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POLITY



CONSTITUTIONAL FRAMEWORK AND CITIZENSHIP

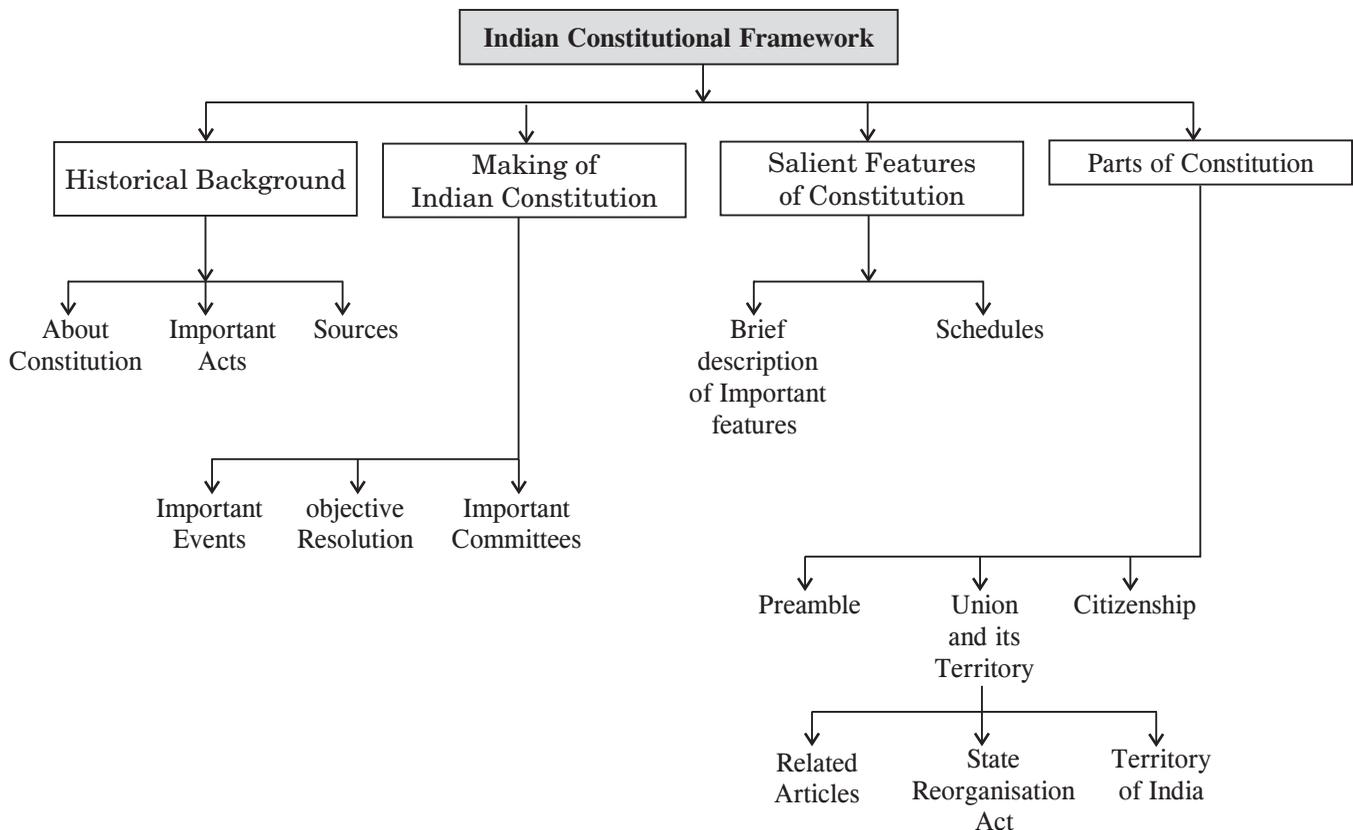
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Chapter

Introduction

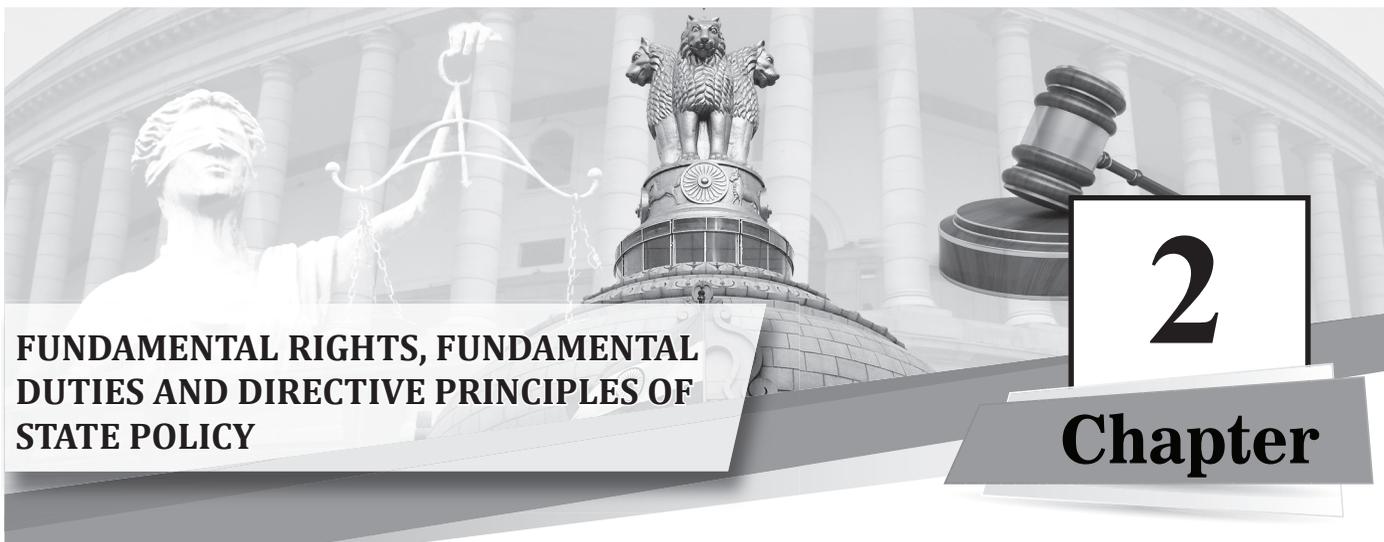
The term constitution is derived from latin word “constituere” which means to “to establish”.

Constitution means a document having a special legal sanctity, which sets out the framework, principles and functions of the government. The idea of constitutionalism suggests ways and means to work out a government form, which exercises power and ensures, at the same time, individual freedom and liberty.



