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CONSTITUTIONAL LAW IN INDIA

INDEX

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CHAPTER 1: INTRODUCTION

The Constitution of India was brought into force on 26th January, 1950 announcing the birth of a new republic to the entire world. It took almost three years (two years, eleven months and eighteen days to be precise) to complete the historic task of drafting the Constitution for Independent India. The Constitution of India was adopted on 26 November 1949 and the Hon'ble members appended their signatures on it on 24th, January 1950.

The Constitution of India is the Supreme law of India. It frames fundamental political principles, procedures, practices, rights, powers, and duties of the government. It imparts constitutional supremacy and not parliamentary supremacy, as it is not created by the Parliament but by a constituent assembly and adopted by its people with a declaration in its preamble.

In a democracy, the Constitution is a sacred text for the Government- It lays a strong foundation for a parliamentary democracy to function.

- The Constitution is the supreme law of a Nation.
- India is the largest democracy in the world, and its Constitution serves as a guiding light for it to function smoothly and vibrantly.

- The Constitution of India is dynamic and adapts itself to changing times, to address the changing needs and requirements of a developing nation.

CHAPTER 2: CONSTITUENT ASSEMBLY AND MAKING OF THE CONSTITUTION

A) Dr. Rajendra Prasad

- Dr. Rajendra Prasad is the President of the Constituent Assembly.
- Elected as the first President of independent India On 24th January1950, at the last session of the Constituent Assembly.
- Distinction of being the only President to have been re-elected for a second term (1950-1962).

B) Sardar Vallabh Bhai Patel

- Sardar Vallabhbhai Patel was a key member of the Constituent Assembly
- He was instrumental in the integration of over 500 princely states into the Indian Union.

C) Dr. B.R. Ambedkar

- Referred to as the 'Father of the Constitution', Dr. Ambedkar played a leading role in the Constitution's framing process.
- He was the Chairman of the Assembly's most crucial committee – the Drafting Committee.

- He was directly responsible for preparing the draft Constitution for Independent India.
- Appointed as the first Law Minister of independent India in 1947.

DRAFTING COMMITTE

On 29th August 1947, the Constituent Assembly through a resolution appointed a Drafting Committee to "scrutinise the draft of the text of the Constitution of India prepared by Constitutional Adviser, giving effect to the decisions already taken in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the Assembly for consideration the text of the draft constitution as revised by the committee".

The Drafting Committee had seven members: Dr. B.R. Ambedkar, Alladi Krishnaswami Ayyar, N. Gopalaswami, K.M Munshi, Mohammad Saadulla, B.L. Mitter and D.P. Khaitan. At its first meeting held on 30th August 1947, the Drafting Committee elected Dr. B.R. Ambedkar as its Chairman.

Important Committees of the Constituent Assembly and their Chairman

Chairman	Name of the Committee
Committee on the Rules of Procedure	Dr. Rajendra Prasad
Steering Committee	Dr. Rajendra Prasad
Finance and Staff Committee	Pt. Jawaharlal Nehru
Ad Hoc Committee on the National Flag	Pt. Jawaharlal Nehru
Union power Committee	Pt. Jawaharlal Nehru
State Committee	Sardar vallabh bhai patel
Drafting committee	Dr. B.R. Ambedkar
Advisory Committee on Fundamental	Sardar vallabh bhai patel
Credential Committee	Alladi Krishnaswami Ayyar
House Committee	B.Pattabhi Sitaramayya
Order of Business Committee	K. M. Munshi
Minorities Sub-Committee	H.C. Mookherjee

Excluded and Partially Excluded Areas — A. V. Thakkar

Towards the end of October 1947, the Drafting Committee began to scrutinize the Draft Constitution prepared by the B.N Rau, the Constitutional Advisor. It made various changes and submitted the Draft Constitution to the President of the Constituent Assembly on 21st of February 1948.

The Drafting Committee and its members were very influential in Indian constitution-making during the Committee stages and the deliberations of the Constituent Assembly. Majority of the debates in Constituent Assembly revolved around the Draft Constitutions prepared by the Drafting Committee. Out of 165 sitting of the Constituent Assembly, 114 were spent debating the Draft Constitutions.

CHAPTER 3: NATURE OF THE CONSTITUTION

The Constitution of India is neither purely federal nor unitary but is a combination of both. It is a Union or a composite of a novel type. The Indian Constitution establishes a dual polity with the Union at the centre and the States at the periphery, each enjoying powers clearly demarcated by the Constitution. The Constitution is written as supreme, with enough power to declare enactments in excess of the powers of the Union or State Legislatures as *ultra vires,* which has been firmly established after the historic decision of the constitutional bench of 13 judges of the Supreme Court in Kesavananda Bharati Vs. State of Kerala, 1973. Moreover, no amendment making any change in the status of powers of the Centre and the States is possible without the participation of the States (Art.368). Finally, the Supreme Court is the apex authority to interpret the Constitution of India as well as to decide disputes arising out of Centre-State relations.

Provisions in the Indian Constitution which are not strictly federal in character:

The question of the extent of federalism is a different matter and in this regard the Constitution of India has certain distinctive features having a bias towards the Centre. The political system of a country is by and large, the outcome

of the circumstances, which certainly differ from one country to another. The following are the provisions in the Indian Constitution which are not strictly federal in character:

a) In the USA and Australia, the States have their own constitutions which are equally powerful as the federal Constitution, but in India, there are no separate constitutions for a member State.

b) India follows the principle of uniform and single citizenship, but in the USA and Australia, double citizenship is followed.

c) In the USA, it is not possible for the Federal Government to unilaterally change the territorial extent of a State but in India, the parliament can do so even without the consent of the State concerned. Thus, the States in India do not enjoy the right to territorial integrity.

d) If the President declares national emergency for the whole or part of India under Article 352, the Parliament can make laws on subjects, which are otherwise, exclusively under the State List. The Parliament can give directions to the States on the manner in which to exercise their executive authority in matters within their charge. The financial provisions can also be suspended. Thus in one stroke, the Indian Federation acquires a unitary character. However, such a situation is not possible in other federal constitutions.

e) The VII Schedule of the Indian Constitution distributes the legislative subjects on which the Parliament and the State Legislatures can enact laws under three lists: Union, State and Concurrent. The Union List contains 99 subjects over which the Parliament has exclusive control, while the State List contains only 66 subjects over which the State Legislatures have control. Moreover, the most important subjects except only one i.e. the state tax, are under the Union List. Further, in the event of a conflict between the Union and State laws on concurrent subjects, the latter must give way to the former to the extent of such contradiction. Furthermore, the Residuary power i.e. the power to enact laws on subjects not falling under any of the three Lists lies with the Centre (Canadian model) and not with the States, as is the case in the USA and Australia.

f) The Parliament has the exclusive authority to make laws on the 99 subjects of the Union List (Schedule VII), but the States do not have such exclusive rights over the State List. Under certain circumstances and situation, the Parliament can legislate on subjects of State List. There are five such situations as mentioned below:

i. Under Art. 249, if the Rajya Sabha passes a resolution with not less than 2/3rd majority, authorizing Parliament to make laws on any State subject, on the ground that it is expedient or necessary in the national

interest Parliament can legislate over that subject. Such laws shall be in force for only 1 year and can be continuously extended any number of times but for not more than one year at a time.

ii. Under Art 250, if national emergency is declared under Art 352 Parliament has the right to make laws with respect to all the 66 subjects in the State List automatically i.e. the State List is transformed into the Concurrent List.

iii. Under Art 252, if the Legislatures of two or more States request the Parliament to legislate on a particular State subject, the Parliament can do so. However, such legislation can be amended or repealed only by the Parliament.

iv. Under Art 253, Parliament can make laws even on State List to comply with the international agreements to which India is a party. The States cannot oppose such a move. An example of this is the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which was enacted for giving effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region convened by

the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December 1992.

v. Under Art. 356, if President's rule is imposed in a State the power of the legislature of that State become exercisable by or under the authority of the Parliament. This gives the Parliament full powers to legislate on any matter included in the State list

vi. Under Art. 155, the Governor of a State is appointed by the President and the former is not responsible to the State Legislature. Thus indirectly, the Centre enjoys control over the State through the appointment of the Governor.

h) If financial emergency is declared by the President under Art. 360, on the ground that the financial stability or credibility of India or any of its units is threatened, all the Money Bills passed by the State Legislatures during the period of financial emergency are also subject to the control of the Centre.

i) Under Art 256, the Centre can give administrative directions to the States, which are binding on the latter. Along with the directions, the constitution also provides measures to be adopted by the Centre to ensure such compliance.

j) Under Art. 312, the All India Services officials IAS, IPS and IFS (Forest) – are appointed by the Centre, but are paid and controlled by the State. However, in case

of any irregularities or misconduct committed by the officer, States cannot initiate any disciplinary action except suspending him/her.

k) Judges of the High Courts are appointed by the President in consultation with the Governors under Art. 217 and the State do not play any role in this.

Thus, apart from certain provisions biased towards the Union, the constitution of India, in normal times, is framed to work as a federal system. But in times of war and other emergencies, it is designed to work as though it were unitary. The federal constitutions of the USA and Australia, which are placed in a tight mould of federalism, cannot change their form. They can never be unitary as per the provisions of their constitution. But, the Indian Constitution is a flexible form of federation - a federation of its own kind. That is why Indian federation is called federation *sui generis*.

CHAPTER 4: FEATURES OF THE INDIAN CONSTITUTION

The main features of Indian Constitution are the following:

1. **A written Constitution:** The Indian Constitution is mainly a written constitution. A written constitution is framed at a given time and comes into force or is adopted on a fixed date as a document. As you have already read that our constitution was framed over a period of 2 years, 11 months and 18 days, it was adopted on 26th November, 1949 and enforced on January 26, 1950. Certain conventions have gradually evolved over a period of time which has proved useful in the working of the Constitution.
2. **Federal Policy:** The Constitution of India does not use the term 'federal state'. It says that India is a 'Union of States'. There is a distribution of powers between the Union/Central Government and the State Governments. Since India is a federation, such distribution of functions becomes necessary. There are three lists of powers such as Union List, State List and the Concurrent List.
3. **Parliamentary Democracy:** India has a parliamentary form of democracy. This has been adopted from the British system. In a parliamentary democracy there is a close relationship between the legislature and the

executive. The Cabinet is selected from among the members of legislature. The cabinet is responsible to the latter. In fact the Cabinet holds office so long as it enjoys the confidence of the legislature. In this form of democracy, the Head of the State is nominal. In India, the President is the Head of the State. Constitutionally the President enjoys numerous powers but in practice the Council of Ministers headed by the Prime Minister, which really exercises these powers. The President acts on the advice of the Prime Minister and the Council of Ministers.

4. **Fundamental Rights and Duties:** Fundamental Rights are one of the important features of the Indian Constitution. The Constitution provides for six Fundamental Rights. Fundamental Rights are justiciable and are protected by the judiciary. In case of violation of any of these rights one can move to the court of law for their protection. Fundamental Duties were added to our Constitution by the 42nd Amendment. It lays down a list of ten Fundamental Duties for all citizens of India. While the rights are given as guarantees to the people, the duties are obligations which every citizen is expected to perform.
5. **Directive Principles of State Policy:** The Directive Principles of State Policy which have been adopted from the Irish Constitution is another

unique feature of the Constitution of India. The Directive Principles were included in our Constitution in order to provide social and economic justice to our people. Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few.

6. **Partly rigid and partly flexible:** A constitution may be called rigid or flexible on the basis of its amending procedure. The Constitution of India provides for three categories of amendments. In the first category, amendment can be done by the two houses of Parliament simple majority of the members present and voting of before sending it for the President's assent. In the second category amendments require a special majority. Such an amendment can be passed by each House of Parliament by a majority of the total members of that House as well as by the 2/3rd majority of the members present and voting in each house of Parliament and send to the President for his assent which cannot be denied. In the third category besides the special majority mentioned in the second category, the same has to be approved also by at least 50% of the State legislatures.
7. **Language Policy:** India is a country where different languages are spoken in various parts of the country. Hindi and English have been made official

languages of the central government. A state can adopt the language spoken by its people in that state also as its official language.

8. **Special Provisions for Scheduled Castes and Scheduled Tribes:** The Constitution provides for giving certain special concessions and privileges to the members of these castes. Seats have been reserved for them in Parliament, State legislature and local bodies, all government services and in all professional colleges.
9. **A Constitution Derived from Many Sources:** The framers of our constitution borrowed many things from the constitutions of various other countries and included them in our constitution. That is why; some writers call Indian Constitution a 'bag of borrowings'.
10. **Independent Judiciary:** Indian judiciary is independent an impartial. The Indian judiciary is free from the influence of the executive and the legislature. The judges are appointed on the basis of their qualifications and cannot be removed easily.
11. **Single Citizenship:** In India there is only single citizenship. It means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth. He/she is not a citizen of the Constituent State like Jharkhand, Uttaranchal or Chhattisgarh to which he/she may belong to

but remains a citizen of India. All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of India.

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

13. **Emergency Provisions:** The Constitution makers also foresaw that there could be situations when the government could not be run as in ordinary times. To cope with such situations, the Constitution elaborates on emergency provisions. There are three types of emergency; a) emergency caused by war, external aggression or armed rebellion; b) emergency arising out of the failure of constitutional machinery in states; and c) financial emergency.

CHAPTER 5: THE PREAMBLE

PREAMBLE:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Framing of the Preamble:

The Preamble to the Constitution sets out the main objectives which the Constituent Assembly intended to achieve. The 'Objective Resolution' proposed by Pandit Nehru and passed by the Constituent Assembly, ultimately became the Preamble to the Constitution of India. As the Supreme Court has observed, the Preamble is a key to unravel the minds of the makers of the Constitution. It also embodies the ideals and aspirations of the people of India.

