

# UNIT-1

## INTRODUCTION TO INDIAN CONSTITUTION

### 1.1 INDIAN CONSTITUTION – EVOLUTION, IDEOLOGY, FEATURES

#### Constitution of India – Major Features

The salient features of the Indian Constitution are listed and briefed below:

##### 1. Longiest Written Constitution

- Constitutions are classified into written, like the American Constitution, or unwritten, like the British Constitution.
- The Constitution of India has the distinction of being the lengthiest and detailed Constitutional document the world has so far produced. In other words, the Constitution of India is the lengthiest of all the written constitutions of the world.
- It is a very comprehensive, elaborate and detailed document.
- The factors that contributed to the elephantine size of the Indian Constitution are:
  - **Geographical factors**, that is, the vastness of the country and its diversity.
  - **Historical factors**, for instance, the influence of the Government of India Act of 1935, which was bulky.
  - Single constitution for both the Centre and the states.
  - The dominance of legal luminaries in the Constituent Assembly.
- The Constitution of India contains not only the fundamental principles of governance but also detailed administrative provisions.
- Both justiciable and non-justiciable rights are included in the Constitution.

##### 2. Drawn from Various Sources

- The Constitution of India has borrowed most of its provisions from the constitutions of various other countries as well as from the Government of India Act of 1935 [About 250 provisions of the 1935 Act have been included in the Constitution].
- Dr B R Ambedkar proudly acclaimed that the Constitution of India has been framed after 'ransacking all the known Constitutions of the world'.
- The **structural part** of the Constitution is, to a large extent, derived from the Government of India Act of 1935.
- The **philosophical part** of the Constitution (Fundamental Rights and the Directive Principles of State Policy) derive their inspiration from the American and Irish Constitutions respectively.
- The **political part** of the Constitution (the principle of Cabinet government and the relations between the executive and the legislature) have been largely drawn from the British Constitution.

### 3. Blend of Rigidity and Flexibility

- Constitutions are classified into **rigid** and **flexible**.
- A rigid constitution is one that requires a special procedure for its amendment, as for example, the American Constitution.
- A flexible constitution is one that can be amended in the same manner as the ordinary laws are made, as for example, the British Constitution.
- The Indian Constitution is a unique example of the combination of rigidity and flexibility.
- A constitution may be called rigid or flexible on the basis of its amending procedure.
- The Indian Constitution provides for three types of amendments ranging from simple to most difficult procedures depending on the nature of the amendment.

### 4. Federal System with Unitary Bias

- The Constitution of India establishes a federal system of government.
- It contains all the usual features of a federation, such as two governments, division of powers, written constitution, the supremacy of the constitution, the rigidity of the Constitution, independent judiciary and bicameralism.
- However, the Indian Constitution also contains a large number of unitary or non-federal features, such as a strong Centre, single Constitution, appointment of state governor by the Centre, all-India services, integrated judiciary, and so on.
- Moreover, the term 'Federation' has nowhere been used in the Constitution.
- Article 1, describes India as a '**Union of States**' which implies two things:
  - Indian Federation is not the result of an agreement by the states.
  - No state has the right to secede from the federation.
- Hence, the Indian Constitution has been variously described as 'federal in form but unitary in spirit', 'quasi-federal' by K C Wheare.

### 5. Parliamentary Form of Government

- The Constitution of India has opted for the British Parliamentary System of Government rather than the American Presidential system of government.
- The parliamentary system is based on the principle of cooperation and coordination between the legislative and executive organs while the presidential system is based on the doctrine of separation of powers between the two organs.

### 6. Synthesis of Parliamentary Sovereignty and Judicial Supremacy

- The doctrine of the sovereignty of Parliament is associated with the British Parliament while the principle of judicial supremacy with that of the American Supreme Court.
- Just as the Indian parliamentary system differs from the British system, the scope of judicial review power of the Supreme court in India is narrower than that of what exists in the US.
- This is because the American Constitution provides for 'due process of law' against that of 'procedure established by law' contained in the Indian Constitution (Article 21).
- Therefore, the framers of the Indian Constitution have preferred a proper synthesis between the British principle of parliamentary sovereignty and the American principle of Judicial supremacy.
- The Supreme Court can declare the parliamentary laws as unconstitutional through its power of judicial review.

- The Parliament can amend the major portion of the Constitution through its constituent power.

## 7. Rule Of Law

- According to this axiom, people are ruled by law but not by men, that is, the basic truism that no man is infallible. The axiom is vital to a democracy.
- More important is the meaning that law is the sovereign in democracy.
- The chief ingredient of law is custom which is nothing but the habitual practices and beliefs of common people over a long number of years.
- In the final analysis, rule of law means the sovereignty of the common man's collective wisdom.
- Apart from this crucial meaning, rule of law means a few more things like
  - There is no room for arbitrariness
  - Each individual enjoys some fundamental rights, and
  - The highest judiciary is the final authority in maintaining the sanctity of the law of the land.
- The Constitution of India has incorporated this principle in Part III and in order to provide meaning to Article 14 (all are equal before the law and all enjoy equal protection of laws), promotion of Lok Adalats and the venture of the Supreme court known as "public interest litigation" have been implemented.

**Also, as per today's law of the land, any litigant can appeal to the presiding judicial authority to argue the case by himself or seek legal assistance with the help of the judiciary.**

## 8. Integrated and Independent Judiciary

- India has a single integrated judicial system.
- Also, the Indian Constitution establishes Independent Judiciary by enabling the [Indian judiciary](#) to be free from the influence of the executive and the legislature.
- The Supreme Court stands as the apex court of the judicial system. Below the Supreme Court are the High Courts at the state level.
- Under a high court, there is a hierarchy of subordinate courts, that is district courts and the other lower courts.
- The Supreme Court is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the Constitution. Hence, the Constitution has made various provisions to ensure its independence.

## 9. Fundamental Rights

- Part III of the Indian Constitution guarantees six [fundamental rights](#) to all Citizens.
- Fundamental Rights are one of the important features of the Indian Constitution.
- The Constitution contains the basic principle that every individual is entitled to enjoy certain rights as a human being and the enjoyment of such rights does not depend upon the will of any majority or minority.
- No majority has the right to abrogate such rights.
- The fundamental rights are meant for promoting the idea of political democracy.
- They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature.

- They are **justiciable** in nature, that is, enforceable by the courts for their violation.

## 10. Directive Principles of State Policy

- According to Dr B R Ambedkar, the Directive Principles of State Policy is a ‘novel feature’ of the Indian Constitution.
- They are enumerated in Part IV of the Constitution.
- 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.
- They are non-justiciable in nature.
- In the Minerva Mills case (1980), the Supreme Court held that ‘the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles’.

## 11. Fundamental Duties

- The original constitution did not provide for the [fundamental duties](#) of the citizens.
- Fundamental Duties were added to our Constitution by the 42nd Amendment Act of 1976 on the recommendation of the Swaran Singh Committee.
- It lays down a list of ten Fundamental Duties for all citizens of India.
- Later, the 86th Constitutional Amendment Act of 2002 added one more fundamental duty.
- While the rights are given as guarantees to the people, the duties are obligations that every citizen is expected to perform.
- However, like the Directive Principles of State Policy, the duties are also **non-justiciable** in nature.
- There is a total of 11 Fundamental duties altogether.

## 12. Indian Secularism

- The Constitution of India stands for a secular state.
- Hence, it does not uphold any particular religion as the official religion of the Indian State.
- The distinguishing features of a secular democracy contemplated by the Constitution of India are:
  - The State will not identify itself with or be controlled by any religion;
  - While the State guarantees to everyone the right to profess whatever religion one chooses to follow (which includes also the right to be an antagonist or an atheist), it will not accord preferential treatment to any of them;
  - No discrimination will be shown by the State against any person on account of his religion or faith; and
  - The right of every citizen, subject to any general condition, to enter any office under the state will be equal to that of the fellow citizens. Political equality which entitles any Indian citizen to seek the highest office under the State is the heart and soul of secularism as envisaged by Constitution.
- The conception aims to establish a secular state. This does not mean that the State in India is anti-religious.
- The western concept of secularism connotes a complete separation between religion and the state (negative concept of secularism).

- But, the Indian constitution embodies the **positive concept of secularism**, i.e., giving equal respect to all religions or protecting all religions equally.
- Moreover, the Constitution has also abolished the old system of communal representation. However, it provides for the temporary reservation of seats for the scheduled castes and scheduled tribes to ensure adequate representation to them.

### 13. 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.

### 14. Single Citizenship

- In a federal state usually, the citizens enjoy double citizenship as is the case in the USA.
- 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 Chattisgarh to which he/she may belong 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.
- The Constitution makers deliberately opted for single citizenship to eliminate regionalism and other disintegrating tendencies.
- Single citizenship has undoubtedly forged a sense of unity among the people of India.

### 15. Independent Bodies

- The Indian constitution not only provides for the legislative, executive and judicial organs of the government (Central and state) but also establishes certain independent bodies.
- They are envisaged by the Constitution as the bulwarks of the democratic system of Government in India.

The candidates can read about some of the Independent Bodies

<a href="#"><u>Election Commission of India</u></a>	<a href="#"><u>Comptroller and Auditor General of India</u></a>
<a href="#"><u>Union Public Service Commission (UPSC)</u></a>	<a href="#"><u>Constitutional Bodies</u></a>

### 16. 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
  - Emergency caused by war, external aggression or armed rebellion [Article 352]
  - Emergency arising out of the failure of constitutional machinery in states [Article 356 & 365]
  - Financial emergency [Article 360].
- The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.
- During an emergency, the central government becomes all-powerful and the states go into total control of the centre.
- This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique feature of the Indian Constitution.

## 17. Three-tier Government

- Originally, the Indian Constitution provided for a dual polity and contained provisions with regard to the organisation and powers of the Centre and the States.
- Later, the 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of government (that is, Local Government), which is not found in any other Constitution of the world.
- The 73rd Amendment Act of 1992 gave constitutional recognition to the panchayats (rural local governments) by adding a new Part IX and a new schedule 11 to the Constitution.
- Similarly, the 74th Amendment Act of 1992 gave constitutional recognition to the municipalities (urban local government) by adding a new Part IX-A and a new schedule 12 to the Constitution.

## 18. Co-operative Societies

- The 97th Constitutional Amendment Act of 2011 gave a constitutional status and protection of **cooperative societies**.
- In this context, it made the following three changes in the Constitution:
  - It made the right to form cooperative societies a fundamental right (Article 19).
  - It included a new Directive Principles of State Policy on the promotion of cooperative societies (Article 43-B).
  - It added a new Part IX-B in the Constitution which is entitled “The Co-operative Societies” [Articles 243-ZH to 243-ZT].
- The new Part IX-B contains various provisions to ensure that the cooperative societies in the country function in a democratic, professional, autonomous and economically sound manner.
- It empowers the Parliament in respect of multi-state cooperative societies and the state legislatures in respect of other cooperative societies to make the appropriate law.

## Philosophy of Constitution

- On January 22, 1947, the Constituent Assembly adopted the Objectives Resolution drafted by Jawaharlal Nehru. The Objectives Resolution contained the fundamental propositions of the Constitution and set forth the political ideas that should guide its deliberations.

The main principles of the resolution were:

- that India is to be an independent, sovereign republic ;
- that it is to be a democratic union with an equal level of self-government in all the constituent parts;
- that all power and the authority of the Union Government and governments of the constituent parts are derived from the people;
- that the constitution must strive to obtain and guarantee to the people justice-based upon social, economic and political equality, of opportunity and equality before the law;
- that there should be freedom of thought, expression, belief, faith, worship, vocation, association and action;
- that the constitution must provide just rights for minorities, and people from backward and tribal areas, etc. so that they can be equal participants of social, economic and political justice; and
- to frame a constitution that should secure for India, a due place in the community of nations.

The philosophy of a Constitution consists of the ideals for which the constitution stands and the policies that the Constitution enjoins upon the rulers of the Community to follow. The Constitution of India reflects the impact of our ideology in the following spheres:

(i) **Secularism:** Secularism is the hallmark of the Indian Constitution. People professing different religions have the freedom of religious worship of their own choice. All religions have been treated alike. The fact appreciated in India was that all religions love humanity and uphold the truth. All the social reformers and political leaders of modern India have advocated religious tolerance, religious freedom and equal respect for all religions. This very principle has been adopted in the Constitution of India where all religions enjoy equal respect. However, the word 'secularism' was nowhere mentioned in the Constitution as adopted in 1949. The word 'secularism' has now been added to the Preamble to the Constitution through the 42nd Amendment passed in 1976.

(ii) **Democracy:** We have borrowed the modern form of democracy from the West. Under this system, democracy means the periodic responsibilities of the Government to go to the people. For this purpose; elections have been held every five-year to elect a Government by the people. However, democracy covers even the economic and social aspects of life. This aspect of democracy is well-reflected in the Directive Principles of State Policy. They are aimed at human welfare, co-operation, international brotherhood and so on.

(iii) **Sarvodaya:** Sarvodaya refers to the welfare of all. It is different from the welfare of the majority. It seeks to achieve the welfare of all without exception. It is referred to as Ram Rajya. The concept of Sarvodaya was developed by Mahatma Gandhi Acharya Vinoba Bhave and J. Narayan under which the material, spiritual, moral and mental development of everyone is sought to be achieved. The Preamble to the Indian Constitution and the Directive Principles of State Policy represent this ideal.

(iv) **Socialism:** Socialism is not new to India. Vedanta's philosophy has socialism in it. The national struggle for freedom had this aim also in view. Jawaharlal Nehru referred to himself as a socialist and republican. Almost all the parties in India profess to promote democratic socialism. These principles are included in the Directive Principles of State Policy. However, to lay emphasis on this aspect, the word 'socialism' was specifically added to the Preamble to the Constitution through the 42nd Amendment.

(v) **Humanism:** Humanism is a salient feature of Indian ideology. Indian ideology regards the whole of humanity as one big family. It believes in resolving international disputes through mutual negotiations. This is what we find in the Directive Principles of State Policy.

(vi) **Decentralization:** Decentralization is another aspect of Sarvodaya. India has always practised decentralization through the Panchayat system. Mahatma Gandhi also advocated decentralization. It is on

this account that he is regarded as a philosophical anarchist. We have introduced the Panchayati Raj system in India to achieve the objective of decentralisation. The concept of cottage industries as laid down in the Directive Principles of State Policy also refers to decentralization.

(vii) **Liberalism:** Liberalism does not refer to the Western concept of liberalism. It refers, in the Indian context, to self-government, secularism, nationalism, economic reforms, constitutional approach, representative institutions etc. all these concepts were advocated by the modern Indian leaders.

(viii) **Mixed Economy:** Co-existence is a salient feature of our ideology. Co-existence has manifested itself through a mixed system of economy. In this system, we have allowed both the private and public sectors of the economy to work simultaneously. Large scale and essential industries have been put in the public sector.

(ix) **Gandhism:** Gandhism represents an ethical and moral India. Gandhi set a new example of fighting foreign rule through non-violence. He taught the importance of non-violence and truth. He advocated untouchability, cottage industry, prohibition, adult education and the uplift of villages. He wanted a society free of exploitation and decentralized in character. All these Gandhian principles have found an honourable place in the Constitution of India.

## UNIT 3

### 3.1 ELECTION COMMISSION OF INDIA

#### What is Article 324?

The Constitution provides the Election Commission of India with the power of direction, superintendence, and control of elections to parliament, state legislatures, the office of president of India and the office of vice-president of India.

The Election Commission is an all-India body that is common to both the Central government and the State governments. It must be noted here that the commission does not deal with the elections to the Municipalities and Panchayats in the states. Hence, a separate State Election Commission is provided by the Constitution of India.



#### Constitutional Appointment of ECI

Since its inception in 1950 and till 15 October 1989, the election commission was a one-member body with only the Chief Election Commissioner (CEC) as its sole member.

- On 16 October 1989, the voting age was changed from 21 to 18 years. So, two more election commissioners were appointed by the president in order to cope with the increased work of the election commission.
- Since then, the Election Commission was a multi-member body that consisted of 3 election commissioners.
- Later on, the two posts of election commissioners were eliminated in January 1990 and the Election Commission was reverted to the previous position.
- This was repeated again later in October 1993 when the president appointed two more election commissioners. Since then, the Election Commission functions as a multi-member body comprising of 3 commissioners.
- The chief and the two other election commissioners have the same powers and emoluments including salaries, which are the same as a Supreme Court judge.
- In case of a difference of opinion amongst the Chief Election Commissioner and/or two other election commissioners, the matter is decided by the Commission by a majority.
- The office is held by them for a term of 6 years or until they attain 65 years, whichever happens first. They can also be removed or can resign at any time before the expiry of their term.

Aspirants can find the [list of Chief Election Commissioners of India](#) in the linked article.

## Independence of the Election Commission

Article 324 of [The Constitution of India](#) mentions the provisions to safeguard and ensure the independent and impartial functioning of the Election Commission which is as follows.

- The chief election commissioner is provided with security of tenure. He cannot be removed from his office except in the same manner and on the same grounds as a judge of the Supreme Court. In other words, he can be removed by the [President](#) on the basis of a resolution passed to that effect by both the Houses of Parliament with a special majority, either on the ground of proved misbehaviour or incapacity.
- Thus, he does not hold his office until the pleasure of the president, though he is appointed by him.
- The service conditions of the chief election commissioner cannot be varied to his disadvantage after his appointment.
- Any other election commissioner or a regional commissioner cannot be removed from office except on the recommendation of the chief election commissioner.
- Though the constitution has sought to safeguard and ensure the independence and impartiality of the Election Commission, some flaws can be noted, ie:
  - The Constitution has not prescribed the qualifications (legal, educational, administrative or judicial) of the members of the Election Commission.
  - The Constitution has not specified the term of the members of the Election Commission.
  - The Constitution has not debarred the retiring election commissioners from any further appointment by the government.

## Powers, Functions, and Responsibilities of Election Commission

Among the major Constitutional Bodies in India, Election Commission is a permanent Constitutional Body. It was established in accordance with the Constitution on 25th January 1950.

- The Constitution has vested to this body superintendence, direction and control of the entire process for conduct of elections.
- The Commission's functions and powers with respect to elections to the offices of the President, the Vice President, the state legislators and the Parliament are divided under three headings:
  - Administrative
  - Advisory
  - Quasi-judicial

Aspirants preparing for [Civil Services exam](#) can go through other such bodies on the links provided below-

1. [Types of Constitutional Bodies](#)
2. [Constitutional, Statutory and Quasi-Judicial Bodies](#)

## Powers of Election Commission of India

In details, these powers of the Election Commission of India are:

- Determining the Electoral Constituencies' territorial areas throughout the country on the basis of the Delimitation Commission Act of Parliament.
- Preparing and periodically revising electoral rolls and registering all eligible voters.
- Notifying the schedules and dates of elections and scrutinising nomination papers.
- Granting recognition to the various political parties and allocating them election symbols.

- Acting as a court to settle disputes concerning the granting of recognition to political parties and allocating election symbols to the parties.
- Appointing officers for inquiring into disputes concerning electoral arrangements.
- Determining the code of conduct to be followed by the political parties and candidates during elections.
- Preparing a program for publicising the policies of all the political parties on various media like TV and radio during elections.
- Advising the President on matters concerning the disqualification of MPs.
- Advising the Governor on matters concerning the disqualification of MLAs.
- Cancelling polls in case of booth capturing, rigging, violence and other irregularities.
- Requesting the Governor or the President for requisitioning the staff required for conducting elections.
- Supervising the machinery of elections throughout the country for ensuring the conduct of free and fair elections.
- Advising the President on whether elections can be held in a state that is under the President's rule, in order to extend the period of emergency after 1 year.
- Registering political parties and granting them the status of national or state parties (depending on their poll performance).

The Commission is aided in its function by deputy election commissioners. The deputy ECs are taken from the civil services and they are appointed by the Commission. They have a fixed tenure. They are aided by the secretaries, deputy secretaries, joint secretaries and under-secretaries posted in the commission's secretariat.

## Functions of Election Commission

1. To direct and control the entire process of conducting elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.
2. To decide the election schedules for the conduct of periodic and timely elections, whether general or bye-elections
3. To decide on the location of polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters
4. To prepare electoral roll and issues Electronic Photo Identity Card (EPIC)
5. To grant recognition to political parties & allot election symbols to them along with settling disputes related to it
6. To sets limits of campaign expenditure per candidate to all the political parties, and also monitors the same
7. To advise in the matter of post-election disqualification of sitting members of Parliament and State Legislatures.
8. To issue the Model Code of Conduct in the election for political parties and candidates so that no one indulges in unfair practice or there is no arbitrary abuse of powers by those in power.

## Composition of Election Commission

Article 324 of the Constitution has made the following provisions with regard to the composition of the election commission:

- The President appoints the Chief Election Commissioner and other election commissioners.
- When any other EC is so appointed, the CEC acts as the Election Commission's Chairman.
- The President can also appoint regional commissioners to assist the Commission, if necessary after consulting with the Election Commission.

- The tenure of office and the conditions of service of all the commissioners shall be determined by the country's President.

## Importance of Election Commission for India

- The Election Commission has been successfully conducting national as well as state elections since 1952. Now, it plays an active role to ensure the greater participation of people.
- The Commission has brought discipline among the political parties with a threat of derecognizing if the parties failed in maintaining inner-party democracy.
- It supports the values preserved in the Constitution viz, equality, equity, impartiality, independence; and rule of law in superintendence, direction, and control over the electoral governance.
- ECI helps in conducting elections with the highest standard of credibility, fairness, transparency, integrity, accountability, autonomy and professionalism.
- In the electoral process, it ensures the participation of all eligible citizens in an inclusive voter-centric and voter-friendly environment.
- The Election Commission of India engages with political parties and all stakeholders in the interest of the electoral process.
- It creates awareness about the electoral process and electoral governance amongst stakeholders (political parties, voters, election functionaries, candidates and people at large) to enhance and strengthen confidence and trust in the electoral system of this country.

## Challenges faced by Election Commission

1. Increased violence and electoral malpractices under influence of money have resulted in political criminalization, which ECI is unable to arrest.
2. Election Commission is not adequately equipped to regulate the political parties. It has no power in enforcing inner-party democracy and regulation of party finances.
3. ECI is becoming lesser independent of the Executive which has impacted its image.
4. Allegations of EVMs malfunctioning, getting hacked and not registering votes, corrodes the trust of the general masses in ECI.

## Way Forward – ECI

- Until the controversy related to glitches in EVM settles down, the commission needs to establish its trust amongst people by installing ( Voter Verifiable Paper Audit Trail System ) VVPATS in more and more constituencies.
- The challenge before ECI is to be vigilant and watchful against the collusion at the lower level of civil and police bureaucracy in favour of the ruling party of the day.
- 2nd ARC report recommended that collegium headed by the Prime Minister with the Speaker of the Lok Sabha, the Leader of Opposition in the Lok Sabha, the Law Minister and the Deputy Chairman of the Rajya Sabha as members should make recommendations for the consideration of the President for the appointment of the Chief Election Commissioner and the Election Commissioners. What are the powers of the Election Commission in India?

