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GENERAL STUDIES FOUNDATION COURSE

INDIAN POLITY

PART - 1

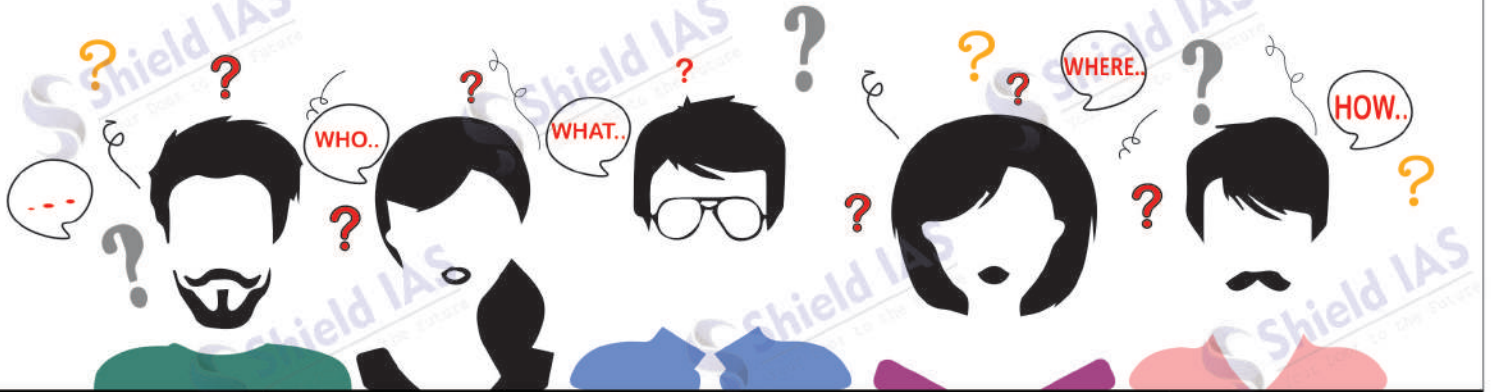


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INDIAN POLITY

BOOK - 1

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Chapter – 1

Basic Terminologies of Polity

INTRODUCTION:

POLITICS

Aristotle first used the term Politics, and he called it “the master science.” The word Politics is derived from the Greek word poll’s meaning a city. To the Greeks, the city was the State, and the subject that dealt with the City-State and its problems were designated Politics. In our times, some eminent political scientists, as Harold Laski, R. H. Soltau, Karl Deutsch, and many others, prefer the term Politics for our study’s subject matter.

But ordinary usage equates Politics with party politics and politicians with party politicians. As a result, it emphasizes disagreement, which is so prominent in party politics. In this context politics of one country differs from the politics of another country and within the same country politics of one party differs from the politics of another party, as each party offers its own solution to its problems. For example, though split into four hostile wings, the politics of the Indian National Congress differs from the politics of the Janata Dal or the Communist Party of India, itself divided into two warring camps.

It follows that a politician is a person who interests himself in the politics of his country and that of a particular party That conforms to his political views. He is not a student of Political Science. He is only concerned With the present problems that confront the country and their solution as his party suggests.

Politics is accordingly rather than a science. But Political Science is a scientific study of the State-its nature, conditions, origin and developments and government, their functions and purposes and the institutions they foster to make the task of “good life” possible.

A student of Political Science will know something of society whose political system is involved, its history and traditions, its physical and human environments to assess the extent to which the existing institutions fulfill the aspirations of the people and help achieve the goal of “good life.” A politician may have nothing to do with all this.

Historical Underpinnings and Constitutional Developments

INTRODUCTION

The polity evolution of India as an independent and sovereign republic has its immediate historical roots in the period of the British rule in India. Certain features of our Constitution can better be comprehended, only if we start with a brief review of the constitutional set up in the preceding periods. But, it is not necessary to go beyond British Period because modern political institutions originated and developed in that period only. The Constitution of India was drawn up by the Constituent Assembly, initially summoned on Dec 9, 1946. The Constituent Assembly was not a truly representative body as its members were indirectly elected by those who were themselves elected on a narrow franchise. The Constitution was adopted on Nov. 26, 1949 and it came into effect on Jan. 26, 1950. It is the longest written Constitution in the world containing 395 Articles and 12 Schedules.

HISTORICAL UNDERPINNINGS

The British came to India in 1600 as traders, in the form of East India Company, which had the exclusive right of trading in India under a charter granted by Queen Elizabeth I.

In 1765, the Company, which till now had purely trading functions obtained the 'diwani' (i.e., rights over revenue and civil justice) of Bengal, Bihar and Orissa.¹ This started its career as a territorial power. In 1858, in the wake of the 'sepoy mutiny', the British Crown assumed direct responsibility for the governance of India. This rule continued until India was granted independence on August 15, 1947.

With Independence came the need for a Constitution. Hence, a Constituent Assembly was formed for this purpose in 1946 and on January 26, 1950, the Constitution came into being. The origin and growth of the Indian Constitution has its roots in Indian history during the British period. From 1773 onwards, various Acts were passed by the British Government for the governance of India. None of them, however satisfied Indian aspirations mainly because they were imposed by the alien rulers.

The period of British Constitutional historical experiments in India can be divided into two phases:

- A. Constitutional experiment during the rule of the East India Company (1773-1857)
- B. Constitutional experiments under the British Crown (1857-1947)

CHARTER ACT 1813

Its major provisions included the following-

- (i) It abolished the trade monopoly of the company in India i.e., the Indian trade was thrown open to all British merchants. However, it continued the monopoly of the company over trade in tea and trade with China.
- (ii) It asserted the sovereignty of the British Crown over the Company's territories in India.

- (iii) It allowed the Christian missionaries to come to India for the purpose of enlightening the people.
- (iv) It provided for the spread of western education among the inhabitants of the British territories in India.
- (v) It authorised the Local Governments in India to impose taxes on persons. They could also punish the persons for not paying taxes.

THIS ACT WAS SIGNIFICANT FOR TWO REASONS:

- a) THE COMPANY'S TERRITORIES IN INDIA WERE FOR THE FIRST TIME CALLED THE 'BRITISH POSSESSIONS IN INDIA
- b) THE BRITISH GOVERNMENT WAS GIVEN THE SUPREME CONTROL OVER COMPANY'S AFFAIRS AND ITS ADMINISTRATION IN INDIA

SIMON COMMISSION

In November 1927 itself (i.e., 2 years before the schedule), the British Government announced the appointment a seven-member statutory commission under the chairmanship of Sir John Simon to report on the condition of India under its new Constitution. All the members of the commission were British and

THE REPORT OF THE COMMISSION PUBLISHED IN MAY 1930 WAS REJECTED BY ALL POLITICAL PARTIES. THE INDIAN NATIONAL CONGRESS PRESIDED OVER JAWAHARLAL NEHRU AT ITS LAHORE SESSION IN 1929 HAD ALREADY DECLARED COMPLETE INDEPENDENCE OR PUMA SWARAJ AS ITS AIM

hence, all the parties boycotted the commission. The commission submitted its report in 1930 and recommended the abolition of dyarchy, extension of responsible government in the provinces, establishment of a federation of British India and princely states, continuation of communal electorate and so on. To consider the proposals of the commission, the British Government convened three round table conferences of the representatives of the British Government, British India and Indian princely states. On the basis of these discussions, a 'White Paper on Constitutional Reforms' was prepared and submitted for the consideration of the Joint Select Committee of the British Parliament. The recommendations of this committee were incorporated (with certain changes) in the next Government of India Act of 1935.

GOVERNMENT OF INDIA ACT 1935

Its major provisions included the following-

- (i) It provided for the adoption of dyarchy at the Centre. Consequently, the federal subjects were divided into reserved subjects and transferred subjects. However, this provision of the Act did not come into operation at all.
- (ii) It introduced bicameralism in six out of eleven provinces, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house). However, many restrictions were placed on them.
- (iii) It further extended the principle of communal representation by providing separate electorates for depressed classes (scheduled castes), women and labour (workers).
- (iv) It abolished the Council of India established by the Government of India Act of 1858. The secretary of state for India was provided with a team of advisors.

MAKING OF INDIAN CONSTITUTION

Making of Indian Constitution

It was in 1934 that the idea of a Constituent Assembly for India was put forward for the first time by M. N. Roy, a pioneer of communist movement in India and an advocate of radical democratism. In 1935, the Indian National Congress (INC), for the first time, officially demanded a Constituent Assembly to frame the Constitution of India. In 1938, Jawaharlal Nehru, on behalf the INC declared that the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise'.

The demand was finally accepted in principle by the British Government in what is known as the 1 August Offer of 1940. In 1942, Sir Stafford Cripps, a member of the cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after the World War II. The Cripps Proposals were rejected by the Muslim League which wanted India to be divided into two autonomous states with two separate Constituent Assemblies. Finally, a Cabinet Mission was sent to India. While it rejected the idea of two Constituent Assemblies, it put forth a scheme for the Constituent Assembly which more or less satisfied the Muslim League.

Parts of the Constitution at a Glance

PARTS OF THE CONSTITUTION AT A GLANCE

Parts	Deals with	Articles Covered
I	The Union and its territory	1 to 4
II	Citizenship	5 to 11
III	Fundamental Right	12 to 35
IV	Directive Principles of State Policy	36 to 51
IV-A	Fundamental Duties.	51A
V	The Union government	52 to 151
VI	The state governments	152 to 237
VIII	The union territories	239 to 242
IX	The Panchayats	243 to 243-0
IX-A	The municipalities	243-P to 243-ZG
X	The Scheduled and Tribal Areas	244 to 244- A
XI	Relations between the Union and the states	245 to 263
XII	Finance, property, contracts and suits	264 to 300-A
XIII	Trade, commerce and intercourse within the Territory of India	301 to 307

XIV	Services under the Union and the States	308 to 323
XIV-A	Tribunals	323-A to 323-B
XV	Elections	324 to 329-A
XVI	Special provisions to SCs, STs, OBCs and Anglo-Indians	330 to 342
XVII	Official language	343 to 351
XVIII	Emergency provisions	352 to 360
XIX	Miscellaneous	361 to 367
XX	Amendment of the Constitution	368
XXI	Temporary, transitional and special provisions	369 to 392
XXII	Short title, commencement, authoritative text in Hindi and repeals	393 to 395

CRITICAL EVALUATION OF CONSTITUENT ASSEMBLY

Criticisms

The critics have criticized the Constituent Assembly on various grounds. These are as follows:

- (i) **Not a Representative Body:** The critics have argued that the Constituent Assembly was not a representative body as its members were not directly elected by the people of India on the basis of universal adult franchise.
- (ii) **Not a Sovereign Body:** The critics maintained that the Constituent Assembly was not a sovereign body as it was created by the proposals of the British Government. Further, they said that the Assembly held its sessions with the permission of the British Government.
- (iii) **Time Consuming:** According to the critics, the Constituent Assembly took unduly long time to make the Constitution. They stated that the framers of the American Constitution took only four months to complete their work.
- (iv) **Dominated by Congress:** The critics charged that the Constituent Assembly was dominated by the Congress party.
 Granville Austin, a British Constitutional expert, remarked: The Constituent Assembly was a one-party body in an essentially one-party country. The Assembly was the Congress and the Congress was India¹.
- (v) **Lawyer-Politician Domination:** It is also maintained by the critics that the Constituent Assembly was dominated by lawyers and politicians. They pointed out that other sections of the society were not sufficiently represented. This, to them, is the main reason for the bulkiness and complicated language of the Constitution.
- (vi) **Dominated by Hindus:** According to some critics, the Constituent Assembly was a Hindu dominated body. Lord Viscount Simon called it 'a body of Hindus'. Similarly, Winston Churchill commented that the Constituent Assembly represented 'only one major community in India'.