The Constitution (42nd Amendment) Act, 1976 amended the Preamble and added the words *Socialist, Secular* and *Integrity* to the Preamble. The Preamble is non-justiciable in nature, like the Directive Principles of State Policy, and cannot be enforced in a court of law. It can neither provide substantive power (definite and real power) to the three organs of the State, nor limit their powers under the provisions of the Constitution. The Preamble cannot override the specific provisions of the Constitution. In case of any conflict between the two, the latter shall prevail. So, it has a very limited role to play. As observed by the Supreme Court, the Preamble plays a vital role in removing the ambiguity surrounding the provisions of the constitution.

Whether the Preamble is a part of the Constitution

The Supreme Court in the Kesavananda Bharati Vs State of Kerala (1973) case overruled its earlier decision of 1960 and made it clear that it is a part of the Constitution and is subject to the amending power of the Parliament as any other provisions of the Constitution, provided the basic structure of the Constitution as found in the Preamble is not destroyed. However, it is not the essential part of the Constitution.

Basic Structure of the Constitution: The concept of basic structure of the Constitution is nowhere found in the Constitution. This doctrine is a judicial innovation and was given its shape by the Supreme Court in the Kesavananda Bharati vs State of Kerala case (1973). The doctrine simply states that any law passed by the Parliament, which destroys the basic structure of the Constitution, shall be declared void to the extent of its destruction. The basic aim of the Supreme Court was to maintain its superiority as well as to sustain a balance between the three organs of the State. The Court however did not define in precise terms the basic structure of the Constitution. But in a number of decisions, the Supreme Court has made it clear as to what the basic structure of the Constitution is. The following concepts are some of the basic structure –

Supremacy of the Constitution, Republican and Democratic form of Government, Federalism, Secular character of the Constitution, Separation of powers between the three organs of the State, Judicial review, Sovereignty of the country, etc.

Exercising this power, the Supreme Court struck down the amended provision of Art. 368 (introduced by the 42nd Amendment Act, 1976) on the ground that it deprives the Supreme Court of the power of 'judicial review', a basic structure of the Constitution (Minerva Mills case in 1980 and Waman Rao vs. Union of India case in 1981).

Features of the Preamble:

I. The Source of Authority:

Popular Sovereignty:

The Preamble categorically accepts the principle of Popular Sovereignty. It begins with the words 'We the people of India'. These words testify to the fact that the people of India are the ultimate source of all authority. The Government derives its power from them.

II. Nature of State:

The Preamble describes five cardinal features of the Indian state:

(1) India is a Sovereign State:

The Preamble proclaims that India is a sovereign state. Such a proclamation denotes the end of rule over India. It testifies to the fact that India is no longer a dependency or colony or possession of British Crown. As a sovereign independent state, India is free both internally and externally to take her own decisions and implement these for her people and territories.

(2) India is a Socialist State:

In 1976, the Preamble was amended to include the word 'Socialism'. It is now regarded as a prime feature of the State. It reflects the fact that India is committed to secure social, economic and political justice for all its people. India stands for ending all forms of exploitation as well as for securing equitable distribution of income, resources and wealth. This has to be secured by peaceful, constitutional and democratic means. The term 'India is a Socialist state' really means, 'India is a democratic socialist state.'

(3) India is a Secular State:

By the 42nd Amendment, the term 'Secular' was incorporated in the Preamble. Its inclusion simply made the secular nature of the Indian Constitution more explicit. As a state India gives special status to no religion. There is no such thing as a state

religion of India. India guarantees equal freedom to all religions. All religions enjoy equality of status and respect.

(4) India is a Democratic State:

The Preamble declares India to be a Democratic State. The Constitution of India provides for a democratic system. The authority of the government rests upon the sovereignty of the people. The people enjoy equal political rights. The people freely participate in the democratic process of self-rule.

They elect their government. For all its acts, the government is responsible before the people. The people can change their government through elections. The government enjoys limited powers. It always acts under the Constitution which represents the supreme will of the people.

(5) India is a Republic:

The Preamble declares India to be a Republic. Negatively, this means that India is not ruled by a monarch or a nominated head of state. Positively, it means that India has an elected head of state who wields power for a fixed term. President of India is the elected sovereign head of the state. He holds a tenure of 5 years. Any Indian citizen can get elected as the President of India.

III. Four Objectives of the Indian State:

The Preamble states that the objectives to be secured to every citizen are -

(i) Justice-social, economic and political.

(ii) Liberty- of thought, expression, belief, faith and worship.

(iii)Equality-of status, opportunity;

and to promote among them all - Fraternity-assuring the dignity of the individual and the unity and integrity of the Nation.

(a) Regarding *Justice*, one thing is clear that the Indian Constitution expects political justice to be the means to achieve social and economic justice, by making the State more and more welfare oriented in nature. Political justice in India is guaranteed by universal adult suffrage without any sort of qualification. While social justice is ensured by abolishing any title of honor (Art. 18) and untouchability (Art 17), economic justice is guaranteed primarily through the Directive Principles.

(b) *Liberty* is an essential attribute of a free society that helps in the fullest development of intellectual, mental and spiritual faculties of an individual. The Indian Constitution guarantees six democratic freedoms to the

individuals under Art. 19 and the Right to freedom of religion under Arts. 25-28.

(c) The fruits of *Liberty* cannot be fully realized until there is an *Equality* of status and opportunity. Our Constitution renders any discrimination by the State only on the basis of religion, race, caste, sex or place of birth as illegal by throwing open public places to all (Art. 15), by abolishing untouchability (Art. 17) and by abolishing titles of honour (Art. 18). However, to bring the hitherto neglected sections of the society into the national mainstream, the Parliament has passed certain laws for the benefit of SCs, STs, OBCs (Protective Discrimination).

(d) *Fraternity* as enshrined in the Constitution means a sense of brotherhood prevailing amongst all the sections of the people. This is sought to be achieved by making the State secular, guaranteeing fundamental and other rights equally to people of all sections, and protecting their interests. However, fraternity is an evolving process and by the 42nd amendment, the word 'integrity' was added, thus giving it a broader meaning.

CHAPTER 6: SOURCES OF THE INDIAN CONSTITUTION

The framework of the Constitution was derived from the Government of India Act 1935, many provisions were imported from other constitutions of the world. Some of them are listed below along with the Government of India Act, 1935:

I. The most profound influence was exercised by the Government of India Act, 1935. The federal scheme, office of Governor, powers of federal judiciary, emergency powers etc. were drawn from this Act.

II. The British practice influenced the lawmaking procedures, rule of law, system of single citizenship, besides, of course, the model of a parliamentary system of governance.

III. The US constitution inspired details on the independence of judiciary, judicial review, fundamental rights, and the removal of the judges of Supreme Court and High Courts.

IV. The Irish Constitution was the source of the Directive Principles, method of Presidential elections and the nomination of members of Rajya Sabha by the President.

V. From the Canadian Constitution was taken the idea of a federation with a strong Centre and placing residuary powers with the Centre.

VI. The Wemar Constitution of Germany was the source of provisions concerning the suspension of fundamental rights during emergency.

VII. The idea of a Concurrent List was taken from the Australian constitution.

The founding fathers of our Constitution had before them the accumulated experience from the working of all the known constitutions of the world and were aware of the difficulties faced in the working of those constitutions. Hence, besides incorporating some provisions from the other constitutions, a number of provisions were included to avoid some of the difficulties experienced in the working of these constitutions. This is an important reason for making our constitution the lengthiest and the most comprehensive of all the written constitutions of the world.

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FIRST CONSTITUTIONAL AMENDMENT ACT: 1951

- Added Ninth Schedule to protect the land reform and other laws included in it from the judicial review.
- Added three more grounds of restrictions on freedom of speech and expression, viz., public order, friendly relations with foreign states and incitement to an offence. Also, made the restrictions 'reasonable' and thus, justiciable in nature.
- Empowered the state to make special provisions for the advancement of socially and economically backward classes

SECOND CONSTITUTIONAL AMENDMENT ACT: 1952

- Readjusted the scale of representation in the Lok Sabha by providing that one member could represent even more than 7,50,000 persons.

THIRD CONSTITUTIONAL AMENDMENT ACT: 1954

- Empowered the Parliament to control the production, supply and distribution of the foodstuffs, cattle, fodder, raw cotton, cotton seed and raw jute in the public interest.

FOURTH CONSTITUTIONAL AMENDMENT ACT: 1955

- Made the scale of compensation given in lieu of compulsory acquisition of private property beyond the scrutiny of courts.

FIFTH CONSTITUTIONAL AMENDMENT ACT, 1955

- Empowered the president to fix the time-limit for the state legislatures to express their views on the proposed Central legislation affecting the areas, boundaries and names of the states.

SIXTH CONSTITUTIONAL AMENDMENT ACT, 1956

- Included a new subject in the Union list i.e., taxes on the sale and purchase of goods in the course of inter-state trade and commerce and restricted the state's power in this regard

SEVENTH CONSTITUTIONAL AMENDMENT ACT-1956

- This constitutional amendment act was brought to give effect to recommendations of state reorganization commission.
- Provided for the establishment of a common high court for two or more states.

- Abolished the existing classification of states into four categories i.e., Part A, Part B, Part C and Part D states, and reorganized them into 14 states and 6 union territories.
- Extended the jurisdiction of high courts to union territories.
- Provided for the appointment of additional and acting judges of the high court.

EIGHT CONSTITUTIONAL AMENDMENT ACT, 1960

- Extended the reservation of seats for the SCs and STs, and special representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a period of ten years (i.e., up to 1970).

NINTH CONSTITUTIONAL AMENDMENT ACT, 1960

- Facilitated the cession of Indian Territory of Berubari Union (located in West Bengal) to Pakistan as provided in the Indo-Pakistan Agreement (1958).

TENTH CONSTITUTIONAL AMENDMENT ACT-1961

- Incorporated Dadra and Nagar Haveli in the Indian Union

ELEVENTH CONSTITUTIONAL AMENDMENT ACT, 1961

- Changed the procedure of election of the vice-president by providing for an electoral college instead of a joint meeting of the two Houses of Parliament.
- Provided that the election of the president or vice-president cannot be challenged on the ground of any vacancy in the appropriate electoral college.

TWELFTH CONSTITUTIONAL AMENDMENT ACT-1962

- Incorporated Goa, Daman and Diu in the Indian Union.

THIRTEENTH CONSTITUTIONAL AMENDMENT ACT, 1962

- Gave the status of a state to Nagaland and made special provisions for it.

FOURTEENTH CONSTITUTIONAL AMENDMENT ACT-1962

- Incorporated Puducherry in the Indian Union

FIFTEENTH CONSTITUTIONAL AMENDMENT ACT-1963

- Increased the retirement age of high court judges from 60 to 62 years

SIXTEENTH CONSTITUTIONAL AMENDMENT ACT, 1963

- Included sovereignty and integrity in the forms of oaths or affirmations to be subscribed by contestants to the legislatures, members of the legislatures, ministers, judges and CAG of India.

SEVENTEENTH CONSTITUTIONAL AMENDMENT ACT, 1964

- Prohibited the acquisition of land under personal cultivation unless the market value of the land is paid as compensation.

EIGHTEENTH CONSTITUTIONAL AMENDMENT ACT, 1966

- Made it clear that the power of Parliament to form a new state also includes a power to form a new state or union territory by uniting a part of a state or a union territory to another state or union territory.

NINETEENTH CONSTITUTIONAL AMENDMENT ACT, 1966

- Abolished the system of Election Tribunals and vested the power to hear election.

TWENTIETH CONSTITUTIONAL AMENDMENT ACT, 1966

- Validated certain appointments of district judges in the UP which were declared void by the Supreme Court.

TWENTY-FIRST CONSTITUTIONAL AMENDMENT ACT, 1967

- Included sindhi as the 15th language in the Eight Schedule.

TWENTY-SECOND CONSTITUTIONAL AMENDMENT ACT, 1969

- Facilitated the creation of a new autonomous State of Meghalaya within the State of Assam.

TWENTY-THIRD CONSTITUTIONAL AMENDMENT ACT, 1969

- Extended the reservation of seats for the SCs and STs, and special representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a further period of ten years (i.e., up to 1980).

TWENTY-FOURTH CONSTITUTIONAL AMENDMENTACT-1971

- Affirmed the power of Parliament to amend any part of the constitution including fundamental rights.
- Made it compulsory for the president to give his assent to a Constitutional Amendment Bill.

TWENTY-FIFTH CONSTITUTIONAL AMENDMENT ACT, 1971

- Curtailed the fundamental right to property.
- Provided that any law made to give effect to the Directive Principles contained in Article 39 (b) or (c) cannot be challenged on the ground of violation of the rights guaranteed by Articles 14, 19 and 31.

TWENTY-SIXTH CONSTITUTIONAL AMENDMENT ACT, 1971

- Abolished the privy purses and privileges of the former rulers of princely states.

TWENTY-SEVENTH CONSTITUTIONAL AMENDMENT, 1971

- Empowered the administrators of certain union territories to promulgate ordinances.

TWENTY-EIGHTH CONSTITUTIONAL AMENDMENT ACT, 1972

- Abolished the special privileges of ICS officers and empowered the Parliament to determine their service conditions.

TWENTY-NINTH CONSTITUTIONAL AMENDMENT ACT, 1972

- Included two Kerala Acts on land reforms in the Ninth Schedule.

THIRTIETH CONSTITUTIONAL AMENDMENT ACT, 1972

- Did away with the provision which allowed appeal to the Supreme Court in civil cases involving an amount of `20,000, and provided instead that an appeal can be filed in the Supreme Court only if the case involves a substantial question of law.

THIRTY-FIRST CONSTITUTIONAL AMENDMENT ACT, 1972

- Increased the number of Lok Sabha seats from 525 to 545.

THIRTY-SECOND CONSTITUTIONAL AMENDMENT ACT-1973

- Made special provisions to satisfy the aspirations of the people of the Telangana region in Andhra Pradesh.