The powers and functions of the Election Commission with regard to elections to the Parliament, state legislatures and offices of President and [Vice-President](#) can be classified into three categories, viz, • Administrative • Advisory • Quasi-Judicial

- Who elects the members of the election commission?

The President appoints the Chief Election Commissioner (CEC) and the other Election Commissioners.

- What are the articles related to ECI?

The following articles of the Constitution of India are related to ECI:

Important Articles related to Election Commission of India	
Article 324	Superintendence, direction and control of elections to be vested in an Election Commission.
Article 325	No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.
Article 326	Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.
Article 327	Power of Parliament to make provision with respect to elections to Legislatures.
Article 328	Power of Legislature of a State to make provision with respect to elections to such Legislature.
Article 329	Bar to interference by courts in electoral matters.

Candidates can know about relevant commissions of India for comprehensive preparation –

<a href="#">Finance Commission of India</a>	<a href="#">Planning Commission of India</a>	<a href="#">Delimitation Commission</a>
<a href="#">Central Vigilance Commission (CVC)</a>	<a href="#">Central Information Commission (CIC)</a>	<a href="#">National Commission For Women</a>
<a href="#">Competition Commission of India (CCI)</a>	<a href="#">National Human Rights Commission of India</a>	<a href="#">Tax Administration Reform Commission</a>

## 3.2 PARTY SYSTEM IN INDIA

The Indian National Congress dominated the party system. But the same has not continued and there had been periods of non-Congress governments both at the Centre and in the States.

In general, the party system in India has not been a fixed one like a single party system or a dominant one-party system or a two-party

system or a multiparty system. The features found in any of the above party systems may be found in India's party system.

For many years now, the party system has not been a single-party dominant system as it used to be the case until 1967. It is not now a one-party dominant system. The Indian party system is not a bi-party system, that existed for a short period between 1977 and 1980.

It is more a less a multiparty system because the national political parties depend largely on the support of regional political parties to stay in power at the Centre as well as in some States. Various political parties join hands to form coalition governments as single parties are finding it difficult to get majorities by themselves.

### **Dominant Features of India's Party System**

In view of the above, the party system in India displays the following major characteristics:

- India has a multi-party system with a large number of political parties competing to attain power at the Centre as well as in the States.
- the contemporary party system in India has witnessed the emergence of a bi-nodal party system existing at both national and state/region levels. The bi-nodal tendencies operating at two poles are led by the Congress and the BJP both at the centre and in the states.
- political parties are not hegemonic but competitive, though many a time we see a particular party aligning with one national political party and then shifting to another on the eve of general elections.
- the regional political parties have come to play a vital role in the formation of governments at the Centre. At the Centre, these regional parties support one national political party or the other and seek substantive favours, ministerial berths at the Centre and other financial packages for their respective States.

- the election is now fought not among parties but the coalition of parties. Nature of competition, alliance and players varies from state to state.
- coalitional politics has been a new feature of our party system. We have reached a situation where there is no single party government, except in some of the States. There are, as you can see around, neither permanent ruling parties nor permanent opposition parties.
- as a result of coalitional politics, ideologies of the political parties have taken a back seat. The administration is run through the Common Minimum Programme, which reflects that pragmatism has become the 'ruling mantra'. We have seen political situations where the Telugu Desam Party supported the BJP led NDA in 1999 and CPI(M) backed the Congress-led UPA in 2004 without formally joining the government.
- parties are keen on focusing on the single emotive issue/s to garner votes. The emotive issues in some of the earlier elections were: Garibi Hatao of the 1970s, 'Indira is India' of the 1980s, 'Taking into the 21st Century' under Rajiv in mid-1980s, BJP' India Shining of 1999, Congress' 'Feel Good' in 2004 and 'Aam Aadmi' in 2009.

parties now look for short term electoral gains rather than build lasting social coalitions. **Definition and Types of Political Parties**

Political parties are voluntary associations or organised groups of individuals who share the same political views and who try to gain power via constitutional means and who desire to promote national interests.

In modern democratic states, there are four types of political parties

1. Reactionary parties which cling to the old socio-economic and political institutions
2. Conservative parties that believe in status-quo
3. Liberal parties that aim to change and reform the existing institutions
4. Radical parties which aim at establishing a new order by overthrowing the existing institutions

Political parties are also classified as per the ideologies. Political scientists have placed radical parties on the left, liberal parties in the centre and reactionary and conservative parties on the right.

In India, CPI and CPM are examples of leftist parties, Congress of centrist parties and the BJP is an example of rightist parties.

There are three kinds of party systems in the world:

- (i) The one party system in which only one party rules and no opposition party is permitted. The [Soviet Union](#) was an example of one party system.
- (ii) Two-party system on which two major parties exist. For example the Republicans and the Democrats in the United States.
- (iii) Multi-party system on which there are a number of political parties lead to the formation of coalition governments. India, France and Switzerland are examples of multi-party systems.

## Characteristics of Party System in India

The following are the characteristics of the party system in India:

1. **Multi-Party System:** The continental size of the, the diversified characteristics of the Indian society, the adoption of universal adult franchise, the peculiar type of political processes have given rise to a large number of political parties. In fact, India has the largest number of political parties in the world. Further, India has all categories of parties – left parties, centrist parties, right parties and so on. Consequently the hung Parliaments, hung assemblies and coalition governments have become a common phenomenon in Indian politics.
1. **One-Dominant Party Systems:** In spite of the multiparty system, the political scene in India was dominated for a long period by the Congress. Hence, Rajni Kothari, an eminent political analyst, preferred to call the Indian party system as ‘one party dominance system’ or the ‘Congress System’. The dominant position enjoyed by the Congress has been on the decline since 1967 with the rise of regional parties and other national parties like the Janata Dal and BJP.
1. **Lack of Clear Ideology:** Except the BJP, the CPI and CPM, all other parties do not have a clear-cut ideology. They (i.e., all other parties) are ideologically closer to each other. They have a close resemblance in their policies and programmes. Almost every party advocates democracy, [secularism](#), socialism and Gandhism. Moreover, every party, including the so-called ideological parties, is guided by only one consideration – power capture. Thus, politics has become issue-based rather than ideology and pragmatism has replaced the commitment of its principles.
1. **Personality Cult:** Quite often, the parties are organised around an eminent leader who becomes more important than the party and its ideology. Parties are known by their leaders and their ideology. Parties are known by their leaders rather than by their manifesto. It is a fact that the popularity of the Congress was mainly due to the leadership of Nehru, Indira Gandhi and Rajiv Gandhi. It is the same case for the AIADMK in Tamil Nadu and TDP in Andhra Pradesh which got recognition with MG Ramachandran and NT Rama Rao respectively.
1. **Based on Traditional Factors:** In the western countries, the political parties are formed on the basis of socio-economic and political programmes. On the other hand, a large number of parties in India are formed on the basis of religion, caste, language, culture and so on. For example, Shiv Sena, Muslim League, Hindu Maha Sabha and so on. These parties work for the promotion of communal and sectional interests that undermine the general public interest.
2. **Emergence of Regional Parties:** Another significant feature of the Indian party system is the emergence of a large number of regional parties and their growing role. They have become the ruling parties in various states like BJD in Orissa, DMK or AIADMK in Tamil Nadu, Akali Dal in Punjab and so on. In the beginning, they were confined to regional politics only. But of late they have come to play a significant role in the national politics due to coalition governments at the Centre.

Learn more about [regionalism](#) in the given link.

1. **Faction and Defections:** Factionalism, defections, splits, mergers, polarisation and so on have been an important aspect of the functioning political parties in India. Lust for power and materialistic conditions have made political parties leave their party and join another party. The practice of defections gained greater currency after the fourth general elections in 1967. This phenomenon caused instability both at the Centre and in the states and led to disintegration of the parties.
1. **Lack of Effective Opposition:** An effective Opposition is very essential for the successful operation of the parliamentary democracy prevalent in India. It checks the autocratic tendencies of the ruling party and provides an alternative government. However, in the last 50 years an effective, strong, organised and visible national Opposition could never emerge except in flashes.

The opposition parties have no unity and very often adopt mutually conflicting positions with respect to the ruling party. They have failed to play a constructive role in the functioning of the body politic and in the process of nation building.

## Recognition of National and State Parties

The **Election Commission** registers political parties for the purpose of elections and grants them recognition as national or state parties on the basis of their poll performance. The other parties are simply declared as registered-unrecognised parties.

The recognition granted by the Commission to the parties determines their right to certain privileges like allocation of the party symbols, provision of time for political broadcasts on the state-owned television and radio stations and access to electoral rolls.

Every national party is allotted a symbol exclusively reserved for its use throughout the country. Similarly, every state party is allotted a symbol exclusively reserved for its use in the states in which it is so recognised. A registered-unrecognised party, on the other hand, can select a symbol from a list of free symbols.

In other words, the Commission specifies certain symbols as 'reserved symbols' which are meant for the candidates set up by the recognised parties and others as 'free symbols' which are meant for the other candidates.

The conditions for recognition as National Party and State Party are as follows:

### National Party:

1. If it secures six % of valid votes polled in any two or more states at a general election to the Lok Sabha or to the legislative assembly and in addition it wins four seats in the **Lok Sabha** from any states
2. If a party wins two % of seats in the Lok Sabha at a general election and these candidates are elected from three states. An additional criteria includes if the party is recognised as a state party in four states.

### State Party:

1. If the party secures 6% of the valid votes polled in the state at a general election to the legislative assembly of the state concerned and in addition wins 2 seats in the assembly of the state concerned.
2. The state party secures 6% of the valid votes polled in the state at a general election to the Lok Sabha from the state concerned. In addition if it wins 1 seat in the Lok Sabha from the state concerned.
3. If it wins 3% of the seats in the legislative assembly at a general election to the legislative assembly of the state concerned or 3 seats in the assembly, whichever is more.
4. If it wins 1 seat in the Lok Sabha for every 25 seats or any fraction thereof allotted to the state at a general election to the Lok Sabha from the concerned states

5. If the state party secures 8% of the total valid votes polled in the state at a General Elections to the Lok Sabha from the state or to the legislative assembly of the state. The condition was added in 2011.

## 3.3

# Coalition Politics in India - History, Problems and Prospects

Coalitions have almost invariably been associated with instability and focus on petty politics rather than actual governance. This article tries to refute this claim. In the beginning, a brief history of coalitions in India has been given. Then an attempt has been made to point out the areas where coalitions are better than an absolute majority by a single party. The problems of coalitions and ways to solve them also form parts of our discussion.

## A brief political history of independent India – our experience with coalitions

For a long, long time after independence, Congress dominance in the country was almost unchallenged. Granted, there were a few exceptions (most notably Kerala in 1957) when the Congress failed to capture the government but overall the period immediately after independence saw what Rajni Kothari termed as the 'Congress System' – politics in which the Congress occupied the central position. And why should it not be so? After all, the contribution of the Congress in the freedom struggle was universally acknowledged. And riding on the popularity of the 'People's Prince' Pandit Nehru, Congress was invincible.

A phase came around 1967 when this system was challenged. Two Congress Prime Ministers had died in quick succession and the opposition had decided to come together under the banner of 'Non-Congressism'. Although Congress was able to

save its position in the center, it saw massive debacles in the states. At the state level, Samyukta Vidhayak Dal (Joint Legislative Parties) consisting of a motley crowd of parties were able to form an alternative to the Congress. These alliances which were almost purely opportunistic predictably did not last long. And anyway, the Congress was soon reinforced under the leadership of Indira Gandhi (for better or for worse, I won't say). Coalition politics would have to wait until 1977 to make a comeback.

India saw its first stint with a national emergency in 1975. The atrocities and excesses that followed (especially in North India) dealt the biggest possible dent to its popularity the Congress could ever imagine. Simultaneously a new party, by the name of Janata Party was being formed. This was only nominally a party. In reality, this was formed by the coming together of a number of parties including Vajpayee's Jana Sangh and Charan Singh's Bharatiya Lok Dal as well as, of course, Morarjee Desai's Congress (O). Thus although nominally the Janata Party was a single political party, it has to be in fact considered India's first coalition government at the center.

That first experience wasn't very fruitful. The Janata Party was together only as far as pursuing revenge against Indira was concerned. When it came to policy matters, no consensus could be built. All of the constituent leaders were intent on displaying their power to ensure that they ended up with the position of the next Prime Minister or Deputy Prime Minister or whatever new position might be created.

It was probably the fear of a divided and weak government that led Indira to power in the next elections. Of course, in 1984, Congress under Rajeev broke all records, grabbing almost three-fourth of all seats. It was in 1989 that the second and longer stint of coalition politics began in the country. VP Singh stitched together an almost unlikely coalition, with the name of National Front. The BJP and the Communists offered 'outside support' with the sole purpose of preventing a Congress re-entry. But ingenious though this combination was, it didn't last long as the BJP soon went its own way (after having created a lot of havoc of course). Since then until 2014, we have seen either coalitions or minority governments. During this period, it was as if the coalitions were an unshakeable part of our polity.

## A criticism of coalitions

In 2014, Narendra Modi's BJP utilized effective campaign strategies and the anti-incumbency against the ruling party to form the first government with a complete majority since Rajeev Gandhi's era. Apparently, the era of coalitions was put on a pause. In 2019, the Lok Sabha elections were fought by the ruling party on two main planks (apart from the usual rhetoric of development). One was the plank of nationalism, which in post-Pulwama India, was an inevitability. The second was the plank of a strong government, i.e. a government which enjoyed a complete majority

on its own and which could effectively carry out 'tough reforms' for the betterment of the country.

That campaign, run in public meetings and continued on social media platforms and television screens, reflected the prevalent bias against coalitions. Coalitions were seen as bringing ruin upon the country. As coalition partners bargained for better ministerial posts and struggled for survival, the governance machinery was left bereft of any energy. Appeasement of the coalition partners took a priority and people's welfare was left behind. And think of all the expenses that have to be incurred due to premature elections due to a coalition breaking down. Isn't it better to have one strong party that would result in stability and which could focus all its energies on governance?

## Why coalitions are better

This was exactly how I had thought before the elections. Mind you, I was not supportive of the hints of majoritarianism that the ruling party had started exhibiting in its first term. But I was more disgusted by the opportunistic nature of the coalitions that had started developing in various parts of the country (especially in UP) where parties who were historically rivals came together for the sole purpose of preventing a party from grabbing power. Somehow I had equated coalitions with instability and a 'strong' government with good governance.

Sad as it might be, I was wrong. In a country like India, coalitions are perhaps necessary. The coalition involves a coming together of diverse opinions. Various parties, each with their diverse ideologies, come together in a single government. Necessarily there will be compromises. The result will be that no single party will be able to unilaterally impose its ideology over the entire country. People have often argued that it was Vajpayee's moderate nature that toned down the 'Hindutva' forces even as BJP completed a full five-year term from 1999-2004. That was probably true to an extent, but I think that it was also due to the fact that Vajpayee was heading a coalition of an unbelievably large number of parties. To carry along all those parties required the BJP to tone down certain less agreeable portions of its ideology.

Just imagine what would have happened in case Mr. Modi was heading a coalition in today's date. His ministers would never have the courage to go ahead and garland those involved in mob lynching. Actions against those involved in atrocities on Dalits would have probably been stricter.

Counter-intuitive as it might sound, coalitions do not prevent reforms. Just think back to 1991, when India embarked on what was its greatest tryst with economic reforms since

independence. Almost the entire makeup of the economic system was modified. Was this the handiwork of a 'strong' government? Far from it, the PM struggled to keep his government alive in parliament while the Finance Minister was a soft-spoken intellectual who looked more suited to academia than the rough and tumbles of politics. Yet, were not the reforms implemented well? That one example from three decades ago should be enough to wash away claims that coalitions and minority governments cannot take bold initiatives. The only thing that matters is whether or not the politicians have a sufficient amount of willpower.

The only drawback that coalitions still have is that of political instability. A coalition often tumbles at the first available possibility. Conflicts with coalition partners can well produce mid-term elections. Anyone who has lived through the '90s knows what I am talking about. The cost of repeated elections is probably too much for us.

## What we can do

To prevent such an unstable situation as well as the costs of repeated elections, the system of no-confidence motion can be modified. No-Confidence motion should also be accompanied by a proposal for an alternative government. This would help in preventing mid-term elections. Another important source of instability, particularly at the state level is the intervention by the center, through the governor. Very often unstable coalition governments are made even shakier due to the actions of the governor. This practice should be prevented at all costs.

A government formed by a party with a complete majority has its own benefits. Yet I feel that coalitions are necessary for a country of India's size and diversity. But ultimately it is up to the parties involved in a coalition that determines the success of this form of government.

### 3.4 NATIONAL PARTIES

#### BJP

The Bhartiya Janata Party (BJP) was formally launched as an independent political organisation in February 1980, after the split of the Janata Party on the R.S.S issue.

Most of east while Jana Sangha members along with a few others, left the Janata Party to form the B.J.P. Thus the B.J.P. is a reincarnation of

the Jana Sangha, the militant Hindu nationalist party founded in 1951 by Shyama Prasad Mukherjee.

The object of the Jana Sangha was the rebuilding of Bharat as a modern, democratic society in accordance with religious precepts. The party adopted four fundamentals one country, one nation, one culture and a rule of law that would determine its future course of action Nehru described the party as its “Illegitimate child.”

Professor Rasheeduddin Khan has rightly remarked, “The BJP has prints of continuity with the Jana Sangha, in its discipline and well knit organisational set up and units linkage with the traditional Hindus socio-cultural organisations, the RSS and the VTTP.”

### **Support Base:**

The BJP’s support base is essentially the same as that of the erst while Jana Sangha. It is a party of the urban educated Hindu middle classes professionals, small businessmen and white collar workers.

In Gujarat, Maharashtra, Delhi and Rajasthan BJP is the ruling party with charismatic leaders like Suresh Meheta, Gopinath Mundle, Mandas Lai Khurana and Bhairon Singh shekhawat.

But BJP’s most impressive performance was in Karnataka, U.P. and Gujarat in 1991 election. In all these states the BJP vote went up by over 20%. Gujarat represents the BJP’s most spectacular showing.

### **Electoral Performance:**

In 1967, the party gave its full support to the SVD ministry in U.P headed by Charan Singh and it had 98 members in the Vidhan Sabha.

In 1977, with 98 of its men in parliament under the Janata banner it received only three cabinet ministership.

In 1980 the party backed Jagajivan Ram and in 1983 with their 18 members in the Karnataka legislature the BJP supported R.K. Hegde who was then of a minority. The BJP bore V.P. Singh on its shoulders after he formed the Jana Morcha. In 1984 during its worst showing only 2 Lok Sabha seats it still polled 7.4% of the national votes ahead of the Janata's 6.7 percent and the Lok Dal's 5.6.

### **Ideology and Programme:**

The BJP believes in Gandhian socialism. The party says that its socialism is inspired not only by Gandhi and JP but also by a Deen Dayal Upadhyaya.

It stands for positive secularism and clean government while laying emphasis! on the 'Hindus Idiom' on its poll manifesto, the party stands for justice for all and appeasement of none.

Policy of reservations for the scheduled castes and scheduled tribes apply the same policy to the backward castes broadly in line with the recommendation of the Mandal Commission. The party also favours smaller and stronger states desires to abolish Article 370, favours uniform civil code and would like to establish Human Rights Commission.

### **BJP – RSS Relationship:**

The Jana sangh has been closely associated with the RSS. The RSS has served as the organizational base for the party. The BJP being its successor, what type of relationship it has with the RSS? The official

stand of the BJP and the RSS is that those are two separate organizations working in two different -fields.

Besides they do not interfere in each others work. But an overwhelming majority of the BJP workers have RSS background. Therefore a large number of people think that the two organizations belong to the one and same family.

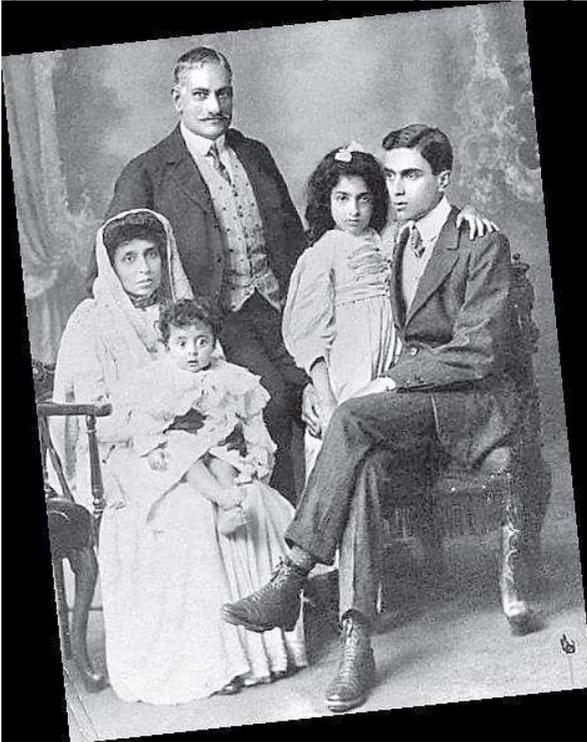
Even the BJP has reaffirmed its RSS link. It seems this link as vital to its newly emphasized commitment to national unity since it believes that the RSS's patriotism is unmatched. It is' in fact proud of its link with RSS.

## CONGRESS PARTY

The hallmark of a successful politician is to play down victory and keep a game face after defeat. Date: May 30, 2019. Venue: Rashtrapati Bhavan, Delhi. Location: Gandhinagar, Gujarat. Who: Prime Minister Narendra Modi's mother Heeraben. Emotionally absorbed in watching the swearing-in ceremony on TV, she started clapping when President Ram Nath Kovind administered the oath of office to her son for the second time on the vast forecourt of the Rashtrapati Bhavan against the backdrop of the massive sandstone dome flying the Tricolour.

At the same time on the same day, with the temperatures blazing in the forties, enter Sonia Gandhi and Rahul Gandhi. Rahul's mother wore a stoic expression as she took her seat. But the son's face gave story away. The soon-to-resign Congress president looked as if he would rather be in any

other place than there, glaring at the ground while ministers took their



oath.

It was obvious that Rahul was traumatised. After its rout, the Congress has PTSD. Having forgotten that Rahul failed to win the mandate in spite of a gruelling campaign, leaders insist he stay on as party boss. Or get Priyanka. The siblings are in no mood to oblige. Time and again, the selection of at least an interim party boss was put off. The Congress is gripped by a crisis of ideology.

Says a former Congress MP: “The RSS has powerful ideologues, ideology and cadre, which fuels the BJP. We don’t even have an ideologue.” Veteran Congress leader Dr Karan Singh differs. “Democracy, *sarv dharam sambhav*, the welfare of minority and Schedule Castes, economic structure and foreign policy —these are five foundations of Congress ideology. You can call it liberal, Left liberal if you like, or liberal values enshrined in the Constitution. We have to rearticulate it,” he explains.

