defender of Fundamental Rights.**

2- It entitles the Indian citizens to **move to the Supreme Court for the remedy against the breach of Fundamental Rights.**

Writs

Under **Article 32 of the Indian Constitution, Supreme Court has the power to issue directions, orders or writs for the enforcement of the Fundamental Rights** while under Article 226 **of the Indian Constitution, the High Courts have the power to issue directions, orders or writs for the enforcement of the Constitutional Rights.** An Indian citizen can seek justice through **five prerogative writs** as provided by the Indian Constitution under Article 32 and Article 226. These are as follows:

1- ***Habeas Corpus***
2- ***Certiorari***
3- ***Mandamus***
4- ***Quo-Warranto***

5- Prohibition

Habeas Corpus:

- It is a Latin term which means '*you may have the body'/ 'let us have the body'.*
- This writ protects an individual from **unlawful detention.**
- The writ is issued in the form of an order calling upon the person by whom another person is detained to bring that person before the court and to let the court know by what authority he has detained that person.
- The court then **examines the grounds on which the individual has been detained.**
- If the detention has no legal justification, **the detained person is set free.**
- The writ can be issued against public authority and also against individuals.
- It is to be noted that the **writ cannot be issued in the cases where**

a) the detention is lawful
b) the proceeding is for contempt of a legislature or a court
c) an individual is detained by a competent court, and
d) The detention falls outside the jurisdiction of a particular High Court.

- An individual can seek **compensation from the state against the arbitrary detention.**
- The petition under this writ can be **filed by the detainee, prisoner or by any person on behalf of the detainee/prisoner.**
- The writ of Habeas Corpus **cannot be suspended even during the emergency under Article 359.**

- **ADM Jabalpur v. Shivkant Shukla, (Habeas Corpus Case), AIR 1976**
- The judgment, in this case, was laid down by a 5-judge bench consisting of Justices Ray, Beg, Chandrachud, Bhagwati, and Khanna.
- The majority ruling was pronounced by four judges while Justice Khanna delivered a powerful dissent.

- The Court held – *Given the Presidential order dated 27 June 1975 no person has any locus standi to move any writ petition under Article 226 before a High Court for habeas corpus or any other writ or order or direction to challenge the legality of an order of detention on the ground that the order is not under or in compliance with the Act or is illegal or is vitiated by mala-fides factual or legal or is based on extraneous consideration.*
- The Court also upheld the constitutional validity of Section 16A (9) of MISA.

- Justice H.R. Khanna in his dissent stated that invoking Article 359(1) does not take away the right of an individual to approach the Court for the implementation of statutory rights.
- He added that Article 21 is not the sole repository of life and personal liberty.
- He further stated that during the proclamation of emergency, Article 21 only loses the procedural power but the substantive power of this article is very fundamental and the State does not have the power to deprive any person of life and liberty without the authority of law.
- There was so much political pressure during that particular hearing that this dissent cost Justice Khanna his chance of becoming the Chief Justice as he was the second in line to the Chair of CJI at that time.
- Even Justice Bhagwati expressed his regret later for siding with the majority by saying that he was wrong not to uphold the cause of individual liberty.

- **Rudul Sah v. State of Bihar, (1983) -**The petitioner who was detained in prison for over 14 years after his acquittal filed a habeas corpus petition under Article 32 of the Constitution praying for his release on the ground that his detention in the jail was unlawful. He also asked for certain other reliefs including compensation for his illegal detention. When the petition came up for hearing the Court was informed by the respondent State that the petitioner had already been released from the jail. Allowing the petition, the court held that the petitioner's detention in the prison after his acquittal was wholly unjustified

- In **Sunil Batra Vs Delhi Administration**, AIR 1980 SC 1579, a convict had written a letter to one of the Judges of the Supreme Court alleging inhuman torture to a fellow convict. The late justice Krishna Iyer treated this letter as a petition of habeas corpus and passed appropriate orders. Courts can also act suo motu in the interests of justice on any information received by it from any source. The general principle is that a person illegally detained in confinement without legal proceedings is entitled to seek the remedy of habeas corpus.

- **Kanu Sanyal v. District Magistrate** the court may examine the legality of the detention without requiring the person detained to be produced before it
- **Sheela Barse v. State of Maharashtra** if the detained person is unable to pray for the writ of habeas corpus, someone else may pray for such writ on his behalf.
- **Nilabati Behera v. State of Orissa** The petitioner was awarded compensation of Rs.1,50,000.

Mandamus:

- It means *'we command'*.
- It is an order **issued by superior court commanding a lower court or public authority to perform his official duties correctly.**
- The writ of Mandamus **can be issued against any public body, a corporation, an inferior court, a tribunal or government itself.**
- It is an important writ to check arbitrariness of an administrative action. It is also called 'Writ of Justice'
- It **cannot be issued against** a private individual/ body and to enforce contractual obligation/departmental instruction that do not possess statutory force.
- This writ cannot be issued against the **President of India or the State Governors; Chief Justice of a High Court acting in a judicial capacity.**
- This writ **can also be issued by the High Courts for violation of ordinary rights.**
- This **writ is a discretionary remedy and the Courts may refuse to grant it where some alternate remedy is available.**

Prohibition:

- It means**:** *'to forbid' or 'Stay order'.*
- It is **issued by a higher court to a lower court to enforce inactivity in the jurisdiction** (in case of excess or absence of jurisdiction).

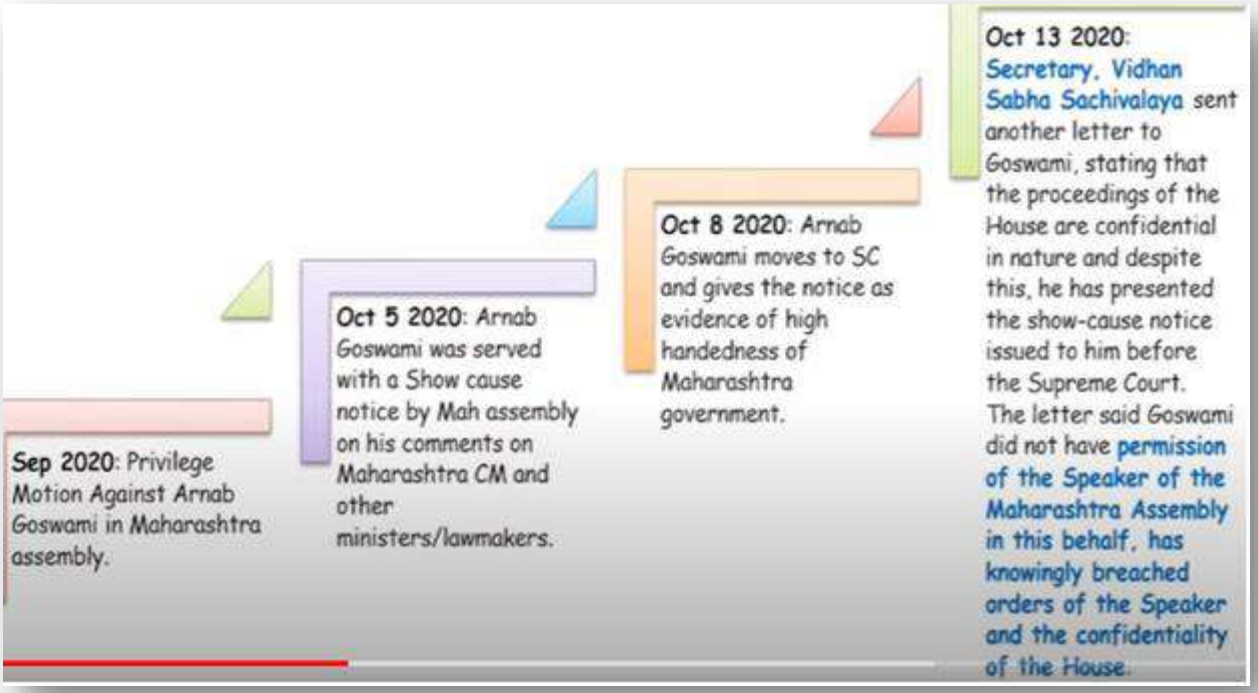
- It is a writ issued by superior Court to Lower court or Tribunal forwarding it to perform an act which **is outside its jurisdiction**
- It can **only be issued against judicial and quasi-judicial authorities.**
- It is **preventive writ in nature.**
- It is **not available against administrative authorities, legislative bodies, and private individuals or bodies**

Certiorari:

- It means *'to be certified' or 'to be informed'.*
- It is **issued by the Supreme Court and High Courts to a lower court, tribunal or Quasi-judicial body** usually to **quash the judgment of the latter.**
- It can be **issued under the following grounds** (a) to correct errors of the jurisdiction (excess or lack of jurisdiction) (b) in case of error of law.
- It can also be **issued against administrative authorities in case the rights of individuals get affected.**
- This writ is **unavailable against the equal or higher court** and is only available **against the lower courts.**

Quo-Warranto:

- **It means** *'by what authority or warrant' or 'by what warrants'.*
- It is **issued by the court against the person who usurps a public office.**
- It **enquires the legality of usurpation of public office by a person.**
- It is a writ issued with a view to restrain a person from acting in a public office to which he is not entitled to. The writ of quo warranto is used to prevent illegal assumption of any-office for or usurpation of any public office by anyone.
- The **grounds on which this writ is issued** (a) public office created by a statute or by the Constitution of India (b) person to be appointed by a statute.
- The writ **cannot be issued against a ministerial office or private office.**



- The Supreme Court issued notice to the Maharashtra Legislative Assembly Secretary asking him to explain why contempt proceedings not be initiated against him for threatening Republic TV Editor-in-Chief Arnab Goswami for moving the court.
- "Can any authority in the country penalize someone for approaching this court? This is in the teeth of Article 32. How dare this officer write something like this in his letter?" a Bench headed by Chief Justice SA Bobde said pulling up the Maharashtra Assembly Secretary.
- "We have a serious question on the author of this letter and we find it extremely difficult to overlook this," the CJI said.
- The top court ordered the Assembly Secretary to remain present before it on the next date.
- It also appointed senior advocate Arvind Datar as amicus curiae and posted the matter for further hearing after two weeks.
- The court told senior advocate AM Singhvi, representing the Maharashtra government, to look into the conduct of the officer concerned.
- The CJI's outburst came after senior advocate Harish Salve, representing Goswami, told the Bench that the Maharashtra Legislative Assembly Secretary

wrote a letter to Goswami on October 13 questioning the Republic TV Editor-in-Chief for "breaching" confidentiality of privilege proceedings by moving the top court.

- The Bench also granted protection from arrest to Goswami in this case as Salve urged the court to protect him from any coercive action by the Privileges Committee of the Assembly.
- Pointing out that "cases after cases" were being filed against Goswami, Salve said, "Constitutional courts have to see the reality, not the smokescreen."
- The Assembly Secretary, who had already been served with a notice on Arnab's petition, hasn't made an appearance so far in the court.
- Instead, he wrote a letter to Goswami threatening him for approaching the court.
- Noting that the letter written by the Secretary of the Assembly was unprecedented and had a tendency to bring the administration of justice to disrepute, the Bench said it also amounted to interference with the administration of justice.
- "The intention of the author (Assembly Secretary) seems to intimidate the petitioner (Goswami) because he approached this court and threaten him with a penalty for doing so," the top court said.
- **In its order, the court said the Assembly Secretary must know that the right to approach the Supreme Court under Article 32 itself was a fundamental right.**
- **"There is no doubt that if a citizen is deterred from exercising his right under Article 32, it will amount to serious interference with the administration of justice," the top court said.**
- The Supreme Court had on September 30 issued notice to the Maharashtra Assembly Secretary on Goswami's petition challenging a notice breach of privilege issued to him for his alleged remarks against Chief Minister Uddhav Thackeray in Sushant Singh Rajput death case.

These contrasting observations made in the same week by the CJI led many to wonder whether the fundamental right of Article 32 was being reduced to a selective remedy under the law for a favored few. Arnab Goswami was arrested in early November in a 2018 abetment to suicide case of an architect.

On November 6, Justice Bobde, while issuing a contempt notice to the Secretary of the Maharashtra Legislative Assembly for sending a letter to Arnab Goswami, allegedly

intimidating him for approaching the court against the privilege notice issued by the Assembly, said: *"No authority in the country can penalise somebody for coming to the court. What is Article 32 for? How dare this officer say all this. This is in the teeth of Article 32. ART 32 itself is a fundamental right. I have never seen an attitude like this."*

Limitations to Article 32

- There are certain circumstances during which the citizens do not get the privileges which they ought to under Article 32. Therefore, the situations when the fundamental rights may be denied to the citizens but the constitutional remedies will not be available i.e. Article 32 will not be applicable are:

    - Under Article 33, the Parliament is empowered to make changes in the application of Fundamental Rights to armed forces and the police are empowered with the duty to ensure proper discharge of their duties.
    - During the operation of Martial law in any area, any person may be indemnified by the Parliament, if such person is in service of the state or central government for the acts of maintenance or restoration of law and order under Article 34.
    - Under Article 352 of the Constitution when an emergency is proclaimed, the guaranteed Fundamental Rights of the citizens remains suspended. Also, Fundamental Rights guaranteed under Article 19 is restricted by the Parliament under Article 358 during the pendency of an emergency.
    - Article 359 confers the power to the President to suspend Article 32 of the Constitution. The order is to be submitted to the Parliament and the Parliament may disapprove President's order.

Article 226 of the Indian Constitution

Concurrent jurisdiction of high courts: article **226** enables the high court to issue writs for enforcement of fundamental rights or any other legal rights.

226. Power of High Courts to issue certain writs

(1) **Notwithstanding anything in Article 32** every **High Court shall have powers,** throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.] sub by 44th CA 1978

(2) The power conferred by clause (1) to issue **directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction** in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) **Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1)**, without

(a) Furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of **two weeks** from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period,

before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated

(4) The **power conferred on a High Court by this Article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.**

Difference between Article 32 and Article 226:

S.No.	Article 32	Article 226
1.	It includes Fundamental Rights.	It includes Constitutional Rights.
2.	The rights of an individual can be suspended during the emergency.	The rights of an individual cannot be suspended during the emergency.
3.	It has a limited scope and is only applicable in case of violation of fundamental rights.	It has a wider scope and is applicable in case of violation of fundamental as well as legal rights
4.	It has jurisdiction all over India and empowers Supreme Court to issue writs pan India.	It has jurisdiction in the concerned State only and empowers High Courts to issue writs only in their own local jurisdiction.
5.	The rights under Article 32 cannot be refused by the Supreme Court.	The rights under Article 226 are under the discretion of the High Courts.

Article 32 of the Indian Constitution is known as **'the heart and soul of the Constitution**' and provides the *Fundamental Rights of an Indian citizen* while Article 226 of the Indian Constitution gives **discretionary power to the High Courts** and provides the *Constitutional Rights of an Indian citizen*.

Thus, it can be said that *Articles 32 and 226 are slightly different in terms of powers* but both of them ensures that the **rights of the Indian citizens are protected and provisions of the Constitution of India are upheld.**

Cases

- ***Daryao versus state of UP 1961*** when the matter has been heard and decided by high court under article 226 the writ under article 32 is barred by the principle of res judicata.
- ***L Chandra Kumar vs. Union of India 1997*** the jurisdiction of high court under article 226 and supreme court under article 32 is inviolable basic structure of the constitution.

PART IV A

DIRECTIVE PRINCIPLES OF STATE POLICIES

ARTICLE 36 DEFINES 'STATE'-

36. **Definition:** In this Part, unless the context otherwise requires, the State has the same meaning as in Part III

- It says "the State" has the same meaning as in **Part III.**
- Therefore, the same definition as **Article 12** will apply, which means State includes:
  1. Executive and Legislature of Union and State
  2. All local or other authorities within the territory of India or which are under the control of the Government of India

Classification of DPSP

- **Socialistic Principles,**

These Principles aim at providing social and economic justice and set the path towards the welfare state. **(Article 38, 39, 39A, 41, 42, 43, 43A, 47)**

- **Gandhian Principles.**

Principles are based on Gandhian ideology **(Article 40, 43, 43B, 46, 47, 48,)**

- **Liberal-Intellectual Principles.**

These principles reflect the ideology of liberalism. **(Articles 44, 45, 48, 49, 50, 51)**

- **Social and Economic Charter (Article 38,39)**
- **Social Security Charter (Article 40,41,42,43,43-A,45,46,47)**
- **Community Welfare Charter (Article 44,48,48A,49,50,51)**

ARTICLE 37- APPLICATION OF PRINCIPLES CONTAINED

37. Application of the principles contained in this Part: - The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

- Provides that the directive principles shall not be enforceable by any court,
- But these principles are fundamental in governance of the country and
- It shall be the duty of the state to apply these principles in making laws.
- Note: - Hence this article imposes duty on the organs of the Government to apply these principles in making laws. It is the duty of the Judiciary to interpret the law in the light of these directive principles.

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ARTICLE 38- SOCIAL ORDER FOR WELFARE

38. State to secure a social order for the promotion of welfare of the people

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations

State should secure social to promote welfare of people and strive to minimize inequalities in income and in status, facilities and opportunities.

(Article 38 was renamed as Article 38 (1) by 44th amendment and Article 38(2) was added)

ARTICLE 39 – CERTAIN PRINCIPLES OF POLCIY TO BE FOLLOWED BY STATE

39. Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment

a. Right to adequate means of livelihood for all citizens
b. Equitable distribution of material resources of the community for the common good
c. Prevention of concentration of wealth and means of production
d. Equal pay for equal work for men and women (E.g.: Equal Remuneration Act 1976)
e. Preservation of the health and strength of workers and children against forcible abuse

f. Opportunities for the healthy development of children (clause (f) added by 42nd amendment 1976)

- In **Randhir Singh vs. Union of India 1982** Supreme Court held that directive principle of equal pay for equal work is not a fundamental right but since it is a constitutional goal it can be enforced through art. 32.

ARTICLE 39A- EQUAL JUSTICE AND FREE LEGAL AID

39A: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

- State shall secure that operation of legal system promotes justice on a basis of equal opportunity
- State shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities
- (Article 39A was inserted by the 42nd Amendment Act 1976)
- Implementation: Legal Services Authorities Act 1987 (NALSA/DALSA)

ARRICLE 40- PANCHAYAT SYSTEM

- States to take steps to Organize village panchayats
- Endow them with powers and authority
- Endow them to function as unit of self-government
- Implementation: 73rd Amendment Act 1992. (Added a new part IX (The Panchayat's) consisting of 16 Articles and the Eleventh Schedule to the Constitution.)

Article 41- RIGHT TO WORK, EDUCATION AND PUBLIC ASSISTANCE.

Right to work, to education and to public assistance in certain cases: - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want

- State shall within its economic capacity and development make effective provision for securing
- Right to work
- Right to education
- Right to public assistance
- In case of unemployment, old age, sickness, disablement, and undeserved want

Article 42- JUST AND HUMANE CONDITIONS OF WORK AND MATERNITY RELIEF

- State shall make provision for securing just and humane conditions of work and for maternity relief
- Implementation: Maternity Benefit Act 1961.

Article 43- PROTECTION OF WORKERS

43. Living wage, etc, for workers:- The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co operative basis in rural areas.

- State shall endeavor to secure to all workers agricultural, industrial or otherwise
- Provide A living wage
- Provide A decent standard of life
- Provide Full enjoyment of leisure and social and cultural opportunities

- Implementation: Amendments to Minimum Wages Act 1948 Payment of Bonus Act 1965
- State shall endeavor to promote cottage industries on an individual or co-operative basis in rural areas
- Implementation: Khadi and Village Industries Commission Act 1956

Article 43A- PARTICIPATION OF WORKERS

43A participation of workers in management of industries: - the state shall take steps, by suitable legislation or in any other way to secure the participation of workers in the management of undertaking establishments or other organisations engaged in any industry.

- State shall take steps to secure participation of workers in management of undertakings, establishments engaged in industry
- (Inserted by the 42nd Amendment Act 1976)

Article 43B- CO-OPERATIVE SOCIETIES

43BPromotion of cooperative societies:- The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

- State shall endeavor to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
- **(Inserted by the 97th Amendment Act 2012)**

Article 44- UNIFORM CIVIL CODE

- 44 uniform civil code for the citizens:-Sate shall endeavor to secure for citizens a uniform civil code throughout the territory of India

Article 45- EDUCATION AND CARE TILL 6 YEARS AGE

45. Provision for free and compulsory education for children:- The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years

- State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.
- (Article 45 was amended by **the 86th Amendment Act, 2002**, Before amendment it talked about free and compulsory education to all children until they complete 14 years of age, 86th amendment made that Fundamental Right by adding 21A)

Article 46- PROTECTION OF WEAKER SECTIONS

46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections: - The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation

- State shall promote with special care educational and economic interests of weaker section in particular, of SCs and STs State shall protect them from social injustice and exploitation
- Implementation: 65th Amendment Act 1990- National Commission for SCs and ST's (NCSCST)

- 89th Amendment Act 2003- Bifurcated the commission into two separate commissions, one for SC's (NCSC)and ST's (NCST) each
- SCs and STs (Prevention of Atrocities) Act 1989

Article 47- NUTRITION, PUBLIC HEALTH, STANDARD OF LIVING AND PROHIBITION

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health:- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

- State shall make its primary duty in
  - ✓ Raising of level of nutrition
  - ✓ Raising of standard of living of people improvement of public health
- State shall endeavor to
  - ✓ Bring about prohibition of consumption except for medicinal purpose of intoxicating drinks and drugs injurious to health.

Article 48- PROTECTION FROM COW SLAUGHTER AND SCIENTIFIC AGRUICULTURE

48. Organisation of agriculture and animal husbandry:- The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

- State shall endeavor

- ✓ To organize agriculture and animal husbandry on modern and scientific lines
- State shall take steps for
- ✓ Preserving and improving the breeds and prohibiting slaughter of cows and calves and other milch and draught cattle

Article 48A- PROCTECTION OF ENVIRONMENT AND WILD LIFE

48A. Protection and improvement of environment and safeguarding of forests and wild life: - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

- State shall endeavor: To protect and improve environment and to safeguard forests and wild life
- (Inserted by the 42nd Amendment Act 1976)
- Implementation:
- Wildlife (Protection) Act 1972
- Forest (Conservation) Act 1980
- Environment (Protection) Act 1986
- Water (Prevention and Control of Pollution) Act 1974
- Air (Prevention and Control of Pollution) Act 1981

Article 49- PROTECTION OF HISTORICAL SITES

49. Protection of monuments and places and objects of national importance: - It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by

Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

- It shall be the obligation of State
- To protect every monument or place or object of artistic or historic interest declared by Parliament to be of national importance
- From spoliation, disfigurement, destruction, removal or export
- Implementation: Ancient and Historical Monuments and Archaeological Sites and Remains Act 1951

Article 50- SEPARATION OF JUDICIARY

Separation of judiciary from executive The State shall take steps to separate the judiciary from the executive in the public services of the State.

- State shall take steps
- To separate judiciary from executive in public services of State
- Implementation: Criminal Procedure Code 1973- Judicial powers haven been taken away from executive authorities like Collector, Tehsildar

Article 51- INTERNATIONAL RELATIONS

Promotion of international peace and security The State shall endeavour to
(a) promote international peace and security;
(b) maintain just and honorable relations between nations;
(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration.