Nature and features of Indian Constitution

Significance of the Preamble

The preamble specifies the source of authority, the system of government, the objectives to be attained by the political system and the date of the adoption and enactment of the Constitution.

Though the Preamble is not enforceable in a court of law and generally, not considered a part of the Constitution, it provides a key to the understanding and interpretation of the Constitution; it has, therefore, been described as the soul of the Constitution. In case of doubt the Supreme Court has referred to the Preamble to elucidate vague aspects of the Constitution. In this context, in the *Berubari* case the Supreme Court held that Preamble was not part of the 'Constitution, but later, in the *Keshavananda Bharti* case, it declared it was a part of the Constitution.

Preamble decoded

SOVEREIGN REPUBLIC

The Preamble begins with the words, "We, the people of India....", thus clearly indicating the source of all authority under the Constitution. The Preamble establishes the ultimate sovereignty of the people of India on whose authority the Constitution rests. It points out that the Constitution of India has been ordained by the people of India through their representatives in Constituent Assembly.

In the present times, the term 'sovereignty' may be losing rigid connotations of "supreme and absolute power acknowledging no superior" -no modern state can be considered sovereign in that sense. However, through the words of the Preamble, what is sought to be established is the oneness of the people of India (not the people of different states but of one nation), that the sovereignty vests in the collectivity, and that the people of India are

FORTY-SECOND AMENDMENT

ON 18 DECEMBER 1976, DURING THE EMERGENCY IN INDIA, THE INDIRA GANDHI GOVERNMENT PUSHED THROUGH SEVERAL CHANGES IN THE FORTY-SECOND AMENDMENT OF THE CONSTITUTION OF INDIA.

A COMMITTEE UNDER THE CHAIRMANSHIP OF SARDAR SWARAN SINGH RECOMMENDED THAT THIS AMENDMENT BE ENACTED AFTER BEING CONSTITUTED TO STUDY THE QUESTION OF AMENDING THE CONSTITUTION IN THE LIGHT OF PAST EXPERIENCE.

THROUGH THIS AMENDMENT THE WORDS "SOCIALIST" AND "SECULAR" WERE ADDED BETWEEN THE WORDS "SOVEREIGN" AND "DEMOCRATIC" AND THE PHRASE "UNITY OF THE NATION" WAS CHANGED TO "UNITY AND INTEGRITY OF THE NATION."

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Fundamental Rights

The constitution contains the basic principle that every individual is entitled to enjoy certain rights as a human being and the enjoyment of such rights does not depend upon the will of any majority or minority. No majority has the right to abrogate such rights. In fact, the legitimacy of the majority to rule is derived from the existence of these rights. These rights include all the basic liberties such as freedom of speech, movement and association, equality before law and equal protection of laws, freedom of religious belief and cultural and educational freedoms.

The constitution has classified these rights into seven categories and one of them is the right to constitutional remedies which entitles every aggrieved person to approach even the Supreme Court of India to restore to him any fundamental right that may have been violated. It is, thus, a basic affirmation of the Constitution that the political system that it establishes should provide conditions favourable for the maximum development of the individual's personality. The framers of the Constitution were conscious of the fact that in the absence of the enjoyment of the above mentioned rights, such development of the personality was impossible and democracy would sound an empty word. Having spent most of their lives

under a foreign rule and having fought relentlessly for the enjoyment of these rights by themselves, it was only natural that they should have wanted to embody them in the Constitution they framed for the establishment of a democratic political order. They hoped to build this political order on the firm foundation of the freedom of political competition. The prime importance of these rights is that while the will of the majority decides how these freedoms are to be implemented, the existence of the freedoms themselves is not subject to that will. On the contrary, these freedoms set the conditions under which the will of the majority is to be formed and exercised.

IT MUST BE STRESSED, THAT THE FUNDAMENTAL FREEDOMS GUARANTEED TO THE INDIVIDUAL UNDER THE CONSTITUTION ARE NOT ABSOLUTE. INDIVIDUAL RIGHTS, HOWEVER, BASIC THEY ARE, CANNOT OVERRIDE NATIONAL SECURITY AND GENERAL WELFARE. FOR, IN THE ABSENCE OF NATIONAL SECURITY AND GENERAL WELFARE, INDIVIDUAL RIGHTS THEMSELVES ARE NOT SECURE. FREEDOM OF SPEECH DOES NOT MEAN FREEDOM TO ABUSE ANOTHER; FREEDOM OF MOVEMENT DOES NOT MEAN FREEDOM OF PHYSICAL ATTACK ON OTHERS. THE CONSTITUTION HAS MADE EXPRESS PROVISIONS DEALING WITH SUCH LIMITATIONS OF FUNDAMENTAL RIGHTS SO THAT THOSE WHO SEEK TO ENJOY THE RIGHTS MAY ALSO REALISE THE OBLIGATION ATTENDING THEM.

Part III of the Indian Constitution guarantees six¹¹ fundamental rights to all the citizens:

- a. Right to Equality (Articles 14–18);
- b. Right to Freedom (Articles 19–22);
- c. Right against Exploitation (Articles 23–24);
- d. Right to Freedom of Religion (Articles 25–28);
- e. Cultural and Educational Rights (Articles 29–30); and
- f. Right to Constitutional Remedies (Article 32).

Fundamental Duties

The original constitution did not provide for the Fundamental Duties of the citizens. These were added during the operation of internal emergency (1975–77) by the 42nd Constitutional Amendment Act of 1976 on the recommendation of the Swaran Singh Committee. The 86th Constitutional Amendment Act of 2002 added one more fundamental duty.

The Part IV-A of the Constitution (which consists of only one Article 51-A) specifies the eleven Fundamental Duties viz., to respect the Constitution, national flag and national anthem; to protect the sovereignty, unity and integrity of the country; to promote the spirit of common brotherhood amongst all the people; to preserve the rich heritage of our composite culture and so on.

The fundamental duties serve as a reminder to citizens that while enjoying their rights, they have also to be quite conscious of duties they owe to their country, their society and to their fellow- citizens. However, like the Directive Principles, the duties are also non-justiciable in nature.

Themes of Constitution

Main Sources of Indian Constitution

SL NO.	SOURCES	FEATURES BORROWED
1	Government of India Act of 1935	Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
2	British Constitution	Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
3	US Constitution	Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice- president.
4	Irish Constitution	Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.
5	Canadian Constitution	Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
6	Australian Constitution	Concurrent List, freedom of trade, commerce and inter-course, and joint sitting of the two Houses of Parliament.
7	Soviet Constitution	Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
8	Weimar Constitution of Germany	Suspension of Fundamental Rights during Emergency.
9	French Constitution	Republic and the ideals of liberty, equality and fraternity in the Preamble.
10	South African Constitution	Procedure for amendment of the Constitution and election of members of Rajya Sabha.

Parliamentary and Presidential form of Governance at a glance

PRESIDENTIAL SYSTEM OF GOVERNANCE	
Advantages	Disadvantages
In most Presidential systems, the President is elected directly by the people. This creates more legitimacy than that of a leader who has been appointed indirectly.	The Presidential form of governance is autocratic as it places a lot of power in the hands of one person, i.e., the President. Also, the President is out of the control of the legislature.
Since in a Presidential system the branches of	The complete separation between the legislature and

the government work separately, it becomes easier to maintain the system checks and balances.	executive may lead to conflicts and a deadlock between the executive and the legislature. The legislature may refuse to accept the policies of the executive; while the executive may not agree to the Acts passed by the legislature, and the President may even veto them.
The President, under this system, is usually less constrained and can take decisions more independently. Thus, this system allows for quick decision making. This becomes very beneficial at the time of crisis.	This system gives the President the power to choose the people of his choice for his cabinet to form the government. The President may misuse this power and choose his relatives, business partners etc, which might affect the political working of the state.
A Presidential government is more stable. This is because the term of the President is fixed and is not subject to majority support in the legislative. Hence, he/she does not need to worry about losing the government.	It leads to less accountability in the government and may also result in the legislature and the executive playing the blame game in time of crisis.
Since it is the President who chooses his cabinet and the executive need not be legislators, the President is able to choose experts in various fields to head relevant departments in his government. This ensures that only the people who are capable and knowledgeable form part of the government.	
Once the election is complete and the President gains power, the whole nation accepts him/her. Political rivalries are forgotten and people look at problems from a national view, rather than a party view.	

PARLIAMENTARY SYSTEM OF GOVERNANCE

Advantages	Disadvantages
There is better coordination between the legislature and the executive. This is because executive is part of the legislature and most members of the lower house support the government. Thus, in Parliamentary system, there is lesser tendency of disputes and conflicts, which makes it comparatively easier to pass legislation and implement it.	Because of party fragmentation, the legislators cannot exercise their free will and vote as per their own understanding and opinions. Rather, they have to follow the party policy.
This type of government is more flexible as, if required, the Prime Minister can be changed. For instance, in the UK during the Second World War, Prime Minister Neville Chamberlain was replaced by Winston Churchill.	The system might lead to legislators who intend to enter the executive only. They are largely unqualified to legislate, which can hamper the working of the government.