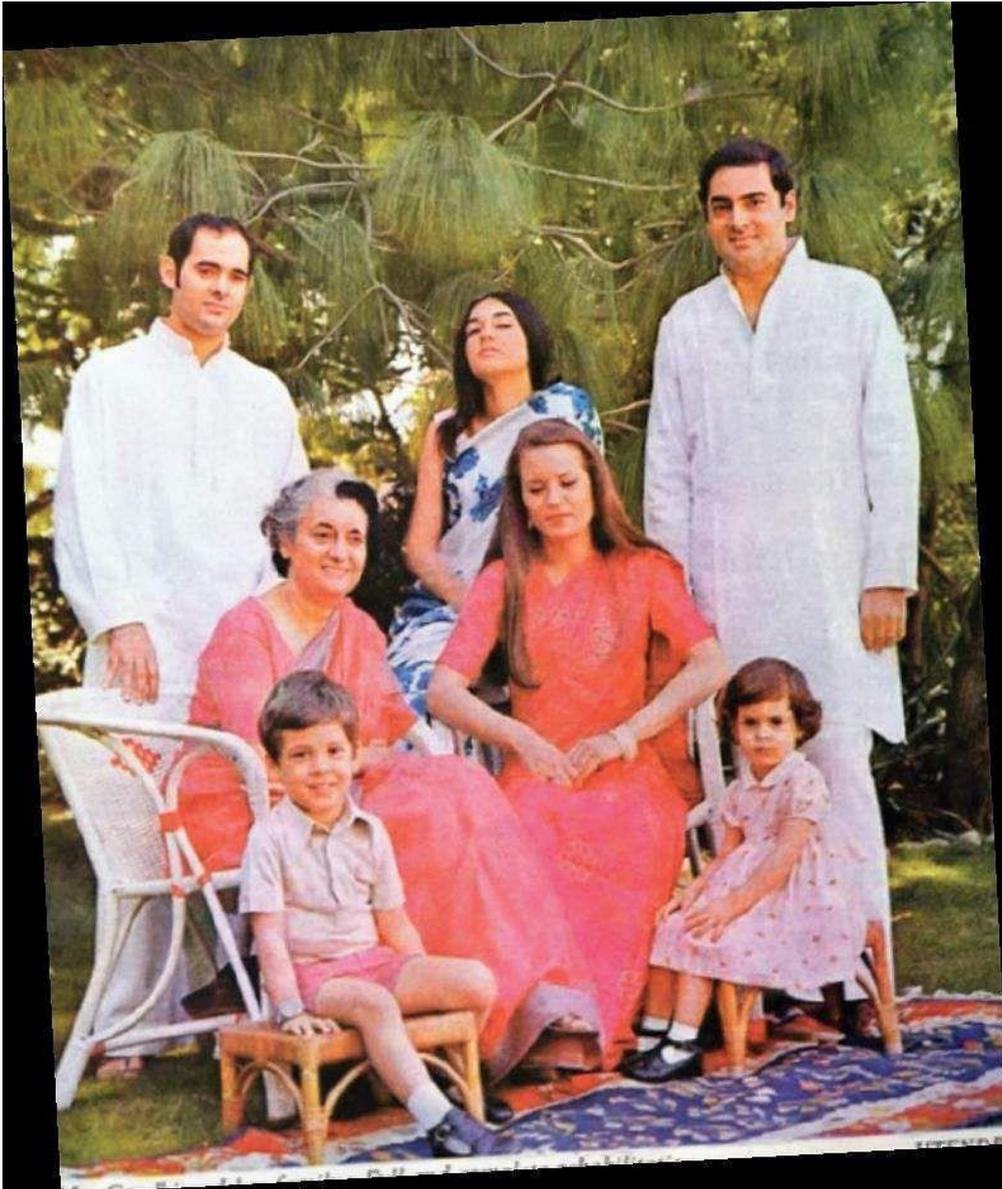
The BJP’s assault on minority accommodation by weaponising Hindutva has thrown secularism into the national shedder. The Congress response to Jai Shri Ram was to send Rahul to a few temples en route to some vote fishing rallies. Spin doctors coined a new phrase—‘soft Hindutva.’ Says a young MP, “We have to reach out to Hindus. Not with extreme Hindutva but in moderation so that we are not projected as anti-Hindu.”

A former senior general secretary agrees saying that 80 per cent of India’s population cannot be ignored. However, he calls the controversy around his *gotra* in Pushkar Temple and wearing a *janeu* bad optics. Young leaders are firm that the party cannot be seen as appeasing Muslims and

Dalits. Scuttlebutt says an advisor felt that the sharp and scholarly Shashi Tharoor is the party's best bet for party ideologue. Advice rejected. Too Westernised.

"Our first priority should be the dissemination and revival of the party ideology," the former MP said. "And find the right person to do it." The main problem is the party itself. At the recent CWC meeting, Priyanka Gandhi Vadra flared up over the selection issue. "Party *ka sab kaatil* (killers) *yahaan maujood hai*," she raged—all the murderers of the Congress are here. Every leader present at the party headquarters on 24, Akbar Road is responsible for the decay of India's oldest political outfit. Her question: Why haven't you nurtured second and third level state leaders? Seriously? Irony just died. Priyanka goes on berating the huddling flock. Why are you so insecure? Why do you appoint only sycophants as DPCC and PCC presidents? Rahul intervenes to cool his sister's bitter wrath, insisting politely that the priority is to fix the organisation. And the family is willing to help. But the onus has to be on the CWC. What are the choices for the catbird seat? Can't Soniaji be interim president until the mess is cleaned up?

No way. Her advice is available but that's all. What about Mallikarjun Kharge or Sushilkumar Shinde? Too old. Jyotiraditya Scindia? Too arrogant. Sachin Pilot? Mustn't destabilise Rajasthan and piss off CM Ashok Gehlot. So, it's an organisation man after all. Who will keep his head down and work to restore the moribund party's rank and file, induct new members, enthuse the district and state units. With an outsider as president, the siblings want to work on refurbishing the party's decrepit wall of fame.



The Gandhis have been holding one-to-one consultations with various leaders. Annoyed young MPs ask why suggestions cannot be aired with everyone present? Let leaders throw up names, and settle on the best choice. But this not acceptable to the old warhorses who cling to the remnants of authority left, at least the party. They have offspring waiting to take over in their fast-fading pocket boroughs. But the interim president would be just a Band-Aid to stop a haemorrhage.

“Everyone knows the medicine, but who will prescribe it,” jokes an MP.

Loyalists believe that Rahul will win the race in the long run since he is a class apart who believes in inner-party democracy. “Rahulji is a soft target. Nobody else could have endured such abuse and trolling without missing a step. Try calling Modi or Amit Shah such names and see what happens. You will be arrested,” claims an aide at Rahul’s new war room, which was

moved to P Chidambaram's government bungalow at 80 Lodhi Estate after elections were declared.

Strategy meetings were held there every day, attended by heavyweights such as Ahmed Patel, Anand Sharma, Randeep Surjewala, Jairam Ramesh and Sam Pitroda; starting 4 pm and extending late into the morning. Little did they guess that the astrologer who recommended the change to an ageing CWC member got it so wrong. "We don't have anyone who can counter the power and stature of Modi and Shah," the ex-MP mourns.

"Besides, most of our big wigs are vulnerable. There are corruption cases against many CWC leaders and allies regarding their actions when they were in power." The Family itself is fighting many cases. One of its members, who has taken to acupuncture recently, is dismayed that the needle of suspicion is pointing to him. With Modi's zero tolerance on corruption—*Na khaata hoon, na khaane doonga* (I don't take bribes, nor will I allow anyone else to) were the PM's famous words when he took charge in 2014—many Congressmen are justifiably worried.

Hence the cry. Priyanka *lao*.

Says a young MP bitterly, "Leaders like Shinde, Kharge, Ghulam Nabi Azad etc. have enjoyed a long innings. We have given 20 years of our youth to the party. What do we have to look forward in the next 20?"

Defecting to the BJP is no longer an option, except in a poll-bound state like Maharashtra, and elsewhere, Congressmen are crossing over like lemmings. The ruling party has a massive mandate in the Lok Sabha. "Even if they accept me, it will be just tokenism," says a Congress MP who had lost in Uttar Pradesh. "They'll give me some insignificant post and cast me aside on the sidelines."

Though Congress upped its Lok Sabha numbers this time to 52 seats from 44 in 2014, its median margin of victory went down to 8.6 per cent from 13.6 per cent in 2014. The BJP vote share this election was 37.4 per cent while the Congress party got only 19.5 per cent.

The NDA improved from 2014 by around 45 per cent—in 1952, when the first general election in independent India was held, the Congress vote share was 45 per cent. The decline of the Congress, which won 364 of the 401 MPs in 1952, to the current 52 began with the death of Jawaharlal Nehru on the morning of May 27, 1964, without naming a successor. The origin of the Gandhi family's matchless status can be traced to the machinations that followed Nehru's passing.

The powerful Congress president K Kamaraj was the kingmaker. Morarji Desai declared his own candidacy for PM. Kamaraj successfully pulled strings to install the non-controversial Lal Bahadur Shastri. After Shastri

died, he backed 'Goongi Gudiya' Indira against Desai who lost again. Historian Francine Frankel wrote, "Evidently, the greatest qualification of Indira Gandhi at the time of her accession was her weakness."

## LIFE AND TIMES OF THE CONGRESS AND THE GANDHIS

**1965:** Indira Gandhi chosen as Prime Minister after the demise of Prime Minister Lal Bahadur Shastri



**1991:** Rajiv assassinated while campaigning during Lok Sabha elections; Congress comes to power, PV Narasimha Rao chosen as PM

**1996:** Congress loses General Elections; Narasimha Rao resigns from party presidency

**March 14, 1998:** Sonia Gandhi takes over as party president



**1998:** Party forms governments in Madhya Pradesh, Rajasthan and Delhi

**1969:** Split in Congress over the election of the President of India

**1971:** Mid-term poll swept by Indira



**1972:** Congress gets massive victories in state elections

**2000:** Congress forms governments in Assam, Kerala and Pondicherry



**1975:** Imposition of Emergency by Indira

**2001:** Governments in Punjab, Uttaranchal and J&K

**2003:** Party forms governments in Himachal Pradesh and Meghalaya

**1977:** Loss in General Elections; party splits

**1978:** Split in Congress

**1980:** Indira sweeps back to power with over 300 seats in the Lok Sabha

**2004:** Sonia Gandhi leads party to victory in Lok Sabha elections. Appoints Manmohan Singh as PM. Rahul Gandhi elected as an MP for the first time.



**2007:** Rahul appointed as a party general secretary

**2009:** Manmohan again becomes PM with the support of regional parties

**Oct 31, 1984:** Indira assassinated by his Sikh body guards. Anti-Sikh riots erupt.



**1984:** Rajiv Gandhi leads the party to an unprecedented victory, winning 401 seats in the Lok Sabha



**2011:** Sonia returns to Delhi on September 8 after a month in the US where she underwent surgery for an undisclosed ailment

**1989:** Congress single largest party with 197 seats. Rajiv chooses to sit in opposition.

**2014:** Party wins 44 seats in its worst performance

**2017:** Rahul becomes party president

**2018:** Congress wins state polls and forms governments in Rajasthan, Madhya Pradesh and Chhattisgarh

To Kamaraj's dismay, Indira proved to have a mind of her own. When the party split in the internecine power standoff, the majority of Congressmen supported her. In 1969, at the AICC session in Lalbagh, Indira declared her ideological shift from the Nehruvian confluence of socialism and capitalism to a Leftist economy. The Syndicate disagreed. To discuss the selection of the Rashtrapati in 1969, parallel CWC meetings were held; at the Congress HQ and the PM's house respectively.

The furious Congress President S Nijalingappa sacked the Prime Minister from the party. After defeating the Syndicate's no-confidence motion, Indira went for elections in 1971 and garnered a two-thirds majority. The irony was that she won in 1969 after calling for a "conscience vote allowing MPs and MLAs to vote how they wanted". But 1971 onwards, she was determined not to tolerate competition.

She first eroded the old Congress structure that allowed state leaders to wield power and influence relevant national issues by replacing them with loyal nominees. Her insecurity and hatred of challengers led to the

eventual decline of institutions over the decades. New terms like “committed judiciary” and “committed bureaucrats”— i.e. Committed to her—appeared during the Emergency. Politics discarded its ideological nature for the first time: Indira was ideology. As Defence Minister and Nehru ally VK Krishna Menon reportedly said: “When the Congress president calls you, unless you are a fool like me, you more or less express his opinion.” In this case, the opinion was hers.

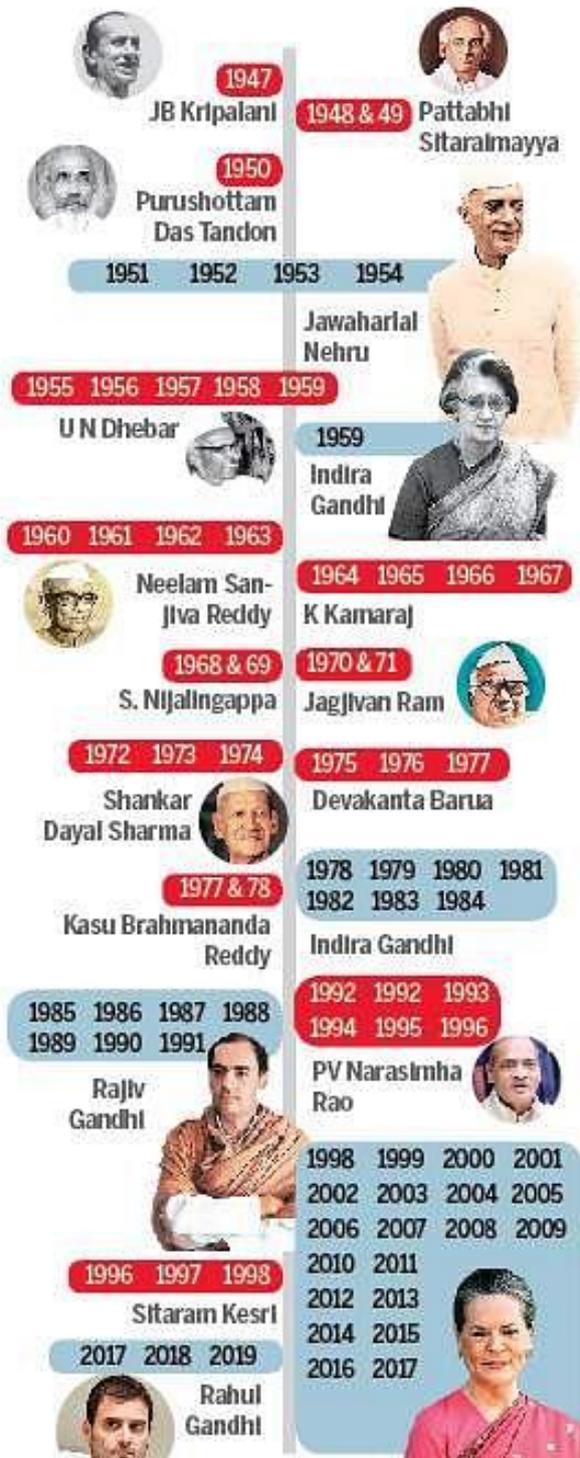
‘One Man One Post’ came to mean ‘One Family One Post’ as the PM and party became synonymous. In March 1998, Congress president Sitaram Kesri was ousted by the dynasty cult’s followers who wanted the magic of the Gandhi name to lead the party in the October general elections. “There is no point in going back in history,” says an articulate Congress leader who had cut his political teeth in UP. “We have to think beyond the Gandhis. The design of the party must change.”

It is doubtful whether an interim president can change it. If last week’s Lok Sabha proceedings are an indication, the Gandhis still believe they are best suited to leadership. Legacy and experience are on their side. The former senior general secretary who was at helm of party affairs under Indira, Rajiv and Sonia says post or no post, the Gandhis will always hold sway over the party. “The party looks up to them for everything,” says the octogenarian.

The appointment of the Leader of the Opposition proved that Sonia is very much in the game, in spite of her age and imperfect health. After the elections, Tharoor expressed his desire for the job. Instead, Sonia chose West Bengal Congressman Adhir Ranjan Chowdhury. Her choice surprised many leaders since Adhir is not at ease in Hindi, spoken by nearly every BJP MP.

Wouldn’t Manish Tewari have been a better choice? He is a lawyer with debating skills. And younger than the Kharge gang, The majority of MPs this time took their oath in Hindi and regional languages. Even Congress MP Kodikunnil Suresh from Kerala, which pleased even Hindi speakers in BJP. Hindi is the language of the heartland which brought the NDA to power. Besides, Adhir is a political lightweight, and easily controlled by the family. On July 24, when Adhir demanded PM Modi’s presence in Parliament after Donald Trump’s absurd claim over Kashmir, the Speaker

refused. Rahul was nowhere to be seen.



The inexperienced Adhir sought the UPA chairperson's help. She promptly took over floor management, and sent her MPs to troop into the well of the house and ordered Adhir to interact with the DMK. In early July, Rahul and Sonia had a 40-minute-long meeting with the Congress Parliamentary Party (CPP). She wanted a better sync with allies; the DMK had refused to sponsor Manmohan Singh's Rajya Sabha

nomination. CPP meets every morning now on the pretext that 30 of the 52 Congress MPs are first-timers who need mentoring in parliamentary procedure. "Parliament has become so boring," laments a firebrand MP who lost to the BJP.

Even more boring is the wait for a bone fide Congress president. Perhaps weary of the delay, the Gandhis could be back is the refrain in Akbar Road. The chorus is "PGV for Party Prez". Insiders say Priyanka has firmly refused. Politics is a quicksand of possibilities. If husband Robert Vadra is arrested after she takes over the reins, it would prove a major setback to the party's image. Besides, next year Maharashtra and Haryana go to the polls. The Congress hopes that its previous performances in Rajasthan and Madhya Pradesh will be repeated in these states. But advisers are playing it careful. Should the Congress lose to Modi magic on Priyanka's watch, it would further sabotage the infallibility of the G-name.

Her UP foray into Yogi Adityanath's territory over the Sonbhadra massacre last week "at Rahulji's instructions" signals that she is seeking validation for her leadership as a part worker. UP, which is the launchpad of power in India, is her target. Besides, family honour has to be salvaged after her brother's defeat. "Priyanka is the real deal," says a senior Congress worker close to the family since Rajiv became the PM. "Rahul's approach is too clinical. If someone in his constituency approaches him for a favour, he goes by the book. Not Priyanka.

She will try to get the work done any which way she can. It reminds me of Indira Gandhi." Last week, the old fox of Punjab, Captain Amarinder Singh demanded that Priyanka must be the boss of 24, Akbar Road. Congress watchers are unsure if he has amnesia. Immediately after the victory, Rahul called state heads and CMs home for a post-poll assessment meeting. He blamed them for inefficiency and partisanship. Pointing at one CM, he accused him of ensuring the CM's son's victory while ignoring the party.

Turning to Captain, he reportedly said, "Congratulations on your performance. But if I hadn't campaigned, you wouldn't have got so many seats." The hubris may be apocryphal but the words were confirmed by some leaders who claimed they had attended. According to Rahul's close friends, among the many accouterments at 12 Tughlak Lane is a mini movie theatre where he goes to relax with popcorn after a hard day. The chaos over leadership has reached a high pitch. Picture *abhi baki hai*.



## 2.2

### President of India - Article 52-62

The Indian President is the head of the state and he is also called the first citizen of India. He is a part of Union Executive, provisions of which are dealt with Article 52-78 including articles related to President (Article 52-62). Under these articles, information on how a President is elected, his powers and functions, and also his impeachment process is given.

#### Who is President of India?

The Indian President is the head of the state. He is the first citizen of India and is a symbol of solidarity, unity, and integrity of the nation. **He is a part of Union Executive along with the Vice-President, Prime Minister, Council of Ministers, and Attorney-General of India.**

#### How is President elected?

There is no direct election for the Indian President. An electoral college elects him. The electoral college responsible for President's elections comprises **elected members of:**

1. **Lok Sabha** and Rajya Sabha
2. Legislative Assemblies of the states (Legislative Councils have no role)
3. Legislative Assemblies of the Union Territories of Delhi and Puducherry

#### Note:

- The value of the vote of an MLA is given below:

$$\begin{array}{l} \text{Value of the vote of an MLA} \\ = \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000} \end{array}$$

- The value of the vote of an MP is given below:

$$\begin{array}{l} \text{Value of the vote of an MP} = \\ \frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}} \end{array}$$

To know who has been the Indian President, IAS aspirants can check the [list of Presidents of India](#) in the linked article.

#### Who does not take part in the President's elections?

The following group of people is not involved in electing the President of India:

1. Nominated Members of **Rajya Sabha** (12)
2. Nominated Members of State Legislative Assemblies

3. Members of Legislative Councils (Both elected and nominated) in bicameral legislatures
4. Nominated Members of union territories of Delhi and Puducherry

## What is the term of the President's office?

Once President is elected, he holds office for five years. He sits in the office even after the completion of five years given no new election has taken place or no new President has been elected till then. He can also be re-elected and there is no cap on his re-election.

