

USEFUL FOR IAS/PCS PRELIMINARY & MAINS EXAM



मुख्यमंत्री अभ्युदय योजना



GENERAL STUDIES

Indian Polity

मुख्यमंत्री अभ्युदय योजना प्रकोष्ठ

उत्तर प्रदेश प्रशासन और प्रबंधन अकादमी

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यह अध्ययन-सामग्री मुख्यमंत्री अभ्युदय योजना प्रकोष्ठ (उत्तर प्रदेश प्रशासन और प्रबंधन अकादमी) द्वारा उत्तर प्रदेश सरकार की मुख्यमंत्री अभ्युदय योजना के अंतर्गत सिविल सेवा परीक्षा की तैयारी कर रहे प्रतियोगियों की सहायता के लिए तैयार कराई गई है।

इस पाठ्य-सामग्री को उत्तर प्रदेश प्रशासन एवं प्रबंधन अकादमी, लखनऊ में 65वें आधारभूत प्रशिक्षण कार्यक्रम के अंतर्गत प्रशिक्षण प्राप्त कर रहे प्रशिक्षु (डिप्टी कलक्टर-UPPCS-2018) द्वारा प्रोजेक्ट कार्य के रूप में तैयार किया गया है।

इस सामग्री की पूर्णतः शैक्षणिक और जन कल्याणकारी-उद्देश्यों के लिए तैयार किया है-इसका एक मात्र उद्देश्य प्रदेश के छात्र/छात्राओं का प्रतियोगी परीक्षाओं की तैयारी में मार्गदर्शन व सहयोग करना है।

वैधानिक सूचना - इस अध्ययन सामग्री का किसी भी प्रकार से व्यावसायिक उपयोग प्रतिबंधित है।

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Historical Evolution of the Constitution

ACTS	PROVISIONS
<ul style="list-style-type: none"> • Regulating Act of 1773 	<ul style="list-style-type: none"> • Governor of Bengal as the 'Governor-General of Bengal' • Bombay and Madras presidencies subordinate to the governor-general of Bengal. • Prohibited the servants of the Company from engaging in any private trade or accepting presents or bribes from the 'natives'. • Control of the British Government over the Company strengthened • Required the Court of Directors (the governing body of the Company) to report on its revenue, civil, and military affairs in India.
<ul style="list-style-type: none"> • Pitt's India Act of 1784 	<ul style="list-style-type: none"> • Company's Indian territories were for the first time called the 'British possessions in India' • A system of double government <ol style="list-style-type: none"> 1. Court of Directors managed the commercial affairs 2. A new body called Board of Control managed the political affairs.
<ul style="list-style-type: none"> • Charter Act of 1813 	<ul style="list-style-type: none"> • Abolished the trade monopoly of the company in India (Except trade in tea and trade with China) • Allowed the Christian missionaries for the spread of western education.
<ul style="list-style-type: none"> • Charter Act of 1833 	<ul style="list-style-type: none"> • Final step towards centralization

	<ul style="list-style-type: none"> • Governor-General of Bengal as the “Governor-General of India” (first - Lord William Bentick) • Laws made under the previous acts were called as Regulations, while laws made under this act were called as Acts • System of open competition for civil services.
<ul style="list-style-type: none"> • Charter Act of 1853 	<ul style="list-style-type: none"> • Last Charter Acts in series. • Separated legislative and executive functions of the Governor-General’s council. 1. It established a separate Governor-General’s legislative council which came to be known as the Indian (Central) Legislative Council (total 6 members’ along with local representation). 2. This legislative wing of the council functioned as a Mini-Parliament. Thus, legislation was treated as a special function of the government for the first time. • Macaulay Committee on civil services appointed in 1854.
<ul style="list-style-type: none"> • GOI Act of 1858 	<ul style="list-style-type: none"> • Governor-General of India to Viceroy of India. • System of double Govt. ended. • New Office of Secretary of State for India (member of the British Cabinet)
<ul style="list-style-type: none"> • Indian Councils Act of 1861 	<ul style="list-style-type: none"> • Beginning of the representative institutions by associating Indians with the law-making process. • Restored legislative powers to Bombay and Madras. • Recognised portfolio system. • Empowered Viceroy to issue ordinances.
<ul style="list-style-type: none"> • Indian Councils Act of 1892 	<ul style="list-style-type: none"> • Increased the number of additional (non-official) members in the Central and provincial legislative councils, with official majority.

<ul style="list-style-type: none"> • Indian Councils Act of 1909 	<ul style="list-style-type: none"> • Known as Morley-Minto Reforms • Increased the size of the legislative councils, both Central (official majority) and provincial (non-official majority). • Members were allowed to ask supplementary questions, move resolutions on the budget, and so on. • Association of Indians for first time with the executive Councils of the Viceroy and Governors • Introduction of separate electorate(Muslim members were to be elected only by Muslim voters)- 'legalised communalism'
<ul style="list-style-type: none"> • GOI Act of 1919 	<ul style="list-style-type: none"> • Known as Montague-Chelmsford Reforms • Demarcating and separating central and provincial subjects • Dyarchy at provinces 1. Transferred subjects– administered by the governor with the aid of ministers responsible to the legislative Council. 2. Reserved subjects– administered by the governor and his executive council. • Granted franchise to a limited number of people on the basis of property, tax or education • Created a new office of the High Commissioner for India in London. • Separate budgets for Provincial and Central Legislatures for the first time. • Appointment of a statutory commission after ten years – Simon commission appointed in 1927
<ul style="list-style-type: none"> • Simon Commission 1927 	<ul style="list-style-type: none"> • Mandated by GOI 1919 • To report on condition of India under GOI 1919 • Recommendations of committee were incorporated in GOI Act of 1935

<ul style="list-style-type: none"> • GOI act 1935 	<ul style="list-style-type: none"> • All-India Federation. • Abolished dyarchy in the provinces and introduced ‘provincial autonomy’ • Adopted Dyarchy at Centre. • Extended franchise (About 10%) • Established RBI (RBI act 1934) • Established Federal Court (1937)
<ul style="list-style-type: none"> • Indian Independence Act of 1947 	<ul style="list-style-type: none"> • Declared India as an independent and sovereign state from August 15, 1947. • Partition of India into two dominions; • Abolished office of Viceroy & office of Secretary of State for India • Empowered Constituent Assemblies to frame and adopt any constitution, repeal any law/act including the Independence act itself • Lapse of British paramountcy • Governor-General of India and the provincial governors as constitutional (nominal) heads; • Dropped the title of Emperor of India; • First Governor General of India- Lord Mountbatten • first Indian Governor General of India- C. Rajagopalachari

Fundamental Rights

- The Fundamental Rights are enshrined in Part III of the Constitution (Articles 12-35).

The Constitution of India provides for six Fundamental Rights:

- o Right to equality (Articles 14–18)
- o Right to freedom (Articles 19–22)
- o Right against exploitation (Articles 23–24)
- o Right to freedom of religion (Articles 25–28)
- o Cultural and educational rights (Articles 29–30)
- o Right to constitutional remedies (Article 32)
- Originally the constitution also included **Right to property (Article 31)**. However, it was deleted from the list of Fundamental Rights by the **44th Amendment Act, 1978**.
- It is made a **legal right under Article 300-A** in Part XII of the Constitution.

Provision for Laws Violating Fundamental Rights:

- **Article 13** of the Indian constitution declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.
- This power has been conferred on the Supreme Court (**Article 32**) and the high courts (Article 226).
- Further, the article declares that a constitutional amendment cannot be challenged (as it is not a law).
- However, the Supreme Court in the **Kesavananda Bharati case (1973)** held that a Constitutional amendment can be challenged if it violates a fundamental right.
- o The Supreme Court (Article 32) and the High courts (Article 226) can issue the writs of **habeas corpus, mandamus, prohibition, certiorari and quo-warranto**.

Features of the Fundamental Rights:

- **Protected by Constitution:** Fundamental Rights, unlike ordinary legal rights, are protected and guaranteed by the constitution of the country.
- Some of the rights are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
- The rights are not absolute but qualified.
- The state can impose reasonable restrictions on them, however, the reasonability of the restrictions is decided by the courts.

Suspension of Rights:

The rights can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. Further, the six rights guaranteed by Article 19 can be suspended only when there is an external emergency war or external aggression) [and not on the ground of armed rebellion (i.e., internal emergency)].

Restriction of Laws:

Their application to the members of armed forces, paramilitary forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 33).

Their application can be restricted while martial law (military rule imposed under abnormal circumstances) is in force in any area.

Description of Fundamental Rights

1. Right to Equality (Article 14, 15, 16, 17 and 18):

- **Equality Before Law:**
 - o **Article 14** says that no person shall be denied treatment of equality before the law or the equal protection of the laws within the territory of India.
 - o The right is extended to all persons whether citizens or foreigners, statutory corporations, companies, registered societies or any other type of legal person.
 - o **Exceptions:** As per article 361, the President of India or Governor of states is not answerable to any court for the exercise of their powers/duties and no civil or criminal proceedings can occur or continue against them in any court during their term of office.

- o As per article 361-A, no civil or court proceedings can occur for a person for publishing any substantially true report of either House of the Parliament and State Legislature.
- o No member of Parliament (article 105) and State Legislature (article 194) shall be liable to any court proceedings in respect of anything said or any vote given by him in Parliament or any committee.
- o The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.

- **Prohibition of Discrimination:**

- o Article 15 provides that no citizen shall be discriminated on grounds only of religion, race, caste, sex or place of birth.
- o **Exception:** Certain provisions can be made for the women, children, citizens from any socially or educationally backward class for their upliftment (such as reservation and access to free education).

- **Equality of Opportunity in Public Employment:**

- o Article 16 of the Indian constitution provides for equality of opportunity for all citizens in matters of employment or appointment to any public office.
- o **Exceptions:** There are provisions for reservation in appointments or posts for any backward class that is not adequately represented in the state services.
- o Also, an incumbent of a religious or denominational institution may belong to the particular religion or denomination.

- **Abolition of Untouchability:**

- o **Article 17** abolishes ‘untouchability’ and forbids its practice in any form. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

- **Abolition of Titles:**

- o **Article 18** of the constitution of India abolishes titles and makes four provisions in that regard:

- o It prohibits the state from conferring any title on any citizen or a foreigner (except a military or academic distinction).
- o It prohibits a citizen of India from accepting any title from any foreign state.
- o A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the President of India.
- o No citizen or foreigner holding any office of profit or trust within the territory of India can accept any present, emolument or office from or under any foreign State without the consent of the president.

2. Right to Freedom (Article 19, 20, 21 and 22):

- **Protection of 6 Rights: Article 19** guarantees to all citizens the six rights of freedom including:
 - o **Right to freedom of speech and expression.**
 - Expressing one's own views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner.
 - o **Right to assemble peaceably and without arms.**
 - Includes the right to hold public meetings, demonstrations and take out processions which can be exercised only on public land.
 - It does not protect violent, disorderly and riotous assemblies or strike.
 - o **Right to form associations or unions or co-operative societies.**
 - It includes the right to form (and not to form) political parties, companies, partnership firms, societies, clubs, organisations, trade unions or anybody of persons.
 - o **Right to move freely throughout the territory of India.**
 - The freedom of movement has two dimensions, viz, internal (right to move inside the country) (article 19) and external (right to move out of the country and right to come back to the country) (article 21).
 - o **Right to reside and settle in any part of the territory of India.**
 - The right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture and customs of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

- **Right to practice any profession or to carry on any occupation, trade or business.**
- It doesn't include the right to carry on a profession that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc.).
- **Protection in Respect of Conviction for Offences:**
- **Article 20** grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It provides that:
 - 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 or subjected to a penalty greater than that prescribed by the law.
 - No person shall be prosecuted and punished for the same offence more than once.
 - No person accused of any offence shall be compelled to be a witness against himself.
- **Protection of Life and Personal Liberty:**
- **Article 21** declares that no person shall be deprived of his **life or personal liberty** except according to procedure established by law. This right is available to both citizens and non-citizens.
- **Right to Education:**
- **Article 21 (A)** declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years.
- This provision makes only elementary education a Fundamental Right and not higher or professional education.
- This provision was added by the **86th Constitutional Amendment Act of 2002**.
- Before the 86th amendment, the Constitution contained a provision for free and compulsory education for children under **Article 45 in Part IV** of the constitution.

- **Protection Against Arrest and Detention:**

- Article 22 grants protection to persons who are arrested or detained.
- The first part of Article 22 deals with the ordinary law and includes:
 - Right to be informed of the grounds of arrest.
 - Right to consult and be defended by a legal practitioner.
 - Right to be produced before a magistrate within 24 hours, excluding the journey time.
 - Right to be released after 24 hours unless the magistrate authorises further detention.
- The second part of Article 22 deals with preventive detention law. Protection under this article is available to both citizens as well as aliens and includes the following:

3. Right Against Exploitation (Article 23 and 24)

- **Prohibition of Human Trafficking and Forced Labour: Forced labour in India** was imposed by landlords, moneylenders and other wealthy persons in the past.
- The **Article 23** of the Indian Constitution prohibits human trafficking and begar (forced labour without payment) to protect the millions of underprivileged and deprived people of the country.
- The right is available to **citizens** of India as well as to **non-citizens**.
- **Prohibition of Child Labour: Article 24** of the Indian Constitution forbids employment of children below the age of 14 years in dangerous jobs like factories and mines.

4. Right to Freedom of Religion (Article 25-28)

- **Freedom of Conscience, Profession, Practice and Propagation: Article 25** of the Constitution of India provides the freedom of conscience, to profess, to practice and to propagate any religion. These rights are **available to citizens as well as non-citizens**.

- **Limitations:** The government can impose restrictions on the practice of freedom of religion in order to protect public order, morality and health.
- The government can interfere in religious matters for rooting out certain social evils. For example: banning practices like sati, bigamy or human sacrifice.
- Such restrictions cannot be opposed in the name of interference in the right to freedom of religion.
- **Freedom to Manage Religious Affairs:** The **Article 26** of the Indian Constitution provides every religious denomination (or any section of it) the **right to establish and maintain institutions for religious and charitable purposes.**
 - It also empowers the religious denominations to manage their own affairs in matters of religion.
 - The rights provided under Article 26 are also **subjected to public order, morality and health.**
- **Freedom from Taxation for Promotion of a Religion:** The Indian Constitution under **Article 27** lays down that **no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion** or religious denomination.
 - It says that no public money, collected through taxes, shall be spent for the promotion or maintenance of any particular religion.
 - Favours, patronising or supporting any religion over the other is prohibited.
- **Freedom from Attending Religious Instruction:** **Article 28** states that no religious instruction shall be provided in any educational institution wholly maintained out of State (the territory of India) funds.
 - However, the provision is not applicable to educational institutions administered by the State or established under any endowment or trust.
 - Moreover, no person is required to attend any religious instructions or worship without his consent in any educational institution recognised by the State or receiving aid out of State funds.

5. Cultural and Educational Rights (Article 29 and 30)

- **Protection of Interests of Minorities: Article 29** provides that every section of citizens residing in any part of the country have the right to protect and conserve its own distinct language, script or culture (it provides the right to a group/section/community of people).
 - Article 29 grants protection to both religious, linguistic as well as cultural minorities.
- **Right of Minorities to Establish and Administer Educational Institutions: Article 30** grants all the minorities the following rights:
 - The right to establish and administer educational institutions of their choice.
 - The State shall not discriminate against any educational institution managed by a minority.