A Parliamentary democracy allows representation of diverse groups. This system gives opportunities to various diverse ethical, racial, linguistic and ideological groups to share their views and enable making of better and suitable laws and policies.	Since the executive is formed of the members of the winning party, it is not the experts who head the departments.
Since, the executive is responsible to the Parliament, it has the power to keep a check upon the activities of the executive. Moreover, the members of the Parliament can move resolutions, discuss matters and ask questions of public interest to put pressure on the government. This enables responsible governance.	Since, in the Parliamentary system, tenure of the council of ministers is completely dependant upon their popularity, there is no fixed tenure. Because of this they often hesitates to take bold and long-term policy decisions.
Parliamentary system prevents autocracy. This is because the executive is responsible to the legislature, and it is possible to vote out the Prime Minister through a no confidence motion. Thus, power does not get concentrated in the hands of only one person.	Such governments might prove to be unstable. This is because the government exists only as long as they maintain majority support in the house. Many a times, when coalition parties come into power, the government is short lived and disputes arise. Because of this, the executive puts all of its focus upon staying in power, rather than worrying about the welfare of people and state of affairs.
In case, the no confidence motion is passed, the leader of the state invites the opposition to form the government. Thereby, this system provides an alternate government.	

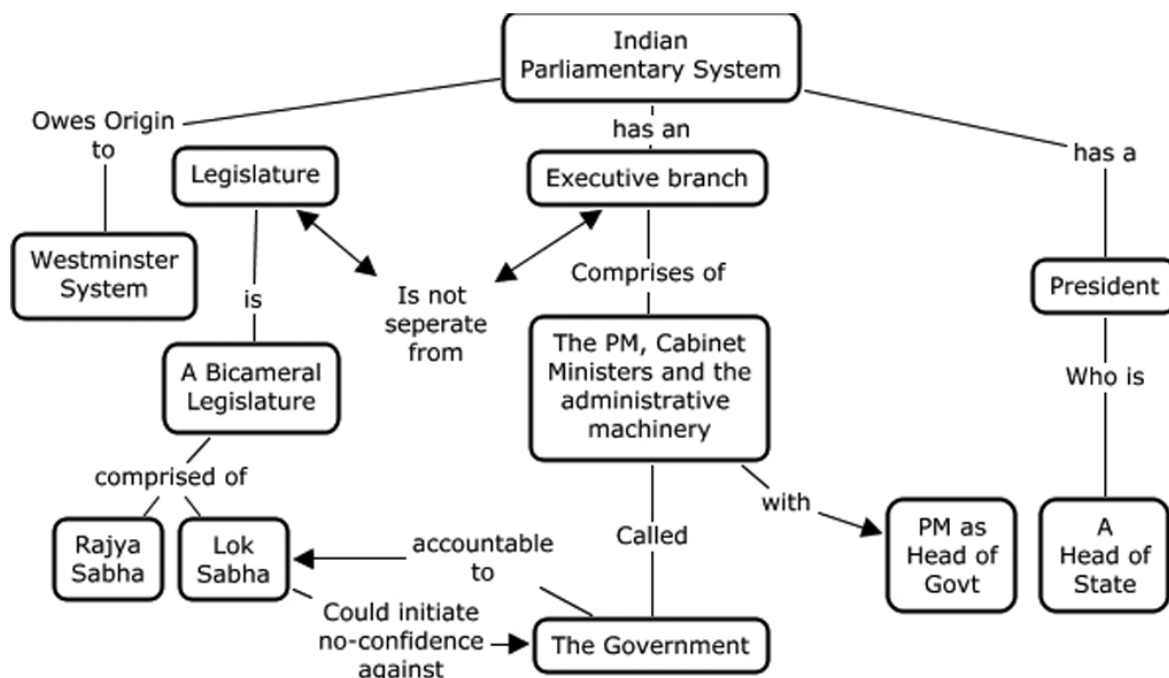
DIFFERENCE BETWEEN THE PARLIAMENTARY AND PRESIDENTIAL FORMS OF THE GOVERNMENT

Basis	Parliamentary Form of Government	Presidential Form of Government
Meaning	It is a form of government where the legislature and executive are closely related to each other. It is a system in which the citizens elect representatives to the legislative Parliament.	It is a system of government in which the three organs of the government – the executive, judiciary, legislature work separately. In it, the President is the chief executive and is elected directly by the citizens.
Executive	There is dual executive as leader of the state and leader of the government are different.	There is a single executive as the leader of the state and the leader of the government is the same.
Ministers	The ministers belong to the ruling party and are Members of Parliament. No outsider is allowed to become a minister.	The ministers can be chosen from outside the legislature, and are usually industry experts.
Accountability	The Executive is accountable to the Legislature.	The Executive is not accountable to the Legislature.

Dissolution of lower house	The Prime Minister can dissolve the lower house.	The President cannot dissolve the lower house.
Tenure	The tenure of the Prime Minister depends upon the majority support in the Parliament, and is thus, not fixed.	The tenure of the President is fixed.
Separation of Powers	The principle of Separation of powers is not followed strictly. There is concentration and fusion of powers between the Legislative and the Executive.	The principle of Separation of powers is strictly followed. Powers are divided and the Legislature, the Executive and the Judiciary work separately.
Party Discipline	Party discipline is stronger and the system leans towards unified action, block voting and distinct party platforms.	Party discipline is comparatively less and failure to vote with one's party does not threaten the government.
Autocracy	This type of government is less autocratic as immense power is not given to only one person.	This type of government is more autocratic as immense power is concentrated in the hands of the President.

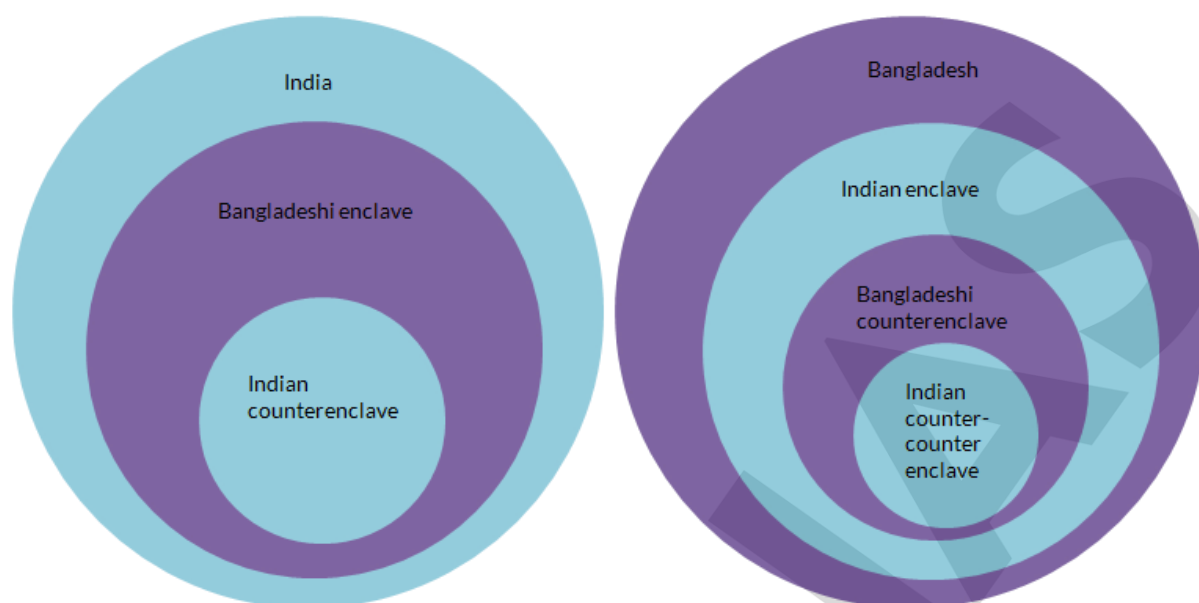
Indian system of Parliamentary form

INDIAN PARLIAMENTARY SYSTEM



In India, the system of democracy which exists is the Parliamentary Democracy. This model has been borrowed from the UK, but there are certain differences:

Exchange of territories with Bangladesh



India and Bangladesh signed a pact on boundary delineation and the exchange of adversely held enclaves in September 2011. The 100th Amendment Act of 2015 gave effect to the acquiring of certain territories by India and transfer of certain other territories to Bangladesh (through the exchange of enclaves and retention of adverse possessions) in pursuance of the Land Boundary Agreement of 1974 and its protocol of 2011.

For this purpose, this amendment act amended the provisions relating to the territories of four states (Assam, West Bengal, Meghalaya and Tripura) in the First Schedule of the Constitution.

SPACE FOR NOTES

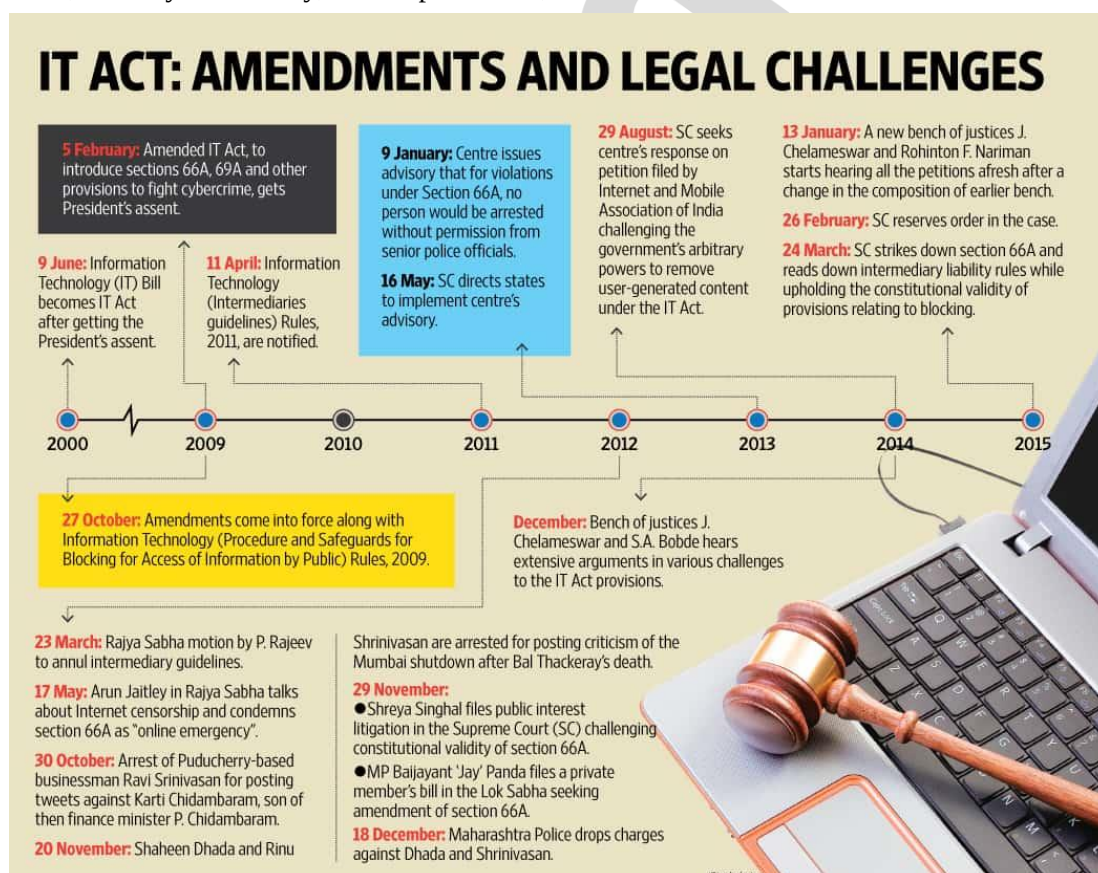
Part 3 of COI – Fundamental Rights

Features of Fundamental Rights

The Fundamental Rights guaranteed by the Constitution are characterised by the following:

1. Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
2. They are not absolute but qualified. The state can impose reasonable restrictions on them. However, whether such restrictions are reasonable or not is to be decided by the courts. Thus, they strike a balance between the rights of the individual and those of the society as a whole, between individual liberty and social control.
3. All of them are available against the arbitrary action of the state. However, some of them are also available against the action of private individuals.
4. Some of them are negative in character, that is, place limitations on the authority of the State, while others are positive in nature, conferring certain privileges on the persons.
5. They are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.