## What are the qualifications of the President?

A candidate has to meet some qualifications to be elected as the president. Those qualifications of the President are:

1. He should be an Indian Citizen
2. His age should be a minimum of 35 years
3. He should qualify the conditions to be elected as a member of the Lok Sabha
4. He should not hold any office of profit under the central government, state government, or any public authority

## What are the conditions of the President's office?

There are a few conditions for the candidate running for the President's elections:

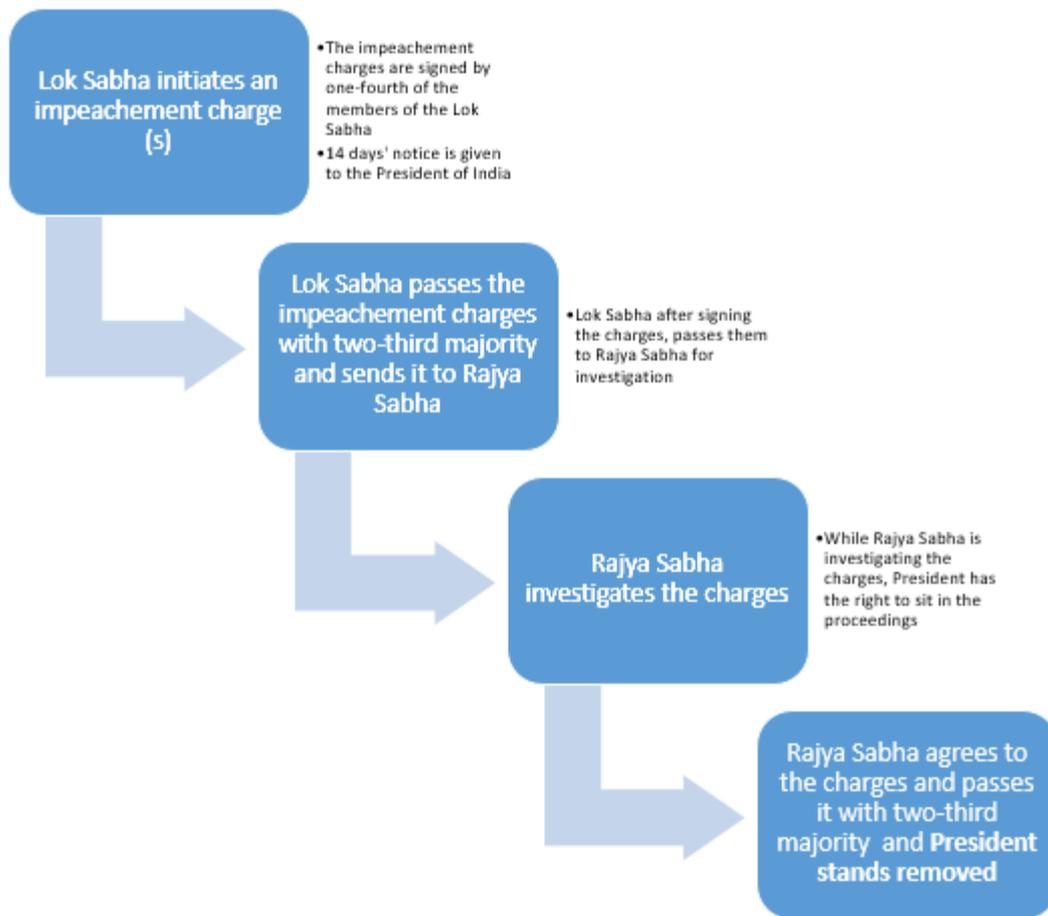
1. He cannot be a member of Lok Sabha and Rajya Sabha. If he has been a member of either of the house, he should vacate the seat on his first day as President in the office
2. He should not hold any office of profit
3. For his residence, Rashtrapati Bhavan is provided to him without the payment of rent
4. Parliament decides his emoluments, allowances and privileges
5. Parliament cannot diminish his emoluments and allowances during his term of office
6. He is given immunity from any criminal proceedings, even in respect of his personal acts
7. Arrest or imprisonment of the President cannot take place. Only civil proceedings can be initiated for his personal acts that too after giving two months' of prior notice.

## What is the procedure for impeachment of a President?

The only condition for the initiation of impeachment of the Indian president is the '**violation of the constitution.**'

**Note:** Indian Constitution contains no definition of 'violation of the constitution.'

The impeachment process of President is given below. (We have taken Lok Sabha as the first house to initiate the impeachment charges, however, Rajya Sabha too can initiate the impeachment charges against President and in that case, it will pass the resolution and send the charges to Lok Sabha which will investigate and pass it if it finds those charges valid.)



## Can the President's office be vacant?

Yes, his office can be vacant in the following ways:

1. When the President of India completes his term of five years in the office
2. If the President resigns by putting forward his resignation to the [Vice-President](#) of India
3. If Lok Sabha/Rajya Sabha initiates an impeachment charge and they stand valid, he is removed
4. If he dies in the office
5. If the Supreme Court declares his election invalid

**Note:** Vice-President discharges the duties as President; if the latter's office falls vacant in the circumstances mentioned above, except by the expiry of the term. As per the President's Act 1969; if the Vice-President office is vacant too, Chief Justice of India (CJI) (or in his absence); Supreme Court's senior-most judge, discharge the functions of the President (till new President is elected.)

## What are the powers and functions of the President of India?

### Executive Powers of President

1. For every executive action that the Indian government takes, is to be taken in his name
2. He may/may not make rules to simplify the transaction of business of the central government
3. He appoints the [attorney general of India](#) and determines his remuneration
4. He appoints the following people:

0. [Comptroller and Auditor General of India](#) (CAG)
1. Chief Election Commissioner and other Election Commissioners
2. Chairman and members of the Union Public Service Commission
3. State Governors
4. [Finance Commission of India](#) chairman and members
5. He seeks administrative information from the Union government
6. He requires PM to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council
7. He appoints National Commissions of:
  0. Scheduled Castes (Read about [National Commission for Scheduled Castes](#) in the linked article.)
  1. Scheduled Tribes Read about ([National Commission for Scheduled Tribes](#) in the linked article.)
  2. Other Backward Classes (Read about [National Commission for Backward Classes](#) in the linked article.)
8. He appoints inter-state council
9. He appoints administrators of union territories
10. He can declare any area as a scheduled area and has powers with respect to the administration of scheduled areas and tribal areas

## Legislative Powers of President

1. He summons or prorogues Parliament and dissolve the Lok Sabha
2. He summons a joint sitting of Lok Sabha and Rajya Sabha in case of deadlock
3. He addresses the Indian Parliament at the commencement of the first session after every general election
4. He appoints speaker, deputy speaker of Lok Sabha, and chairman/deputy chairman of Rajya Sabha when the seats fall vacant (to know the [difference between Lok Sabha and Rajya Sabha](#) check the linked article.)
5. He nominates 12 members of the Rajya Sabha
6. He can nominate two members to the Lok Sabha from the Anglo-Indian Community
7. He consults the Election Commission of India on questions of disqualifications of MPs.
8. He recommends/ permits the introduction of certain types of bills (to read on [how a bill is passed in the Indian Parliament](#), check the linked article.)
9. He promulgates ordinances
10. He lays the following reports before the Parliament:
  0. Comptroller and Auditor General
  1. Union Public Service Commission
  2. Finance Commission, etc.

## Financial Powers of President

1. To introduce the [money bill](#), his prior recommendation is a must
2. He causes Union Budget to be laid before the Parliament
3. To make a demand for grants, his recommendation is a pre-requisite
4. Contingency Fund of India is under his control
5. He constitutes the Finance Commission every five years

## Judicial Powers of President

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

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

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

## Diplomatic Powers of President

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

## Military Powers of President

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

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

## Emergency Powers of President

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

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

## What is the Ordinance Making Power of the President?

Article 123 deals with the ordinance making power of the President. The President has many legislative powers and this power is one of them. He promulgates an ordinance on the recommendation of the union cabinet. To read more on [Ordinance Making Power of the President](#), check the linked article.

## What is the Veto Power of the President?

When a bill is introduced in the Parliament, Parliament can pass the bill and before the bill becomes an act, it has to be presented to the Indian President for his approval. It is on the President of India to either reject the bill, return the bill or withhold his assent to the bill. The choice of the President over the bill is called his veto power. The Veto Power of the President of India is guided by Article 111 of the Indian Constitution.

## 2.3

# Prime Minister of India: Power, Function, and Position and Role of PM of India

### **Prime Minister of India**

The Prime Minister is the real executive head in a parliamentary government like India. He is the leader of the majority party in the Lok Sabha. He is assisted by the Council of Ministers. The Prime Minister, along with the Council of Ministers, aid and advise the President.

### **PRIME MINISTER**

The Prime Minister is appointed by the President. While appointing the Prime Minister, the President cannot act arbitrarily. According to the convention, the President invites the leader of the majority party or group in the Lok Sabha to form the Government. Sometimes none of the parties get an absolute majority. In such cases, the President may exercise his discretionary power. But the President has to appoint that person who can prove the majority in the House.

### **POWERS, FUNCTIONS, AND POSITION OF THE PRIME MINISTER OF INDIA**

We may study the powers, functions, and position of the Prime Minister under the following broad heads:

#### **A. Prime Minister and his relations with the President:**

a) The Prime Minister is the line of communication between the Cabinet and the President. He conveys Cabinet's decisions to the President and keeps him informed of all national or foreign matters of the government.

- b) The Prime Minister advises the President to summon and prorogue the Parliament and dissolve the Lok Sabha.
- c) The Prime Minister advises the President in appointing or removing the high officials.

## **B. Prime Minister and his relationship with the Council of Ministers:**

### **Who is the head of the Council of Ministers?**

The Council of Ministers is headed by the prime Minister. There are three categories of ministers in it.

- a) Cabinet Ministers: Cabinet Ministers are usually top-level leaders of the ruling party or parties who are in charge of the major ministries. Usually, the Cabinet Ministers meet to take decisions in the name of the Council of Ministers. The cabinet is thus the inner ring of the Council of Ministers. It comprises about 20 to 30 ministers.
- b) Ministers of State with independent charge: There are the ministers who are usually independent in charge of smaller ministries. They participate in the Cabinet meetings only when specially invited.
- c) Minister of State: They assist Cabinet Ministers and they are also known as deputy ministers. The members of the Council of Ministers need to be members of either House of the Parliament. Any member of the Council of Ministers including the Prime Minister, who is not a Member of Parliament, has to acquire its membership within six months of his appointment.

## **C. Prime Minister and his relationship with the Cabinet or the Council of Ministers:**

Concerning the Cabinet or the Council of Ministers, the Prime Minister possesses the following powers:

- a) He forms the Council of Ministers and determines its size, the categories of ministers and their portfolios. The Prime Minister's decision is final in such matters.
- b) The Prime Minister can remove a minister from the Cabinet or the Council of Ministers by asking him/her to resign. He can reallocate portfolios.
- c) The Prime Minister calls the meetings of the Council of Ministers, presides over them and decides the agenda.
- d) The Prime Minister coordinates the policies and the working of the different

departments of the government to ensure that all departments work according to the set policies and decisions of the Cabinet.

#### **D. Prime Minister and his relations with the Parliament:**

- a) The Prime Minister is the leader of the Lok Sabha.
- b) The Prime Minister is the chief spokesman of the government in the Parliament.
- c) The Prime Minister makes all important announcements of the government policies on the floor of the House.

#### **E. Prime Minister and his role in foreign affairs:**

There is a minister of foreign affairs, yet the Prime Minister has a significant role in these matters, as noted below:

The Prime Minister represents India in international conferences. He goes to the U.N.O., the Commonwealth, the SAARC, the Non-Aligned Nations meetings and puts forward India's point of view before the world leaders. He may visit any country to improve India's relations, or to solve outstanding issues. He is the chief architect of India's foreign policy.

Do you know, who accompanies the Prime Minister in these conferences? Usually, the Foreign Minister accompanies the Prime Minister in all the parleys or conferences.

#### **F. Prime Minister as the leader of the Nation:**

The Prime Minister is the acknowledged leader of the nation as a whole. The whole nation looks up to him for leadership. Actually, at the time of general elections, it is for or against the Prime-ministerial candidate that the entire electorate in the country votes, though he/she is contesting from a particular Constituency.

Thus, we can say that in a practical sense, the election of the Prime Minister is the direct choice of the voters. In other words, if the people want to choose a particular candidate as their Prime Minister, they vote for the candidate of the Prime Minister's party in their Constituency.

## 2.1

# Parliament: Composition, Powers and Functions | India

### 1. Introduction to the Parliament of India:

Article 79 of the Constitution of India provides that there shall be Parliament for the Union which shall consist of the President and two Houses to be respectively known as the Council of States and the House of the People.

Thus, the Constitution has stipulated a bicameral system of legislature in which Indian Parliament consists of two Houses. Whereas the Rajya Sabha is Upper House, the Lok Sabha is Lower House of Parliament. The former is a permanent House in the sense that it cannot be dissolved, unlike latter i.e., the Lok Sabha, which has a fixed term of five years unless dissolved earlier.

The Lok Sabha consists of representatives directly elected by the people on the basis of universal adult franchise, except of course in the case of Anglo-Indian community, whose two representatives can be **nominated in that House, when the President is satisfied that that community has not been properly**

**represented. This nomination has so far been made in the case of all the ten Lok Sabhas.**

---

## **2. The Rajya Sabha: Its Composition:**

The Rajya Sabha, as already mentioned, is Upper House of Indian Parliament. Article 50 of the constitution provides that the Council of States shall consist of 12 members to be nominated by the President in accordance with the provisions of clause (3) and not more than two hundred and thirty-eight representatives of the states and of the Union Territories.

It is also provided that allocation of seats in the Council of States to be filled in by the representatives of states and Union Territories shall be as contained in the Fourth Schedule to the constitution.

Clause (3) of the constitution also, provides that the members to be nominated by the President shall be those who have special knowledge or practical experience in respect of such matters as literature, science, art and social services.

The constitution also provides that the representatives of each state in the Council of States shall be elected by the elected members of the Legislative Assembly of the state in accordance with the system of proportional representation by means of single transferable vote.

The composition of the Rajya Sabha, in term of number of seats to each state has been changing, because from time to time the states have been reorganised. Members from the Union Territories are chosen in such a manner as the Parliament may decide by law. The basis of the composition, i.e., number of representatives to be elected from each State has been fixed keeping in view the population of each State.

Thus, each State has not been given equal representation, as is the case with the Senate of the USA where each state, big or small, is represented by two representatives or Swiss Upper House in which two representatives each come from full Canton and one member each from half Canton.

By and large, a state is given representation on the basis of one member for each million of the first five millions of its population and thereafter only one seat after every additional two millions.

**Position in respect of seats allocated to each State in Rajya Sabha now is as follows:**

<i>Name of the State/ Union Territory</i>	<i>No. of Seats Allotted</i>
Andhra Pradesh	18
Arunachal Pradesh	1
Assam	7
Bihar	22
Gujarat	11
Haryana	5
Himachal Pradesh	3
Jammu & Kashmir	4
Karnataka	12
Kerala	9
Madhya Pradesh	16
Maharashtra	19
Mani Pur	1
Meghalaya	1
Mizoram	1
Nagaland	1
Orissa	10
Panjab	7
Rajasthan	10
Sikkim	1
Tamil Nadu	18
Tripura	1
Uttar Pradesh	34
West Bengal	16
Delhi	3
Pandicherry	1
Nominated	12

Of course, the Constitution provides that twelve members to be nominated by the President shall be those who have earned a name and fame in the field of science, art, literature and social services, yet sometimes nomination to the Rajya Sabha are made of the persons who are likely to politically support the Prime Minister and of

those who have already been inducted in the cabinet but are not being asked by the party bosses to contest the Lok Sabha seat within a stipulated period of 6 months, due to one reason or the other.

Even otherwise it is said about the membership of this House that **“It is a House of party pocket boroughs of various political parties to send their second rate party leaders who may be indispensable to the parties but unacceptable to the adult electorate.”**

### **Qualifications of Members:**

The Rajya Sabha being Upper House of Parliament it is expected of it that its members should be comparatively sober and atmosphere in the House calm. The constitution provides that a person who wants to become a member of the House should be citizen of India and not less than 30 years of age. He should be an elector for a parliamentary constituency of the state from which he is to be returned to the House.

He should not hold any office of profit either in the central or state government. He should be of sound mind and not be an alien. He also should not have been declared unqualified for membership by any court of law. He should neither have voluntarily acquired citizenship of any foreign country nor agreed to owe allegiance to any foreign power.

After his election to the Rajya Sabha a member shall ordinarily continue to be a member for a period of 6 years but his seat shall fall vacant after he has tendered his resignation or incurred some disqualification which disqualifies him from the membership of the Rajya Sabha.

He cannot simultaneously hold membership of the Lok Sabha. In case he becomes a member of the other House at any stage, he will have to give up the membership of either House of Parliament.

This also applies to the membership of state legislature as well. He will also cease to be member of the Rajya Sabha in case he remains absent from the sittings of the House continuous!;- for 60 days without the permission of the Presiding Officer of the House. He shall also cease to be a member, if the House on account of his unbecoming conduct, decides to expel him from the House as a matter of punishment.

Since the time the constitution came into force and since the days when Representation of People Act was passed the provision that only a person who is an elector of a parliamentary constituency in a state can be chosen as a representative of that state in the Rajya Sabha was not strictly adhered to and political parties nominated a person to the Rajya Sabha from a state from which it could return him/her with the support of party MLAs, no matter whether the person concerned was ordinarily resident of that state or not.

When T.N. Seshan became Chief Election Commissioner he laid stress on this provision of the Representation of People Act, 1950 and decided to examine whether some members of the Rajya Sabha, including Finance Minister Man Mohan Singh, who was representing Assam in the Rajya Sabha with the support of ruling party, were ordinarily residents of the states which they claim to represent and for which they had submitted affidavits.

This of course, posed problem for sometime and embarrassment to these members as well, though ultimately none of them was affected. But an issue has been thrown open for consideration, which can be raised by some one else at some latter stage.

The Representation of People Act, 1951 stipulates that only a person who is an elector of a parliamentary constituency in a state can be chosen as a representative of that state in the Rajya Sabha.

One of the conditions of elector in a constituency stipulated by the Representation of People Act, 1951 is that a person shall be 'ordinarily resident' in that constituency but the Act does not give precise meaning of the words 'Ordinarily Resident' but say that the fact of owning or being in possession of dwelling house in a constituency is not enough.

The word 'ordinarily' means normally or usually but not in-variably. In some cases it is very difficult to decide whether a person is ordinarily resident in a particular place or not. Thus, the Act lacks clarity and precision. No one, thus, can be penalised for non- clarity or non-precision in law.

Moreover, any such enquiry by any authority responsible for conduct of elections for the membership of the Rajya Sabha is bound to stand on the way of persuasion of eminent persons known for their expertise in different fields to join Parliament and help in improving administration on the one hand and cleaning corrupt elements from politics on the other.

## **Meetings of the Rajya Sabha:**

The meetings of the Rajya Sabha are presided over by Vice-President of India, who is ex-officio Chairman of the Rajya Sabha.

Like his counter part in the USA, the Vice-President of India is not the member of the Rajya Sabha and as such he does not enjoy any voting power or right, but he has casting vote in case of a tie and when the House is equally divided on any issue. As presiding officer of the House, he is required to maintain decorum and discipline in the House.

He allows the members to speak and disposes of all the points of order which are raised in the House. When he is on his legs nobody else is supposed to stand in the House. Any item in the House can be discussed only with his permission.

He recognises the members on the floor of the House. It may, however, be remembered that though the Vice-President of India is the Chairman of the Rajya Sabha yet he is not elected by that House alone. His election procedure has already been discussed separately.

But at times the Chairman is not in a position to preside over the meetings of House due to one or several reasons. In his absence, the meetings are presided over by Vice-Chairman, who of course is elected by the Rajya Sabha from amongst its own members.

When both the Chairman and Vice-Chairman are not available to preside, available member from the panel of chairmen presides. Deputy Chairman obviously holds office as long as he is member of the Rajya Sabha. As soon as he ceases to be a member of the House, he also vacates that office.

The Chairman of the Rajya Sabha can be removed from his office by a Resolution of the Rajya Sabha, which is also approved by the Lok Sabha. When such a resolution is under discussion he is provided an opportunity to participate in the discussions but cannot vote.

In addition, when such a charge of removal is levied against the Vice-President, he leaves the chair when the resolution is under consideration of the House.

Each member of the House is elected for a period of 6 years, 1/3 of them retire after every two years. Each member is required to take an oath an allegiance to the

constitution. 1/10th of total membership of the House constitutes quorum for holding meetings of the House.

## **Functions and Powers of the Rajya Sabha:**

Rajya Sabha, being Upper House of Indian Parliament, does not possess co-equal powers with the Lok Sabha in money matters which is Lower House of Union Parliament. In financial matters it has much less powers than the Lok Sabha. In non-money matters both the Houses have co-equal powers. A non-money bill can be moved in either House of Parliament.

In fact, when the government feels that the work with the Lok Sabha is heavy, it introduces non-money bills in the Rajya Sabha, so that all discussions and heat which usually is generated on a new bill, finds its expression in that House and comparatively less time of the Lok Sabha is consumed over such bills.

Every non-money bill must be passed by both the Houses of Parliament before it can be sent to the President for his approval. In that regard both the Houses are at par.

There can, however, be disagreement between the two Houses on any non-money bill. In order to solve that the President can call for a joint sitting of both the Houses. In this connection it may be pointed out that in India there is no system of conciliation committee as that obtains in the USA, under which such disputed matters are referred to such a committee, on which both the Houses have equal representation and whose decision is treated as final. In that country Senators having more glamour and longer tenure, usually carry the day.

The position is also not like the one prevailing in England where the House of Lords has the power to delay the matters. It is ultimately forced to agree to what has been proposed by the Commons. In India, the position is somewhat different because the Rajya Sabha is neither so weak as the House of Lords in England, nor so powerful as the Senate in the USA.

But even then the position of the Rajya Sabha in a joint session is not as strong as that of the Lok Sabha. It is because numerical strength of the Lok Sabha is more than that of the Rajya Sabha and in case of any voting the former is likely to win, because each House is likely to vote in its own favour to save its prestige.

The Lok Sabha has advantage in another respect also, because in such a joint session Speaker of the Lok Sabha presides. Not only this, but it is the Council of

Ministers which decides whether on a controversial matter view point of the Rajya Sabha is to be adjusted and whether such a matter is to be pursued or dropped.

Since the Council of Ministers is jointly and collectively responsible to the Lok Sabha, therefore, it is likely to go with the view point of that House. Thus, in actual practice the Rajya Sabha can delay a non-money Bill for period of six months but cannot kill that, if the Lok Sabha is keen to see that through.

### **Money Bills:**

In so far as money matters are concerned, the Rajya Sabha is of course much weaker than the Lok Sabha and much less than the Senate of the USA. All money bills can originate only in the Lok Sabha. No money bill can originate in the Rajya Sabha. If a money bill passed by the Lok Sabha is sent to the Rajya Sabha that House can delay it for a period not exceeding 14 days.

In case a money bill is not returned within that period that will be treated to have been passed. In case, however, the Bill is returned within this period, with any suggestions or modifications, it is for the Lok Sabha to accept such changes or not, but in both the cases the money bill need not be returned to that House.

The Bill as passed by the Lower House for the second time will be treated to have been passed and sent to the President for his approval.

### **Control over Executive Government:**

Then comes control over the executive government. In a parliamentary form of government the Council of Ministers is collectively responsible to the Lower House e.g., the House of Commons in England. In India also it is responsible to the Lok Sabha and not in the Rajya Sabha.

The Ministers appear before the Rajya Sabha, pilot non-money bills in that House, reply to all questions put on them, leave no one unturned to satisfy the members of the House, but if even in spite of all all as the members do not feel satisfied and move a vote of no-confidence against the Ministry, that will have no effect on the life of the government, even if such a motion is unanimously carried out.

All that the House can do is that it can express its dissatisfaction on government policies and programmes, can embarrass it but nothing beyond that.

### **Co-Equal Powers:**

But both the Houses have co-equal powers in so far as amendment of the constitution is concerned. India's constitution has so far been amended as many as 80 times and several non-official amendments proposed by the members in both the Houses could not be carried out for want of government support. According to the constitution, it is provided that a constitutional amendment can be proposed in either House of Parliament.

Thus, in this regard there is no distinction between the two. It is also provided that such an amendment must be approved by both the Houses of Parliament by a majority of each House, as specified in the constitution, in each House. It may be remembered that there is no provision in the constitution by which a joint sitting of the House can be called to solve a deadlock on any constitutional amendment.