THIRTY-THIRD CONSTITUTIONAL AMENDMENT ACT, 1974

- Provided that the resignation of the members of Parliament and the state legislatures may be accepted by the Speaker/Chairman only if he is satisfied that the resignation is voluntary or genuine.

THIRTY-FOURTH CONSTITUTIONAL AMENDMENT ACT, 1974

- Included twenty more land tenure and land reforms acts of various states in the Ninth Schedule.

THIRTY-FIFTH CONSTITUTIONAL AMENDMENT ACT, 1974

- Terminated the protectorate status of Sikkim and conferred on it the status of an associate state of the Indian Union. The Tenth Schedule was added laying down the terms and conditions of association of Sikkim with the Indian Union.

THIRTY-SIXTH CONSTITUTIONAL AMENDMENT ACT, 1975

- Made Sikkim a full-fledged State of the Indian Union and omitted the Tenth Schedule.

THIRTY-SEVENTH CONSTITUTIONAL AMENDMENT ACT, 1975

- Provided legislative assembly and council of ministers for the Union Territory of Arunachal Pradesh.

THIRTY-EIGHTH CONSTITUTIONAL AMENDMENT ACT, 1975

- Empowered the president to declare different proclamations of national emergency on different grounds simultaneously.

THIRTY-NINTH CONSTITUTIONAL AMENDMENT ACT, 1975

- Placed the disputes relating to the president, vice-president, prime minister and Speaker beyond the scope of the judiciary. They are to be decided by such authority as may be determined by the Parliament.

FORTIETH CONSTITUTIONAL AMENDMENT ACT, 1976

- Empowered the Parliament to specify from time to time the limits of the territorial waters, the continental shelf, the exclusive economic zone (EEZ) and the maritime zones of India.

FORTY-FIRST CONSTITUTIONAL AMENDMENT ACT, 1976

- Raised the retirement age of members of State Public Service Commission and Joint Public Service Commission from 60 to 62.

FORTY-SECOND CONSTITUTIONAL AMENDMENT ACT, 1976

- It is also known as Mini-Constitution. It was enacted to give effect to the recommendations of Swaran Singh Committee.)

- Added three new words (i.e., socialist, secular and integrity) in the Preamble.
- Added Fundamental Duties by the citizens (new Part IV A).
- Made the president bound by the advice of the cabinet
- Added three new Directive Principles viz., equal justice and free legal aid, participation of workers in the management of industries
- Shifted five subjects from the state list to the concurrent list, viz, education, forests, protection of wild animals and birds, weights and measures and administration of justice, constitution and organisation of all courts except the Supreme Court and the high courts.
- Empowered the Centre to deploy its armed forces in any state to deal with a grave situation of law and order.

FORTY-THIRD CONSTITUTIONAL AMENDMENT ACT, 1977

- Restored the jurisdiction of the Supreme Court and the high courts in respect of judicial review and issue of writs

FORTY-FOURTH CONSTITUTIONAL AMENDMENT ACT, 1978

- Empowered the president to send back once the advice of cabinet for reconsideration. But, the reconsidered advice is to be binding on the president.

- Replaced the term 'internal disturbance' by 'armed rebellion' in respect of national emergency.
- Made the President to declare a national emergency only on the written recommendation of the cabinet.
- Deleted the right to property from the list of Fundamental Rights and made it only a legal right.

FORTY-FIFTH CONSTITUTIONAL AMENDMENT ACT, 1980

- Extended the reservation of seats for the SCs and STs and special representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a further period of ten years (i.e., up to 1990).

FORTY-SIXTH CONSTITUTIONAL AMENDMENT ACT, 1982

- Enabled the states to plug loopholes in the laws and realise sales tax dues.

FORTY-SEVENTH CONSTITUTIONAL AMENDMENT ACT, 1984

- Included 14 land reforms Acts of various states in the Ninth Schedule.

FORTY-EIGHTH CONSTITUTIONAL AMENDMENT ACT, 1984

- Facilitated the extension of President's rule in Punjab beyond one year without meeting the two special conditions for such extension.

FORTY-NINTH CONSTITUTIONAL AMENDMENT ACT, 1984

- Gave a constitutional sanctity to the Autonomous District Council in Tripura.

FIFTIETH CONSTITUTIONAL AMENDMENT ACT, 1984

- Empowered the Parliament to restrict the Fundamental Rights of persons employed in intelligence organisations and telecommunication systems set up for the armed forces or intelligence organisations.

FIFTY-FIRST CONSTITUTIONAL AMENDMENT ACT, 1984

- Provided for reservation of seats in the Lok Sabha for STs in Meghalaya, Arunachal Pradesh, Nagaland and Mizoram as well as in the Legislative Assemblies of Meghalaya and Nagaland.

FIFTY-SECOND CONSTITUTIONAL AMENDMENT ACT, 1985

- This amendment popularly known as Anti-Defection Law.
- Provided for disqualification of members of Parliament and state legislatures on the ground of defection and added a new Tenth Schedule containing the details in this regard.

FIFTY-THIRD CONSTITUTIONAL AMENDMENT ACT, 1986

- Made special provisions in respect of Mizoram and fixed the strength of its Assembly at a minimum of 40 members.

FIFTY-FOURTH CONSTITUTIONAL AMENDMENT ACT, 1986

- Increased the salaries of the Supreme Court and high court judges and enabled the Parliament to change them in future by an ordinary law.

FIFTY-FIFTH CONSTITUTIONAL AMENDMENT ACT, 1986

- Made special provisions in respect of Arunachal Pradesh and fixed the strength of its Assembly at a minimum of 30 members.

FIFTY-SIXTH CONSTITUTIONAL AMENDMENT ACT, 1987

- Fixed the strength of the Goa Legislative Assembly at a minimum of 30 members.

FIFTY-SEVENTH CONSTITUTIONAL AMENDMENT ACT, 1987

- Reserved seats for the STs in the legislative assemblies of the states of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland.

FIFTY-EIGHTH CONSTITUTIONAL AMENDMENT ACT, 1987

- Provided for an authoritative text of the Constitution in Hindi language and gave the same legal sanctity to the Hindi version of the Constitution.

FIFTY-NINTH CONSTITUTIONAL AMENDMENT ACT, 1988

- Provided for the declaration of national emergency in Punjab on the ground of internal disturbance.

SIXTIETH CONSTITUTIONAL AMENDMENT ACT, 1988

- Increased the ceiling of taxes on professions, trades, callings and employments from Rs 250 per annum to Rs 2,500 per annum.

SIXTY-FIRST CONSTITUTIONAL AMENDMENT ACT, 1989

- Reduced the voting age from 21 years to 18 years for the Lok Sabha and state legislative assembly elections.

SIXTY-SECOND CONSTITUTIONAL AMENDMENT ACT, 1989

- Extended the reservation of seats for the SCs and STs and special representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for the further period of ten years (i.e., up to 2000).

SIXTY-THIRD CONSTITUTIONAL AMENDMENT ACT, 1989

- Repealed the changes introduced by the 59th Amendment Act of 1988 in relation to Punjab. In other words, Punjab was brought at par with the other states in respect of emergency provisions.

SIXTY-FOURTH CONSTITUTIONAL AMENDMENT ACT, 1990

- Facilitated the extension of the President's rule in Punjab upto a total period of three years and six months.

SIXTY-FIFTH CONSTITUTIONAL AMENDMENT ACT, 1990

- Provided for the establishment of a multi-member National Commission for SCs and STs in the place of a Special Officer for SCs and STs.

SIXTY-SIXTH CONSTITUTIONAL AMENDMENT ACT, 1990

- Included 55 more land reforms Acts of various states in the Ninth Schedule.

SIXTY-SEVENTH CONSTITUTIONAL AMENDMENT ACT, 1990

- Facilitated the extension of the President's rule in Punjab up to a total period of four years.

SIXTY-EIGHT CONSTITUTIONAL AMENDMENT ACT, 1991

- Facilitated the extension of the President's rule in Punjab up to a total period of five years.

SIXTY-NINTH CONSTITUTIONAL AMENDMENT ACT, 1991

- Accorded a special status to the Union Territory of Delhi by designing it as the National Capital Territory of Delhi.

SEVENTIETH CONSTITUTIONAL AMENDMENT ACT, 1992

- Provided for the inclusion of the members of the Legislative Assemblies of National Capital Territory of Delhi and the Union Territory of Puducherry in the Electoral College for the election of the president.

SEVENTY-FIRST CONSTITUTIONAL AMENDMENT ACT, 1992

- Included Konkani, Manipuri and Nepali languages in the Eight Schedule. With this, the total number of scheduled languages increased to 18.

SEVENTY-SECOND CONSTITUTIONAL AMENDMENT ACT, 1992

- Provided for reservation of seats for the STs in the Legislative Assembly of Tripura.

SEVENTY-THIRD CONSTITUTIONAL AMENDMENT ACT, 1992

- Granted constitutional status and protection to the panchayati raj institutions.
- For this purpose, the Amendment has added a new Part-IX entitled as 'the panchayats' and a new Eleventh Schedule containing 29 functional items of the panchayats.

SEVENTY-FOURTH CONSTITUTIONAL AMENDMENT ACT, 1992

- Granted constitutional status and protection to the urban local bodies.
- For this purpose, the Amendment has added a new Part IX-A entitled as 'the municipalities' and a new Twelfth Schedule containing 18 functional items of the municipalities.

SEVENTY-FIFTH CONSTITUTIONAL AMENDMENT ACT, 1994

- Provided for the establishment of rent tribunals for the adjudication of disputes with respect to rent, its regulation and control and tenancy issues including the rights, title and interest of landlords and tenants.

SEVENTY-SIXTH CONSTITUTIONAL AMENDMENT ACT, 1994

- Included the Tamil Nadu Reservation Act of 1994 (which provides for 69 per cent reservation of seats in educational institutions and posts in state services) in the Ninth Schedule to protect it from judicial review. In 1992, the Supreme Court ruled that the total reservation should not exceed 50 percent.

SEVENTY-SEVENTH CONSTITUTIONAL AMENDMENT ACT, 1995

- Provided for reservation in promotions in government jobs for SCs and STs. This amendment nullified the Supreme Court ruling with regard to reservation in promotions.

SEVENTY-EIGHTH CONSTITUTIONAL AMENDMENT ACT, 1995

- Included 27 more land reforms Acts of various states in the Ninth Schedule. With this, the total number of Acts in the Schedule increased to 282. But, the last entry is numbered 284.

SEVENTY-NINTH CONSTITUTIONAL AMENDMENT, 1999

- Extended the reservation of seats for the SCs and STs and special representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a further period of ten years (i.e., up to 2010).

EIGHTIETH CONSTITUTIONAL AMENDMENT ACT, 2000

- Provided for an 'alternative scheme of devolution' of revenue between the Centre and states. This was enacted on the basis of the recommendations of the Tenth Finance Commission which has recommended that out of the total income obtained from Central taxes and duties, twenty-nine per cent should be distributed among the states.

EIGHTY-FIRST CONSTITUTIONAL AMENDMENT ACT, 2000

- Empowered the state to consider the unfilled reserved vacancies of a year as a separate class of vacancies to be filled up in any succeeding year or years. Such classes of vacancies are not to be combined with the vacancies of the year in which they are being filled up to determine the ceiling of 50 per cent reservation on total number of vacancies of that year. In brief, this amendment ended the 50 per cent ceiling on reservation in backlog vacancies.

EIGHTY-SECOND CONSTITUTIONAL AMENDMENT ACT, 2000

- Provided for making of any provision in favour of the SCs and STs for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to the public services of the Centre and the states.

EIGHTY-THIRD CONSTITUTIONAL AMENDMENT ACT, 2000

- Provided that no reservation in panchayats need be made for SCs in Arunachal Pradesh. The total population of the state is tribal and there are no SCs.

EIGHTY-FOURTH CONSTITUTIONAL AMENDMENT ACT, 2001

- Extended the ban on readjustment of seats in the Lok Sabha and the state legislative assemblies for another 25 years (i.e., up to 2026) with the same objective of encouraging population limiting measures.
- In other words, the number of seats in the Lok Sabha and the assemblies are to remain same till 2026.
- It also provided for the readjustment and rationalization of territorial constituencies in the states on the basis of the population figures of 1991 census.

EIGHTY-FIFTH CONSTITUTIONAL AMENDMENT ACT, 2001

- Provided for 'consequential seniority' in the case of promotion by virtue of rule of reservation for the government servants belonging to the SCs and STs with retrospective effect from June 1995.

EIGHTY-SIXTH CONSTITUTIONAL AMENDMENT ACT, 2002

- Made elementary education a fundamental right. The newly-added Article 21-A declares that "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may determine".
- Changed the subject matter of Article 45 in Directive Principles. It now reads—"The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years".
- Added a new fundamental duty under Article 51-A which reads—"It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen years".

EIGHTY-SEVENTH CONSTITUTIONAL AMENDMENT ACT, 2003

- Provided for the readjustment and rationalization of territorial constituencies in the states on the basis of the population figures of 2001 census and not 1991 census as provided earlier by the 84th Amendment Act of 2001.

EIGHTY-EIGHTH CONSTITUTIONAL AMENDMENT ACT, 2003

- Made a provision for service tax (Article 268-A). Taxes on services are levied by the Centre. But, their proceeds are collected as well as appropriated by both the Centre and the states in accordance with the principles formulated by parliament.

EIGHTY-NINTH CONSTITUTIONAL AMENDMENT ACT, 2003

- Bifurcated the erstwhile combined National Commission for Scheduled Castes and Scheduled Tribes into two separate bodies, namely, National Commission for Scheduled Castes (Article 338) and National Commission for Scheduled Tribes (Article 338-A). Both the Commissions consist of a Chairperson, a Vice-Chairperson and three other members. They are appointed by the President.