Article 31, 31A, 31B and 31C

- Originally, the **right to property was one of the seven fundamental rights** and provided that **no person shall be deprived of his property except by authority of law.**
 - However, being one the most controversial rights, the **44th Amendment Act of 1978** abolished the right to property as a Fundamental Right and made it a legal right (constitutional right) under **Article 300A in Part XII** of the Constitution.

Right to Constitutional Remedies (Article 32)

- **Article 32** is considered the most important article of the Constitution as it provides that the **right to get Fundamental Rights protected is itself a fundamental right.**
 - It confers the **right to remedies for the enforcement of the fundamental rights** of an aggrieved citizen.

- The Supreme Court has ruled that Article 32 is a basic feature of the Constitution. Hence, it **cannot be abridged or taken away even by way of an amendment** to the Constitution.
- It contains the following four provisions:
 - The right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights.
 - The Supreme Court shall have power to issue directions or orders or **writs** for the enforcement of any of the fundamental rights.
 - Parliament can empower any other court to issue directions, orders and writs of all kinds.
- Any other court here does not include high courts because (**Article 226**) has already conferred these powers on the high courts.
- The right to move the Supreme Court shall not be suspended except as otherwise provided for by the Constitution.
- In the case of national emergency, the right can be suspended by the President (**Article 359**).

Article 33, 34 and 35

- **Article 33:** It empowers the **Parliament to restrict or abrogate the fundamental rights of the ‘Members of the Armed Forces’, paramilitary forces, police forces, intelligence agencies and analogous forces.**
- The objective of this provision is to **ensure the proper discharge of their duties** and the maintenance of discipline among them.
- The **power to make laws under Article 33 is conferred only on Parliament** and not on state legislatures.
- Any such law made by Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.
- The ‘members of the armed forces’ also covers non-combatant employees of the armed forces such as barbers, carpenters, mechanics, cooks, chowkidars, bootmakers and tailors.

- **Article 34:** It provides for the **restrictions on fundamental rights while martial law is in force** in any area within the territory of India. The expression ‘martial law’ has not been defined anywhere in the Constitution but literally, it means ‘military rule’.
- The martial law is **imposed under extraordinary circumstances** like war, invasion, insurrection, rebellion, riot or any violent resistance to law.
- Article 34 **empowers the Parliament to indemnify (compensate) any government servant** or any other person for any act done by him in connection with the maintenance or **restoration of order in any area where martial law was in force.**
- The Act of Indemnity made by the Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights.
- **Article 35:** Article 35 lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures.
- Article 35 extends the competence of the Parliament to make a law on the specified matters even those matters which may fall within the sphere of the state legislatures (i.e., State List).

Conclusion

- The Fundamental Rights, despite having a lot of exceptions & restrictions and lack of permanency, are a crucial part of the Constitution of India as:
 - They provide necessary conditions for the material and moral protection of man and ensure the liberty of every individual.
 - These rights protect the interests of minorities and weaker sections of society and also strengthen the notion of India as a secular State.
 - They ensure the dignity and respect of individuals by laying down the foundation of social equality and justice.

Directive Principles of State Policy (DPSP)

Articles 36-51 under Part-IV of Indian Constitution deal with Directive Principles of State Policy (DPSP). They are borrowed from the Constitution of Ireland, which had copied it from the Spanish Constitution.

What are the Directive Principles of State Policy?

DPSP are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws. There are various definitions to Directive Principles of State which are given below:

- They are an ‘instrument of instructions’ which are enumerated in the Government of India Act, 1935.
- They seek to establish economic and social democracy in the country.
- DPSPs are ideals which are not legally enforceable by the courts for their violation.

Article 38	Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimize inequalities in income, status, facilities and opportunities
Article 39	Secure citizens: <ul style="list-style-type: none">• Right to adequate means of livelihood for all citizens• Equitable distribution of material resources of the community for the common good• Prevention of concentration of wealth and means of production• Equal pay for equal work for men and women• Preservation of the health and strength of workers and children against forcible abuse Opportunities for the healthy development of children

Article 39A	Promote equal justice and free legal aid to the poor
Article 41	In cases of unemployment, old age, sickness and disablement, secure citizens: <ul style="list-style-type: none"> • Right to work • Right to education • Right to public assistance,
Article 42	Make provision for just and humane conditions of work and maternity relief
Article 43	Secure a living wage, a decent standard of living and social and cultural opportunities for all workers
Article 43A	Take steps to secure the participation of workers in the management of industries
Article 47	Raise the level of nutrition and the standard of living of people and to improve public health
Article 40	Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government
Article 43	Promote cottage industries on an individual or co-operation basis in rural areas
Article 43B	Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies
Article 46	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 47	Prohibit the consumption of intoxicating drinks and drugs which are injurious to health
Article 48	Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds
Article 44	Secure for all citizens a uniform civil code throughout the country
Article 45	Provide early childhood care and education for all children until they complete the age of six years
Article 48	Organise agriculture and animal husbandry on modern and scientific lines
Article 49	Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance

Article 50	Separate the judiciary from the executive in the public services of the State
Article 51	<ul style="list-style-type: none"> • Promote international peace and security and maintain just and honourable relations between nations • Foster respect for international law and treaty obligations Encourage settlement of international disputes by a

Criticism of Directive Principles of State Policy

As a point of debate, the following reasons are stated for the criticism of Directive Principles of State Policy:

1. It has no legal force
2. It is illogically arranged
3. It is conservative in nature
4. It may produce constitutional conflict between centre and state

What is the conflict between Fundamental Rights and DPSPs?

With the help of four court cases given below, candidates can understand the relationship between Fundamental Rights and Directive Principles of State Policy:

Champakam Dorairajan Case (1951)

Supreme Court ruled that in any case of conflict between Fundamental Rights and DPSPs, the provisions of the former would prevail. DPSPs were regarded to run as a subsidiary to Fundamental Rights. SC also ruled that Parliament can amend Fundamental Rights through constitutional amendment act to implement DPSPs.

Result: Parliament made the First Amendment Act (1951), the Fourth Amendment Act (1955) and the Seventeenth Amendment Act (1964) to implement some of the Directives.

Golaknath Case (1967)

Supreme Court ruled that Parliament cannot amend Fundamental Rights to implement Directive Principles of State Policy.

Result: Parliament enacted the 24th Amendment Act 1971 & 25th Amendment Act 1971 declaring that it has the power to abridge or take away any of the

Fundamental Rights by enacting Constitutional Amendment Acts. 25th Amendment Act inserted a new Article 31C containing two provisions:

- No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b)22 and (c)23 shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14 (equality before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc.) or Article 31 (right to property).
- 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.

Kesavananda Bharti Case (1973)

Supreme Court ruled out the second provision of Article 31C added by the 25th Amendment Act during Golaknath Case of 1967. It termed the provision 'unconstitutional.' However, it held the first provision of Article 31C constitutional and valid.

Result: Through the 42nd amendment act, Parliament extended the scope of the first provision of Article 31C. It accorded the position of legal primacy and supremacy to the Directive Principles over the Fundamental Rights conferred by Articles 14, 19 and 31.

Minerva Mills Case (1980)

Supreme Court held the extension of Article 31C made by the 42nd amendment act unconstitutional and invalid. It made DPSP subordinate to Fundamental Rights. Supreme Court also held that **'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.'**

Supreme Court's rulings following the case were:

- Fundamental Rights and DPSPs constitute the core of the commitment to social revolution.
- The harmony and balance between Fundamental Rights and Directive Principles of State Policy is an **essential feature of the basic structure** of the Constitution.
- The goals set out by the Directive Principles have to be achieved without the abrogation of the means provided by the Fundamental Rights.

Conclusion:

Today, Fundamental Rights enjoy supremacy over the Directive Principles. Yet, Directive Principles can be implemented. The Parliament can amend the Fundamental Rights for implementing the Directive Principles, so long as the amendment does not damage or destroy the basic structure of the Constitution.



Fundamental Duties

- The **idea of Fundamental Duties** is inspired from the **Constitution of Russia**.
- These were incorporated in **Part IV-A** of the Constitution by the **42nd Constitutional Amendment Act, 1976** on the **recommendations of Swaran Singh Committee**.
- Originally 10 in number, one more duty was added through the **86th Constitutional Amendment Act, 2002**. All the **eleven duties** are listed in **Article 51-A** of the Constitution (the sole Article in Part-IV-A).
- 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.

List of Fundamental Duties

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- To cherish and follow the noble ideals that inspired the national struggle for freedom;
- To uphold and protect the sovereignty, unity and integrity of India;
- To defend the country and render national service when called upon to do so;
- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
- To value and preserve the rich heritage of the country's composite culture;
- To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;

- To develop scientific temper, humanism and the spirit of inquiry and reform;
- To safeguard public property and to abjure violence;
- To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and
- To provide opportunities for education to his child or ward between the age of six and fourteen years (**added by the 86th Constitutional Amendment Act, 2002**).



Emergency Provisions

A state of emergency in India refers to a period of governance that can be proclaimed by the President of India during certain crisis situations. Under the advice of the cabinet of ministers, the President can overrule many provisions of the Constitution, which guarantees Fundamental Rights to the citizens of India.

The emergency provisions are contained in Part XVIII of the Constitution of India, from Article 352 to 360. These provisions enable the Central government to meet any abnormal situation effectively.

The rationality behind the incorporation is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.

- The Constitution stipulates three types of emergencies-
 - a. National Emergency
 - b. Constitutional Emergency
 - c. Financial Emergency

1. NATIONAL EMERGENCY

National emergency can be declared on the basis of war, external aggression or armed rebellion. The Constitution employs the expression ‘proclamation of emergency’ to denote an emergency of this type.

Grounds of declaration:

- Under Article 352, the president can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.
- The President can declare a national emergency even before the actual occurrence of war or armed rebellion or external aggression
- When a national emergency is declared on the grounds of ‘war’ or ‘external aggression’, it is known as ‘External Emergency’. On the other hand, when it is declared on the grounds of ‘armed rebellion’, it is known as ‘Internal Emergency’.
- This term ‘armed rebellion’ is inserted from the 44th amendment. Before this term it was known as internal disturbance.

- The 38th Amendment Act of 1975 made the declaration of National Emergency immune to judicial review. But, this provision was subsequently deleted by the 44th Amendment Act of 1978.

Parliamentary approval and duration

- The proclamation of emergency must be approved by both the houses of parliament within one month from the date of its issue.
- However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
- If approved by both the houses, the Emergency continues for 6 months and can be extended to an indefinite period with an approval of the Parliament for every six months.
- Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority.

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.

Effects of national emergency

- A proclamation of Emergency has drastic and wide-ranging effects on the political system. These consequences can be grouped into 3 categories:

Effects on the centre-state relations:

While a proclamation of Emergency is in force, the normal fabric of the Centre-State relations undergoes a basic change. This can be studied under three heads:

- Executive: Centre becomes entitled to give executive directions to a state on 'any' matter
- Legislative: The parliament becomes empowered to make laws on any subject mentioned in the state list, the president can issue ordinances on State subjects also, if the parliament is not in session. The laws made on state subjects by the

parliament become inoperative six months after the emergency has ceased to be in operation.

- Financial: the president can modify the constitutional distribution of revenues between the centre and the states.

Effect on the life of the Lok Sabha and State Assembly:

- While a proclamation of National Emergency is in operation, the life of the Lok Sabha may be extended beyond the normal term for one year at a time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.
- Similarly, the Parliament may extend the normal tenure of a state Legislative Assembly by one year each time during a national emergency, subject to a maximum period of six months after the emergency has ceased to operate.

Effect on fundamental rights:

Articles 358 and 359 describes the effect of a National Emergency on the Fundamental Rights. These two provisions are explained below:

- Suspension of Fundamental rights under Article 19: According to Article 358, when a proclamation of National Emergency is made, the six fundamental rights under article 19 are automatically suspended. Article 19 is automatically revived after the expiry of the emergency.
- Suspension of other Fundamental Rights: Under Article 359, the President is authorised to suspend, by order, the right to move any court for the enforcement of Fundamental Rights during a National Emergency. Thus, remedial measures are suspended and not the Fundamental Rights.

Declarations made so far:

This type of emergency has been proclaimed three times so far- in 1962, 1971 and 1975

- The first proclamation of National Emergency was issued in October 1962 on account of Chinese aggression in the NEFA and was in force till January 1968.
- The second proclamation of National Emergency was made in December 1971 in the wake of the attack by Pakistan.
- Even when the emergency was in operation, the third proclamation of National Emergency was made in June 1975. Both the second and the third proclamations were revoked in March 1977

2. PRESIDENT'S RULE

- Article 355 imposes a duty on the centre to ensure that the government of every state is carried on in accordance with the provisions of the constitution.
- It is this duty in the performance of which the centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in a state.
- This is popularly known as 'President's Rule'.

Grounds of imposition:

The president's rule can be proclaimed under Article 356 on two grounds:

- 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.

Parliamentary approval and duration:

- A proclamation imposing president's rule must be approved by both the houses of parliament within two months from the date of its issue.
- However, if the proclamation of President's rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided that the Rajya Sabha approves it in the meantime
- **Consequences of the President's rule:** The President acquires the following extraordinary powers when the President's rule is imposed in a state:
- He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.
- He can declare that the powers of the state legislature are to be exercised by the parliament.
- He can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state.

Scope of judicial review:

- 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.

3. FINANCIAL EMERGENCY

Grounds of declaration:

- Article 360 empowers the president to proclaim a Financial Emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.

Parliamentary approval and duration:

- A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue.
- However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
- Once approved by both the houses of Parliament, the Financial Emergency continues indefinitely till it is revoked.

Effects of Financial Emergency

- Extension of the executive authority of the Union over the financial matters of the States.
- Reduction of salaries and allowances of all or any class of persons serving in the State.
- Reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the State.
- Direction from the President for the reduction of salaries and allowances of all or any class of persons serving the Union; and the judges of the Supreme Court and the High Courts.

Criticism of the Emergency Provision

Some members of the Constituent Assembly criticised the incorporation of emergency provisions in the constitution on the following grounds:

- The federal character of the constitution will be destroyed and the union will become all-powerful

- The powers of the State- both the Union and the Units- will entirely be concentrated in the hands of the union executive.
- The president will become a dictator
- The financial autonomy of the state will be nullified
- Fundamental rights will become meaningless and, as a result, the democratic foundation of the constitution will be destroyed.'

While defending the emergency provisions in the Constituent Assembly, Dr Ambedkar accepted the possibility of their misuse. He observed, 'I do not altogether deny that there is a possibility of the Articles being abused or employed for political purposes.'



Amendment of Constitution

1. Part XX of the Constitution deals with its amendment.
2. Under Article 368(2), Parliament can amend the Constitution by passing a Bill in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.
3. Thereafter, the Bill shall be presented to the President who shall give his assent... and thereupon the Constitution shall stand amended.
4. Parliament cannot amend those provisions which form the basic structure of the Constitution according to the Supreme Court ruling in the landmark 1973 Kesavananda Bharati case.
5. All provisions that do not require ratification by states, and those that come directly under the purview of Article 368, have to be amended by the special majority.

Various Procedures for Amendments

1. Simple Majority

A large number of provisions contained in the constitution are open to change by a simple majority. These may be divided into two classes:

- Formation of new state.
- Creation or abolition of legislative council
- Creation of council of ministers for Union territories
- Extending the period of 15 years fixed for the use of English in Article 343
- Defining Parliamentary privileges

2. Special Majority

- a) Except those provisions which are amendable by an ordinary majority, the rest of the provisions require a special majority for amendment.

- b) The Amendment Bill must be passed by a majority of **two-thirds** of the members of each House present and voting and such majority must exceed 50% of the total membership of the House.