State shall endeavor

To promote international peace and security

To maintain just and honourable relations between nations

To foster respect for international law and treaty obligations

To encourage settlement of international disputes by arbitration

RELATIONSHIP BETWEEN DPSP AND FUNDAMENTAL RIGHTS

ChampakamDorairajanCase(1951)

- Conflict was between Article 15, Article 29(2) (of Fundamental Rights) and Article 46 (of DPSP), issue was reservation, there should be equality according to F.R but DPSP is asking to promote interests of weaker section.
- Supreme Court in its verdict said that in case of conflict between Fundamental Rights and Directive Principles, Fundamental Rights would always prevail.
- It also said that Directive principles have to work as a supplement with Fundamental rights & Parliament can't amend Fundamental Rights.
- 1st Amendment (1951)
- As a Response to Champakam case, Parliament added Article 15(4) which created a way to provide reservation as special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

In Re: Kerela Education Bill (1958)

- **Doctrine of Harmonious Construction**
- Supreme Court in the Re Kerala Education Bill (1957) had propounded the **Doctrine of Harmonious Construction** to avoid a situation of conflict while enforcing DPSPs and the Fundamental Rights. As per this doctrine, the court held that there is no inherent conflict between FRs and DPSPs and the courts while interpreting a law should attempt to give effect to both as far as possible i. e. should try to harmonize the two as far as possible.
- The court further said that where two interpretation of the law is possible, and one interpretation validates the law while other interpretation makes the law

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unconstitutional and void, then the first interpretation which validates the law should be adopted. But if only one interpretation is possible which leads to conflict between DPSPs and FRs, the court has no option but to implement FRs in preference to DPSPs.

- Similar Observation was made in **State of Kerela v. N.M Thomas (1975)** and Dalmia Cement v. Uol (2017)

Golaknath Case (1967)

- Supreme Court held that Parliament cannot amend Fundamental Right to give effect to the Directive Principles.
- **24th Amendment (1971)-** This amendment was done in reaction to Golaknath Case judgment and to nullify the effect of the same.
- Added Art. 13(4) and Art. 368(3), meaning parliament can amend any part of Constitution
- **25th Amendment (1972)-**It was also done in reaction Golaknath Case judgment. It inserted a new Article 31- C which contained the following two provisions:
  1. No law which gives effect to the directive principles can be declared invalid and unconstitutional on the grounds that it is violating fundamental rights namely Article 14 (equality before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc) & Article 31 (rights to property).
  2. No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.
- (Note: Right to Property was a fundamental right at this time.)

KESHAVNANDA BHARTI CASE (1973)

- Supreme Court in its verdict held that the second provision mentioned in the Article 31-C is invalid & unconstitutional as it is taking away the power of court

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for judicial review. However, first provision of Article 31-C was held valid & Constitutional.

- 42nd Amendment (1976)
- DPSP were given precedence over fundamental rights and any law made to this effect by parliament was kept beyond scope of judicial by court.
- MINERVA MILLS CASE (1980)
- Supreme Court in its decision declared that Directive Principles are subordinate to Fundamental Rights. But position of Fundamental Rights under Article 14 & Article was made subordinate to Directive Principles. Supreme Court also said that Constitution demands to maintain balance between the Fundamental Rights & Directive principles. To give absolute primacy to one over the other is to disturb the harmony of the Constitution.
- (Note: Right to property (Article 31) was abolished as a fundamental right by 44th Amendment Act (1978))

PRESENT POSITION

This means that DPSP 39B and 39C has been given precedence over Fundamental Right 14 (Right to Equality) and Fundamental Right 19 (Freedom of Speech and Expression).

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Article Number	Content
Article 36	Defines State as same as Article 12 unless the context otherwise defines.
Article 37	Application of the Principles contained in this part.
Article 38	It authorizes the state to secure a social order for the promotion of

	the welfare of people.
Article 39	Certain principles of policies to be followed by the state.
Article 39A	Equal justice and free legal aid.
Article 40	Organization of village Panchayats.
Article 41	Right to work, to education and to public assistance in certain cases.
Article 42	Provision for just and humane conditions of work and maternity leaves.
Article 43	Living wage etc. for workers.
Article 43-A	Participation of workers in management of industries.
Article 43-B	Promotion of cooperative societies.
Article 44	Uniform civil code for the citizens.
Article 45	Provision for early childhood care and education to children below the age of six years.
Article 46	Promotion of education and economic interests of SC, ST, and other weaker sections.
Article 47	Duty of the state to raise the level of nutrition and the standard of living and to improve public health.

Article 48	**Organization of agriculture and animal husbandry.**
Article 48-A	**Protection and improvement of environment and safeguarding of forests and wildlife.**
Article 49	**Protection of monuments and places and objects of national importance.**
Article 50	**Separation of judiciary from the executive.**
Article 51	**Promotion of international peace and security.**

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FUNDAMENTAL DUTIES [Article 51A]

- **Part IV A** containing article 51A was added by the **42nd Constitutional Amendment Act 1976.**
- Originally it contained 10 fundamental duties. The 11th fundamental duty was added by the **86th Constitutional Amendment Act 2002**.
- The concept of fundamental duties was taken from **USSR**
- Duties were added on Recommendation of **Swaran Singh committee**.
- These duties are **non enforceable** but many of these duties are imposed through various legislations

51A. Fundamental duties: It shall be the duty of every citizen of India

(a) To abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem; **[Prevention of Insult to National Honours Act, 1971.]**

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

(c) To uphold and protect the sovereignty, unity and integrity of India; **[sec 153B IPC- activities that encourage enmity between groups are prohibited]**

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

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; **[SEC 153A IPC also SEC.295- 298 Offences related to religion and caste punishable]**

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

(g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; [EPA ACT, 1986]

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

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

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

(k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Fundamental duties case laws

In the case of Bijoe Emmanuel vs. State of Kerala 1987 which is popularly known as the **National Anthem Case**, on refusing to sing the National Anthem in the school, three children of the Jehovah's Witnesses were expelled from the school. There was a circular that was issued by the Director of Instructions, Kerala which made it compulsory for the school students to sing the National Anthem. These three children did not join the singing of the National Anthem but they stood up out of respect. They didn't sing the National Anthem because their religious faith didn't permit it and it was against their religious faith. They were expelled on the ground that they violated their fundamental duties and committed an offence under the **Prevention of Insult to National Honours Act, 1971.** The court reversed this decision of the High Court because they did not commit any offence and also they committed no crime under the Prevention of Insult to National Honours Act, 1971 as though they did not sing the National Anthem but they stood out of respect.

In **M.C.Mehta (2) vs. Union of India 1998,** the Supreme Court held that it is compulsory for all the educational institute to organize a teaching lesson of at least one hour a week on the protection and improvement of the natural environment and it is the duty of the Central Government under Article 51A (g) to introduce this in all the educational institute. The Central Government should also distribute books free of cost on the same subject in all the institutes and also raise consciousness amongst people towards clean environment. The government should organize 'keep the city clean' week at least once in a year.

In **Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh**, a complete ban and closing of mining operation carried on in Mussoorie hills was held to be sustainable by deriving support from the fundamental duty as enshrined in Article 51-A (g) of the Constitution. The court held that preservation of the environment and keeping the ecological balance unaffected in a task which not only government but also every citizen must undertake. It is a social obligation of the state as well as of the individuals

In the case of AIIMS Students Union vs, AIIMS 2002 the Supreme Court held that the fundamental duties are equally important like the fundamental rights. The court also said that just because they are duties they cannot be overlooked. They have the same importance which the fundamental rights hold.

In Aruna Roy vs. Union of India 2002, the court upheld the validity of the National Curriculum Framework for School Education which was challenged on the ground that it violated the Article 28 of the Indian Constitution and it was anti-secular because it provided for value development education relating to the basics of all religions. The court said that the NCFSF does not mention anything related to imparting religious instruction which is prohibited under Article 28 and education neither violate Article 28 nor the concept of secularism.

In order to make a right balance between Fundamental Rights and Duties the petitioner in the case of **Hon'ble Shri Rangnath Mishra vs. Union of India 2003** wrote a letter to the President so that he can give directions to the State in order to educate citizens in the matter related to fundamental duties. This letter was treated as a writ petition by the Court. But by the time this matter would be heard a report was submitted to the Government of India by the National Commission who was reviewing the Constitution at that time. Following suggestions were provided by the commission in the court:

1. In order to sensitise the people and to create general awareness regarding the fundamental duties, the State and the Union Government should take proper steps on the lines that were recommended by the Justice Verma Committee.

2. For generating awareness and consciousness of citizens related to fundamental duties, modes and manners needs to be adopted.

The court took into account the recommendations made by the National Commission and also directed the government to take necessary steps. The writ was disposed of.

In **Government of India vs. George Philip 2006**, the compulsory retirement was challenged by the respondent from the service. Two years of leave was granted to him by the department to pursue advanced research training. After the repeated reminders he overstayed in foreign, so, an inquiry was instituted against him and the charge was proved. The High Court provided him with a remedy to join the service again on one clause that no back wages would be provided but the Supreme Court had set aside this order. The Supreme Court said that according to Article 51A(j) one should always strive towards excellence in all spheres of life of an individual and also for the collective activity so that the nation constantly rises to a higher level of endeavour, achievements and excellence could not be achieved unless discipline is maintained by the employees. The court also said that no order should be passed by the courts which destroy the essence of Article 51A and the order passed by the High Court, in this case, was destroying the essence of the Article.

The court in the case **of Dr. Dasarathi vs. State of Andhra Pradesh 1984**, held that under Article 51(j) every citizen must abide by its duty to always strive towards excellence in all spheres of life and also for the collective activity so that the nation constantly rises to a higher level of endeavour and achievements. For this, the State can provide ways to achieve excellence according to the methods which are permitted by our Indian Constitution.

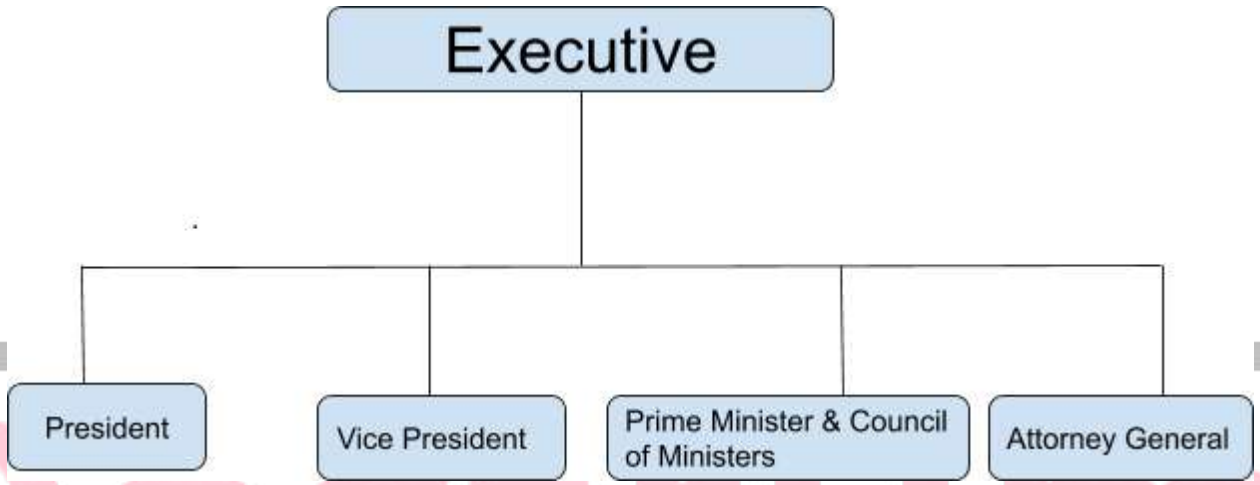
In the case of **Charu Khurana vs. Union of India** 2015 the Supreme Court held that the State should provide for opportunities rather than curtailing it. The court also said that the duty of the citizen have also been extended to the collective duty of the state.

- : In **Parmanand Katara vs Union of India 1989** Supreme Court held that all doctors (private or government) or employees are obliged to extend

medical assistance to person injured immediately without asking for legal formalities.

Rostrum Legal

THE UNION EXECUTIVE [PART V, ARTICLES 52-72]



THE PRESIDENT

Article 52 provides that there shall be a President of India.

- The president is the head of Indian state. He is first citizen of India

Executive power of union article 53

- Article 53 provides that executive power of the union shall be vested in the president and shall be exercised by him either directly or through officers subordinate to him in accordance with the constitution.
- The president shall be supreme commander of Defence forces in India.

Election of president article 54

- Article 54 provides that president shall be elected by the members of electoral college consisting of:

Rostrum Legal

A. Elected members of both houses of parliament and

B. Elected members of Legislative assemblies of state

- State includes the national capital territory of Delhi and union territory of Pondicherry. It means that elected members of Legislative assemblies of NCT of Delhi and union territory of Pondicherry shall also be eligible to vote in the election of president.
- **Member who do not participate in election of president: it is to be noted that**

1. nominated members of both the houses of parliament; and
2. nominated members of state legislative assembly; and
3. members both elected and nominated of state legislative council[in case of bicameral Legislature] and
4. Nominated members of legislative assemblies of Delhi and Puducherry do not participate in the election of president.

- **Article 55**
- Provides that there shall be uniformity in the scale of Representation of different states as well as parity between the state as whole and union at the election of the president.
- the president election is held in accordance with the system of proportional representation by the means of Single Transferable Vote and the voting is by secret ballot[article 55(3)]
- **Term, Resignation And Re Election [Article 56]**
- Provides that president shall hold office for the term of five years from the date on which he enters upon his office.
- the president may resign by addressing his resignation to the vice president

Rostrum Legal

- The president may for violation of constitution be removed from office by impeachment in the manner provided in article 61.
- The president shall not withstanding the expiration of his term, continue to hold the office until his successor enters upon his office.
- Resignation address to vice president shall be communicated by him to the speaker of the house of people.

- **Resignation**
- **President → Vice President → Speaker**

- **Article 57** provides that the person who holds or has held the office of president shall subject to the other provisions of the Constitution be eligible for re-election to that office.

Qualification for the election of president [article 58]

- **Article 58** provides that following shall be the qualification for election of president.
    1. He should be a citizen of India.
    2. He should have completed 35 years of age.
    3. He should be qualified for election as a member of Lok Sabha.
    4. He should not hold any office of profit under the union government or any State government or any local authority or any other public authority.
- A sitting president or vice president of the union, the governor of any state and a Minister of the union or any state is not deemed to hold any office of profit and hence qualified as presidential candidate.

Conditions of president's office [article 59]

- Article 59 provides that the president shall not be a member of either the House of Parliament or of the House of Legislature of any state.

Rostrum Legal

- If a member of either House of Parliament or of house of the Legislature of any state be elected president, he shall be deemed to have vacated his office in that house on the date on which he enters upon his office as a president.
- The president shall not hold any other office of profit.
- The president shall be entitled without payment of rent to the use of his official residence and shall be also entitled to search emoluments, Allowances and privileges as maybe determined by the Parliament by law.
- The emoluments and allowances of president shall not be diminished during his term of office.

Oath or affirmation by president [article 60]

- Article 60 provides that before entering upon his office, the president has to make and subscribe to an oath or affirmation. In his oath the president swears:
    1. To faithfully execute the office.
    2. To preserve, protect and Defend the constitution and law; and
    3. To devote himself to the service and well-being of the people of India.
- The Oath of the office of president is administered by Chief Justice of India and in his absence, the senior most judge of Supreme Court available.
- Any other person acting as a president or discharging the functions of the president also undertake the similar oath or affirmation.

Impeachment of the president [article 61]

- Article 61 provides the procedure for impeachment of president.
- Grounds: president is impeached on the ground of violation of constitution. The constitution does not define the meaning of phase 'violation of the constitution'.
- The impeachment charges can be initiated by either House of the Parliament.

Rostrum Legal

- 14 days prior notice
- These charges should be signed by one fourth member of the house (that framed the charges).
- The president has the right to appear and to be represented at such investigation.
- If the other house also sustains the charges and passes the impeachment resolution by a majority of two third and total memberships, then the president stands removed from his office from the date on which the resolution is so passed.
- in context of impeachment, two things should be noted:-
    1. The nominated members Of either House of Parliament can participate in impeachment of the president though they do not participate in his election;
    2. The elected member of legislative assemblies of the states and union territories of Delhi and Puducherry do not participate in the impeachment of president do they participate in his election.
    - Till date no president has been impeached.

Vacancy, time for holding election etc [article 62]

- Article 62 provides that an election to fill a vacancy caused by expiration of the term of office of president shall be completed before the expiration of the term of the president.
- vacancy in president's office
    1. On expiry of his tenure of 5 year
    2. by his resignation
    3. on his removal by the process of impeachment
    4. by his death

Rostrum Legal

5. Otherwise [when he becomes disqualified to hold the office or when his election is declared void].

- In the case of any delay in conducting the elections of new president by any reason, the outgoing president continues to hold office the on his term of 5 years until his successor assumes the charge. It is to be noted that in this situation the Vice-President does not get an opportunity to act as a president.
- If the office false vacant by resignation, removal, death or otherwise, then the election to fill the vacancy should be held within six months from the date of occurrence of such a vacancy.
- The newly elected president remains an office for a full term of five years from the date he assume the charge of his office.

Situations where vice president act as a president article 65

- When a vacancy occurs in the office of president due to his resignation, removal, death or otherwise, the vice president acts as the President until our new President is elected article 65(1).
- When the sitting president is unable to discharge is function due to absence, illness or any other cause the vice president discharges his functions until the president resumes his office article 65(2)
- in the case of office of vice president is vacant, the Chief Justice of India for if his office is also vacant the senior most judge of Supreme Court available acts as the President of discharges the functions of president.

Powers of president

1. Executive Power
2. Legislative Power
3. Financial Powers
4. Judicial Power

Rostrum Legal

5. Military Powers
6. Diplomatic Powers

- **Executive powers:**
  - Powers of the union Vest in the president. few important executive powers and functions of President are:

i. All executive actions of Government of India are formally taken in the name of president [article 77]

ii. Appoints the Prime Minister and other ministers. they hold office during his pleasure [article 75 (1)]

iii. He appoints office bearers of constitutional post like the governor of state, Attorney General of India, Comptroller and Auditor General of India, the election commissioner and other Election Commissioner, the Chairman and members of Union Public Service Commission the Chairman and member of finance commission etc.

iv. he can appoint commissions to investigate into conditions of SC ST and other backward classes[article 338, 338 a 338 b]

v. He can appoint the Interstate Council to promote Centre state and interested Corporation.[263]

vi. He directly administers union territories through administrator appointed by him.[239]

vii. He can declare any area as scheduled area and has powers with respect to administration of Scheduled Areas and tribal areas.[244(1) V SCHEDULE]

Rostrum Legal

- **Legislative powers**

Following are the few important legislative powers of the president:-

1. He can summon of prorogue the Parliament and dissolve the Lok Sabha. article 85 [1]
2. He can summon a joint sitting of both the houses of parliament [article 108]
3. He can appoint any member of Lok Sabha to preside over its proceedings when the offices of both the speaker and deputy speaker fall vacant. Similarly he can also appoint any member of Rajya Sabha to preside over its proceedings when the offices of both the Chairman and Deputy Chairman fall vacant.
4. nominates 12 members of Rajya Sabha from person having special knowledge or practical experience in Literature, science, art and social service [article 80(3)]
5. He can nominate two members of Lok Sabha from Anglo Indian community **article 331**. Repealed by 104th constitutional amendment 2019.
6. He decides on question as to disqualification of members of parliament in consultation with election commission (article 103).
7. when a bill is sent to the president after it has been passed by the parliament he can Give his assent to the bill or

a. withhold his assent to the bill or

b. Return the bill [if it is not a money bill] for reconsideration of the Parliament.

c. if the bill is passed Again by the parliament, with or without amendment, the president has to give his assent to the bill [article 111]

Rostrum Legal

8. He can promulgate Ordinance is when Parliament is not in session

Military Powers

Article 53 also states that the President shall be the Supreme Commander of all the Armed Forces of the Union of India. It also states that no specific provisions can reduce the scope of this general principle.

As the Supreme Commander of the Armed Forces of the Union, President has powers regarding:

- Appointment of all the officers, including the appointment of the chiefs of the forces;
- Wars are waged in the name of the President;
- Peace is concluded in the name of the President.

Diplomatic Powers

The President forms the face of Indian diplomacy and helps the nation to maintain cordial relationships with countries across the globe.

- All the Ambassadors and high commissioners in foreign nations are his representatives;
- He receives the credentials of the Diplomatic representatives of other nations;
- Prior to ratification by Parliament, the treaties and agreements with other nations are negotiated by the President.

Ordinance making power of the President: Article 123

Article 123 talks about the presidential powers to promulgate ordinances. An ordinance can be promulgated if:

- neither of the House of the Parliament is in session;
- And the President feels a need for immediate action.

The ordinance which is promulgated by the President will have the same effect as that of an act or law of the Parliament.

The essential conditions to be met by an ordinance are:

- It shall be presented before both the Houses of Parliament for passing when it comes to the session;
- The ordinance shall cease to **operate six weeks** after the date of reassembling of the parliament;
- The ordinance may also expire if the resolutions disapproving it are passed by both the Houses of Parliament;
- Therefore every Ordinance issued by the president during the Recess of Parliament must be laid before both the houses of Parliament when it reassembles. if the ordinance is approved by both the houses it becomes an act and if Parliament takes no action at all, all the ordinance ceases to operate on expiry of 6 Weeks from reassembly of parliament.
- It can be withdrawn at any time by the President;
- **The ordinance must be in consonance to the Constitution of India else it shall be declared void.**
- It is to be noted an ordinance made when both the houses are in session is void. Thus the power of the president to legislate by Ordinance is not a parallel power of legislation.

- **Grounds of promulgation** he can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.
- In **RC Cooper vs. Union of India 1970** the supreme court held that the president's satisfaction can be questioned in a court on the ground of malafide.
- In **A K Roy versus Union of India** the supreme court held that Ordinance would be subject to the test of vagueness, arbitrariness, reasonableness and Public Interest.
- Scope of Ordinance making power is coextensive with that of Legislative powers of parliament. It means that an ordinance can be issued only on those subjects on which Parliament can make laws.
- The ordinance making power of the president is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of Council of Ministers headed by the Prime Minister.
- In **D C Wadhwa vs. State of Bihar 1987** the Supreme Court ruled that successive Re promulgation of Ordinance without any attempt to get the Bill passed by the Assembly would amount to fraud on constitution and the ordinance so promulgated is liable to be struck down. it held that the exceptional power of law making through Ordinance cannot be used as a substitute for legislative powers of state legislative assembly.

Financial Roles

- Money bills can be introduced in the Parliament only with the prior recommendation of president [article 109 and 110]
- He Causes to be laid before the Parliament the annual financial statement that is the union budget [article 112]

- The Contingency Funds of India are at the disposal of the President. He can make advances out of the contingency fund of India to meet any unforeseen expenditure. [ART 267]
- He also causes the presentation of audits in the Parliament. [151]
- He constitutes a finance commission after every five years to recommend the distribution of revenues between the centre and the states [article 280]

Judicial powers

The President enjoys the following privileges as his judicial powers:

- He can rectify the judicial errors;
- He exercises the power of grant of pardons and reprieves of punishments; or suspend, remit or commute sentences of any person convicted of any offence.
- President can seek the advice of Supreme Courts on: article 143

1. Legal matters,
2. Constitutional matter,
3. Matters of national importance.

So he can seek advice from the Supreme Court on any question of law or fact. However the advice tendered by the Supreme Court is not binding on the president.

Pardoning power: Article 72

Article 72 provides for the provisions relating to the pardoning powers of the President. President can grant pardons, respites, reprieves, and remissions of punishments or remit suspend or commute the sentence given to a person by the court in the following cases:

- When the sentence is granted through a court-martial;

- When the sentence or punishment is given for offense of violation of any law relating to matters that fall in the ambit of Union's executive powers;
- When a death sentence is passed by a court.
- **Pardon:** it removes both the sentence and the conviction and completely absolved the Convict from all sentences punishments and disqualification
- **Commutation:** it denotes the substitution of one form of punishment for a lighter form. For example a death sentence may be commuted to rigorous imprisonment.
- **Remission:** it applies reducing the period of sentence without changing its character. for example sentence of rigorous imprisonment for two years may be limited to a rigorous imprisonment for one year
- **Respite:** it denotes awarding a lesser sentence in place of one originally awarded due to some special facts such as physical disability of a Convict for pregnancy of a women offender.
- **Reprieve:** it implies a stay of execution of sentence [especially that of death] for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the president.

