



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

GNANADHARE EDUCATIONAL TRUST ®

GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar North
Bangalore-560079, Mob:9513804777/9513809777



POLITY NOTES



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

CONSTITUTION HISTORICAL BACKGROUND

TO INDIAN CONSTITUTION:-

- The British came to India in 1600 as traders in the form of East India Company and had exclusive right of trading under a charter granted by Queen Elizabeth I.
- In 1765 the company which had purely trading factions obtained the Diwani Rights (Right over revenue and civil justice) of Bengal Bihar and Orissa.
- On the wake of 'Sepoy Meeting' in 1857, the "British Crown" assumed direct responsibility over the governance of India which continued till India government Independence.
- Along with the independence came the need of a constitution in 1934, MN Roy (a pioneer in the communist movement in India and an advocate) for the first time suggested the need of a constituent assembly.
- A constituent assembly was formed in 1946 and on Jan 26 1950 constitution came into being these are certain in the British rule that laid down the legal framework for the functioning of British rule also these events have greatly influenced our constitution and polity chronological events are explained below.

1. 1773 Regulating Act:-

- Governor of Bengal renamed as governor general of Bengal.
- This Act provides courts of directors to regulate administration of East India companies.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- Courts are required to submit report of revenue civil and military affairs in India.
- This Act provides for governor general executive council of members.
- Supreme courts were established at Calcutta (Fort William) 1774.
- This act made governor of Madras and Bombay subordinate to governor general of Bengal.

2. 1784 - Pitt's India Act

To rectify the defects of regulating act of 1773 British parliament passed the amending act of 1781, It is called as Act of Settlement.

Features

- The commercial and political functions of company were differentiated.
- It allowed the court of directors (COD'S) to manage the commercial affairs; also a new body was created called the Board of control (BOC'S) to manage the political affairs. Therefore A double government system was established.
- BOC'S were empowered to control and supervise all civil, military and revenue operations of British possessions in India.
- The act is very significant for 2 reasons.
- For the first time company's territories in India were called as "British possessions in India".
- British government was given the supreme control over company's affairs and administration.
- This act provides board of control to manage political affairs in India.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- Whereas court of director would manage commercial affairs in India.
- The number of members of executive council has been reduced from 4 to 3.

3. 1813 - Charter Act

- This Act abolished monopoly of east India Company in trade in India except trade with china and trade India.
- Called as era of “promotional of education in India”.
- For the first time rupee 1 lakh is allocated for the promotion of education in India.

4. 1833 Act

- 1833 this act abolished monopoly of east India company on commercial matters completely including trade in china and trade India.
- Hence this era is called “completely free trade in India”.
- This act provides appointment of a law member to governor general executive council.
- The act provides appointment of commission for the codification of laws in India.
- Governance William benthic was the first governor genial of India.

5. 1853 chartered Act:-

- This Act provides for the first time a separate legislative council 6 members.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- For the first time it introduced an open competitive system for the requirement of civil servants (for India).
- Governor General of India was divested from local charges of governor general of Bengal.
- 1ST Bengal governor general of India was Lord Dalhousie.

6. 1858 government of India Act (queen's proclamation).

- Abolished dual system of court of director and board of controls.
- Act also abolished East India Company.
- It created new office in the form of.
- He was member of British cabinet and accountable to British parliament.
- Lord atanely Ist secretary of state for India.
- This act renamed the governor general of India as viceroy such first viceroy was lord caning.
- British prime minister during queen proclamation, "Lord Palmerston".

7. 1861 India's council Act

- For the first time this act provides association of Indians in the viceroy legislative council.
- First 3 Indians
 - Raja of Banaras
 - Maharaja of Patiala
 - Sir dinakar rao
- This act initiated the process of restoring process to Bombay and madras presidencies.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- This act for the first time introduces portfolio system.
- Governor (viceroy) general was given the power issue ordinances.

8. 1892 India council Act

- This act for the first time introduced indirect elections for the Indians in viceroy legislative councils and provisional legislative council.
- This act provides the power to viceroys legislative council members to discuss budget and to ask questions related to budget.