The State can impose reasonable restrictions on the exercise of the freedom of speech and expression on the grounds of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence.



Issues with Section 66A of IT Act 2000

Based on Undefined Actions:

- The court observed that the weakness of Section 66A lay in the fact that it had created an offence on the basis of undefined actions: such as causing "inconvenience, danger, obstruction and insult", which do not fall among the exceptions granted under Article 19 of the Constitution, which guarantees the freedom of speech.

Subjective Nature:

- The court also observed that the challenge was to identify where to draw the line. Traditionally, it has been drawn at incitement while terms like obstruction and insult remain subjective.

No Procedural Safeguards:

- In addition, the court had noted that Section 66A did not have procedural safeguards like other sections of the law with similar aims, such as the need to obtain the concurrence of the Centre before action can be taken.
- Local authorities could proceed autonomously, literally on the whim of their political masters.
- The Court did not strike down two other provisions- sections 69A and 79 of the IT Act – and said that they can remain enforced with certain restrictions.

Against the Fundamental Rights:

- Section 66A was contrary to both Articles 19 (free speech) and 21 (right to life) of the Constitution.

RESTRICTIONS ON SPEECH	
ARTICLE 19 (1) OF THE CONSTITUTION	INFORMATION TECHNOLOGY ACT SECTION 66A
<ul style="list-style-type: none"> In the interest of sovereignty and integrity of India The security of the state Friendly relations with foreign states Public order, decency or morality In relation to contempt of court, defamation or incitement to an offence 	<ul style="list-style-type: none"> Any information that is 'grossly offensive' Any information which you know to be false but which is sent for purpose of causing annoyance Any information which you know to be false but which is sent for purpose of causing inconvenience



THE 66A ZOMBIE CONTINUES TO HAUNT INTERNET USERS

Sec. 66A of the Information Technology Act, which was declared unconstitutional in March 2015, continues to be invoked despite fresh directions by the Supreme Court in 2019. IFF, in collaboration with Civic Data Labs, are working on a tool to track cases under Sec.66A and to advocate for effective implementation of the decision.

INTERNET FREEDOM FOUNDATION

The Supreme Court also ruled that the arrest and detention in the first part of Article 22 do not cover arrest under the orders of a court, civil arrest, arrest on failure to pay the income tax, and deportation of an alien. They apply only to an act of a criminal or quasi-criminal nature or some activity prejudicial to public interest.

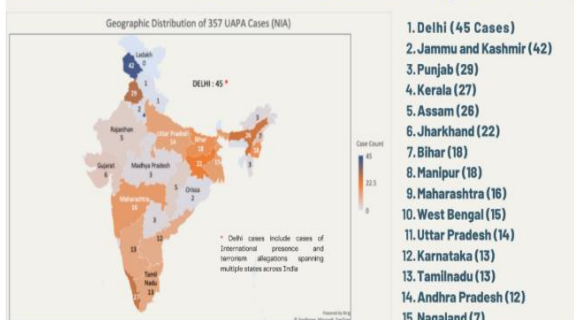
- (b) The second part of Article 22 grants protection to persons who are arrested or detained under a preventive detention law. This protection is available to both citizens as well as aliens and includes the following:
- (i) The detention of a person cannot exceed three months unless advisory board reports sufficient cause for extended detention. The board is to consist of judges of a high court.
- (ii) The grounds of detention should be communicated to the detainee. However, the facts considered to be against the public interest need not be disclosed.
- (iii) The detainee should be afforded an opportunity to make

“ Preventive detention must fall within the four corners of Article 21 (protection of life and liberty) read with Article 22 and the statute in question... ..for ‘public order’ to be disturbed, there must in turn be public disorder. Mere contravention of law... before it can be said to affect ‘public order’, must affect the community or the public at large –SC

representation against the detention order

PUCL REPORT: UAPA – CRIMINALISING DISSENT AND STATE TERROR

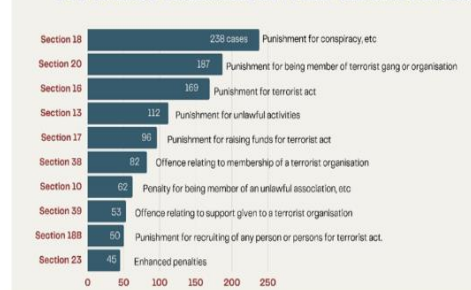
TOP 15 STATES WHERE NIA INVOKES UAPA [2009 – 2022]



UAPA VS NDA



TOP 10 MOST COMMONLY INVOKED UAPA OFFENCES



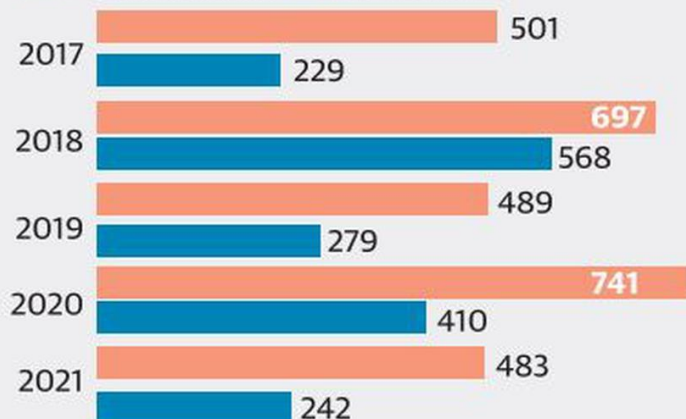
MOST OFTEN INVOKED UAPA OFFENCE – SECTION 18



Most of the persons arrested under Sec 18 charge continue to remain in jail without bail

Behind bars | A look at the number of preventive detentions under the National Security Act over the past five years

DETENTIONS RELEASED



Right to freedom of religion

FREEDOM OF CONSCIENCE AND FREE PROFESSION, PRACTICE AND PROPAGATION OF RELIGION

ARTICLE 25

- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
- (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—
 - (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
 - (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

COMPARISON	
GOLAK NATH CASE 1967	KESAVANANDA BHARATI CASE (1973)
<ul style="list-style-type: none"> The Parliament reacted to the Supreme Court's judgement in the Golak Nath case (1967) by enacting the 24th Amendment Act (1971). <p>This Act amended Articles 13 and 368.</p> <ul style="list-style-type: none"> It declared that the Parliament has the power to abridge or take away any of the Fundamental Rights under Article 368 and such an act will not be a law under the meaning of Article 13. 	<ul style="list-style-type: none"> In the Kesavananda Bharati case (1973), the Supreme Court overruled its judgement in the Golak Nath case (1967). It upheld the validity of the 24th Amendment Act (1971), and stated that Parliament is empowered to abridge or take away any of the Fundamental Rights. At the same time, it laid down a new doctrine of the 'basic structure' (or 'basic features') of the Constitution. It ruled that the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution. This means that the Parliament cannot abridge or take away a Fundamental Right that forms a part of the 'basic structure' of the Constitution.

MANDAMUS

It literally means 'we command'. It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform. It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.

The writ of mandamus cannot be issued (a) against a private individual or body; (b) to enforce departmental instruction that does not possess statutory force; (c) when the duty is discretionary and not mandatory; (d)

to enforce a contractual obligation; (e) against the president of India or the state governors; and (f) against the chief justice of a high court acting in judicial capacity.

PROHIBITION

Literally, it means ‘to forbid’. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. Thus, unlike mandamus that directs activity, the prohibition directs inactivity.

The writ of prohibition can be issued only against judicial and quasi-judicial authorities. It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

Difference between Mandamus and Prohibition			
Mandamus		Prohibition	
	Issued against judicial, quasi-judicial, & administrative authority	Issued against judicial or quasi-judicial authority	
	An order to a lower court to DO something	An order to a lower court to NOT do something	
	Directs activity	Directs inactivity	
	Directs performance of public duties	Prohibits continuing in excess of their jurisdiction	

MARTIAL LAW VS NATIONAL EMERGENCY

Sl. No.	Martial law	National Emergency
1	It affects only Fundamental Rights.	It affects not only Fundamental Rights but also Centre-state relations, distribution of revenues and legislative powers between centre and states and may extend the tenure of the Parliament.
2	It suspends the government and ordinary law courts.	It continues the government and ordinary law courts.
3	It is imposed to restore the breakdown of law and order due to any reason	It can be imposed only on three grounds—war, external aggression or armed rebellion.
4	It is imposed in some specific of the country	It is imposed either in the whole country or in any part of it
5	It has no specific provision in the Constitution. It is implicit.	It has specific and detailed provision in the Constitution. It is explicit.

Classification of DPSPS

The Constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz, socialistic, Gandhian and liberal-intellectual.