HISTORICAL BACKGROUND

Constitutional Landmark	Important Provisions
Regulating Act, 1773	<ul style="list-style-type: none"> • British government to regulate affairs of East India Co. • Designated Governor of Bengal as Governor General of Bengal. Warren Hastings was the first Governor General. • Established a Supreme Court at Calcutta.
Pitts India Act, 1784	<ul style="list-style-type: none"> • Indian affairs under direct control of British government. • Board of Control was established.
Charter Act of 1793	<ul style="list-style-type: none"> • Salary of company to drawn from the Indian exchequer. • The Governor General and governors to override the decision of Councils. • Company got monopoly of trade with India for another 20 years.
Charter Act, 1833	<ul style="list-style-type: none"> • Governor General of Bengal became Governor General of India. • Lord William Bentinck was the first Governor General of India. • The Act centralized British rule in India. • Created Government of India, with authority over all of British India. • East India Co. lost its monopoly of tea trade and China trade. • The Indian Civil Services was founded.
Charter Act, 1853	<ul style="list-style-type: none"> • Separated legislative & executive functions of Governor General's Council. • Open competition for Indian Civil Services. • Patronage of the directors of the company ends.
Government of India, Act, 1858	<ul style="list-style-type: none"> • Act known as the Act for the Good Government of India. • Company rule was replaced by British crown. • Secretary of State for India was appointed to exercise the power of the Crown. He was a member of British cabinet, responsible to it and was assisted by Council of India with 15 members. • Governor General became the agent of the crown and now known as <i>Viceroy of India</i>. • <i>Lord Canning</i> became the first Viceroy of India.
Indian Councils Act, 1861	<ul style="list-style-type: none"> • Parliamentary system started in India. • Indians became non-official members of the legislature. • Started decentralization of power. • Recognition to the 'Portfolio' system, was introduced by Lord Canning in 1859.
Indian Councils Act, 1892	<ul style="list-style-type: none"> • Introduced indirect elections. Governor General could nominate members. • Functions of Legislative Council Expanded to discuss the budget and ask questions to the executive.
Indian Councils Act, 1909 (<i>Morley-Minto Reforms</i> . Lord Morley was then the secretary of state for India and Lord Minto was then the viceroy of India).	<ul style="list-style-type: none"> • Central Legislative Council became imperial Legislative Council with officials forming the majority. • Provincial legislative councils had a majority of non-official members. • <i>Satyendra Prasad Sinha</i> became the first Indian to join the Viceroy's Executive Council. • Introduced communal representation for muslims with a separate electorate system. Legalized communalism. Lord Minto created a communal electorate.
Government of India Act, 1919/ <i>Montague - Chelmsford Reforms</i> . Montague was the secretary of state for India and Lord Chelmsford was the viceroy of India.	<ul style="list-style-type: none"> • Separated central subjects from provincial subjects. • Provincial subjects were transferred and reserved. • Transferred subjects were administered by Governor with the help of ministers who were responsible to the legislature. • Reserved subjects were administered by Governor and Executive Council who were not responsible to the legislature. • <i>Dyarchy/ Dual system</i> of government was introduced. • <i>Bicameral legislature</i> with upper and lower houses were formed with direct elections. • Majority of members in both houses were directly elected. • 3 of the 6 members of governor-general's council had to be Indians.



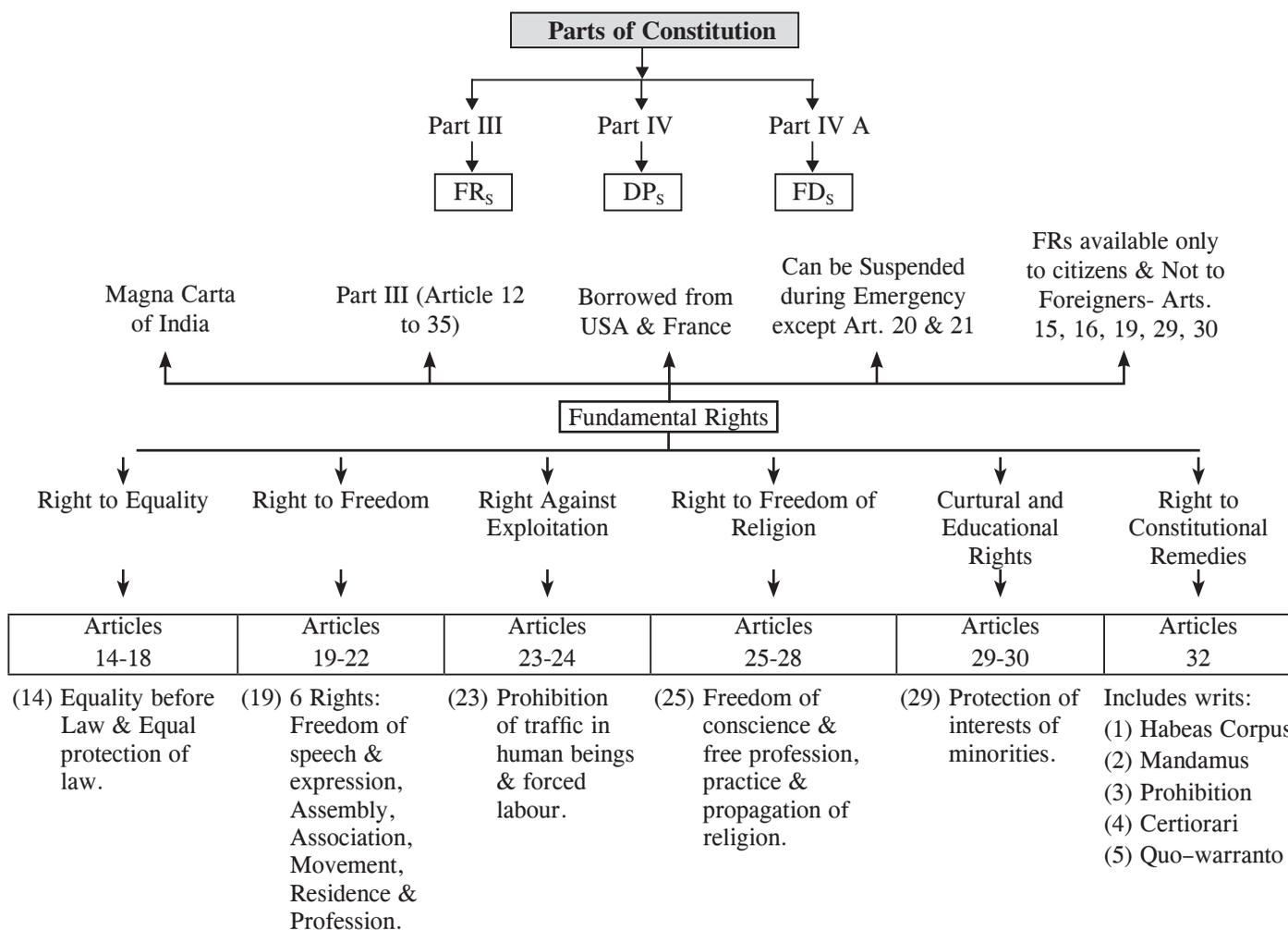
FUNDAMENTAL RIGHTS, FUNDAMENTAL DUTIES AND DIRECTIVE PRINCIPLES OF STATE POLICY

2

Chapter

Introduction

Fundamental Rights are defined as basic human freedoms, which every Indian citizen has to enjoy for a proper and harmonious development of personality. It contains six rights. Fundamentals Rights are justiciable and are protected by the judiciary. The Constitution seeks to strike a balance between individual freedom and social interests through the Fundamental Duties. To make fundamental right and duties of citizens of India safe and effective, there are certain guidelines for the governance of the country given in the Directive Principles of state policy.



- (15) Prohibition of discrimination on grounds of religion, race, sex, etc.
- (16) Equality of opportunity in public employment.
- (17) Abolition of untouchability.
- (18) Abolition of titles.
- (20) Protection in respect of conviction for offences.
- (21) Protection of life & personal liberty.
- (22) Protection against arrest & detention in certain cases.
- (24) Prohibition of employment of children in factories, etc.
- (26) Manage religious affairs.
- (27) Freedom from payment of taxes for promotion of any religion.
- (28) Freedom from attending religious instruction or worship in certain educational institutions.
- (30) Right of minorities to establish & administer educational institutions.