3. Special Majority and Ratification by half of the States

- a) Those provisions which relate to the federal structure of the constitution require special majority in Parliament as well as ratification by at least half of the state legislatures.
- b) This procedure is required in the following provisions:
- Manner of election of President
 - Executive power of the Union and the State
 - The Supreme Court and the High Courts
 - Distribution of legislative power between the Union and the States
 - Representation of states in Parliament
 - Article 368 itself



National Human Rights Commission

- NHRC of India is an independent statutory body established on **12 October, 1993** as per provisions of Protection of Human Rights Act, 1993, later amended in 2006.
- NHRC has celebrated its Silver Jubilee (25 years) on October 12, 2018. Its headquarter is located in New Delhi.
- It is the watchdog of human rights in the country, i.e. the rights related to life, liberty, equality and dignity of the individual guaranteed by Indian Constitution or embodied in the international covenants and enforceable by courts in India.

Background

- **Universal Declaration of Human Rights (UDHR)** was adopted by the United Nations General Assembly in Paris on 10 December 1948.
- It is a milestone declaration in the history of human rights which sets out, for the first time, fundamental human rights to be universally protected.
- **Human Rights Day** is observed every year on **10 December**, which is the anniversary of the UDHR. In 2018, Human Rights Day marked the 70th anniversary the declaration.
- This act also authorized State Governments to establish State Human Right Commission.

Structure of the Commission

- NHRC is a multi-member body which consists of a Chairman and seven other members. Out of the seven members, three are ex-officio member.
- **President appoints the Chairman and members** of NHRC on recommendation of high-powered committee headed by Prime Minister.
- The Chairperson and the members of the NHRC are appointed for 5 years or till the age of 70 years, whichever is earlier.

- They can be removed only on the **charges of proved misbehavior or incapacity**, if proved by an inquiry conducted by a Supreme Court Judge.
- Commission also has five **Specialized Divisions** i.e. Law Division, Investigation Division, Policy Research & Programmes Division, Training Division and Administration Division.
- The chairman and the members of **State Commission are appointed by the Governor** in consultation with the Chief Minister, Home Minister, Speaker of Legislative Assembly and Leader of the Opposition in the State Legislative Assembly.

Functions and Powers of NHRC

- NHRC investigate grievances regarding the violation of human rights either suo moto or after receiving a petition.
- It has the power to interfere in any judicial proceedings involving any allegation of violation of human rights.
- It can visit any jail or any other institution under the control of the State Government to see the living conditions of the inmates and to make recommendations thereon.
- It can review the safeguards provided under the constitution or any law for the protection of the human rights and can recommend appropriate remedial measures.
- NHRC undertakes and promotes research in the field of human rights.
- NHRC works to spread human rights literacy among various sections of society and promotes awareness of the safeguards available for the protection of these rights through publications, media, seminars and other means.
- The Commission takes an independent stand while providing opinions for the protection of human rights within the parlance of the Constitution or in law for the time being enforced.
- It has the powers of a civil court and can grant interim relief.
- It also has the authority to recommend payment of compensation or damages.
- NHRC credibility is duly reflected in large number of complaints received every year and the trust reposed in it by the citizens.

- It can recommend to both the central and state governments to take suitable steps to prevent the violation of Human Rights. It submits its annual report to the President of India who causes it to be laid before each House of Parliament.

Limitations of NHRC

- NHRC can only make recommendations, without the power to enforce decisions.
- Many times NHRC is viewed as post-retirement destinations for judges and bureaucrats with political affiliation moreover, inadequacy of funds also hampers it's working.
- Government often out rightly rejects recommendation of NHRC or there is partial compliance to these recommendations.
- State human rights commissions cannot call for information from the national government, which means that they are implicitly denied the power to investigate armed forces under national control.

Suggestions

- There is need for complete revamping of NHRC to make it more effective and truly a watchdog of human right violations in the country.
- NHRC efficacy can be enhanced by government if commission decisions are made enforceable.
- There is need to change in composition of commission by including members from civil society and activists.
- Many laws in India are very old and archaic in nature by amending which government can bring more transparency in regulations.
- To improve and strengthen the human rights situation in India, state and non-state actors need to work in tandem.

NITI Aayog

Background

- Planning has been in Indian psyche as our leaders came under influence of the socialist clime of erstwhile USSR. Planning commission served as the planning vehicle for close to six decades with a focus on control and command approach.
- Planning Commission was replaced by a new institution – NITI AAYOG on January 1, 2015 with emphasis on ‘Bottom-Up’ approach to envisage the vision of Maximum Governance, Minimum Government, echoing the spirit of ‘Cooperative Federalism’.

Administrative Structure

- **Chairperson:** Prime Minister
- **Vice-Chairperson:** To be appointed by Prime-Minister
- **Governing Council:** Chief Ministers of all states and Lt. Governors of Union Territories.
- **Regional Council:** To address specific regional issues, Comprising Chief Ministers and Lt. Governors Chaired by Prime Minister or his nominee.
- **Adhoc Membership:** 2 members in ex-officio capacity from leading Research institutions on rotational basis.
- **Ex-Officio membership:** Maximum four from Union council of ministers to be nominated by Prime minister.
- **Chief Executive Officer:** Appointed by Prime-minister for a fixed tenure, in rank of Secretary to Government of India.
- **Special Invitees:** Experts, Specialists with domain knowledge nominated by Prime-minister.

NITI Aayog Hubs

1. **Team India Hub** acts as interface between States and Centre.
2. **Knowledge and Innovation Hub** builds the think-tank acumen of NITI Aayog.
 - The Aayog planned to come out with three documents — 3-year action agenda, 7-year medium-term strategy paper and 15-year vision document.

Importance

- The 65-year-old Planning Commission had become a redundant organization. It was relevant in a command economy structure, but not any longer.
- India is a diversified country and its states are in various phases of economic development along with their own strengths and weaknesses.
- In this context, a ‘one size fits all’ approach to economic planning is obsolete. It cannot make India competitive in today’s global economy.

Objectives

- To foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognizing that strong States make a strong nation.
- To develop mechanisms to formulate credible plans at the village level and aggregate these progressively at higher levels of government.
- To ensure, on areas that are specifically referred to it, that the interests of national security are incorporated in economic strategy and policy.
- To pay special attention to the sections of our society that may be at risk of not benefitting adequately from economic progress.
- To provide advice and encourage partnerships between key stakeholders and national and international like-minded Think Tanks, as well as educational and policy research institutions.
- To create a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and other partners.

- To offer a platform for resolution of inter-sectoral and inter-departmental issues in order to accelerate the implementation of the development agenda.
- To maintain a state-of-the-art Resource Centre, be a repository of research on good governance and best practices in sustainable and equitable development as well as help their dissemination to stake-holders.

Challenges

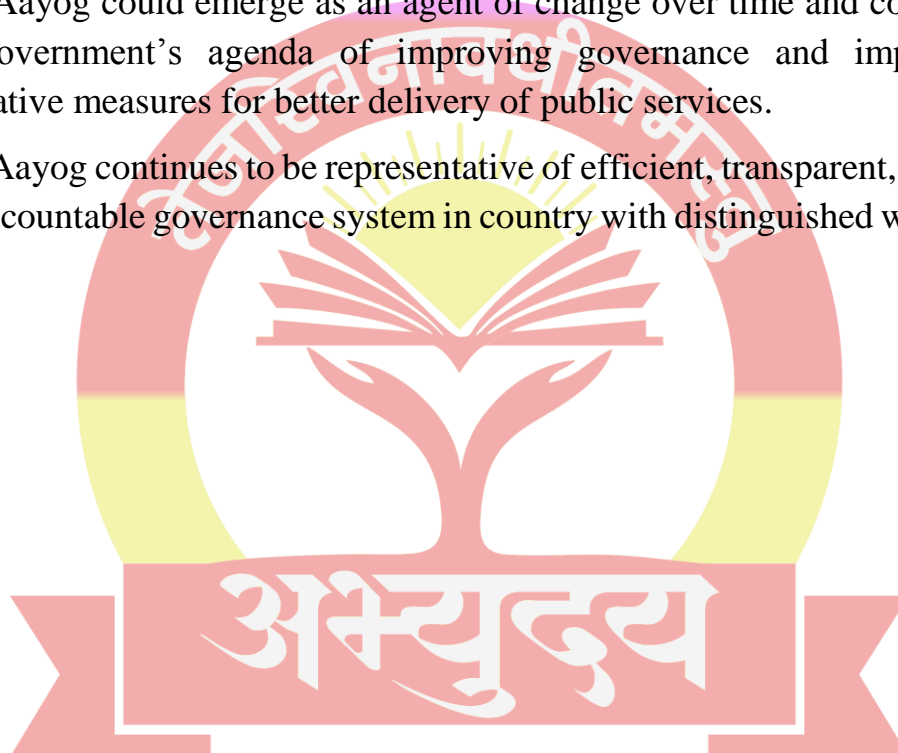
- To prove its mettle in policy formulation, the NITI Aayog needs to prioritize from the long list of 13 objectives with clear understanding of the difference in policy, planning and strategy.
- To build the trust, faith and confidence more than the planning commission, NITI Aayog needs freedom of various kinds with budgetary provisions not in terms of plan and non-plan expenditures but revenue and capital expenditure as the higher rate of increase in capital expenditure can remove infrastructural deficits at all levels of operation in the economy.

NITI Aayog	Planning Commission
It serves as an advisory Think Tank.	It served as extra-constitutional body.
It draws membership from a wider expertise.	It had limited expertise.
It serves in spirit of Cooperative Federalism as states are equal partners.	States participated as spectators in annual plan meetings.
Secretaries to be known as CEO appointed by Prime- Minister.	Secretaries were appointed through usual process.
It focuses upon 'Bottom-Up' approach of Planning.	It followed a 'Top-Down' approach.

It does not have powers to allocate funds, which are vested in Finance Minister.	It had powers to allocate funds to ministries and state governments.
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Way Forward

- Decentralization of planning but within a five-year plan framework.
- Bureaucratic inertia need to be shaken, specializing it and fixing the accountability on basis of performance.
- NITI Aayog could emerge as an agent of change over time and contribute to the government's agenda of improving governance and implementing innovative measures for better delivery of public services.
- NITI Aayog continues to be representative of efficient, transparent, innovative and accountable governance system in country with distinguished work ethics.



Chief Information Commission (CIC)

- The Chief Information Commission (CIC) is the authorized body in India to act upon complaints received from individuals who have been unable to submit requests of information to a Central or State Public Information Officer due to either the officer not having been appointed, or the respective officer refused to entertain the application under the Right to Information Act (RTI Act).
- The Central Information Commission is not a constitutional body.
- The CIC was constituted with effect from 12th October 2005 under the RTI Act 2005.
- Its jurisdiction extends to all central public authorities.

Composition

Members in CIC –

- The CIC is headed by the Chief Information Commissioner and not more than ten Information Commissioners are there for the assistance of CIC.
- The Chief Information Commissioner holds office for five years.
- At present (2019), the Commission has six Information Commissioners apart from the Chief Information Commissioner.

Appointment of the commissioner in CIC –

- The commissioners are appointed by the President on the recommendation of a committee consisting of the Prime Minister as Chairperson, the Leader of Opposition in the Lok Sabha, and a Union Cabinet Minister nominated by the Prime Minister.

Tenure of Office:

- The Chief Information Commissioner and an Information Commissioner shall hold office for such term as prescribed by the Central Government or until they attain the age of 65 years, whichever is earlier.

- They are not eligible for reappointment.

Role of the Central Information Commission

1. Order enquiry into any matter on reasonable grounds only (suo-moto power).
2. Secure compliance of its decisions from any public authority.
3. Receive and inquire into a complaint from any person:
 - o Who has not received any response to his request for information within a specified time
 - o Who deems the information given to him/her incomplete, false or misleading, and any other matter related to securing the information
 - o Who has been unable to submit a request for information due to the non-appointment of an officer
 - o Who considers the fees so charged unreasonable?
 - o Who was refused the information requested
4. The commission has the power to examine any record under the control of the public authority. All such records have to be given to the Commission during the examination and nothing shall be withheld.
5. During inquiries, the CIC has the powers of a civil court, such as the powers to:
 - o Summon and enforce the attendance of persons, and compel them to give oral or written evidence on oath and produce documents or things
 - o Require the discovery and inspection of documents
 - o Receive evidence on affidavit
 - o Requisition public records or copies from any office or court
 - o Issue summons for the examination of documents or witnesses
 - o Any other matter that may be prescribed
6. The CIC also submits an annual report to the GOI on the implementation of the provisions of the Act. This report is then placed before both the Houses of Parliament.

State Information Commission (SIC)

The State Information Commission (SIC) is a quasi-judicial body. Right to Information Act provides provisions for creation of State Information Commission.

State Information Commission – Members, Appointment

1. The Right to Information Act of 2005 provides for the creation of not only the Central Information Commission but also a State Information Commission at the state level.
2. Accordingly, all the states have constituted the State Information Commissions through Official Gazette Notifications.
3. The State Information Commission is a high-powered independent body that inter-alia looks into the complaints made to it and decides the appeals.
4. It entertains complaints and appeals pertaining to offices, financial institutions, public sector undertakings, etc., under the concerned state government.
5. The Commission consists of a State Chief Information Commissioner and not more than ten State Information Commissioners.
6. They are appointed by the Governor on the recommendation of a committee consisting of the Chief Minister as Chairperson, the Leader of Opposition in the Legislative Assembly and a State Cabinet Minister nominated by the Chief Minister.
7. They should be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. They should not be a Member of Parliament or Member of the Legislature of any State or Union Territory. They should not hold any other office of profit or connected with any political party or carrying on any business.

Term of Office of SIC

1. They hold office till the age of 65 or 5 years. The information commissioner is eligible for the post of state chief information commissioner but can be in office for a maximum of 5 years including his tenure of information commissioner.

Removal of State Chief Information Commissioner from Office

1. Subject to the provisions of sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.
2. The Governor may suspend from office, and if deemed necessary prohibit also from attending the office during the inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.
3. Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if the SIC:
 - o is adjudged an insolvent; or
 - o engages during his term of office in any paid employment outside the duties of his office; or
 - o has been convicted of an offense which, in the opinion of the Governor, involves moral turpitude; or
 - o is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or
 - o has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

- o If the State Chief Information Commissioner or a State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehavior.

State Information Commission – Quasi-Judicial Powers and Functions

The quasi-judicial powers and functions of the State Information Commission are:

1. The Commission must receive and inquire into a complaint from any person
2. The Commission can order an inquiry into any matter if there are reasonable grounds (suo-moto power).
3. While inquiring, the Commission has the powers of a civil court in respect of civil matters
4. During the inquiry of a complaint, the Commission may examine any record which is under the control of the public authority and no such record may be withheld from it on any grounds. In other words, all public records must be given to the Commission during inquiry for examination.
5. The Commission has the power to secure compliance with its decisions from the public authority.
6. The Commission submits an annual report to the State Government on the implementation of the provisions of this Act. The State Government places this report before the State Legislature.

Central Vigilance Commission

- The Indian government introduced the Central Vigilance Commission (CVC) in the year 1964.
- The commission was set up on the recommendation of K. Santhanam Committee on Prevention of Corruption.
- It was originally introduced through an executive resolution.
- The Central Vigilance Committee's role is to advise and guide the Central Government in the field of surveillance.

What is the Central Vigilance Commission (CVC)?

- It is an agency constituted to curb corruption in offices of the Indian government.
- Complaints from whistleblowers (an employee of the firm/public office informing the public about frauds/wrongdoings in the office) under '**Whistleblower Resolution**' are received by CVC after which the commission can take actions on motivated acts.
- CVC is called the apex vigilance institution.
- It is free of control from any executive authority.
- Its role is to monitor all vigilance activity under the Central Government and advising various authorities in Central Government organizations in planning, executing, reviewing and reforming their vigilance work.