Socialistic Principles

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state. They direct the state:

1. To promote the welfare of the people by securing a social order permeated by justice—social, economic and political— and to minimise inequalities in income, status, facilities and opportunities (Article 38).
2. To secure (a) the right to adequate means of livelihood for all citizens; (b) the 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) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children⁵ (Article 39).
3. To promote equal justice and to provide free legal aid to the poor (Article 39 A).
4. To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (Article 41).
5. To make provision for just and humane conditions of work and maternity relief (Article 42).
6. To secure a living wage, a decent standard of life and social and cultural opportunities for all workers (Article 43).
7. To take steps to secure the participation of workers in the management of indus-tries⁸ (Article 43 A).
8. To raise the level of nutrition and the standard of living of people and to improve public health (Article 47).

Gandhian Principles

These principles are based on Gandhian ideology. They represent the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfil the dreams of Gandhi, some of his ideas were included as Directive Principles. They require the State:

1. To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (Article 40).
2. To promote cottage industries on an individual or co- operation basis in rural areas (Article 43).
3. To promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies^{8a} (Article 43B).
4. To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation (Article 46).
5. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47).

To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (Article 48).

Drug Menace - Worldwide & India

What is Drug Abuse?

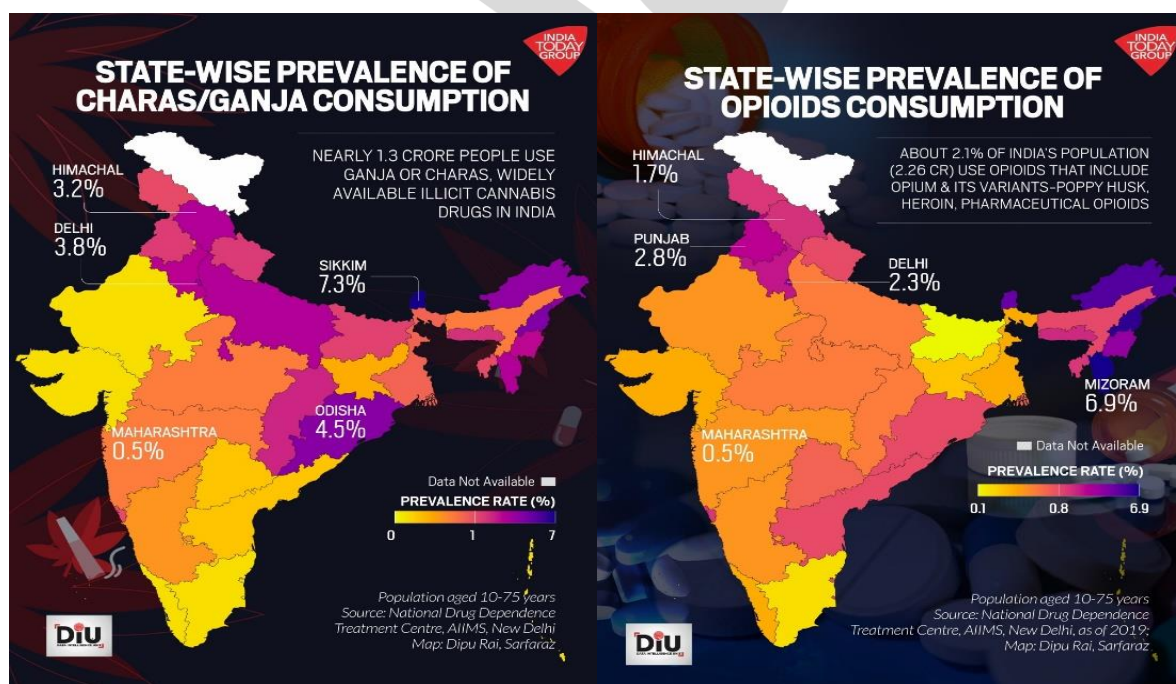
- World Health Organisation defines Drug Abuse as the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.
- Addiction is an advanced stage of substance abuse where the addict develops a compulsion to take the drug, persists in its use despite harmful consequences and exhibits a determination to obtain the drug by almost any means.
- Psychoactive substance use can lead to dependence syndrome - a cluster of behavioural, cognitive, and physiological phenomena, which are marked by social withdrawal.

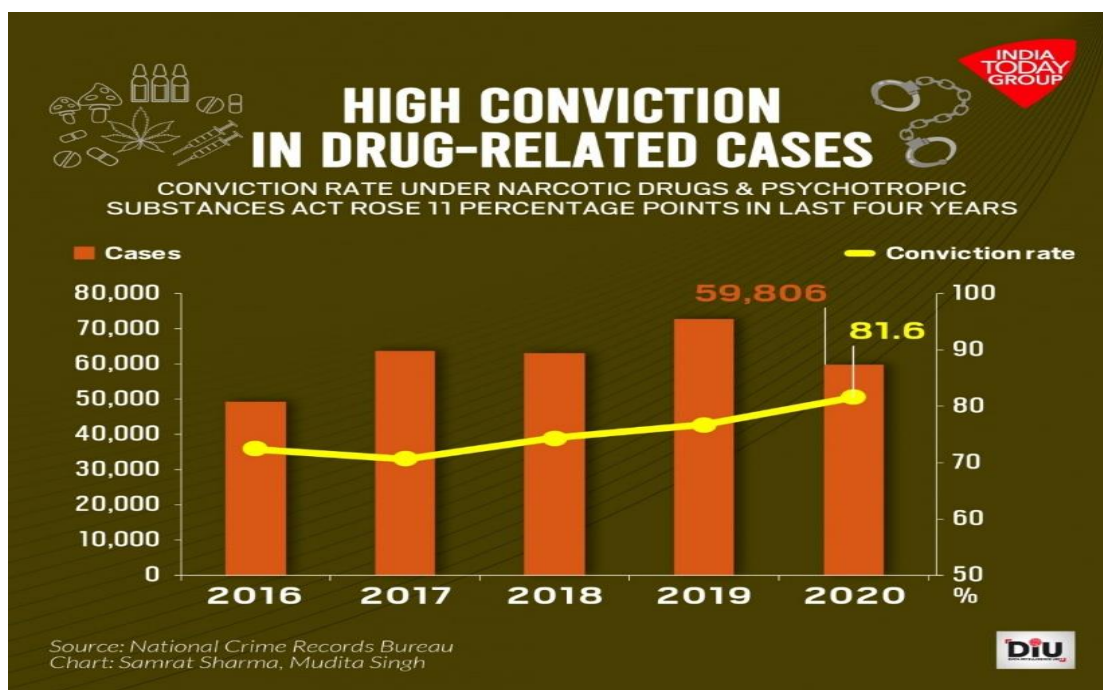
What are the implications of Drugs for a society?

- Drug abuse is one of the most serious health problems faced by the world today which not only destroys the person involved, but his entire family, the society and the nation at large
- Drug abuse adversely affects the economic growth of a country by generating un-accounted money that are also often used to fund terror and anti national activities.
- In 1987 the United Nations decided to observe June 26th as 'International Day against Drug Abuse and Illicit trafficking'.

Government's initiatives against drug abuse?

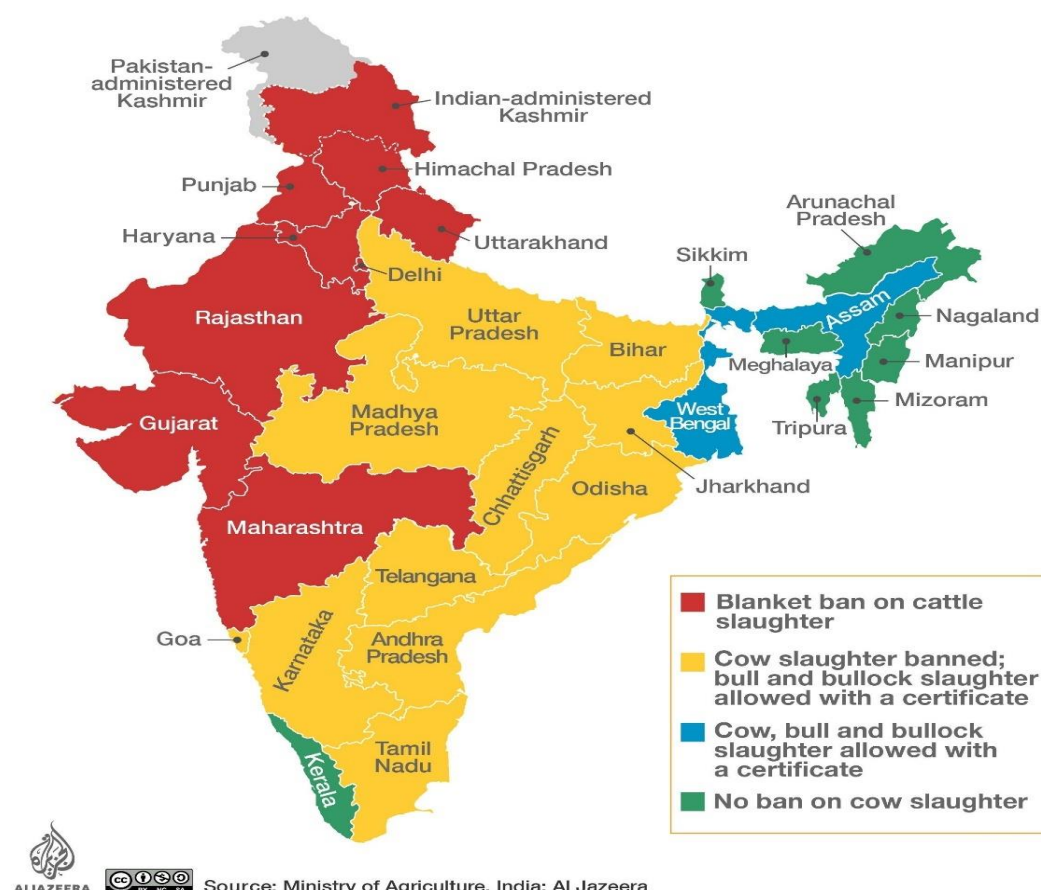
- **Article 47** of the Directive Principles of State Policy of the Constitution of India directs state to improve public health & endeavour to bring about prohibition of the consumption of intoxicating drinks & drugs which are injurious to health.
- India is also a party to the three United Nations drug conventions - **Single Convention on Narcotic Drugs (1961)**, **Convention on Psychotropic Substances (1971)**, **Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)**.
- Parliament passed '**Narcotic Drugs and Psychotropic Substances Act**' of 1985 as a comprehensive legislation on narcotics, providing for stringent and long term prison sentences and heavy fines for offenders.
- Parliament also passed the **Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988**.
- Government has adopted a multi pronged strategy to deal with drugs control by establishing enforcement agencies like Narcotic Control Bureau (NCB), Narcotics Control Division, Department of Central excise & customs, revenue intelligence & para-military and armed forces.
- It has also constituted a joint committee to curb the menace of drug smuggling into India along international borders, which comprises four central ministries - Home Affairs, Health, Finance and Social Justice & Empowerment.