In **Maru Ram v Union of India**, Supreme Court held that pardoning power under Article 72 is to be exercised by the President, on the advice of the Central Government and not on his own will and that the advice is binding on the head of the Republic.

Pardoning Power: subject to judicial review

In **Kuljit Singh Alias Ranga Vs Lt. Governor of Delhi & Ors** In this case, death sentence of one of the appellants was confirmed by the Supreme Court. His mercy petition was also rejected by the President. Then, the appellant filed a writ petition in the Supreme Court challenging the discretion of the President to grant pardon on the ground that no reasons were given for rejection of his mercy petition. The court

dismissed the petition and observed that the term "pardon" itself signifies that it is entirely a discretionary remedy and grant or rejection of it need not to be reasoned.

In **Kehar Singh vs. Union of India and Anr** 1989: the Supreme Court held that while exercising the pardoning power of president can scrutinize the evidence on record and can come to a different conclusion. In doing so the president does not modify or supersede the judicial records. The petition for Mercy has no right to an oral hearing by the president.

In **Epuru Sudhakar vs. government of Andhra Pradesh 2006** the Supreme Court held that pardoning power of president under article 72 and of governor under article 161 are subject to judicial review. Pardoning cannot be exercised on the basis of caste and political reasons.

Articles 72 and 161 of Constitution

Article 161 grants the power to the Governor of the state to suspend, remit or commute sentences of the offenders in certain cases relating to a violation of provisions or laws to which the executive power of the state extends.

Article 72	Article 161
Grants power to the President of India.	Grants powers to the Governor of state.
The power is wider in scope.	The scope of powers is narrower.
The powers of pardon extend to cases of Court Martial as well.	Power cannot interfere with cases of Court Martial.

Allows the President to grant pardon in cases of death sentence.	Governor cannot grant pardon in cases of death sentence.

Emergency Powers

Article 352 of the Constitution of India grants President, three kinds of emergency powers as well:

- When a National Emergency is declared in case of external aggression or internal armed rebellion, the President holds the powers to declare a state of emergency. Thus the President's rule gets established in the country. However, the prime minister and the Council of Ministers must recommend such an emergency;
- When there exists a constitutional or law and order breakdown situation in a state, the President may declare a state of emergency in such cases. The state would then come under Governor's rule;
- Whenever the financial stability of the nation or any country is seriously affected, the President has the right to intervene and direct the state to check and maintain public expenditure.

Privileges of the President: Article 361

Under Article 361, the President is protected from being answerable to any court for:

- For exercise and performance of his powers and duties of his office;
- For doing any act or claimed of doing any act in the exercise of those powers and duties;

The conduct of the President can be reviewed only if either House of Parliament designates or appoints any court tribunal or any other body to investigate the charges under Article 61.

But it bars no person from bringing any valid proceeding against the Governor or Government of India.

This Article immunes the President against all types of criminal proceedings during the term of his office.

No issuance of any order relating to the arrest and imprisonment of the President can be made by any court during his term of office.

A civil proceeding can be constituted against the president during his term of office if:

- The act is done or alleged to have been done, whether before or entering the office of the President, by him was in his personal capacity;
- Two months prior notice is provided, to the president or was sent to his office, stating:
    1. The nature of the proceeding;
    2. The cause of action;
    3. The details of the other party including name, description, and place of residence;
    4. The relief claimed by the other party;

Position of the President [art. 74(1)]

The position of the President has changed, with respect to his discretion to use his power, has changed since the inception of the Constitution. The two major changes came through the 42nd and 44th Amendment Act of the Constitution.

Prior to the 42nd Amendment Act of 1976

Prior to the 42nd amendment to the Constitution, the President was free to make decisions based on his wisdom. He may also consider the Council of Ministers for their

advice on the action. As the Constitution at that time talks about constituting a Council of Ministers with a Prime Minister, as its head, to aid and advise the President in carrying out his duties.

After the 42nd Amendment Act, 1976

Later, the Constitution was amended to add the phrase that the President shall act on the aid and advice of the council of ministers. But the provision was still ambiguous whether the advice given by the Council of Ministers is binding on the president or not.

44th Amendment Act, 1978

This amendment was brought to swipe off the ambiguity created by the 42nd amendment. This provision said that:

- President can send back the advice to the Council of Ministers for reconsideration once;
- If the same advice is sent again without modifications by the Council then the President is bound to accept it.

Legal

The Vice President

- **Article 63** provides that there shall be a Vice President of India
- The office of vice president is the second highest office in the country
- **Article 64** provides that vice president shall be ex officio chairman of Council of States. He shall not hold any office of profit
- During any period when the vice president acts as president or this charges the functions of President under article 65 he shall not perform the duties of the office of chairman of Council of states and shall not be entitled to any salary or allowances payable to the chairman of the Council of States.
- Office Of Political Continuity
- **Election of vice president article 66**
- Article 66 provides that vice president shall be elected by the member of electoral college consisting of the members of both the houses of parliament
- The election shall be held in accordance with the system of proportional representation by means of Single Transferable Vote and secret ballot
- It is to be noted that the Electoral College for election of vice president shall consist of both elected and nominated members of parliament.
- It does not include the members of state legislative assembly
- The vice president shall not be a member of either House of Parliament or of a house of Legislature or any state.
- If a member of either of the House of Parliament or of house of Legislature or of any state be elected vice president he shall be Deemed to have vacated his seat in that house on the date on which he enters upon the vice president's office.

Rostrum Legal

- **Qualifications of election as vice president [article 66[3]]**
- Article 66(3) provides the following qualifications of the election as vice president
- He should be a citizen of India.
- He should have completed 35 years of age.
- He should be qualified for election as a member of Rajya Sabha
- He should not hold any office of profit under union government or any State government or any local authority or any other public authority.
- A person shall not be deemed to hold any office of profit by the reason only that he is the president or vice president of the union for the governor of any state or is a Minister either for Union or any state.
- **Term , resignation and removal [article 67]**
- **Article 67** provides that vice president hold office for a term of five years from the date on which he enters upon his office
- **Resignation:** He can resign from his office at any time by addressing the resignation letter to the president.
- **Removal:** He can be removed from the office before completion of office term.
- He can be removed by a resolution of Rajya Sabha passed by an absolute majority [that is a majority of total members of house] an agreed to by the Lok Sabha
- No such resolutions can be moved analyst at least 14 days advance notice has been given
- No Grounds has been mentioned in the constitution for his removal.

Rostrum Legal

- The vice president can hold office beyond his term of 5 years until his successor resumes charge.[68]
- He is also eligible for re-election to that office. He may be elected for any number of terms.

- **Oath by the Vice-President article 69**
- **Article 69** provide that before entering upon his office, the vice president has to make and subscribe to an oath or affirmation
- In his of the vice president swear:
- *True faith and allegiance to the constitution of India and to faithfully discharge the duties of his office*
- The Oath of office to the vice president is administered by the President or some person appointed on that behalf by him.

- **Election disputes article 71**
- **Article 71** provides that matters related to or connected with the elections of president and the vice president
- All doubts and disputes in connection with the election of President and Vice President are decided by Supreme Court whose decision is final.
- The election of a person as the President or vice president cannot be challenged on the ground that the electoral college was incomplete [that is existence of any vacancy among the members of the electoral college].

Rostrum Legal

- Emoluments: the constitution has not fixed any emoluments for vice president in that capacity. Hi he draws his regular salary in capacity of ex officio Chairman of Rajya Sabha.

Rostrum Legal

The Prime Minister and the Council of Ministers

The Prime Minister

- **Appointment of the Prime Minister**
- Article 75 (1) provides that the Prime Minister shall be appointed by the President
- According to the conventions of the parliamentary system of government the president has to appoint the leader of the majority party in the Lok Sabha as Prime Minister
- When no party has a clear majority in Lok Sabha then the president usually appoints the leader of the largest party or coalition in Lok Sabha as prime minister and ask him to seek vote of confidence in Lok Sabha
- ***In Parliamentary form of Government the president is the head of the state while Prime Minister is the head of government***
- **Oath and the term of office**
    - Before the Prime Minister enters upon his office, The President administers to him The Oath of office and secrecy. The form of Oath of office and secrecy for prime minister is similar to that of any Union Minister.
    - **Term: article 75 [2]** to provides that the Minister shall hold office during the pleasure of the president. Therefore the term of Prime Minister is not fixed and he holds the office during the pleasure of the President.
    - However the President cannot dismiss the Prime Minister anytime. So long as the Prime Minister enjoying the majority support in Lok Sabha, he cannot be dismissed by the president.
    - If he loses the confidence of Lok Sabha, he must resign or the president can dismiss him.

Rostrum Legal

- **Duties of prime minister [article 78]**
    - Article 78 provides that it is the duty of prime minister

A. To communicate to the president all the decisions of the Council of Ministers related to the administration of the affairs of Union and proposals for legislation.

B. To furnish such information relating to the administration of the affairs of the union proposals for legislation as the President may call for; and

C. If the president so required to submit for the consideration of the Council of Ministers any matter on which a decision has been taken in by a Minister but which has not being considered by the Council.

Rostrum Legal

COUNCIL OF MINISTERS

- Appointment of other ministers: the Minister shall be appointed by president on the advice of the Prime Minister **article 75[1]**
- A person who is not a member of either House of Parliament can also be appointed as minister. But within six months he must become a member of either House of Parliament; otherwise he sees is to be a Minister **article 75[5]**
- In **SP Anand versus H.D. Deve Gowda 1997** Supreme Court held that a person who is not a member of either House of the Parliament can be appointed by the prime minister for 6 months.
- Article 74 and 75 broadly deal with principles of Parliamentary form of Government post of do it has not been set out in detail

- **Council of Ministers to aid and advise president [article 74]**
- **Article 74[1]** provides that there shall be a Council of Ministers with the prime minister at the head to Aid and advise the President who shall in exercise of his function, act in accordance with such advice.[PM- Primus inter pares]
- The president may require the Council of Ministers to consider such advice, either generally or otherwise, and the president shall act in accordance with the advice standard after such reconsideration **[provision to article 74[1]]** added by the 44th constitutional amendment.
- The 42nd Constitutional Amendment 1976 has amended article 74 [1] and has made the advice binding on the president.
- The question whether any, and if so what, advice was attended by ministers to president shall not be inquired in any court room. **Article 74(2)**
- In **UN Rao versus Indira Gandhi 1971** the Supreme Court has held that article 74[1] is mandatory and the president cannot exercise the executive power without aid and advice to the Council of Ministers. Even after The dissolution of Lok Sabha the Council of Ministers does not cease to hold their office.
- In **Ram Jawaya Kapur Vs State Of Punjab 1955** the Supreme Court held that the president has been made a formal or a constitutional head of the executive and the real executive powers are vested in the Council of Ministers.

- **Principle of collective responsibility and individual responsibility**

Collective responsibility

- Principle of collective responsibility is a Hallmark of Parliamentary form of Government. In India it is important in **article 75[3]** e of the constitution.
- This provides that the Council of Ministers shall be collectively responsible to the house of people.

Rostrum Legal

- When the Lok Sabha passes on no confidence motion against the Council of Ministers, all the ministers have to resign.

Individual responsibility

- Article 75 also contains the principle of individual responsibility.
- Article 75 [2] states that ministers hold office during the pleasure of president.
- Each member is responsible for the works and functioning of his ministries and department. The president can remove a Minister even at a time when the Council of Ministers enjoys the confidence of the Lok Sabha. The president removes a Minister only on the advice of the prime minister.

- **Size of Council of Ministers**
- **Article 75[1 A] Provides** that the total number of ministers, including the prime minister in the Council of Ministers shall not exceed 15% of the total number of members of the house of the people.
- The clause was inserted by the **91st constitutional amendment 2003**
- At the top of all these ministers stars Prime Minister the supreme governing authority of the country.

Rostrum Legal

Attorney General for India

- **Article 76** provides for the office of Attorney General for India. He is appointed by the president.
- **Qualification**: he must be a person qualified to be appointed as a judge of Supreme Court **[article 76]**
- **Tenure:** the attorney-general shall hold office during the pleasure of president**. [Article 76[4]].**
- He is the highest law officer of the country

Duties of attorney general

- It shall be the duty of Attorney General to give advice to the Government of India upon such legal matters, and to perform such other duties of legal character as may be assigned from time to time by the president.**[article 76[2]].**
- He will also discharge functions conferred on him by or under the constitution or any other law for the time being in force. **[Article 76[2]].**
- In the performance of his duties he shall have the right to audience in all courts in territory of India **[article 76[3]]**

Rostrum Legal

The State Executive Part VI [Article 153- 167]

- **Article 153 to 167** in **part 6** of the Constitution deals with the **State Executive**

GOVERNOR

- **Article 153** provides that there shall be a Governor for each state. The same person can be appointed as governor for two or more states.
- **Article 154** provides that the executive power of the state shall be vested in the Governor.
- The Governor is the **Chief Executive Head of the State**. Like the president, he is a head (titular or constitutional head).

- **Appointment of the Governor article 155**
- **Article 155** the governor of the state shall be appointed by the president by warrant under his hand and seal
- The Governor is neither directly elected by the people not indirectly elected by a special constituted electoral college as in the case of president
- **Hargovind vs Raghukul 1979** Supreme Court held that the office of governor of a state is not an employment under central government. It is an independent constitutional office and is not under the control of a subordinate to the central government.

- **Qualifications for appointment as governor [article 157]**
- Article 157 provided that no person shall be eligible for appointment as governor unless **he is a citizen of India and has completed the age of 35 years**

- **Term of the office of governor [article 156]**

Rostrum Legal

- Joint reading **of article 156 [1] and 156 [3]** Provide that the Governor holds office for a term of **five years** from the date on which he enters upon his office. However his term is subject to the pleasure of president.
- **Resignation:** the Governor may by writing under his hand at least to the president, resign his office.
- Governor shall notwithstanding expiration of his term continue to hold the office unless his successor enters upon his office.
- The Constitution does not lay down any Grounds upon which a Governor may be removed by the president.

- **Conditions of governor's office [article 158]**
- **Article 158** provides that the Governor shall not be a member of either of the House of Parliament or of house of the Legislature of any state specified in the first schedule
- If a member of either of the House of Parliament or of a house of the Legislature of any such States be appointed governor, he shall be Deemed to have vacated his office in that house on the date on which he enters upon his office as governor
- The Governor shall not hold any office under the office of profit
- The emoluments and allowances of the Governor shall not be dismissed during his term of office.

- **Oath or affirmation by the Governor [article 159]**
- **Article 159** provides that before entering upon his office the Governor has to make and subscribe to an oath or affirmation. In his oath the Governor swears:-
    A. To faithfully execute the office
    B. To preserve, protect and Defend the constitution and the law: and
    C. To devote himself to the service and well-being of the people of the state.
- Oath of office to the Governor is administered by the Chief Justice of the concerned state High Court and in his absence the senior most judge of the court available

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- **Power of the Governor to grant pardons, etc [article 161]**
- **Article 161 p**rovides that the governor of the state shall have the power to grant pardons reprise respite for emissions of punishment for to suspend, remit or commute the sentence of any person convicted of any office against any law related to the matter to which the executive power of the state extends.

Ordinance making power of the Governor

- Under Article 213, the Government can issue an ordinance if the circumstances compel him to do so, when either houses of the legislative assembly are not in session. However, there are two circumstances under which the Governor cannot issue an ordinance. They are:

1. If the ordinance has certain provisions which the Governor would have reserved for the President in case it were a Bill.
2. If the State Legislature has an act with similar provisions and the same would be declared invalid without the President's assent.

Advising the President for the Proclamation of an Emergency under Article 356

- When the State Government is unable to function in accordance to the constitutional machinery, then the Governor sends a report to the President briefing him/her about the grievousness of the situation. This power has been granted to the Governor under Article 356. This may happen when there is a vote of no confidence in the house or a government breakdown in the state.

Protection of Governor

- **Article 361** lays down the provisions for the protection of the Governor. The Governor shall not be answerable to any court for the performance and disposal of his/her duties. There can be no criminal proceedings against him/her during the term of his/her office. Neither can there be a process to arrest him/her during the term of his/her office. Any civil proceedings in which relief is claimed against the Governor of a State, shall be instituted during his/her term of office in any

court in respect of any act done or purporting to be done by him/her in his personal capacity.

Chief Minister and Council of Ministers

- The Governor is the nominal executive authority and the chief minister is the real executive authority
- The Governor is the head of the state Chief Minister is the head of the government
- The position of chief minister at the state level is analogous to the position of prime minister at the centre.

- **Appointment of Chief Minister and Council of Ministers**
- **Article 164** provides that the Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of chief minister
- In the states of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha there shall be a minister in charge of tribal welfare who may in addition be in charge of the Welfare of SC and backward classes or any other work
- **Council of Ministers to aid an advice Governor [article 163]**
- **Article 163** provides that there shall be a council of minister with chief minister at the head to add and advise the Governor in the exercise of his functions except insofar as he is by or under this constitution required to exercise function or any of them at his discretion.

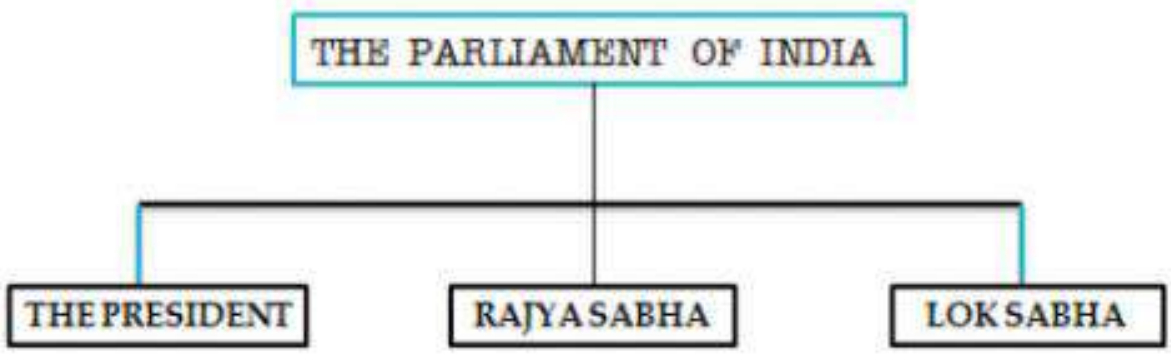
- **A convicted person cannot be appointed as Chief Minister:**
- **Lily Thomas vs. Union of India,** The SC held that "a person who is convicted for a criminal offence and sentenced to imprisonment for a period of not less

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than two years cannot be appointed the Chief Minister of a State under Article 164(1) read with (4) and cannot continue to function as such.

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Union legislature part V [article 79- 122]



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- **Article 79 to 122 in part V chapter II of the Constitution deals** with the organization, composition, duration, officers, procedures, privilege, power etc of Parliament.
- The Rajya Sabha is the upper house and the Lok Sabha is the lower house
- **Rajya Sabha** represents the states and union territories. **Lok Sabha** represent people of India

Composition of Rajya Sabha article 80

- Article 80 provides that Council of state shall consist of
    a. **12 members** to be nominated by the **President** and
    b. Not more than **238** representatives of the states and union territory.

- The members to be nominated by the president shall consist of a person having special knowledge or practical experience in respect of such matters as **literature, science, art, social service**

- The allocation of seats in Council of states to be filled by representatives of the states and union territories shall be in accordance with the provisions in that behalf contained in fourth schedule **article 80[2]**

- The representatives of states in the Rajya Sabha are elected by **elected members of state legislative assemblies.** The election is held in accordance with the system of proportional representation by means of Single Transferable Vote **[Article 80[4]].**

- The seats are allotted to the states in Rajya Sabha on the **basis of population.**

- The representatives of Union Territories in Council of states shall be chosen in such manner as Parliament may by law prescribe.

- Delhi and Puducherry are the only two union territories that have representation in Rajya Sabha.

Composition of Lok Sabha [article 81]

- Article 81 provide that Lok Sabha shall consist of following

A. Not more than **530** members are to be chosen from direct election from States

B. Not more than **20 members to represent** union territories and

C. Two members are to be nominated by president from Anglo Indian community article 331.[removed from the 104 Constitutional Amendment Act 2020]

- The Maximum strength of Lok Sabha is fixed at 552

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- The Parliament has enacted the **union territories [Direct Election to the House of People] Act 1965** by which the members of Lok Sabha from the union territories are also chosen by the direct election.

Readjustment after each census [article 82]

- **Article 82** provide that every census, a readjustment has to be made in

a) Allocation of seats in Lok Sabha to the states and

b) Division of each state into territorial constituencies

- Parliament is empowered to determine the authority and the manner in which it is to be made
- Parliament has enacted **The Delimitation Commission Act in 1952, 1962, 19, and 2000 for this purpose**
- The **42nd Constitutional Amendment Act 1976** froze the allocation of seats in Lok Sabha to the states and the division of state into territorial constituencies till the year 2000 at the **1971 level**.
- This ban on readjustment was extended for another 25 years that is up to **2026** by the **84th constitutional amendment 2001**
- The **87 Constitutional Amendment Act 2003** provided for delimitation of constituencies on the basis of 2001 census and not on 1991 census.

Duration of Rajya Sabha [article 83 [1]]

- **Article 83[1]** provides that the Council of state shall not be subjected to dissolution, but As nearly **one third of the members** shall retire on the expiration of every **second year** in accordance with provisions made on behalf of the Parliament by law.

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- The retiring member are eligible for re-election and re nomination any number of time
- The constitution has not fixed the term of office of members of Rajya Sabha and left it to the Parliament to decide it by making a law
- The parliament in **Representation Of Peoples Act 1951** provides that the term of office of the member of Rajya sabha shall be **6 years**.

Duration of Lok Sabha [Article 83[2]]

- **Article 83[2]** provides that the house of people shall continue for **five years** from the date appointed for its first meeting.
- After expiration of **5 years** the Lok Sabha shall automatically dissolve
- Lok Sabha can be dissolved at any time before the completion of 5 years by the President.
- **Duration of Lok Sabha in national emergency**: while a proclamation of emergency is in Operation the period of 5 years can be extended by Parliament by law for a period not exceeding **one year** at a time and not exceeding in any case beyond a period of **six months** after the proclamation has ceased to operate. **[provision to article 83[2]]**

Qualifications for membership of Parliament [article 84]

- **Article 84** provides the following qualifications for a person to be chosen a member of parliament

1. He must be a citizen of India
2. He must he must make and subscribe to an oath or affirmation before the person authorized by Election Commission for this purpose
3. He must be not less than **30 years** of age in the case of **Rajya Sabha** and not less than **25 year** of age in case of **Lok Sabha**

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4. He must possess other qualifications prescribed by parliament.

Disqualification for membership of Parliament article 102

- Article 102 provide that every person shall be disqualified for being chosen as, and for being, a member of either of the house of parliament
- Clause 1

a) If he holds an office of profit under the Government of India or government of any state other than an office declared by Parliament by law not to disqualify its holder.
b) If he is of unsound mind and stands so declared by the competent court
c) If he is an undischarged insolvent.
d) If he is not a citizen of India, or have voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of alliances two foreign states
e) If he is disqualified by or under any law made by parliament[Representation Of Peoples Act 1951]

- A person shall not be Deemed to hold any office of profit under Government of India for the Government of any state by the reason only that he is a Minister either for the Union or for such state
- Clause 2
- A person shall be disqualified for being a member of either of the houses of Parliament if he is so disqualified under the **tenth schedule [article 102[2]].**

Cases on Parliamentary Privileges

- **PV Narasimha Rao vs State 1998-** The scope of protection of immunity available to the members of parliament is quite wide and is not confined only against judicial proceedings but is available to them against all actions and criminal proceedings or anything said or any vote given by them. The object of

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protection is to enable members to speak their mind in Parliament freely and fearlessly.