9. 1909 Morley minto reforms

- Morley secretary to state
- This act provided separate electorate for
- Thus it is considered to be genesis of 2 nation theory in India.
- This act increased members of viceroy legislative council to 60.
- This act retained British majority in the central legislative council and allowed the provisional legislative council to have majority of Indians.
- This act provided for the first time association of Indians in viceroy executive council.
- (Satyendra Prasad sinha) was the first Indian to form viceroy executive council.
- The system of direct elections was introduced through this for the first.
- This act provides system of local governance in India.
- Lord Rippon father of local self governance.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

10. 1919 Government of India

Montague Chelmsford reforms

- Introduce for the first time directly in the provinces.
- According to this, subjects were divided into 2 lists.
 - reserved list
 - transferred list
- The subjects in the reserved list are headed by British who are not responsible to legislative council (governor general).
- But transferred list were responsible to legislative council.
- It introduced for the first time Bicameralism.
- It intended separate electorate for Sikhs, Anglo Indians, Christians and European in India
- It created a new office for the high commission for India in London.
- This act also provided for the 1st time parliament voting rights for women.
- Provided for the establishment of public service commission hence a central public service commission was established in 1926.
- A separated for the first time provincial budget from central budget.

11. 1935 Government of India Act.

- This act provides for creation of all India federation comprising of British provinces 11 and princely states.
- But this attempt was failed because of disapproval by the princely states.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- This act abolished directly in the provinces and provided provincial autonomy.
- the directly system was introduced at the centre
- According to which the process are divided between courts and its units or princely states.
 - federal list
 - provincial list
 - concurrent list
- This act introduced bicameralism in 6 out of 11 provinces.
- Bengal, Bombay, Madras, Bihar, Assam limited province.
- This act further entered commercial representation or separate electorate for depressed class (SC) and women.
- Thus act provides for the establishment of not only federal public service commission and also provincial public service commission.
- This act provides for the established of not only federal public service commission and also provincial public commission.
- This act provides for the established of Reserve bank of India.
- This Act provides for the established of federal court which was set up in 1937 in Delhi.

Same court was inaugurated as Indian Supreme Court in Jan 28 1950

INDIAN CONSTITUTION

PARTS	DEALS	ARTICLES
1	Union and its territories	1-4
2	Citizenship	5-11
3	Fundamental rights	12-35
4	Directive principles of state policy	36-51
4A	Fundamental duties	51A
5	Union government	52-151
6	State government	152-237
8	Union territories	239-242
9	Panchayath	243-243
9A	Municipalities	243p-243ZG
10	Scheduled and tribal areas	244-244A
11	Relation between union and states	245-260
12	Finance , property and contracts	261-300A
13	Trade commission in territory of India	301-307
14	Service under union and states	308-323
15	Tribunals	323-323
16	Elections	324-329A
17	Special provisions for SC/ ST/ OBC/ Anglo Indians	330-342
18	Official languages	343-351
19	Emergency provisions	352-360
20	Miscellaneous	361-367
21	Temporary transitional and special provisions	368
22	Short titled commencement and text of Hindi language	392-395

SCHEDULES OF INDIAN CONSTITUTIONS

1	Names and territorial extent of 29 states and 7 union territories.
2	Salaries allowances of president speaker chairman of Rajyasabha Governors judges of supreme court high courts and CA (Controller and auditor general of India)
3	Forms of oath to be made by president, union and state ministers MLA'S, MP'S, judges of supreme and high courts.
4	Number of seats allotted to various states in Rajyasabha.
5	Administration and control of scheduled areas and scheduled tribes "except" in 4 states Assam, Meghalaya, Tripura, Mizoram.
6	Administration of tribal areas in states of Assam, Meghalaya, Tripura, Mizoram.
7	Division of powers
8	language
	<ul style="list-style-type: none"> • 21st Amendment 1967 • Konkani, Manipuri, Nepali • Bodo, Dogri, Maithili and Saitaali.
9	Added by 1 st Amendment Act 1957 <ul style="list-style-type: none"> • Deals in land reforms • Acts and provisions of this act "cannot" be questioned by any court.
10	Antidefection law <ul style="list-style-type: none"> • Added by 52nd Amendment Act 1985. • Deals in disqualification of members during defection.
11	<ul style="list-style-type: none"> • Added by 73rd amendment Act 1992.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

	<ul style="list-style-type: none">• Deals in panchayaths, consists of 29 subjects.
12	Added by 74 th Amendment Act 1992 consists of 18 subjects.