Members in Central Vigilance Commission:

1. Central Vigilance Commissioner
2. Two Vigilance Commissioner (Maximum number of commissioners is 2)

Removal of CVC Members

If the member is adjudged as an insolvent

If the Central government holds him responsible for an offence involving moral turpitude/ or he is convicted for such an offence

If he becomes a part of the office of profit

If he is declared unfit by reason of infirmity of mind or body, by the President

If he is found interested in financially driven activities or other such interests which can likely affect prejudicially his official functions

Note: CVC members can also be removed by the President on the **grounds of proved misbehaviour**. However, the Supreme Court is referred by President only after which CVC member can be removed.

Departments under the commission:

The organisation of the Central Vigilance Commission (CVC)

Secretariat	Chief Technical Examiners' (CTE) wing	Wing of Commissioners for Departmental Inquiries (CDIs)
<ul style="list-style-type: none">• Secretary• Joint Secretary• Deputy Secretary• Under-Secretary• Office Staff	<ul style="list-style-type: none">• It is the technical wing, having:<ul style="list-style-type: none">• Chief Engineers• Supporting Engineers	<ul style="list-style-type: none">• Inquiry Officers

Functions

- They inquire or investigate whenever a public servant (Central Government employee) commits an offence under the Prevention of Corruption Act, 1988.
- They inquire or investigate against following officials who commit an offence under the Prevention of Corruption Act, 1988:
 - o Members of all-India services serving in the Union and Group 'A' officers of the Central government
 - o The specified level of officers of the authorities of the Central government
- They superintend the functioning of Delhi Special Police Establishment (CBI) in cases related to Prevention of Corruption Act, 1988
- They direct Delhi Special Police Establishment in investigative cases related to Prevention of Corruption Act, 1988
- They review the progress of investigations conducted by the Delhi Special Police Establishment in cases related Prevention of Corruption Act, 1988
- They review the progress of those applications that are pending with competent authorities for sanction under Prevention of Corruption Act, 1988
- Central Government and its authorities are advised on matters as they refer to CVC members
- They also superintend vigilance departments of government ministries
- They undertake or cause an inquiry into complaints received under Whistleblower Resolution and recommend appropriate action.
- Whenever the central government makes rules and regulations governing the vigilance and disciplinary matters relating to members of Central Services and All-India Services, CVC is consulted.
- CVC members are part of the selection committee which is responsible to recommend the appointment of Director of Enforcement (ED.)
- CVC is a part of the selection committee that recommends officers for appointments to the posts above the level of Deputy Director of Enforcement.
- The Commissions acts as an authority to receive information that is related to suspicious transactions under the Prevention of Money Laundering Act, 2002

- It recommends to Central Government for the appointment of Director of Prosecution in Central Bureau of Investigation
- CVC members are part of a selection committee that is responsible to recommend the appointment of officers to the posts of the level of SP and above in the CBI except for Director of CBI
- Lokpal refers complaints to CVC who initiate a preliminary inquiry in respect of officers and officials of Groups A, B, C & D

Jurisdiction of Central Vigilance Commission

CVC can extend its jurisdiction to the following:

Jurisdiction of Central Vigilance Commission (CVC)
Union Government Officers/ Group A officers of All India Services
Public Sector Bank Officers of the rank of Scale V and above
RBI, NABARD and SIDBI officers in Grade D and above
<ul style="list-style-type: none"> • PSUs officers in Group 'A' and Group 'B' and also it's Chief Executives and Executives on board • Chief Executives and Executives on the Board and other officers of E-7 and above in Schedule 'C' and 'D' Public Sector Undertakings of the Central Government
General Insurance Companies' officers in the position of managers and above
Life Insurance Companies' officers having the designation of Senior Divisional Managers and above
Officers drawing a salary of `8700/- per month (pre-revised) and above on Central Government D.A. pattern, as may be revised from time to time, in societies and local authorities owned or controlled by the Central Government

Central Bureau of Investigation (CBI)

- Central Bureau of Investigation (CBI) is the premier investigating police agency in India.
- It functions under the superintendence of the Deptt. of Personnel, Ministry of Personnel, Pension & Public Grievances, Government of India - which falls under the prime minister's office.
- However, for investigations of offences under the Prevention of Corruption Act, its superintendence vests with the Central Vigilance Commission.
- It is also the nodal police agency in India which coordinates investigation on behalf of Interpol Member countries.

Historical Background

- During the period of World War II, a Special Police Establishment (SPE) was constituted in 1941 in the Department of War of the British India to enquire into allegations of bribery and corruption in the war related procurements.
- Later on it was formalized as an agency of the Government of India to investigate into allegations of corruption in various wings of the Government of India by enacting the Delhi Special Police Establishment (DSPE) Act, 1946.
- **CBI derives power to investigate from the Delhi Special Police Establishment Act, 1946.**
- In 1963, the CBI was established by the Government of India with a view to investigate serious crimes related to defence of India, corruption in high places, serious fraud, cheating and embezzlement and social crime, particularly of hoarding, black-marketing and profiteering in essential commodities, having all-India and inter-state ramifications.
- With the passage of time, CBI started investigations in conventional crimes like assassinations, kidnappings, hijackings, crimes committed by extremists, etc.

Director of CBI

- Director, CBI as Inspector General of Police, Delhi Special Police Establishment, is responsible for the administration of the organisation.
- Till 2014, the CBI Director was appointed on the basis of the DSPE Act, 1946.
- In 2003, DSPE Act was revised on Supreme Court's recommendation in the Vineet Narain case. A committee that had members from Central Vigilance Commission, Secretaries from Home Ministry, Ministry of Personnel and Public Grievances would send recommendations to Central Government for the appointment of CBI Director.
- In 2014, the Lokpal Act provided a committee for appointment of CBI Director:
 - Headed by Prime Minister
 - Other members - Leader of Opposition/ Leader of the single largest opposition party, Chief Justice of India/ a Supreme Court Judge.
 - Home Ministry sends a list of eligible candidates to DoPT. Then, the DoPT prepares the final list on basis of seniority, integrity, and experience in the investigation of anti-corruption cases, and sends it to the committee.
- Director of CBI has been provided **security of two-year tenure**, by the CVC Act, 2003.

Challenges

- The Supreme Court of India has criticised the CBI by calling it a "caged parrot speaking in its master's voice", due to **excessive political interference** in its functioning.
- It has often been used by the government of the day to cover up wrongdoing, keep coalition allies in line and political opponents at bay.
- It has been accused of **enormous delays in concluding investigations** - For example, the inertia in its probe against the high dignitaries in Jain hawala diaries case [of the 1990s].
- **Loss of Credibility:** Improving the image of the agency is one of the biggest challenges till now as the agency has been criticised for its mismanagement of several cases involving prominent politicians and mishandling of several

sensitive cases like Bofors scandal; Hawala scandal, Sant Singh Chatwal case, Bhopal gas tragedy, 2008 Noida double murder case (Aarushi Talwar).

- **Limited Powers:** The powers and jurisdiction of members of the CBI for investigation are subject to the consent of the State Govt., thus limiting the extent of investigation by CBI.

Suggestions

- Delink the CBI from the administrative control of the government - As long as the government of the day has the power to transfer and post officials of its choice in the CBI, the investigating agency will not enjoy autonomy and will be unable to investigate cases freely.
- Twenty fourth report of Department related parliamentary standing committee on personnel, public grievances, law and justice on working of CBI recommended the following:
 - Strengthening human resources by increasing strength of CBI;
 - Better investments in infrastructural facilities;
 - Increased financial resource and administrative empowerment with accountability;
 - Give more Powers (related to Union, State and Concurrent list of the 7th schedule of Indian constitution), to the CBI;
 - Separate enactment under – "Central Bureau of Intelligence and Investigation Act" and replace DSPE Act.

The President of India (Articles 52-62)

Part V of the Constitution (The Union) under Chapter I (The Executive) lists out the qualification, election and impeachment of the President of India.

The **President of India** is the head of state of the Republic of India. The President is the formal head of the executive, legislature and judiciary of India and is also the commander-in-chief of the Indian Armed Forces.

Although Article 53 of the Constitution of India states that the President can exercise his or her powers directly or by subordinate authority, with few exceptions, all of the executive authority vested in the President are, in practice, exercised by the Council of Ministers (CoM).

Part V The Union: Chapter I The Executive

ARTICLE 52: THE PRESIDENT OF INDIA

There shall be a President of India.

ARTICLE 53: EXECUTIVE POWER OF THE UNION

1. The 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 this Constitution.
2. Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.
3. Nothing in this article shall –
 - a. be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or
 - b. prevent Parliament from conferring by law functions on authorities other than the President.

ARTICLE 54: ELECTION OF PRESIDENT

The President shall be elected by the members of an electoral college consisting of –

- a. the elected members of both Houses of Parliament; and

- b. the elected members of the Legislative Assemblies of the States. Explanation:
In this article and in article 55, “State” includes the National Capital Territory of Delhi and the Union territory of Pondicherry.

ARTICLE 62: TIME OF HOLDING ELECTION TO FILL VACANCY IN THE OFFICE OF PRESIDENT AND THE TERM OF OFFICE OR PERSON ELECTED TO FILL CASUAL VACANCY

1. An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.
2. An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

Info-Bits Related to the President of India

1. Salary of Indian President is Rs.5 lakhs. Until 2017, the President used to get Rs. 1.50 lakh per month. In Budget 2018, it was increased to Rs 5 lakh per month.
2. In addition to the salary, the President receives many other allowances and free facilities which include free medical, housing, and treatment facilities (whole life).
3. The Government of India spends around Rs.2.25 crore rupees annually on other expenses like President’s housing, staff, food and hosting of guests.
4. Indian President’s salary is $7000\$ \times 12 = 84,000\$$, which is much lower when compared to US President’s salary of 4,00,000\$.
5. The president of the United States of America is also indirectly elected by the people through the Electoral College, but to a four-year term. He is one of only two nationally elected federal officers, the other being the Vice President of the United States. (In total, there are 538 electors, corresponding to the 435 members of the House of Representatives, 100 senators, and the three additional electors from the District of Columbia.)
6. Under The Presidential and Vice-Presidential Elections Act, 1952, a candidate, to be nominated for the office of president of India needs 50 electors as proposers and 50 electors as seconders for his or her name to appear on the ballot.

7. The general principle in Indian Presidential election is that the total number of votes cast by Members of Parliament equals the total number of votes cast by State Legislators.
8. The formula to determine the value of the vote of an MLA = Population of the state ÷ (No. of M.L.A.s in the state X 1000).
9. The formula to determine the value of the vote of an MP = Total value votes assigned to all the M.L.A.s ÷ Total number of MPs.
10. Each MP had a vote value of 708 in the Presidential Election 2012.
11. Legislators from larger states cast more votes than those from smaller states.
12. If a state has few legislators, then each legislator has more votes; if a state has many legislators, then each legislator has fewer votes.
13. Nominated members cannot vote in the Presidential election. But they can participate in President's impeachment.

Powers of Indian President

Executive Powers of President

1. For every executive action that the Indian government takes, is to be taken in his name
2. He may/may not make rules to simplify the transaction of business of the central government
3. He appoints the attorney general of India and determines his remuneration
4. He appoints the following people:
 - Comptroller and Auditor General of India (CAG)
 - Chief Election Commissioner and other Election Commissioners
 - Chairman and members of the Union Public Service Commission
 - State Governors
 - Finance Commission of India chairman and members
5. He seeks administrative information from the Union government
6. He requires PM to submit, for 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
7. He appoints administrators of union territories
8. He can declare any area as a scheduled area and has powers with respect to the administration of scheduled areas and tribal areas

Legislative Powers of President

1. He summons or prorogues Parliament and dissolve the Lok Sabha
2. He summons a joint sitting of Lok Sabha and Rajya Sabha in case of deadlock
3. He addresses the Indian Parliament at the commencement of the first session after every general election
4. He appoints speaker, deputy speaker of Lok Sabha, and chairman/deputy chairman of Rajya Sabha when the seats fall vacant (to know the difference between Lok Sabha and Rajya Sabha check the linked article.)
5. He nominates 12 members of the Rajya Sabha
6. He can nominate two members to the Lok Sabha from the Anglo-Indian Community
7. He promulgates ordinances
8. He lays the following reports before the Parliament:
 - Comptroller and Auditor General
 - Union Public Service Commission
 - Finance Commission, etc.

Financial Powers of President

1. To introduce the money bill, his prior recommendation is a must
2. He causes Union Budget to be laid before the Parliament
3. To make a demand for grants, his recommendation is a pre-requisite
4. He constitutes the Finance Commission every five years

Judicial Powers of President

1. Appointment of Chief Justice and Supreme Court/High Court Judges are on him
2. He takes advice from the Supreme Court, however, the advice is not binding on him
3. He has pardoning power: Under article 72, he has been conferred with power to grant pardon against punishment for an offence against union law, punishment by a martial court, or death sentence.

Note: Pardoning powers of the president includes the following types:

- Pardon with the grant of pardon convicts both conviction and sentence completely absolved
- Commutation with this nature of the punishment of the convict can be changed
- Remission reduces the term of the imprisonment
- Respite awards lesser punishment than original punishment by looking at the special condition of a convict
- Reprieve stays the execution of the awarded sentence for a temporary period

Diplomatic Powers of President

1. International Treaties and agreements that are approved by the Parliament are negotiated and concluded in his name
2. He is the representative of India in international forums and affairs

Military Powers of President

He is the commander of the defence forces of India. He appoints:

1. Chief of the Army
2. Chief of the Navy
3. Chief of the Air Force

Emergency Powers of President

He deals with three types of emergencies given in the Indian Constitution:

1. National Emergency (Article 352)
2. President's Rule (Article 356 & 365)
3. Financial Emergency (Article 360)

What is the Ordinance Making Power of the President?

Article 123 deals with the ordinance making power of the President. The President has many legislative powers and this power is one of them. He promulgates an ordinance on the recommendation of the union cabinet.

What is the Veto Power of the President?

When a bill is introduced in the Parliament, Parliament can pass the bill and before the bill becomes an act, it has to be presented to the Indian President for

his approval. It is on the President of India to either reject the bill, return the bill or withhold his assent to the bill. The choice of the President over the bill is called his veto power. The Veto Power of the President of India is guided by Article 111 of the Indian Constitution.

There are articles outside Chapter 1 of Part V related with powers of President of India like Article 72 and Articles 352-360. We shall discuss in detail each of them later.

Article 72: Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

1. The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any persons convicted of any offence –
 - a) in all cases where the punishment or sentence is by a Court Martial;
 - b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
 - c) in all cases where the sentence is a sentence of death.
2. Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.
3. Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.



The Vice-President of India

(Articles 63-73)

Part V of the Constitution of India under Chapter I (Executive) also discusses about the office of the Vice-President of India. The Vice-President of India is the second highest constitutional office in the country. He serves for a five-year term, but can continue to be in office, irrespective of the expiry of the term, until the successor assumes office. Let's see the articles 63-73 which deal with the qualifications, election and removal of Vice-President of India.

ARTICLE 63: THE VICE-PRESIDENT OF INDIA

There shall be a Vice-President of India.