- **In Re Keshav Singh 1965-** In the case of conflict between provisions under article 194 and the provisions pertaining to fundamental rights and attempt will have to be made to resolve the set conflicts by adoption of rule of harmonious construction article 194 and 105 are subject to fundamental rights guaranteed under article 21 and 22.

What is office of profit?

- The expression office of profit has not been defined in the constitution. Courts have laid down certain test to determine which office is a office of profit
- The office of profit means an office to which some benefit is derived or might reasonably be expected to be made by the holder of the office
- The Supreme Court in **Jaya Bachchan versus Union of India 2016** held that the office of profit is an office which is capable of yielding profit or pecuniary gain. Whether a person actually receives the game is not important.

Disqualification on the ground of defection

- The constitution also lays down that a person shall be disqualified from being a member of parliaments if he is to be disqualified on the ground of defection under the provisions of the **10 schedule**. [52ND CAA, 1985] A member in class disqualification in law.

  a) If he voluntarily gives up the membership of the political party on whose ticket he was elected to the house.
  b) If he votes or abstains from voting in house contrary to any direction given by his political party
  c) If any independently elected member join any political party and

d) If any nominated member joins any political party after expiry of 6 months.

- The **question** of disqualification under **10th schedule** is decided by the **chairman in the case of rajya sabha and speaker in the case of lok sabha.**
- In **Kihoto Hollohan V. Zachillhu** supreme court ruled that function of speaker / chairman while applying anti defection law is that of a tribunal and therefore it is open to judicial review
- **91st constitutional amendment 2003** added to article 75 which provides that a member of either house of parliament belonging to any political party who is disqualified from being a member of the house under paragraph if off 10 schedule shall also be disqualified together minister.

Decisions on question as to disqualification of members article 103

- Article 103 provides that if any question arises as to whether a member of either House of Parliament has become subject to any of these disqualifications mentioned in article 102[1], the question shall be referred for decision of the **president and his decision shall be final**.
- Before giving any decisions on any such questions, **the president shall obtain the opinion of the election commission and shall act accordingly to such opinion.**

Vacation of seats article 101

- **Article 101** provides for the vacation of seats. In the following circumstances a Member of Parliament vacate his seat.

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1. No person shall be a member of both houses of Parliament and provision shall be made by Parliament by law for vacation by a person who is chosen a member of **both houses** of his seat in one house or the other. Article 101[1]

Representation of People Act 1951 provides for the following

- If a person is elected to both the houses of parliament, he must intimate within 10 days in which House he desires to serve. In default of such intimation his seat in Rajya Sabha becomes vacant.
- Member of one house is also elected to the other house his seat in the first house becomes vacant
- If a person elected to two seats in a house he should exercise his option for one. Otherwise both seats become vacant.

2. No person shall be a member of both of Parliament and of House of Legislature of the state and if a person is chosen a member both of parliament And off of a house of Legislature of a state, then at the expiration of such period as may be specified in the rules made by the president, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of state **article 101[2]**

3. If a member of either House of Parliament

A. Become subject to any disqualification in article 102[1] and [2]; or

B. Resign his seat by writing under his hand address to the chairman or the speaker, as the case may be

Oath and affirmation by members article 99

- Article 99 provides that every member of either House of Parliament shall before taking his seat Make and subscribe before the President or some person

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appointed in that we have by him on and on or information according to the form set out for the purpose in third schedule

- **Penalty Article 104**

➢ A person is liable to **a penalty of rupees 500 for each day he sits** or votes as a member in the house in the following conditions

1. Before taking and subscribing to the prescribed oath or affirmation; or
2. When he knows that he is not qualified or that he is disqualified for its membership; or
3. When he knows that he is prohibited from sitting or voting in-house by virtue of any law

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Chairman and Deputy Chairman of Rajya Sabha

- **Article 89** provides that Vice President of India till the act official chairman of Council of States
- The Council of states choose a member of Council to be Deputy Chairman

Vacation, resignation, removal from Office of Deputy Chairman[Article 90]

- **Article 90** provides that a member holding office as Deputy Chairman of the Council of States shall vacate his office

1. If he ceases to be a member of the Council;
2. Resign by writing under his hand address to the Chairman and
3. Removed from his office by a resolution of Council passed by a majority of all the then members of Council

- No resolution for the purpose of removal shall be moved unless at least 14 days notice has been given of the intention to move resolution.

Removal of vice president/term of office [article 67]

He can be removed by a resolution of Rajya Sabha passed by an absolute majority [that is a majority of total members of house] an agreed to by the Lok Sabha

No such resolutions can be moved analyst at least 14 days advance notice has been given

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Speaker and Deputy Speaker of Lok Sabha

- **Article 93** provide that Lok Sabha shall as soon as may be choose to members of the house to be respectively **Speaker and Deputy Speaker**
- As and when the office of speaker and deputy speaker becomes vacant, the house shall choose another member to be speaker or deputy speaker

Vacation, resignation, Removal from the offices of speaker and deputy speaker [article 94]

- **Article 94** provides that a member holding office as a speaker or deputy speaker of the house of the people shall vacate his office if:
  a) He ceased to be a member of house of people
  b) **Resign** by writing under his hand addressed, if such member is the speaker to the deputy speaker and if such member is the deputy speaker of the speaker resign his office and
  c) **Removed** from his office by a resolution of house of people passed by majority of all the then members of the house.
- No resolution for the purpose of removal shall be moved at 14 days notice has been given of the intention to move the resolution.
- Whenever the house of people is dissolved the speaker **shall not** vacate his office until immediately before the first meeting of the house of people after the dissolution
- **Article 96** provides that Speaker or Deputy Speaker **shall not preside** while a **resolution for his removal** from office is under consideration.
- The speaker shall have the **right to speak** in and take part in the proceeding of the house of people, while any resolution for his removal from office is under consideration.

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- He shall also be entitled to **vote only in the first instance** on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

Secretariat of the Parliament article 98

- **Article 98** provides that each house of the Parliament shall have a separate Secretariat staff.
- Parliament may by law regulate the recruitment and the conditions of the services of person appointed, to the secretariat staff of either House of Parliament

Sessions of the Parliament- summoning, prorogation and dissolution

- **Article 85** provides that **President** shall from time to time summon each house of parliament to meet at such time and place as he thinks fit.
- The maximum gap between two sessions of Parliament cannot be **more than six months**
- The president may from time to time:-

  a) Prorogue the houses or either house
  b) Dissolve the house of the people

- **Propagation:** it means adjourned, when the business of the session is completed. The president issues a notification for propagation of the session. It does not end the life of Lok Sabha

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- **Dissolution**: It ends the life of the existing house and a new house is constituted after general elections are held.

Rights of ministers and Attorney General as respects houses [article 88]

- **Article 88** provides that **every minister and Attorney General** of India shall have the **right to speak** in and otherwise to take part in the proceedings of either House any joint sitting of the houses and any committee of the parliament of which he may be named a member but shall not by the virtue of this article be entitled to vote.
- It follows that the Attorney General of India can participate in meetings of either houses of Parliament but shall not be entitled to vote.

Quorum and voting in the house of parliament article 100

- **Article 100** provides that all questions at any sitting of either houses or joint sitting of the houses shall be determined by a majority of votes of members present and voting, other than the speaker or the person acting as the chairman or speaker.
- The chairman of the speaker shall not vote in the first instance, but still have and exercise a casting vote in the case of an equality of votes.
- **Quorum:** the quorum to constitute a meeting of either House of Parliament shall be **one-tenth of the total number of members** of the house.

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Legislative procedure

Provisions as to introduction and passing of this article 107

Article 107 provides that except money bill [109] and other financial bill[117] of Bill may originate in either House of Parliament.

- Subject to the provisions of **article 108 and 109,** a bill shall not be deemed to have been passed by the House of Parliament unless it has been agreed to by both houses, either without amendment or with such amendment only as are agreed to by both houses.
- A Bill pending in Parliament shall not lapse by the reason of **propagation** of the houses
- A Bill Pending in Council of state which has not been passed by House of people shall not lapse on **dissolution** of the house of people
- A Bill Which is pending in the house of people or which having been pass by house of the people is pending in Council of states, shall subject to the provision of article 108, lapse on the **dissolution** of House of people.

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Joint sitting of both houses [article 108]

- **Article 108** provides that if after a bill has been passed by one house and transmitted to the other house and:-
- Bill is rejected by the other house or
- Houses have finally disagreed as to amendments to be made in the bill or
- More than **6 months** has lapsed from the date of reception of the bill by the other house without the bill being passed by it.

- The **President** can notify to the houses his intention to Summon them to meet in a joint sitting for purpose of the deliberating and voting on the bill
- There will be no joint meeting in cases of **money bill**
- If at the joint sitting of the two Houses the bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of total number of members of both houses **present and voting** it shall be deemed for the purpose of the constitution to have been passed by both houses.
- In case of joint sitting of the house will be presided over by **the speaker of Lok Sabha. Article 118[4]**

Money bill

- Definition of money bill **article 110**
- **Article 110** provides that a bill shall be Deemed to be a money bill if it contains only provisions dealing with all or any of the following matters :

a) The imposition, abolition, remission, alteration or regulation of **any tax;**
b) The regulation of the borrowing of money or the giving of any guarantee by the government of India or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the government of India;
c) The custody of the **consolidated fund[266]** or the **contingency fund[267]** of India, the payment of moneys into or the withdrawal of moneys from any such fund;
d) The appropriation of moneys out of the consolidated fund of India;
e) The declaration of any expenditure to be expenditure charged on the consolidated fund of India or the increasing of the amount of any such expenditure;

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f) The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or

g) Any matter incidental to any of the matters specified in sub-clause (a) to (f).

- Any question arises whether a bill is a money bill or not the decision of the **speaker of the house of the people** shall be final**.[110[3]]**

- There shall be endorsed on every money bill then it is transmitted to the Council of states under **article 109,** and when it is presented to the president for a Centre under **article 111,** the certificate of the speaker of the house of the people signed by him that it is a money bill.

Special procedures in respect of money bill article 109

- Money bill shall not be introduced in Rajya Sabha

- After a money bill has been passed by Lok Sabha it shall be transmitted to Rajya Sabha for its recommendations. The Rajya Sabha can within a period of **14 days** from the date of its receipt of the bill shall return the bill to Lok Sabha with its recommendation and Lok Sabha may thereupon either accept or reject all or any recommendations of Rajya Sabha.

- If the Lok Sabha accepts any Recommendation of Rajya Sabha the money bill shall be deemed to have been passed by both the houses with amendment recommended by the Rajya Sabha and accepted by Lok Sabha.

- If the Lok Sabha does not accept any of the Recommendation of Rajya Sabha, the money bill shall be deemed to have been passed by both the houses in the form in which it was passed by Lok Sabha without any of the amendment recommended by the Rajya Sabha.

- If a money Bill passed by Lok Sabha and transmitted to Rajya Sabha for its recommendation is not returned to Lok Sabha within the set period of **14 days**, it

shall be deemed to have been passed by both the houses at the expiration of the said period in the form in which it was passed by the Lok Sabha.

Assent to bills [article 111]

- **Article 111** provides that when a bill has been passed by the houses of parliament, it shall be presented to the President, and the President has following options:-

1. Assent to bills, or
2. Withholds assent
3. He may also return the bill if it is not a money bill to the houses with a request to reconsider the bill.

- When a bill is so returned, the house shall reconsider the bill according, and if the bill is passed again by the houses with or without amendment and presented to the president for assent, President shall not withhold assent.

Annual financial statement [article 112]

- **Article 112** provide that The President shall in respect of every financial year cause to be laid before both the House of Parliament a statement of estimated recipes and expenditure of the Government of India for that year, in this path referred as the annual financial statement

- It is popularly known as the **budget.**

Appropriation bills [article 114]

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- **Article 114** provides that soon after the grants under **article 113** have been made by the Lok Sabha, there shall be introduced to provide for appropriation out of the consolidated fund of India of all money required to meet

  A. Grant so made by the house of people and

  B. Expenditure charged on consolidated fund of India but not exceeding in any case the amount shown in the statement previously laid before the parliament

Votes on account, votes of credit and exceptional grant article 116

- **Article 116** provides that Lok Sabha shall have power

1. To make any grant in advance in respect of estimated expenditure for a part of any financial year ending the completion of procedure prescribed in article 113 for the voting of such grant and passing of law of in accordance with the provision of article 114 in relation to that expenditure

2. Make a grant for meeting an Unexpected demands upon the resources of India when an account of the magnitude for the indefinite character of the service the demand cannot be stated with details accordingly given in an annual financial statement

3. Make an exceptional grant which forms no part of the current service of any financial year and Parliament shall have power to authorized by law the withdrawal of money from the consolidated fund of India for the purpose for which the state grant are made.

Other matters

Language to be used in Parliament article 120

- **Article 120** provides that business in Parliament shall be transacted in Hindi or in English
- The chairman of the Council of states or speaker of the house of people may permit any member who cannot adequately express himself in Hindi or in English to address the house in his mother tongue.

Restriction on discussion in Parliament [article 121]

- **Article 121** provides that No discussion shall take place in the Parliament with respect to the conduct of any judge of Supreme Court or of High Court in discharge of his duties except upon a motion for presenting and address to the president praying for the removal of the judge.

Courts not to enquire into proceedings of Parliament [article 122]

- **Article 122** provides that the validity of any proceeding in Parliament cannot be called in question on the grounds of any list irregularity of procedure
- No officer or Member of Parliament in whom powers are vested by or under this Constitution for regulating procedure for the conduct of business, for maintaining order, in parliament shall be subject to jurisdiction of any court in respect of the exercise by him of those powers.

Restrum Legal

State Legislature Part VI [articles 168- 212]

- **Article 168 - 212** in Part VI of the Constitution deals with the organization, composition, duration, officers, procedures etc of the state legislature

Constitution of legislatures in state [article 168]

- **Article 168** provides that for every state there **shall** be a **legislature** which shall consist of the Governor and
- in the states of **Andhra Pradesh, Bihar, Madhya, Maharashtra, Karnataka, Tamil Nadu, Telangana and Uttar Pradesh two houses;**
- in other states **one house**
- Where there are two houses of Legislature or state, one shall be known as **Legislative Council and other as legislative assembly** and where there is only one house it shall be known as Legislative Assembly.

Abolition of creation of Legislative Council in state article 169

- **Article 169** provides that Parliament may by law or provide for **abolition or creation** of the Legislative Council of a state if the Legislative Assembly of the state passes a resolution to that effect by a majority of total membership of the assembly and by a majority of not less than two third of the members of the assembly present and voting.
- No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Composition of Legislative assemblies article 170

- **Article 170** provides that the Legislative Assembly of each state shall consist of not more than **500 and not less than 60** members chosen by direct election from territorial constituencies in the state.

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Composition of Legislative Council article 171

- **Article 171** provides that the total number of members in Legislative Council of a state having such a Council shall **not exceed one third** of total number of members in the Legislative Assembly of the state. **[1/3]**
- The total number of members in Legislative Council of a state shall in no case be **less than 40.**
- Of the total number of members of the Legislative council of a State
- as nearly as may be, **one third** shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify; . **[1/3]**
- as nearly as may be, **one twelfth shall** be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;. **[1/12]**
- as nearly as may be, **one twelfth** shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament; **[1/12]**

a) as nearly as may be, **one third** shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly; **[1/3]**
b) the remainder shall be nominated by the Governor

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- The members to be nominated by the Governor shall consist of persons having special knowledge or practical experience in respect of such matters as **literature, science, arts, Cooperative movement, social service.**

Duration of state legislature article 172

- **Article 172** provides that every Legislative Assembly of every state unless sooner dissolved shall continue for a period of five years from the date appointed for the first meeting.
- The said period may while a proclamation of emergency is in Operation be extended by Parliament by law for a period not exceeding **one year** at a time and not exceeding in any case beyond the period of six months after the proclamation has ceased to operate.
- The Legislative Council of a state shall not be subject to dissolution but as nearly as possible **one third** of the members thereof shall retire as soon as may be on expiration of every second year in accordance with the provisions made in that behalf by the Parliament by law.

Qualification for membership of state legislature article 173

- **Article 173** provides that a person shall not be qualified to be chosen to fill a seat in the Legislature of a state unless he

a. Is a citizen of India and make and subscribe before some person authorized in that behalf by the election commission and oath or affirmation according to the form set out for the purpose in the third schedule

b. In the case of a state in Legislative Assembly not less than **25 years** of age and in the case of seat of Legislative Council not less than **30 years** of age

c. Possesses such other qualifications as may be prescribed when that behalf by or under any law made by parliament.

The speaker and the deputy speaker of Legislative Assembly [article 178]

- **Article 178** provides that every Legislative Assembly of a state shall as soon as may choose two members of assembly to be respectively speaker and deputy speaker

The Chairman and Deputy Chairman of Legislative Council article 182

- **Article 182** provides that Legislative Council of every state having such Council shall as soon as may be choose two members of Council to be respectively Chairman and Deputy Chairman

LEGISLATIVE PROCEDURE

[Article 197] Restriction on powers of Legislative Council as to Bills other than Money Bills.—(1) If after

A Bill has been passed by the **Legislative Assembly** of a State having a Legislative Council and **transmitted** to the **Legislative Council**—

(a) The Bill is rejected by the Council; or

(b) more than **three months** elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) The Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

The Legislative Assembly may, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or

agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for **the second time by the Legislative Assembly** and transmitted to the Legislative Council—

(a) The Bill is rejected by the Council; or

(b) more than **one month** elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) The Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

The Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill.

[Article 198] Special procedure in respect of Money Bills.—

(1) **A Money Bill shall not be introduced in a Legislative Council.**

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

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(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

200. Assent to Bills.—When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that

a) He **assents to the Bill or**
b) **He withholds assent or that**
c) **He reserves the Bill for the consideration of the President**

If the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent

Provided further that the Governor shall not assent to, but shall reserve for the **consideration of the President,** any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

201. Bills reserved for consideration.—When a Bill is reserved by a Governor for the consideration of the President, **the President shall declare either that he assents to the Bill or that he withholds assent**

a) Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or,

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b) When a Bill is returned, the House or Houses shall reconsider it accordingly within a **period of six months from the date of receipt** of such message and, if it is again passed by the House or Houses with or without amendment, it shall be **presented again to the President for his consideration**.

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Ordinance Making Power of the President: Article 123

123. Power of President to promulgate Ordinances during recess of Parliament.—(*1*) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

(*2*) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

(*a*) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

Explanation.—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(*3*) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

- **Article 123** talks about the presidential powers to promulgate ordinances. An ordinance can be promulgated if:
  a) either of the House of the Parliament is in session;
  b) And the President feels a need for immediate action.
- The ordinance which is promulgated by the President will have the same effect as that of an act or law of the Parliament.

- **The essential conditions to be met by an ordinance are**:
  - It shall be presented before both the Houses of Parliament for passing when it comes to the session;
  - The ordinance shall cease to **operate six weeks** after the date of reassembling of the parliament; Where the Houses of Parliament are summoned to reassemble

on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

- The ordinance may also expire if the resolutions disapproving it are passed by both the Houses of Parliament;
- Therefore every Ordinance issued by the president during the Recess of Parliament must be laid before both the houses of Parliament when it reassembles. If the ordinance is approved by both the houses it becomes an act and if Parliament takes no action at all, ordinance ceases to operate on expiry of **6 Weeks** from reassembly of parliament.
- It can be withdrawn at any time by the President;
- **The ordinance must be in consonance to the Constitution of India else it shall be declared void.**
- It is to be noted an ordinance made when both the houses are in session is void. Thus the power of the President to legislate by Ordinance is not a parallel power of legislation.
- **Grounds of promulgation** he can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.
- In **RC Cooper vs. Union of India 1970** the Supreme Court held that the president's satisfaction can be questioned in a court on the ground of malafide.
- The **38th Constitutional Amendment Act of 1975** made the president's satisfaction final and conclusive and beyond Judicial review but this provision was deleted by the 44th Constitutional Amendment Act 1978
- Ordinance can be retrospective in nature
- Constitutional amendment cannot be done through ordinance
- In **A K Roy versus Union of India** the Supreme Court held that Ordinance would be subject to the test of vagueness, arbitrariness, reasonableness and Public Interest.
- Scope of Ordinance making power is coextensive with that of Legislative powers of parliament. It means that an ordinance can be issued only on those subjects on which Parliament can make laws.

- The ordinance making power of the president is not a discretionary power, and he can promulgate or withdraw an ordinance only on the advice of Council of Ministers headed by the Prime Minister.

- **R G Garg Vs Union of India 1981**
- The power to promulgate ordinances is a power exerciseable only when both houses of Parliament are not in session and it has been conferred *ex necessitates rie* in order to enable the executive to meet and emergent situation. This Power to promulgate an ordinance is coextensive with the power of Parliament to make laws and President cannot issue Ordinance which Parliament cannot enact into law.

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Ordinance making power of the Governor, Article 213

213. Power of Governor to promulgate Ordinances during recess of Legislature.—(*1*) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—

(*a*) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or

(*b*) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or

(*c*) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(*2*) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance—

a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and

(b) may be withdrawn at any time by the Governor.

Explanation.—Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(*3*) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be *void*:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.

- Under Article 213, the Government can issue an ordinance if the circumstances compel him to do so, when either houses of the legislative assembly are not in session. However, there are certain circumstances under which the Governor cannot issue an ordinance. They are:

a) If the bill containing the same provision would require previous sanction of president for its introduction in state legislature

b) If the ordinance has certain provisions which the Governor would have reserved for the President in case it were a Bill.

c) If the State Legislature has an act with similar provisions and the same would be declared invalid without the President's assent.

- In **D C Wadhwa vs. State of Bihar 1987** the Supreme Court ruled that successive re promulgation of Ordinance without any attempt to get the Bill passed by the Assembly would amount to **fraud on constitution** and the ordinance so promulgated is liable to be struck down. It held that the exceptional power of law making through Ordinance cannot be used as a substitute for legislative powers of state legislative assembly. 256 ordinances work promulgated in the state of Bihar and all of them were kept alive by promulgation without being brought before the Legislature. The court held it 'subversion of Democratic process' and 'colorable exercise of power' and held it amounted to fraud on constitution.

UNION JUDICIARY

Part V, chapter IV of the Constitution. (Article 124-147)

- We have different levels of Judiciary which is present at the central level, the state level, and district level. In Part V of the constitution, chapter IV concerns the Union Judiciary.
- In India we have an **independent, integral judicial system.**

Article 124: Establishment and constitution of Supreme Court

1) Supreme Court of India will have Chief Justice of India and **7 judges** (Now 33 Judges, **33+1(CJI)**, done by The Supreme Court (Number of judges) Amendment Act, 2019)

2) Every Judge of the Supreme Court shall be appointed by the President after **consultation** with the of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose.

- Before 99th amendment judges of SC were appointed by the president. The chief justice of Supreme Court was appointed by the president with the consultation of SC and HC judges as he deemed necessary for the purpose. But in appointing other judges the president would always consult the CJI. He might consult such other judges of the SC and HC as he might deem necessary.
- **Case 1: UOI vs. Sankalchand Sheth (1977)**

  The SC held that the word Consultation meant full and effective consultation. It **does not** mean concurrence and the effective consultation. It does not mean concurrence and the president is not bound such consultation.
- **Case 2: SP Gupta vs. UOI (1982) (1st judges' case or judges transfer case)**

➢ The SC unanimously agreed with the meaning of the term '**Consultation'** as explained by the majority in the case of UOI vs. Sankalchand Seth. This means that the ultimate power to appoint judges was vested in the executive.

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- The decision of the government could only be challenged on the grounds of *malafides* or based on a relevant consideration. In effect decision in SP Gupta case gave absolute primacy to the government in appointment of judges.