NINETIETH CONSTITUTIONAL AMENDMENT ACT, 2003

- Provided for maintaining the erstwhile representation of the Scheduled Tribes and non- Scheduled Tribes in the Assam legislative assembly from the Bodoland Territorial Areas District (Article 332 (6)).

NINETY-FIRST CONSTITUTIONAL AMENDMENT ACT, 2003

- The total number of ministers, including the Prime Minister, in the Central Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha (Article 75(1A)).
- The total number of ministers, including the Chief Minister, in the Council of Ministers in a state shall not exceed 15% 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(1A)).
- 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.

NINETY-SECOND CONSTITUTIONAL AMENDMENT ACT, 2003

- Included four more languages in the Eighth Schedule. They are Bodo, Dogri (Dongri), Maithili (Maithili) and Santhali. With this, the total number of constitutionally recognized languages increased to 22.

NINETY-THIRD CONSTITUTIONAL AMENDMENT ACT, 2005

- Empowered the State to make special provisions for the socially and educationally backward classes or the Scheduled Castes or the Scheduled Tribes in educational institutions including private educational institutions (whether aided or unaided by the state), except the minority educational institutions (clause (5) in Article 15). This Amendment was enacted to nullify the Supreme Court judgement in the Inamdar case (2005) where the apex court ruled that the state cannot impose its reservation policy on minority and non-minority unaided private colleges, including professional colleges. The court declared that reservation in private, unaided educational institutions was unconstitutional.

NINETY-FOURTH CONSTITUTIONAL AMENDMENT ACT, 2006

- Freed Bihar from the obligation of having a tribal welfare minister and extended the same provision to Jharkhand and Chhattisgarh. This provision will now be applicable to the two newly formed states and Madhya Pradesh and Orissa, where it has already been in force (Article 164(1)).

NINETY-FIFTH CONSTITUTIONAL AMENDMENT ACT, 2009

- Extended the reservation of seats for the SCs and STs and special representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a further period of ten years i.e., upto 2020 (Article 334).

NINETY-SIXTH CONSTITUTIONAL AMENDMENT ACT, 2011

- Substituted "Odia" for "Oriya". Consequently, the "Oriya" language in the Eighth Schedule shall be pronounced as "Odia".

NINETY-SEVENTH CONSTITUTIONAL AMENDMENT ACT, 2011

- Gave a constitutional status and protection to co-operative societies. In this context, it made the following three changes in the constitution.
- It made the right to form co-operative societies a fundamental right (Article 19).
- It included a new Directive Principle of State Policy on the promotion of co-operative societies (Article 43-B).
- It added a new Part IX-B in the constitution which is entitled as "The Co-operative societies" (Articles 243-ZH to 243-ZT).

NINETY-EIGHT CONSTITUTIONAL AMENDMENT ACT, 2013

- To empower the Governor of Karnataka to take steps to develop the Hyderabad-Karnataka Region.

NINETY-NINTH CONSTITUTIONAL AMENDMENT ACT, 2014

- It provided for establishment of National judicial commission

HUNDREDTH CONSTITUTIONAL AMENDMENT ACT 2015

- This amendment is Land Boundary Agreement (LBA) between India and Bangladesh

ONE HUNDRED AND FIRST CONSTITUTIONAL AMENDMENT ACT, 2016

- Goods and Services Tax (GST) has commenced with the enactment of the 101st Constitution Amendment Act, 2016 on 8th September, 2016 and the subsequent notifications.
- Articles 246A, 269A and 279A were added in the constitution. The amendment made changes in the 7th schedule of the constitution. The entry 84 of Union List earlier comprised duties on tobacco, alcoholic liquors, opium, Indian hemp, narcotic drugs and narcotics, medical and toilet preparations. After amendment, it will comprise Petroleum crude, high speed diesel, motor spirit (petrol), natural gas, and aviation turbine fuel,

tobacco and tobacco products. Entry 92 (newspapers and on advertisements published therein) has been deleted, they are now under GST. Entry 92-C (Service Tax) has now been deleted from union list. Under State list, entry 52 (entry tax for sale in state) has also been deleted. Entry 54, Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I has now been replaced by Taxes on the sale of petroleum crude, high speed diesel, motor spirit (petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods. Entry 55 (advertisement taxes) have been deleted. Entry 62 (Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling) has now replaced by these taxes only to be levied by local governments (panchayats, municipality, regional council or district council).

ONE HUNDRED AND SECOND CONSTITUTIONAL AMENDMENT ACT, 2018

- The bill seeks to give constitutional status to the National Commission for Backward Classes. It seeks to insert new article 338B in the constitution

which provides for NCBC, its mandate, composition, functions and various officers. Inserted a new article 342-A which empowers president to notify the list of socially and educationally backward classes of that state/union territory.

ONE HUNDRED AND THIRD CONSTITUTIONAL AMENDMENT ACT, 2019

- It changed two fundamental rights, Article 15 and 16. It provides for the advancement of the economically weaker sections of society. A big 10% of all government jobs and college seats will now have a reservation for people outside the high-income bracket. It states that bill is drafted with a will to mandate Article 46 of the Constitution of India, a Directive Principle that urges the government to protect the educational and the economic interests of the weaker sections of society.

ONE HUNDRED AND FOURTH CONSTITUTIONAL AMENDMENT ACT, 2020

- To extend the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Seventy years to Eighty years. Removed the reserved seats for the Anglo-Indian community in the Lok Sabha and state assemblies.

CHAPTER 9: GENERAL PROVISIONS

I) CITIZENSHIP

A citizen is a person who enjoys full membership of the community or State in which he lives or ordinarily lives. Citizens are different from aliens, who do not enjoy all the rights which are essential for full membership of a state.

Part II of the Constitution simply describes classes of persons living in India at the commencement of the Constitution, i.e. 26th January 1950, and leaves the entire law of the citizenship to be regulated by legislations made by the Parliament. In exercise of its power, the Parliament has enacted the Indian Citizenship Act, 1955, which was subsequently amended in 1986.

The Act provides for the acquisition of Indian citizenship after the commencement of the Constitution in following five ways. i.e., birth, descent, registration, naturalization and in-corporation of territory:

a) By birth - Every person born in India on or after Jan 26, 1950, shall be a citizen of India by law of soil (Jus Soli), provided either or both of his/her parents are citizens of India at the time of his/her birth. But this law does not

apply where his/her father is a diplomat of any other country or is an enemy alien at the time of his/her birth.

b) By descent- Broadly, a person born outside India on or after January 26, 1950, is a citizen of India by descent if his/her father is a citizen of India at the time of that person's birth i.e. law of blood (Jus Sanguine)

c) By registration- Any person who is not a citizen of India by virtue of the Constitution or any of the provisions of the Citizenship Act may acquire citizenship by applying for registration for such a purpose. However, he/she should have lived in India for at least 5 years for not less than 90 days a year, immediately before making such an application.

d) By naturalization- A foreigner can acquire citizenship of India by applying for it before a competent authority provided he/she had lived in India for at least 10 years.

e) By incorporation of territories- If any new territory becomes a part of India, after a popular verdict, the Government of India may notify the person of that territory to be citizens of India.

Termination of citizenship:

The Citizenship Act 1955 also lays down three modes by which Indian citizens may lose his/her citizenship. These are renunciation, termination and deprivation.

a. Renunciation is a voluntary act by which a person, after acquiring the citizenship of another country gives up his/her Indian citizenship. This provision is subject to certain conditions.

b. Termination takes place by operation of law when an Indian citizen voluntarily acquired the citizenship of another country. He/she automatically ceases to be an Indian citizen.

c. Deprivation is a compulsory termination of the citizenship of India obtained by Registration to Naturalization, by the Government of India on charges of using fraudulent means to acquire citizenship.

Rights Not Available to Aliens

1. Right not to be discriminated against on grounds of race, religion, caste, sex or place of birth (Art. 15)

2. Right to equality of opportunity in public employment (Art. 16)

3. Right to six fundamental freedoms (Art. 19)

4. Right to suffrage

5. Cultural and educational rights (Art. 29 & 30)

6. Rights to hold certain offices – President, Vice President, Governor, Judges of Supreme Court and the High Courts, Attorney General of India, Comptroller and Auditor General, etc.

7. Right to contest election and get elected to either House at the Centre or State level.

Dual Citizenship:

The Indian Constitution under Art. 11, gives power to the Indian Parliament to legislate on citizenship matters. Accordingly, Parliament enacted the Citizenship Act in 1955. Art 9 says that citizenship means full citizenship. The Constitution does not recognize divided allegiance.

Section 10 of the Citizenship Act provides that a person cannot have allegiance to the Indian Constitution as well as to the Constitution of another country. The Indian courts have consistently ruled against dual citizenship.

If an Indian citizen acquires citizenship of another country, he loses the Indian citizenship. For example, if a child of parents who are citizens of India, is born in another country and does not renounce the citizenship of that country on attainment of adulthood, he/ she loses the Indian citizenship. The reason for the denial of dual citizenship is that citizenship entails certain duties like serving in the army, if the need be.

II) FUNDAMENTAL RIGHTS

The most striking difference between the Government of India Act, 1935 and the present Indian Constitution is the presence of Fundamental Rights in the latter. This is the Magna Carta of India. In the American Constitution these rights are provided in the form of Bill of Rights. The Constitution of India has embodied a number of Fundamental Rights, in Part III of the Constitution. Part III of the Constitution is called the cornerstone of the Constitution and together with part IV (Directive Principles) constitutes the 'conscience' of the Constitution. These

Rights are regarded as fundamental because they are most essential for the attainment, by the individual of his/her full intellectual moral and spiritual stature.

Fundamental Rights are individual rights and without them democracy is meaningless. The Fundamental Rights are included in the Constitution because these rights should be regarded as inviolable under all conditions. A society cannot function freely without Fundamental Rights.

Fundamental Rights are meant to protect the rights and liberties of the people from the encroachment by the Government. They are limitations upon the powers of the Government, legislative as well as executive, and are essential for the the presentation of public and private rights. The danger of encroachment on citizen's liberties is particularly great in the parliamentary system as those who form the Government enjoy a majority support in the legislature and can get laws made according to their wishes.

Fundamental rights are individual rights and these rights are enforceable against the arbitrary invasions by the State. The rights which are given to the citizens by way of fundamental rights as included in Part III of the Constitution are a guarantee against State action, as distinguished from violation of such rights by

private parties. But, the following two rights can be enforced against private individuals also:

a) Right against discrimination and Right against untouchability (Arts. 15(2), 17; and

b) Right against exploitation (Arts. 23, 24).

Are fundamental Rights absolute?

Fundamental Rights do not give absolute power to the individual. They are restricted rights. Unrestricted liberty becomes a license and jeopardizes the liberty of others. If individuals are given absolute freedom and action, the result will be chaos, ruin and anarchy. There should be a balance between individual liberty and social needs. On the other hand, if the State has absolute power over liberty, the result would be tyranny. Thus Constitution empowered the Parliament to provide restrictions on Fundamental Rights, provided such restrictions are reasonable and fair

However, it will be pertinent to note here that the following two Fundamental Rights are absolute rights -

1. Right against untouchability (Art. 17)

2. Children below 14 years shall not be employed in hazardous jobs (Art. 24)

Judicial Review and Fundamental Rights

Art. 13 provides for Judicial Review of all legislations in India. Judicial Review is the power conferred on the High Courts and Supreme Court of India to declare a law unconstitutional, if it is inconsistent with any of the provisions of Part III of the Constitution to the extent of the contravention. The concept of Judicial Review is taken from the American Constitution.

In India, it is the Constitution that is supreme. For a law to be valid, it must conform to the constitutional requirements. It is for the judiciary to decide whether the law is constitutional or not.

Amenability of the Fundamental Rights

As per Art. 13(2), any 'law' made by Parliament, if it takes away or abridges the fundamental rights conferred by Part III of the constitution, shall be declared void to the extent of such contravention. The Supreme Court in a number of cases from Shankari Prasad vs Union of India (1952) to Sajjan Singh vs State of Rajasthan (1965), held that by exercising its amending power under Art. 368, the Parliament can amend even Part III of the Constitution.

But in Golaknath Vs State of Punjab (1967) case, the Supreme Court overruled its earlier decision and held that the Fundamental Rights embodied in Part III had been given a 'Transcendental position' by the constitution and no authority including the Parliament through its amending power under Art. 368, was competent to amend the Fundamental Rights.

However, by the 24th Amendment Act, 1971 the Parliament suitably amended Art. 13 and Art. 368 to empower itself to amend Part III of the Constitution. This Amendment Act was challenged before the Supreme Court in the landmark case, Kesavananda Bharati Vs State of Kerala (1973). The Court in this case held that the Parliament can amend any provisions of the Constitution including Fundamental Rights by its amending power under Art. 368, provided such amendments do not touch the *basic structure* of the Constitution.

Rights Outsides Part III

• Art. 300 - A no person shall be deprived of his property save by authority of law.

• Art 301 - Freedom of trade, commerce and intercourse –Subject to other provisions of this Part, trade commerce and intercourse throughout the territory of India shall be free.

• Art. - 326, Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.

Suspension of Fundamental Rights

In the USA and Australia, the fundamental rights cannot be suspended under any circumstances. But the Constitution of India contains provisions for automatic suspension of Fundamental Rights under certain circumstances, as for e.g. during national emergency under

Art. 352 (i.e., war or external aggression). The Constitution further empowers the President, under Art. 359, to suspend any or all fundamental rights by issuing a separate proclamation during a national emergency. However, the 44th Amendment Act, 1978 prohibits the suspension of Arts. 20 and 21 (protection in respect of conviction of offences and protection of life and personal liberty respectively) even during a national emergency.