Both the Houses have co-equal powers in certain other matters as well, including election of the Vice-President of India, impeachment of the President and removal of the judges of the Supreme Court and High Courts and also that of the Comptroller and Auditor General of India.

In another respect in which both the Houses have co-equal powers is the approval of the declaration of emergency in the country. Unless both the Houses approve, there can be no emergency declaration in the country.

If there is need for setting up martial law or suspension of fundamental rights, then also the approval of Rajya Sabha is unavoidable. Under the constitution Union Public Service Commission has a special status. It is expected to perform certain specific functions.

In case government decides to taken away some of the functions of the Commission or for that matter of the Comptroller and Auditor General of India, for that the consent of the Rajya Sabha is as much needed as that of the Lok Sabha.

### **Exclusive Powers of the Rajya Sabha:**

There are, however, certain fields in which the Rajya Sabha has exclusive rights. In India this House is supposed to represent the states. Under the constitution there are certain specific subjects which have been mentioned in the state list and it is the exclusive responsibility of the states to enact laws on the subjects mentioned in that list.

But the Rajya Sabha by a 2/3 majority, can pass a resolution that a particular subject mentioned in the state list may be transferred either to the central list or

concurrent list, thereby depriving the states of its authority of legislation on the subject.

Article 249(2) of the constitution provides that such a resolution when passed by the Rajya Sabha shall remain in force for such period not exceeding one year, or as may be specified in the resolution. It is also provided that such a resolution shall continue to remain in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

When such a resolution is passed by the- Rajya Sabha, then alone the Parliament becomes competent to pass any enactment on a matter so amended by the Rajya Sabha.

Article 312 of the constitution provides that the Rajya Sabha is entitled to create a new All India Service, by passing a resolution by 2/3 majority of the House, if it feels that creation of such a service is essential and needed in the national interest. It is also for the Rajya Sabha to regulate recruitment and conditions of service of persons appointed to any such service.

Forty-Second Constitution Amendment Act dealt with All India Judicial Service. The amendment covered subordinate courts as well. It was provided that in this service posts not inferior to that of district judge shall be included.

It was also provided that law providing for the creation of the All India Judicial Service aforesaid may contain such provisions for the amendment of subordinate courts as may be necessary for giving effect to the provisions of that law and no such law deemed to be an amendment of this constitution for purposes of Article 368. In this way the powers of the states were effected.

Then it is left to the Rajya Sabha to initiate a proposal for the removal of Vice-President of India from his office. In addition, when emergency is in operation in the country and the Lok Sabha has been dissolved, it is left to the care of the Rajya Sabha to keep an eye on the activities of the government and to see that emergency powers are not misused.

### **Critical Study of a Working of the Rajya Sabha:**

Now a question arises as to what is the real position of the Rajya Sabha. Is it really a House which is significantly contributing to the Indian political system or merely it is a House which has been created because India is a Union of States and a Union must have a bicameral system of legislature.

It was accepted even in the Constituent Assembly that in Indian Parliament centre of political activity shall be the Lok Sabha. But it was perhaps never the intention of constitution makers that the Rajya Sabha should be an appendage of the Lok Sabha, because had that been so, that House would not have been given some exclusive powers.

In the words of Pylee, **“The Rajya Sabha is an important part governmental machinery and not an ornamental super-structure or an unessential adjunct.”** With the passage of time in India, different political parties have been nominating politically mature persons for the Upper House who have earned name for their sincerity.

Same can be said about nominations made by the President. They are the persons who have significantly contributed in their respective fields and also have sound views on every bill which comes up for discussion.

Now comes controversial problem of representation of the states. Some critics argue that like any other federation, in India too the representatives are not chosen on the basis of those who represent the interests of the state, but on the basis of strength of political party in power in the state.

At the time of every binnial election the composition of the Rajya Sabha changes because the political party which is in power in the state at that time returns representatives belonging to it.

Thus they feel that the Rajya Sabha does not serve the basic purpose for which it was created. They argue that the members in the Rajya Sabha express their views on the basis of their party affiliations. Even if that is so and the argument is accepted then such a situation is unavoidable in our present day political system in which every institution must work on the basis of party affiliations.

The Rajya Sabha so far has refused to act as mere shadow of the Lok Sabha. As early as in 1953 it directed its member, who was then Law Minister of the government, not to associate himself with any activity of the Lok Sabha, as long as the House is given proper representation, along with the Lok Sabha on Public Accounts Committee.

The House persisted on this demand till Prime Minister Nehru intervened and agreed that the Rajya Sabha shall have seven representatives on the Committee. A year later in 1954 when N.C. Chatterjee, a Member of the Lok Sabha, called the

Rajya Sabha as a pack of urchins and there was much resentment in the House. It was after great difficulty that the matter could be settled.

In 1963, the Rajya Sabha felt that an attempt was being made in the Lok Sabha to deprive it to discuss the budget before its discussion in that House. This was resented by the House. In 1961, it forcefully stuck to its views on Dowry Prohibition Bill, when in order to solve the problem a joint session of both the Houses was held and in that one of the two major recommendations of the Rajya Sabha were accepted.

In 1968, the Lok Sabha decided to refer Banking Companies (Amendment) Bill to a Select Committee of its own.

The Rajya Sabha resented this and demanded that a Bill of this nature should be referred to Joint Select Committee of both the Houses. In 1970, came Constitutional Twenty-Fourth Amendment Bill, which had been passed by the Lok Sabha.

It proposed abolition of Privy purses and privileges of Indian princes. It was a major issue, and the Rajya Sabha exerted itself and voted against it, and the amendment could not be carried out.

In 1977, Janata Party came to power in the Lok Sabha and formed its government. At that time Congress party was in majority in the Rajya Sabha. In April 1977, the Lok Sabha passed two measures which were sent to the Rajya Sabha for its approval.

The latter House suggested certain amendments, which were not acceptable to the government and the Home Minister decided that both these bills be allowed to lapse, rather than bowing to the pressure of the Rajya Sabha.

Again the Rajya Sabha asserted itself when it demanded that a copy of the charges of corruption, etc., against the family members of Prime Minister Desai and Home Minister Charan Singh should be placed on the Table of the House. For days together, it did not allow the government to proceed smoothly with its normal work.

In 1979, elections were again held in the country and on the basis of results declared in early 1980 Congress (I) formed government at the centre. At that time Janata Party was in majority in the Rajya Sabha. When a motion of thanks to the

President for his address was sent to the Rajya Sabha, after its approval by the Lok Sabha, the former passed that in an amended form.

It was for the first time that in the history of Parliament in India that the Rajya Sabha amended a Presidential Address. In 1989, the Rajya Sabha forcefully raised its concern over Bofor Gun deal issue and made the working of the House difficult.

Again in the history of Indian Parliament several occasions have risen when the Rajya Sabha made amendments in the Bills passed by the Lok Sabha and thus acted as a true revisory body, which is one of the important functions of an Upper House.

The House has also helped the Lok Sabha to relieve it from some of the burden of its work. Several non-money bills are introduced in this House, which otherwise would have been introduced in the lower House and thus its burden of work would have considerably increased.

Even Constitutional Amendment Bills e.g., 40th Constitutional Amendment were introduced in the Rajya Sabha. In the absence of this House, it would always have been very difficult for the Lok Sabha to cope with heavy work load.

About the position of the Rajya Sabha Prof. K.V. Rao says. **“An awkward situation may well arise if a government has slender majority in the Lok Sabha but to which a substantial majority of the Rajya Sabha is opposed, is defeated in a joint sitting of two Houses.”**

As even one is aware that the Janata Party was quite keen that changes introduced by Forty-Second Constitution Amendment Act, should be revoked. But it knew that in the Rajya Sabha Congress party was in power and as long as Rajya Sabha was not agreeable, constitution could not be amended. Accordingly it could amend the constitution only to the extent to which the Rajya Sabha agreed with government views.

Similarly Constitution 64th and 65th Amendment Bills could not be introduced in August 1989 session of the Rajya Sabha because at that time ruling Congress (I) did not have requisite two-thirds majority in the House. In October 1989 session when these Bills were introduced in the Rajya Sabha that House disapproved these and thus exerted its authority.

Thus, in India the Rajya Sabha has, to a great extent, justified its existence. Its role and responsibility is being now increasingly felt under changed circumstances. As

long as Congress party was in power in both the Houses, there was not much of a problem, because it was sure that under party discipline the Rajya Sabha would agree to what is passed by the Lok Sabha.

But between 1977 and 1979 Janata party, and in 1989 again ruling Congress (I) felt the taste of Rajya Sabha power and existence when it was faced with a hostile Upper House. Similarly in 1980, Congress(I) which was in power in the Lok Sabha felt the punch of Rajya Sabha, where Janata Party was in power and this situation is now frequently arising.

Since P.V. Narsimha Rao government did not have requisite majority in the Rajya Sabha, it could not get some Constitution Amendment Bills passed, which otherwise it would like to have passed. It is said that the Rajya Sabha exerts itself only when the same political party which controls it is not in power in the Lok Sabha but not otherwise.

### **The Other Side of the Picture:**

But there are many critics of the Rajya Sabha in India. They argue that Upper House of the Parliament has not come up to the expectations of the constitution makers. According to them founding fathers of the constitution wanted that the Rajya Sabha would have elderly persons as its members.

But in actual practice what has happened is that the average age of the Lok Sabha members and those of the members of Rajya Sabha has remained almost the same.

It was also expected that the Rajya Sabha will present the composition of the state legislatures, but that too has not happened. On the other hand, the members of the Rajya Sabha have been working on political basis rather than keeping interests of the states into consideration.

In effect the trend of discussions on important Bills, both in the Lok Sabha and the Rajya Sabha has always been on party lines. Then it is argued that in the Rajya Sabha, on several occasions, political parties have provided membership to their disgruntled party leaders for their satisfaction, who otherwise could not be placed in any position of authority.

These critics also argue that founding fathers of the constitution also left certain inherent defects in the composition of the Rajya Sabha, for the reasons best known to them. By providing seats to each state in the Rajya Sabha, more or less on the

basis of population, they aimed at giving more representation to bigger states like U.P., Maharashtra and Bihar than to small states and Union Territories.

Incidentally these for long remained Congress strong holds. They also allege that 12 members who are to be nominated by the President, will always side with the centre, firstly, because they represent no state, and secondly, because Central government will nominate a person who is not opposed to their policies and thus can tilt the balance in favour of centre, as against the interests of the states, at any time.

It was in 1973 that a senior Congress Member of the Lok Sabha, Bhibhuti Misra, moved a resolution in the Lok Sabha that Upper House should be abolished. He pointed out that even Gandhiji and Pt. Nehru supported unicameral legislature. He argued that membership of the Rajya Sabha was back door entry to Parliament.

According to him without this House it would have been easy for the Lok Sabha to implement its progressive programmes; like bank nationalisation and abolition of privy purses or to introduce far-reaching land reform measures. But the proposal was not supported by majority of the members who felt that a bicameral system of legislature was unavoidable for a federal polity.

In India the Rajya Sabha on the whole has held good reputation for high standard of debates on important issues and has also successfully delayed legislation on matter which might otherwise been the outcome of the passions of the moment.

It is not only the best constituted second chamber in the world but as Prof Jatendra Rajan once remarked, **“It is also the most well balanced in its powers to fit in modem democracy and to serve the constitutional purpose which a second chamber in democracy is required to perform in the best possible manner.”**

---

### **3. The Lok Sabha: Its Composition:**

The Lok Sabha is Lower House of Indian Parliament. Article 81 of the constitution deals with the composition of this House. It had originally been provided that the Lok Sabha shall consist of not more than 500 members to be directly elected by the electorates from territorial constituencies of the states and not more than 25 members to be elected from the Union Territories.

It had also then been provided that each representative shall not represent less than 5 lakh or more than 7.5 lakh of population. But subsequently as the population increased, there were two alternatives open, namely, either to increase the size of the Lok Sabha or to end the restriction that each representative shall not represent more than 7.5 lakh of population.

In 1953, Second Constitution Amendment Act was passed by which population restriction was done away with.

Now according to Art. 81 of the constitution the House of the People shall consist of not more than 530 members chosen by direct election from territorial constituencies in the states and not more than 20 members to represent the Union Territories chosen in such manner as the Parliament may by law provide. At present membership of the Lok Sabha is 542.

It is also provided in the constitution in Article 81(2) that each state shall be allotted a number of seats in the Lok Sabha in such manner that the ratio between that number and the population of the state, in so far as possible shall be uniform for all the states.

In other words, for allocating number of seats the basis shall be uniform. Obviously in this arrangement the states which have more population shall have more seats, as compared with the states, which have less population.

In order to return the representatives each state shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it, shall as far as possible, be the same throughout the state.

Since the whole arrangement is based on population it was provided that population meant the population as ascertained at the last preceding census of which the relevant figures had been published.

This provision was, however, amended by Forty-Second Constitution Amendment Act by which it was provided that the reference to this clause to the “last preceding census of which relevant figures have been published shall until the relevant figures for the first census taken after the year 2000 have been published”, be construed as reference to 1971 census.

The Lok Sabha consists of representatives directly elected by the people, but Article 331 of the constitution provides that in case the President is of the opinion that Anglo-Indian community has not been adequately represented in the Lok Sabha he may nominate not more than two members of that community in the House.

There is no specific nomination of the members of scheduled castes and scheduled tribes, by the President in the Lok Sabha, but from certain constituencies, which are notified in advance by the Election Commission, the members belonging to the scheduled castes and schedule tribes can only be returned. Thus, these castes and tribes get adequate and proper representation in the Lok Sabha.

Since in India census takes place after every decade and as a result of which population of the states increases necessitating adjustment of seats for the Lok Sabha and delimitation of constituencies, Article 82 of the constitution has, therefore, provided that upon the completion of each census the allocation of seats in the Lok Sabha to the states and division of each state into territorial constituencies shall be readjusted, provided that such readjustment shall have no effect on the representation in the House of the People until the dissolution of the existing House.

Forty-Second Constitution Amendment Act, however, added a provision by which it was provided that such readjustment shall take effect from such date as the President may, by order specify and until such readjustment takes effect, any election to the House may be held on the basis of territorial constituencies existing before such adjustment.

This Act has also provided that until relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats to the states in the Lok Sabha and also the division of each state into territorial constituencies.

Under the existing laws reservation of seats for the members of scheduled castes and scheduled tribes in the Lok Sabha would have come to an end by January 1980. Forty-Fifth Constitution Amendment Act extended this period by another ten years. The government headed by V.P. Singh decided to extend this period by another 10 years i.e., up to the year 2000 A.D.

Since in India there is population explosion, a point has been made out that in case the number of seats in the Lok Sabha is not considerably increased, elected and voter ratio will go on increasing and the Lok Sabha shall not be a true representative body of the people.

In 1971, the then Chief Election Commissioner suggested that the strength of the Lok Sabha should be increased from 545 to 570. According to him this will serve the double purpose. On the one hand the electorates will have more and better chances to contact their members whereas on the other hand the members of Parliament shall have reasonably medium size constituency.

But this argument was countered by Dr. Nagendra Singh, who said that the strength of the Lok Sabha should not be increased. He argued that whether the population of constituency was less or more did not in any way effect the touring of the member.

According to him the strength of the House of Commons in England since 1832 has practically remained the same though the population of the country has increased from 15 to 55 million.

It is also argued that even if the population increases there is a marginal difference in so far as contact with the masses is concerned, because only few people personally contact Members of the Lok Sabha. But so far the position is that the size of the Lok Sabha has not been increased beyond 545.

**PARTY POSITION IN THE LOK SABHA AS ON 17.3.89**

<i>Name of the State</i>	<i>Total No. of seats</i>	<i>Cong. (I) Desam</i>	<i>Telugu (M)</i>	<i>CPI parties</i>	<i>Other parties</i>	<i>Unattached</i>	<i>Independents</i>	<i>Total</i>	<i>Vacancies</i>
Andhra Pradesh	42	6	29	1	3(a)	1	1	41	1
Arunachal Pradesh	2	2	-	-	-	-	-	2	-
Assam	14	5	-	-	7(b)	1	1	14	-
Bihar	54	45	-	-	5(c)	-	1	51	3
Goa	2	2	-	-	-	-	-	2	-
Gujarat	26	23	-	-	3(d)	-	-	26	-
Haryana	10	6	-	-	4(e)	-	-	10	-
Himachal Pradesh	4	4	-	-	-	-	-	4	-
Jammu & Kashmir	6	3	-	-	3(f)	-	-	6	-
Karnataka	28	24	-	-	4(g)	-	-	28	-
Kerala	20	12	-	1	5(h)	1	-	19	1
Madhya Pradesh	40	39	-	-	-	1	-	40	-
Maharashtra	48	43	-	-	3(i)	-	1	47	1
Manipur	2	2	-	-	-	-	-	2	-
Meghalaya	2	2	-	-	-	-	-	2	-
Mizoram	1	-	-	-	-	-	-	-	$\frac{1}{2}$
Nagaland	1	-	-	-	-	-	-	-	1
Orissa	21	20	-	-	-	-	-	-	1
Panjab	13	6	-	-	(5J)	2	-	13	1(speaker) *
Rajasthan	25	24	-	-	-	-	-	-	1
Sikkim	1	-	-	-	1(K)	-	-	1	-
Tamil Nadu	39	23	-	-	12(l)	1	-	36	3
Tripura	2	-	-	2	-	-	-	2	-
Uttar Pradesh	85	79	-	-	1(m)	2	1	83	2
West Bengal	42	16	-	18	8(n)	-	-	42	2
<b>Union Territories</b>									
Andaman Nicobar	1	1	-	-	-	-	-	1	-
Chandigarh	1	1	-	-	-	-	-	1	-
Dadra & Nagar Haveli	1	-	-	-	-	-	1	1	-
Daman & Diu	1	1	-	-	-	-	-	1	-
Delhi	7	6	-	-	-	-	-	1	-
Lakshadweep	1	1	-	-	-	-	-	1	-
Pondicherry	1	1	-	-	-	-	1	-	-
Nominated (Anglo-Indians)	2	-	-	-	-	-	-	-	-
	545	397	29	22	64	9	8	529	15

(a) Janata 1 CP(M) 1 BJP 1

(c) Janata 3 CPI 2

(e) Lok Dal 4

(g) Janata 4

(i) Janata 2; Peasants and Workers Party of India 1

(k) Sikkim Sangram Parishad 1

(m) Lok Dal 1

(b) AGP 6 PTCA 1

(d) Janata 2 BJP 1

(f) J & K National Conference 3

(h) Muslim League 2, Kerala Congress 2 Janata 1

(j) Akali Dal (Badal) 3, Akali Dal Barnala (2)

(l) AIADMK (I) 7, AIADMK (II) 3, DMK 3

(n) CPI 3 RSP 3, Indian Forward Bloc 2

Elections for the Ninth Lok Sabha were held between 22-26 November, 1989, as a result of which the ruling Congress (I) was dislodged from power.

**Party position in the Lok Sabha, as on 1.12.1989 was as under:**

Total seats contested	525	Total seats Results Declared	524
Congress (I)	192	JMM	3
Janata Dal	141	NC	3
BJP	88	IUML(S)	2
CPI-M	32	Telugu Desam	2
AIADMK	11	Congress (S)	1
Akali Dal (M)	6	Indian People's Front	1
CPI	12	IUML	1
BSP	4	Kerala Congress (M)	1
Forward Bloc	3	Sikkim Sangram Parishad	1
		UCPI	1
		Independents and others	16

Elections to the Lok Sabha were held in 1991 after the down fall of V.P. Singh government. This time Congress party was returned as the single – largest party which also formed the government, but not with absolute majority of its own. It was, however, subsequently that members belonging to other political parties joined it.

**Party position in the Lok Sabha as on 1.1.95 was under:**

**PARTY POSITION IN THE LOK SABHA AS ON 1.1.1995.**

	Name of the State/Union Territory	Seats	Congress (I)							Others	Ind/Nom	Total	Vacancies
			BJP	CPI (M)	JD	CPI	Samata Party	JD (A)	TDP				
1.	Andhra Pradesh	42	30	1	1	-	1	-	7	1(a)	-	41	1
2.	Arunachal Pradesh	2	2	-	-	-	-	-	-	-	-	2	-
3.	Assam	14	8	2	1	-	-	-	-	2(b)	1	14	-
4.	Bihar	54	2	5	1	17	8	9	4	6(c)	2	54	-
5.	Goa	2	2	-	-	-	-	-	-	-	-	2	-
6.	Gujarat	26	6	20	-	-	-	-	-	-	-	26	-
7.	Haryana	10	9	-	-	-	-	-	-	-	-	9	1
8.	Himachal Pradesh	4	2	2	-	-	-	-	-	-	-	4	-
9.	Jammu & Kashmir	6	-	-	-	-	-	-	-	-	-	-	6
10.	Karnataka	28	23	4	-	-	-	-	-	-	-	27	1
11.	Kerala	20	12	-	4	-	-	-	-	4(d)	-	20	-
12.	Madhya Pradesh	40	26	12	-	-	-	-	-	1(e)	-	39	1
13.	Maharashtra	48	39	5	1	-	-	-	-	2(f)	-	47	1
14.	Manipur	2	1	-	-	-	-	-	-	1(e)	-	2	-
15.	Meghalaya	2	2	-	-	-	-	-	-	-	-	2	-
16.	Mizoram	1	1	-	-	-	-	-	-	-	-	1	-
17.	Nagaland	1	1	-	-	-	-	-	-	-	-	1	-
18.	Orissa	21	13	-	1	2	1	1	2	-	-	20	1
19.	Panjab	13	12	-	-	-	-	-	-	1(h)	-	13	-
20.	Rajasthan	25	13	12	-	-	-	-	-	-	-	25	-
21.	Sikkim	1	-	-	-	-	-	-	-	1(i)	-	1	-

22.	Tamil Nadu	39	26	-						12	-	38	1	
										(j)				
23.	Tripura	2	2	-								2		
24.	Uttar Pradesh	85	14	51	-	4	1	4	4	5(k)		83	2	
25.	West Bengal	42	5	-	27		3			7(l)		42		
<b>Union Territories</b>														
26.	And. & Nic. Islands	1	1	-	-	-	-	-	-				1	
27.	Chandigarh	1	1	-	-	-	-	-	-				1	
28.	Dadra & Nagar Haveli	1	1	-	-	-	-	-	-				1	
29.	Daman & Diu	1	-	1	-	-	-	-	-				1	
30.	Delhi	7	3	2	-	-	-	-	-			5	2	
31.	Lakshadweep	1	1	-	-	-	-	-	-				1	
32.	Pondicherry	1	1	-	-	-	-	-	-			0	-	
33.	Nominated	2	-	-	-	-	-	-	-			2	2	
<b>TOTAL</b>		<b>545</b>	<b>259</b>	<b>117</b>	<b>36</b>	<b>23</b>	<b>14</b>	<b>14</b>	<b>10</b>	<b>07</b>	<b>31</b>	<b>5</b>	<b>528</b>	<b>17</b>

- (a) All India Majlis-e-Ittehadul Muslimeem 1
- (b) Autonomous State Demand Committee 1; Assam Gana Parishad 1
- (c) Jharkhand Mukti Morcha 6
- (d) Indian Congress (Socialist) 1 ; Muslim League 2; Kerala Congress (M) 1.
- (e) Bahujan Samaj Party 1.
- (f) Shiv Sena 2
- (g) Mani Pur People's Party 1
- (h) Bahujan Samaj Party 1
- (i) Sikkim Sangram Parishad 1 (J) AIADMK 12
- (k) Janata Party 1; Smajwadi Party 3; Bahujan Samaj Party 1.
- (l) All India Forward Bloc 3; Revolutionary Socialist Party 4. As already said in the Lok Sabha there are certain number of constituencies which have reserved for the member of scheduled castes and scheduled tribes and those belonging to these communities can only be returned from these constituencies.