MAKING OF CONSTITUTION:-

- It was in 1934 the idea of constituent assembly for India was put forward for the first time by M.N Roy.
- M.N Roy was a pioneer of communist movement in India as an advocate of radical democracy.
- In 1935, the Indian National Congress (INC) for the first time officially demanded a constituent assembly to frame the Indian constitution.
- In 1938, Jawaharlal Nehru on behalf of INC declared that the constitution for free India must be framed, without outside interference, by a constituent assembly elected on the basis of adult franchise.
- The demand was finally accepted in principle by British government in what is known as the "August offer" of 1940.
- In 1942, Sir Stafford Cripps, came to India with a draft proposal of Indian constitution which will be adopted after world war II.
- However, Cripps proposals were rejected by the Muslim League which wanted India to be divided into two autonomous states with 2 constituent assemblies.
- Finally, a cabinet mission was sent to India, however it rejected the idea of 2 constituent assemblies, and put forth a scheme for the constituent assembly which more or less satisfied the Muslim League.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

COMPOSITION OF CONSTITUENT ASSEMBLY:-

According to the scheme formulated by the cabinet mission plan, the constituent assembly was constituted in November 1946.

FEATURES OF CONSTITUENT ASSEMBLY:-

- The total strength of CA was 389. Out of this 296 seats belonged to British India and 93 seats belonged to princely states. Out of 296 seats of British India, 292 member were to be drawn from the 11 governors provinces and 4 from chief commission province each.
- Seats province and princely state were to be allowed seats in proportion to their respective population (roughly 1 seats to 1 million population).
- Seats allotted to each British province were to be decided among 3 principle communities, Muslim, Sikhs and generalation proportion to their population.
- The respective of each communities were to be elected by members of that community in provincial legislative assembly.
- The respective of princely states were to be nominated by heads of the princely states. thus, CA was partly elected and partly nominated body.
- The election for 296 seats were held on July, august 1946.
- INC won 208 seats, Muslim league won 73 seats 15 seats.

However 93 seats allotted as they decided to stay away from CA.

Although the constituent assembly was not directly elected by the people of India on the basis of adult franchise, the assembly had representatives of all section of Indian society. Hindus Muslims, SIKHS,



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

PARSIS, Anglo-Indians, Indian, Christians, SC'S ST'S including women of all these sections.

The CA included all important personalities of that time except M. Gandhi and M.A Jinnah.

WORKING OF CONSTITUENT ASSEMBLY:-

- The constituent of assembly holds its first meeting on Dec 9th 1946 the Muslim league by boycotted the meeting and insisted on a separate state of Pakistan the meeting was thus attended by only 211 members.
- Dr. Sachidanand sinha the oldest member was elected as the temporary president of the assembly following the French practice.
- Later on Dec 11, 1946 Dr Rajendra Prasad and H.C Mukherjee were elected as the president and vice president of assembly respectively, sir B.N Ram was appointed as the constitutional advisor to the assembly.

OBJECTIVE RESOLUTION:-

On December 13, 1946, Jawaharlal Neharu moved the historic objective resolution in the assembly. It laid down the fundamental and philosophy of constitutional structure.

This resolution was unanimously adopted by the assembly on Jan 22 1947. It influence the eventual shaping of the constitution through all its subsequent stages. Its modified version forms the preamble of the present constitution.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

CHANGES AFTER INDIAN INDEPENDENCE ACT:-

- The representatives of the princely states who had stayed among from the CA, gradually joined it.
- After the acceptance of the Mountbatten plan of June 3, 1947, for a partition of the country, the representatives of most of the other princely states took their seats in the assembly, the members of the Muslim league from the Indian divisions also entered the assembly.

The I.I.A of 1947, made the following changes in the position of the assembly.

- The assembly was made a fully sovereign body, which could frame any constitution it pleased.
- The assembly also became a legislative body in other words, 2 separate functions were assigned to the assembly, that is.
 - Making of a constitution for free India.
 - Enacting of ordinary laws for the country.

Thus, CA became the first parliament of free India.

- Wherever assembly met as the constituent body it was chaired by Dr. Rajendra Prasad.
- Wherever it met as a legislative body, was chaired by G.V Mavlankar.

These two functions constituted till Nov26,1949 till the task of making constitution was over.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

OTHER FUNCTIONS OF CA REFORMS:-

1. In addition to making of constitution and enacting ordinary laws.
 - It adopted national flag on July 22, 1947.
 - It adopted national anthem on Jan 24, 1950.
 - It adopted national song on Jan 24, 1950.
 - It elected Dr. Rajendra Prasad as the first president of India on Jan 24, 1950.
2. Totally CA had 11 session over 2 year 11 months and 18 day's.
3. The constitution makers had gone through the draft constitution of about 60 countries, and draft constitution was considered for 114 day's.
4. Total expenditure incurred on making the constitution was rupees 64 lakh.