ARTICLE 64: THE VICE-PRESIDENT TO BE EX-OFFICIO CHAIRMAN OF THE COUNCIL OF STATES

The Vice-President shall be ex-officio Chairman of the Council of States and shall not hold any other office of profit:

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

ARTICLE 65: THE VICE-PRESIDENT TO ACT AS PRESIDENT OR TO DISCHARGE HIS FUNCTIONS DURING CASUAL VACANCIES IN THE OFFICE, OR DURING THE ABSENCE, OF PRESIDENT

4. In the event of the occurrence of any vacancy in the office of the President by reason of this death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.
5. When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

6. The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

ARTICLE 66: ELECTION OF VICE-PRESIDENT

1. The Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament in accordance with the system of proportional representation by means of a single transferable vote and the voting at such election shall be by secret ballot.
2. The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature 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 his office as Vice-President.
3. No person shall be eligible for election as Vice-President unless he –
 - a) is a citizen of India;
 - b) has completed the age of thirty-five years; and
 - c) is qualified for election as a member of the Council of States.
4. A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.
Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

ARTICLE 67: TERM OF OFFICE OF VICE-PRESIDENT

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

Provided that –

- a) A Vice-President may, by writing under his hand addressed to the President, resign his office;

- b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;
- c) A Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

ARTICLE 68: TIME OF HOLDING ELECTION TO FILL VACANCY IN THE OFFICE OF VICE-PRESIDENT AND THE TERM OF OFFICE OF PERSON ELECTED TO FILL CASUAL VACANCY

- c. An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.
- d. An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

ARTICLE 69: OATH OR AFFIRMATION BY THE VICE-PRESIDENT

Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say – “I, A.B., do swear in the name of God /solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will discharge the duty upon which I am about to enter.”

ARTICLE 70: DISCHARGE OF PRESIDENT’S FUNCTIONS IN OTHER CONTINGENCIES

Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

ARTICLE 71: MATTERS RELATING TO, OR CONNECTED WITH, THE ELECTION OF A PRESIDENT OR VICE-PRESIDENT

1. All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.
2. If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.
3. Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.
4. The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

ARTICLE 72: POWER OF PRESIDENT TO GRANT PARDONS, ETC., AND TO SUSPEND, REMIT OR COMMUTE SENTENCES IN CERTAIN CASES

1. The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any persons convicted of any offence – (a) in all cases where the punishment of sentence is by a Court Martial; (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends; (c) in all cases where the sentence is a sentence of death.
2. Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.
3. Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

ARTICLE 73: EXTENT OF EXECUTIVE POWER OF THE UNION*

1. Subject to the provisions of this Constitution, the executive power of the Union shall extend— (a) to the matters with respect to which Parliament has power to make laws; and (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement: Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in

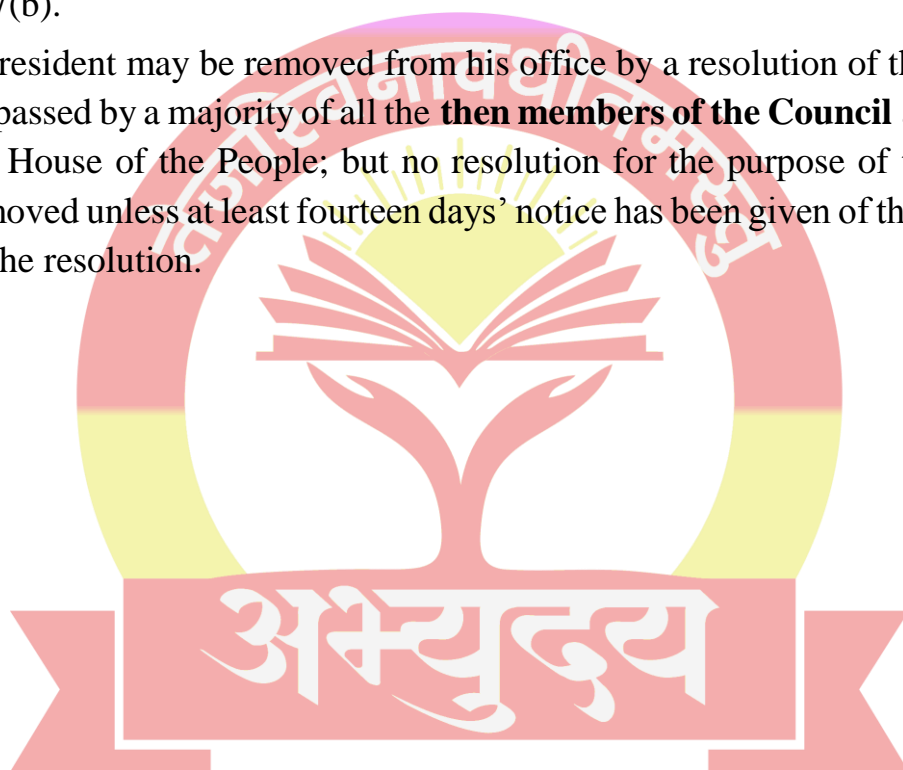
any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

2. Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Removal of Vice-President of India

Article 67(b).

A Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the **then members of the Council** and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.



Prime Minister of India

Article 75 of the Indian Constitution mentions that a Prime Minister is one who is appointed by the President. There is no specific procedure for his election or appointment. Article 74(1) states that there shall be a Council of Ministers with a Prime Minister at the head to aid and advise the President. Thus, the Indian Constitution itself recognizes a Council of Ministers.

Power and Function of Prime Minister

Prime Minister of India serves the country by following various functions. He performs his functions taking responsibilities as:

- **The leader of Country:** The Prime Minister of India is the Head of the Government of India.
- **Portfolio allocation:** The Prime Minister has the authority to assign portfolios to the Ministers.
- **Chairman of the Cabinet:** The Prime Minister is the chairman of the cabinet and presides the meetings of the Cabinet. He can impose his decision if there is a crucial opinion difference among the members.
- **Official Representative of the country:** Prime minister represents the country for high-level international meetings
- **The link between the President and the Cabinet:** The Prime Minister acts as the link between President and cabinet. He communicates all decisions of the Cabinet to the President which is related to the administration of the affairs of the Union and proposals for legislation.
- **Head:** The Prime Minister is the head of Nuclear Command Authority, NITI Aayog, Appointments Committee of the Cabinet, Department of Atomic Energy, Department of Space and Ministry of Personnel, Public Grievances and Pensions.
- **Chief Advisor:** He acts as the chief advisor to the President

Who is eligible to be a Prime Minister?

To become an Indian prime minister one has to be

- A citizen of India.
- A member of either Rajya Sabha or Lok Sabha

- He should have completed his 30 years if he is a member of the Rajya Sabha or can be 25 years of age if he is a member of the Lok Sabha

Position of the Prime Minister

Right from the days of the first Prime Minister Pandit Jawaharlal Nehru, the Prime Minister is treated at a much higher pedestal. His preeminence rests on his commanding position in the Cabinet, coupled with fact that he is the leader of the majority party.

All these positions of power when combined in one person make him rank much above an ordinary Minister. The death or resignation of the Prime Minister automatically brings about the dissolution of the Council of Ministers. It generates a vacuum. The demise, resignation or dismissal of a Minister creates only a vacancy which the Prime Minister may or may not like to fill. The Government cannot function without a Prime Minister but the absence of a Minister can be easily compensated.



Council of Ministers

Article 74 and Article 75 of the Indian Constitution deal with the Council of Ministers. Where article 74 mentions that the council will be headed by the Prime Minister of India and will aid and advise the President, article 75 mentions the following things:

- They are appointed by the President on the advice of Prime Minister
- They along with the Prime Minister of India form 15% of the total strength of the lower house i.e. Lok Sabha. (The number cannot exceed 15%)
- 91st Amendment Act provided for the disqualification of the minister when he stands disqualified as a member of Parliament. (Difference between Lok Sabha and Rajya Sabha can be referred to in the linked article.)
- A Minister ceased to exist as one if he is not a member of either house of Parliament for six consecutive months.
- Parliament decides the salary and allowances of the council of ministers.

Collective Responsibility of the Council of Ministers

In England, the Cabinet system is based on conventions. The framers of our Constitution considered it fit to incorporate the system in the Constitution. The principle of collective responsibility finds a place in Art. 75(3) where it is stated that the Council of Ministers shall be collectively responsible to the Lok Sabha. In other words, this provision means that a Ministry which loses confidence in the Lok Sabha is obliged to resign. The loss of confidence is expressed by rejecting a Money Bill or Finance Bill or any other important policy measure or by passing a motion of no-confidence or rejecting a motion expressing confidence in the Ministry. When a Ministry loses the confidence of the Lok Sabha the whole of the Ministry has to resign including those Ministers who are from the Rajya Sabha. The Ministers fall and stand together. In certain cases, the Ministry may advise the President to dissolve Lok Sabha and call for fresh elections.

Types of Ministers

The Indian Constitution does not categorize ministers into ranks, however, in practice seen in India, ministers are of four types:

1. **Cabinet Ministers**—He is present and he participates in every meeting of the Cabinet.
2. **Minister of State with independent charge**—He is a Minister of State who does not work under a Cabinet Minister. When any matter concerning his Department is on the agenda of the Cabinet, he is invited to attend the meeting.
3. **Minister of State**—He is a Minister who does not have independent charge of any Department and works under a Cabinet Minister. The work to such Minister is allotted by his Cabinet Minister.
4. **Deputy Minister**—He is a Minister who works under a Cabinet Minister or a Minister of State with independent charge. His work is allotted by the Minister under whom he is working.



Governor

- The Governor's appointment, his powers and everything related to the office of Governor have been discussed under **Article 153 to Article 162** of the Indian Constitution.

Constitutional Provisions related to Governor

- The appointment and powers of government can be derived from Part VI of the Indian constitution. **Article 153** says that there shall be a Governor for each State. One person can be appointed as Governor for two or more States.
- The governor acts in '**Dual Capacity**' as the Constitutional head of the state and as the representative.
- He is the part of federal system of Indian polity and acts as a bridge between union and state governments.
- **Article 157 and Article 158** of the Constitution of India specify eligibility requirements for the post of governor. They are as follows:
 - **A governor must:**
 1. Be a citizen of India.
 2. Be at least 35 years of age.
 3. Not be a member of the either house of the parliament or house of the state legislature.
 4. Not hold any office of profit.
- The **term of governor's office is normally 5 years** but it can be terminated earlier by:
 1. Dismissal by the president on the advice of the council of minister headed by the prime minister of the country.
 2. Dismissal of governors without a valid reason is not permitted. However, it is the duty of the President to dismiss a governor whose acts are upheld by courts as unconstitutional and malafide.

3. Resignation by the governor.

Issues

- There are numerous examples of the Governor's position being abused, usually at the behest of the ruling party at the Centre. The process of appointment has generally been the cause behind it.
- In several cases, politicians and former bureaucrats identifying with a particular political ideology have been appointed as the Governors by the Governments. This goes against the constitutionally mandated neutral seat and has resulted in bias, as appears to have happened in Karnataka and Goa.
- Recently, the Governor of Rajasthan has been charged with the violation of the model code of conduct. His support of the ruling party is against the **spirit of nonpartisanship** that is expected from the person sitting on constitutional posts.
- Due to such incidents, negative terms like an **agent of the Centre, Puppet and rubber stamps** are used to describe a governor of the state.
- Governor's **discretionary powers to invite the leader of the largest party/alliance, post-election, to form the government** has often been misused to favour a particular political party.
- **The Governors Committee (1971)** laid down the responsibility on the governor to see that the administration of the State does not breakdown due to political instability and he must send a regular report about the political situation of the State.
- However, the **imposition of President's rule (Article 356)** in case of breakdown of constitutional machinery in a State has been frequently misused by the central government.
- Governor's work is bound by the aid and advice of his council of ministers, this has brought down the significance of the office to **a mere rubber stamp**.
- **The arbitrary removal of the Governor** before the expiration of his tenure has also been an important issue in the recent past.

Recommendations

- **The Administrative Reforms Commission (1968)** recommended that the report of the governor regarding the president's rule has to be objective and also the governor should exercise his own judgment in this regard.

- **The Sarkaria Commission (1988)** recommended that Article 356 should be used in very rare cases when it becomes unavoidable to restore the breakdown of constitutional machinery in the State.
- The commission recommended that before taking action under **Article 356**, a warning should be issued to the state government that it is not functioning according to the constitution.
- **"Justice V. Chelliah Commission" (2002)** recommended that **Article 356** must be used sparingly and only as a remedy of the last resort after exhausting all actions under **Articles 256, 257 and 355**.

Constitutional provisions

- **Article 163:** It talks about the discretionary power of governor.
- **Article 256:** The executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.
- **Article 257:** The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:
- **Article 355:** It entrusts the duty upon Union to protect the states against “external aggression” and “internal disturbance” to ensure that the government of every State is carried on in accordance with the provisions of Constitution.
- **Article 356:** In the event that a state government is unable to function according to constitutional provisions, the Central government can take direct control of the state machinery. The state's governor issues the proclamation, after obtaining the consent of the President of India.
- **Article 357:** It deals with Exercise of legislative powers under Proclamation issued under Article 356 by the central government.

Cabinet Committees

Cabinet Committees are extra-constitutional in emergence, which means, they are not mentioned in the Indian Constitution. But, the Rules of Business provide for their formation.

- They are of two types—standing and ad hoc. The former is permanent, while the latter is temporary.
- The ad hoc committees are formed at times to deal with special problems. They are disbanded after their job is done.

Composition of Cabinet Committees

- Their membership varies from three to eight.
- They usually include only Cabinet Ministers.
- Such Committees are usually chaired by the PM. At times, other Cabinet ministers like Home, Finance, etc. can also be the chairperson. But, if the Prime Minister is a member of the committee, then, he or she is the head of the committee.

Cabinet Committees Formed

- Appointments Committee of the Cabinet.
- Cabinet Committee on Economic Affairs.
- Cabinet Committee on Political Affairs.
- Cabinet Committee on Investment and Growth.
- Cabinet Committee on Security.
- Cabinet Committee on Parliamentary Affairs.
- Cabinet Committee on Employment & Skill Development.
- Cabinet Committee on Accommodation.

All committees except Cabinet Committee on Accommodation and Cabinet Committee on Parliamentary Affairs are headed by Prime Minister.

Role of Cabinet Committees

- They are an organizational device to lessen the enormous workload of the Cabinet. They facilitate an in-depth examination of policy issues and effective coordination. They are based on the principles of division of labor and effective delegation.
- They not only resolve issues and frame proposals for the Cabinet's consideration, but they also take decisions. The Cabinet can, of course, review their decisions.



Supreme Court of India

- The **Supreme Court of India** is the **highest judicial court** and the **final court of appeal** under the Constitution of India, the **highest constitutional court**, with the power of **judicial review**.
- India is a federal State and has a **single and unified judicial system** with **three tier structure**, i.e. Supreme Court, High Courts and Subordinate Courts.

Brief History of the Supreme Court of India

- The promulgation of **Regulating Act of 1773** established the **Supreme Court of Judicature at Calcutta** as a **Court of Record**, with full power & authority.
- It was established to hear and determine all complaints for any crimes and also to entertain, hear and determine any suits or actions in **Bengal, Bihar and Orissa**.
- The **Supreme Courts at Madras and Bombay** were established by **King George – III** in **1800 and 1823** respectively.
- The **India High Courts Act 1861** created High Courts for various provinces and **abolished Supreme Courts at Calcutta, Madras and Bombay** and also the **Sadar Adalats in Presidency towns**.
- These High Courts had the distinction of being the highest Courts for all cases till the creation of **Federal Court of India** under the **Government of India Act 1935**.
- The **Federal Court** had jurisdiction to solve disputes between provinces and federal states and hear appeal against Judgements from High Courts.
- After India attained independence in 1947, the Constitution of India came into being on **26 January 1950**. The **Supreme Court of India** also came into existence and its first sitting was held on 28 January 1950.
- The law declared by the Supreme Court is **binding on all Courts** within the territory of India.
- It has the power of **judicial review** – to strike down the legislative and executive action contrary to the provisions and the scheme of the constitution,

the distribution of power between Union and States or inimical to the fundamental rights guaranteed by the Constitution.