Fundamental Rights (Part III)

Important Feature

- *Articles 12-35* of the Constitution deal with fundamental rights. Constitution does not define fundamental rights but says that they are fundamental and superior to ordinary laws. Fundamental rights cannot be altered except with constitutional amendment.
- Fundamental Rights incorporate provisions of “*American Bill of Rights*” and are very elaborate and comprehensive. They provide for absolute rights with judiciary having powers to impose limitations. Legislature can impose limitations on fundamental rights during national emergency.
- These can be negative obligations on the state not to encroach on individual liberty in its activities.
- They promote political democracy and prevent authoritative rule.
- In USA legislature is competent to interfere with individual rights if they endanger safety of the state and collective interests.
- Originally the Constitution classifies Fundamental Rights under 7 groups.
- Now there are only 6 groups as Right to Property has been eliminated by the 44th Amendment Act, 1978 and transposed to a new Article – Article 300 A, which is outside Part-III of the Constitution and has been labelled in as ‘Chapter IV’ of Part XII – but that is not a fundamental right.
- Fundamental rights under Articles 15, 16, 19, 29 & 30 are applicable to Indian citizens.
- Fundamental rights under Articles 14, 20, 21, 23, 25, 26, 27 and 28 are available to all resident of India both citizens and foreigner.
- Some fundamental rights are negatively worded as prohibitions on the State like Articles - 14, 15(1), 16(2), 18(1), 20, 22(1) and 28(1)

- Fundamental rights which impose *absolute limitations upon the legislative power* cannot be regulated by the legislature are covered by Articles 15, 17, 18, 20 and 24.
- All fundamental rights are guaranteed against state action.
- If Rights under Article 19 and Article 21 are violated by an individual, legal remedies but not Constitutional remedies are available.
- Article 12 defines the State which includes:
 1. Government and Indian parliament *i.e.* executive and Legislature of the Union.
 2. Government and legislature of the states.
 3. All local and other authorities within the territory of India.
 4. All local and other authorities under the control of GOI.
- *Article 13* confers the power of judicial review to the courts of all legislative acts.
- Supreme Court of India and State High Courts have this power under Article 32 and 226. They can declare a law unconstitutional if it is inconsistent with Part III of the Constitution.
- Power of judicial review makes the constitution legalistic.

ARTICLE-14 : Equality before law/Equal protection of Laws

- Equality before law and equal protection of laws are different.

Equality Before Law	Equal Protection of Law
Negative concept	Positive concept
Absence of special privilege due to birth, creed or like in the favour of any person. There is equal treatment before law.	Right to equality of treatment in similar circumstances.
Dacey’s concept of rule of law.	Treated as due process of law.
Established law in England.	An American concept.

‘*Rule of Law*’ is the “Basic Feature” of the Constitution which cannot be destroyed even by constitutional amendment under Article 368.

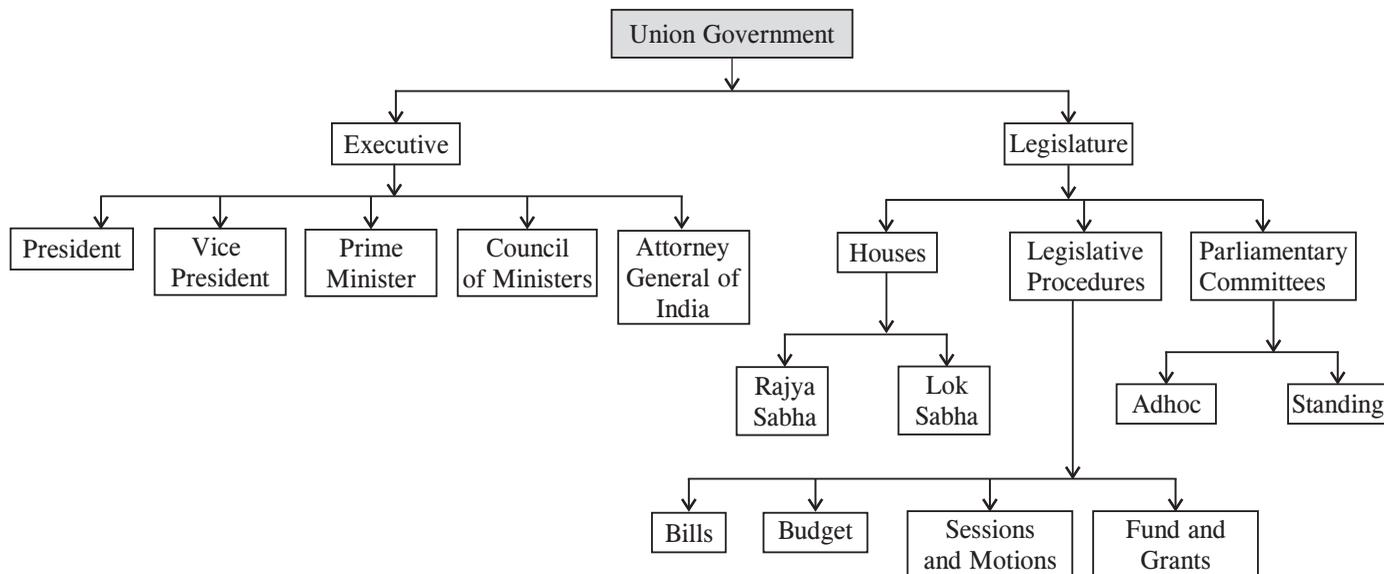


Introduction

The Government of India or the central or the union Government is divided into three main sections, namely the executive, Legislature and the judiciary.

The Union Government

- **PART V (ARTICLES 52 TO 151)** deals with the Executive, Parliament (Legislature), Union Judiciary and the Comptroller and Auditor General of India.
- **Union Executive:** Articles 52 to 78 (Part V).
- Union Executive in India consists of the President, Vice-President, Prime minister and his/her Council of ministers and the Attorney General of India.



UNION EXECUTIVE

The President

- **Article 52:** There shall be a President of India. He shall be the head of the state.
- **Article 53:** Executive powers of the Union shall be vested in the President, exercised by him either directly or through the officers subordinate to him, who give aid and advice to the President for the exercise of powers.

Election of the President (Articles 54 & 55)

- **Article 54** provides that President shall be elected by an electoral college consisting of:-
 - (a) Elected members of both houses of parliament.
 - (b) Elected members of the legislative assemblies of the states.

- Word “State” includes “National Capital Territory of Delhi” and UT of Pondicherry (Punducherry). This was added by 70th Amendment Act, 1992.

Members of legislative councils (in case of the bicameral legislature in state) do not participate in presidential election. Nominated members of both the Houses at the Centre and the States do not have voting rights in the election of the President.

- **Article 55 (3)** states that the election of the President shall be held in accordance with the system of **proportional representation** by means of **single transferable vote**. Voting is done through secret ballot.
- **Article 55(1)** provides that as far as practicable there shall be uniformity in the scale of representation among the states as well as parity between the states as a whole and the Union in the election of the President.
- To secure uniformity among states and parity between the Union and states following formula is adopted:

$$\text{Value of the vote of an MLA} = \frac{\text{Total population of the state}}{\text{Elected members of the state legislative assembly}} \times 1000$$

$$\text{Value of vote of an MP} = \frac{\text{MLAs of all states}}{\text{Total Nos. of elected MPs}} \times \text{Total value of votes of all MLAs of all states}$$

- Population data used for these calculations are of 1971 census. 42nd amendment, 1976 froze the “last preceding census” to 1971, till the first census after 2000.
- In 2000, the Union cabinet decided to extend the freeze on fresh delimitation of parliamentary and assembly constituencies up to 2026. The argument was that the states which had better population control thought that such a revision would reduce their seats in the parliament.
- After calculating the value of vote of MLAs and MPs, a complex system of calculating the quota of individual candidates is used which is based on the order of preference of candidates.

Disputes on election of the President

- Article 71 provides that all disputes arising out of the election of President or Vice-President shall be ‘inquired’ into and ‘decided’ by the Supreme Court whose decision shall be final.
- If the election of President is declared void by the Supreme Court, the acts performed by President before the date of such decision of court remain valid.
- Article 71(4) declares that the election of President or Vice-President cannot be challenged on the ground of any vacancy in the electoral college which elects him.

Qualifications for the Office of President

- Under Article 58, he must be:
 - (a) Citizen of India
 - (b) Completed 35 years
 - (c) Qualified for election as a member of the Lok Sabha, i.e. he must be registered as a voter in a parliamentary constituency.

- (d) Not hold any office of profit under GOI, or any state government or under any local or other authority subject to the control of the government.