On Jan 24, 1950, CA held its final session, However it did not end and continued as provisional parliament of India from 26, Jan 1950 till the new parliament after general elections of 1951-52.

SALIENT FEATURES OF THE CONSTITUTION:-

1. Longiest written constitution:-

- It is lengthiest, written constitution in the world. It is very comprehensive, elaborate and detailed document. Originally there was a preamble, 395 articles divided into 22 parts and 8 schedules. Presently there are 468 articles 25 parts and 10 schedules.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

2. Drawn from various sources:

- The structural part of constitution is to in large extent derived from government of India act 1935, the philosophical part of the constitution (FR & DPSP derive inspiration from French and Ireland).
- Political part have been largely derived from British constitution.
- Other provisions are drawn from Canada, Australia, Germany, USSR, France SA, Japan and so on.

3. Blend of rigidity and flexibility.

- A rigid constitution is one which requires a special procedure for its amendment by American.
- A flexible is one in which the amendment can be made in same manner as ordinary laws are made.

Ex:- British constitution.

Indian constitution is neither rigid nor flexible but a synthesis of both article 368, provides for 2 types of amendments.

4. Federal system in unitary bias:-

- Federation is dual government division of power, supremacy and bicameralisation.
 - How every unitary / non federal features are strong centre, single constitution, single citizenship, integrated judiciary, and bicameralisation.
 - More ever the term federation has now where been used in the IC article/ describes India as a union of states.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- Hence IC has been variously describe as federal inform and unitary in spirit, quasi federal by KC Where bargaining federalism by Morris Jones etc.

5. Parliamentary form of government.

- IC has opted for British parliamentary system of government rather than American presidential system.
Parliamentary system is also known as Westminster model of government, responsible government and cabinet government.

Features of PG:-

- a) Presence of nominal and real executive.
- b) Majority party rule.
- c) Collective responsibility of executive to the legislature.
- d) Membership of ministers in legislature.
- e) Leadership of PM or CM.
- f) Dissolution of lower house.

6. Synthesis of parliamentary sovereignty and federal supremacy.

- There is a proper synthesis between the parish principle of parliamentary severginity and US principle of judicial supremacy.

SC on the other hand can declare the parliamentary laws as unconstitutional through the power of judicial review the parliamentary on the other hand, can amend the major portion of the constitution through the constituent power.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

7. Integrated and independent judiciary:-

- SC is the federal court, the highest court of appeal, the guarantor of fundamental rights to citizen and guardian of the constitution. Hence there are various process to ensure its independence.
Ex:- separation of judiciary from executive prohibition on discussion on conduct of judges in legislatures etc.

8. Fundamental rights.

- FR'S are meant to political democracy of individuals. They are justifiable in nature is, enforceable by the court when violated the affected person can directly approach the SC and can issue writs such as habeas corpus, mandamus, prohibition, certiorari, and quo warrantor for the restoration of their rights.
- However, fundamental rights are not absolute and there are subjects to reasonable restrictions also they are not sacrosanct in nature. They can be suspended during the operation of national emergency except article 20 & 21.

9. Directive principles of state policy.

- Dr. B.R Ambedkar call it has the novel features of Indian constitution.
- The DPSP are meant to promote the ideal of social and economic democracy. They are established for the Moto of a welfare state to India.

10. Fundamental duties:-

- Original constitution did not provide for the fundamental rights of the citizens they were added during the operation of internal



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

emergency (1975-77) by 42nd amendment of 1976 on the recommendation of the Swarn Singh committee.

11. Secular state

- IC is secular and hence it does not uphold any particular religion as official religion of the state.

12. Universal adult franchise:-

- IC adopts universal adult franchise as a basis to loksabha and state legislature assembly election every person who has attained 18 years has the right to vote.

13. Single citizenship:-

- Though IC is federal and envisages a dual policy it provides only for a single citizenship in Indian citizenship.
- Despite the constitutional provision of a single citizenship and uniform rights for all the people, India has been witnessing the communal riots, class conflicts, caste were linguistic clashes and ethnic disputes, this means the cherished goal of the constitutional; makes to build united and integrated Indian national has not been finally realised.