India's cattle slaughter laws

Some states in India have completely banned cattle slaughter, while others allow it with a 'fit-to-slaughter' certificate, issued when an animal is unfit for breeding, milking or work purposes.



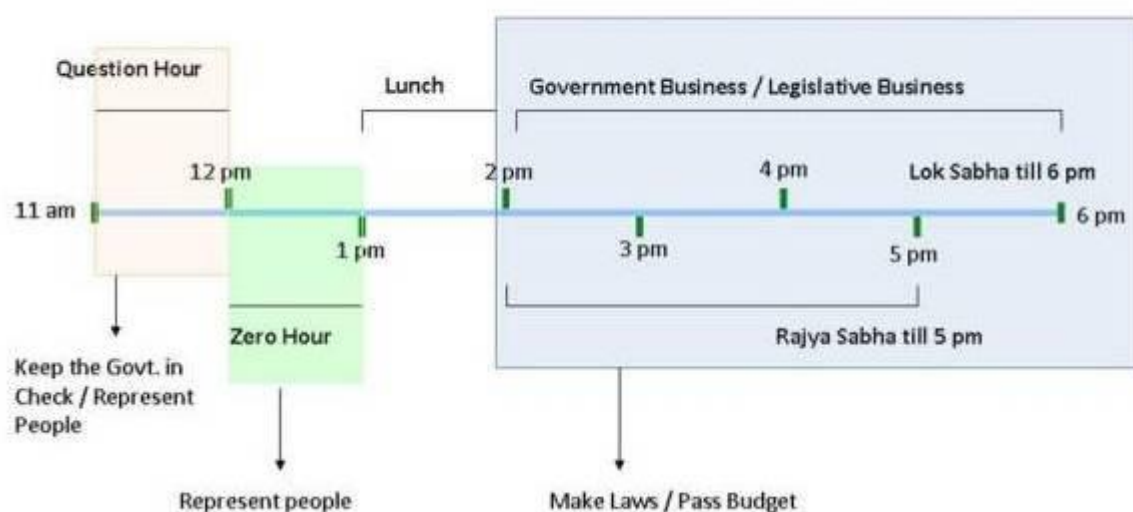
Liberal-Intellectual Principles

The principles included in this category represent the ideology of liberalism. They direct the state:

1. To secure for all citizens a uniform civil code throughout the country (Article 44).
2. To provide early childhood care and education for all children until they complete the age of six years (Article 45).
3. To organise agriculture and animal husbandry on modern and scientific lines (Article 48).
4. To protect and improve the environment and to safeguard forests and wild life (Article 48 A).
5. To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance (Article 49).
6. To separate the judiciary from the executive in the public services of the State (Article 50).
7. To promote international peace and security and maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration (Article 51).

Devices of Parliamentary Proceedings

What happens in Parliament



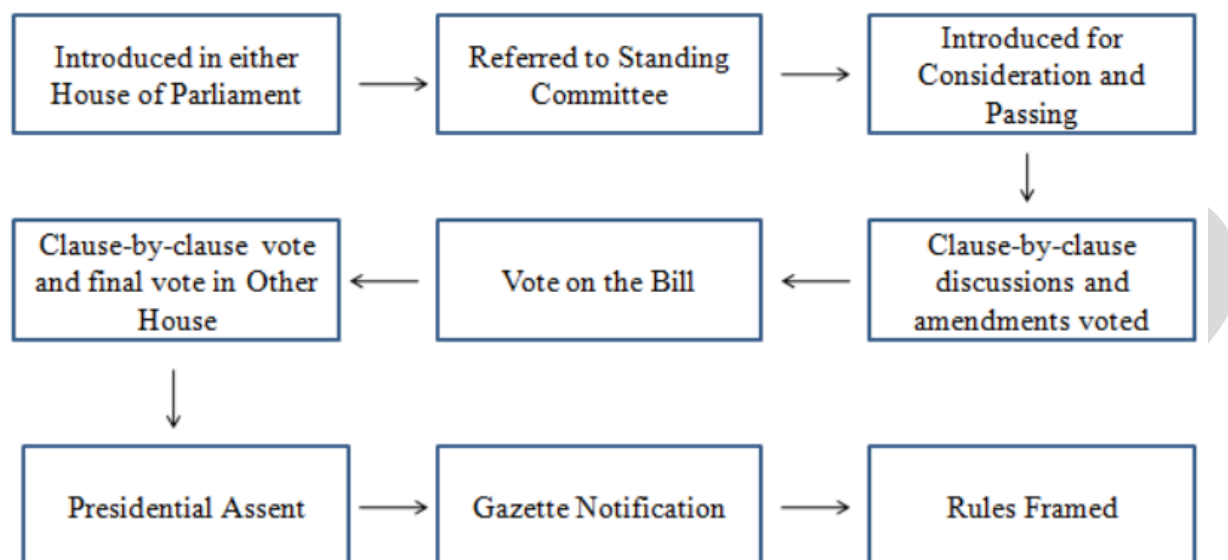
QUESTION HOUR

The first hour of every parliamentary sitting is slotted for this. During this time, the members ask questions and the ministers usually give answers. The questions are of three kinds, namely, starred, unstarred and short notice.

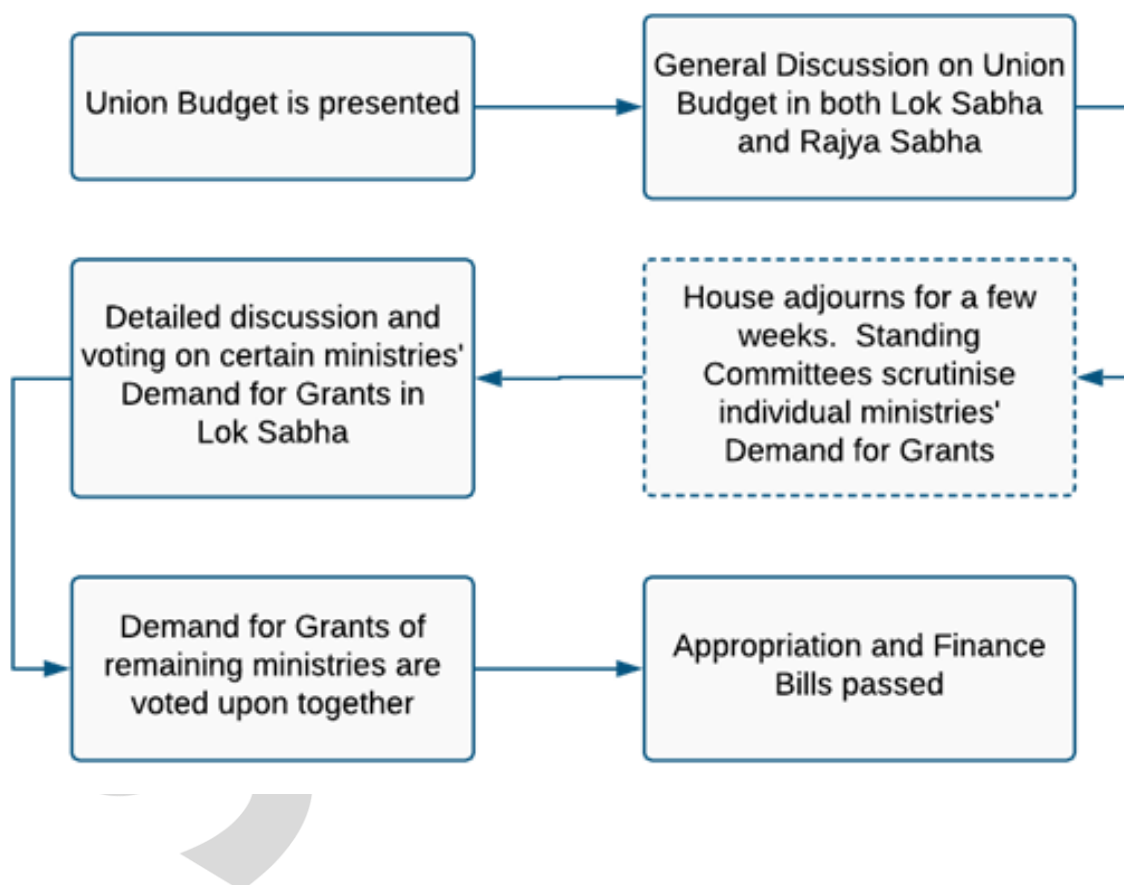
A starred question (distinguished by an asterisk) requires an oral answer and hence supplementary questions can follow.

An unstarred question, on the other hand, requires a written answer and hence, supplementary questions cannot follow.

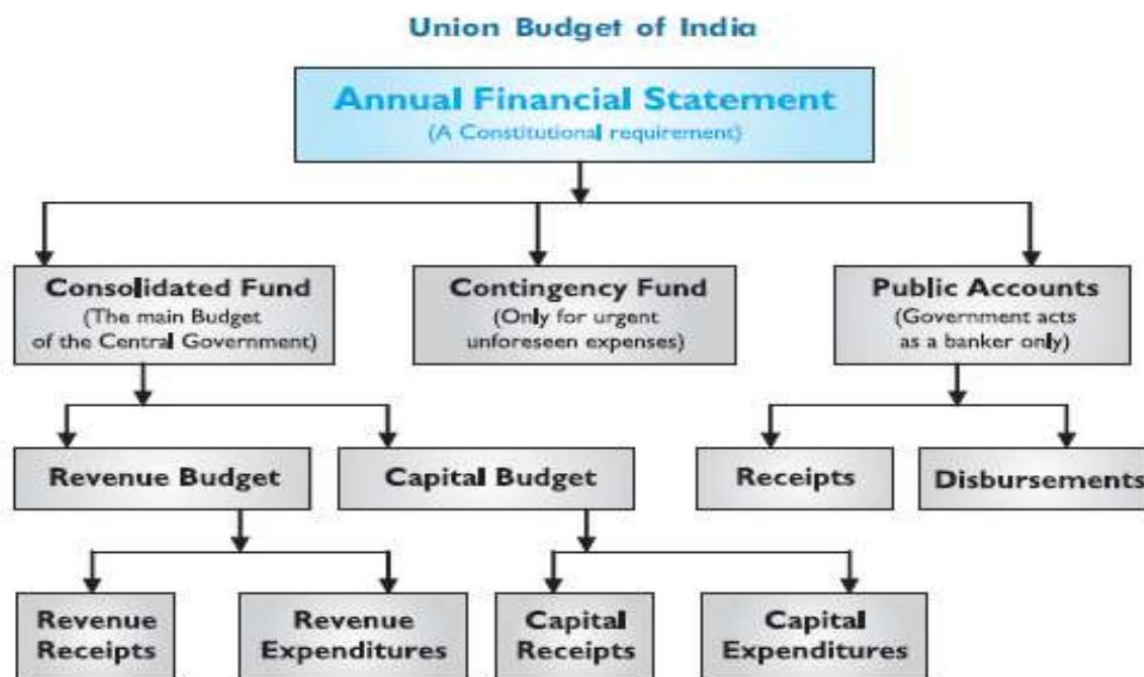
Provisions as to introduction and passing of bills