Case 3: Supreme Court Advocates on Record Association v. Union of India (1993): (2nd Judges Case or Transfer case)

- A nine Judge Bench of the Supreme Court by a 7:2 majority overruled its earlier judgment in the SP Gupta case -and held that in the matter of appointment of the Judges of the Supreme Court and the High Courts, the Chief Justice of India should have primacy.

- Greatest of significance should be attached to the opinion of chief justice which is formed after taking into account the views of two senior most judges of Supreme Court

- The selection should be made as a result of participative consultative process. In such process executive should only act as a check on the exercise of the power of Chief Justice of India. Only in exceptional circumstances and for strong reasons the names recommended by the Chief Justice of India me not be appointed.

- The court held that the appointment of Chief Justice of India should be made on the basis of seniority.

- **Case 4: Re presidential reference 1999 (3rd Judge case or Transfer case)**

- A nine-judge bench of Supreme Court held that consultation process to be adopted by Chief Justice of India requires consultation of plurality of judges

- The sole individual opinion of chief justice does not constitutes consultation

- With regard to appointment of Supreme Court judge and transfer of High Court judge the Chief Justice of India should consult a collegium of 4 senior most judges of Supreme Court. The collegium must include the successor Chief Justice of India.

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- If two judges give adverse opinion then chief justice should not send opinion to the government.
- In regard to the appointment of High Court judge the collegium should consist of Chief Justice of India and two senior most judges.
- Court made it clear that recommendation for appointment without following the consultation process is not binding on the government.

National Judicial Appointment Commission [99 Constitutional Amendment, 2014]

- 99th Amendment: To remove the collegium system the constitution (ninety ninth Amendment) Act, 2014 was passed which entailed the constitution of **National Judicial Appointments Commission 2014** and amended **articles 124 (2), 127 and 128.** It inserted articles **124A, 124B and 124C.** This contended that a special committee needs to be set up for impartial and uninterrupted appointing of judges, which consisted of PM. CJI and person for civil society.

- **Case 5: Supreme Court Advocates on Record Association vs. UOI (2015)**

- SC Held that both, 99th constitutional amendment and as well as NJAC act 2014 is unconstitutional and void. Therefore, the original collegium system was initiated again.
- **124(A) (B) (C)** declared **void** by SC on 16th October 2016 in the case of **Supreme Court advocates on record association vs. UOI 2016**

3) Judge shall hold office until he attains the age of **sixty-five years [124[2]]**; the age of Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may be law provide) **[124(2A)]** (Inserted by the Constitution (Fifteenth Amendment) Act, 1963)

4) A judge **resigns to President of India. [124[(2)(a)]]**

5) **Qualification** to be a Judge of Supreme Court**[124[3]]**

- Citizen of India
- Has been for at least five years as a Judge of a High Court or of two or more such Courts in succession; or
- Has been for at least ten years an advocate of a High court or of two or more such Courts in succession; or
- **In the opinion of the President, a distinguished jurist.**

6) **Removal of Judge**

- **Article 124(2) (b)** provides that a judge may be removed according to **art. 124 [4]**
- **Article 124[4]** provides the procedure for removal of a Supreme Court judge. It lays down that a judge may be removed by the President only on grounds are **proved misbehavior or incapacity**
- Prior to the President passing this order, it should be addressed to both the houses and both houses need to approve with Simple majority (total-membership) and 2/3rd majority of members (present and voting)
- Such order shall be presented to the president in same session and President orders the removal.
- **Art 124[5]** says that the Parliament may be law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a judge under clause (4)

- **Article 124[6]** provides that the **Oath** by Supreme Court Judge is taken in front of President or some person appointed by President.

- **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.

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- **Article 125. Salaries, etc. of Judges**
  - Salary, privileges, allowances and rights as are specified in the Second Schedule
  - Neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.
- **Article 126. Appointment of acting Chief Justice – President** May appoint acting Chief Justice to perform the functions of chief justice in his absence

- **Article 127. Appointment of ad hoc. Judges-** Provide for appointment of *ad hoc* Judges in Supreme Court to fulfill the quorum of the judges to hold or to continue the session of court.

- **Article 129. Supreme Court to be a court of record**
- The Supreme Court shall be a court of record and shall have all the powers of a a court including the power to punish for contempt of itself.
- Implementation: The contempt of courts Act 1971

Laws relating to Contempt of Court

- The power to punish for contempt rests with the Judges under the Contempt of Courts Act, 1971.
- Section 2(b) states civil contempt and Section 2(c) states criminal contempt.
- **Sec 2(b) "civil contempt"** means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;
- **Sec 2(c) "criminal contempt"** means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—
- (i) scandalizes or tends to scandalise, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with,

or obstructs or tends to obstruct, the administration of justice in any other manner;

- Article 215 of Indian Constitution gives power to High Courts to punish for its contempt.
- Article 129 of Indian Constitution gives power to Supreme Court to punish for its contempt.

In **Delhi Judicial Service Assn. v. State of Gujarat 1991**, it has been held that under Article 129 the Supreme Court has power to punish a person for the contempt of itself as well as of its subordinate courts. The expression "including' extends and widens the scope of power.

It indicates that the Supreme Court as a court of Record has power to punish for contempt of itself and also something else which would fall within the inherent jurisdiction of the court of record.

In **Rajeshwar Singh vs. Subrata Roy Sahara, 2014** Supreme Court held that jurisdiction of Supreme Court under article 129 is independent of provisions of Contempt Of Court Act, 1971

International rulings

In 1987, after the ***Spycatcher judgement,*** when the Daily Mirror called British Law Lords "You Old Fools" or, in 2016, after the Brexit ruling, when the Daily Mail called three judges "Enemies of the People" the British judiciary consciously and sensibly ignored the headlines and did not consider contempt prosecution. In fact, **Lord Templeton's** comment on the Spycatcher headline is worth recalling*: "I cannot deny that I am old; it's the truth. Whether I am a fool or not is a matter of perception of someone else … there is no need to invoke the powers of contempt."*

As far back as 1968**, Lord Denning**, then Master of the Rolls in Britain and perhaps the greatest judge of our time, said of the law of contempt: "*Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself. It is the right of every*

man, in parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment on matters of public interest... we must rely on our own conduct itself to be its own vindication."

130. Seat of Supreme Court

The Supreme Court shall sit in **Delhi** or in such other place or places, as the chief justice of India may, with the approval of the President, from time to time, appoint.

131. Original jurisdiction of the Supreme Court

The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

a. Between the Government of India and one or more states; or
b. Between the government of India and any state or states on one side and one or more other states on the other; or
c. Between two or more states,

If and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Exclusion

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *Sanad* or other similar instrument which, having been entered into or executed before the commencement of this constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute. (7th amendment act, 1956)

SC is excluded to use its rights of original jurisdiction in the following case:

- The proviso mentioned in the (**article 131)**
- Disputes between states with respect to the use, distribution or control of water of Interstate River or river valley. **(article 262)**
- Matters referred to financial commission. **(article 280)**
- Adjustment of certain expenses as between union and state. **(article 257,258)**

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Recently Article 131 was invoked in the case of Sushant Singh Rajput where there was clash of opinion between Bihar government or Maharashtra government

Article 132: Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases [CONSTITUTIONAL JURISDICTION]

An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceedings, (if the High Court certifies under **Article 134A)** that the case involves a substantial question of law as to the interpretation of this constitution.

133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters [CIVIL JURISDICTION]

- Provides that an appeal shall lie to the supreme court from any judgment, decree or Final order in a civil proceeding of High Court in the territory of India is the high court certified under **article 134 A**

a) When the case involves a substantial question of law of general importance and
b) In the opinion of the High Court the said question needs to be decided by the Supreme Court.

134. Appellate jurisdiction of Supreme Court in regard to criminal matters

Provides that an appeal shall lie to the Supreme Court from any judgment, final order for sentence in a criminal proceeding of High Court in the territory of India

a) If the high court has on appeal reversed an order of acquittal of an accused person and sentenced him to death, or
b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
c) Certifies that the case is a fit one for appeal to the Supreme Court

- **134A- Certificate for Appeal to Supreme Court**

- **136. Special Leave Petition (SLP) to appeal by the Supreme Court**
  Supreme Court may, in its discretion, grant special leave to appeal from any judgment. Decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.
  This **shall not** apply to any judgment, determination, sentence or order passed or made my any court or tribunal constituted by or under any law relating to the Armed Forces. **[136[2]]**

➢ **Delhi Judicial Service Assn. v. State of Gujarat (1991)**
The Supreme Court has held that under Article 136 the Supreme Court has wide power to interfere and correct the judgment and order passed by any court or tribunal in the country. In addition to the appellate power, the court has special residuary power to entertain appeal against any order of any court. The plenary jurisdiction of the court to grant leaves and hear appeals against any order of a court or tribunal confers power of judicial superintendence over all the courts and tribunals including subordinate courts of magistrate and District Judge. The Supreme Court has therefore supervisory jurisdiction over all courts of India.

➢ **Essar Steel Ltd. Vs UOI (2016)**
It was held that The court not competent to judge economic policy of the government,- The Supreme Court has no jurisdiction and competence to judge the validity of the economic policy decision of the government unless it is unconstitutional or in violation of the statute and the rules or it is arbitrary, unreasonable or mala fide.

- **137. Review of judgments or orders by the Supreme Court- Article 137** provides that subject to the provision of any law made by the Parliament or any rule made under article 145 the Supreme Court shall have the power to review any judgment pronounced or order made by it.

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- **Curative Petition**
- The remedy of the curative petition was introduced by the Supreme Court in the case of **Rupa Asok Hurra V. Ashok Hurra.**
- A curative petition is the last remedy provided for any grievances. Its counterpart is the mercy petition which is filed before the President.
- It was also filed in the famous Delhi rape case.

- **139. Conferment on the Supreme Court of powers to issue certain writs**

➢ Parliament may be law confer on the supreme court power to issue directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto and certiorari,* or any of the, for any purposes other than those mentioned in clause (2) of article 32.

- **139A. Transfer of certain cases.**

➢ Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and or more High Courts or before two or more High Courts and the Supreme Courts is satisfied on its own motion or on an application made by the Attorney- General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Court and dispose of all the cases itself:

➢ Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

➢ The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any high court to any other high court. (42nd Amendment Act 1976)

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- **In Union of India v. Shiromani Gurdwara Prabandhak Committee (1986)**
- A petition for transfer of a suit for damage filed in Punjab against Union of India for loss of Gurdwara properties by respondents as a result of operation Blue star was filed in the Supreme Court by the Union of India on the ground that fair trial in Punjab would not be possible in view of extraordinary situation prevailing there. In view of the unusual and sensitive nature of the suit and the extraordinary situation in Punjab Court allowed the petition and transferred the case to the Delhi High Court for trial. The Court said that the power to transfer cases from one state to another must be used with circumstances justified the transfer of the case from Punjab to Delhi Court.

- **141. Law declared by Supreme Court to be binding on all courts-** Article 141 provides that Law cleared by Supreme Court shall be binding on all the courts within the territory of India.
- In **Bengal immunity vs. State of Bihar 1955** Supreme Court held that the Supreme Court and apart from its previous decisions. Therefore Supreme Court is not bound by its decision and in proper case it may reverse it.

- **ARTICLE 142: Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.- power to do complete Justice** article 142 provide that Supreme Court may pass such decree or make such orders as is necessary for doing **complete justice** in any matter pending before it.

- **ARTICLE 143: Power of President to consult Supreme Court[ADVISORY JURISDICTION]**
- If at any time it appears to the President that
- A question of law or fact has arisen, or is likely to arise,
- Which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that court for consideration and the court may, after such hearing as it thinks fit, report to the President its opinion thereon.

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- **Article 143[2]** provides that if the president refers to such matters which are excluded from the provision of article 131 for the advisory opinion of the Supreme Court then the court will be bound to give its opinion on it.
- On any dispute arising out of any treaty, agreement, covenant, engagement, *Sanad* or other similar instrument which, having been entered into or executed before the commencement of this constitution,

- **In Re Kerala education bill-1958**

  SC held that the court is not bound to answer a reference made to it by the president. It also held that in cases of advisory opinion conferred by article 143 is different from regular opinion, it is mandatory on the court to answer any reference or discussion made to it.

- In Special **Courts Bill 1978**: SC held that even in matters arising out of article 143(2) the court may be justified in returning the reference unanswered for a valid reason.
  - **145. Rules of Courts, etc**. - Article 145 provides that Supreme Court may from time to time, with the approval of president make rules for regulating Generally the practice and procedure of the court

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State Judiciary

Chapter V of Indian Constitution (Article 214-237)

- The Parliament on the recommendation of the Law Commission in 1858 passed the Indian High Courts Act 1861 which suggested the establishment of High Courts in place of Supreme Court in three Presidencies: Calcutta, Madras, and Bombay. The Charter of High Court of Calcutta was ordered in May 1862 and that of Madras and Bombay were ordered in June 1862. Thereby, making the **Calcutta high Court the first High Court of the country**.
- The reason for the implementation of this act was the need for a separate judiciary body for different states. Certain rules and eligibility criteria were set for the appointment of a Judge in any High Court and later after independence as per Article 214 of the Indian Constitution; it was declared that every Indian state must have their own High Court.
- There are currently **25 High Courts** in India.

- **214. High Courts for States.** - There shall be a High Court for each State.
  - **Article 231** further provides that Parliament may by law establish a common High Court for two or more States or for two or more states and union territory.

- **215. High Courts to be courts of record. -** Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.
- **216. Constitution of High Courts. -** Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.
  - **217. Appointment and conditions of the office of a Judge of a High Court.**-Every Judge of a High Court shall be appointed by the **President** after **consultation** with the Chief justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High court,

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- Shall hold office until he attains the **age of sixty Two years 217[1]**
- Judge may by writing under his hand Resigns to President. **217[1] [a]**
- A Judge may be **removed from his office by the President** in the manner provided in clause (4) of article 124 for the removal of a judge of the Supreme Court; **217 [1] [b]**
- **Procedure for removal of Judges:**
- **The judge's enquiry act** governs the removal of judges of High Court. Hence the grounds for removal are
  - ✓ Proved misbehaviour
  - ✓ Incapacity
- He is removed by the President as per the removal order passed by each house of the parliament by a special majority i.e. a majority of the total membership of the house and a majority of not less than two thirds of members present and voting. A detailed procedure followed is as follows:

1. The initial removal motion to be signed by 100 members in Lok Sabha or by 50 members of Rajya Sabha and be presented to the speaker/ chairman of the house.

2. The speaker has the option of either accepting or rejecting the motion

3. If it is accepted a committee would be constituted to investigate the matter

4. The committee so constituted consists of chief justice or judge of Supreme Court, chief justice of high court and a distinguished jurist.

5. If the committee ascertains the guilty of the judge then the houses take up the issue.

6. If the motion is passed in each house of the parliament by a special majority then the it is later presented to the President for his assent.

7. The President then passes order for removal of judge. The judge is considered removed from that day. (In fact no judge has been removed till now)

- **Qualifications of high court judges 217[2]**
  a) Citizen of India
  b) has for at least ten years held a judicial office in the territory of India; or
  c) Has for at least ten years been an advocate of a High Court or of two or more such Courts in succession.
- If any question arises as to the age of a Judge of a High Court, the question shall be decided by the **President after consultation with the Chief Justice of India** and the decision of the President shall be final.

- **218. Application of certain provisions relating to Supreme Court to High Courts**. The provisions of clauses (4), (5) of article 124 shall apply in relation to a High Court as they apply to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court. (Process of removal)
- **219. Oath or affirmation by Judges of High Courts-** In front of **Governor** or any person appointed by him
- **220. Restriction on practice after being a permanent Judge- Article 220** states no person who has held the office as a permanent judge of high court shall plead or act in any Court or before any authority in India except **Supreme Court and other high courts**
- **221. Salaries, etc., of Judges-** As per **2nd Schedule** or as per parliament determines by law.
- **222. Transfer of a Judge from one High Court to another**: Provides that the **President after consultation with Chief Justice** of India transfer a judge from one high court to another High Court.

  When a Judge has been or is so transferred, he shall, during the period the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963 as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.

- **Union of India v. Sankalchand Sheth (1976)**

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The constitutionality of a notification issued by the President by which Justice Sankalchand Sheth of the Gujarat High Court was transferred to the High Court of Andhra Pradesh, was challenged on the ground that the order was passed without the consent of the Judge and against public interest and without effective consultation of the Chief Justice of India. The Supreme Court by a majority of 3:2 held-

A Judge of a High Court could be transferred under Art. 222(1) without his consent if Consent.

The power to transfer a High Court Judge is conferred by the Constitution in public interest and not for the purpose of providing the Executive with a weapon to punish a Judge. The extraordinary power conferred on the President by Art. 222 (1) cannot be exercised in a manner which is calculated to defeat or destroy in one stroke the object and purpose of the various provisions conceived with such care to insulate the judiciary from the influence and pressures of the executive. Once it is accepted that a high court Judge can be transferred on the ground of public interest only, the apprehension that the Executive may sue the power of transfer for its own ulterior ends and thereby interfere with the independence of the judiciary loses its force.

Also Art. 222. (1) casts an absolute obligation on the President to consult the Chief Justice of India before transferring a judge from one High Court to another.

- **S.P Gupta v. Union of India (1982) (Judges Transfer case)**

  the validity of a circular letter of the Union Law Minister asking the Chief ministers of Various States of get the advance consent of sitting additional Judges and future incumbents to the post for being appointed as permanent Judges outside their State was challenged the Court by 4:3 majority held.

  The consent is not necessary element of Art. 222 they only requirement is that there must be a "consultation" with the Chief justice of India which must be effective. Power of transfer of Judges must be exercised in public interest. However, transfers cannot be done by way of 'punishment'.

- **In Supreme Court Advocates-on-record Association (1993)**

  Supreme Court has overruled the Judges Transfer case and held that in case of transfer of Judges of High Court the opinion of the Chief Justice of India has

not only the primacy, but is determinative in the matter. The chief Justice was however required to consult two senior most Judges of the Supreme Court before sending his recommendation for transfer of a Judge from one High Court to another. It was also held that the consent of the **transferred** Judge/Chief Justice of a High Court is not required for either the fresh or any subsequent transfer from one High Court to another.

Any transfer made on such recommendation of the Chief Justice of India not deemed to be punitive, and such transfer is not justiciable on any ground

- **In re President Reference (1999)**

  A nine-Judge Bench of the Supreme Court unanimously held that in case of transfer of High Court Judges, the chief justice of India must consult four senior most judges of the supreme court and in addition to the collegium of four judges the CJI is required to consult the Chief Justice of the two High Court (one from which the Judge is being transferred and the other receiving him). The collegium should make the decision in consensus and unless opinion of the collegium in conformity with that of the CJI no recommendation is to be made. If two Judges give adverse opinion, the CJI should not send the recommendation to the Government.

223. Appointment of acting Chief Justice- provides for the appointment of acting Chief Justice of India. **The president** may appoint another judge to be acting Chief Justice of India when the office of chief justice is vacant.

Article 224: Appointment of additional and acting judges- provides for appointment of additional and acting judges. The additional and acting judges are appointed for a period not exceeding two years

No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age **of sixty-two years**.

224A. Appointment of retired Judges at sittings of High Courts- provides for appointment of retired judges at the sitting of the High Court

225. Jurisdiction of existing High Courts. — It shall be the same as immediately before the commencement of this Constitution:

[Provided that any restriction to which the exercise of original jurisdiction by any of the High Court's with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the

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commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.]

Jurisdiction of High Court(s)

1) **Original Jurisdiction-** it means that applicant can directly go to High Court and not by means of appeals. This power is used in the following matters –

• Disputes arising out of relating to members of Parliament and state legislative assembly

• Relating to marriage, law, admiralty divorce, contempt of court etc

• Enforcement of fundamental rights (Supreme Court also has this power)

• Cases transferred from other court to itself which involves a question of law.

2) **Writ Jurisdiction-** Article 226 states that High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases, any government, within those territories directions, orders, or writs.

3) **Appellate Jurisdiction-**

It is said that the high court is the primary court of appeal i.e. it has power to hear the appeals against the judgment of the subordinate courts within its territories. This power can be classified in to 2 categories-**Civil jurisdiction and Criminal jurisdiction**

In civil cases its jurisdiction includes to the orders and judgments of the district courts, additional district courts and other subordinate courts.

In criminal cases its jurisdiction includes judgments relating to sessions courts and additional sessions court. These cases should be involving imprisonment for more than 7 years, confirmation of any death sentence awarded by session court before execution

226. Power of High Courts to issue certain writs.

Every High Courts shall have power, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, any government within those territories directions, orders or writes, including writs in the nature of habeas corpus mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of **the rights conferred by part III and for any other purpose**.

227. Power of superintendence over all courts by the High Court.

Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

Nothing in this article shall be deemed to confer on a High Court power of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

Hence in the exercise of this power it may –

- Call for return from such courts
- May issue general rules and prescribe forms for regulating the practice and proceedings of such courts
- Prescribe the form in which books and accounts are being kept by the officers of any court
- Settle fees payable to the sheriff clerks, officers and legal practitioners

Control over Subordinate Courts – [article 235]

This is an extension of the above supervisory and appellate jurisdiction. It states that the High Court can with draw a case pending before any subordinate court, if it involves the substantial question of law. The case can be disposed of itself or solve the question of law and return back to the same court. In the second case the opinion tendered by High court would be binding on the subordinate court. It also deals with matters pertaining to posting **promotion, grant of leave, transfer and discipline of the members there in**. In

this regard it appoints officers and servants to be made by Chief Justice or such other judge of High Court as the Chief Justice may direct.

228. Transfer of certain cases to High Court.

If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may-

a. Either dispose of the case itself, or
b. Determine the said question of law and return the case to the court from which case has been so withdrawn together with a copy f its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

229. Officers and servants and the expenses of High Courts.

230. Extension of jurisdiction of High Court to Union Territories.

231. Establishment of a common High Court for two or more States.

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Subordinate courts part VI [articles 233- 237]

- **Article 233** provides that **appointment, posting and promotion** of any person as district judge in any state shall be made by the **governor** of the state in **Consultation with the high court** exercising jurisdiction in relation to such state.

- a person **not already in service of union or state** shall only be eligible to be appointed as A district judge if he has been **not less than 7 year an advocate f**or a pleader and is **recommended by high court for appointment**

- **article 234 provides that appointments of person other than district judge to the judicial service** of the state shall be made by the **governor** of the state in accordance with the rules made by him in that behalf after consultation with the state public service commission and with the high court exercising jurisdiction in relation to such state

- **Article 235** provides that the **control over District Court** and court subordinate there too including the posting and promotions of and grant of leave to persons belonging to judicial service of a state and holding any posting period to the post of district judge shall be vested in the **High Court**.

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Relations between Union and the states [Part IX, articles 245- 293]

- Distribution of power between the Union and State is an essential feature of **federalism.** The Constitution has provided exhaustive provisions for distribution of power between Union and the state.
- The centre-state relations are divided into three parts, which are mentioned below:

A. Legislative Relations (Article 245-255)

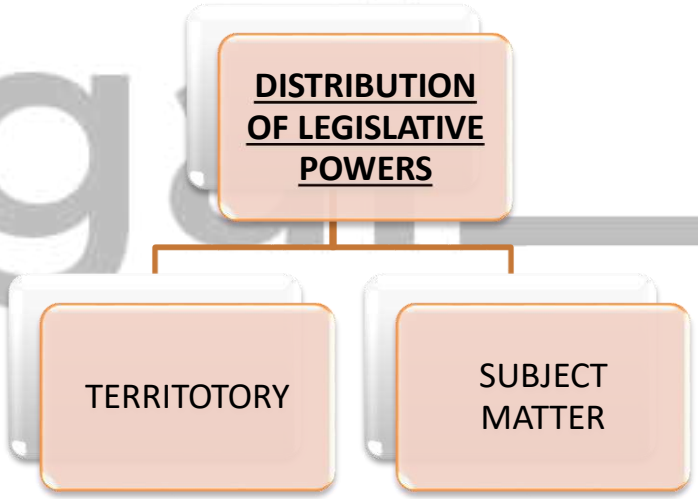
B. Administrative Relations (Article 256-263)

C. Financial Relations (Article 268-293)

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Legislative Relations [Article 245- 255]

Distribution of Legislative Powers



Territorial relations

- **Article 245[1]** provides that subject to the provisions of the constitution,
  - ✓ **Parliament** may Make laws for the whole or any part of the country and the
  - ✓ **Legislature** of the state may make law for the whole or any part of the state.
- **Article 245[2]** Provides that no law made by Parliament shall be Deemed to be invalid on the ground that it would have an **extra territorial operation**.