- Under Article 59, the President cannot be a member of either house of parliament or any state legislature. If such a member is elected President, he shall be deemed to have vacated his seat in that house on the date which he enters the office of President.
- His emoluments, allowances and privileges are determined by the parliament by law. Salary and allowances cannot be diminished during his term of office. Monthly emoluments are Rs. 1.5 lakh and the pension is Rs. 75,000 per month.
- Oath or affirmation of President’s office is administered by the Chief Justice of India (Article 60) or by the senior most judge of the Supreme Court.
- Term of office of President is 5 years from the date on which he/she enters upon his/her office. The president is eligible for re-election.
- Termination from office is possible before the term of 5 years ends either of the two ways:
 - (a) By resignation in writing under addressed to Vice-President of India who shall communicate it to the speaker, Lok Sabha.
 - (b) By removal by Impeachment (Article 61). The only ground for impeachment specified in Article 61 (1) is ‘Violation of the Constitution’.

Impeachment against the President

- Impeachment is a quasi-judicial procedure mentioned in Article 61.
- Impeachment charge against the President may be initiated by either houses of the parliament.

Impeachment Process

Charge must be in the form of a proposal/ resolution signed by not less than 1/4th of the total members of the house and moved after giving at least 14 days’ advance notice to the President.



This resolution must be passed by a majority of not less than 2/3rd of the total membership of the initiating house.



Charge is then investigated by the other house. The President has right to appear and to be represented at the investigation.



If the other house, after investigations, passes a resolution by 2/3rd majority of the total membership declaring that the charge is proved, the President is removed from the office from the date on which the resolution is passed.

In this context, two things should be noted:

- (a) the nominated members of either House of Parliament can participate in the impeachment of the President though they do not participate in his election;
- (b) the elected members of the legislative assemblies of states and the Union Territories of Delhi and Pondicherry do not participate in the impeachment of the President though they participate in his election.

No President has so far been impeached.



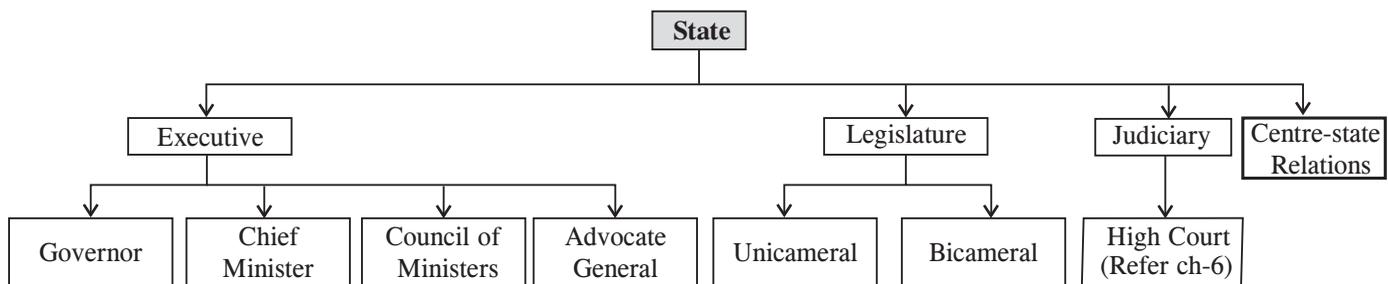
STATE GOVERNMENT

4

Chapter

Introduction

The Constitution provides for a Federal Government having separate administrative systems for the Union and its units, namely, the states. Provisions for the governance of both are contained in the Constitution. Articles 153 to 167 is Part VI of the Constitution deal with the state executive. The pattern of Government at the State level is the same as that at the Union level - a parliamentary system, in which the executive head is a constitutional ruler who is to act according to the advice of council of Ministers responsible to the State Legislature.



STATE EXECUTIVE

Governor

Article 153 states that there shall be a Governor for each state. Same person can be appointed as Governor for 2 or more states was added by 7th amendment act 1956.

Article 154 states that the executive power of the state is vested in him and is exercised by him either directly or through officers subordinate to him.

Appointment & Tenure (Article 155 & 156)

- Governor is the executive Head/Nominal Head of the State.
- Governor of a State is appointed by the President.
- Hold office during the pleasure of the President.
- May resign by submitting his resignation to the President. Otherwise the normal term of his office is 5 years.
- Grounds for removal of the Governor are not mentioned in the Constitution; however he must be involved in the gross delinquency like bribery, treason or violation of the Constitution for such an action.

- A President may transfer a Governor appointed to one State to another State for rest of the term.
- A Governor whose term has expired may be reappointed in the same State or any other State.

Qualifications & Conditions for office (article 157 & 158) of Governor

- He must be –
 - A citizen of India.
 - Has attained 35 years of age.
 - Not a member of parliament or state legislature.
 - Not hold any office of profit under the government.
- His emoluments, allowances and privileges are determined by parliament by law.
- The emoluments are charged on the Consolidated Fund of India and cannot be diminished during his term of office.
- If the same person acts as Governor of 2 or more states, the Constitution provides that President may decide about the allocation of emoluments of Governor among states proportion wise (Article 158(3A)).

Oath

Article 159 says that the Governor and every person discharging the functions of the Governor is to take an oath or affirmation before the Chief Justice of the High Court of that state, or in his absence, the senior-most judge of that court available.

Article 160 gives the president the power to make such provision as he thinks fit for the discharge of the functions of the Governor in any contingency not provided for in the Constitution.

Executive Powers of Governor

- **Article 166** : All executive actions of the state are to be taken in the name of the Governor. He acts as a representative of President in the state. He has power to recommend President that the government of the state cannot be carried on in accordance with the provisions of the Constitution. This leads to the imposition of **President rule** in the State under **Article 356**.
- All major appointments in the state are made by the Governor – those of CM, Ministers, and Advocate-General (and decide his remuneration), Chairman & members of State Public Service Commission (PSC), State Election Commissioner and Finance Commission. Members and Chairman of State PSC are however removed by President.
- He is the Chancellor of various universities in the state and appoints their Vice-Chancellors.

Legislative Powers of Governor

- He is an integral part of the state legislature, though not a member of it, he discharges some important legislative functions.
- He **summons** the house(s) of the legislature of state to meet at such a time and place as he thinks fit. However 6 months must not lapse between the last sitting in one session and the first in the next session.
- He may **prorogue** the house(s) and **dissolve** the legislative assembly.
- He has right to reserve certain bills for the assent of the President [Article 200].
- He nominates 1/6th of the members of Legislative Council having special knowledge in literature, science, arts, cooperative movement and social service.
- Decides on the question of disqualification of a member of State Legislature in consultation with Election Commission.
- His most important power is the ordinance making power [Article 213].
- But the Governor cannot issue an ordinance without the previous instructions from the President in cases in which–
 - (a) Bill would have required his previous sanction.
 - (b) Required to be reserved under the Constitution for the assent of the President.
- The ordinances have to be approved by the state legislature, in the same way as the Parliament does in case of Presidential ordinances.
- The scope of the ordinance making power of the Governor is co-extensive with the legislative powers of the State Legislature and is confined to the subjects mentioned in state List and Concurrent List.

- Submission of reports from Auditor General, State Public Service Commission, State Finance Commission, etc. before the Legislature.

Discretionary Powers of Governor

- Discretion of the Governor is wider than that of the President. Article 163 (2) provides that as to the question of matter of discretion, it is the Governor himself who decides which matter falls in his discretion. And his action based on such discretion shall not be called in question.
- Though in most of the matters he has to act on the advice of Council of Ministers, but there are some matters in which he can act according to his discretion.
- He selects the CM if no party has clear-cut majority.
- Dismissal of Ministry if he is convinced that it has lost majority support. But SC in S.R. Bommai Vs UOI (1994) case directed that his opinion must not be subjective and compulsory floor-testing must be done.
- Dissolving the Legislative Assembly.
- Submission of report to the President regarding failure of constitutional machinery in the State.
- Reservation of certain bills for the consideration of the President (Article 200). He must reserve the bill that endangers the position of high court. In addition, he can also reserve the bills that are against the provisions of Constitution, are against larger national interest or DPSP and those which deal with compulsory acquisition of property under Article 31A.