14. Independent bodies:-

- These are certain independent bodies.
 - a) Election commission to ensure free and fair election to parliament, state legislatures, president and vice president.
 - b) Controller and auditor general of India to audit the accounts of the central and state governments.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- c) UPSC to conduct examination for recruitment to all Indian services.
- d) State public service commission in every state to conduct examination for state service.

15. Emergency provision:-

- The rationality behind the incorporation of this provision into safeguard to sovereignty unity, and integrity and security of the country.
- National emergency during was aggression external and armed rebellion(352).
- State emergency (president rule) on the ground of failure of constitutional macharcy of state (356).
- Financial emergency on ground of treat to financial stability or credit of India (360).

During emergency the central government become all powerful and states go into the total control of centre. It connects the federal structure into a unitary one without amendment in constitutions; this is unique feature of IC.

16. 3 tier government:-

- Originally, IC provided for a dual polity states the 73rd and 74th CAA (1992) have added a third tier of government, ie (local) which is not found in any other constitution of the world.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

PREAMBLE OF THE CONSTITUTION:-

- The American constitution was the first to begin with a preamble, many countries including India, followed the practice. Preamble refers to constitutional; it contains the summary or essence of the constitution.
N.A Palkhivala an eminent jurist and constitutional expert called the preamble as “identity card” of the constitution.
- The preamble is based on the objective resolution drafted and moved by Pandit Nehru. And adopted by constituent assembly. It has been amended by the 42nd constitutional amendment act which has added 3 new words, socialistic, secular and integrity.

INGREDIENTS OF PREAMBLE:-

- Source of authority of the constitution preamble states that constitution derives its authority from to people of India.
- Nature of Indian states :- It declares India to be a sovereign, socialist, secular, democratic and republic.
- Objectives of constitution:- it specifies justices liberty, equality and fraternity as the objective.
- Date of adoption of the constitution:- it stipulated nov 26, 1949 as the date.

KEY WORDS:-

1. SOVERIGN

- Word sovereign implies that India is neither a dependency nor a domination of any other national, but is an India president state, where is no free to conduct its own affairs.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

2. SOCIALIST

- Notably the Indian brand of socialism is a democratic socialism and not a communist socialism democratic socialism holds faith in the mixed economy where both public and private sector coincide side by side.
- India socialism is blend of Marxism and Gandhian learning heavenly towards Gandhian socialism.

3. SECULAR:-

- The term secular was added by the 42 constitutional amendment act of 1976, the Indian constitution embodies the positive concept of secularism is , all religion in the country have the same status and support from the state

4. DEMOCRATIC

- The type of democracy is known as representative democracy, its of two types parliamentary and presidential.
- IC provides for representative parliamentary democracy, universal adult franchise, periodic elections, rule of law, independence of judiciary and absence of discrimination on certain grounds are the manifestations of democratic character of Indian polity.

5. REPUBLIC:-

- The term republic in one preamble indicates that India has an elected head called the president, He is elected indirectly for a fixed period of 5 years.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- Republic also means two more things, one vesting of political sovereignty in the people and not in a single individual like a king second are absence of any privilege class and hence all public offices belong opened to every citizen without any discrimination.

6. JUSTICE:-

- Word justice is the preamble embraces 3 distinct forms, social, economic and political.
- Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, and so on

Economic justice denotes the non discrimination between people on the basis of economic factors.

Political justice implies that all citizen should have equal political rights and equal voice in the government.

7. LIBERTY:-

- The ideals of liberty, equality and fraternity in one preamble have been taken from the French revolution.
- The term liberty means the absence of restraints on the activity of the individual at the same time providing opportunity for the development of individual personalities, Liberty has been enjoyed within certain limitations mentioned in the constitution itself.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

8. EQUALITY

- The term equality means the absence of special privileges in any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.
- Preamble secure to all citizens of India equality of states and opportunity this provision embraces 3 dimension of equality- civic, political and economic.
- Article 14,15,16,17,18, A 325, 326 all provides equality to the citizens.

9. FRATERNITY:-

- Fraternity means a sense of brother hood this feeling is promoted by the system of single citizenship. Also the fundamental duties of (Article 51A)
- Say that it shall be the duty of every citizen of India to promote harmony and the spirit of brotherhood amongst the people of India.

SIGNIFICANCE OF PREAMBLE

- According to K.M Munshi a member of the drafting committee of constituent assembly the preamble is the “horoscope of one sovereign democratic republic”.
- Pandit ihakur das bhargana another member of constitution assembly called it soul of constitution key to constitution, and set of secular in constitution.
- M.H dayatullah frames CJI observed preamble as soul of our constitution Which lays down the pattern of our political society?