Constitutional Provisions

- The Indian constitution provides for a provision of Supreme Court under **Part V (The Union)** and **Chapter 6 (The Union Judiciary)**.
- **Articles 124 to 147 in Part V** of the Constitution deal with the organisation, independence, jurisdiction, powers and procedures of the Supreme Court.
- The Indian constitution under **Article 124(1)** states that there shall be a Supreme Court of India constituting of a Chief Justice of India (CJI) and, until Parliament by law prescribes a **larger number**, of not more than seven other Judges.
- The Jurisdiction of the Supreme Court of India can broadly be categorised into **original jurisdiction, appellate jurisdiction and advisory jurisdiction**. However, there are other multiple powers of the Supreme Court.

Organisation of Supreme Court

- At present, the Supreme Court consists of thirty-one judges (one chief justice and thirty other judges).
- **Supreme Court (Number of Judges) Bill of 2019** has added four judges to strength. It increased the judicial strength from 31 to 34, including the CJI.
- Originally, the strength of the Supreme Court was fixed at eight (one chief justice and seven other judges).
- The Parliament is authorised to regulate them.

Appointment of Judges

- The **judges of the Supreme Court** are appointed by the **President**. The CJI is appointed by the President after **consultation with such judges of the Supreme Court** and high courts as he deems necessary.
- The other judges are appointed by the President after **consultation** with the CJI and such other judges of the Supreme Court and the high courts as he deems necessary. The consultation with the chief justice is **obligatory** in the case of appointment of a judge other than Chief justice.

Collegium System

- Collegium system was born through “**three judges case**” and it is in practice since 1998. It is used for appointments and transfers of judges in High courts and Supreme Courts.
- There is no mention of the Collegium either in the original Constitution of India or in successive amendments

Working of Collegium System and NJAC

- The collegium recommends of the names of lawyers or judges to the Central Government. Similarly, the Central Government also sends some of its proposed names to the Collegium.
- Collegium considers the names or suggestions made by the Central Government and resends the file to the government for final approval.
- If the **Collegium resends** the same name again then the government has to give its assent to the names. But **time limit is not fixed** to reply. This is the reason that appointment of judges takes a long time.
- Through the **99th Constitutional Amendment Act, 2014 the National Judicial Commission Act (NJAC)** was established to replace the collegium system for the appointment of judges.
- However, the Supreme Court **upheld the collegium system and struck down the NJAC as unconstitutional** on the grounds that the involvement of **Political Executive** in judicial appointment was **against the “Principles of Basic Structure”**. I.e. the “**Independence of Judiciary**”.

Qualifications of Judges

- A person to be appointed as a judge of the Supreme Court should have the following qualifications:
 - He should be a **citizen of India**.
 - He should have been a **judge of a High Court** (or high courts in succession) **for five years**; or
 - He should have been an advocate of a High Court (or High Courts in succession) for ten years; or
 - He should be a **distinguished jurist in the opinion of the president**.
- The Constitution **has not prescribed a minimum age** for appointment as a judge of the Supreme Court.

Oath or Affirmation

- A person appointed as a judge of the Supreme Court, before entering upon his office, has to make and subscribe to an **oath or affirmation before the President**, or some other person appointed by him for this purpose. In his oath, a judge of the Supreme Court swears:
 - o to bear true faith and allegiance to the Constitution of India;
 - o to uphold the sovereignty and integrity of India;
 - o to duly and faithfully and to the best of his ability, knowledge and judgement to perform the duties of the Office without fear or favour, affection or ill-will; and
 - o to uphold the Constitution and the laws.

Removal of Judges

- A judge of the Supreme Court can be removed from his office by an **order of the President**. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal.
- The address must be supported by a **special majority** of each House of Parliament (i.e., a majority of the total membership of that House and a majority of not less than **two-thirds of the members** of that House present and voting). The grounds of removal are two—**proved misbehaviour or incapacity**.
- o No judge of the Supreme Court has been impeached so far.

Salaries and Allowances

- The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are **determined from time to time by the Parliament**. They cannot be varied to their disadvantage after their appointment except during a financial emergency.

Acting Chief Justice

- The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:
 - o the office of Chief Justice of India is vacant; or
 - o the Chief Justice of India is temporarily absent; or
 - o the Chief Justice of India is unable to perform the duties of his office.

Ad hoc Judge

- When there is a **lack of quorum** of the permanent judges to hold or continue any session of the Supreme Court, the **Chief Justice of India** can **appoint a judge of a High Court as an ad hoc judge of the Supreme Court** for a temporary period. He can do so only after consultation with the Chief Justice of the High Court concerned and with the previous consent of the president.
- The judge so appointed should be **qualified for appointment as a judge of the Supreme Court**. It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his office. While so attending, he enjoys all the jurisdiction, powers and privileges (and discharges the duties) of a judge of the Supreme Court.

Retired Judges

- At any time, the **CJI can request a retired judge** of the Supreme Court or a retired judge of a high court (who is duly qualified for appointment as a judge of the Supreme Court) to act as a judge of the Supreme Court for a temporary period.
- He can do so only with the **previous consent of the President** and also of the person to be so appointed.
- o Such a judge is entitled to such allowances as the president may determine. He will also enjoy all the jurisdiction, powers and privileges of a judge of the Supreme Court. But, he will not otherwise be deemed to be a judge of the Supreme Court.

Procedure of Court

- The Supreme Court can, with the approval of the President, make rules for regulating generally the practice and procedure of the court.
- The **Constitutional cases or references** made by the President under **Article 143** are decided by a **Bench consisting of at least five judges**. All other cases are usually decided by a bench consisting of not less than three judges. The judgements are delivered by the open court. All judgements are by majority vote but if differing, then judges can give dissenting judgements or opinions.

Independence of Supreme Court

- The Supreme Court is a **Federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution**.

- o Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament). It should be allowed to do justice without fear or favour.
- The Constitution has made the following provisions to **safeguard and ensure the independent and impartial** functioning of the Supreme Court:

Jurisdiction and Powers of Supreme Court

Original Jurisdiction

- As a Federal court, the Supreme Court decides disputes between different units of the Indian Federation. More elaborately, any dispute between:
 - o the Centre and one or more states; or
 - o the Centre and any state or states on one side and one or more states on the other; or
 - o between two or more states.
- In the above federal disputes, the Supreme Court has **exclusive original jurisdiction**.
- Further, this jurisdiction of the Supreme Court **does not extend** to the following:
 - o A dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement, sanad or other similar instrument.
 - o A dispute arising out of any treaty, agreement, etc., which specifically provides that the said jurisdiction does not extend to such a dispute.
 - o Inter-state water disputes.
 - o Matters referred to the Finance Commission.
 - o Adjustment of certain expenses and pensions between the Centre and the states.
 - o Ordinary dispute of Commercial nature between the Centre and the states.
 - o Recovery of damages by a state against the Centre.

Writ Jurisdiction

- The Supreme Court is empowered to issue writs, including **habeas corpus, mandamus, prohibition, quo-warranto and certiorari** for the enforcement of the fundamental rights of an aggrieved citizen.
- In this regard, the Supreme Court has **original jurisdiction** in the sense that an aggrieved citizen can go directly to the Supreme Court, not necessarily by way of appeal.
- However, the writ jurisdiction of the Supreme Court is not exclusive. The High Courts are also empowered to issue writs for the enforcement of the Fundamental Rights.

Appellate Jurisdiction

- The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:
- Appeals in constitutional matters
- Appeals in civil matters
- Appeals in criminal matters
- Appeals by special leave

Advisory Jurisdiction

- The Constitution **under Article 143** authorises the President to seek the opinion of the Supreme Court in the two categories of matters:
- On any question of law or fact of public importance which has arisen or which is likely to arise.
- On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement, sanador other similar instruments.

A Court of Record

- As a Court of Record, the Supreme Court has two powers:
- The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court.
- They are **recognised as legal precedents and legal references**.
- It has power to **punish for contempt of court**, either with simple imprisonment for a term up to six months or with fine up to 2,000 or with both.

Power of Judicial Review

- Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments.
- o On examination, if they are found to be **violative of the Constitution (ultra-vires)**, they can be declared as **illegal, unconstitutional and invalid (null and void)** by the Supreme Court. Consequently, they cannot be enforced by the Government.



High Courts in India

As per the Constitution of India, Articles 214-231 deals with the provisions of the High Courts in India. At present, we have 24 high courts in the country, which includes 3 common high courts. Article 217 deals with the appointment of judges. However, there is also a procedure for removal of Judges of the High Court

As per the Constitution of India, Articles 214-231 deals with the provisions of the High Courts in India. At present, we have 24 high courts in the country, which includes 3 common high courts. Article 217 deals with the appointment of judges. However, there is also a procedure for removal of Judges of the High Court.

High Court

According to the Indian Constitution, Articles 214-231 deals with the provisions of High Courts in India. It provides for separate high courts for separate states but according to 7th constitutional amendment act the same high court can be the court for more than one state. At present, we have 21 high courts in the country, which includes 3 common high courts.

Constitution and composition of High courts

Every high court consists of a Chief Justice and a number of judges, who are determined by the President from time to time. Article 217 deals with the appointment of judges and states that every judge of high court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the state.

Jurisdiction and powers of High Court

The powers and jurisdiction of High Court can be classified under following heads:

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

4. Power of Superintendence –

The High Court has this power over all courts and tribunals except those dealing with the armed forces functioning in the state. 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

The constitution does not place any restriction on this power of superintendence over the subordinate courts, it is not only by means of appeal by the person, it can

be suo motto. It is of the nature of revision as it verifies the earlier judgments. In this regard it is considered as a special function as the Supreme Court has no similar power vis a vis the High Court.

5. Control over Subordinate Courts –

This is an extension of the above supervisory and appellate jurisdiction. It states that the High Court can withdraw 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.

6. Court of Record –

It involves recording of judgments, proceedings and acts of high courts to be recorded for the perpetual memory. These records cannot be further questioned in any court. Based on this record it has power to punish for the contempt of court either with simple imprisonment or with fine or both.

7. Judicial Review –

This power of High Court includes the power to examine the constitutionality of legislative and executive orders of both central and state government. It is to be noted that the word judicial review is nowhere mentioned in our constitution but the Article 13 and 226 explicitly provide High Court with this power.

8. Extension of jurisdiction of High Court to Union Territories –

Parliament by law may extend the jurisdiction of a High Court to or exclude the jurisdiction of a high court from any union territory.

Procedure for removal of Judges:

The judge's enquiry act governs the removal or impeachment of judges of High Court. Hence the grounds for removal are

- Proved misbehavior
- 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)

Appointment of acting Chief Justice (Article 223) - when the office of Chief Justice of a High Court is vacant or when any such Chief Justice by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the court as the President may appoint for the purposes.

However, appointments of persons other than district judges to the judicial service of a state shall be made by the Governor of the state in accordance with rules made by him after consultation with the state public service commission and with the high court exercising jurisdiction in relation to such state.

Subordinate Courts in India

The District Courts of India are the district courts of the State governments in India for every district or for one or more districts together taking into account the number of cases, population distribution in the district. They administer justice in India at a district level. These courts are under administrative control of the High Court of the State to which the district concerned belongs. The decisions of District court are subject to the appellate jurisdiction of the High court.

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The provisions related to subordinate courts are provided in the **6th part of the Indian Constitution. Articles 233-237 deal with the subordinate courts.**

Control over Subordinate Courts –

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.

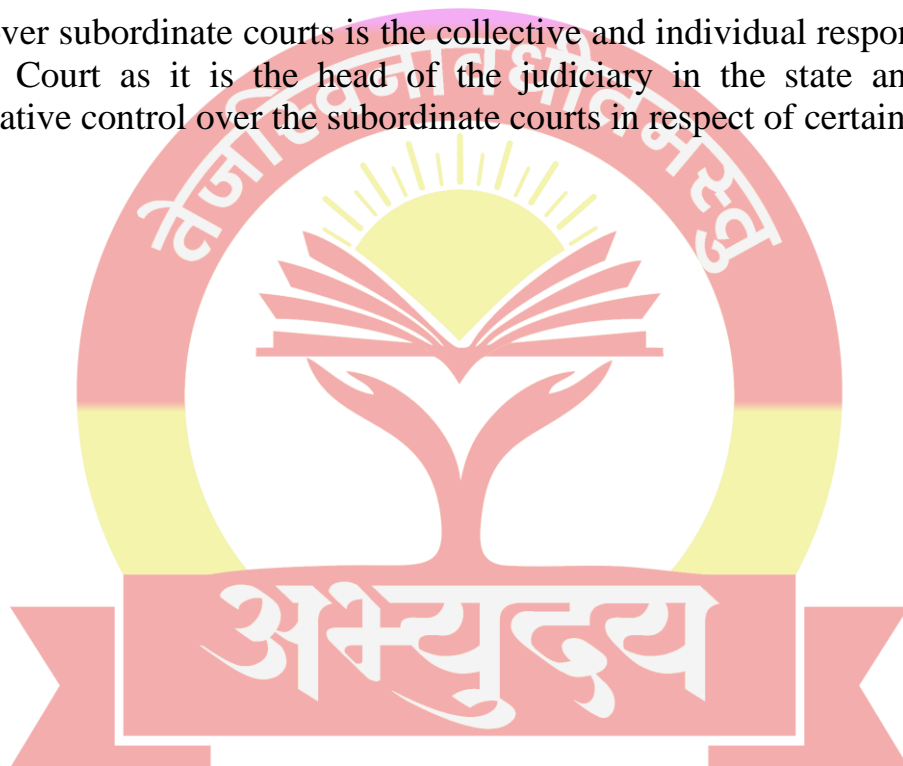
High court has complete authority and control over its officers and employees. In this regard it appoints officers and servants to be made by Chief Justice or such other judge of High Court as the Chief Justice may direct. However, the Governor of the state may by rule require that in such cases as may be specified in the rule no person not already attached to the court shall be appointed to any office connected with the court except after the consultation with the state public service commission.

The subordinate courts include the District Judges, Judges of the city civil courts, Metropolitan magistrates and members of the judicial service of the state.

Appointment of the District Judges as per Article 233,

- a.** Appointments and promotion of district judges 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
- b.** A person not already in the service of the Union or of the state shall only be eligible to be appoint a district judge if he has been for not less than 7 years an advocate or a pleader and is recommended by the high court for appointment.

Control over subordinate courts is the collective and individual responsibility of the High Court as it is the head of the judiciary in the state and has got administrative control over the subordinate courts in respect of certain matters.



Panchayati Raj Institution (PRI)

When the panchayat raj is established, public opinion will do what violence can never do. — Mahatma Gandhi

Context

- Panchayati Raj Institution (PRI) is a system of **rural local self-government** in India.
- Local Self Government is the management of local affairs by such local bodies who have been **elected by the local people**.
- PRI was constitutionalized through the **73rd Constitutional Amendment Act, 1992** to build democracy at the grass roots level and was entrusted with the task of rural development in the country.
- In its present form and structure **PRI has completed 26 years of existence**. However, a lot remains to be done in order to further decentralization and strengthen democracy at the grass root level.