Financial Powers of Governor

- A money bill cannot be introduced in the Legislative Assembly of the State without the recommendation of the Governor.
- No demand of grants can be made except on the recommendation of the Governor.
- The Governor is required to cause to be laid before the house or houses of the legislature “annual financial statements”, that is “Budget” [Article 202].
- He constitutes a finance commission after every five years to review the financial position of the panchyats and the municipalities.

Judicial powers of governor

- Governor appoints judges of the courts below HC
- He is consulted by the President before appointing judges of the HC.
- Under Article 161 he can grant pardons, reprieves, remission of punishment to the persons convicted under state laws. However he has no power to pardon a sentence of death or remit sentence by the court martial (military court).

Other Power

The Governor receives the report of the Auditor General and places it before the State Legislature. He places the report of the state Public Service Commission along with the observations of the Council of Ministers before the State Legislature. As chancellor of various universities within the jurisdiction of the state, he appoints the vice-chancellors of the universities.



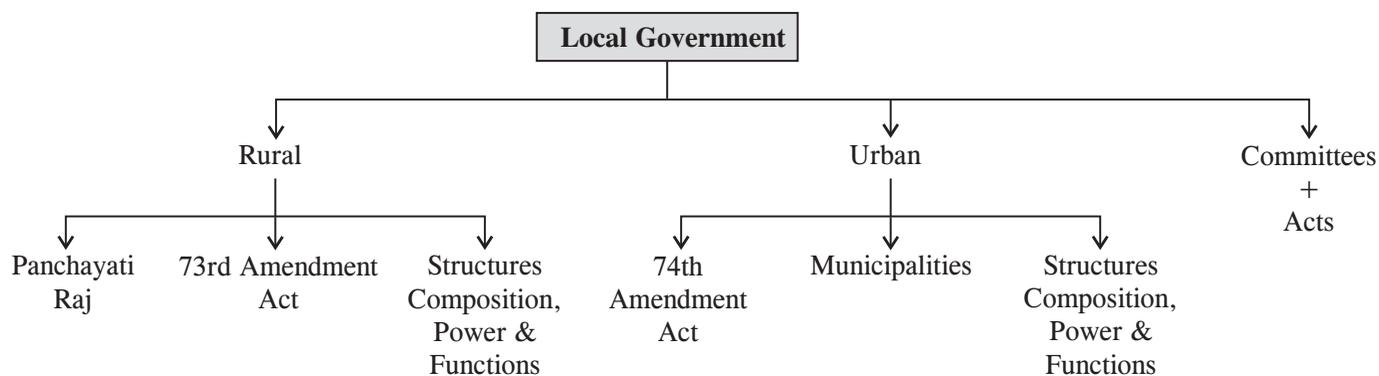
LOCAL GOVERNMENT

5

Chapter

Introduction

The local self government includes both rural and urban government. It is the third level of government. There are 2 types of local government in operation - Panchayats in rural areas and Municipalities in urban area. **Lord Ripon is known as the father of local self government.**



RURAL LOCAL GOVERNMENT

Panchayati Raj

The term Panchayati Raj in India signifies the system of rural local self-government. It has been established in all the states of India by the Acts of the State Legislatures to build democracy at the grass root level. It is entrusted with rural development. It was constitutionlised through the 73rd Constitutional Amendment Act 1992.

Evolution of Panchayati Raj

- The Narasimha Rao Government introduced the Constitutional Amendment Bill in the Lok Sabha in September, 1991.
- It was passed by the Lok Sabha on 22nd December, 1992 and by the Rajya Sabha on 23rd December. Later it was approved by the 17 State Assemblies and received the assent of the President of India on 20th April, 1993.
- Thus, it emerged as the *73rd Constitutional Amendment Act, 1992* and came into force on 24th April, 1993.

- Rajasthan was the first state to establish the institution of Panchayati Raj in *Nagaur District* in 1959. Rajasthan was followed by *Andhra Pradesh*.

Balwant Rai Mehta Committee (1957)

- It was set up to examine the working of the Community Development Programme (1952) and the National Extension Service (1953).
- Recommendations:
 - (i) *Three-tier Panchayati Raj system*: Gram Panchayat at the Village level, Panchayat Samiti at the block level, Zila Parishad at the district level.
 - (ii) Village Panchayat is directly elected, while the Panchayat Samiti and Zila Parishad constituted with indirectly elected members.
 - (iii) Panchayat Samiti is the executive body, while the Zila Parishad is the advisory, coordinating and supervisory body.
 - (iv) The District Collector should be the Chairman of the Zila Parishad.

K Santhanam Committee

One of the prime areas of concern in this long debate on Panchayati Raj Institutions was fiscal decentralisation. The K Santhanam Committee was appointed to look solely at the issue of PRI finance, in 1963.

Recommendations

- Panchayats should have special powers to levy special tax on land revenues, home taxes, etc.
- All grants and subventions at the state level should be mobilised and sent in a consolidated form to various PRIs.
- A Panchayati Raj finance corporation should be set-up to look into the financial resource of PRIs at all levels, provide loans and financial assistance to these grassroots level governments and also provide non-financial requirements of villages.

Ashok Mehta Committee

In December 1977, the Janata Government appointed a Committee on Panchayati Raj Institutions under the Chairmanship of Ashok Mehta. It submitted its report in August, 1978 and made recommendations to revive and strengthen the declining Panchayati Raj System in the country.

Recommendations

- The three-tier system of the Panchayati Raj should be replaced by two-tier system, that is, the Zila Parishad at the district level and below it the *Mandal Panchayat* consisting of a group of villages comprising a population upto 20,000.
- The Zila Parishad should be the executive body and be made responsible for planning at the district level.
- The *Panchayati Raj Institutions* should have Compulsory powers for taxation to mobilise their own financial resources.
- The *Nyaya Panchayats* should be kept as separate bodies from that of development Panchayats.
- A minister for the Panchayati Raj should be appointed in the State Council of Ministers to look after the affairs of the Panchayati Raj Institutions.
- Seats for the SCs and the STs should be reserved on the basis of their population.

G V K Rao Committee

The Committee on Administrative Arrangement for Rural Development and Poverty Alleviation Programmes under the chairmanship of G.V.K. Rao was appointed by the Planning Commission in 1985.

Recommendations

The Committee made the following recommendations to strengthen and revitalise the Panchayati Raj system:

- “The district is the proper unit for planning and development and the Zila Parishad should become the principal body for management of all development programmes which can be handled at that level”.
- The Panchayati Raj institutions at the district and lower

levels should be assigned an important role with respect to planning, implementation and monitoring of rural development programmes.

- A post of District Development Commissioner should be created.
- Elections to the Panchavati Raj institutions should be held regularly.

LM Singhvi Committee

In 1986, Rajiv Gandhi Government appointed a committee on the “Revitalisation of the Panchayati Raj Institutions for democracy and development” under the Chairmanship of LM Singhvi.

Recommendations

- The *Panchayati Raj Institutions* should be constitutionally recognised, protected and preserved. It also suggested some constitutional provisions to ensure regular, free and fair elections to the Panchayati Raj bodies.
- Nyaya Panchayats should be established for a cluster of villages.
- The villages should be organised to make the Gram Panchayats more viable.
- The Village Panchayats should have more financial resources.
- The judicial tribunals should be established in each state to eradicate controversies about election to the Panchayati Raj Institutions, their dissolution and other matters related to their functioning.