Classification of Fundamental Rights

There are six groups of Fundamental Rights:

1. Right to equality (Arts. 14-18)

2. Right to freedom (Arts. 19-22)

3. Right against exploitation (Arts. 23-24)

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

5. Cultural and Educational Rights (Arts. 29-30)

6. Right to Constitutional Remedies (art. 32)

Fundamental Rights exclusive to citizens

a) Art. 15. Prohibition of discrimination only on grounds of religion, race, caste, sex or place of birth.

b) Art. 16. Equality of opportunity in matters of public employment.

c) Art. 19. Protection of certain rights, regarding freedom of speech etc.

d) Art. 30. Right of minorities to establish and administer educational institutions.

Fundamental Rights available to any person on the soil of India (*except the enemy aliens*)

a) Art. 14. Equality before law and equal protection of laws.

b) Art. 20. Protection in respect of conviction for offences.

c) Art. 21. Protection of life and personal liberty.

d) Art. 23. Prohibition of traffic in human beings and forced labour.

e) Art. 25. Freedom of religion.

f) Art. 27. Freedom as to payment of taxes for promotion of any particular religion.

Article 14

Right to Equality - The State shall not deny to any person *equality before the law* or *equal protection of the laws* within the territory of India.

Equality before Law - This is borrowed from the British Constitution. Equality before Law is a negative concept. It means 'no man is above the law' and every person, whatever be his social status, is subject to the jurisdiction of the courts. Equality is an antithesis of arbitrariness. Equality and arbitrariness are sworn enemies.

Exceptions - The rule of equality before law is, however, not an absolute rule and there are a number of exceptions to it. Firstly, foreign diplomats are immune from

the jurisdiction of courts. Secondly, Article 361 provides that the President or the Governor of the states shall not be answerable to any Court for the exercise and performance of the powers and duties of the office. Thirdly, no criminal proceeding shall be instituted or continued against the President or the Governor of a State in any Court during his term of office. Further, no process for the arrest or imprisonment of the President or the Governor shall be issued from any Court during his term of office.

Rule of Law

The guarantee of equality before the law is an aspect of, what Dicey calls, the 'Rule of Law' that originated in England. It means no man is above law and that every person, whatever be his rank or status is subject to the jurisdiction of ordinary courts. Also, it says no person shall be subject to harsh, uncivilized or discriminatory treatment even for the sake of maintaining law and order.

There are three basic meanings of 'Rule of Law' –

1. Absence of arbitrary power or supremacy of law – "a man can be punished for a breach of law and not for anything else."

2. Equality before law – no one is above law.

3. The Constitution is the supreme law of the land and all laws passed by the Legislature must be consistent with the provisions of the Constitution.

Equal protection of law

This is a positive concept. The concept of equal protection of law has been borrowed from the US Constitution. It only means that all persons in similar circumstances shall be treated alike, both in the privileges conferred and liabilities imposed. Equal law should be applied to all persons who are similarly placed, and there should be no discrimination between one person and another.

Art. 14 thus empowers the State to reasonably classify people. But this classification should not be arbitrary, artificial or evasive. There can be discrimination between the groups but not within the groups. Since the State stands for the welfare of all sections of the society, it can make certain discrimination in favour of those who are less privileged. Hence, the income tax for an income upto Rs. 2,00,000/- per annum has been exempted. Under the policy of protective discrimination, the State has made laws in favour of certain sections of the society, e.g. the Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Castes (OBCs). But these three are not classified as a single group. For example,

between the SCs and STs, the latter have got more favours and the OBCs have received the least favours. But within a group, say, Scheduled Caste, there cannot be further discrimination.

Article 15

Art. 15 directs the State not to discriminate against a citizen on grounds only of race, religion, caste, sex, place of birth, etc.. The word 'only' indicates that discrimination cannot be made merely on the ground that one belongs to a particular caste, race, religion, etc. If other qualifications are equal, religion, caste, race, etc. should not be a disability.

Exceptions

1. Special provisions for women and children.

2. Art. 15(4) provides for special favours for groups of citizens who are economically and socially depressed.

Socially and Educationally backward classes

This is not defined in the Constitution. But Art. 340 empowers the President to appoint a commission to investigate conditions of socially and educationally backward classes. On the basis of the recommendations of the commission, the President may specify the backward classes. But the decision of the Government is subject to judicial review.

In various rulings, Supreme Court held that 'Backwardness', as defined in Art. 15(4), should be both social and educational, and not either. Poverty, occupation, place of habitation may all be relevant factors to be taken into consideration. Though poverty is not the sole test of backwardness, it is a relevant factor in the contest of social backwardness.

Article 16

Equality of opportunity in matters of public employment. No citizen shall, on grounds only of race, religion, caste, sex, descent, place of birth or residence be ineligible for, or discriminated against in respect of any employment or office under the State. But the State is free to specify qualifications. There cannot be any other ground for non-eligibility.

Exceptions

a) Residence can be made as a restriction for employment on the basis of historical aspects.

b) Special favours can be given to the backward classes if they are not adequately represented.

c) Religion can be a ground for discrimination in special cases. There are religious institutions taken over by the State. So the religious posts are reserved for people of the same religious denomination.

Constitutional Protection of SC/STs

The goal of establishing an egalitarian society is the foundation of the Indian Constitution. In India, the additional burden of history in the form of inherited social distortions taking ethnic and caste dimensions needs to be addressed with preferential and special constitutional steps in support of the SC/ST communities. The Constitution provides the following support to them:

• Art. 15 eliminates disability with regard to access to public places.

• Art. 16 provides equality of opportunity which is enriched by protective measures for the SC/STs in matters of State employment and appointment.

• Art. 18 abolishes untouchability and the accused has to prove his innocence.

• The President is empowered to draw a list of SC/STs in consultation with the Governor of each state subject to Parliamentary amendments (Arts. 341-342).

• The property of these communities cannot be taken away unless specified authorities permit the same (Art.19.5).

• National Commission of SC/STs has been set up by the 65th Amendment Act in 1990, which was further bifurcated into National Commission for SC and National Commission for ST by way of the 89th Constitution Amendment Act (2003) (Art. 338 & 338A).

• The President may appoint a commission to review the functioning of the Scheduled areas and the welfare of the STs in the areas.

• The President may direct a state to draw and execute schemes for the welfare of the STs.

• One of the criteria for extending the Central grants-in-aid of the states is the obligation of the latter to meet the cost of the welfare schemes for the SC/STs.

• Special provisions are laid down in the 5th and 6th Schedules of the Constitution, which are read along with Art. 244 for the administration of areas inhabited by the STs.

• In states like Madhya Pradesh, Bihar etc. there shall be ministers in charge of welfare of SC, ST and OBC. There are seats and constituencies reserved for the SC/STs. It is a temporary provision that is being extended, so far, for every ten years.

Article 17

Abolition of untouchability - Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence, punishable in accordance with law. But the Constitution does not prescribe any punishment under this Article.

The Parliament enacted the 'Untouchability (Offences) Act, 1955', which prescribed punishment for the practice of untouchability. This Act was amended by the 'Untouchability (Offences) Amendment Act, 1987', in order to make the

untouchability laws more stringent. Further, the name of the original Act was changed to Civil Rights (Protection) Act, 1976. However, the Act does not define what is 'Untouchability'. According to the Supreme Court, 'Untouchability' should not be understood in its literal or grammatical sense. It is to be understood as the 'practice as it had developed historically'. Art. 17 also imposes a duty on the public servants to investigate such offences.

Article 18

Abolition of title - 'No title, not being a military or academic distinction, shall be conferred by the State.' 'No citizen of India shall accept any title from any foreign State'. It also prohibits a foreign national under the employment of the State to receive any title from any foreign state without the consent of the President. But Art. 18 does not prescribe any punishment for the offence. Parliament is free to make a law for punishment.

Article 19

Right to Freedom - Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right –

(a) To freedom of speech and expression.

(b) To assemble peacefully and without arms.

(c) To form associations or unions.

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

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

(f) To property (*removed by the 44th Constitutional Amendment, 1978 and transferred to Art. 300A*)

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

Restrictions - The freedom of speech and expression is not absolute. The State can impose reasonable restrictions on grounds of security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation etc. Also, the right to form associations, unions etc. does not give any fundamental right to strike. Moreover, an individual has the right to or not to join an association.

The Supreme Court in 1995, in the 'airways case', held that the freedom of speech and expression was limited not only by 'reasonable restrictions', but also by State regulations associated with the use of public property. However, the State-ownership of radio and TV violates the freedom of speech and expression and so a public autonomous authority is to be set up so that the State responsibility of collective benefit and the individual need for self-expression are balanced.

Article 19 and Judicial Review

The six basic freedoms prescribed in Art. 19 are not absolute. The State can impose reasonable restrictions. The expression 'reasonable restriction' has brought with it the doctrine of Judicial Review. In determining the reasonableness, the court looks not only to the surrounding circumstances, but also, other laws which were passed as a single scheme.

Article 20

Protection in respect of conviction for offences. This protection is available against the following three types of convictions -

a) *Ex-post Facto Legislation*

This means enacting a law and giving it a retrospective (i.e.,from a previous date/year) effect. This power has been conferred to the Parliament by our Constitution. This is applicable only for civil legislation while criminal legislation cannot be given retrospective effect.

b) *Double Jeopardy*

This means that an individual can be punished for a crime only once and also not beyond the period prescribed by the authority. However, if a civil servant is dismissed on criminal charges, his dismissal does not come under Double Jeopardy and he could be well prosecuted further in the court.

c) *Right against self-incrimination*

No person accused of an offence shall be compelled to be a witness against himself. The cardinal principle of criminal law is, an accused should be presumed to be innocent till the contrary is proved. It is the duty of the prosecution to prove the offence.

Freedom of Press

The Indian Constitution does not provide for the freedom of press separately. It is implicit in Art. 19, which grants freedom of speech and expression. Freedom of expression includes not only expression of one's own views but of other's as well. The restrictions that limit the freedoms in the case of individuals apply to the press also.

The laws that apply to press include:

• Taxation;

• Laws regulating industrial relations

• Regulations of the conditions of service of the employees;

• Defamation, contempt of House and Court etc.

In its interpretation of Art. 19 in the 'Airways case' (February, 1995), the Supreme Court reiterated that the Press would be bound by the rules of the Government, expressed through an autonomous body.

Article 21

Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law.

Inferred Rights

The composite or inferred rights are those rights of the citizens which are not explicitly provided by the Constitution but have been derived by liberal interpretation of the various provisions of the Constitution.

Some of the inferred rights from Art. 21 are:

1. Right to clean air.

2. Right to health of the workers.

3. Right to privacy (i.e. to be left alone).

4. Right to live with dignity.

5. Right against denial of wages and arbitrary dismissal of workers.

6. Right to speedy trials for under trials.

7. Right against cruel punishment

8. Right to shelter.

This Article provides Right to Life and personal liberty except on the ground of procedure established by law. Over the years, this Article has undergone a sea change and has become the most important and fundamental right. The Supreme Court, through a liberal interpretation of the Article, has derived a number of composite or inferred rights. Now, the Article stands not merely for the Right to Life and personal liberty, but also the right to dignity and all other attributes of human personality that are essential for the full development of a person. That is why Art. 21 has become the foundation stone of Part III of the Constitution.

The Supreme Court and the High Courts have been enlarging the scope of the Article with various activist judgments. In 1992 and 1993, in the case of capitation fees being charged by some professional colleges, the Supreme Court rules that right to education upto fourteen years of age is a part of Right to Life. In some judgments, the Supreme Court held that right to clean and hygienic conditions of life is a part of Right to Life. In recent years, the Supreme Court and High Courts have ordered many industries to close down for the pollution they are

generating thus, violating the right to clean surroundings, which is a part of Right to Life.

Procedure Established by law and the Due Process of Law

The procedure established by law means the uses and practices as laid down in the statute or law. Under this doctrine, the Court examines a law from the point of view of the Legislature's competence and sees whether the prescribed procedures have been followed by the Executive. The Court cannot go behind the motive of the law and cannot declare it unconstitutional, unless the law is passed without procedure established by law. Therefore, the Court relies more on the good sense of the Legislature and strength of the public opinion. This doctrine protects individual against the executive actions only.

On the other hand, the phrase due process of law means that the court should examine the law, not only from the point of view of legislature's competence, but also from the broad view of the intention of the law. Thus it provides greater power to the court. The Constitution of India provides for the procedure established by law. But, the Supreme Court in the Maneka Gandhi case, in 1978, interpreted Art. 21 to include the phrase "due process of law" in it. Thus, Art. 21 now protects an individual both against legislative and executive actions.

Article 21 A

Right to education – The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

Article 22

Protection against arrest and detention against certain cases - The Article says that the Authority cannot arrest or detain a person without properly informing him of the grounds for such arrest/detention. The detained or arrested person must be produced before the nearest magistrate within 24 hours of arrest (excluding the holidays and time taken during the journey). Further, the period of detention cannot be beyond what is authorized by the magistrate.

Preventive Detention - A person can be detained under preventive detention, if there is a suspicion or reasonable probability of that person committing some act which is likely to cause harm to the society and endanger the security of the society. Article 22 does not apply in case of preventive detention because the person is arrested on the ground of suspicion and is meant to prevent him from committing a serious crime.

However, there are certain provisions in Article 22 for the protection of such persons. These provisions are –

a. A person detained on the ground of suspicion shall be detained for a maximum period of two months. If the government seeks to detain the arrested person beyond this period, his detention must be authorized by an 'Advisory Body', which is purely judicial.

b. The detained person must be informed about the reason of his arrest, as soon as possible.

c. The detained person must have the earliest opportunity to present his case before the authority of law.

In the case of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA); and National Security Act (NSA), the period of preventive detention is 6 months or more. Parliament is given the power to determine the maximum period for which a person can be detained on preventive grounds. The Parliament passed the Preventive Detention Act in 1950. Later, in 1971, Maintenance of Internal Security Act (MISA); IN 1974, COFEPOSA; IN 1980, The National Security Act were passed.