Theory of Territorial Nexus

- The state legislature cannot make extraterritorial laws except when there is sufficient connection between state and subject matter of the legislation. **[A.H. Wadia vs Commissioner of Income Tax]**
- The Supreme Court in **State of Bombay vs. RMDC 1957** held that extra territorial legislature can be upheld only when there is the sufficient Nexus between the object sought to be achieved and the state seeking to achieve them. The connection must be real and not illusionary.
- **Wallace Bros. And Co. Ltd. vs. The Commissioner Of Income**
  A company which was registered and incorporated in India and which also carried out its business in India through a sleeping partner. The firm made a staggering profit in that accounting year. The income tax authorities sought to levy a tax upon the company of the respondent. The income tax authority was challenged by the respondent, it was held by the Privy Council that there existed the doctrine of territorial nexus and held the tax valid. It is said that the major part of that income was extracted from British India was the sufficient ground to establish a territorial nexus.

Subject matter

- **Article 246** is related to subject matter of law making power of the Parliament and state legislature.

PARLIAMENT	• LIST I • UNION LIST
STATE LEGISLATURE	• LIST II • STATE LIST
BOTH	• LIST III • CONCURRENT LIST

- **Parliament** has exclusive power to make laws with respect to matters enumerated in the **union list [list I]**
- **State legislature** in **state list[list II]**

- **Parliament and state legislature both** have powers to make laws with respect to the matters enumerated in the **concurrent list[list III]**
- **Javed vs State of Haryana 2003** Supreme Court held that the constitution gives autonomy to the centre and the states within their respective fields. The legislation of one state cannot be held to be discriminatory against its citizens simply because Parliament or the state legislatures of the other states have not chosen to enact similar laws.
- **Article 248** provide for **residuary powers** of the legislation. It Lays down that subject to **article 246A Parliament has exclusive power** to make laws with respect to **any matter not enumerated in the concurrent list or state list.**

- **Article 246 A** provides for special provisions with respect to goods and service tax. This provision has been inserted by **101 Constitutional Amendment 2016**
- Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Principles of interpretation of lists

- Subject matters enumerated in the list are not scientifically perfect and there cannot be a watertight compartmentalization. There has to be certain overlapping. Therefore there are certain principles for interpretation of list which are to be followed by the court while adjudicating upon the matter:-

1. **Plenary powers of the Legislature**
   - It is the absolute power to enact laws and it is only subject to legislative competence and other constitutional limits.
   - The power of the Legislature to enact laws with reference to the matters interested to it is unqualified and it is only subject to the limitations imposed by the constitution. **[JK Jute mills vs. State of UP 1961]**

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- Entries should not be interpreted in restrictive sense. Each general word in an entry should be construed to include all ancillary powers or subsidiary matter**.** **[State of West Bengal versus Union of India]**
- The power to make laws include the power to give effect to it effectively as well as retrospectively.

2. Ancillary or incidental powers

- The power to legislate on a topic includes the power to legislate on ancillary or incidental matters which can be said to be reasonable included in the power
- According to this doctrine, the entries enumerated in the three legislative lists are not to be read in a narrow or restricted sense and each general word in an entry should be held to extend to all incidental or ancillary matters which can fairly and reasonably be comprehended in it. Hence, the power to levy tax would include the power to make provisions for checking tax evasion. Similarly, the power to legislate with respect to the collection of rent includes the power to legislate to remission of rent. However, the above logic of wider interpretation does not mean that the scope of the incidental or ancillary power can be extended to any unreasonable extent. Hence, the power to levy tax cannot be held to include the power to confiscate goods. Further, this doctrine cannot be used as a cloak for extending the power of a legislature to comprehend a subject which is explicitly mentioned in a list.
- **R.D Joshi versus Ajit Mills 1977** Supreme Court held that entries in the list must be given wide meaning in performing all ancillary and incidental powers. The court held that punitive measures for enforcing social legislation are ancillary measures.

3. Doctrine of pith and substance

- Doctrine of Pith and Substance is also known as the Doctrine of Predominant Purpose of true nature and character of law
- If the law passed by one legislature encroaches upon the field assigned to other, then the court will apply the doctrine of pith and substance to determine whether the legislature was competent to make the law or not.
- Pith and substance of Legislature means **true object and scope of legislation**

- If substance of law relates to matters within the competence of Legislature then the enactment will be held to be *intra virus(valid)*
- **Prafulla Kumar vs. Bank of Commerce Khulna 1947** In this case, the validity of the Bengal Money Lenders Act,1946 was challenged on the ground that it was ultra-vires the Bengal Legislature in so far as it related to " promissory notes " which was a central subject. The Privy Council held that the Act was, in pith and substance, a law in respect of "money lending" and "money lenders" – a state subject and hence, was valid even though it incidentally encroached on "promissory notes".
- The court held that clear cut distinction is not possible between the legislation if Power of Union and State legislatures because they are bound to overlap. In ascertaining the pith and substance of the court must consider:-
  a) The object of the
  b) The scope of the act and
  c) The effect as the whole
- In the **State Of Bombay Vs Fn Balsara 1951** the court held that Bombay prohibition act as valid because the pith and substance of the act fell in the state list even though it incidentally encroaches upon the union list.

4. Doctrine of colorable legislation

- It is based upon the doctrine of power separation. Separation of power mandates to strike power of balance between different state components.
- It means that though apparently the legislature passing the statue purported to act within the limits of the power. The transgression is covert or indirect.
- This doctrine of colorable legislation is applied when a Legislature does not have the right to make law upon a particular subject but indirectly makes one.
- It is based on the Maxim ' ***what cannot be done directly, cannot be also done indirectly'***
- Colourability is bound up in competency and not with bad fate or Evil motive.

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- **K.C. Gajapati Narayana Deo and Other v. The State Of Orissa**-"If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers"

- **State of Bihar vs. Kameshwar Singh 1952** is the only case where the law has been declared invalid on the ground of colorable legislation. The Bihar Land Reforms Act, 1950 was held unconstitutional on the ground that although it ostensibly purported to lay down the principle of compensation, it did not lay down any such principle and therefore implicitly attempted to deprive the petitioner of any compensation.

Parliament's Power to Legislate On State Subject

- In the following circumstances the Parliament gets the authority to legislate on matters enumerated in the state list

1. **National interest[article 249]**

- **Article 249** provides that if **Rajya Sabha** passes a resolution supported by two third of the member present and voting that it is necessary and expedient in the **national interest** that the Parliament should make laws with respect to the goods and services tax or any other entry in state list then it shall be lawful for Parliament to make laws for whole or any part of the country so long as the resolution remains in force.
- Such resolution passed by the Rajya Sabha remains valid for 1 year but it can be renewed multiple times but not exceeding one year is time.
- The law made by the Parliament shall cease to have effect after expiration of **six months** after the resolution ceases to operate.

2. **During proclamation of emergency [article 250]**

- **Article 250** provides that while proclamation of emergency is an operation the Parliament shall have the power to make laws for the whole or any part of the country with respect to goods and service tax and other matters specified in state list.
- Such law will cease to have effect after expiry of **six months** from the date when emergency cease to operate.

3. **Consent of States [article 252]**

- **Article 252** provides that if a legislature of two or more States passes a resolution to effect that it is desirable to have a law passed by Parliament on any matter in state list then it shall be lawful for Parliament to make laws on that subject matter.

4. **To give effect to treaties and international agreements [article 253]**

- **Article 253** empowers the Parliament to make law for the whole or any part of India for implementing treaties and international agreements and conventions.

5. **Failure of constitutional machinery in state article 356**

- **Article 356** provides that Parliament is empowered to make laws with respect to all matters in the state list in case of state emergency.

Repugnancy between centre and state laws [article 254]

- Repugnancy means a contradiction between two laws which when applied to the same set of facts produce different results. It is used to describe inconsistency and incompatibility between the Central laws and State laws when applied in the **concurrent field.**
- **Article 254[1]** provides that if any provision of law made by the Legislature of the state is repugnant to any provisions of law made by Parliament with respect

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to one of the matters of the **concurrent list** then the law made by the Parliament shall prevail. This provision is subject to **article 254[2].**

- **Article 254[1]** is applied when there is inconsistency between State Law and union law with respect to the concurrent list.

- **Article 254[2]** envisages a situation where the State Law will prevail over Union law.
- It provides that if the state law is repugnant to any law made by Parliament on the concurrent list but the **state law has been reserved for ascent of the president** and **has received the assent of the President** then the law will prevail over the law made by the parliament.
- However Parliament can still **override** such laws by subsequently making a law on the same matter
- **Hoechst Pharmaceuticals Limited versus state of Bihar 1983-** This case discusses the effect of Clause (2) of Article 254. It was observed that the assent of the President for a state law which is repugnant to a Central law for a matter related to a concurrent subject is important as it results in the prevailing of the State law in that particular State, thereby, overriding the application of the Central law in that state only.

- **Important cases on repugnancy**

➢ **M Karunanidhi versus Union of India 1979-** In this case, a constitutional bench of the Apex court considered the question of repugnancy between a law made by the Parliament and a law made by the State legislature. It was observed that the following conditions should be satisfied for the application of the doctrine of repugnancy:

1. A direct inconsistency between the Central Act and the State Act.
2. The inconsistency must be irreconcilable.
3. The inconsistency between the provisions of the two Acts should be of such nature as to bring the two Acts into direct collision with each other and a situation should be reached where it is impossible to obey the one without disobeying the other.

- **Deep Chand versus state of UP 1959 -** observed that repugnancy between two enactments can be identified with the help of the following three tests:

- Whether there is a direct conflict between the two conflicting provisions;
- Whether the Parliament intended to lay down an exhaustive enactment on the subject-matter and to replace the law made by the State legislature; and
- Whether the law made by the Parliament and that made by the State legislature occupies the same field.

- **Government of Andhra Pradesh v. J.B. Educational Society-** the Court observed that the judiciary must interpret legislation made by the Parliament and the State Legislature in such a way that the question of conflict does not arise or can be circumvented. However, if such a conflict between laws is unavoidable, then the Parliamentary law shall prevail.

- **Zhaveri bhai vs State of Bombay 1954 -** a convict pleaded that he was convicted by a Court having no jurisdiction. According to the state law, the offence committed by him, that is, transporting food grains without permit attracted imprisonment for a term of 7 years. On the other hand, the Central law [essential supplies act] prescribed punishment of imprisonment for a term of 3 years for the offence committed by him. An additional provision in the Central law was that the punishment could be increased to 7 years if the person was found possessing double the permitted quantity of food grains [i.e. several category of level]. The convict argued that he should have been governed by the provisions of the Bombay Act and not the Central Act which would render the decision of the court a faulty one, and without jurisdiction as the Magistrate who punished him could sentence him for the imprisonment of only up to 3 years. The occupation of the field of both the laws was observed as seen whether they occupy the same field or not. The Supreme Court held that both the laws occupied the same field and cannot be split up. Hence, the State laws were held to be void and the Central law prevailed as per the doctrine of repugnancy.

Administrative relations [article 256- 263]

- Administrative relations are basically executive relations.
- The executive power is co-extensive with legislative power.

- **Basic principles of union state executive relations**

✓ **Article 256** provides that **executive power of every state shall be so exercise as to ensure compliance with the law made by the Parliament** and any existing laws which apply in that state

✓ **257. Control of the Union over States in certain cases**.—**The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union**, **[art 257[1]]**

- **The executive power of the Union shall extend to the giving of directions to a State [in normal circumstances]**

✓ As to the construction and maintenance of means of communication declared in the direction to be of national or military importance. **[art 257[2]]**

✓ As to the measures to be taken for the protection of the railways within the State. **[art 257[3]]**

- **The executive power of the Union shall extend to the giving of directions to a State [in the case of emergency]**

✓ Article 353- during the proclamation of national emergency center can give direction on all matters

✓ Article 356- during president's rule imposed, the state executive comes under the union

- **258A. Power of the States to entrust functions to the Union**.—the **Governor of a State** may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers

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functions in relation to any matter to which the executive power of the State extends.

- **Article 261** provides that full faith and credit shall be given throughout the territory of India public the acts, records and judicial proceedings of the Union and of every state.
- Final judgment or order delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within the territory according to the law.

Adjudication of water disputes

- **Article 262[1]** provides that Parliament May by law provide for adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or, in any interstate river or river valley.
- Parliament may by law provide that neither Supreme Court nor any other courts shall exercise jurisdiction in respect to any interstate water dispute or complaint**. [Article 262[2]].**
- Parliament has enacted **Interstate Water Dispute Act 1956** under **article 262.**

Interstate Council

- **Article 263** provides for establishment of interstate Council to effect coordination between the states and between the centre and States.
- The **President** can establish such a Council is at any time it appears to him that **Public Interest** would be served by its establishment.
- He can define the nature of duties to be performed by such a Council and its organization and procedure
- **Article 263** specifies the duty that can be assigned to it in the following manner:

a) Inquiring into the advice upon dispute which may arise between States;
b) Investigating and discuss in subjects in which the states of the centre and the states have a common interest; and

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c) Making recommendations upon in such subject and particularly for the better coordination of policy and action on it.

- Recommendations of interstate council are advisory in nature and not binding.
- The **Sarkaria Commission** on centre state relations [1983- 87] made a strong case for establishment of permanent interstate council under **article 263** of the constitution.
- In pursuance of the above recommendation of the Sarkaria Commission. Government established the interstate council in 1990.

Composition

- It consists of following members:

a) Prime Minister as chairman
b) Chief Minister of all the states
c) Chief minister of union territories having Legislative Assembly
d) Administrators of union territories not having Legislative Assembly
e) Governors of state under president rule
f) 6 central cabinet ministers, including the Home Minister, to be nominated by Prime Minister.

- Five minutes of cabinet rank / minister of state [independent charge] nominated by the chairman of Council [i.e. Prime Minister] are permanent invitees to the Council.

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Financial Relations [Article 264- 291]

- **Article 265** provides that no tax shall be levied [imposed] or collected except by the authority of law.

- **Consolidated fund of India and of the states**

➢ **Article 266** provides for a consolidated fund of India and States of public account of India and of the state.

➢ This provision shall be subject to **article 267**[contingency fund] and to provisions relating to the assignment of whole or any part of the net proceeds.

➢ Consolidated fund of India: following shall be the consolidated fund of India:-

a) All revenues received by government of India;
b) All loans raised by government of India by issue of treasury bills;
c) Loan for ways and means advances;
d) All money received by government in repayment of loans

- **Consolidated fund of the state**

a) All revenue received by government of the state
b) All loans raised by government of States by issue of treasury bills
c) Loans or ways and means advances
d) All money received by government in repayment of loans.
e) All other public money received by or on behalf of Government of India or government of the state shall be credited to the public account of India for the public account of the state.

- **Contingency fund of India and of the states**

➢ **Article 267[1]** provides for the contingency fund of India and **article 267[2]** provide for the contingency fund of state

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- **Article 267[1]** provides that Parliament may by law establishment contingency fund of India and such sums shall be paid into it as may be determined by such law.
- Such fund shall be placed at the disposal of the President to enable advances to be made by him out of such funds for purpose of meeting unforeseen expenditure pending authorization of such expenditure by Parliament by law under **article 115 or 116.**

Goods and service tax

- Provision related to goods and service tax has been introduced by the **101st constitutional amendment act 2016**
- **Article 269A** provides that goods and service tax on supplies in the course of interstate trade or commerce shall be levied and collected by the government of India.
- Such tax shall be appropriated between the Union and the state in the manner as may be provided by Parliament by law on the Recommendation of goods and service tax council.

- **Goods and service tax Council**
- **Article 279A** (inserted by the 101st constitutional amendment, 2016) provide for establishment of goods and service tax Council
- It provides that GST Council shall be constituted by president within 60 days from the commencement of 101st constitutional amendment, 2016

Composition article 279[2] provide that goods and service tax counsel shall consist of the following members:-

a) Union Finance Minister[chairperson]
b) The Union Minister of state in charge of revenue of finance[member]
c) The Minister in charge of finance and taxation or any other Minister nominated by each state government[members]

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- The members of The goods and service tax Council referred to in sub clause [c] of the clause [2]shall as soon as may be choose one among themselves to be the vice chairperson of the Council for such a period as they may decide
- **Quorum:** one half of the total number of members of goods and service tax Council shall constitute the quorum at its meeting.

275. Grants from the Union to certain States.—(*1*) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as **Parliament may determine** to be in **need of assistance,** and different sums may be fixed for different States:
Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State

- Therefore Statutory grants are such grants given by the **Parliament** out of the **consolidated fund of India** to such States which are **in need of assistance.**
- Different states may be granted different sums
- Specific grants are also given to promote Welfare of scheduled tribes in a state or to raise the level of of administration of Scheduled Areas there in

Finance commission [article 280]

- **Article 280** provides for the constitution of finance commission.
- Finance commission shall be constituted by the order **of president**
- It shall be constituted within two years from commencement of the constitution and there after the expiration of every fifth year for such earlier time as president may considered necessary

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- **Parliament** may by law determine the qualifications of members of finance commission **[article 280[2]]** Parliament has enacted **finance commission Act 1951,** there in the qualifications of Chairman and members are given. following are the qualifications:-
- Chairperson must be a person having experience in public affairs

1. a judge of high court or one qualified to be appointed as judge of HC
2. a person who has special knowledge of finance and accounts of the government
3. a person who has wide experience in financial matters and in administration
4. a person who has special knowledge of Economics

- **composition**: it shall consist of a Chairman and four other members to be appointed by president

Duties of finance commission

- **article 280[3]** provides that it shall be the duty of commission to make **recommendations** to the president in the following matters:-

1. Distribution of net proceeds of tax to be shared between centre and state, and the allocation between states of respective shares of such proceeds
2. The principles that should be governed the grant in aid to the state by centre[that is out of the consolidated fund of India]
3. The measures needed to augment the consolidated fund of state to supplement the resources of the panchayats and municipalities in the state on the basis of recommendations made by the eighth finance commission.
4. any other matters referred to it by president

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EMERGENCY

Part XVIII of the Constitution

- **Articles 352 to Article 360** contains emergency provisions
- The emergency provisions of the Indian Constitution were borrowed from the **German Constitution**
- Part XVIII of the Constitution states three kinds of emergency:
  1. Emergency (Art. 352)
  2. State Emergency, called **President's Rule** (Art 356)
  3. Financial Emergency (Act. 360)

- Two duties are imposed on the Centre by **Article 355** of the Constitution:
  1. To protect every State from external aggression and internal disturbance
  2. To ensure that the Government of every State is carried on in accordance with the provisions of the Constitution

NATIONAL EMERGENCY

- **ARTICLE 352**
- **Proclamation of emergency** can be made under any of the three circumstances by **President** under Article 352(1) if he is satisfied that a grave emergency exists for the following reasons. He may by proclamation make a declaration to that effect in respect of the whole of India or part of territory thereof as may be specified in the proclamation

  ✓ War
  ✓ External Aggression
  ✓ Armed Rebellion **[inserted by the 44th CAA, 1978 in place of 'internal disturbance]**

- **Territorial extent of emergency:** the emergency can be proclaimed either for the whole of India or for any part of country

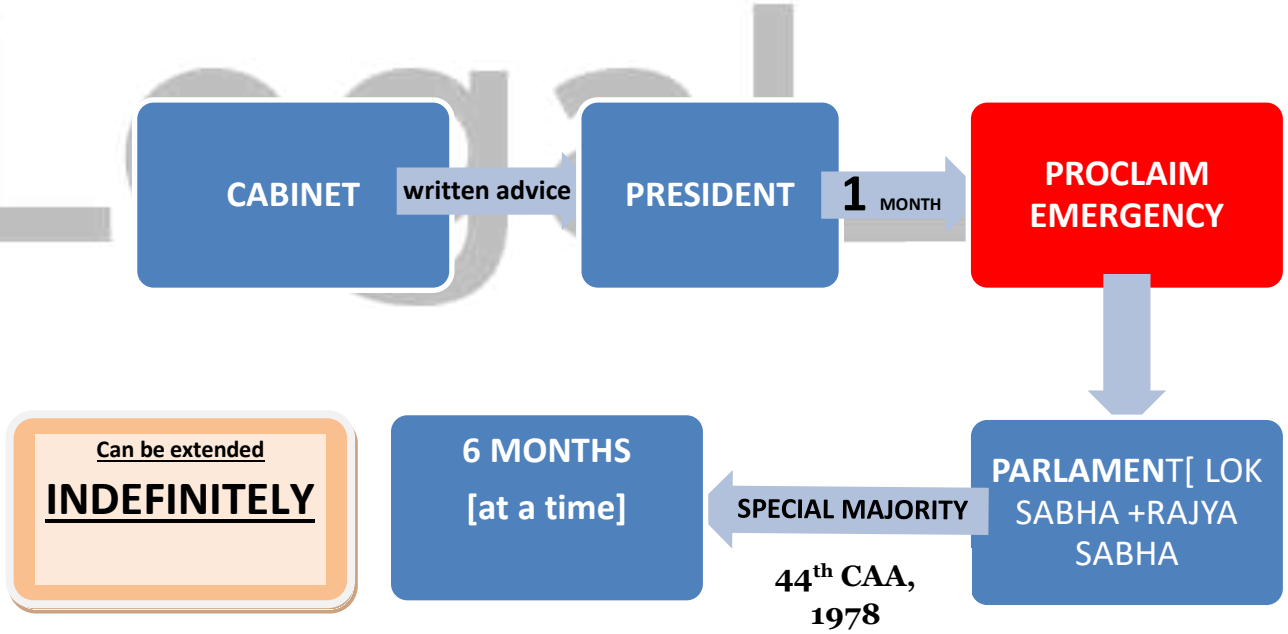
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- The Proclamation of emergency could only be issued by the **President,** on recommendations of the **Council of Ministers, in writing**.
- **44th Amendment** also added that Proclamation of Emergency may be made if the security of India or any part thereof is threatened, even before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof

- **38TH amendment** added that the President may, if satisfied, issue different proclamations on different grounds, even if a proclamation has already been issued and is in operation. It also made the declaration of National Emergency immune to **judicial review**. But, this provision was subsequently deleted by the **44th Amendment Act of 1978.**

- **In Minerva Mills case (1980),** the Supreme Court held that National Emergency can be challenged in the court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts.

- **Procedure of Approval by parliament**



- The proclamation of emergency must be laid before each house of the Parliament and it shall cease to operate at the expiration of **one month** unless before the expiry of one month is it is approved by the resolution by both houses of the Parliament.

- House approves the proclamation by passing a resolution with special majority (44TH CAA, 1978 before this it was simple majority] to that effect; it shall remain in force for a period **of six months.**

- If either House takes no action, it shall expire after one month. If the proclamation is rejected or disapproved, it shall be revoked by the president with immediate effect.

- If the proclamation of emergency is issued at a time when Lok Sabha is dissolved or dissolution take place within one month of the proclamation without approving the proclamation but the proclamation has been approved by Rajya Sabha then the proclamation will have to be approved by Lok Sabha within 30 days from the date when the newly constituted Lok Sabha first sits. If it does not approve within the 30 days then the proclamation shall cease to operate

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- **Duration of emergency**: proclamation of emergency was approved by the Parliament shall remain in Force for a period of **six months** [unless revoked earlier] from the date of passing of 2nd resolution approving the proclamation.