The position in this regard is as follows:

<i>Name of the State/Union Territory</i>	<i>Total No. of seats</i>	<i>No. of Seats S.C.</i>	<i>Reserved for S.T.</i>
Andhra Pradesh	42	6	2
Arunachal Pradesh	2	—	—
Assam	14	1	2
Bihar	54	8	5
Goa	1	—	—
Gujarat	26	2	4
Haryana	10	2	—
Himachal Pradesh	4	1	—
Jammu & Kashmir	6	—	—
Karnataka	28	4	—
Kerala	20	2	—
Madhya Pradesh	40	5	8
Maharashtra	48	3	3
Manipur	2	—	1
Meghalaya	2	—	—
Mizoram	1	—	1
Nagaland	1	—	—
Orissa	21	3	5
Panjab	13	3	—
Rajasthan	25	4	3
Sikkim	1	—	—
Tamil Nadu	39	7	—
Tripura	2	—	1
Uttar Pradesh	85	18	—
West Bengal	42	8	2
Andaman Nicobar Island	1	—	—
Chandigarh	1	—	—
Dadra & Nagar Haveli	1	—	1
Daman & Diu	1	—	—
Delhi	7	1	—
Lakshadweep	1	—	—
Pondicherry	1	—	—

Election Schedule for Constituting eleventh Lok Sabha was announced on 27th March, 1996 and formal notification was issued by the President of India on 27th March, 1996. The position as it emerged after Lok Sabha election is shown in a separate chapter.

### **Qualifications for Membership of Lok Sabha:**

Elections to the Lok Sabha are held on the basis of universal adult franchise in which every citizen of India is eligible to cast his/her vote without sex or property qualifications on the one hand and caste and educational

**qualifications creed on the other, provided one possesses the following qualifications:**

- (a) He is citizen of India,
- (b) He is not less than 25 years of age,
- (c) He has resided in the constituency for a minimum period as prescribed by law,
- (d) He should not be of unsound mind,
- (e) He should not otherwise be disqualified to become a member of the Lok Sabha,
- (f) He should not hold any office of profit either in the central or in the service of state government,
- (g) He should subscribe that he owes allegiance to the Constitution of India and will uphold country's unity and integrity.

Article 102 of the constitution deals with disqualifications for membership of the Lok Sabha. Sub-clause (a) of this Article provides that a person shall become disqualified to hold membership of either House of Parliament if he holds an office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder.

**A person will also disqualify himself of the membership of the House if:**

- (a) He is guilty of corrupt practices in election under Representation of People's Act.
- (b) If he is convicted of an offence resulting in imprisonment of two or more years.
- (c) He has failed to lodge an account for the election offences.
- (d) If he has an interest or share in the contract for supply of goods or any execution of any work or performance of a service to government.
- (e) If he is working as Director or Managing Agent or holding an office of profit in a corporation in which government has 25% shares.
- (f) If he has been dismissed from government service on the charges of corruption or disloyalty to the state.

(g) If he is a person of unsound mind or a bankrupt declared by a court.

(h) If he is an alien i.e., not a citizen of India.

This sub-clause of the constitution was amended by Forty-Second Constitution Amendment Act which provided that a person shall disqualify himself for membership provided he holds an office of profit under the Government of India or the State Government as is declared by Parliament by law to disqualify its holders.

In the words of Dr. Singh, **“The object of the provision is to secure independence of Members of Parliament and to ensure that Parliament does not contain persons who have received favours or benefits from the executive and who, consequently, being under an obligation to the executive might be amenable to its influence.”**

The term ‘office of profit’ has not been defined anywhere in the constitution. But it is by and large accepted that office means a fixed office capable of yielding a profit or from which a person might reasonably be expected to make a profit, but the amount of profit is immaterial.

Article 103 of the constitution deals with authority which is to decide whether a person has disqualified himself/herself for the membership of the House or not.

This Article provides that the question shall be referred for the decision of the President and his decisions shall be final. It is also provided that before giving his decision the President shall obtain the opinion of Election Commission and shall act according to such opinion.

**Forty-Second Constitution Amendment Act modified this and provided that:  
If any questions arises:**

(a) As to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (i) of Article 102 or

(b) As to whether a person, found guilty of corrupt practice at an election to a House of Parliament under any law made by Parliament, shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of a House of Legislature of a State, or as to the period for which he shall be so disqualified, or as to the removal of or the reduction of the period of, such disqualification, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any such decision on any such question, the President shall consult Election Commission and the Election Commission may, for this purpose make such enquiry as it thinks fit.

But Forty-Fourth Constitution Amendment Act has again restored the original position and omitted the change made by Forty -Second Constitution Amendment Act in so far as this Article is concerned.

There can be no simultaneous membership. A person who is elected to the Lok Sabha. shall have to vacate his seat of either the Rajya Sabha or any state legislature, of which he might happen to be a member. His seat will be deemed to have become vacant as soon as he ceases to be Indian citizen or has incurred such other disqualification for the membership of the House, as may be prescribed by law.

He can resign his seat any time after writing a letter of resignation to the Speaker of the Lok Sabha. His seat in the House will be treated as vacant if he remains absent from the House continuously for 60 days without obtaining Speaker's permission or he has been found guilty of using corrupt practices in the election.

He will vacate his seat if he has been convicted by a court of law for any offence and sentenced to imprisonment by it for a period of not less than two years.

Under its Representation People's Act 1951, a member of the Lok Sabha shall be required to vacate his seat if he fails to send his election returns within specified period of time or when dismissed for disloyalty to the nation while in service or it has been established that he has interest in government contracts and uses his position to promote his commercial interests.

### **Dissolution of the Lok Sabha:**

Article 83 of the constitution has fixed normal life of Lok Sabha at 5 year, unless of course the House is dissolved earlier by the President, when he is satisfied that it is not possible for the country to have a stable government with the present composition of the House or when the Prime Minister has advised the President to dissolve the House.

The House was dissolved on the advice of the Prime Minister before completion of its normal term in 1971 and 1977, whereas in 1979 it had to be dissolved because of instable political conditions. In 1989, Lok Sabha was dissolved in November of that year, whereas its normal term of 5 years was to end in January, 1990.

In 1991, elections for the Lok Sabha had again to be held because ninth Lok Sabha constituted hardly a year earlier had to be dissolved when V.P. Singh government resigned after remaining in power for about 1 year.

With Forty- Second Constitution Amendment Act normal life of the House was increased from 5 to 6 years and it was provided that the life of the then existing House will also stand increased to 6 years. But with the passing of Forty-Four Constitution Amendment Act, the life of the Lok Sabha, including that of the then existing House was reduced to 5 years.

In 1979, when the Lok Sabha was dissolved an unprecedented situation arose. In an Indian State, when the President is satisfied that state administration cannot be run in accordance with the provisions of the constitution, the House is dissolved and the state administration is run by the Governor, as the representative of the President.

In order to assist him some advisers are also appointed. But in 1979 Charan Singh, the then Prime Minister resigned without facing the Lok Sabha and President in turn dissolved the House.

In the constitution there being no provision of the appointing an adviser or such a situation having not arisen earlier a question that arose was who should run the country, till new Lok Sabha is convened. There is of course convention of a care-taker government at the centre, but that is for a very short period.

But in this care the period was sure to be long and the government saddled in authority was to get the elections conducted. The President decided to let Charan Singh and his government continue as care-taker government, till the time new government was installed. It was made clear that the government was not to take any policy decision.

**It evoked a lot of controversy in the political circles, particularly by the opposition on the following grounds:**

(a) How could a person ran the government who has not faced the Lok Sabha for even a single day and resigned on the ground that he did not command the majority of the House?

(b) How could it be expected of such a government to arrange free and frank elections in the country, when fortunes of the Prime Minister and his party are at stake, particularly when the country's political situation is very fluid?

(c) Who was to decide what was a policy and non-policy decision and what were the guarantees that policy decisions taken by such a government shall be implemented? In fact, care-taker government took important policy decisions e.g., payment of bonus to railway and postal employees.

(d) What should be the duration of a care-taker government?

In 1989, when the then ruling party leader and Prime Minister Rajiv Gandhi resigned, he was asked by the President to continue as care taker Prime Minister. This time no eye brows were raised because elections for the ninth Lok Sabha has already been held and new government was to be formed within next few days.

On the advise of the Prime Minister, the President summons, prorogues as well as dissolves the Parliament, dissolution of course being in the case of the Lok Sabha alone. But according to Article 85 of the constitution 6 months shall not intervene between its last sitting in one session and date appointed for its first sitting in the next session.

In this connection it may be pointed out that prorogation is different from adjournment, because adjournment' does not end the session but suspends the sittings of the House, whereas proroguing is the act of terminating the parliamentary session. Then whereas the House adjourns with the decision of the House only, it is prorogued by President.

In India each budget session of Parliament begins with an address of the President, who in his budget speech outlines the policies and programmes of the government in the year to come. Such a speech is prepared by the government and at the end if no vote of thanks is passed by the Lok Sabha, for the President for his addressing the joint session, that means a vote of no-confidence against the government.

Article 86 of the Constitution provides that the President may address either or both the Houses of Parliament and can also send messages to either House of Parliament for considering Bill then pending lying with it. It is obligatory on the Part of the Parliament to consider such messages.

## **Powers and Functions of the Lok Sabha:**

### **Legislative Functions:**

The Lok Sabha being the Lower House of the Parliament and consisting of directly elected representatives of the people has comparatively more powers than the Rajya Sabha which consists of indirectly elected or nominated members.

Both the money as well as non-money bills can be introduced in the Lok Sabha. Though non-money bills can also be introduced in the Rajya Sabha as well but money bills can be introduced only in the Lok Sabha. Whether a Bill is a money or non-money Bill, will be decided by the Speaker of the Lok Sabha, whose decision shall be final.

As already pointed out a money bill, when passed by the Lok Sabha, is sent to the Upper House – which must return it with or without comments within a period of 14 days. In case the Bill is not received back within this specified period, it is treated to have been passed.

In case the Bill is received with some modifications which are not accepted by the Lok Sabha, that need not be sent back to the Rajya Sabha but is sent direct to President for his approval. The procedure about non-money bills, where a joint sittings of both the Houses is to be called to settle the differences, but in money matters Lok Sabha has got absolute powers.

It is' the custodian of national purse and watch keeper of country's income and expenditure.

In this connection it may also be pointed out that India is over centralised federation and the Parliament has powers to enact laws on the subjects mentioned both in the central as well as concurrent lists. In addition, the Parliament is also empowered to legislate on the residuary subjects.

Several times the State Assemblies in India had to be dissolved because of breakdown of constitutional machinery. In such a situation administration of the state, for all practical purposes, during this period is taken over by the Parliament, which in effect means by the Lok Sabha.

### **Executive Functions:**

Then comes control over the executive. Under the constitution the Council of Ministers is jointly and collectively responsible to the Lok Sabha. It can remain in position and authority only as long as it enjoys the confidence of the majority of the House. As soon as the confidence is lost the Ministry is supposed to resign.

The Lok Sabha exercises this control in several ways. It keeps the Minister on his toes during the question hour, by raising half an hour discussion, by moving adjournment motions and criticising government's policies and programmes at the time of budget.

But difficult time for the government comes when opposition in the Lok Sabha moves a vote of no-confidence against the government. During the period when the motion of no-confidence is under discussion, the opposition launches frontal attack on the government on ground of failure of policies.

It badly criticises its policies and exposes its weaknesses, faults and faltering's. On its own side the government defends its policies and if at the end the motion is successfully carried the government is forced to resign.

In the history of Indian Parliament votes of no-confidence against the government have been moved several times, but it was only in 1979 when as a result of motion of no-confidence moved by leader of the opposition Y.B. Chavan, the then Desai Government resigned, though formally the motion was not put to vote.

Similarly in Chaudhry Charan Singh as Prime Minister did not face the Lok Sabha when he was sure that vote of no confidence against his government will be passed on the floor of the House.

### **Electoral Functions:**

The Lok Sabha has also electoral functions to perform. In the election of the President the Lok Sabha is an integral part of the electoral college, which is constituted to elect him.

Since the votes of the members of all the State Assemblies for the election of the President have been equated with those of the members of the Parliament therefore, the role of the Lok Sabha in the election process is very important and significant. Similarly, electoral functions of the Lok Sabha also came to focus, when it sits, in a joint sitting, with the members of the Rajya Sabha, for the election of the Vice-President of India.

### **Ventilating of Grievances:**

The Lok Sabha has the important function of removing and ventilating the grievances of the people. The members of the Lok Sabha are supposed to be in contact with their electorates. Several times the constituents individually or collectively approach MPs with their grievances and problems which the constituency in particularly and the country in general faces.

It is function of Lok Sabha to express and discuss these on the floor of the House and force the government to face the situation realistically, rather than remaining in the air. Each Ministry has an informal consultative committee attached to it. It is in

the meeting of these committees that the members discuss particular problems concerned with that Ministry.

Other Functions : Some other important functions of the Lok Sabha, of course, along with the Rajya Sabha are to amend the constitution as and when such a need and necessity arise.

It sits as a court of law when it discusses motion for the removal of judges of Supreme Court and High Courts or disposes of a motion of impeachment against the President of India. Its approval is also needed for the removal of Vice-President of India and also that of proclamation of emergency made by the President.

Thus, the Lok Sabha has wide and vast functions to perform. It is, however, important duty of the members of this House to politically educate the people and make them conscious of their role and responsibility as citizens of India.

India enters into international treaties from time to time. These treaties cast certain obligations on the people of India. It is the responsibility of the Lok Sabha to take that adequate steps for discharging these obligations. The Lok Sabha can also legislate on a subject which though in the central or state list, but for which a request has been made to it by two or more states.

It enacts laws for the whole country when there is a national emergency. When the Rajya Sabha has passed a resolution that a particular subject may be transferred from state to the central or concurrent list, that empowers the Lok Sabha to legislate on that as well.

Along with the Rajya Sabha, the Lower House can amend the constitution. In fact, all important Constitutional Amendment Bills have so far been introduced in the Lok Sabha. It is after the approval of this House that these are sent to the Rajya Sabha for its approval.

Being custodian of national finances it controls Contingency Fund of India and can borrow money from foreign nations as well as. It empowers the Reserve Bank of India to raise loans from Indian public. Needless to say that this House decides about the taxes which should be levied and those already in force should be reduced or abolished.

The Lok Sabha being an independent House lays down rules of procedure for the conduct of its own business and decides about the way in which it shall see that work goes on unhindered.

---

#### **4. Powers of the Parliament:**

Combined together both the Houses of Indian Parliament i.e., the Lok Sabha and the Rajya Sabha have thus vast powers. The Indian Parliament can admit into the Union any new state or area and can also change the boundaries of the existing states. In other words it can increase or decrease the area of any of the existing state.

It determines salaries and allowances of Ministers and public servants. It can extend its life by one year during the period of emergency but not exceeding 6 months in any case, after the emergency has ceased to operate.

It is also left to the Parliament to decide under what circumstances should a person or group of persons be detained for a period of more than 3 months.

Under Article 169 of the constitution it is provided that Parliament can abolish Legislative Council of a state or can create one, where it is already not in existence, provided a resolution to that effect is passed by the State Assembly concerned by a majority of not less than two-thirds of the members present and voting.

Under article 105 of the constitution it is the responsibility of the Parliament to define its powers, privileges and immunities until these are codified by law, these should be those which are available to the members of the House of Commons in England. Since at present these have not been codified these remain the same as are those of members of the House of Commons in England.

The Parliament can set up a High Court for any Union Territory and can also set up more additional courts or increase the strength of the judges of Supreme Court and High Courts, if it so feels that for proper administration of justice that is necessary. It can adjudicate on any dispute with respect to the use, control or distribution of waters or in any inter-state river valley dispute.

It decides about the qualifications of the members as well as manner in which Finance Commission should be appointed and the date on which it should start functioning. In the public interest the Parliament is fully empowered to impose

restrictions on freedom of trade, or commerce between one state or another or within any part of the territory of India.

On the request of states concerned it can create joint Public Service Commissions and can also pass resolutions for the delimitation of constituencies and preparation of electoral rolls in a manner that constitution of Houses of Parliament becomes both easy as well as the Parliament becomes a more representative body.

It also decides for how long English should continue along with Hindi, in India, for official purposes. It is the responsibility of the Parliament to decide for how long special rights given to scheduled castes and scheduled tribes should be continued and which caste and tribe should be removed from or added to the schedule.

In this connection it may be pointed out that scheduling and de-scheduling is a very difficult problem, because those in the schedule, both as the members of scheduled castes and scheduled tribes, enjoy certain privileges, which are not enjoyed by other citizens of India. Thus, whereas it is the desire of many castes and tribes to join the schedules none is prepared to go out of that.

Powers of Parliament are enjoyed by both the Houses, i.e., both by the Lok Sabha and the Rajya Sabha, collectively. But as already pointed out the Upper House of Parliament is much weaker than the Lower House, particularly in financial matters on the one hand and in exercising effective control over the executive on the other.

But constitution makers did not wish that this House should be as weak as the House of Lords in England or as powerful as the Senate in the U.S.A. The framers of the constitution wanted that both the Houses should have co-equal powers, except in financial matters and as already said the Rajya Sabha has justified its existence fully well.

For the conduct of business the constitution has provided that for a meeting of either House of Parliament there shall be a quorum which shall be 1/10 of the total members of the House. In case there is no quorum at any stage, the presiding officer of the House may suspend the meeting till such time that there is a quorum.

Forty-Second Constitution Amendment Act omitted both these sub-clauses 3 and 4 of Article 100, which dealt with this issue, i.e., quorum of the House. But sub-clauses 3 and 4 of Article 100 have, however, again been restored.

---

## 5. The Speaker:

### **Appointment of the Speaker:**

Presiding officer of the Lok Sabha is called Speaker. Like many other institutions, the institution of 'Speakership' has also been borrowed from England, where it started as early as in 1377.

At that time the Speaker used to be a courageous person who could displease both the King as well as the Commons, because he used to carry the petition of the Commons to the displeasure of the King and orders of the monarch to the annoyance of the Commons. His task was difficult.

But as the time passed the Commons grew more and more powerful and with that the dignity and authority of the Speaker began to increase. He became the custodian of rights and privileges of the Commons.

In India first Speaker was appointed by the Governor-General. This honour was bestowed on Sir Fedrick Whyte. He was a very able parliamentarian and set up many healthy traditions. First Indian Speaker was Sardar Vithal Bhai Patel. He always maintained that the only authority to guide and control him was the Assembly, and none else.

He endeavoured his best to see that there was no intervention in the affairs of the House from any quarter. He even closed down visitors gallery when he saw police in the precincts of the House and in the galleries without his permission.

He resigned in frustration when he saw that the government was not allowing him to function without interference. He set many healthy traditions and made the Assembly realise that it was an independent House and the Speaker was custodian of their rights and privileges.

He was followed by able successors, last of the pre-independence era being Speaker Mavlankar. He was incidentally the first Speaker of the House of the people after independence as well.

He was very able Speaker. In the words of Dr. Rao, **"The period of consolidation gave way to new period of development only in 1946 with the election of Mr. Mavlankar."** Pt. Nehru always stressed that the office of the Speaker should always be held by persons of great dignity who were known for their integrity.

As early as in 1953 he said, “The Speaker represents the House. He represents the dignity of the House and because the House represents the nation in a particular way, the Speaker betimes the symbol of nation’s liberty and freedom.”

The Speaker, according to Article 93 of the constitution, is to be elected by the Lok Sabha. which House is also to elect a Deputy Speaker, as well. Tire latter will preside over the meetings of the House in the absence of the Speaker.

Only a member of the House can hold the office of the Speaker. For whatever reason, if the person holding the office of the Speaker ceases to be a member of the House, he shall also cease to be Speaker as well.

The Speaker once elected can be removed only by a resolution of the House for which 14days notice is necessary. Such a notice should specify the charges against him. He can be removed on the allegations that he conducted himself or the business of the House in a manner which had brought down dignity and honour of the House.

When a resolution for the removal of the Speaker or the Deputy Speaker is under consideration, the officer concerned is not to preside over the sittings of the House, even though he may be present. He, however, has a right to participate in the proceedings and to clarify his position. He can also vote but not use his casting vote. Ordinarily he has not been given the right to vote but can exercise his casting vote.

Unless removed earlier, the Speaker will hold office till his successor is appointed. Even he does not cease to be a Speaker with the dissolution of the House. Under the constitution there is no bar for his seeking re-election to the office of the Speaker. Some of the Speakers even got re-elected both in the state Assemblies and the Lok Sabha.

**India so far has had distinguished Speakers like:**

First Central Legislative: Sir Fredrick Whyte

Assembly Second Central Legislative Assembly: V.J. Patel

Third Central Legislative Assembly: V.J. Patel and Maulvi Mohd. Yakub

Fourth Central Legislative Assembly: Sir Ibrahim Rahimtoola and Sir Shanmukham Chetty

Fifth Central Legislative Assembly: Abdur Rahim

Sixth Central Legislative Assembly: G.V. Mavlankar

## **Lok Sabha Speakers:**

G.V.Mavlankar -G.S. Dhillon

M.A. Ayyanger – B.R. Bhagat

S. Hukam Singh -N. Sanjiva Reddy

N. Sanjiva Reddy- K.S. Hedge

Balram Jakhar- Rabi Ray

Shiv Raj Patil. – P.A. Sangma

So far no Speaker in India has been removed from office by an adverse resolution of the House. But Speaker Mr. N. Sanjiva Reddy resigned as Speaker of the Lok Sabha to become the President of India.

The Speaker in India gets such monthly salary and fixed allowances as may be specified by Parliament by law. He also gets free medical facilities. In order to keep the Speaker away from the criticism of the House his salary and allowances are charged on the Consolidated Fund of India.

## **Functions and Power of the Speaker:**

The Speakers of the Lok Sabha enjoys very wide and extensive powers. His foremost duty is to see that there is decorum and discipline in the House and that the business of the House is conducted in an orderly manner and in accordance with the wishes of the House. This is becoming increasingly difficult day-by-day because clashes between the party in power and those in opposition are quite frequent.

In addition to this, some of the members behave in a disorderly manner and defy the authority of the Chair by either not leaving the House when asked to do so or by refusing to stop speaking when so directed.