Article 23

Prohibition of traffic in human beings and forced labour - Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Traffic in Human Being: selling and buying men and women like goods and includes immoral traffic in women and children for immoral and other purposes. It is prohibited to force a person to render service, where he was lawfully entitled not to work or to receive remuneration of services rendered by him. One shall not be forced to provide labour or services against his will even if remuneration is paid. If remuneration is less than minimum wages, it amounts to forced labour under Art. 23.

Article 24

Prohibition of employment of children in hazardous jobs: No child below the age of fourteen years shall be employed to work in any factory or mining or engaged in any other hazardous employment.

This provision is in the interest of public health and safety of the lives of children. In M***.C. Mehta Vs. State of Tamil Nadu*** case, the Supreme Court held that the State authorities should protect economic, social and humanitarian rights of millions of children, working allegedly in public and private sectors.

Right to Freedom of Religion

India is a secular state. But it is not an in irreligious or atheist state. It is the ancient doctrine in India that the State protects all religions; but interferes with none. The State is concerned with relations between man and man; not man and God.

Article 25

Freedom of conscience, profession, practice and propagation of religion: Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

However, the Right to propagate does not mean inducing or alluring a person to join any religion.

Conscience: Absolute inner freedom of the citizen to mould his / her own relation with God in whatever manner he likes.

Profess: to declare freely and openly one's faith and belief.

Practise: to perform the prescribed religious duties, rites and rituals and to exhibit his religious beliefs.

Propagate: Spread and publicise his/her religious views for the edification of others. It only indicates persuasion and exposition without any element of coercion.

Restrictions on Freedom of Religion

a) Religious liberty is subject to public order, morality and health - For e.g., in the name of religion, one cannot practice untouchability. There cannot be indecent dressing. One cannot forcibly convert another person. Right to wear 'kripan' are acceptable in the Sikh community; but not any number of 'kripans'.

b) Regulation of economic, financial, political and secular activities associated with religious practices - For e.g., sacrifice of cows on the occasion of Bakrid is not an essential part of religion. Hence, the State law forbidding slaughter is valid.

c) Social welfare and social reforms - This clause declares that where there is conflict between the need for social welfare and reform and religious practice, religion must yield. Social evils cannot be practiced in the name of religion, e.g., polygamy is not an essential part of Hindu Religion, hence can be regulated. Similarly, Prohibition of Sati and Devadasi systems.

Conversions

India being a secular country, with Arts. 25-28 containing the essence of secularism and the Preamble to the Constitution proclaiming the same categorically, the people of the country are given the freedom of conscience and the right to freely profess, practice and propagate religion, subject to public order, morality, health and so on (Art. 25.1).

There has been a debate over whether Art. 25.1 can be understood as granting person the right to convert others to his/her religion. But a Constitution Bench of the Supreme Court, in a group of related cases in 1977 called ***the Rev. Stainislau vs. State of Madhya Pradesh and Others*** case, ruled that Art. 25.1 does not give the right to convert but only the right to spread the tenets of one's own religion. The Supreme Court was delivering the verdict about the legislation made in

Madhya Pradesh and Orissa to outlaw conversions based on force, fraud and allurement in 1968.

Article 26

Freedom to manage religious affairs - Subject to public order, morality and health, every religious denomination or any section thereof shall have the right–

a) to establish and maintain institutions for religious and charitable purposes.

b) to manage its own affairs in matters of religion.

d) to own and acquire movable and immovable property; and

e) to administer such property in accordance with law.

Article 27

Freedom as to payment of taxes for promotion of any particular religion- No person shall be compelled to pay any taxes for religious purposes. But if the government has done any service for a particular religious denomination, the government is free to charge fees from the devotees.

Article 28

Freedom as to attendance at religious instruction or religious worship in certain educational institutions - Educational institutions have been divided into the following four categories:

a) Wholly maintained by the State.

b) Recognised by the State.

c) Receive aid out of the State funds.

d) Administered by the State, but established under a religious endowment.

In the first case, there can be no religious instructions whatsoever. In the second and third cases, religious instructions can be imparted, but the pupils cannot be compelled to attend such instructions. In the fourth case, there is no restriction whatsoever, as far as religious instructions are concerned.

Article 29

Protection of interests of minorities - Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

Article 30

Right of minorities to establish and administer educational institutions - All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

It provides to religious, educational and cultural institutions, the right to own, possess and dispose immovable property. The State shall give due compensation in case of acquisition of such property. The right to preserve language, culture or script can be implemented through educational institutions. Art. 30(1) provides the Right to 'establish' and 'administer' institutions. *Administer* means the management of affairs of the institution.

Minority institutions and Regulatory measures

Article 30 confers the right to establish and administer an institution by a minority community. But, states can regulate the working of such institutions. Regulations should pass the dual test of reasonableness and there being an effective vehicle of education for the minority community. The Supreme Court observed that the Right to administer is not the right to maladminister. Also, management should be effective, but Universities cannot regulate the composition and personnel of the managing bodies. Regarding selection of teachers, the Supreme Court held that it is a part of the administration. But, the University can put basic qualifications for selection.

III) THE WRITS

For enforcement of fundamental rights, the judiciary has been armed with the power to issue the writs.

Article 32 provides institutional framework for the enforcement of the Fundamental Rights by the Supreme Court. Dr. B.R. Ambedkar called this Article as “the Fundamental of the fundamental rights” and the heart and soul of the Constitution.

To enforce the Fundamental Rights, the Supreme Court is empowered under Art. 32 to issue writs of various forms. The concept of issuing writs is taken from the UK. The five forms of writs are as follows:

a) *Habeas Corpus*: It literally means 'to have a body' i.e. to be produced before the court. This kind of writ is issued to protect personal liberty of an individual against the arbitrary action of both the State and private individuals. The aggrieved person can even claim for compensation against such action.

b) *Mandamus*: It literally means 'command'. This kind of writ is issued against a public authority or a public officer and inferior courts for purpose of enforcing legal rights only. However, this writ cannot be issued against the President and the Governors. Also private right cannot be enforced by the writ of the mandamus.

c) *Prohibition*: This kind of writ is issued by the higher courts to the lower courts or quasijudicial bodies (tribunals, etc.) when the latter exceed their judicial authority. The objective is to keep the inferior courts or the quasi-judicial bodies within the limits of their respective jurisdiction.

The difference between 'Mandamus' and 'Prohibition' is that while the former can be issued against judicial as well as administrative authorities, the latter is issued only against the judicial or quasi-judicial authorities.

d) *Certiorari*: It is similar to Prohibition. The only difference is that this writ is issued to quash the order of a lower court or the decision of a tribunal in excess of its jurisdiction.

While Prohibition is issued to prevent an inferior court or tribunal to go ahead with the trial of a case in which it has assumed excess of jurisdiction. The purpose of this writ is to secure that the jurisdiction of an inferior court or tribunal is properly exercised and that it does not usurp the jurisdiction it does not possess.

e) *Quo Warranto*: It literally means "What is your authority". This kind of a writ is issued to ensure that the person holding a public office is qualified to hold the office. No time-limit is prescribed for issuing the writs in the Constitution and has been left to the Courts to decide this.

Difference between the Writ Jurisdiction of the Supreme Court and High Courts

1. The Supreme Court issues the Writ (under Art. 32) only in cases of the violation of the Fundamental Rights, whereas the High Courts (under Art. 226) can issue the writs not only for the enforcement of the Fundamental Rights but also for redressal

of any other injury or illegality, provided certain conditions are satisfied. Thus in a way the writ jurisdiction of the High Court is wider than the Supreme Court.

2. Art. 32 imposes on the Supreme Court a duty to issue the Writs, whereas no such duty is imposed on the High Court by Art. 226.

3. The jurisdiction of the Supreme Court extends all over the country, whereas that of the High Court only to the territorial confines of the particular sate and the Union Territory to which its jurisdiction extends.

IV) RIGHT TO INFORMATION

Right to information has been granted to every citizen of India under Right to information Act, 2005 which came into force on 12th October, 2005.

It is not a Fundamental Right but it entails a clause for penalty in case of delay in giving information to the applicant.

Information Commission has been set- up at central and state levels to oversee implementation of the Act.

V) DIRECTIVE PRINCIPLES OF STATE POLICY

The enumeration of the Directive Principles of the State Policy is a unique feature of the Indian Constitution. This novel feature of the Constitution has been adopted from the Constitution of Ireland. The concept is the latest development in the Constitutional governments throughout the world, with the growing acceptance of a 'welfare state'. The Directive Principles of the Constitution of India are a unique blend of Socialism, Gandhism, Western Liberalism, and the ideals of the Indian freedom movement. They are in the nature of directions or instructions to the State.

Art. 38-51 in Part – IV of the constitution, deal with the provisions of the Directive Principles. Art. 38 clearly directs the state to secure and protect a social order which stands for the welfare of the people.

Art. 37 says that Directive Principles are not justiciable but are fundamental to the governance of the country, and the State has the duty in applying the DPSPs. If they are not acted upon by the State, no one can move the courts. The reasons for making the DPSPs explicitly unjusticiable are that they require resources which the State may not have. However, with the economic development and growth, the state should strive to achieve goals set out in this part. For example, the Right to work enshrined in Art. 41 could not be guaranteed in the beginning, however, with the enactment of the Mahatma Gandhi National Rural Employment Guarantee Act, every household has been given the right to work for at least 100 days in a year.

Similarly, poverty in India makes children take to labour. As a consequence, making primary education universal as well as compulsory was not considered practical in the beginning and was kept as a DPSP at Art 45. This has now been ensured for children between the age of 6 and 14 years and has been introduced as a fundamental right at Art 21 A. Thus, the DPSPs also require a modicum of economic development as a prerequisite for their enforcement.

There are other DPSPs which are irrespective of the economic condition of the nation, such as the uniform civil code, which is difficult to be enforced in a country where there is rampant religious superstition, illiteracy and mutual fear among religious communities. The code can only be brought about in the form of a law when suitable conditions are built up and all the concerned communities develop consensus for it. Therefore, DPSPs have to be implemented as and when the socio material conditions in the country improve.

These principles can be classified under the following categories for a better understanding:

(a) *Socialist Principles*

Art. 38 - To secure a social order for the promotion of welfare of the people.

Art. 39 - To strive to minimise inequalities of income.

Art. 39(b) - Ownership and control of material resources of the community shall be so distributed so as to subserve the common good.

Art. 39(d) - Equal pay for equal work for men and women.

Ar. 39(e) - Health and strength of workers, and the tender age of children must not be abused.

Art. 39 A - Equal justice and free legal aid.

Art. 41 - Right to work to education and to public assistance in certain cases.

Art. 42 - Provision of just and humane conditions of work and maternity relief.

Art. 43A - Participation of workers in the management of industries.

Art. 45 - Provision for early childhood care and education to children below the age of six years.

(b) *The Gandhian Principles*

Art. 40 - Organisation of Village Panchayats

Art. 46 - Promotion of education and economic interests of SCs, STs and other weaker sections.

Art. 45 - Provision for early childhood care and education to children below the age of six years.

Art. 48 - Organisation of agriculture and animal husbandry on modern and scientific lines to prohibit the slaughter of cows, calves and other milch and draught animals

Art. 47 - To bring about the prohibition of intoxicating drinks and drugs that are injurious to health.

Art. 43 - To promote cottage industries

(c) *The Western Liberal Principles*

Art. 44 - Uniform Civil Code for the citizens

Art. 45 - Provision for early childhood care and education to children below the age of six years.

Art. 50 - Separation of judiciary from executive.

Art. 51 - To promote international peace and amity

Art 49 - To preserve historical monuments

Difference between Fundamental Rights and Directive Principles

There are three significant differences between the two. These are:

a) Whereas the Fundamental Rights provide the foundation of political democracy in India, the Directives spell out the character of social and economic democracy in India.

b) Fundamental Rights are in the form of negative obligations of the State i.e., injunctions against the actions of the State. The Directive Principles are, on the contrary, positive obligations of the state towards the citizen.

c) A vital difference between the two is that, whereas the Fundamental Rights are justiciable, the Directive Principles are non-justiciable, thus lacking legal sanctity.

Relationship between the Fundamental Rights and Directive Principles

Although unlike the Fundamental Rights (Part III), the Directive Principles (Part IV) are not justiciable, Art. 37 declares that the Directive Principles are fundamental in the governance of the country and it shall be the duty of the State to

apply the Directive Principles in making laws. But here the question of the validity of Directive Principles arises, if laws made by the State giving effect to them violate the Fundamental Rights. The Supreme Court in various cases has evolved a 'doctrine or theory of harmonization'. It has further stated that both the Fundamental Rights and Directive Principles are in fact supplementary to each other and together constitute an integrated scheme. However, it has also held that where this is not possible, the Fundamental Rights shall prevail over the Directive Principles. On this ground the Supreme Court held the Bank Nationalization Act and the Privy Purses Abolition Act as unconstitutional.

The Parliament, by the 25th Amendment Act 1971, introduced a new Article 31-C which stated that if the State enacts any law giving effect to the Directive Principles namely, Art. 39(a) and Art. 39(b) and in the process if the law violates the Fundamental Rights enumerated in Arts. 14, 19 and 30, such law(s) cannot be (1) held void for impinging the three Fundamental Rights and (2) questioned in any court of law. The 25th amendment was challenged before the Supreme Court in the Kesavananda Bharati case in 1973. The Court upheld the 25th Amendment Act, but struck down the 2nd part on the ground that the 'judicial review' is a part of the 'basic structure' of the Constitution, which no authority can change.

The Parliament again, by the 42nd Amendment (1976) amended Art. 31-C to extend it to include all the Directive Principles. But this change (as made under 42nd Amendment) was declared by the Supreme Court as unconstitutional in the Minerva Mills case (1980) on the ground that it affects the balance of judicial power. Thus, the present position is that only Art. 39(a) and Art. 39(b) can be given precedence over Arts. 14, 19 and not all the Directive Principles. [Art. 31 no longer exists, for by 44th Amendment, the right to property (earlier under Art. 31) has been made a Constitutional right under Art. 300A]. Also the court held that there exists a balance between Parts III and IV and while giving judgement, a harmonious reading of the two is important rather than giving any general preference to the Directives.