Constitutionalisation

Rajiv Gandhi Government

In July 1989, Rajiv Gandhi Government introduced the 64th Constitutional Amendment Bill to constitutionalise PRIs, but it was not approved by Rajya Sabha.

VP Singh Government

In November 1989, Prime Ministers VP Singh proposed the introduction of a fresh Constitutional Amendment Bill and the bill was introduced in Lok Sabha in September 1990, but it lapsed due to the fall of government.

Narsimha Rao Government

In September 1991, Prime Minister PV Narsimha Rao introduced the modified proposal of Constitutional Amendment Bill, which finally emerged as the 73rd Constitutional Amendment Act, 1992 and came into force on 24th April, 1993.

73rd Amendment Act (1992)

- *Added to Part-IX (Articles 243 to 243-O)* and the Eleventh Schedule to the Constitution.
- *11th Schedule contains 29 functional items* and deals with Article 243-G.
- The Act has given a practical shape to Article 40. The Act has brought them under the purview of the justifiable part of the Constitution.



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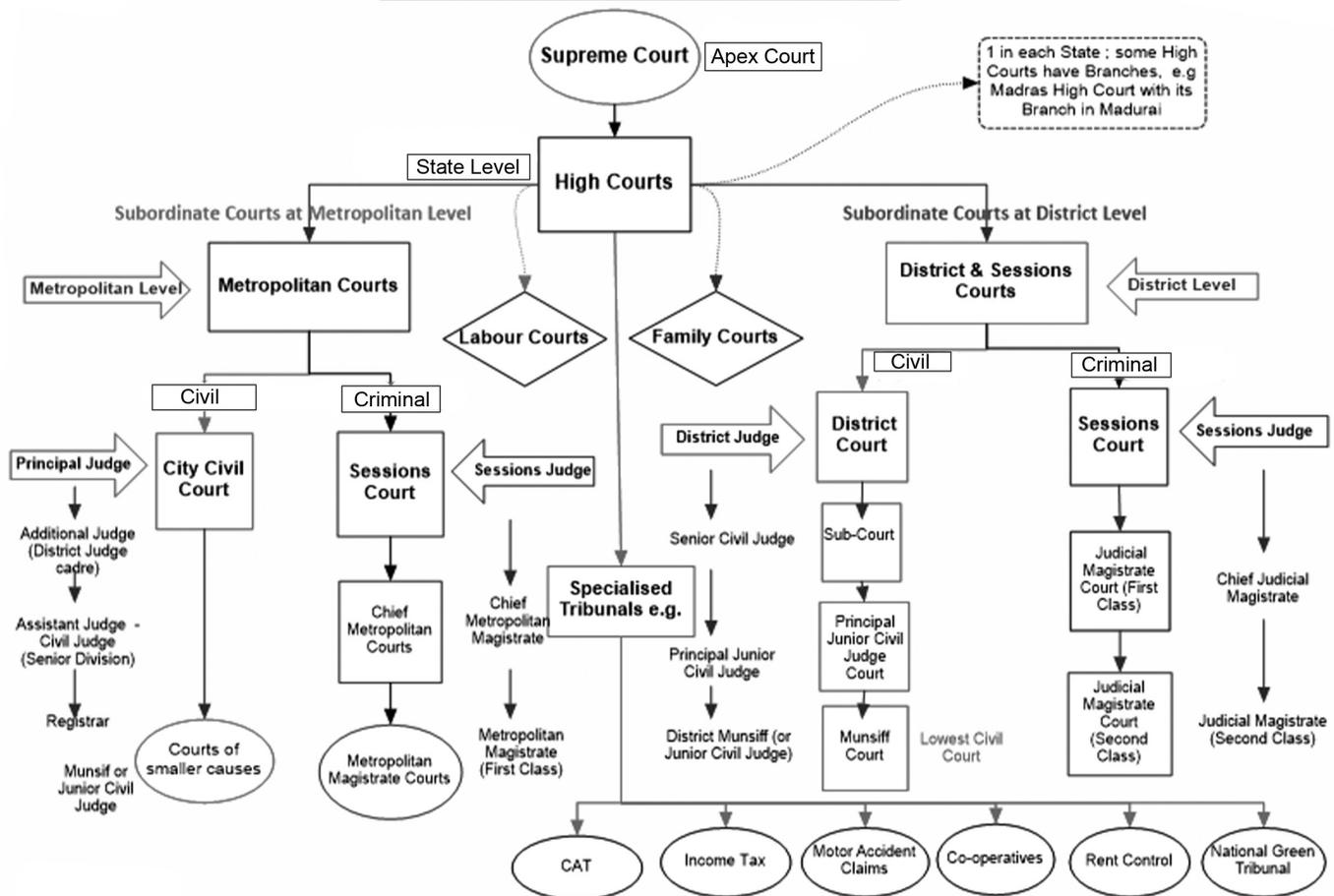
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Chapter

Introduction

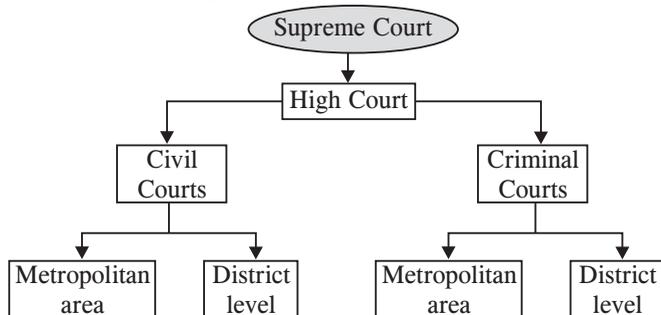
The Indian Judicial System is one of the Oldest Legal systems in the world today. In spite of India adopting the features of a federal system of government, the Constitution has provided for the setting up of a single integrated system of courts to administer both Union and State Laws.

HIERARCHY OF COURTS IN INDIA - A Flow Diagram



The above simple Flowchart illustrates sub-ordinate courts- both Civil and Criminal courts - at (i) Metropolitan and (ii) District levels. Besides, it illustrates the hierarchy in terms of (i) Labor Courts and (ii) Family Courts together with specialized tribunals.

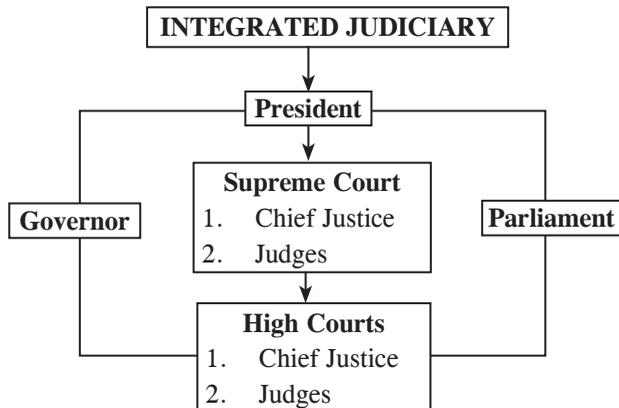
However, if required, the hierarchy can be illustrated in a different manner for those who want to have the structure by (i) Civil Courts at (a) Metropolitan and (b) District levels and (ii) Criminal Courts at (a) Metropolitan and (b) District levels. i.e.



Union Judiciary

Supreme Court (Articles 124-147)

- The Supreme court of India was inaugurated on **January 28, 1950**. It succeeded the Federal Court of India, established under the Government of India Act of 1935.
- **Article 124 to 147 in part V of the Constitution** deal with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court. The Parliament is also authorised to regulate them.
- Supreme Court is the final interpreter and guardian of our Constitution. It is also the guardian of Fundamental rights of the people.
- It decides the disputes between Centre and States regarding encroachment of power, thus maintains the supremacy of the Constitution.
- It is the highest court of appeal in India.
- Originally the total number of judges was 7, but in 1977, their number was increased to 18. In 1986, it was further raised to 26 (including CJI). **Presently there are 31 judges in Supreme court.**
- Constitution does not provide for minimum no. of judges who will constitute a bench for hearing cases. Largest bench constituted so far has been of 13 judges in Keshavanand Bharati vs. Union of India case in 1973.