There is also noise in the House which retards smooth working of the House. Then it is the responsibility of the Speaker to see that those who behave in a disorderly

manner are punished. This can be done by pulling the member to behave properly or by way of admonishing misbehaving members.

If he still persists he can even be asked to leave the House. In case he refuses to do so, the services of Marshall can be called to exit him from the House.

The Speaker is the only authority to decide who shall hold the floor and speak. All members simply try to catch the eye of the Speaker. While allowing the members to speak, care is, of course, taken to see that if the leader of the party wants to speak, he is given first preference. He is to see that all political parties get sufficient time to vindicate their view point, so that there is no dissatisfaction among the members.

The Speaker decides about the time which should be allotted for discussion of each item on the agenda. Of course, he is assisted in this by the Business Advisory Committee of the House.

His authority in the precincts of the House and over the galleries is final. No person can enter within the four walls of the House or galleries without his permission. He decides when the galleries should be cleared of the visitors and the House should meet in camera. He punishes all those who misbehave in any way from visitors gallery.

As presiding officer of the House, the Speaker decides what should appear in the proceedings of the House. He is to see that there is faithful recording of what had been happening in the House and the proceedings are made as quickly available to the people as these can be. At the same time he is to see that nothing wrong goes in the proceedings. Objectionable matters are expunged by his orders.

He is the custodian of rights and privileges of the members of the Lok Sabha and all members of the House look towards him for protection and he ensures that these are fully protected. It is to be ensured by him that there is no malicious criticism by the government, press or any outsider of the members in their individual and collective capacity while performing their parliamentary duties.

Since the powers, privileges and immunities of Members of Parliament in India have remained un-codified so far, this task has become very difficult. But the Speaker is to ensure that no section of the society should feel that the privileges of the House are being used to their disadvantage.

The Speaker certifies whether a particular bill is a money or a non-money bill. It is important because once the Speaker certifies that a particular bill is a money bill then that cannot be introduced in the Rajya Sabha and that House cannot delay its passage for a period of more than 14 days only.

Whenever there is a joint meeting of both the Houses of Parliament, the Speaker, and not the Chairman of the Rajya Sabha presides over such meetings.

In the House when the Speaker is on his legs, all members are supposed to sit down and listen to him patiently. If any member continues to stand that is to be treated as affront to Speaker's dignity.

All the members are supposed to address him only, while participating in the debate. They cannot address each other or to the Treasury Benches. He decides all points of order raised during the course of discussion and his decision is binding on all.

Then comes question hour. Many members give notice of their intention to put questions. The time is always limited, as compared with the number of questions to be answered. The Speaker decides which question should or should not be admitted.

While admitting a question he is to see that the reply shall not compel the government to divulge an information, which otherwise is not in the public interest to be disclosed, that the labour involved in the collection of information will commensurate with the information to be supplied, that the information will not spoil country's relations unnecessarily with any foreign power and so on.

Similarly only the Speaker allows Half an Hour discussion and admits adjournment motions. A vote of no-confidence against the government is also admitted by him.

These days quite a good business of the House is done by the committees which are now playing a very important role in the transaction of parliamentary business. It is, therefore, essential that the committees should be so constituted that all political parties are fully presented on these.

The Speaker nominates chairman and members of these committees which submit their reports to him to cause these to be placed before the House. When Speaker is a member of any committee he presides over its meetings.

The Speaker admits all resolutions for discussion and decides when a discussion on a bill under consideration of the House should be discontinued. He ensures that no member, during the course of discussion indulges in tedious repetition of his arguments or unnecessarily casts aspersions on his colleagues or on the other those or on all House who are unable to defend themselves on the floor of the House.

The Speaker is the channel through which all communications between the House and the President must pass. Several times opposition parties demand that a particular motion be put to vote. The Speaker puts these motions to vote and also announces the result of the voting.

In case there is a tie, he casts his vote to decide the issue. Again it is a Speaker's discretion to allow a member to speak in a language, which is other than English and Hindi and get the speech translated, to the advantage of all the members who do not understand the language in which speech was delivered.

The Speaker is the head of the Lok Sabha Secretariat. No officer or employee of the Lok Sabha can appear as a witness in any court of law without his permission.

He can instruct the government to produce a document for the use of the committee or place a document on the Table of the House. In this way he can force the government to make a document public, which hitherto it was unwilling to part with either on one pretext or the other.

No arrest or any other type of warrant can be issued by any executive authority on any member of Parliament within the four-walls of the House without his prior permission. Information about arrest, bail or release of a member of the House, must immediately be sent to him.

Similarly he allows a member of the House to appear as witness before the other House, court of law or any other body which wishes to appear as witness. He, however, does not force any member for his appearance as witness.

He accepts all the resignations which are sent to him by the members of the House. He has, however, been empowered not to accept a resignation, which he feels has been signed by a member under duress.

The Speaker authenticates all the Bills passed by the House. It is the responsibility of the chair to protect the House from unnecessary executive interference. Pt Nehru once said, "We would like the distinguished occupant of this chair, now and

always to guard the freedom and liberties of this Houses from every possible danger, even from the danger of executive intrusion.”

Thus the Speaker of the Lok Sabha has immense responsibilities and powers as well. But every person cannot be a good Speaker. These days his task has become increasingly difficult. A good Speaker should be level headed and firm, with sufficient patience to listen to all tedious repetitions.

He must be courteous and have for-clearance, fortitude, accurate knowledge about working of the constitution, standing orders and Rules of Procedure for the Conduct of Business in the House. He should have capacity to amicably settle complicated issues.

But Mr. Speaker can discharge his duties and responsibilities only when he enjoys the confidence of the House, including the opposition parties. This raises many serious problems.

Usually such a person is nominated as Speaker, by the ruling party, and subsequently elected by the House who has all along been an active politician. How to ensure that person on being elevated to the Chair as Presiding Officer, will all of a sudden become a none partisan, fully appreciating the view point of the opposition.

Then another problem is that in India so far no tradition has been developed that Speaker will always be returned to the House uncontested. At the time of election political parties contest even from the constituency from which the Speaker of the dissolved Lok Sabha is contesting. The Speaker thus contests on a party ticket and becomes a party candidate.

Then another problem is that in India no healthy tradition has been developed that the Speaker shall not be offered or the occupant shall not accept any other office of profit from the government after retirement, so that he does not look to the government for any favours. Sardar Hukam Singh and N.A. Ayyanger become State Governors, though they had remained Speaker of the Lok Sabha.

Similarly Balram Jakhur who also was Speaker of Lok Sabha joined as cabinet Minister in P. V. Narsimha Rao Government. In order to ensure impartiality of the chair, so far in India no tradition has been developed that once a Speaker, always a speaker.

But in spite of all this from the very beginning the occupants of this chair have always assured to all sections of the House that they will act impartially and protect rights and privileges of the House as a whole.

Sir Eraskine May once said, **“Confidence in the impartiality of Speaker is an indispensable condition of the successful working of the procedure and many conventions exist which have as their object not only to ensure the impartiality of the Speaker, but also to ensure that his impartiality is generally recognised.”**

In 1925, when V. J. Patel became the Speaker of the House he said that from this moment he ceased to be a party man and that he belonged to no party and to all parties. He said, “In the discharge of my duties, I shall assure you, observe strict impartiality in dealing with all sections of the House, irrespective of party consideration.”

When President Patel resigned his successor Maulvi Muhammed Yakub also said, “It will be my sacred duty to see that the rights of every individual member of every party and every section of the House are safeguarded during the brief period that I shall occupy the chair.”

His successor in office President Rahimtoola assured the House, “I would keep before me the motto of judicial impartiality.” President R.K. Shanmukham Chetty said that, “In accordance with this well established practice I cease to belong to any political party from this day.”

About his impartiality, President Abdur Rahim said, “I need hardly assure you that in the discharge of my duties I shall be strictly impartial to all sections of the House and all views that the Hon’ble members of this House may hold.” In 1946, Speaker Mavlanker said, “Though a Congress man ... it would be my duty to be impartial and remain above all considerations of party or of political career.” Speaker Ayyanger did not resign his seat in the party but he said, “It may be that I am not resigning my membership from the party but I shall so conduct myself in this office as to infuse a confidence in the minds of all parties and be absolutely impartial and try to raise the standard conventions and traditions of this House.”

In 1967, Speaker Ayyanger said, **“My office requires of me to be impartial and judicious in the conduct of my work. As a necessary corollary to said resolve, I resign my membership of the party (Congress) to which I had the honour to belong for 34 years.”**

## 2.4 SUPREME COURT

### **Introduction**

The Supreme Court in India was established through an enactment passed in pre-independent India, with the introduction of the Regulating Act, 1773. The 1st Supreme Court started its function as a court of record at Calcutta, and the 1st Chief Justice Sir Elijah Impey was appointed. The court was established to resolve the disputes in Bengal, Orissa, and Patna. Consequently, in 1800 and 1834, the King George-III established the other two Supreme Courts in Bombay and Madras.

However, soon after the enactment of the Indian High Court Act, 1861, the Supreme Courts in Calcutta, Bombay, and Madras were consequently abolished and the courts in Calcutta, Bombay, and Madras resumed its functioning as High Court. In 1935, the British Parliament enacted the Government of India Act, 1935, after a resolution was passed by the Joint Select Committee, which was headed by Lord Linlithgow.

The Government of India Act, 1935, led to the establishment of the Federal Court in India, which has vested more judicial power than the High court with original, appellate, and advisory jurisdiction. After independence, the Constitution of India was adopted on 26th January 1950, and the Federal Court of India resumed functioning as the Supreme Court of India on 28th January 1950, which was presided by Hon'ble Mr. Justice Harilal Jekisundas Kania.

As per article 124(1) of the Constitution, there should be a Supreme Court in India that will be presided by the Chief Justice of India with additional seven Judges until the parliament passes precedent for increasing the number of Judges. However, currently, there are 34 judges in the Supreme Court, and the current Chief Justice of India is Mr. Justice Sharad Arvind Bodbe.

## Indian Legal System Overview

### Importance of the Supreme Court in India

In the Constitution of India, part 5, chapter 6 deals with the power, function, appointment, retirement, jurisdiction, etc. from Article 124 to Article 147 of the Supreme Court. The followings are the importance of the establishment of the Supreme Court:

- 1) The Supreme Court is the highest appeal court that is also known as the apex court of India and even the last resort, where the citizens of India can seek justice if they are not satisfied with the judgment of the High court.
- 2) The citizens of India, as per Article 32 of the Constitution, can even directly sort for remedy through writs if their fundamental rights are violated.
- 3) The Supreme Court has Judicial Review power that is being vested through Article 13 of the Constitution, which means the Supreme Court has the power to strike down any legislation and executive action if such acts are found to be inconsistent with the Constitution of India.

### What are the functions of the Supreme Court?

The following are the Supreme Court functions:

- a) The SC gives the final verdict against an appeal from the other subsidiary courts i.e., High courts.
- b) It acts as an institution where issues from the different governmental

bodies, central government, and the state government matters are resolved.

c) As per Article 141 of the Constitution, laws passed by the SC, apply to all courts within the Indian Territory.

d) In some matters, the Supreme Court also acts on its own and can pass suo moto.

**What are the powers of the SC?**

The Supreme Court has the following powers that are jurisdiction:

**A) Original Jurisdiction:** The following are the original jurisdiction of the SC:

I) As per article 131 of the Constitution, the SC functions as original jurisdiction over matters where the disputes are either between the Central government and the state government or between two or more state governments.

II) As per article 139 of the Constitution, the SC have the power to issue writs, order, or direction.

III) As per section 32 of the Constitution, the SC also has the authority to enforce Fundamental Rights.

IV) As per Article 139A of the Constitution, the SC on its discretion or at the advice of the Attorney General of India can take up the cases during the pendency of the matter from the high courts if the same issue is to be disposed of by the SC that is related to the question of law. And it can also transfer the pending cases, appeal or other proceedings to give justice from one HC to another HC.

**B) Appellate Jurisdiction:** As per article 132, 133, 134 of the Constitution, the SC has appellate jurisdiction in matters that are related to civil, criminal, or Constitution. Also, as per article 136, the SC has the power to issue special leave that is being by any tribunal courts in India but this does not apply to Army courts.

**C) Advisory Jurisdiction:** As per article 143 of the Constitution, the SC can advise the President of India that is related to the question of law, and the nature of the matter is associated with the public importance. And the President can also seek opinion in the matters that are related to Article 131 of the Constitution.

**D) Review Jurisdiction:** As per article 137 of the Constitution, the SC has the power to review any laws that are being passed by the legislature.

## Conclusion

The Supreme Court is the highest appealing body in our jurisdiction. With its establishment, justice is being proclaimed by the citizens of India. The powers that are vested upon the SC are to ensure the fair trial in matters that are about the Constitution of India; hence it also protects the world's largest democratic state.

## Judicial Review Definition

**Judicial review** is the ability of the court system (judicial branch) to review decisions by the court if it feels the executive or legislative branch of the government has created a law or policy that the judicial system does not feel is just or fair. There are three branches of government in the United States: the executive, the legislative, and the judicial branch. The idea behind the judicial review is to have a balance of power between the three aforementioned branches of government. The power in the judicial review process is 100% held by the judicial branch and cannot be questioned if the judicial branch decides to make a law null and void. The importance of this power and having checks and balances between the judicial branch and the executive and legislative branch is to make sure that an unfair law does not get passed. For example, if it was suddenly against the law to be outside after 9 pm (assuming it's not a public safety issue) the judicial branch might review this law. Judicial restraint also protects the rights of the US Constitution. It does this by requiring that judges cannot decide if the rights of an individual were upheld or violated unless there is another verifiable or concrete dispute between the two opposing parties.

## The Judicial Review Process

The **judicial review** process is when the US Supreme Court administratively reviews laws that might be unfair or unjust. After the review, the court will declare the laws just and fair, or null and void. When the court decides that the law is null and void, this means the law is no longer in effect. Usually, creating laws is performed by the legislative branch and rarely the executive branch unless it is an executive order. Traditionally, the judicial branch enforces the laws that

have been created. However, when the judicial branch feels that a law is unfair, it has the power to strike it down. The grounds for declaring a law null and void have to do with it being declared unconstitutional.

## Historical Background

Article III, Section 1 of the US Constitution establishes the US Supreme Court, which can act over all other inferior courts. The Judiciary Act of 1789 permitted the Supreme Court to issue legal mandates to the government or state officials to comply with the law. This act was challenged, but because Article VI of the Constitution creates and establishes the US Supreme Court as the highest judicial authority, the Judiciary Act of 1789 remains in force today. In the Marbury v. Madison case in 1803, the power of the Supreme Court to declare actions from the legislative or executive branch unconstitutional was granted. The verbiage in the US Constitution does not specifically allow the act of **judicial review**. When the Fourteenth Amendment was passed in 1869, this gave the US Supreme Court further power to rule over states.

The Supreme Court is the final evaluator regarding if someone's rights are protected or violated. On February 24, 1803, there was a question of how far executive power extended for President Thomas Jefferson. Through the utilization of his Secretary of State, James Madison, Thomas Jefferson attempted to prevent William Marbury from becoming the justice of the peace for the District of Columbia in Washington County. However, the Chief Justice, John Marshall challenged President Jefferson's decision, and it was ruled that Thomas Jefferson could not stop William Marbury from taking the position as the justice of peace. Additionally, it was ruled that the Supreme Court could not legally force President Thomas Jefferson to place William Marbury in the justice of peace position for the District of Columbia. Because the court ruled both that this was an abuse of executive power by President Thomas Jefferson to block this job opportunity and legal position for Marbury, and that the court could not force Marbury to receive the position either, William Marbury never became the justice of the peace in the District of Columbia for Washington County. Marbury v. Madison established the power of **judicial review** for the US Supreme court.

## Judicial Activism – Know What It Means

Judicial activism is a concept that originated in the US in 1947. It has been seen in India since the Emergency days. The judiciary plays an important role in upholding and promoting the rights of citizens in a country. The active role of the judiciary in upholding the rights of citizens and preserving the constitutional and legal system of the country is known as judicial activism. This entails, sometimes overstepping into the territories of the executive. Candidates should know the **judicial overreach** is an aggravated version of judicial activism.

Judicial activism is seen as a success in liberalizing access to justice and giving relief to disadvantaged groups, because of the efforts of justices V R Krishna Ayer and P N Bhagwati.

The Black's Law Dictionary defines judicial activism as “judicial philosophy which motivates judges to depart from the traditional precedents in favour of progressive and new social policies.” **udicial**

### Activism Methods

There are various methods of judicial activism that are followed in India. They are:

1. Judicial review (power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict with the Constitution)

2. PIL (The person filing the petition must not have any personal interest in the litigation, this petition is accepted by the court only if there is an interest of large public involved; the aggrieved party does not file the petition).
3. Constitutional interpretation
4. Access of international statute for ensuring constitutional rights
5. Supervisory power of the higher courts on the lower courts

## Significance of Judicial Activism

- It is an effective tool for upholding citizens' rights and implementing constitutional principles when the executive and legislature fails to do so.
- Citizens have the judiciary as the last hope for protecting their rights when all other doors are closed. The [Indian judiciary](#) has been considered as the guardian and protector of the Indian Constitution.
- There are provisions in the constitution itself for the judiciary to adopt a proactive role. **Article 13 read with Articles 32 and 226 of the Constitution** provides the power of judicial review to the higher judiciary to declare any executive, legislative or administrative action void if it is in contravention with the Constitution.
- According to experts, the shift from locus standi to public interest litigation made the judicial process more participatory and democratic.
- Judicial activism counters the opinion that the judiciary is a mere spectator.

## Judicial Activism Examples

It all started when the Allahabad High Court rejected the candidature of Indira Gandhi in 1973.

- In 1979, the [Supreme Court of India](#) ruled that undertrials in Bihar had already served time for more period than they would have, had they been convicted.
- **Golaknath case:** The questions, in this case, were whether the amendment is a law; and whether Fundamental Rights can be amended or not. SC contented that Fundamental Rights are not amenable to the Parliamentary restriction as stated in Article 13 and that to amend the Fundamental rights a new Constituent Assembly would be required. Also stated that Article 368 gives the procedure to amend the Constitution but does not confer on Parliament the power to amend the Constitution.
- **Kesavananda Bharati case:** This judgement defined the basic structure of the Constitution. The SC held that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament's amending power, the "basic structure of the Constitution could not be abrogated even by a constitutional amendment." This is the basis in Indian law in which the judiciary can strike down an amendment passed by Parliament that is in conflict with the basic structure of the Constitution.
- In the 2G scam, the SC cancelled 122 telecom licenses and spectrum allocated to 8 telecom companies on the grounds that the process of allocation was flawed.
- The Supreme Court rolled out a blanket ban on firecrackers in the Delhi – NCR area with certain exceptions in 2018.
- The SC invoked terror laws against alleged money launderer Hasan Ali Khan.

## Pros & Cons Of Judicial Activism

Judicial Activism in simple words means when judges interrupt their own personal feelings into a conviction or sentence, instead of upholding the existing laws. For some reason, every judicial case has a base of activism within it, so it is imperative to weigh the pros and cons to determine the aptness of the course of action being carried out.

### Pros associated with Judicial Activism India

- Judicial Activism sets out a system of balances and controls to the other branches of the government. It accentuates required innovation by way of a solution.
- In cases where the law fails to establish a balance, Judicial Activism allows judges to use their personal judgment.
- It places trust in judges and provides insights into the issues. The oath of bringing justice to the country by the judges does not change with judicial activism. It only allows judges to do what they see fit within rationalised limits. Thus, showing the instilled trust placed in the justice system and its judgments.
- Judicial Activism helps the judiciary to keep a check on the misuse of power by the state government when it interferes and harms the residents.
- In the issue of majority, it helps address problems hastily where the legislature gets stuck in taking decisions.

### **Cons Associated with Judicial Activism**

- Firstly, when it surpasses its power to stop and misuse or abuse of power by the government. In a way, it limits the functioning of the government.
- It clearly violates the limit of power set to be exercised by the constitution when it overrides any existing law.
- The judicial opinions of the judges once taken for any case becomes the standard for ruling other cases.
- Judicial activism can harm the public at large as the judgment may be influenced by personal or selfish motives.
- Repeated interventions of courts can diminish the faith of the people in the integrity, quality, and efficiency of the government.

### **Judicial Activism Criticism**

Judicial activism has also faced criticism several times. In the name of judicial activism, the judiciary often mixes personal bias and opinions with the law. Another criticism is that the theory of separation of powers between the three arms of the State goes for a toss with judicial activism. Many times, the judiciary, in the name of activism, interferes in an administrative domain, and ventures into judicial adventurism/overreach. In many cases, no fundamental rights of any group are involved. In this context, judicial restraint is talked about.