Importance of the Directive Principles

The Directive Principles have been criticized chiefly for their lack of legal sanction. But Art. 37 declares Directive Principles as fundamental in the governance of the country. It should also be kept in mind that it is due to practical necessity (basically, lack of finance on the part of the States to fulfil the provisions of the Directive Principles) that the Directive Principles have not been given legal status and not because they have an inferior status. These principles represent not only the temporary will of the Constituent Assembly as observed by B.R.

Ambedkar and later Chief Justice Kania, but the deliberate wisdom of the country expressed through the Constituent Assembly. Since the Government is answerable to the people, the Directive Principles act as a signpost to all succeeding governments. The Directive Principles provide the yardstick for assessing the success or failures of these governments.

VI) FUNDAMENTAL DUTIES

This is included in the Indian Constitution by the 42nd Amendment Act, 1976. It is based on the Japanese model. Ten duties of the citizens towards the state have been enumerated by inserting Art. 51A in Part IV-A of our Constitution.

Rights and Duties are correlative. These serve as a constant reminder to every citizen that, while the Constitution specifically confers on them certain Fundamental Rights, it also requires them to observe certain basic norms of democratic conduct and behaviour. It was argued that in India, people lay emphasis only on rights and not on duties.

None of the major democracies in the world has Fundamental Duties. Only Japan has made some mention of them. France has a passing reference only. It does not mean that people of these countries behave in an irresponsible manner. In all these countries, citizens have a high sense of patriotism as a result of education

and training in the elementary duties and obligations of citizenship. But in socialist countries, there are specific Fundamental Duties.

The ten duties require the citizens:

1. To abide by and respect the Constitution, the National Flag, and the National Anthem.

2. To cherish and follow the noble ideals of the freedom struggle.

3. To uphold and protect the sovereignty, unity and integrity of India.

4. To defend the country and render national service when required.

5. To promote common brotherhood and establish dignity of women.

6. To preserve the rich heritage of the nation's composite culture.

7. To protect and improve natural environment.

8. To develop scientific temper, humanism and spirit of inquiry.

9. To safeguard public property and abjure violence.

10. To strive for excellence in all spheres of individual and collective activity

VII) THE PRIME MINISTER AND THE UNION COUNCIL OF MINISTERS

In a parliamentary system of Government, the Prime Minister occupies a unique position as the most powerful functionary who controls both the Parliament and tile Executive.

The Prime Minister is appointed by the President. Other ministers are appointed and/or dismissed by the President on the advice of the Prime Minister.

The Prime Minister must be the leader of the party in majority in the Lok Sabha or a person who can win the confidence of the majority in that House. As the bead of the Council of Ministers, the Prime Minister (PM) is the head of the Government. Also, he she is the leader of his/her party or / and of a coalition of parties in Parliament and usually the Leader of the Popular House.

The PM enjoys large powers of patronage. All the ministers are appointed at his /her recommendation and stand dismissed at his / her demand. The PM allots work among the ministers. Also, he / she can change their portfolios at will.

The PM is the channel of communication between the Council of Ministers and the President. Ministers get the salaries and allowances etc. as payable to members of

parliament. In addition they get a sumptuary allowance at a varying scale and a residence, free of rent. Cabinet Ministers attend meeting of the Cabinet.

Ministers of State are not members of the Cabinet and can attend a Cabinet Meeting only if invited to attend any particular meeting. A Deputy Minister assists the Minister in discharge of his duties and takes no part in Cabinet meetings.

There is no bar to the appointment of a non- MP as Minister, but he cannot continue as Minister for more than 6 months unless he secures a seat in either House of Parliament.

As per Art. 75(3) the Council of Ministers are collectively responsible to the Lok Sabha. This means that if a resolution is defeated in the Parliament, the entire ministry collapse. This concept evolved in England and the motive behind this is that the Government should function as a homogenous body. To maintain this, the Prime Minister has the right to refer to the President,

the removal of dissident minister(s) because technically the ministers are individually responsible to the President (Art. 75(2)) i.e., though the ministers are collectively responsible to the Legislature, they shall be individually responsible to the head of the Executive and shall be liable to dismissal, even when they may have the confidence of the Legislature. Usually, the Prime Minister asks the

undesirable colleague to resign, which the latter readily complies with in order to avoid the odium of a dismissal, (an instance being the resignation of Ram Jethmalani from Vajpayee Cabinet in July 2000)

The Attorney-General is the first Law Officer of the Government of India, who gives advice on legal matters and performs other duties of a legal character as assigned to him by the President. The Attorney-General for India is appointed by the President and holds office during the pleasure of the President. He must have the same qualifications as are required to be a judge of the Supreme Court. He discharges the functions conferred on him by the Constitution or any other law {Ref.: Art. 76}.

The Attorney-General for India is not a member of the Cabinet. But he has the right to speak in the Houses of Parliament or in any Committee thereof, but he has no right to vote {Ref.: Art 88). He is entitled to the privileges of a member of Parliament [Art. 105(4)]. In the performance of his official duties, the Attorney-General has the right of audience in all Courts in the territory of India. He is not a whole-time counsel for the Government nor a Government servant.

VIII) THE COMPTROLLER & AUDITOR GENERAL OF INDIA

The CAG controls the entire financial system of the Union as well as the States {Art. 148 }.

Though appointed by the President, the Comptroller and Auditor- General can be removed only on an address from both Houses of Parliament on the ground of proved misbehaviour or incapacity. His salary and conditions of service are laid down by Parliament and cannot be varied to his disadvantage during his term of office.

The term of office of the Comptroller and Auditor-General (CAG) is 6 years from the date on which he assumes office.

CAG vacates office on attaining the age of 65 years even without completing the 6-year term. He can resign by writing under his hand, addressed to the President of India. He can be removed by impeachment {Arts. 148(1); 124(4)1.}

His salary is equal to that of a Judge of the Supreme Court. Other conditions of his service are similar to an I. A. S. of the rank of Secretary to the Government of India. The salaries, etc. of the Comptroller and Auditor-General and his staff and

the administrative expenses of his office are charged upon the Consolidated Fund of India and thus non-notable {Ref.: Art. 148 (6)}.

The main duties of the Comptroller and Auditor General

-To audit and report on all expenditure from the Consolidated Fund of India and of each state and each Union Territory having a Legislative Assembly as to whether such expenditure has been in accordance with the law.

-To audit and report on all expenditure from the Contingency

IX) THE PARLIAMENT OF INDIA

The Parliament of India consists of the President, the Lok Sabha and the Rajya Sabha. (Art. 791) The President is a part of the Legislature, even though he or she does not sit in Parliament.

The most important function of the Parliament are:

(a) to legislate i.e., make legislations for development which benefits the society.

(b) exercise control over the Executive.

(c) The Parliament provides the Council of ministers as ministers are the members of Parliament.

(d) It has financial control over the Executive. The Parliament is the sole authority to raise taxes.

(e) It provides an opportunity to deliberate on various policies and measures before their implementation. Thus, the Parliament is also an authoritative source of information, collected and disseminated through the debates and through the specific medium of 'Questions' to ministers.

X) RAJYA SABHA

The Rajya Sabha consists of two categories of members – elected and nominated – who are members for a period of six years. They are indirectly elected by the members of the State legislatures. The election is scheduled in such a way that one-third of its members retire every two years. The Rajya Sabha represents the federal character of the Constitution in the Parliament.

The Council of States shall consist of

(a) Twelve members to be nominated by the President in accordance with the provisions and

(b) Not more than two hundred and thirty eight representatives of the States and of the Union Territories.

(only Union Territories of Delhi and Pondicherry have representation in the Rajya Sabha).

Criteria for nomination

The members to be nominated by the President are persons having special knowledge or practical experience in respect of such matters as the following, namely:- Literature, science, art and social service.

Qualifications for the Membership of Rajya Sabha

Following are the qualifications needed to be elected to the Rajya Sabha:

• The person must be a citizen of India;

• The person must not be below the age of 30 years.

• He must be an ordinary citizen / registered voter in the State or Union Territory from where he is intended to be chosen.

• He should not hold any office of profit.

Chairman and Deputy Chairman of the Rajya Sabha

Chairman – The Vice-President of India is the ex-officio chairman of the Rajya Sabha. He presides over the proceedings of the Rajya Sabha as long as he does not act as the President of India during a vacancy in the office of the President.

Deputy Chairman – The Deputy Chairman is elected by the Rajya Sabha from amongst its members. In the absence of the Chairman, Deputy Chairman presides over the functions and proceedings of the House.

Removal from the office of Chairman or Deputy Chairman

The Vice President of India is the ex-officio Chairman of the Rajya Sabha. The Chairman can be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council, which is to be approved by the Lok Sabha by a simple majority. But such a resolution can only be moved by giving at least fourteen days' notice to the Chairman.

A Deputy Chairman shall vacate his office if he ceased to be a member of the Council. He may resign his office by writing to the Chairman. He may also be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council [Art.90]. But such a resolution can only be moved by giving at least 14 days' notice to him

XI) LOK SABHA

The Lok Sabha is the popular House of the Parliament because its members are directly elected by the citizens of India. All the members of the Parliament are popularly elected, except not more than two members of the Anglo-Indian community, who are nominated by the President. This is basically due to the fact that they are not concentrated in a particular constituency and hence the Anglo-Indian community, in the opinion of the President, is not adequately represented in the Lok Sabha.

In the Constitution, the strength of the Lok Sabha was provisioned to be not more than 552-530 from the States. 20 from the Union Territories and 2 nominated from the Anglo-Indian community. But the Constitution empowers the Lok Sabha to readjust strength. The Parliament has fixed the strength of the Lok Sabha as 545 (530+13+2 respectively)

Tenure:

The normal tenure of the Lok Sabha is five years. But the House can be dissolved by the President before the end of the normal tenure. Also, the life of the Lok Sabha can be extended by the Parliament beyond the five year term during the period of national emergency, proclaimed under Art. 352. But this extension is for a period of not more than one year at a time (no limit on the number of times in the Constitution). However, such extension shall remain in force for not more than six months after the emergency has been revoked.

Qualifications for the membership of Lok Sabha

To become a member of the Lok Sabha, the person must –

a) Be a citizen of India;

b) Be not less than 25 years of age;

c) Be a registered voter in any of the Parliamentary constituencies in India; and

d) Should not hold any office of profit

Vacation of Seats

Provisions for vacation of the seats in the Parliament are enumerated in Art. 101. These are:

a) No person shall be a member of both the Houses of Parliament. If a person is chosen for both the Houses, he/she shall have to vacate membership of either House.

b) If a member of either House is disqualified under Art. 102(1) and (2).

c) If a member resigns in writing addressed to the Chairman (Council of States) of Speaker (House of People) as the case may be, and if his resignation is accepted by the Chairman or the Speaker, as the case may be.

d) If a member or either House absents himself from the House without its permission for a period of more than sixty days, the House may declare his seat vacant.

Speaker and deputy speaker of the Lok Sabha

The Speaker is the Chief Presiding Officer of the Lok Sabha. The two officers are elected from amongst the members of the Lok Sabha after a new Lok Sabha is

constituted. The Speaker presides over the meetings of the House and his rulings on the proceedings of the House

are final. He has the responsibility to uphold the dignity and privileges of the House. In the absence of the Speaker, the Deputy Speaker performs the Speaker's duties. The Speaker continues to hold office even after the Lok Sabha is dissolved till the newly elected Lok Sabha is constituted.

The Speaker and Deputy Speaker may be removed from their offices by a resolution passed by the House with an effective majority of the House after a prior notice of 14 days to them.

The Speaker, to maintain impartiality of his office votes only in case of a tie i.e., to remove a deadlock arising from equality of votes

Special Powers of the Speaker

There are certain powers which belong only to the Speaker of Lok Sabha while similar powers are not available to the Chairman of Rajya Sabha. These are –

- Whether a Bill is Money Bill or not is certified only by the Speaker and his decision is final and binding.

• The Speaker, or in his absence, the Deputy Speaker, presides over the joint sittings of the Parliament.

• The Committees of Parliament (e.g. Public Accounts Committee etc.) function essentially under the Speaker and their chairpersons are also appointed or nominated by him. Members of the Rajya Sabha are also present in these committees.

• If the Speaker is a member of any Committee, he is the ex-officio Chairman of such a Committee.

Disqualification of the Members of Parliament

The members of the Parliament (Lok Sabha and Rajya Sabha) can be disqualified on one or more of the following grounds enumerated in Art. 102 of the Constitution –

Clause (1)

• If he holds any office of profit under the Union or the State government, other than an office declared by Parliament, by law, not to disqualify its holder.

• If a competent court declares him to be of unsound mind;

• If he is an undischarged insolvent;

• If his citizenship is found forged or if he voluntarily acquires the citizenship of any foreign country or is under any acknowledgement of allegiance or adherence to a foreign State;

• If he is so disqualified under any law by Parliament:

In case of any dispute regarding the disqualification on the above grounds the President's decision, in accordance with the opinion of the Election Commission, shall be final (Art. 103)

Clause (2) (inserted by 52nd Amendment, 1985):

If he is so disqualified under the Tenth Schedule i.e., on the grounds of defection

XIII) JUDICIARY

Unlike the distribution of legislative and executive powers between the states and the Union, the Indian Constitution does not adopt a similar division of judicial powers. Contrary to the situation in USA and Australia where the States have their own Constitutions, separate from the Federal one, the judicial system

in India is unified and integrated. Also of the three organs of the State. The Judiciary enjoys supreme position in the Constitution.

Types of Judicial Benches

Supreme Court

(a) Constitutional / Full Bench – constitutes of five or more judges of the Supreme Court.

(b) Divisional Bench – constitutes of two or more judges of the Supreme Court but in case of participants of the Chief Justice three or more judges of the Supreme Court.