Appointment and Removal of Judges

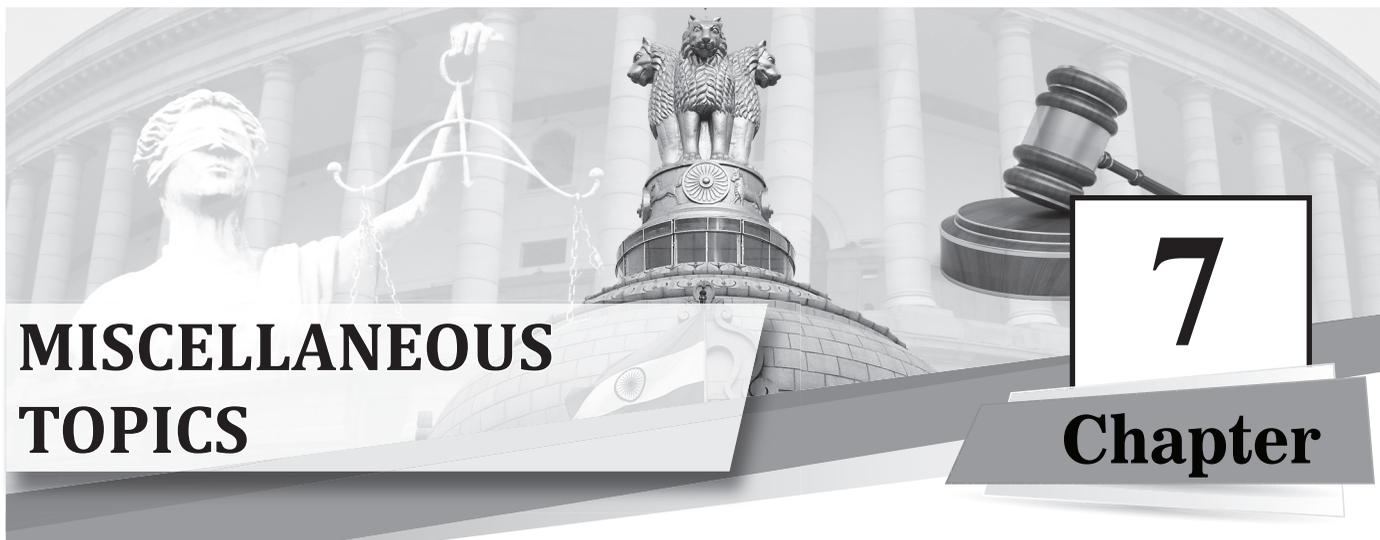
Qualifications to be appointed as a judge of Supreme Court:

- He must be a citizen of India.
- He must either be a distinguished jurist, or one who has been a High Court judge for at least 5 years or an advocate of a High Court (or 2 or more such courts in succession) for at least 10 years (Article 124).
- No minimum age is fixed for the appointment of a judge.
- **The Chief Justice of India is appointed by the President.** In this matter, the President shall consult such judges of the Supreme Court and the high courts as he may deem necessary. A 9 judge bench of the SC has laid down that the senior most judge of Supreme Court should be appointed as Chief Justice of India.
- In the appointment of other judges, the President shall always consult the Chief Justice of India. He ‘may’ consult other judges of SC and high courts as he may deem necessary [Article 124(2)].
- Power of appointment is exercised by the President on the advice of Council of Ministers.
- There is no fixed period of office for Supreme Court judges. Once appointed, they hold office till the age of 65 years. He can quit office earlier by submitting his resignation to the President.
- He can be removed by an order of President only on the grounds of proved misbehavior or incapacity. The order of President in this regard can only be passed after it has been addressed to both houses of parliament in the same session, by special majority (majority of the membership of house and majority of not less than 2/3rd of members of that house present and voting). [Article 124 (4)].
- A Supreme Court judge can become Chief Justice of India but cannot practice before any other court or act as a Judge before any other authority. But there is one exception. This is regarding the retired SC judge appointed as a judge of the Supreme Court for a temporary period by the Chief Justice of India with the previous consent of President [Article 128].
- Salaries of Judges are determined by the Parliament by law. These cannot be varied to their disadvantage during their term (except during financial emergency). Their salaries and expenses are charged on the Consolidated Fund of India. Salary of Chief Justice - ₹1,00,000/month
Salary of Judges - ₹ 90,000/month
- Seat of the Supreme Court is in New Delhi. However it can be shifted elsewhere in India or more benches of SC can be established in India by Chief Justice of India in consultation with the President.
- According to Article 129, Supreme Court is a “**Court of Record**”. It means:-

Court records are admitted to be of evidentiary value.

It can punish for contempt of the court-

- Contempt is of 2 type: Criminal and Civil.
- Judges can be liable for the contempt of their own court.

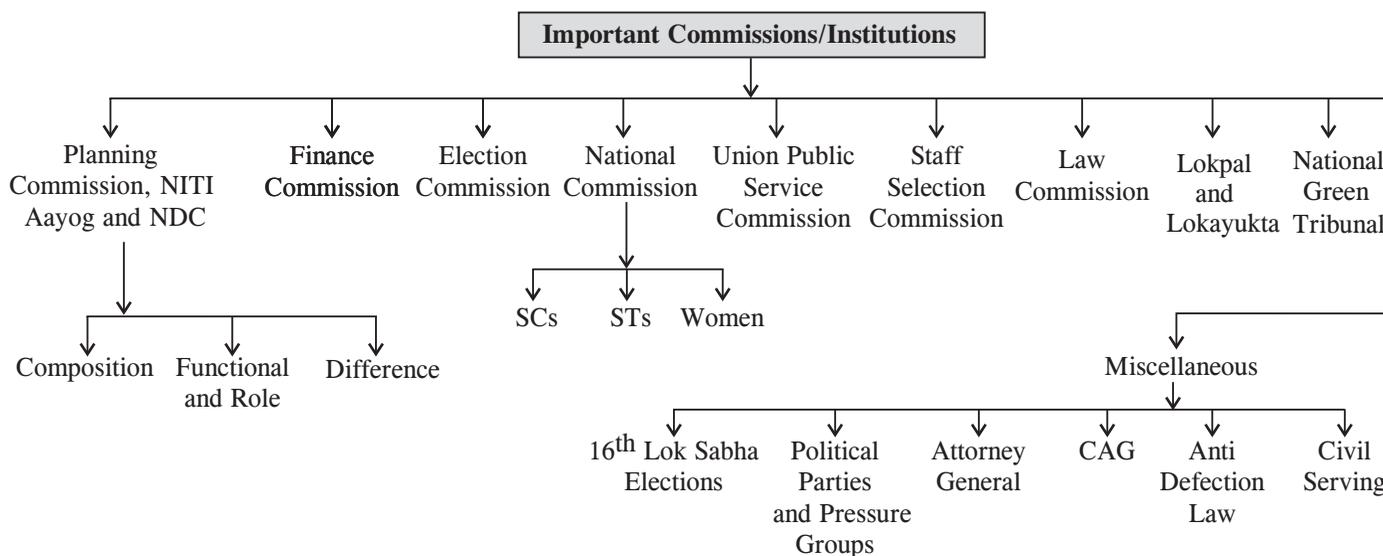


MISCELLANEOUS TOPICS

7 Chapter

Introduction

Miscellaneous chapter consists many different kinds of topics that are not connected and do not easily form a group and are of different nature. In Likewise, different topics for examples planning commission/NITI Aayog, Finance Commission, Election Commission, National Commission, UPSC, and many more given in the chart below are covered in this chapter.