Evolution of Panchayati Raj in India

The history of Panchayat Raj in India can be divided into the following periods from the analytical point of view:

- **Vedic Era:** In the old Sanskrit scriptures, word ‘Panchayatan’ has been mentioned which means a group of five persons, including a spiritual man.
- Gradually the concept of the inclusion of a spiritual man in such groups vanished.
- In the Rigveda, there is a mention of **Sabha, Samiti and Vidatha as local self-units**.
 - These were the democratic bodies at the local level. The king used to get the approval of these bodies regarding certain functions and decisions.
- **Epic Era** indicates the two great epic periods of India, that is, the Ramayana and the Mahabharata.
- The study of Ramayana indicates that the administration was divided into two parts - Pur and Janpad or city and village.

- o In the whole of the state, there was also a Caste Panchayat and one person elected by the Caste Panchayat was a member of the king's Council of Ministers.
- Self-government of a village finds ample expression in the 'Shanti Parva' of the Mahabharata; in the Manu Smriti as well as in Kautilya's Arthashastra.
- As per the Mahabharata, over and above the village, there were units of 10, 20, 100, and 1,000 village groups.
- o **'Gramik'** was the chief official of the village, **'Dashap'** was the chief of ten villages, **Vinshya Adhipati**, **Shat Gram Adhyaksha** and **Shat Gram Pati** were the chiefs of 20, 100, and 1,000 villages, respectively.
- o They collected the local taxes and were responsible for the defense of their villages.
- **Ancient Period:** There is a mention of village panchayats in Kautilya's Arthashastra.
- o The town was referred to as Pur and its chief was the Nagarik.
- o Local bodies were free from any royal interference.
- o **During the Mauryan and Post-Mauryan periods too, the headman, assisted by a council of elders, continued to play a prominent role in the village life.**
- o The system **continued through the Gupta period**, though there were certain changes in the nomenclature, as the **district official was known as the vishya pati** and the **village headman was referred to as the grampati**.
- o Thus, in ancient India, there existed a well established system of local government which was run on a set pattern of traditions and customs.
- o However, it is significant to note that there is **no reference of women heading the panchayat** or even participating as a member in the panchayat.
- **Medieval Period:** During the Sultanate period, the Sultans of Delhi divided their kingdom into **provinces called 'Vilayat'**.
- o For the governance of a village, there were three important officials - **Mukkaddam for administration, Patwari for collection of revenues, and Choudhrie for settling disputes with the help of the Panch.**
- o The villages had sufficient powers as regards self governance in their territory.
- o Casteism and feudalistic system of governance under the Mughal rule in the medieval period slowly eroded the self-government in villages.
- o It is again noteworthy to note that even in the medieval period there is no mention of women participation in the local village administration.

- **British Period:** Under the British regime, **village panchayats lost their autonomy** and became weak.
- It is only from the year 1870 that India saw the dawn of representative local institutions.
- The famous **Mayo's resolution of 1870 gave impetus to the development of local institutions** by enlarging their powers and responsibilities.
- The year 1870, introduced the concept of elected representatives, in urban municipalities.
- The revolt of 1857 had put the imperial finances under considerable strain and it was found necessary to finance local service out of local taxation. Therefore, it was out of fiscal compulsion that Lord Mayo's resolution on decentralization came to be adopted.
- Following the footsteps of Mayo, **Lord Rippon in 1882 provided the much needed democratic framework to these institutions.**
 - All boards (then existing) were mandated to have a two-thirds majority of non-officials who had to be elected and the chairman of these bodies had to be from among the elected non-officials.
 - This is considered to be the **Magna Carta of local democracy in India.**
- Local self-government institutions received a boost with the appointment of the **Royal Commission on centralisation in 1907 under the Chairmanship of C.E.H. Hobhouse.**
 - The commission recognized the importance of panchayats at the village level.
- It is in this backdrop that the **Montagu Chelmsford reforms of 1919** transferred the subject of local government to the domain of the provinces.
 - The reform also recommended that as far as possible there should be a complete control in local bodies and complete possible independence for them from external control.
 - These panchayats covered only a limited number of villages with limited functions and due to **organisational and fiscal constraints** they did not become democratic and vibrant institutions of local self government at the village level.
- However, by 1925, eight provinces had passed the Panchayat Acts and by 1926, six native States had also passed panchayat laws. Local bodies were given more powers and functions to impose taxes were reduced. But, the position of the local self-government institutions remained unaffected.
- **Post-Independence Period:** After the Constitution came into force, **Article 40** made a mention of panchayats and **Article 246** empowers the state

legislature to legislate with respect to any subject relating to local self-government.

- However, this inclusion of panchayats into the Constitution was not unanimously agreed upon by the then decision-makers, with the major opposition having come from the framer of the Constitution himself i.e. B.R. Ambedkar.
- It was after much discussion among the supporters and opponents of the village panchayat that the panchayats finally got a place for themselves in the Constitution as **Article 40 of the Directive Principles of State Policy**.
- Since the Directive Principles are not binding principles, the result was the absence of a uniform structure of these bodies throughout the country.
- In 1953, the **National Extension Service** was also introduced as a prologue to CDP. But the programme did not yield much result.
- In 1957, the National Development Council constituted a **committee headed by Balwant Rai Mehta** to look into the working of community development programme.
- The committee suggested a three-tier PRIs, namely, Grama Panchayats (GPs) at the village level, Panchayat Samiti (PSs) at the block level, and Zilla Parishad (ZPs) at the district level.
- **As a result of this scheme of democratic decentralization was launched in Rajasthan on October 2, 1959.**
- The appointment of the **Ashok Mehta Committee in 1977** did bring new thinking in the concepts and practice of the Panchayat Raj.
- The committee recommended a **two-tier Panchayat Raj institutional** structure consisting of **Zilla Parishad and Mandal Panchayat**.
- In order to use planning expertise and to secure administrative support, the district was suggested as the first point of decentralization below the state level.
- Based on its recommendation, some of the states like Karnataka incorporated them effectively.
- In subsequent years in order to revive and give a new lease of life to the panchayats, the Government of India had appointed various committees.
- The most important among them are the **Hanumantha Rao Committee (1983)**, **G.V.K. Rao Committee (1985)**, **L.M. Singhvi Committee (1986)** and the **Sarkaria Commission on Centre-State relations (1988)**, **P.K. Thungan Committee (1989)** and **Harlal Singh Kharra Committee (1990)**.

- The Amendment phase began with the 64th Amendment Bill (1989) which was introduced by Rajiv Gandhi seeking to strengthen the PRIs but the Bill was not passed in the Rajya Sabha.
- The Constitution (74th Amendment) Bill (a combined bill for the PRIs and municipalities) was introduced in 1990, but was never taken up for discussion.
- It was during the Prime Ministership of P.V. Narasimha Rao that a comprehensive amendment was introduced in the form of the Constitution 72nd Amendment Bill in September 1991.
- **73rd and 74th Constitutional Amendments were passed by Parliament in December, 1992. Through these amendments local self-governance was introduced in rural and urban India.**
- The Acts came into force as the Constitution (73rd Amendment) Act, 1992 on April 24, 1993 and the Constitution (74th Amendment) Act, 1992 on June 1, 1993.

Salient Features of the Constitution 73rd and 74th Amendments.

- These amendments **added two new parts to the Constitution**, namely, added **Part IX titled “The Panchayats”** (added by 73rd Amendment) and **Part IXA titled “The Municipalities”** (added by 74th Amendment).
- Basic units of democratic System-**Gram Sabhas (villages) and Ward Committees (Municipalities)** comprising all the adult members registered as voters.
- **Three-tier system** of panchayats at village, intermediate block/taluk/mandal and district levels except in States with population is below 20 lakhs (Article 243B).
- Seats at all levels to be filled by direct elections **Article 243C (2).**
- Seats reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) and the chairpersons of the Panchayats at all levels also shall be reserved for SCs and STs in proportion to their population.
- One-third of the total number of seats to be reserved for women.
- One third of the seats reserved for SCs and STs also reserved for women.
- One-third offices of chairpersons at all levels reserved for women (**Article 243D**).
- In the event of dissolution, elections compulsorily within six months (Article 243E).

- 74th Amendment provides for a **District Planning Committee** to consolidate the plans prepared by Panchayats and Municipalities (Article 243ZD).
- Budgetary allocation from State Governments, share of revenue of certain taxes, collection and retention of the revenue it raises, Central Government programmes and grants, Union Finance Commission grants (Article 243H).
- Establish a **Finance Commission in each State** to determine the principles on the basis of which adequate financial resources would be ensured for panchayats and municipalities (Article 243I).
- The Eleventh Scheduled of the Constitution places as many as 29 functions within the purview of the Panchayati Raj bodies.
- The following areas have been exempted from the operation of the Act because of the socio-cultural and administrative considerations:
 - Scheduled areas listed under the V Schedule in the states of Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan.
 - The states of **Nagaland, Meghalaya and Mizoram**.
 - The hill areas of district of **Darjeeling in the state of West Bengal** for which Darjeeling Gorkha Hill Council exists.
- In conformity with provisions in the Constitution Amendment Act, an Act called the **Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996** passed by the Government of India.

Urban Local government

Urban Local government implies the governance of an urban area by the people through their elected representatives. 74th Constitutional Amendment Act, 1992 provided constitutional status to local urban bodies.

74th Constitutional Amendment

This act added a new part IX-A to the Constitution entitled as ‘The Municipalities’ and a new Twelfth Schedule containing 18 functional items for municipalities. The main provisions of this Act can be grouped under two categories—compulsory and voluntary. Some of the compulsory provisions which are binding on all States are:

1. **Constitution of Nagar panchayats, municipal councils and municipal corporations** in transitional areas (areas in transition from a rural area to urban area), smaller urban areas and larger urban areas respectively;
2. **Reservation of seats in urban local bodies for Scheduled Castes / Scheduled Tribes** roughly in proportion to their population;
3. **Reservation of seats for women up to one-third seats;**
4. The **State Election Commission**, constituted in order to conduct elections in the panchayati raj bodies (see 73rd Amendment) will also conduct elections to the urban local self- governing bodies;
5. The **State Finance Commission**, constituted to deal with financial affairs of the Panchayati Raj bodies will also look into the financial affairs of the local urban self governing bodies;
6. **Tenure of urban local self-governing bodies is fixed** at five years and in case of earlier dissolution fresh elections are to be held within six months;

Some of the voluntary provisions which are not binding, but are expected to be observed by the States are:

1. Giving representation to members of the Union and State Legislatures in these bodies;
2. Providing reservation for backward classes;
3. Giving financial powers in relation to taxes, duties, tolls and fees etc.;
4. Making the municipal bodies autonomous and devolution of powers to these bodies to perform some or all of the functions enumerated in the Twelfth Schedule added to the Constitution through this Act and/or to prepare plans for economic development.

In accordance with the 74th Amendment, municipal corporations and municipalities (municipal boards or municipal committees) are now regulated in a fairly uniform manner in all the States. However, one must remember that local self-government continues to be a subject in the State List.

Thus, the 73rd and 74th amendments provide a framework for the States in respect of local government. Thus, each State has its own Election Commission which conducts elections to all local bodies after regular intervals of five years.

Each State has its Finance Commission to regulate finances of the local bodies. Seats are reserved in the corporations and municipalities for Scheduled Castes and Tribes. One-third seats are reserved for women in all local bodies – urban and rural.

Functions of Urban Local Bodies

The corporation, council or municipal board or council consisting of the elected representatives of the people constitutes the deliberative part. It acts like a legislature.

It discusses and debates on general municipal policies and performance, passes the budget of the urban local body, frames broad policies relating to taxation, resources raising, pricing of services and other aspects of municipal administration.

It keeps an eye on municipal administration and holds the executive accountable for what is done or not done. For instance, if water supply is not being properly managed, or there is an outbreak of an epidemic, the deliberative wing criticises the role of the administration and suggests measures for improvement.

The executive part of municipal administration is looked after by the municipal officers and other permanent employees. In the corporations, the Municipal Commissioner is the executive head, and all other departmental officers like engineers, finance officers, health officers etc. function under his/her control and supervision.

In a large corporation, such as Delhi or Mumbai Municipal Corporation, the Commissioner is usually a senior IAS officer. In municipalities, the executive officer holds a similar position and looks after the overall administration of a municipality.

Municipal functions are generally classified into **obligatory** and **discretionary** types.

The obligatory (compulsory) functions are those that the municipal body must perform. In this category fall such functions as water supply; construction and maintenance of roads, streets, bridges, subways and other public works, street lighting; drainage and sewerage; garbage collection and disposal; prevention and control of epidemics.

Some other obligatory functions are public vaccination and inoculation; maintenance of hospitals and dispensaries including maternity and child welfare centres; checking food adulteration; removal of slums; supply of electricity; maintenance of cremation and burial grounds; and town planning. In some States some of these functions may be taken over by State Government.

The discretionary functions are those that a municipal body may take up if funds permit. These are given less priority. Some of the discretionary functions are construction and maintenance of rescue homes and orphanages, housing for low income groups, organising public receptions, provision of treatment facilities, etc.

Type of urban governments

There are **eight types** of urban governments in India.

- 1. Municipal Corporation:** Municipal corporations are created for the administration of big cities like Delhi, Mumbai, Hyderabad and others. A Municipal Corporation has three authorities namely, the council (legislative wing of the corporation), the standing committee (to facilitate the working of the council) and the commissioner (chief executive authority of the corporation). The council consist of councillors directly elected by people and is headed by a Mayor while the Commissioner is appointed by state government and is generally an IAS officer.
- 2. Municipality:** The municipalities are established for the administration of towns and smaller cities. They are known by various other names like municipal council, municipal committee, municipal board, borough municipality, city municipality and others. In composition they are quite similar to municipal corporations except that head of council is called President /chairman and in place of commissioner they have a chief executive officer/chief municipal officer.
- 3. Town Area Committee:** It is set up by a separate act of state legislature for the administration of a small town. It is a semi-municipal authority entrusted with limited number of civic functions. It may be wholly elected or wholly nominated or partly elected and partly nominated as provided by state government.
- 4. Cantonment Board:** It is established for municipal administration for civilian population in the cantonment areas (area where military forces and troops are permanently stationed). It is set up under the provisions of the Cantonment Act, 2006 by central government and works under Defence ministry of central government. It is partly elected and partly nominated body having the Military officer commanding the station as its ex-officio President. Vice president is elected amongst by the elected members of board. The executive officer of the cantonment board is appointed by the President of India.,
- 5. Township:** It is established by large public enterprises to provide civic amenities to its staff and workers, who live in the housing colonies built near the plant. It is not an elected body and all members, including the town administrator, is appointed by the enterprise itself.
- 6. Port Trust:** The port trusts are established in the port areas like Mumbai, Kolkata, Chennai and so on for two purposes: (a) to manage and protect the ports; (b) to provide civic amenities. It is created by an Act of Parliament and it consists of both elected and nominated members.

Election Commission of India

What is ECI?

- The Election Commission of India is an autonomous constitutional authority responsible for administering Union and State election processes in India.
- The body administers elections to the Lok Sabha, Rajya Sabha, and State Legislative Assemblies in India, and the offices of the President and Vice President in the country.

Background

- Part XV of the Indian constitution deals with elections, and establishes a commission for these matters.
- The Election Commission was established in accordance with the Constitution on 25th January 1950.
- Article 324 to 329 of the constitution deals with powers, function, tenure, eligibility, etc. of the commission and the member.

Articles related to Elections

324	Superintendence, direction and control of elections to be vested in an Election Commission.
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.
326	Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.
327	Power of Parliament to make provision with respect to elections to Legislatures.

328	Power of Legislature of a State to make provision with respect to elections to such Legislature.
329	Bar to interference by courts in electoral matters.