- For the continuance of emergency beyond 6 month approval by Parliament would be required every six months.

- **Revocation of proclamation**

➢ A proclamation of Emergency may be revoked by the President at any time by a subsequent proclamation. Such proclamation does not require parliamentary approval.

➢ The emergency must be revoked if the Lok Sabha passes a resolution by a simple majority disapproving its continuation.

- **Power of Lok Sabha to pass resolution for discontinuance of emergency**: the president shall revoke a proclamation if the Lok Sabha passes a resolution disapproving the continuance in force of such proclamation

- **Special sitting of Lok Sabha:** Where are written notice signed by not less than **1/10th** Of the total members of Lok Sabha has been given to:-

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1. The speaker, if the house is in session or
2. The president if the house is not in session

- Special sitting of the Lok Sabha shall be held within **14 days** from the date of receipt of the notice.
- The notice will contain an intention to move a resolution for disproving the continuance of proclamation. The special sitting will be held to consider such resolution.

✓ **SARBANANADA SONOWAL V UNION OF INDIA (2005)** The Supreme Court for the first time got the opportunity to interpret the word aggression in Article 355. Interpreting the world "aggression", the court held that it is not to be confined in interpretation with the word "war". Aggression comprises many acts which cannot be termed as war. The framers of the Constitution have deliberately used the world "aggression" and not "war".

Internal disturbance is a matter of concern; it does not threaten the security of the country or part thereof, unlike armed rebellion. Further, internal disturbance by itself cannot be a ground for proclamation of emergency under Article 356 if there is no failure of constitutional machinery of State.

- **EFFECTS OF PROCLAMATION OF EMERGENCY**

✓ **ARTICLE 353: Effect of proclamation of emergency**

1. During emergency, the executive power of the Union extends to giving directions to a State as to the manner in which the executive power is to be exercised. **[article 353[a]]**

2. The Parliament shall have power to make laws, conferring powers or imposing duties with respect to any matter in the state list**[article 353[b]]**. This means that the legislative power of the Union also is extended to making laws

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in the State List, and has an overriding effect. This includes the power to impose duties on the Union and its officers.

- ✓ **ARTICLE 354: Application of provisions relating to distribution of revenues while a proclamation of emergency is in operation**

  The financial arrangements between states and the Union as given under Articles 268 to 279 may also be **altered by order of the President** during proclamation of emergency, which is to be laid before each House of Parliament. This arrangement will cease to operate after the cessation of emergency. **This means The Centre can alter distribution of revenue between Union and States under article 354**

- ✓ **ARTICLE 358: Suspension of fundamental rights under article 19: [automatic suspension]**

  If the emergency is an operation on the ground of **War or external aggression [44th CAA, 1948]** then the state can make any law or take any executive action abridging the rights guaranteed under article 19. **[Article 358]**

- ✓ **ARTICLE 359: Suspension of the enforcement of the rights conferred by part III during emergencies**

  When a proclamation of emergency is in operation, enforcement of fundamental rights **except Articles 20 and 21 (44th Amendment)** may be suspended by the President in the whole or any part of India. This again has to be laid before each House of Parliament.

- ✓ In **ADM Jabalpur vs. Shivkant Shukla 1976** Supreme Court held that during the proclamation of emergency rights under article 21 can also be suspended and no person shall have any *locus standi* for enforcement of such right. This case is also known *habeas corpus* case.

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Failure of Constitutional Machinery of State or State Emergency [Article 356]

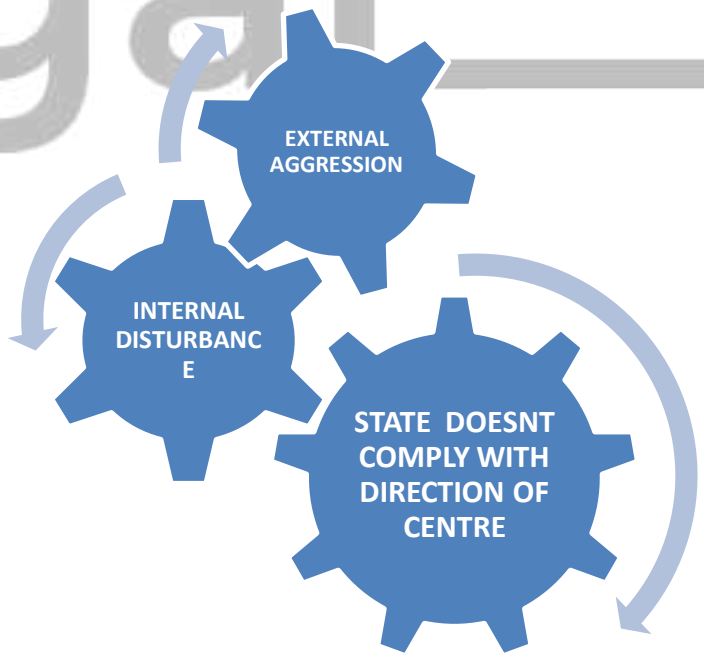
- Two duties are imposed on the Centre by **Article 355** of the Constitution:

1. To protect every State from external aggression and internal disturbance
2. To ensure that the Government of every State is carried on in accordance with the provisions of the Constitution

- It is this duty in the performance of which the centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in a state.

- **Grounds of imposition:** the president's rule can be proclaimed under Article 356 on **two grounds**:

1. **Article 356** empowers the President to issue a proclamation if he is **satisfied** that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the constitution.
2. **Article 365** says that whenever a state fails to comply with or to give effect to any direction from the centre, it will be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the constitution.



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- **Article 356** provides that the **president**

a) On the receipt from the Governor or

b) **Otherwise** is **satisfied** that the situation as a rise in which the government of a state cannot be carried on in accordance with the constitution

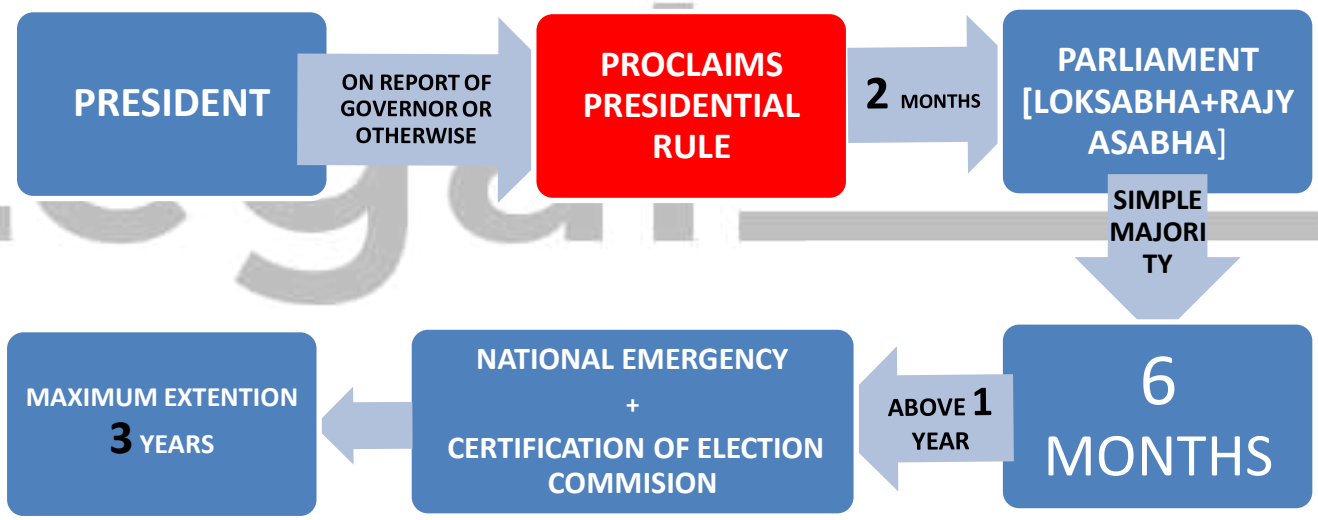
✓ The 38th Amendment act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which would not be challenged in any court on any ground.

✓ But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.

✓ Once a proclamation is made, he assumes to himself, the functions of the Government of the Sate and declares that the powers of the legislature of the State shall vest in Parliament.

✓ These powers, however, **do not include the powers relating to High Courts**

- **Parliamentary approval**



44TH CAA, 1978

✓ A proclamation imposing president's rule must be approved by a **simple majority** by both the houses of parliament within **two months** from the date of its issue. **[Article 356[3]]**

- ✓ However, if the proclamation of President's rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided that the Rajya Sabha approves it in the meantime.
- ✓ a proclamation once approved by Parliament shall[unless revoked] remain in Force for a period of **six months** [changed to 1 year from 42nd CAA, 1976 again changed to 6 months by 44th CAA, 1978] from the date of issue of such proclamation **[article 356[4]]**
- ✓ for the further continuance of emergency it must be approved by Parliament each time
- ✓ **Revocation:** President can at any given time revoke President's rule.

- **Duration of President's rule:**
- ✓ No such proclamation shall remain in Force for the period longer than **3 years. [proviso article 356[4]]**
- ✓ **article 356[5]** provides that resolution for continents of emergency **beyond one yea**r shall not be passed by the Parliament unless

1. A proclamation of emergency is in operation in whole of India or in whole or any part of the state; and
2. Election Commission certifies that continuation of emergency is necessary on account of difficulties in holding elections to the state assemblies.

- **Consequences of the President's rule**:
- The President acquires the following extraordinary powers when the President's rule is imposed in a state:

1. He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.
2. He can declare that the powers of the state legislature are to be exercised by the parliament.
3. He can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state.

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- **RECOMMENDATIONS OF THE SARKARIA COMMISSION (1983)**
- The Sarkaria Commission made the following recommendations regarding use of Article 356:

✓ This article should be used very sparingly and as a matter of last resort. It can be invoked only in the event of political crisis, internal subversion, physical breakdown, and noncompliance with the constitutional directives of the centre.

✓ Before that, a warning should be issued to the errant state in specific terms and an alternate course of action must be explored before invoking it.

✓ The material fact and grounds on the basis of which this article is invoked should be made an integral part of the Proclamation; it will ensure effective Parliamentary control over the invocation of President Rule.

✓ The Governor's report must be a 'speaking document' and it should be given wide publicity.

✓ So the Sarkaria Commission was an important attempt to streamline the centre-state relations.

✓ It has become a reference point for any discussion on centre-state relations and it has been frequently referred to even by the judiciary.

✓ On its recommendation, the Inter-State council was established in 1990 and it has considered its recommendations.

- **Judicial review of proclamation of President's rule**

✓ In **S R Bommai vs. Union Of India 1994**

✓ Supreme Court issued the historic order, which in a way put an end to the arbitrary dismissal of State governments under Article 356 by spelling out restrictions.

✓ The verdict concluded that the power of the President to dismiss a State government is not absolute.

✓ The verdict said the President should exercise the power only after his proclamation (imposing his/her rule) is approved by both Houses of Parliament.

- ✓ Till then, the Court said, the President can only suspend the Legislative Assembly by suspending the provisions of Constitution relating to the Legislative Assembly.

- ➢ The following propositions have been laid down by the Supreme Court with respect to Article 356:
- ✓ Presidential proclamation dissolving a State Legislative Assembly is subject to judicial review.
- ✓ The burden lies on the government of India to prove that relevant material existed to justify proclamation.
- ✓ If the court strikes down the proclamation, it has power to restore the dismissed State Government to office.
- ✓ A State Government pursing ant-secular politics is liable to action under Article 356 of the Constitution.

- **Rameshwar Prasad vs. Union of India 2006**

- ✓ Supreme Court held that Governor while recommending dissolution of assembly has to annex with report relevant materials substantiating his decision. In absence of relevant materials it will be considered as a personal opinion of the Governor

Difference between the national Emergency and president's rule

S.N.	National Emergency (352)	President's Rule (356)
1.	It can be proclaimed only when the security of India or a part of it is threatened by **war, external aggression or armed rebellion**.	It can be proclaimed when the government of a state cannot be carried on in accordance with the provisions of the Constitution due to reasons which may not have any connection with war, external aggression or armed rebellion.
2.	During its operation, the state executive and legislature continue to function and exercise the powers assigned to them under	During its operation, the state executive is dismissed and the state legislature is either suspended or dissolved. The president administers the state through

	the **Constitution.** Its effect is that the Centre gets concurrent powers of administration and legislation in the state.	the governor and the Parliament makes laws for the state. In brief, the executive and legislative powers of the state are assumed by the Centre.
3.	There is **no maximum** period prescribed for its operation. It can be continued indefinitely with the approval of Parliament for every six months.	There is a maximum period prescribed for its operation, that is, **three years.** Thereafter, it must come to an end and the normal constitutional machinery must be restored in the **state.**
4.	It suspends **fundamental rights [19 and other FR except 20& 21]**of the citizens.[358+359]	It has no effect on Fundamental Rights (FR) of the citizens.
5.	Every resolution of Parliament approving its proclamation or its continuance must be passed within **1 month** by a **special majority.**	Every resolution of Parliament approving its proclamation or its continuance can be passed within **2 months** only by a **simple majority**.
6.	Lok Sabha can pass a resolution for its revocation.	There is no such provision. It can be revoked by the President only on his own discretion.

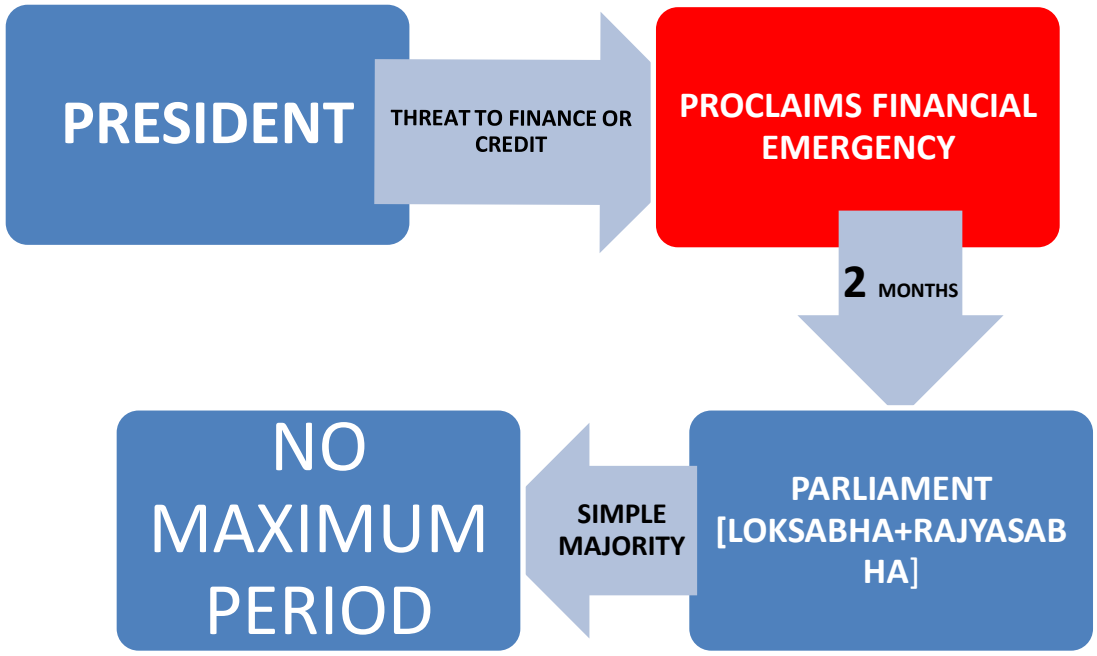
FINANCIAL EMERGENCY [ARTICLE 360]

- **Proclamation Of Financial Emergency**
- It states that if the **President** is satisfied that a situation has arisen whereby the **financial stability or credit of India** (or any part thereof) is threatened, he may, by a proclamation, make a declaration to that effect.
- It was formerly by 38th CAA 1975, provided that the satisfaction of the President on this point was to be final and conclusive, and could not be questioned in any court on any aground. It was further provided that neither the Supreme Court nor any other court had the jurisdiction to go into the validity:

1. Of such a proclamation of the President; or
2. Of the continued operation of such a proclamation.

- The provision was, however, deleted by the **44th Amendment, 1978**.

- **Parliamentary Approval and Duration of the Financial Emergency**



- A proclamation of financial emergency must be approved by both the Houses of Parliament within **two months** from the date of its issue.

- A resolution approving the proclamation of financial emergency can be passed by either House of Parliament (Lok Sabha or Rajya Sabha) only by a **simple majority.**

- However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until **30 days from the first sitting** of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

- Once approved by both the Houses of Parliament, the Financial Emergency continues **indefinitely** till it is revoked. This implies two things:
  1. **Repeated Parliamentary approval is not required** for its continuation.
  2. There is no maximum time limit prescribed for the operation of financial emergency
- A proclamation of Financial Emergency may be revoked by the **President** anytime without any Parliamentary approval.

- **Effects of Financial Emergency**

1. During the financial emergency, the executive authority of the Center expands and it can give financial orders to any state according to its own.
2. All money bills or other financial bills that come up for the President's consideration after being passed by the state legislature can be reserved.
3. Salaries and allowances of all or any class of persons serving in the state can be reduced
4. The President may issue directions for the reduction of salaries and allowances of;
   i. All or any class of persons serving the Union and
   ii. The judges of the Supreme Court and the High Court

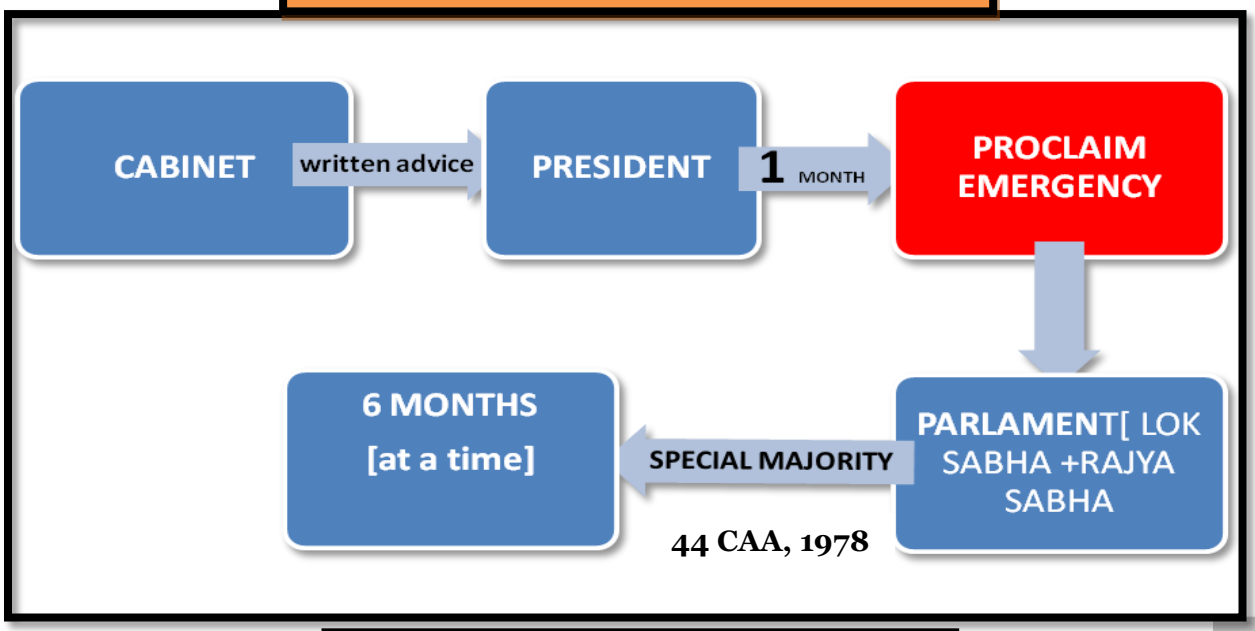
- Thus, during the operation of a financial emergency, the Center gets full control over states in financial matters, which is a threat to the state's financial sovereignty.

- Earlier, a serious financial crisis had arisen in India in 1991, but even then a Financial Emergency was not announced. [Balance of payment crises]

- Financial emergency has not been imposed in India till date.

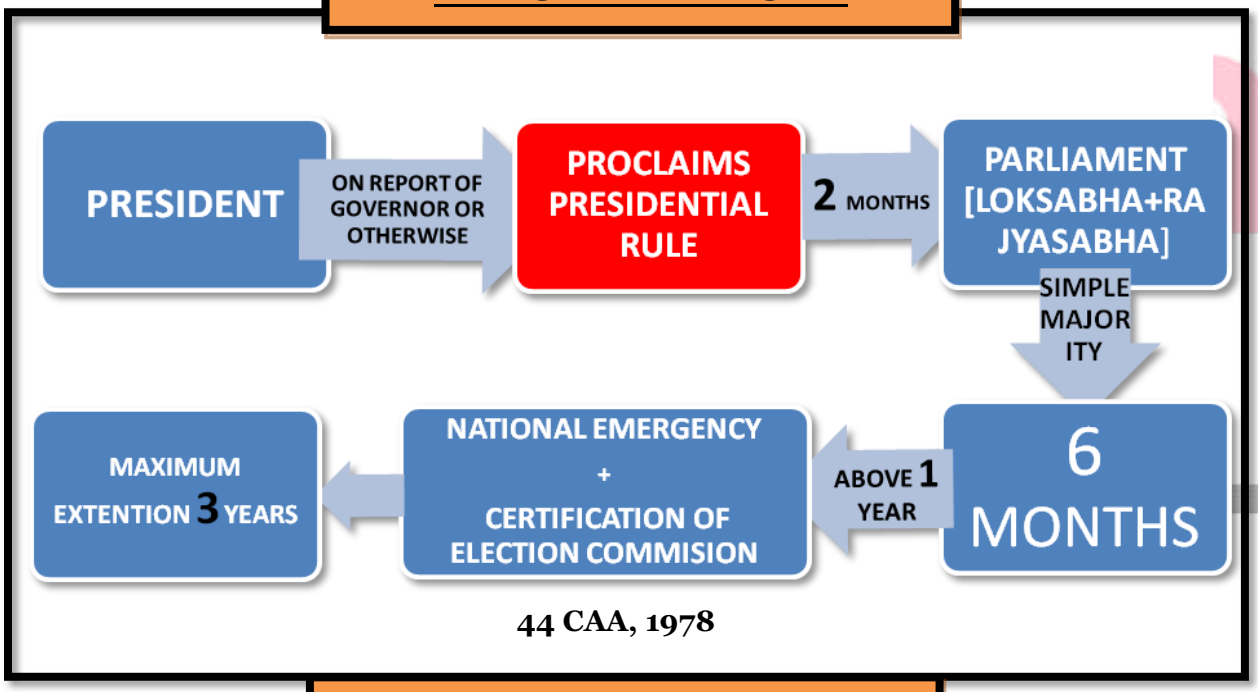
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NATIONAL EMERGENCY



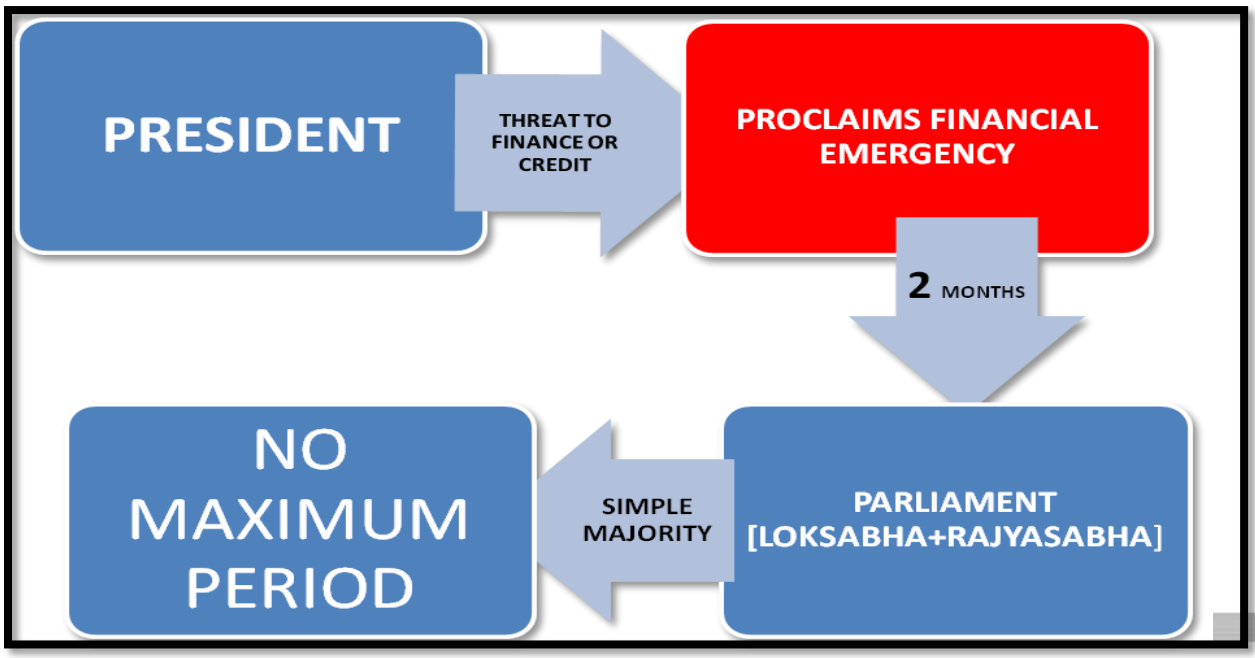
44 CAA, 1978

PRESIDENT RULE



44 CAA, 1978

FINANCIAL EMERGENCY



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Election Commission [article 324]

- **Part XV of the constitution**
- The Election Commission of India is an autonomous constitutional authority responsible for administering Union and State election processes in India.
- **Article 324** provides that **superintendence, direction and control** of preparation of electoral rolls and the conduct of elections to the:

a) The parliament

b) State legislature

c) President and Vice President shall be vested in election commission

- **State Election Commissions (SECs)**
  - ✓ The State Election Commission has been entrusted with the function of conducting free, fair and impartial elections to the local bodies in the state.
  - ✓ **Article 243K(1):** It states that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats (Municipalities under Article 243ZA) shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.
  - ✓ **Article 243K (2):** It states that the tenure and appointment will be directed as per the law made by the state legislature. However, State Election Commissioner shall not be removed from his/her office except in like manner and on the like grounds as a Judge of a High Court.