Stages in Enactment



Funds of Central government



Comparison between Lok Sabha and Rajya Sabha

Sl. No.	Lok Sabha	Rajya Sabha
1	The Lok Sabha is not a permanent House. It is dissolved after the expiry of its term of five years. But it can be dissolved before the period of five years by the President on the advice of the Council of Ministers. New Lok Sabha is elected and constituted within a period of 6 months from the date of its dissolution.	The Council of States or Rajya Sabha is a permanent House and it is not subject to dissolution. After every two years, one-third of its members retire and its same numbers of seats are filled up by new members.
2	The maximum strength of the Lok Sabha can be 552 members. Out of this, 530 members are elected from the States and 20 members are elected from the Union Territories. The remaining two members are nominated by the President from among the Anglo-Indian community.	The total membership of the Rajya Sabha is 250. It is a representative House of States but the States are not represented equally in the Rajya Sabha. Seats in the Rajya Sabha are allocated to different States on the basis of population. Out of the total members of the House, twelve members are nominated by the President from amongst the persons having special knowledge or practical experience in the fields of literature, science, art and social service.

3	The members of the Lok Sabha are elected by the people directly on the basis of secret vote and universal franchise. For the purpose of election, the population is divided into various constituencies.	The members of the Rajya Sabha are elected by the Legislative Assemblies of the respective States on the basis Of proportional representation
4	The Speaker and the Deputy Speaker of the Lok Sabha are the members of the House and are elected by the members of the Lok Sabha themselves.	The Chairman of the Rajya Sabha is not a member of this House. The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. But the Deputy-Chairman of the Rajya Sabha is elected by the members of the Rajya Sabha from amongst its members.
5	The Money Bills can be introduced only in the Lok Sabha.	The Money Bills cannot be introduced in the Rajya Sabha.

IN RELATION TO PARLIAMENT

The prime minister is the leader of the Lower House. In this capacity, he enjoys the following powers:

1. He advises the president with regard to summoning and proroguing of the sessions of the Parliament.
2. He can recommend dissolution of the Lok Sabha to president at any time.
3. He announces government policies on floor of the House. Other Powers & Functions

In addition to the above-mentioned three major roles, the prime minister has various other roles. These are:

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

Dr. B.R. Ambedkar stated:

‘If any functionary under our constitution is to be compared with the US president, he is the Prime Minister and not the president of the Union’.

Lord Morely said,

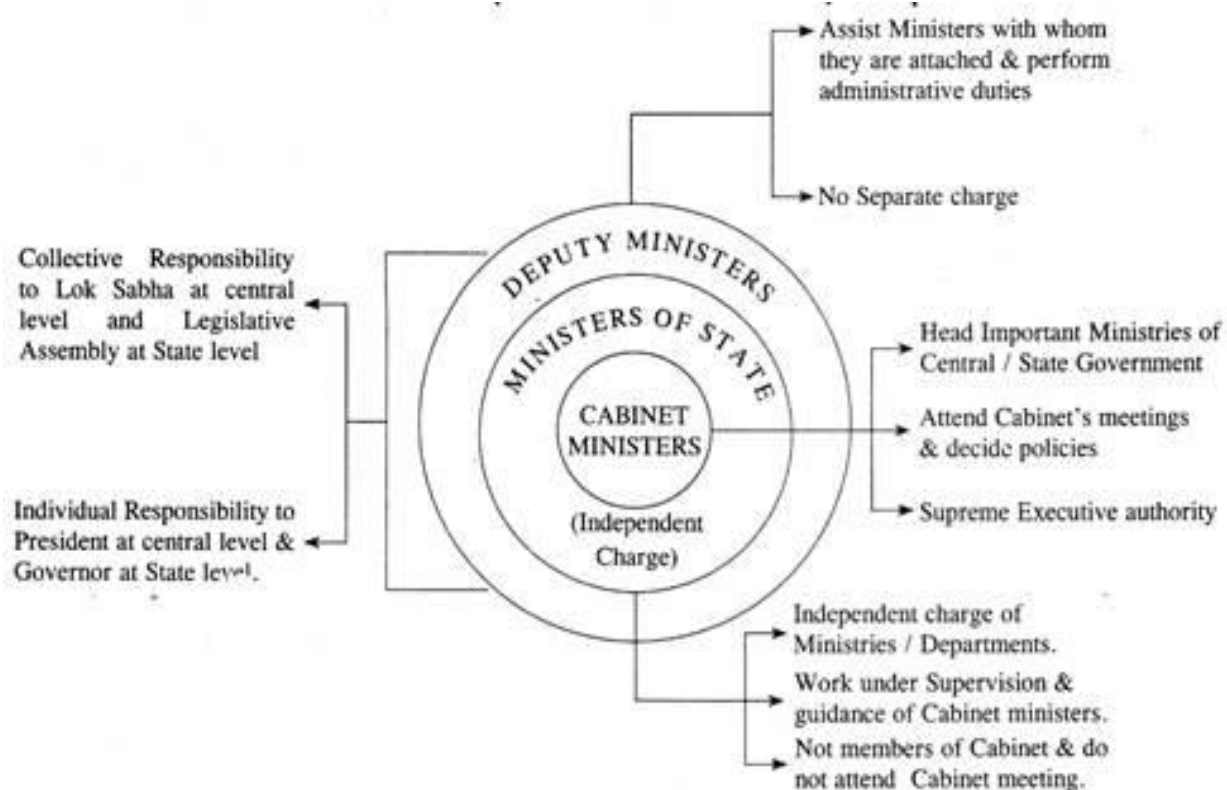
“The head of the cabinet is ‘primus inter pares’, and occupied a position which so long as it lasts, is one of exceptional and peculiar authority”.

Herbert Morrison stated:

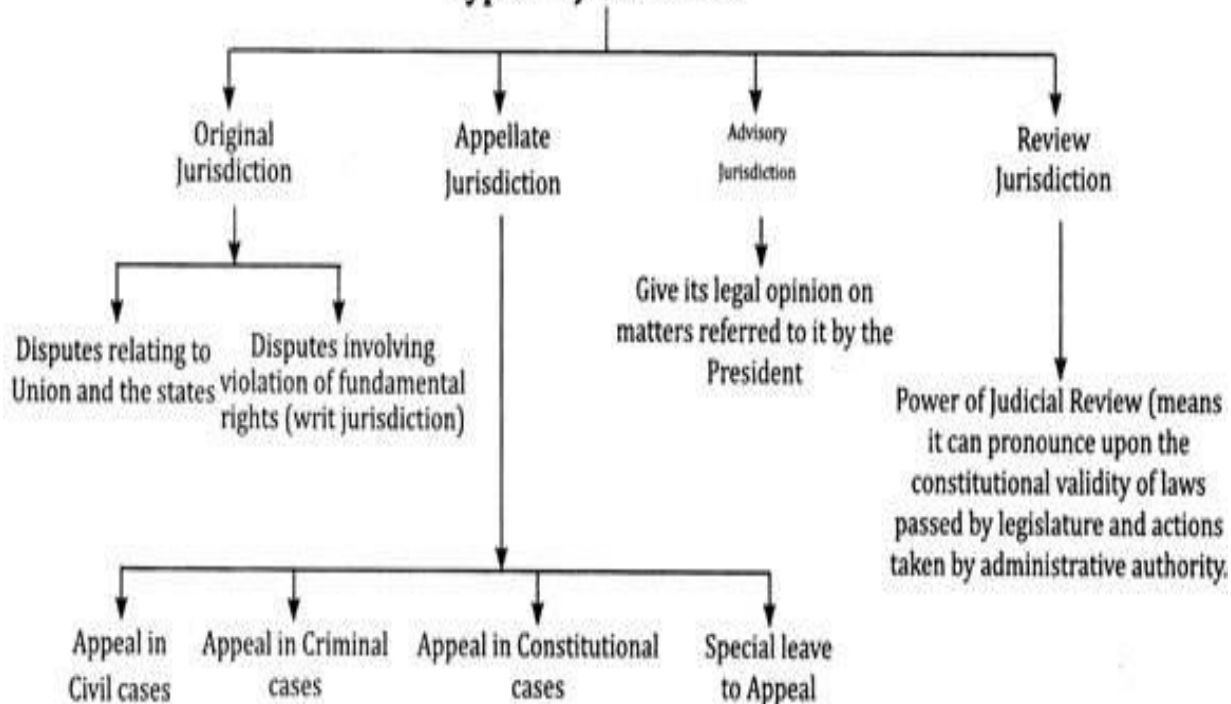
“As the head of the Government, he (prime minister) is ‘primus inter pares’. But, it is today for too modest an appreciation of the Prime Minister’s position”.

Sir William Verner Harcourt described Prime Minister as:

‘inter stellas luna minores’ (a moon among lesser stars).



Types of Jurisdiction



Judicial Activism			
Sl. No.	Justification	Activators	Apprehensions
1	There is near collapse of the responsible government, when the Legislature and Executive fail to discharge their respective functions. This results in erosion of the confidence in the Constitution and democracy amongst the citizens.	Civil Rights Activists	Ideological fears: (Are they usurping powers of the legislature, the executive or of other autonomous institutions in a civil society?)
2	The citizens of the country look up to the judiciary for the protection of their rights and freedoms. This leads to tremendous pressure on judiciary to step in aid for the suffering masses	Consumer Rights Groups	Epistemic fears: (Do they have enough knowledge in economic matters of a Manmohan Singh, in scientific matters of the Czars of the atomic energy establishment, the captains of the Council of Scientific and Industrial Research, and so on?)
3	Judicial Enthusiasm, that is, the judges like to participate in the social reforms that take place in the changing times. It encourages the Public Interest Litigation and liberalises the principle of 'Locus Standi'	Assorted Lawyer-Based Groups and Assorted Individual Petitioners	Legitimation fears: (Are not they causing depletion of their symbolic and instrumental authority by passing orders in public interest litigation which the executive may bypass or ignore? Would not the people's faith in judiciary, a democratic recourse, be thus eroded?)
4	Legislative Vacuum, that is, there may be certain areas, which have not been legislated upon. It is therefore, upon court to indulge in judicial legislation and to meet the changing social needs	Women's Rights Groups	Democratic fears: (Is a profusion of public interest litigation nurturing democracy or depleting its potential for the future?)
5		Media Autonomy Groups	

Chief Minister and Council of Minister

The Constitution does not contain any specific procedure for the selection and appointment of the Chief Minister. Article 164 only says that the Chief Minister shall be appointed by the governor. However, this does not imply that the governor is free to appoint any one as the Chief Minister. In accordance with the conventions of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state legislative assembly as the Chief Minister. But, when no party has a clear majority in the assembly, then the governor may exercise his personal discretion in the selection and appointment of the Chief Minister. In such a situation, the governor usually appoints the leader of the

largest party or coalition in the assembly as the Chief Minister and ask him to seek a vote of confidence in the House within a month.