Structure of the Commission

- Originally the commission had only one election commissioner but after the **Election Commissioner Amendment Act 1989**, it has been made a multi-member body.
- The commission consists of one Chief Election Commissioner and two Election Commissioners.
- The secretariat of the commission is located in New Delhi.
- The President appoints Chief Election Commissioner and Election Commissioners.
- They have a fixed tenure of six years, or up to the age of 65 years, whichever is earlier.
- They enjoy the same status and receive salary and perks as available to Judges of the Supreme Court of India.
- The Chief Election Commissioner can be removed from office only through a **process of removal** similar to that of a Supreme Court judge for by Parliament.

Procedure of Removal

- 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 misbehaviour 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**.
- The Constitution does not use the word 'impeachment', for the removal of the judges, CAG, CEC.
- The term '**Impeachment**' is only used for removing the President which requires the special majority of 2/3rd members of the total strength of both the houses which is not used elsewhere.

Functions

- Election Commission of India superintendents, direct and control the entire process of conducting elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.
- The most important function of the commission is to decide the election schedules for the conduct of periodic and timely elections, whether general or bye-elections.
- It prepares electoral roll, issues Electronic Photo Identity Card (EPIC).
- It decides on the location polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters.
- It **grants recognition to political parties & allot election symbols** to them along with settling disputes related to it.
- The Commission also has **advisory jurisdiction in the matter of post election disqualification** of sitting members of Parliament and State Legislatures.
- It **sets limits of campaign expenditure per candidate** to all the political parties, and also monitors the same.
- The formation of this office was prescribed by the States Reorganization Commission.
- This was formed by the Seventh Constitutional Amendment Act of 1956 which inserted a new article 350-B in Part XVII.
- The Special Officer for Linguistic Minorities is appointed by the president.
- The Commissioner has its headquarters at Allahabad with three regional offices at Belgaum, Chennai, and Kolkata.
- The **Commissioner** is assisted by Deputy Commissioner and an Assistant Commissioner at headquarters.
- The Commissioner falls under the Ministry of Minority Affairs and submits reports to the President through Union Minority Affairs Minister.

Role of the Commissioner:

- All the grievances related to the various safeguards provided for the linguistic minorities are looked into by the Commissioner.
- The Commissioner strives for providing equal opportunities to the linguistic minorities.
- He works for the effective implementation of the various safeguards

National Commission for SCs

- It is established by article 338 of the constitution.
- Initially, there used to be a single commission for SCs and STs. However, the 89th Constitutional Amendment Act of 2003 bifurcated it into two separate bodies.
- Thus, a separate National Commission for SCs came into existence in 2004.

Composition:

- It consists of a chairperson, a vice-chairperson, and three other members.
- They are appointed by the President by warrant under his hand and seal.
- President determines their tenure as well as conditions of service.

Functions:

- The following are the functions of the commission:
 1. To investigate the matters regarding various safeguards provided for SCs.
 2. To inquire into the complaints related to the deprivation of the rights of SCs.
 3. To advise on the planning process for the socio-economic development of SCs.
 4. To submit reports to the president regarding the working of various safeguards.
 5. To make recommendations to union and state governments regarding the measures to be taken for effective implementation of safeguards.
 6. To discharge such other functions as the President may specify.
- On all the major policy matters regarding the welfare of SCs, the commission is consulted by the government.

National Commission for STs

- It is established by article 338-A of the constitution.
- The 89th Constitutional Amendment Act of 2003 inserted a new article 338-A.
- Thus, a separate commission for STs came into existence in 2004.

Composition:

- It consists of a chairperson, a vice-chairperson, and three other members.
- They are appointed by the president by warrant under his hand and seal.
- Their tenure and conditions of service are determined by the president.

Functions:

- The following are the functions of the commission:
 1. To investigate the matters regarding various safeguards provided for STs.
 2. To inquire into the complaints related to the deprivation of the rights of STs.
 3. To advise on the planning process for the socio-economic development of STs.
 4. To submit reports to the president regarding the working of various safeguards.
- On all the major policy matters regarding the welfare of STs, the commission is consulted by the government.

Union Public Service Commission

- UPSC is the central recruiting agency of the country.
- Articles 315 to 323 in Part XIV of the constitution talk about UPSC.
- UPSC is visualized as the watchdog of the merit system of the country.

Composition:

- UPSC consists of a chairman and other members. The number of other members is left to the discretion of the president.
- Generally, the number of members in the commission including the chairman is nine to eleven.
- They hold the office for a term of six years or until they attain the age of 65 years, whichever is earlier.

Removal:

- The chairman and other members of UPSC can be removed by the president under the following situations:
 1. If he is adjudged an insolvent
 2. While in office, if he engages in any paid employment
 3. If he gets unfit by reason of infirmity of mind or body
 4. For misbehavior.
- In the last case, the president has to refer the matter to Supreme Court for inquiry. The advice of SC is binding on the president.

Independence:

- The chairman and the members of the commission enjoy the security of tenure.
- Their conditions of service cannot be varied after an appointment.
- Their entire expenses are charged on the Consolidated Fund of India.
- The chairman of UPSC is not eligible for any future employment in the government of India or a state.

Functions:

- Examinations for recruitment to All India Services, central services, and public services of union territories are held by UPSC.
- All disciplinary matters affecting a person in civil capacity are dealt with by UPSC.
- Assists the states in matters relating to joint recruitment.



State Public Service Commission

- Just as UPSC at the center, there is a State Public Service Commission in every state.
- Articles 315 to 323 in part XIV of the constitution deal with the various provisions of SPSC.
- SPSC is considered as the watchdog of the merit system in the state.

Composition:

- SPSC consists of a chairman and other members appointed by the governor. The number of other members is left to the discretion of the governor.
- One-half of the members should be such persons who have held office either under the government of India or the state for at least ten years.
- The term of office is six years or until they attain the age of 62 years, whichever is earlier.

Removal:

- The chairman and members of the commission can be removed only by the president.
- They can be removed under the following situations:
 1. If he is adjudged an insolvent
 2. If he engages in any other paid employment
 3. If he is deemed unfit by reason of infirmity of body or mind
 4. For misbehavior
- In the last case, the president has to refer the matter to SC for inquiry.

Independence:

- The chairman and the members of the commission enjoy the security of tenure.
- Their conditions of service cannot be varied after an appointment.
- Their entire expenses are charged on the Consolidated Fund of the state.

- The chairman of SPSC is not eligible for any other employment under the government of India or state other than for appointment as chairman/ member of UPSC or as the chairman of other SPSC.

Functions:

- SPSC conducts all the examinations for the appointment to the services of the state.
- All disciplinary matters affecting a person in civil capacity are dealt with by SPSC.
- Any claim for reimbursement of legal expenses borne by a civil servant is also looked into by SPSC



Finance Commission

- Finance Commission is a quasi-judicial body.
- The formation of FC is provided by the constitution under article 280.
- It is constituted every fifth year or at such an earlier time as the president of India considers necessary
- FC consists of a chairman and four other members appointed by the president.
- The qualification of the members and the manner of their selection is determined by parliament.
- They are eligible for reappointment.
- The four members should be selected from amongst the following:
 1. A judge of HC or one qualified to be appointed as such.
 2. A person with specialized knowledge in finance and accounts of the government.
 3. A person with wide experience in financial matters and administration.
 4. A person with special knowledge in economics.

Functions:

- FC makes recommendations to the president on the following matters:
 1. Distribution and allocation of the net proceeds of the taxes between center and states and also among different states.
 2. The principles that should govern the grants-in-aid to the states.
 3. Measures needed to augment the consolidated fund of the state to supplement the resources of local bodies.
 4. Any other matter referred to it by the president of India.

Role of FC:

- The commission submits its report to the president who lays it before both the Houses of the Parliament.

- The recommendations made by FC are only advisory in nature and are not binding on the government.
- Finance Commission is envisaged as the balancing wheel of fiscal federalism in India.



Comptroller and Auditor General of India

- Article 148 of the Constitution provides for an independent office of Comptroller and Auditor General of India.
- CAG is considered as the guardian of the public purse.
- Along with the Supreme Court, the Election Commission, and the Union Public Service Commission, the office of CAG is treated as one of the bulwarks of the democratic system.

Appointment:

- President of India appoints CAG by a warrant under his hand and seal.
- He holds office for a period of six years or up to the age of 65 years, whichever is earlier.
- CAG can be removed from his office in the same manner as a judge of the Supreme Court.

Independence:

- CAG is provided with the security of tenure.
- His rights cannot be altered to his disadvantage after his appointment.
- All the expenses of the office of CAG are charged on the Consolidated Fund of India.
- His salary is equal to that of a judge of the Supreme Court.

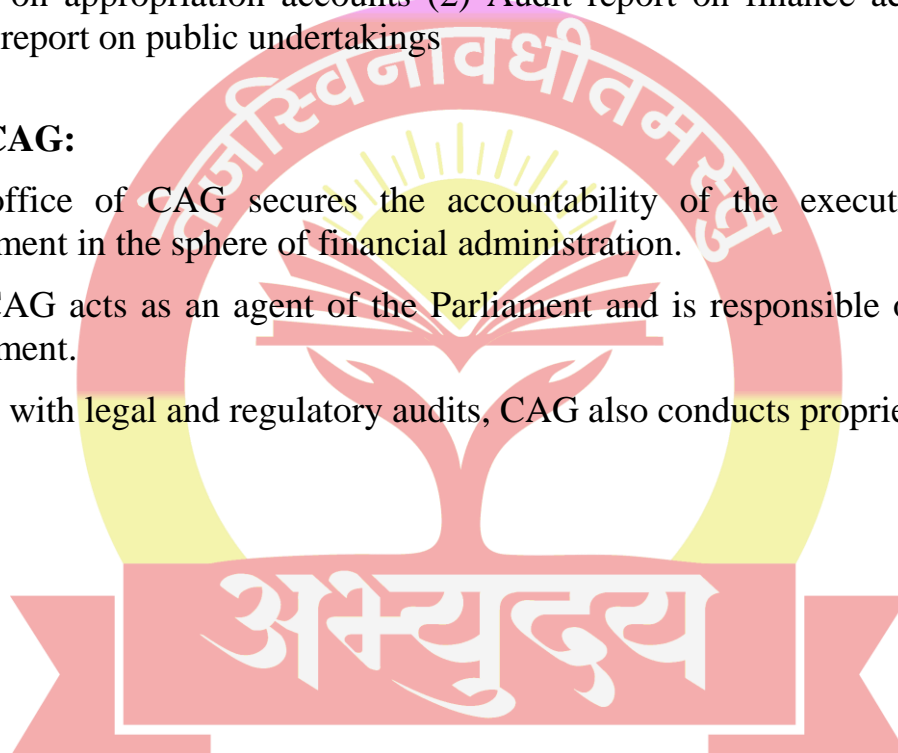
Duties:

- The duties and powers of CAG are mentioned in article 149 of the Constitution.
- All the accounts related to the expenses from the Consolidated Fund of India, Consolidated Fund of the States, and Union Territories are audited by CAG.

- Also, the expenditure from Contingency Fund and Public Account of India and States are audited by CAG.
- The net proceeds of any tax or duty are ascertained and certified by CAG.
- CAG acts as a guide, friend, and philosopher of the Public Accounts Committee.
- All the receipts and expenditure of bodies financed from the central or state revenue are also audited by CAG.
- The audits of any other body as and when requested by the President or Governor are audited by CAG.
- Three reports are submitted by CAG to the President. They are: (1) Audit report on appropriation accounts (2) Audit report on finance accounts (3) Audit report on public undertakings

Role of CAG:

- The office of CAG secures the accountability of the executive to the Parliament in the sphere of financial administration.
- The CAG acts as an agent of the Parliament and is responsible only to the Parliament.
- Along with legal and regulatory audits, CAG also conducts propriety audits.



Attorney General of India

- Article 76 of the Constitution provides for the Attorney General of India.
- He is considered the highest law officer in the country.
- He is appointed by the president and holds office during his pleasure.
- A person who is qualified to be appointed as the judge of the Supreme Court is eligible for the office of Attorney General of India.

Duties of AG:

- To advise the government on the legal matters referred to him by the president.
- To appear on behalf of the GOI in SC in all the cases concerning the government.
- To represent GOI in the references made by the president to the SC under Article 143.
- To appear in HC in the cases concerning GOI when required.

Rights of AG:

- AG has the right to audience in all the courts in the territory of India.
- He has the right to speak and take part in the parliamentary proceedings. However, he doesn't enjoy the right to vote.
- All the privileges and immunities available to a member of parliament are granted to the AG.

Anti-Defection Law

Anti-Defection Law:

The 10th Schedule of the Indian Constitution (which talks about the anti-defection law) is designed to prevent political defections prompted by the lure of office or material benefits or other like considerations. The Anti-defection law was passed by Parliament in 1985 and reinforced in 2002.

- The 10th Schedule of the Indian Constitution popularly referred to as the 'Anti-Defection Law' was inserted by the 52nd Amendment (1985) to the Constitution.
- 'Defection' has been defined as, "To abandon a position or association, often to join an opposing group".
- The anti-defection law was enacted to ensure that a party member does not violate the mandate of the party and in case he does so, he will lose his membership of the House. The law applies to both Parliament and state assemblies.
- The Anti-Defection Law aims to prevent MPs from switching political parties for any personal motive.

10th Schedule – Provisions under Anti-Defection Law

The Tenth Schedule includes the following provisions with regard to the disqualification of MPs and MLAs on the grounds of defection:

Grounds for disqualification:

- If an elected member gives up his membership of a political party voluntarily.
- If he votes or abstains from voting in the House, contrary to any direction issued by his political party.
- If any member who is independently elected joins any party.
- If any nominated member joins any political party after the end of 6 months.
- The decision on disqualification questions on the ground of defection is referred to the Speaker or the Chairman of the House, and his/her decision is final.

- All proceedings in relation to disqualification under this Schedule are considered to be proceedings in Parliament or the Legislature of a state as is the case.

Exceptions under the Anti Defection Law

- In the situation where two-thirds of the legislators of a political party decide to merge into another party, neither the members who decide to join nor the ones who stay with the original party will face disqualification.
- Any person elected as chairman or speaker can resign from his party, and rejoin the party if he demits that post.
- Earlier, the law allowed parties to be split, but at present, this has been outlawed.

Deciding Authority

- Any question regarding disqualification arising out of defection is to be decided by the presiding officer of the House.

The 91st Amendment Act of 2003 has made the following provisions to limit the size of Council of Ministers, to debar defectors from holding public offices, and to strengthen the anti-defection law:

- The total number of ministers, including the Prime Minister, in the Central Council of Ministers shall not exceed 15 per cent of the total strength of the Lok Sabha (Article 75).
1. A member of either House of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister (Article 75).
 2. The total number of ministers, including the Chief Minister, in the Council of Ministers in a state shall not exceed 15 per cent of the total strength of the Legislative Assembly of that state. But, the number of ministers, including the Chief Minister, in a state shall not be less than 12 (Article 164).
 3. A member of either House of a state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister (Article 164).
 4. A member of either House of Parliament or either House of a State Legislature belonging to any political party who is disqualified on the ground of defection

shall also be disqualified to hold any remunerative political post. The expression “remunerative political post” means (i) any office under the Central Government or a state government where the salary or remuneration for such office is paid out of the public revenue of the concerned government; or (ii) any office under a body, whether incorporated or not, which is wholly or partially owned by the Central Government or a state government and the salary or remuneration for such office is paid by such body, except where such salary or remuneration paid is compensatory in nature (Article 361-B).

5. The provision of the Tenth Schedule (anti-defection law) pertaining to exemption from disqualification in case of split by one-third members of legislature party has been deleted. It means that the defectors have no more protection on grounds of splits.