- **Composition of election commission**
- **Article 324[2]** provide what Election Commission shall consist of **Chief Election Commissioner** and such other number of other election commissioners as President may from time to time fix.

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- ✓ **Since 1950 and till 15 October 1989**, the election commission was as a one-member body with only the Chief Election Commissioner (CEC) as its sole member.
- ✓ On **16 October 1989**, the voting age was changed from 21 to 18 years. So, two more election commissioners were appointed by the president in order to cope with the increased work of the election commission.
- ✓ Since then, the Election Commission was a multi-member body which consisted **of 3 election commissioners.**
- ✓ Later on, the two posts of election commissioners were eliminated in January **1990** and the Election Commission was reverted to the previous position.
- ✓ **In October 1993** when the president appointed two more election commissioners. Since then, the Election Commission functions as a multi-member body comprising of 3 commissioners.

- **Appointment:** of Chief Election Commissioner and other Election Commissioner shall be by the **President** subject to the laws made by parliament.
- When any other election commissioner is so appointed the chief election commissioner shall act as the chairman of the election commission.
- The **President** may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.
- Though the Chief Election Commissioner is the chairman of the election commission, however, **his powers are equal to the other election commissioners**. All the matters in the commission are decided by the majority

amongst its members. **The Chief Election Commissioner and the two other election commissioners receive equal salary, allowances and other benefits.**

- **Removal**: Chief election commissioner shall not be removed from his office except in the **manner of removal of a judge of the Supreme Court**. Service conditions of the chief election commissioner shall not be varied to his disadvantage after appointment.

- Judges of High Courts and Supreme Court, CEC, Comptroller and Auditor General (CAG) may be **removed** from office through a motion adopted by Parliament on grounds of **'Proven misbehavior or incapacity'**.
- Removal requires **special majority of 2/3rd members present and voting** supported by **more than 50% of the total strength of the house**.

- Other Election Commissioners or regional commissioner shall be removed on **Recommendation** of Chief Election Commission

- **Tenure Election commission of India:** The Chief Election Commissioner and other election commissioners **hold office for 6 years or till they attain the age of 65 years,** whichever is earlier. They can resign at any time by addressing their resignation to the president. The president can remove any of the commissioners following the procedure provided in the constitution.

Powers and Functions Election commission of India: The powers and functions of the election commission are mentioned below:

1) It determines the territorial area of the electoral constituencies in accordance with the Delimitation Commission Act.
2) It prepares the electoral rolls and revises them from time to time. It registers all the eligible voters.
3) It prepares and notifies the schedule of the election.

4) It receives and scrutinizes the nomination papers from all the candidates in the elections.
5) It registers political parties and grants recognition to them. It provides election symbols to the political parties.
6) It provides the status of national or state parties to the political parties on the basis of their performance in the elections.
7) It **acts as a quasi- judicial authority** to look into disputes regarding the recognition of political parties and allotment of symbols to them.
8) It appoints officers to enquire into disputes relating to electoral arrangements.
9) It prepares the time table for the publicity of the policies and programmes of political parties through TV and radio.
10) It ensures that the **model code of conduct** is followed by all the political parties and all the candidates.
11) It **advises the president on matters relating to the disqualification of the members of the parliament.[103]**
12) It advises the governor of the state on matters relating to the disqualification of the members of the state legislature.
13) It requests the president or the governor for the necessary staff required for conducting elections.
14) It supervises election machinery and the conduct of elections to ensure free and fair elections.
15) It cancels polls in the event of irregularities and wrongdoings during an election.
16) It advises the president whether the elections can be held in a state under president's rule.

- **325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.—**There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion

in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

- This ensures political equality to all citizens
- **R.C. Poudyal Versus Union of India 1993** the court held that it is crucial for maintaining the secular character of constitution any contravention of this provision shall have adverse impact on Secular character of Republic which is basic feature of Indian Constitution

- **326. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.—**The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of **Universal adult suffrage**
- Every person who is a citizen of India and who is not less than **eighteen years** of age [Subs. By the **Constitution (Sixty-first Amendment) Act, 1988**, for **"twenty-one years"]** and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.
- **327. Power of Parliament to make provision with respect to elections to Legislatures.—**
- **Article 327** gives the power of legislation to the **Parliament** with respect to all matters relating to or in connection with elections to the House of Parliament or to the state legislatures including law related to the preparation of electoral rolls and delimitation of constituencies or other connected matters
- In exercise of the power conferred by this article the Indian Parliament has enacted The Representation Of Peoples Act 1950 And 1951

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- The Preamble of Delimitation Act 2002 shows that it is an act to provide for the adjustment of allocation of seats in house of the people to the states, the total number of seats in Legislative Assembly of each state, the division of each state into territorial constituencies for elections to the house of people and legislative assemblies of the states and for matters connected there within
- Article 82 only for shadows that readjustment may be necessary upon completion of each senses but article 327 gifts power to the Parliament to make elaborate provision for such as assistant, including delimitation of constituencies and all other matters connected therewith as also elections to either House of Parliament

Rostrum Legal

- **328. Power of Legislature of a State to make provision with respect to elections to such Legislature.—**Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.
- **329. Bar to interference by courts in electoral matters.—**
- The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;
- No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

- Clause [a] says that law relating to delimitation of constituencies for the allotment of seats cannot be challenged in court of law

- Clause [b] excludes the jurisdiction of the courts to entertain any matter relating to election disputes. Election can be challenged only in the manner laid down in law made by the appropriate legislature.

- In pursuance of Clause b of article 329, parliament enacted the Representation Of People's 1951

- Part of 6 of the act deals with election disputes. Election petitions are trial able by **High Court**, as provided in Representation Of People Amendment Act 1966

- No other Court can decide election disputes. The word election has been used in article 329 as well as other provisions of part 15 of the Constitution in the wide sense- Rejection of acceptance of nomination papers is included in the term election but preparation of electoral rolls is not election result the meaning of article 329 b

CASES:

- **Brundaben Nayak vs. Election Commission of India and another 1965 AIR 1892, :**If any question gets raised whether any sitting member of the Parliament or of the State legislature has become a subject to disqualification for continuing as a member under the Constitution of India (on grounds other than that of the ground of defection) or any law. Such a matter is decided by the President of India in cases which involve the members of the Parliament and in cases which involve the member of the State Legislature then the governor of that state has to decide on such a matter. And he is bound by the opinion of the Election commission in these matters as established in this case.

  Hence, in this case, it was held that the President of India and the governors of States are bound by the opinion of the Election Commission of India in such matters and they are not required to even consult the council of ministers in this regard.

- **In AC Jose v Sivan Pillai 1984** the Supreme Court, held that

1) When there is no parliamentary legislation or rule made under the said legislation, the Commission is free to pass any order in respect of the conduct of elections, but
2) Where there is an Act and express rules made there under, it is not open to the Commission to override the Act or the rules, and pass orders in direct disobedience to the mandate contained in the Act or rules.
3) The powers of the Commission are meant to supplement the law in the matter of superintendence, direction and control as provided by aft 324. Where a particular direction by the Commission is submitted to the government for approval as required by the rules, it is not open to the.

- **S.S Dhanova vs. Union of India 1991:** in October 1989 the president notified that decide CEC the commission should have two other members called Election Commissioner with coordinates powers

✓ On January 1st 1990 the president revoked his notification of 1989 as a result of which the two ECs who had been appointed lost their office as EC. SS Dhanoa was one of them and challenged the president's decision before Supreme Court content in that one appointed an Election Commissioner continuous and office for his full tenure as determined by the rules under article 324 and that the president had no power to cut short the tenure so fixed.

✓ The supreme court rejected the petition under article 324 on the following basis

1) The creation and evaluation of post is a prerogative of Executive and article 324 empowers the President to fix and appoint such number of election commissioners as he may from time to time determine. Hence the abolition of the election commissioner gave rise to no cause of action
2) While it was obligated to appoint the chief election commissioner the appointment of other election commissioners or regional commissioner is left by the constitution to the discretion of president

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- **TN Seshan versus Union of India 1995**
  - ✓ Parliament enacted the chief election commissioner and other Election Commissioner condition of service act 1991
  - ✓ The validity of this act regarding the status, power in whereby the two were declared equal was challenge in this case by the chief election commissioner TN Seshan on the ground that it was arbitrary and unconstitutional
  - ✓ The Supreme Court dismissing the petition has that the scheme of article 324 is that the election commission can either be a single member body or a multi member body if the president considered it necessary to appoint one or more Election Commissioner. The argument that a multi member Election Commission would be unworkable and should not therefore be appointed could not be accepted
  - ✓ The court in this case observed that nobody can be above the Institutions which he is supposed to serve. He is nearly the creator of the institution; he can exist only if the institution exists. To project the creatures of the institution mightier than the institution would be a Grave injustice.

- In **Common Cause v Union of India and Ors[1996],** the Supreme Court held that the expression °**conduct of election**° in art 324 of the Constitution is wide enough to include in its sweep, the power of the Election Commission to issue——in the process of the conduct of elections—directions to the effect that the political parties shall submit to the Commission for its scrutiny, the details of the expenditure incurred or authorized by the political parties in connection with the election of their respective candidates.

Rostrum Legal

Amendment of the constitution part XX, [Article368]

- Article 368 describes the **procedure and power of Parliament** to amend the constitution
- **Procedure of amendment:** The bill to amend the constitution can be introduced before **any house of the Parliament**. When this bill is passed by majority of total number of members of each house [that is more than 50%] and at least two third majority of the members present and voting, then the bill is presented before the Presidents who will be bound to give his/ her assent for the same[24th CAA]. After the approval of president on the bill, the constitution will be amended
- **Types for the amendment**

1. **Amendment by simple majority-** article 4, 162 and 239-A list in this category. The simple majority of parliament is sufficient for amendment in these provisions. **These articles are excluded from purview of Article 368**

✓ A number of provisions in the Constitution can be amended by a simple majority of the two houses of Parliament outside the scope of Article 368. These provisions include:

✓ Admission or establishment of new states.

✓ Formation of new states and alteration of areas, boundaries or names of existing states.

✓ Abolition or creation of legislative councils in states.

✓ Second Schedule-emoluments,

✓ Allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.

✓ Quorum in Parliament.

✓ Salaries and allowances of the members of Parliament.

✓ Rules of procedure in Parliament.

✓ Privileges of the Parliament, its members and its committees.

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- ✓ Use of the English language in Parliament.
- ✓ Number of puisne judges in the Supreme Court.
- ✓ Conferment of more jurisdictions on the Supreme Court.
- ✓ Citizenship-acquisition and termination.
- ✓ Elections to Parliament and state legislatures.
- ✓ Delimitation of constituencies.
- ✓ Union territories
- ✓ Fifth Schedule-administration of scheduled areas and scheduled tribes.
- ✓ Sixth Schedule-administration of tribal areas.

2. **Amendment by special majority**

The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.

The special majority is required only for voting at the third reading stage of the bill but by way of abundant caution, the requirement for the special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill.

The provisions which can be amended by this way include

(i) Fundamental Rights;
(ii) Directive Principles of State Policy; and
(iii) All other provisions which are not covered by the first and third categories.

3. **Special majority and ratification by States**- which are basis a **federal structure** are included in this category. These are vital matters states have important powers and any unilateral amendment May adversely affect the interest of States. For incorporating amendments in these provisions, special majority of each house of parliament as well as ratification by not less than **1/2 States is required**.

- Following provisions require such ratification
    1. Election of president[article 54, 55]
    2. Extent of executive powers of union and state[article 73, 162, 241, 279 A]
    3. Articles dealing with union and state judiciary[article 124- 147, 214- 231, 241]
    4. Distribution of legislative powers between union and state[article 245-255]
    5. Goods and service tax council[article 279 a][instead by 101 amendment act 2016]
    6. Representation of states in parliament[Schedule IV]
    7. Any of the list of seventh schedule; or
    8. Article 368 itself

- The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:

1. An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament (Lok Sabha & Rajya Sabha) and not in the state legislatures.
2. The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
3. The bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
4. Each House must pass the bill separately.

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5. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
6. If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
7. After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
8. The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament
9. After the president's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

Can fundamental rights be amended?

- Yes fundamental rights can be amended by parliament in exercise of powers conferred under Article 368 subject to basic structure of the constitution.
- In **Sankari Prasad vs. Union of India 1951** the Supreme Court held that power to amend the constitution including the fundamental rights is contained in Article 368 and the word law in article 13[2] includes only an ordinary law made in exercise of legislative power and does not include the constitutional amendment which is made in exercise of power. The Constitutional Amendment will be valid even if it abridges or takes away any fundamental rights.
- Subsequently in **Sajjan Singh vs. State of Rajasthan 1965** Supreme Court approved the majority judgment in Sankari Prasad case and held that amendment of the Constitution means amendment of all parts of the constitution
- In **Golaknath vs. State of Punjab** Supreme Court prospectively overruled its earlier *Sankari Prasad case* and *Sajjan Singh case*. The court held that Parliament had no power from the date of decision, to amend part 3 of the Constitution so as to take away or abridge fundamental rights.

- The court observed that the amendment is 'law' within the meaning of article 13[2] and therefore if it vioates any of the fundamental rights it may be declared void. The word law under article 13[2] includes the statutory as well as constitutional law. The court further held that Article 368 only deals with procedure to amend the constitution and the power to amend the Constitution is derived from article 245
- **24th Constitutional Amendment Act 1971:** to overcome the difficulties resulting from *Golaknath's* decision Parliament passed 24th Constitutional Amendment Act 1971
- It added clause 4 to article 13 which provided that nothing in this article shall apply to any amendment of this constitution made under Article 368
- It amended Article 368 of the constitution and provided that Parliament May in exercise of its constituent power may amend, vary or repeal any part of the constitution. **It also made mandatory for the President to give his assent to the Constitutional Amendment Bill.**
- **24th Constitutional Amendment** not only restored the amending power of the Parliament but also extended its scope
- The validity of 24th Constitutional Amendment was challenged in the case of **Kesavananda Bharati vs State of Kerala 1973** the supreme court in this case overruled *Golaknath case*. The court upheld validity of 24th Constitutional Amendment and observed that Article 368 contains the power and procedure to amend the constitution even prior to 24th amendment
- The court however said that Article 368 does not empower the Parliament to amend the constitution so as to damage or destroy the basic structure of the constitution
- **42nd Constitutional Amendment Act 1976**: to nullify the effect of *KeshavNandan Bharti case* **clause 4 and 5** were inserted to Article 368 by 42nd Constitutional Amendment Act 1976
- [clause 4] provided that amendment of the Constitution will not be called in question in any Court and [clause 5] provided that there shall be no limitations on constituent power of Parliament to amend any part of the constitution.

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- In **Minerva Mills vs. Union of India 1980** the Supreme Court struck down clause 4 and 5 of the Article 368 of the on the ground that it destroys basic structure of the Constitution as is **limited amending powers** is itself a part basic structure of the constitution.
- The Supreme Court in **IR Coelho versus state of Tamil Nadu 2007** held that any law laid under the **Ninth Schedule of the Constitution** after **April 24th 1974** would be open to challenge in court of law on the ground that it destroys the basic structure of the constitution.

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Article 370 & 35A

- Art 370 is in **Part XXI** of the constitution
- When India attained independence on 15 August 1947, Jammu and Kashmir was one of the 565 princely states of India. While Independence was being granted to India, the Indian Independence Act handed over an option to the rulers of princely states, which was they had the discretion either to join one of the two dominions – India or Pakistan or remain as an independent state.
- This joining with either of the two countries was to be through an instrument of accession[IOA]
- Raja Hari Singh of Jammu and Kashmir had initially decided to remain independent & standstill agreement with India and Pakistan. But following an invasion from the tribesmen and army men from Pakistan, he sorts the help of India. India in turn sought the accession of Kashmir to India.
- Raja Hari Singh signed the instrument of accession on October 26 1947 and the governor general Lord Mountbatten accepted on **October 27th 1947**.
- India regarded the Accession as purely temporary and provisional

Terms included in the IoA for Kashmir

- The schedule appended to the instrument of accession gave parliament the power to legislate in respect of Jammu and Kashmir only on **Defence, external affairs and communication**
- In Kashmir's Instrument of Accession in **Clause 5,** Raja Hari Singh, ruler of J&K, explicitly mentioned that the terms of "*my Instrument of Accession cannot be varied by any amendment of the Act or of Indian Independence Act unless such amendment is accepted by me by an Instrument supplementary to this Instrument".*
- On **October 17, 1949**, Article 370 was added to the Indian constitution, as a **'temporary provision'**, which exempted Jammu & Kashmir from Indian Constitution [except article 1 article 370 itself], permitting it to draft its own Constitution and restricting the Indian Parliament's legislative powers in respect

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to Jammu and Kashmir. It was introduced into the draft constitution by **N Gopalaswami Ayyangar** as **Article 306 A.**

Main feature of Article 370:-

- Indian Parliament cannot make any law without the consent of state Assembly
- Jammu Kashmir has its own flag and constitution
- President rule cannot be initially proclaimed in that state instead Governor Rule can be imposed. [Jammu and Kashmir, on account of its special status, has a slightly different mechanism under Article 356 of the constitution. Here the failure of governmental function results in Governor's rule under Section 92 of the constitution of Jammu and Kashmir. The Governor later obtains the consent of the President of India. It is only when the Governor's rule is not revoked for six months that the President's rule is imposed in the state under Article 356.]
- Jammu Kashmir has its own Criminal code as well.
- Except for Defense, Foreign Affairs, Finance and Communications, the Indian Government needs the State Government's assent to apply all other laws.
- The central govt. has no power to impose **financial emergency** in the state. Emergency can be imposed only on the grounds of internal disturbances and imminent danger from a foreign enemy.
- Therefore, the state government has the control on how it needs to govern the state without worrying about the consent of the central government.

Article 35A

- Clause 1 of Article 370 provides that the President, in concurrence with the government of State (J&K) has power to make certain orders.
- In pursuance of this provision, Article 35A has been added by Special Presidential order, "The Constitution (Application to Jammu & Kashmir) Order, 1954".
- Article 35A empowers the Jammu & Kashmir legislature to define the **permanent residents of the state**, and their **special rights and privileges**.

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- This Article provides for the rights and privileges of the permanent resident of the Jammu and Kashmir which exclude other person from all State's benefits who are not the permanent resident of the State.
- Due to this article, Indian nationals belonging to other states cannot buy land or property in the state of J&K.
- **It appears in Appendix I of the Constitution.**
- Both of the Articles have been a source of public outrage & there has been a cry for their repeal.

Hurdles in removal:

- Article 370 provides for its removal itself. Clause 3 states that the **President** ceases the operation of this article, if the **Constituent Assembly of J&K** so recommends.
- The condition is essential and is also a hindrance because The Constituent Assembly of J&K was constituted in 1956 and was dissolved after it drafted the state's constitution 1957.
- So there is no constituent assembly, to recommend removal of Article 370
- Also article 35A was not passed as per amendment process given an Article 368, but was inserted on Recommendation of Jammu and Kashmir constituent assembly through president.

Changes made by the recent legislative exercise

- According to article 370 as originally stood, recommendations of constituent assembly of Jammu and Kashmir was required for President to issued notification on the article **370[3] to repeal or modify it**
- However the president by an order dated on 5th August 2019[**constitution application to Jammu and Kashmir] order 2019] has replaced Presidential Order of 1954** and made a change in **article 367** to state that "**constituent assembly**" will read as "**Legislative Assembly of state"**

- Since the Legislative Assembly of Jammu and Kashmir was dissolved and the state was under President's rule since November 2018, the recommendation of Parliament has been treated as Recommendation of Legislature by the president.
- The notification stated that all provisions of constitution, as amended from time to time, without any modifications or exceptions, **shall apply to the state of Jammu and Kashmir** notwithstanding any contrary contained in article 152 or article 308 or any other article of the Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgment, order, by law, rule, Regulation, notification, customer or usage having force of law in territory of India, or any other instrument treaty or agreement as envisaged under Article 363 or otherwise
- The Parliament has also passed Jammu and Kashmir reorganization act 2019 to bifurcate the states into Union Territory of Jammu and Kashmir and Ladakh.

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Cases on J&K's Special Status

Prem Nath Kaul v. J&K (1959)

- Challenge to Big Landed Estates Abolition Act, 1950 on the ground that it was unconstitutionally enacted by Maharaja Yuvraj Karan Singh (Hari Singh's son)
- The Supreme Court upheld the Act
- On Article 370, the court held that the Maharaja's plenary legislative powers were not limited by Article 370

Sampat Prakash v. J&K (1968)

- Challenge to 1959 and 1964 Presidential Orders made under Article 370(1) that extended the operational period of Article 35(c). Article 35(c) made preventive detention legislation immune in J&K from fundamental rights claims.
- The petitioner made two primary arguments:
    - Article 370 ceased to exist after J&K Constituent Assembly dissolves in 1957
    - Even if Article 370 persists, President's power to amend orders under Article 370(1) ceased after the J&K Constitution came into force
- The Supreme Court upheld the Presidential Orders:
    - Article 370 will only dissolve upon the recommendation of the Constituent Assembly under Article 370(3)
    - The power to issue orders includes the power to add, amend, vary or rescind them because the General Clauses Act, 1897 applies to the Constitution

- **Manohar Lal Sharma v. Union of India**
- **Dr. Shah Feasal Vs Union**