The governor may have to exercise his individual judgement in the selection and appointment of the Chief Minister when the Chief Minister in office dies suddenly and there is no obvious successor. However, on the death of a Chief Minister, the ruling party usually elects a new leader and the governor has no choice but to appoint him as Chief Minister.

The Constitution does not require that a person must prove his majority in the legislative assembly before he is appointed as the Chief Minister. The governor may first appoint him as the Chief Minister and then ask him to prove his majority in the legislative assembly within a reasonable period. This is what has been done in a number of cases.

A person who is not a member of the state legislature can be appointed as Chief Minister for six months, within which time, he should be elected to the state legislature, failing which he ceases to be the Chief Minister.

According to the Constitution, the Chief Minister may be a member of any of the two Houses of a state legislature. Usually Chief Ministers have been selected from the Lower House (legislative assembly), but, on a number of occasions, a member of the Upper House (legislative council) has also been appointed as Chief Minister.

GOVERNOR AND CHIEF MINISTER

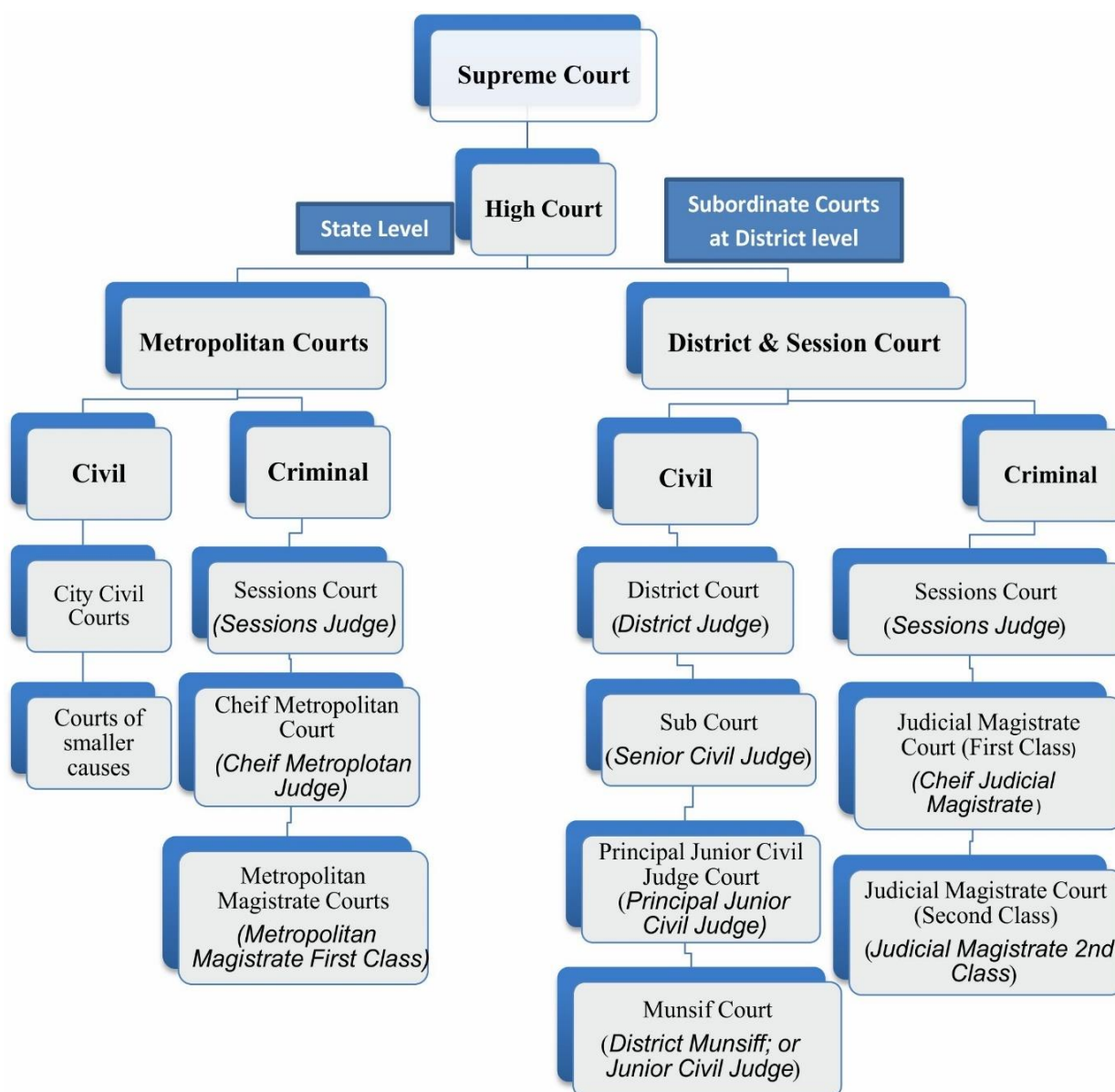
The Chief Minister enjoys the following powers in relation to the governor:

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

Subordinate Court

The state judiciary consists of a high court and a hierarchy of subordinate courts, also known as lower courts. The subordinate courts are so called because of their subordination to the state high court.

The organisational structure, jurisdiction and nomenclature of the subordinate judiciary are laid down by the states. Hence, they differ slightly from state to state. Broadly speaking, there are three tiers of civil and criminal courts below the High Court. This is shown as follows:



* Source: Indian Civil Courts System by: Abhishek Kumar

The district judge is the highest judicial authority in the district. He possesses original and appellate jurisdiction in both civil as well as criminal matters. In other words, the district judge is also the sessions judge. When he deals with civil cases, he is known as the district judge and when he hears the criminal cases, he is called as the sessions judge. The district judge exercises both judicial and administrative powers. He also has supervisory powers over all the subordinate courts in the district. Appeals against his orders and judgements lie to the High Court. The sessions judge has the power to impose any sentence including life imprisonment and capital punishment (death sentence). However, a capital punishment passed by him is subject to confirmation by the High Court, whether there is an appeal or not.

Below the District and Sessions Court stands the Court of Subordinate Judge on the civil side and the Court of Chief Judicial Magistrate on the criminal side. The subordinate judge exercises unlimited pecuniary jurisdiction over civil suits³. The chief judicial magistrate decides criminal cases which are punishable with imprisonment for a term up to seven years.

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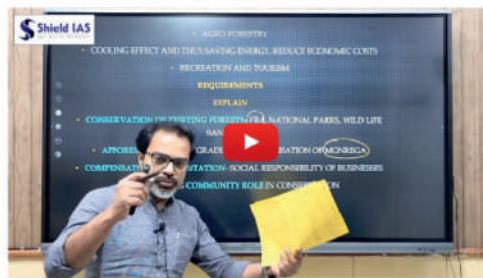
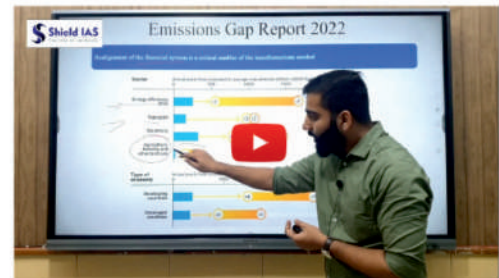
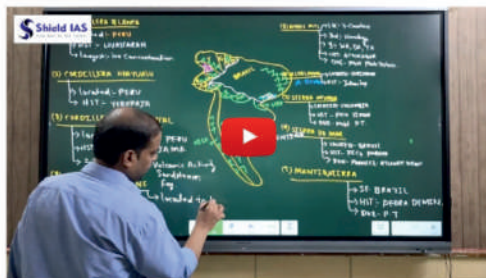
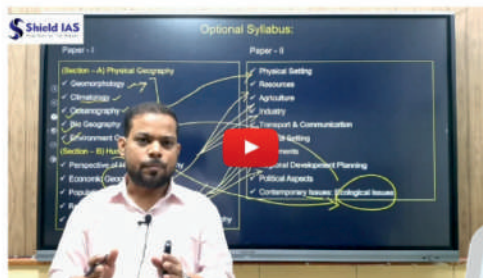
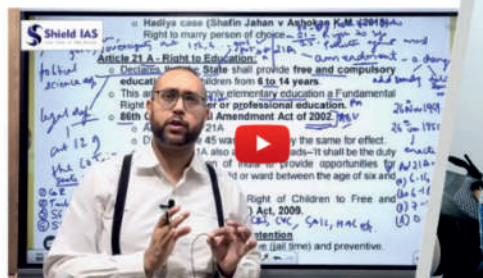
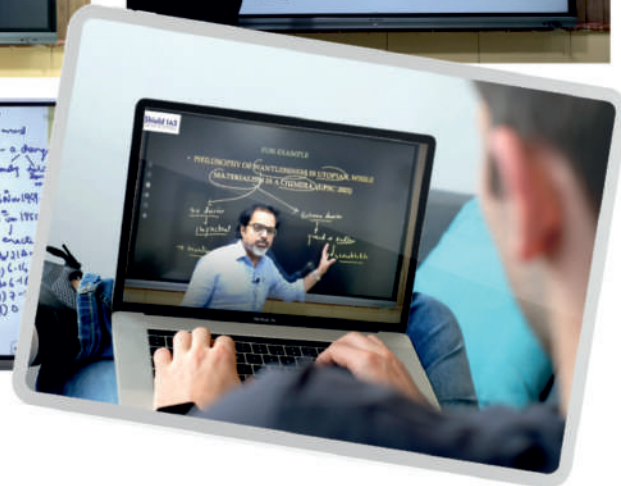


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