Planning Commission

- Constituted in March 1950 by a resolution of the Government of India on the recommendation of the Advisory Planning Board in 1946 under the chairmanship of K.C. Neogi.
- Planning Commission is neither a constitutional body nor a statutory body. It is a **non-constitutional or extra-constitutional or a non-statutory body**.
- Objective is to formulate 5 year plans for economic and social development and to advice Central government in this regard.

Composition

- The Prime Minister of India has been the chairman of the Commission. He presides over the meetings of the Commission.

- Deputy chairman is the de-facto executive (full time functional head). Responsible for the formulation and submission of the draft Five-year plans to the Central cabinet. He is appointed by the Central cabinet for a fixed tenure and enjoys a rank of a cabinet minister. Though he is not a member of cabinet, he is invited to attend all its meetings (without a right to vote).
- Finance Minister and Planning Minister are the ex-officio (by virtue of) members of the Commission.
- Four to seven full time expert members. The full time members enjoy the rank of a Minister of State.
- The Commission has a member-secretary, usually a senior member of IAS.
- The state governments are not represented in the Commission in any way. Thus, the Planning Commission is wholly a Centre-constituted body.



AMENDMENTS & ARTICLES OF THE INDIAN CONSTITUTION

8

Chapter

Amendment Procedures Under Indian Constitution

Indian Constitution is a balanced Constitution. The framers of the constitution desired to secure balance and moderate in incorporating various provision in our Constitution. As far as the amendments of the Constitution is concerned, a balance is struck in making the Constitution *partly rigid* and *partly flexible*. A *flexible Constitution* is one, which can be easily amended like ordinary law of the land. On the contrary, a rigid Constitution is one whose amendment is very difficult and where there is a distinction between the amendment of the Constitutional law and ordinary law. Both the types of Constitutions had their merits and demerits.

The proposal for amending the Constitution can be initiated only in the Union Legislature and the state legislatures have no such power. But the framers of the Indian Constitution did not go to the extreme. They incorporated a unique procedure of amendment which combines both rigidity and flexibility. In this connection, it is worthwhile to quote Pandit Nehru who clearly stated, "While one wants this constitution to be solid and permanent as we can make it, there is no permanence in the Constitution. There should be certain flexibility. If you make anything rigid and permanent you stop the nation's growth, the growth of a living vital organic people."

Methods of Amendments

Article 368 of the Constitution deals with procedure of amendments of the Constitution. It can be amended in three different ways:

1. An amendment of the Constitution may be initiated only by the introduction of a bill for the purpose in either house of Parliament and when a bill is passed in each house.
 - (i) By a majority of total membership of that house.
 - (ii) By a majority of not less than two-thirds of the members of that house present and voting, it shall be presented to the President who shall give his assent to the Bill and there upon the Constitution shall stand amended in accordance with the term of the Bill.

Most of the provisions of the Constitution can be amended by this procedure.

2. For amending certain provisions a special procedure to be followed, e.g.
 - (i) A Bill for the purpose must be passed in each house of parliament by a majority of total membership of the house.
 - (ii) By a majority of not less than two-third of the members of that house present and voting and
 - (iii) It should be notified by the legislatures of not less than one-half of the states before the Bill is presented to the President for assent.

The provisions requiring this special procedure to be followed include:

- (a) Manner of the election of the President.
 - (b) Matters relating to the executive power of the Union and of the state.
 - (c) Representation of the states in Parliament.
 - (d) Matters relating to the Union Judiciary and High Courts in the states.
 - (e) Distribution of legislative powers between the Union and the States.
 - (f) any of the list in the Seventh Schedule.
 - (g) Provisions of Article 368 relating to the procedure for amendment of the Constitution, etc.
3. There are certain provisions which require simple majority for amendments. They can be amended by the ordinary law making process they include:
 - (a) formation of new states and alteration of areas, boundaries or names of existing ones.
 - (b) creation or abolition of legislative councils in the states.
 - (c) administration and control of scheduled areas and scheduled tribes.
 - (d) the salaries and allowances of the Supreme Court and High Court Judges.
 - (e) laws regarding citizenship, etc. It is significant that the laws passed by Parliament to change the above provisions would not be deemed to be amendments of the Constitution for the purpose of Article 368.

Hints and Explanations

EXERCISE-1

1. (b) 2. (b) 3. (c) 4. (d) 5. (c)
6. (d) 7. (a) 8. (d) 9. (d) 10. (c)
11. (c) The 73rd Amendment (1992) of Indian constitution provided for constitution of municipalities, reservation of seats in every municipality for the SC and ST women and backward classes.
12. (d) The reservation in educational institutions in the private sector was provided in the 93rd Amendment under the article 15 (5) of the constitution of India.
13. (c) Article 243(I) of the Indian Constitution prescribes that the Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (73rd Amendment Act, 1992), and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats.
14. (d) 44th Before the 42nd amendment, Article 74(1) stated that, "there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions". However, there was a slight ambiguity whether the advice of the Council of Ministers is binding on the President. Forty-second Amendment of the 42nd Constitutional Amendment (1976) made it explicit that the President shall, "act in accordance with such advice". The amendment went into effect from 3 January, 1977. The 44th Amendment (1978) however added that the President can send the advice back for reconsideration once. But if the Council of Ministers sends the same advice again to the President then the President must accept it. The amendment went into effect from 20 June, 1979.
15. (b) According to 93rd Amendment every Child of the age group of 6-14 years shall have right to free and compulsory Education. No child is liable to pay any kind of fee/ capitation fee/ charges. A collection of capitation fee invites a fine up to 10 times the amount collected.
16. (c) 7th Amendment Act 1956 provides for composition of the House of the People and re-adjustment after every census. 31st amendment act 1973 provides for raising the upper limit for the representation of states in the Lok Sabha from 500 to 525 and reducing the upper limit for the representation of UTs from 25 to 20.
17. (b) The Constitution 98th Amendment Bill, 2003, seeks to constitute a National Judicial Commission (NJC) by including Chapter IV-A in Part V of the Constitution which will be in charge of appointing

judges to the higher judiciary and for transferring High Court Judges.

18. (a) The above provision has been added by 91st constitutional Amendment Act, 2003.
19. (a) 20. (a) 21. (b) 22. (d) 23. (c)
24. (c) 25. (b) 26. (d) 27. (d) 28. (a)
29. (c) 30. (d) 31. (b) 32. (c)

EXERCISE-2

1. (a) Bills that have to be passed by Special Majority and also to be ratified by not less than one-half of the State Legislatures . This comprises of Constitutional Amendment Bills which seek to make any change in articles relating to:
 - The Election of the President.
 - The extent of the Executive Power of the Union and the States.
 - The Supreme Court and the High Courts.
 - Any of the Lists in the Seventh Schedule.
 - The representation of States in Parliament.
 - The provisions of Article 368 itself.
2. (c) Representation of states in the Parliament does require a constitutional amendment only with the ratification of the legislature of not less than one-half of the states. Other given options require the same.
3. (d) An amendment to the Constitution of India can be initiated by either House of Parliament under article 368. It does not require the President's recommendation.
4. (b) Statement 3 is incorrect as a candidate shall not be allowed to contest from more than two constituencies, it also adds options 1 and 2.
5. (a)
6. (d) An amendment to the constitution of India is introduced as a bill in the Parliament. It then must be approved by both the houses of Parliament. The amendments must then be ratified by the legislatures of at least one half of the states (not all the states). Once all these stages are complete the amendment is bound to receive the assent of the President of India.
7. (c) 8. (a) 9. (c) 10. (d) 11. (a)
12. (a) Article 2- (Admission or establishment of new States) Parliament may by law admit into the Union, or establish new States on such terms and conditions as it thinks fit.
Article 3- Formation of new States and alteration of areas, boundaries or names of existing States.
Amendment in the First and Fourth schedule can be done through constitution amendment bill.
13. (a)