# 1.4 AMENDMENT OF CONSTITUTION- TYPES AND PROCEDURE

## Amendments of the Constitution

- The procedure of amendment of the constitution was borrowed from the South African constitution
- The constitutional amendment procedure in our country is neither as rigid as in America or as flexible as in Britain
- Article 368 in Part XX of the constitution deals with the powers of Parliament to amend the constitution
- The above provision states that, parliament in its constituent power amend, by way of addition variation or repeal any provision of the constitution in accordance with the procedure laid down for the purpose
- However, in Keshavananda Bharati judgment, it was ruled that Parliament cannot amend those parts which are part of the 'Basic Structure' of the constitution

### Amending procedure

1. Amendment can be initiated only by the introduction of a bill for the purpose in either house of the Parliament
2. The bill can be introduced either by a minister or by a private member and does not require the permission of the President
3. The bill must be passed in each house by a special majority, that is, a majority of the total membership of the house and a majority of two-thirds of the members of the house present and voting
4. Each house must pass the bill separately. If there is any disagreement, there is no provision for joint sitting of the houses
5. If the bill seeks to amend the provisions of the constitution, it must be ratified by the legislatures of half of the states by a simple majority
6. After passage of the bill by both the houses, it is presented to the President for his assent
7. The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament
8. After the President's assent, the bill becomes an act

### Ways of amending the constitution

#### By simple majority of the Parliament

- A number of provisions in the constitution can be amended by a simple majority of the two houses of Parliament outside the scope of Art 368. These provisions include:
  - Admission or establishment or formation of new states and alteration of areas, boundaries or names of existing states
  - Abolition or creation of legislative councils
  - Second schedule related provisions
  - Quorum in Parliament
  - Salaries and allowances related to Parliament
  - Rules of procedure in parliament
  - Privileges of the Parliament, its members and committees
  - Use of English language in parliament
  - Number of puisne judges in SC
  - Conferring more power to Supreme Court
  - Use of official language
  - Citizenship: acquisition and termination
  - Elections to Parliament and state legislatures
  - Delimitation of constituencies
  - Union territories
  - 5<sup>th</sup> and 6<sup>th</sup> schedule

### **By special majority of Parliament**

- Majority of the provisions in the constitution need to be amended by a special majority of the Parliament
- Special majority clause is applied at every stage of the reading of the bill
- The provisions which can be amended by this way includes:
  1. Fundamental Rights
  2. DPSP
  3. All other provisions which are not covered by the above categories

### **By special majority of Parliament and consent of states**

- This type of majority is required when federal structures need to be amended
- Apart from special majority by both the houses of the parliament, it requires consent of half of the state legislature by a simple majority

- There is no time limit within which states should give their consent to the bill
- Following provisions can be amended during this way:
  1. Election of the President
  2. Extent of the executive power of the Union and the states
  3. Supreme Court and high courts
  4. Distribution of legislative powers between the states and the union
  5. Any of the lists in seventh schedule
  6. Representation of states in Parliament
  7. Power of Parliament to amend the constitution and its procedure

### Types of Majority

1. **Simple majority:** A bill is said to be passed, if more than 50% of the members present and voting pass it
2. **Absolute majority:** A bill is said to be passed, if more than 50% of the total strength of the house pass it
3. **Special majority:** A bill is said to be passed, if it is supported by a majority of 2/3rd members present and voting supported by over 50% of the total strength of the House. In Indian constitution, the provisions related to special majority can be categorized into the following:
  -

- Article 249: 2/3<sup>rd</sup> members present and voting. This is required in the case of empowering Parliament to make laws on those issues included in state list
- Article 368: It refers to a majority of 2/3rd members present and voting supported by over 50% of the total strength of the House.
- Article 368+ fifty percent: As above plus that bill should be passed by a simple majority by half of the state legislatures in India
- Article 361: 2/3<sup>rd</sup> of the total membership of the house

1. **Effective majority:** A bill is said to be passed, if it is supported by 50% of the strength of the house. This strength of the house is calculated by subtracting vacant positions

### Criticism of the amending procedure

- An amendment can be invoked in the Parliament only
- The procedure is very rigid if a private member of the parliament wants to move a constitutional amendment bill
- Vesting of even the constituent power in the Parliament gives the ruling party a greater probability to pass amendments if they have requisite

numbers in both the Parliament. This might result in bills being passed in a hasty manner

- The consent of the states is limited to just a few provisions
- No time frame has been prescribed in the constitution for states to ratify or reject the amendment bill

#### **Why the above criticisms are unfounded?**

- Judiciary has been empowered to check the constituent power of the parliament if it is against the 'basic structure' of the constitution
- It is a blend of both rigidity and flexibility. This allows the freedom for the constitution to change as per the changing times

# 1.3 FUNDAMENTAL RIGHTS, FUNDAMENTAL DUTIES, DIRECTIVE PRINCIPLES OF STATE POLICY

## Fundamental Rights : Part III (Articles 12-35)

The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity.

All people, irrespective of race, religion, caste or sex, have been given the right to move the Supreme Court and the High Courts for the enforcement of their fundamental rights. There are seven categories of Fundamental Rights (FR) which are covered from Articles 12-35.

### ARTICLE 12 : DEFINITION

In this Part, unless the context otherwise required, “the State” includes the Governmental and [Parliament of India](#) and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

### ARTICLE 13 : LAWS INCONSISTENT WITH OR IN DEROGATION OF THE FUNDAMENTAL RIGHTS

- (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
- (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.
- (3) In this article, unless the context otherwise required, – (a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in

the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

#### **ARTICLE 14 : EQUALITY BEFORE LAW**

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

#### **ARTICLE 15 : PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH**

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on ground only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to –

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained whole or partly out of State funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) or article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

#### **ARTICLE 16 : EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT**

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

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

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

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

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

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

#### **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.

#### **ARTICLE 18 : ABOLITION OF TITLES**

(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

#### **ARTICLE 19 : PROTECTION OF CERTAIN RIGHTS REGARDING FREEDOM OF SPEECH, ETC.**

(1) All citizens shall have the right –

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

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

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

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

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause

in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

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

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

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

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

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

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

#### **ARTICLE 20 : PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES**

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, not be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

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

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

#### **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.

## **Article 21A: 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 IN CERTAIN CASES**

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

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

(3) Nothing in clauses (1) and (2) shall apply –

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

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

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

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

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

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

(7) Parliament may by law prescribe –

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

(b) the maximum period for which any person may in any class or classes of cases

be detained under any law providing for preventive detention; and  
(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

#### **ARTICLE 23 : PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR**

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on ground only of religion, race, caste or class or any of them.

#### **ARTICLE 24 : PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES, ETC.**

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

#### **ARTICLE 25 : FREEDOM OF CONSCIENCE AND FREE PROFESSION, PRACTICE AND PROPAGATION OF RELIGION**

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

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

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

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

#### **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;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with the law.

#### **ARTICLE 27 : FREEDOM AS TO PAYMENT OF TAXES FOR PROMOTION OF ANY PARTICULAR RELIGION**

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

#### **ARTICLE 28 : FREEDOM AS TO ATTENDANCE AT RELIGIOUS INSTRUCTION OR RELIGIOUS WORSHIP IN CERTAIN EDUCATIONAL INSTITUTIONS**

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is minor, his guardian has given his consent thereto.

#### **ARTICLE 29 : PROTECTION OF INTERESTS OF MINORITIES**

(1) 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.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

#### **ARTICLE 30 : RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS**

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

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under

such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

## **ARTICLE 31 : COMPULSORY ACQUISITION OF PROPERTY {...}**

### **ARTICLE 31A : SAVING OF LAWS PROVIDING FOR ACQUISITION OF ESTATES, ETC.**

(1) Notwithstanding anything contained in article 13, no law providing for –

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of share-holders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of and such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19: Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article, –

(a) the expression “estate” shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenure in force in that area and shall also include –

(i) any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janmam right;

- (ii) any land held under ryotwari settlement;
- (iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;
- (b) the expression “rights”, in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue.

#### **ARTICLE 31B : VALIDATION OF CERTAIN ACTS AND REGULATIONS**

Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provision thereof shall be deemed to be void, or even to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

#### **ARTICLE 31C : SAVING OF LAWS GIVING EFFECT TO CERTAIN DIRECTIVE PRINCIPLES**

Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:  
Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

#### **ARTICLE 32 : REMEDIES FOR ENFORCEMENT OF RIGHTS CONFERRED BY THIS PART**

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme

Court under clause (2).

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

**ARTICLE 32A : CONSTITUTIONAL VALIDITY OF STATE LAWS NOT TO BE CONSIDERED IN PROCEEDINGS UNDER ARTICLE 32**  
{...}

**ARTICLE 33 : POWER OF PARLIAMENT TO MODIFY THE RIGHTS CONFERRED BY THIS PART IN THEIR APPLICATION TO FORCES, ETC.**

Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to, –

- (a) the members of the Armed Forces; or
- (b) the members of the Forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counterintelligence; or
- (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

**ARTICLE 34 : RESTRICTION ON RIGHTS CONFERRED BY THIS PART WHILE MARTIAL LAW IS IN FORCE IN ANY AREA**

Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any person in respect of any act done by him in connection with the maintenance or restoration or order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

**ARTICLE 35 : LEGISLATION TO GIVE EFFECT TO THE PROVISIONS OF THIS PART**

Notwithstanding anything in this Constitution, –

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws –

(i) With respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offences under this part,

and Parliament shall, as soon as may be after the commencement of this

Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation: In this article, the expression “law in force” has the same meaning article 372.

## Fundamental Duties : Part IVA (Article 51A)

Part IVA of the Indian Constitution deals with Fundamental Duties. As of now, there are 11 Fundamental duties.

Originally, the Constitution of India did not contain these duties. Fundamental duties were added by 42nd and 86th Constitutional Amendment acts.

Citizens are morally obligated by the Constitution to perform these duties. However, like the [Directive Principles](#), these are non-justifiable, without any legal sanction in case of their violation or non-compliance.

### Article 51A: Fundamental duties

- It shall be the duty of every citizen of India –
  - (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
  - (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
  - (c) to uphold and protect the sovereignty, unity and integrity of India;
  - (d) to defend the country and render national service when called upon to do so;
  - (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;  
(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;  
(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

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

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

(k) to provide opportunities for education by the parent the guardian, to his child, or a ward between the age of 6-14 years as the case may be. The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the Swaran Singh Committee that was constituted by the government earlier that year.

- Fundamental duties are applicable only to citizens and not to the aliens.
- India borrowed the concept of Fundamental Duties from the USSR.
- The inclusion of Fundamental Duties brought our Constitution in line with article 29 (1) of the Universal Declaration of Human Rights and with provisions in several modern Constitutions of other countries.
- Out of the ten clauses in article 51A, six are positive duties and the other five are negative duties. Clauses (b), (d), (f), (h), (j) and (k) require the citizens to perform these Fundamental Duties actively.
- It is suggested that a few more Fundamental Duties, namely, duty to vote in an election, duty to pay taxes and duty to resist injustice may be added in due course to article 51A in Part IVA of the Constitution. (NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION: A Consultation Paper on EFFECTUATION OF FUNDAMENTAL DUTIES OF CITIZENS).
- It is no longer correct to say that Fundamental Duties enshrined in article 51A are not enforceable to ensure their implementation and are a mere reminder. Fundamental Duties have the element of compulsion regarding compliance.
- A number of judicial decisions are available towards the enforcement of certain clauses under Article 51A.
- Comprehensive legislation is needed for clauses (a), (c), (e), (g) and (i). The remaining 5 clauses, which are exhortation of basic human values, have to be developed amongst citizens through the education system by creating proper and graded curricular input from primary level of education to the higher and professional levels.
- Available Legal Provisions: Justice Varma Committee was constituted in 1998 “to work out a strategy as well as the methodology of operationalizing a countrywide programme for teaching fundamental

Duties in every educational institution as a measure of in-service training”. The Verma Committee was conscious of the fact that any non-operationalization of Fundamental Duties might not necessarily be the lack of concern or non-availability of legal and other enforceable provisions, but it was more a case of lacuna in the strategy of implementation. It, therefore, thought it appropriate to list in brief some of the legal provisions already available in regard to enforcement of Fundamental Duties. A summary of such legal provisions is given below:

- In order to ensure that no disrespect is shown to the National Flag, Constitution of India and the National anthem, the Prevention of Insults to National Honour Act, 1971 was enacted.
- The Emblems and Names (Prevention of Improper Use) Act 1950 was enacted soon after independence, *inter alia*, to prevent improper use of the National Flag and the National Anthem.
- In order to ensure that the correct usage regarding the display of the National Flag is well understood, the instructions issued from time to time on the subject have been embodied in Flag Code of India, which has been made available to all the State Governments, and Union territory Administration (UTs).
- There are a number of provisions in the existing criminal laws to ensure that the activities which encourage enmity between different groups of people on grounds of religion, race, place of birth, residence, language, etc. are adequately punished. Writings, speeches, gestures, activities, exercise, drills, etc. aimed at creating a feeling of insecurity or ill-will among the members of other communities, etc. have been prohibited under Section 153A of the Indian Penal Code (IPC).
- Imputations and assertions prejudicial to the national integration constitute a punishable offence under Section 153 B of the IPC.
- A Communal organization can be declared unlawful association under the provisions of Unlawful Activities (Prevention) Act 1967.
- Offences related to religion are covered in Sections 295-298 of the IPC (Chapter XV).
  
- Provisions of the Protection of Civil Rights Act, 1955 (earlier the Untouchability (Offences) Act 1955).

- Sections 123(3) and 123(3A) of the [Representation of People Act, 1951](#) declares that soliciting of vote on the ground of religion and the promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India on the grounds of religion, race, caste, community or language is a corrupt practice. A person indulging in a corrupt practice can be disqualified for being a Member of Parliament or a State Legislature under Section 8A of the Representation of People Act, 1951.

## Directive Principles of State Policy – Classification

Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types-

- **Socialistic Principles,**
- **Gandhian Principles** and,
- **Liberal-Intellectual Principles.**

The details of the three types of DPSPs are given below:

DPSP – Socialistic Principles	
<b>Definition:</b> They are the principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to:	
<b>Article 38</b>	Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities
<b>Article 39</b>	Secure citizens: <ul style="list-style-type: none"> <li>• Right to adequate means of livelihood for all citizens</li> <li>• Equitable distribution of material resources of the community for the common good</li> <li>• Prevention of concentration of wealth and means of production</li> <li>• Equal pay for equal work for men and women</li> <li>• Preservation of the health and strength of workers and children against forcible abuse</li> <li>• Opportunities for the healthy development of children</li> </ul>
<b>Article 39A</b>	Promote equal justice and free legal aid to the poor

<b>Article 41</b>	In cases of unemployment, old age, sickness and disablement, secure citizens: <ul style="list-style-type: none"> <li>• Right to work</li> <li>• Right to education</li> <li>• Right to public assistance</li> </ul>
<b>Article 42</b>	Make provision for just and humane conditions of work and maternity relief
<b>Article 43</b>	Secure a living wage, a decent standard of living and social and cultural opportunities for all workers
<b>Article 43A</b>	Take steps to secure the participation of workers in the management of industries
<b>Article 47</b>	Raise the level of nutrition and the standard of living of people and to improve public health

### DPSP – Gandhian Principles

**Definition:** These principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement. Under various articles, they direct the state to:

<b>Article 40</b>	Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government
<b>Article 43</b>	Promote cottage industries on an individual or co-operation basis in rural areas
<b>Article 43B</b>	Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies
<b>Article 46</b>	Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation
<b>Article 47</b>	Prohibit the consumption of intoxicating drinks and drugs which are injurious to health
<b>Article 48</b>	Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds

### DPSP – Liberal-Intellectual Principles

**Definition:** These principles reflect the ideology of liberalism. Under various articles, they direct the state to:

<b>Article 44</b>	Secure for all citizens a <a href="#">uniform civil code</a> throughout the country
<b>Article 45</b>	Provide early childhood care and education for all children until they complete the age of fourteen years
<b>Article 48</b>	Organise agriculture and animal husbandry on modern and scientific lines
<b>Article 49</b>	Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance
<b>Article 50</b>	Separate the judiciary from the executive in the public services of the State
<b>Article 51</b>	<ul style="list-style-type: none"> <li>• Promote international peace and security and maintain just and honourable relations between nations</li> <li>• Foster respect for international law and treaty obligations</li> <li>• Encourage settlement of international disputes by arbitration</li> </ul>

## What are the new DPSPs added by the 42nd Amendment Act, 1976?

[42nd Amendment Act](#), 1976 added four new Directive Principles in the list:

S.No	Article	New DPSPs
1	<b>Article 39</b>	To secure opportunities for the healthy development of children
2	<b>Article 39A</b>	To promote equal justice and to provide free legal aid to the poor
3	<b>Article 43A</b>	To take steps to secure the participation of workers in the management of industries
4	<b>Article 48A</b>	To protect and improve the environment and to safeguard forests and wildlife

### Facts about Directive Principles of State Policy:

1. A new DPSP under **Article 38** was added by the [44th Amendment Act](#) of 1978, which requires the State to minimise inequalities in income, status, facilities and opportunities.
2. The 86th Amendment Act of 2002 changed the subject-matter of **Article 45** and made elementary education a fundamental right under **Article 21A**. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of 14 years.
3. A new DPSP under **Article 43B** was added by the 97th Amendment Act of 2011 relating to co-operative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
4. The Indian Constitution under **Article 37** makes it clear that 'DPSPs are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.'

## Criticism of Directive Principles of State Policy

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

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

## What is the conflict between Fundamental Rights and DPSPs?

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

### Champakam Dorairajan Case (1951)

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

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

### Golaknath Case (1967)

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

**Result:** Parliament enacted the 24th Amendment Act 1971 & 25th Amendment Act 1971 declaring that it has the power to abridge or take away any of the Fundamental Rights by enacting Constitutional Amendment Acts. 25th Amendment Act inserted a new Article 31C containing two provisions:

- No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b)22 and (c)23 shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14 (equality before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc) or Article 31 (right to property).
- No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

### Kesavananda Bharti Case (1973)

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

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

### Minerva Mills Case (1980)

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

Supreme Court's rulings following the case were:

- Fundamental Rights and DPSPs constitute the core of the commitment to social revolution.
- The harmony and balance between Fundamental Rights and Directive Principles of State Policy is an **essential feature of the basic structure** of the Constitution.

- The goals set out by the Directive Principles have to be achieved without the abrogation of the means provided by the Fundamental Rights.

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

## Directive Principles of State Policy – Facts relevant for UPSC Prelims

The table below mentions a few specific points about DPSPs that aspirants can take help from, for [UPSC exam](#):

DPSP for UPSC Prelims	
What is its full form?	Directive Principles of State Policy
From which country is it borrowed?	Ireland (Which had copied it from Spanish Constitution)
How many articles are under DPSP?	Article 36-51 belong to DPSP
Which part in Indian Constitution deals with DPSP?	Part-IV belongs to DPSP
How many types of DPSPs are there?	There are three types: <ol style="list-style-type: none"> <li>1. Socialist</li> <li>2. Gandhian</li> <li>3. Liberal-Intellectual</li> </ol>
Have Directive Principles ever amended?	Yes, the 42 <sup>nd</sup> Amendment Act, 44 <sup>th</sup> Amendment Act, and 86 <sup>th</sup> Amendment Act have added/deleted a few DPSPs.
Are DPSPs justiciable?	No, DPSPs are non-justiciable in nature.
Are DPSPs sub-ordinate to Fundamental Rights?	There is a balance between both. Fundamental Rights can be amended to implement Directive Principles until it does not harm the basic structure of the Constitution.
Who described DPSP as ‘novel feature’ of Constitution?	<a href="#">Dr B.R. Ambedkar</a>
From where do Indian DPSPs find their motivation?	Irish Home Rule Movement
What are the recent developments in favour of DPSPs?	There are various such acts enacted to enforce DPSP. They are:

- |  |   |
|--|---|
|  | <ul style="list-style-type: none"><li>• Prevention of Atrocities Act (In favour of Article 46)</li><li>• Minimum Wages Act (In favour of Article 43)</li><li>• Consumer Protection Act</li><li>• Equal Remuneration Act (In favour of Article 39)</li></ul> |
|--|---|

## 1.2 Indian Federalism: Structure, Nature and Emerging Trends

### Federal System – Two Types of Federations

In a federation system, there are two seats of power that are autonomous in their own spheres. A federal system is different from a unitary system in that sovereignty is constitutionally split between two territorial levels so that each level can act independently of each other in some areas.

There are two kinds of federations:

1. **Holding Together Federation** – In this type, powers are shared between various constituent parts to accommodate the diversity in the whole entity. Here, powers are generally tilted towards the central authority. Example: India, Spain, Belgium.
2. **Coming Together Federation** – In this type, independent states come together to form a larger unit. Here, states enjoy more autonomy as compared to the holding together kind of federation. Example: USA, Australia, Switzerland.

### Features of the Federal System of India

1. Dual government polity
2. Division of powers between various levels
3. Rigidity of constitution
4. Independence judiciary
5. Dual citizenship
6. Bicameralism

All federations might not have all the above features. Some of them may be incorporated depending on what type of federation it is.

### Federalism in India

India is a federal system but with more tilt towards a unitary system of government. It is sometimes considered a quasi-federal system as it has features of both a federal and a unitary system. Article 1 of the Indian Constitution states, 'India, that is Bharat, shall be a **union of states**'. The word federation is not mentioned in the constitution.

Elements of federalism were introduced into modern India by the [Government of India Act of 1919](#) which separated powers between the centre and the provincial legislatures.

Read about [Constituent Assembly debates on Federalism](#) in the linked article.

### Federal Features of the Indian Union

- Governments at two levels – centre and states
- Division of powers between the centre and states – there are three lists given in the [Seventh Schedule of the Constitution](#) which gives the subjects each level has jurisdiction in:
  - Union List
  - State List
  - Concurrent List
- Supremacy of the constitution – the [basic structure of the constitution](#) is indestructible as laid out by the judiciary. The constitution is the supreme law in India.

- Independent judiciary – the constitution provides for an independent and integrated judiciary. The lower and district courts are at the bottom levels, the high courts are at the state levels and at the topmost position is the [Supreme Court of India](#). All courts are subordinate to the Supreme Court.

## Unitary Features of the Indian Union

- **The flexibility of the constitution** – the constitution is a blend of flexibility and rigidity. Certain provisions of the constitution can be easily amended. In case the amendments seek to change aspects of federalism in India, the provision to bring about such amendments is not easy. (Read about [types of majorities in India Parliament](#) using which amendments or certain other provisions are introduced.)
- **More power vests with the Centre** – the constitution guarantees more powers with the Union List. On the Concurrent List subjects, the parliament can make laws that can override the laws made by a state legislature on some matters. The parliament can also make laws regarding certain subjects in the State List.
- **Unequal representation of states in the [Rajya Sabha](#)** – the representation of the states in the upper house is based on the states' populations. For example, Uttar Pradesh has 31 seats and Goa, 1 in the Rajya Sabha. In an ideal federal system, all the states should have equal representation.
- **The executive is a part of the legislature** – in India, the executive in both the centre and the states is a part of the legislature. This goes against the principle of division of powers between the different organs of the government.
- **Lok Sabha is more powerful than the Rajya Sabha** – in our system, the [Lok Sabha](#) is more powerful than the upper house and unequal powers to two houses is against the principle of federalism.
- **Emergency powers** – the centre is provided with emergency powers. When an emergency is imposed, the centre has increased control over states. This undermines the autonomy of the states. (You may also read about [President's rule – Article 356](#) in the linked article.)
- **Integrated judiciary** – the judiciary in India is integrated. There is no separate judiciary at the centre and the state levels. (Gain more information about [Indian Judiciary](#) from the notes mentioned in the linked article.)
- **Single citizenship** – in India, only single [citizenship](#) is available to citizens. They cannot be citizens of the state as well. This helps in increasing the feeling of nationality as it forges unity amidst regional and cultural differences. It also augments fundamental rights such as the freedom of movement and residence in any part of the nation.
- **Governor's appointment** – the [governor](#) of a state acts as the centre's representative in the state. The state government does not appoint the governor, the centre does.
- **New states formation** – the parliament has the power to alter the territory of a state by increasing or reducing the area of the state. It can also change the name of a state.
- **All India Services** – through the All India Services such as the IAS, IPS, etc. the centre interferes in the executive powers of the states. These services also offer uniformity in administration throughout the nation.
- **Integrated election machinery** – the [Election Commission of India](#) is responsible for conducting free and fair elections at both the centre and the state levels in India. The members of the EC is appointed by the president.
- **Veto over states bills** – The governor of a state can reserve certain kinds of bills for the president's consideration. The president enjoys absolute veto on these bills. He can even reject the bill at the second instance that is when the bill is sent after reconsideration by the state legislature. This provision is a departure from the principles of federalism. (Read in detail about [veto power](#) in the linked article.)
- **Integrated audit machinery** – the president of the country appoints the [CAG](#) who audits accounts of both the centre and the states.

- **Power to remove key officials** – the state government or state legislature does not have the authority to remove certain key government officials even at the state level like the election commissioner of a state, judges of the high courts, or the chairman of the state public service commissions.