High Court

(a) Full Bench – 3 or more Judges

(b) Divisional Bench – 2 or more Judges.

Single Bench – only one Judge.

The Supreme Court

The essence of a federal Constitution is the division of powers between the Central and state Governments. This division is made by a written constitution, which is the Supreme Law of the Land. In order to maintain the supremacy of the Constitution, there must be an independent and impartial authority to adjudicate on the disputes between the Centre and the States or between the States. The court is the final interpreter and guardian of the Constitution; It is also the guardian of the Fundamental Rights of the people. It plays the role of "guardian of the social revolution". It is also the highest and final interpreter of the general law of the country. Moreover, the Supreme Court is the highest court of appeal in civil and criminal matters.

Number of Judges:

The Constitution when it came into being, provide for a Chief Justice and not more than seven other Judges. It empowers the Parliament to prescribe by law a larger number of Judges. Under this power the Parliament has now increased the number of Judges to thirty one including the Chief justice.

Appointment of Judges:

The Judges of the Supreme Court are appointed by the President. The Chief Justice of the Supreme Court is appointed by the President with the consultation of such number of Judges of the Supreme Court and High Courts as he may deem necessary for the purpose. But in appointing other Judges the president shall always consult the Chief Justice of India. He may also consult such other Judges of the Supreme Court and high courts as he may deem necessary.

Role of Chief Justice of India in the appointment of Judges:

In a landmark judgment, the supreme Court in the "Supreme Court Advocates on Record Association Vs. Union India" (1993) Case held that the Chief justice of India's opinion in the appointment of the Judges of the Supreme court and high Courts and in the transfer of the Judges of the High Courts shall enjoy primacy. By this Judgment the Supreme Court overruled its earlier Judgement. In S P Gupta Vs. President of India (1980) case, in which it held that the opinion of the Chief Justice of India is not binding on the President.

The Court ruled that the process of appointment of Judges is an "Integrated participatory and consultative" exercise for selecting the best and most suitable persons available. The Chief Justice of India is the sole authority to initiate the proposal for the appointment of the judges of the Supreme Court. He shares this

role with the Chief Justices of the High Courts in relation to the appointment and transfers of the judges of the High Courts.

The Chief Justice of India's Opinion is the determinative factor in the matter of transfer of High Court Judges and Chief Justices of the High Courts.

While the Chief Justice of India is expected to consult his two senior most colleagues (now four senior most colleagues) in the appointment of judges to the apex court, he is expected to take into account the view of his colleagues conversant with the affairs of a particular High Court in recommending appointments there. The Chief Justice of India may also seek the opinion of a High Court judge or Chief Justice of High Court. Such opinions must be sought in writing.

Safeguards for maintaining the Impartiality of Supreme Court Judges:

The hallmark of any judiciary is impartially and for this the independence of Judges is a must. The independence of the Judges of Supreme Court is sought to be secured by the Constitution in a number of ways.

a) The president shall have to consult the Chief Justice of India before appointing a person a judge of the Supreme Court.

b) Once appointed, a judge of the Supreme Court can only be removed from office by the President, on the basis of a resolution passed by both the Houses of the Parliament separately with a majority of not less than two-third of the members present and voting on ground of proved misbehavior or incapacity of the judge in question.

c) After retirement, a judge of the Supreme Court is prohibited from practicing or acting as a judge in any Court or before any authority in India. The only exception is when the Chief justice of India appoints a retired judge of the Supreme Court to act as an adhoc judge of the Supreme Court.

d) The salaries and allowances of the judges of the Supreme Court and the administrative expenses of the Court are charged on the Consolidated Fund of India and are not subject to the vote of the parliament.

e) The salaries and allowances of the Judges of the Supreme Court cannot be varied to their disadvantage except during a financial emergency.

f) The conduct of a judge of the Supreme Court cannot be discussed in the Parliament except on the resolution for this removal.

Qualifications for appointment as judges of the Supreme Court:

A person to be qualified for appointment as a judge of the Supreme Court must.

a) be a citizen of India; and

b) have been a judge of a High Court or two or more such courts in succession for at least five years; or

c) be a distinguished jurist in the opinion of the President.

Tenure:

A judge of the Supreme Court vacates his office on attaining the age of sixty five years of by resignation addressed to the president or by removal by the President upon a resolution passed by both Houses of Parliament separately by a majority of not less than two-third of the members present and voting on the ground of proved misbehavior or incapacity.

Jurisdiction of the Supreme Court:

The jurisdiction of the Supreme Court is five-fold viz. Original, Writ, Appellate, Advisory and Revisory Jurisdictions.

a) Original Jurisdiction: The original jurisdiction of the Supreme Court is purely federal in character, and it has the exclusive authority to decide any dispute involving a question of law or fact between the Government of India and one or more States inter se. However, according to the Constitution (Seventh Amendment) Act, 1956, the original jurisdiction of the Supreme Court does not extend to a dispute if it arises out of any provision of a treaty, agreement, covenant, management, sanad, or other similar instrument which has been entered into or executed before 26th January 1950 and has been continued in operation after that or which provides that the said jurisdiction shall not extent to such a dispute. But the Supreme Court can give advisory opinion, if asked by the President. There are certain provisions in the Constitution which exclude form the original jurisdiction of the Supreme Court.

Certain disputes, the determination of which is vested in other tribunals:

(i) Disputes specified in the provision to art. 363(1)

(ii) Complaints as to interference with inter-state water supplies, referred to the statutory tribunal mentioned in Art 262. (Since Parliament has enacted the inter-state water Disputes Act 1956)

(iii) Matters referred to the Finance Commission (Art 280)

(iv) Adjustment of certain expenses between the Union and the States (Art. 290).

(v) Adjustment of Certain expenses between the Union and the States (Art. 290)

b) Writ Jurisdiction: Art 32 imposes duty on the Supreme Court to enforce the fundamental rights. Under this Article, every individual has a right to move the Supreme Court directly if there has been any infringement on his fundamental rights. The writ jurisdiction sometimes is referred to as Original Jurisdiction of the Supreme Court. But in the strict sense original jurisdiction relates to the federal character of the Constitution.

c) Appellate Jurisdiction: The appellate jurisdiction of the Supreme Court is three-fold:

(i) Constitutional: In constitutional matters, an appeal lies to the Supreme Court if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. If the High Court refuses to give the certificate, the Supreme Court may grant special leave for appeal if it is satisfied that the case does involve such a question.

(ii) Civil: In civil cases, an appeal lies to the Supreme Court if a High Court certifies that the value of the subject matter of the dispute is not less than Rs. 20, 000 or that the case is fit for appeal to the supreme Court. The appellate jurisdiction of the Court in civil cases can be enlarged if Parliament passes a law to that effect.

(iii) Criminal: In criminal cases, an appeal lies to the Supreme Court if the High Court (i) has on appeal, reversed the order of acquittal of an accused and sentenced him to death: or (ii) has withdrawn for trial before itself any case from any subordinate court and has in such trial convicted the accused and sentenced him to death or (iii) certifies that the case is fit for appeal to the supreme Court. The appellate jurisdiction of the Supreme Court in criminal matters can be extended by Parliament, subject to such conditions and limitations as may be specified therein.

(iv)The Supreme Court under Art. 136 enjoys the power of granting special leave to appeal from any judgment, decree, order or sentence in any case or matter passed by any court or tribunal excepting Court martials.

d) Advisory Jurisdiction: One salient feature of the Supreme Court of India is its consultative role (Art.143). The President can refer to the Court either a

question of law or a question of fact, provided that it is of public importance. However, it is not compulsory for the Court to give its advice. Further, the President is empowered to refer to the supreme court for its opinion, disputes arising out of any treaty, agreement etc., which had been entered into or executed before the commencement of the Constitution. In such cases, it is obligatory for the Court, under the Indian constitution, to give its opinion to the president.

e) Revisory Jurisdiction: The Supreme Court under Art. 137 is empowered to review any judgment or order made by it with a view to remove any mistake or error that might have crept in the judgement or order. This means that even though all the judgements and orders passed by the Supreme Court are binding on all the courts of India, they are not binding on the Supreme Court.

Removal of Judges of the Supreme Court

The constitution under Art 124(4) provided that a judge of the Supreme Court can be removed by President after an address by each House of Parliament supported by a majority of the total membership of that house and by majority of not less than two-thirds of members of that house present and voting on the ground of proved misbehavior on incapacity.

Further, Parliament under Art.124 (5) may, by law, regulate the procedure for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a judge. Accordingly Parliament in 1968 passed judges (Inquiry Act.)

The High Courts

The High Court stands at the head of the judiciary in the State. The Judiciary in States consists of a High Court and subordinate Courts. The Parliament can, however, establish by law, a common High Court for two or more States or for one or more States and one or more Union Territories.

Appointment of Judges:

Every High Court consists of a Chief Justice and such other Judges as appointed by the President from time to time. The Constitution, unlike in the case of the Supreme Court, does not fix any maximum number of Judges of a High Court. Apart from appointing the Judges of the High Courts, the President has the power to appoint: (i) additional judges for a temporary period, not exceeding two years, for the clearance of arrears of work in a High Court; (ii) an acting judge, when a permanent Judge of a High Court (other than a Chief

Justice) is temporarily absent or unable to perform his duties or is appointed to act temporarily as Chief Justice. An Acting judge holds office until the permanent Judge resumes his Office. But neither an additional nor an acting Judge can hold office beyond the age of 62 years (now 64 years).

While appointing a Judge of a High Court, the President is to consult the Chief Justice of India, the Governor of the State and the Chief Justice of that High Court in the matter of appointment of a Judge other than the Chief Justice.

Qualifications for appointment as a Judge of High Court

Following are the qualifications required under the Constitution for a person to be appointed as a Judge of a High Court:

(a) must be a citizen of India; and

(b) must have held a judicial office in the territory of India for at least ten years or must have been an advocate of a High Court or two or more such Courts in succession for at least ten years.

Provisions for Independence of Judges of the High Court-

The Constitution seeks to secure the independence of Judges of the High Courts in the following ways:-

a) A Judge of a High Court can only be removed by the President on an address of each House of the Parliament passed by not less than two-thirds of the members present and voting and by a majority of the House only on the ground of proved misbehaviour or incapacity.

b) After retirement a Judge of a High Court cannot serve in any Court or before any authority in India except in the Supreme Court and a High Court other than the High Court in which he had held office.

c) Their salaries and allowances cannot be changed to their disadvantage after appointment except during a financial emergency. Further, their salaries and allowances are charged on the Consolidated Fund of India and are not subject to vote in the Parliament.

d) The conduct of the Judges of the High Courts cannot be discussed in the Parliament, except on a resolution for the removal of Judges.

Transfer of a Judge from one High Court to another-

A Judge of a High Court can be transferred without his consent by the President (Art. 222). But consultation with the Chief Justice of India must be effective and full. This means that all relevant facts relating to the transfer of a Judge of a High Court must be provided to the Chief Justice of India. The opinion provided by the Chief Justice shall have primacy and is binding on the President.

Administrative functions of the High Courts

The High Courts control and supervise the working of courts subordinate to them and frame rules and regulations for the transactions of their business. Under Art. 227, every High Court has the power of superintendence over all courts and tribunals except those dealing with the Armed Forces functioning within its territorial jurisdiction. In exercise of this power, the High Court may (i) call for returns from such courts; (ii) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; (iii) prescribe forms in which books and accounts shall be kept by the office of any such courts, and (iv) transfer cases from one court to another.

Jurisdiction of the High Court

(a) Original Jurisdiction: In their judicial capacity, the High Courts of Presidency Towns (Calcutta, Madras and Bombay) have both original and appellate jurisdictions, while other High Courts have original jurisdiction in civil cases in which the amount involved is more than Rs. 1 Crore and in criminal cases which are committed to them by the Presidency Magistrates.

(b) Appellate Jurisdiction: As courts of appeal, all High Courts entertain appeals in civil and criminal cases from their subordinate courts as well as on their own. They have, however, no jurisdiction over tribunals established under the laws relating to the armed forces of the country.

(c) Writ Jurisdiction: Under Art. 226 of the Constitution the High Courts are given powers of issuing writs not only for the enforcement of Fundamental Rights, but also for other purposes. In exercise of this power, a Court may issue the same type of writs, order or directions which the Supreme Court is empowered to issue under Art. 32. The jurisdiction to issue writs under this Article is larger in the case of High Courts, for while the Supreme Court can issue them only where a fundamental right has been infringed, a High Court can

issue them not only in such cases, but also where an ordinary legal right has been infringed.

XIV) LOK ADALATS

Under the Legal Services Authorities Act of 1987, Lok Adalats have been given a statutory status. The aims of Lok Adalats are:

• Secure justice to the weaker sections.

• Mass disposal of cases to reduce cost and delay.

The Legal Services Act provides for Lok Adalats to be organized by the State or district authorities. The authority of the Lok Adalats is conferred on them by the State or district bodies.

The jurisdiction of the Lok Adalats is conferred on them by the State or district bodies. The jurisdiction of the Lok Adalats is wide – any matter falling within the jurisdiction of civil, criminal, revenue courts or tribunals.

A case goes to the Lok Adalat if the two parties to the case make a joint application to compromise. The award of the Lok Adalat is binding upon all the parties. Lok Adalats, in sum, are given the powers of Civil Courts.

The Supreme Court and HCs have held Lok Adalats from time to time and disposed off thousands of cases. On October 2, 1996, a nationwide programme was launched to dispose off 1 million cases through Lok Adalats.

Lok Adalats are important as an alternative mode of dispute resolution.

DISCLAIMER:

The above information has been sourced from the following sources:

1) The Constitution of India
2) Introduction to the Constitution of India by Mayank Shekhar available at : https://www.legalbites.in/introduction-constitution-india/
3) http://buildindiagroup.org/preamble-and-constitution/
4) Constitution of India, study material compiled by Praveen Prakash Ambashta, Assistant Director, ISTM