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

PREAMBLE AS PART OF THE CONSTITUTION:-

- One of the controversies about the preamble is as to whether it is a part of constitution or not. In the Barbery union case (1960) the supreme court said that preamble shows purpose of constitution despite the recognition of the significance of the preamble, the supreme court specifically pinned that preamble is not a part of constitution.
- keshavanda Barati case (1973) Supreme court subjected the earlier opinion and held that preamble is a part of constitution.
- In the LIC of India case(1995) also, supreme court again held that the preamble is an integral part of constitution. However two things should be noted
 - a) The preamble is neither a source of power to legislature nor a prohibition upon the power of legislature.
 - b) It is no justifiable, that is, its provision are not enforceable in courts of law.

AMENDIBILITY OF PREAMBLE

- The question to whether the preamble can be amended under article 368 of constitution across for the first time in the historic case of Keshavananda Bharathi (1973).
- It was urged that the preamble cannot be amended as it is not a part of the constitution, also article 368 cannot be used to destroy or damage the basic elements of the fundamental features of the constitution which are enshrined in the preamble. However Supreme court held that the preamble is a part of constitution and



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

it can be amended without altering the basic structure / feature of the constitution.

- The preamble has been amended only once so far in 1976, by 42nd constitutional amendment act which has added there new words- socialist, secular and integrity to the preambles.

UNION AND ITS TERRITORY:-

Article 1-4 under part-1 of the constituent deals with union and its territory.

Union of states:-

Article-1:-

India that is Bharat is union of states rather than federation of states this provision deals with 2 things one name of the country, and two is type of polity.

According to the Dr. Ambedkar the phrase union of states has been preferred over the federation of states for 2 reason.

- The India federation is not the result of an agreement among the states like the American federation.
- The states have no right to secede from the federation.

According to article-1, territory of India can be classified into the

categories:-

1. Territories of the states
2. Union territories
3. Territories that may be acquired by the government of India at any time.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

The states are the members of federal system and centre. The union territories on the other hand are directly administered by the central government being or sovereign state, India can acquire foreign territories according to the modes recognised by international law, is session, occupation, conquest or subjugation

Ex:- India has acquired several foreign territories such as Dadra and Nagar Havel, Goa, Daman, Diu, Pondicherry and Sikkim since the commencement of constitution.

Article-2:-

empower the parliament to admit into the union of India, or establish new states. Notably, article 2 relates to the admission or establishment of new states that are not part of the union of India.

Article 3:-

Article 3 on the other hand relates to the formation of or changes in the existing states of the union of India in other words article 3 deals with the internal readjustment interse of the territories of the constituent states of the union of India.

PARLIMENTS STATE REDRGANISING POWER:-

Article 3 authorise parliament to :-

- Form a new state by untiring 2 or more states or parts of states or by uniting any territory to a part of any state.
- Increase the ares of any state
- Alter the boundaries of any state.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- Alter the name of the any state but it has 2 conditions:-
 1. A bill contemplating the above changes can be introduced in the parliament only with the prior permission / recommendation of the president.
 2. Before recommending the bill the present has to refer the same to the state legislature concerned for expressing its view within a specified period.
 3. The president (or parliament) is not bound by the views of the state legislature and may either accepts or reject them.

Article 3 clearly mentions that the parliament can redraw the political map of India according to its will hence it is rights describable states. The union government cannot destroy the union.

Article:-4

Laws made for administration established of new states or and formation of new states and alteration of areas boundaries or names of existing states (A-3) are not to be considered as amendments of the constitution under A-368.

This means that such laws can be passed by a simple majority and by the ordinary legislature procedure.

Does the powers of parliament to diminish the area of a state (under A) include also the power to code Indian territory to a foreign country??

This question came up for examination before the supreme court in a reference made by the parliament in 1960. The decision of the central government to code part of a territory known as Bernbari union (WB) to Pakistan led to political agitation and controversy. Supreme court that



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

the power of parliament to diminish the areas of a state (A-3) does not cores decision of Indian territory to foreign country to Pakistan. Also in 1969 supreme court ruled that settlement of a boundary disputes between India and another country does not require a constitutional amendment it can be done by executive action only.

EVOLUTION OF STATES AND UNION TERRITORIES:-

Integration of princely states:-

At the time of independence, India comprised 2 categories of political units namely the British provinces (under the direct rule of native princes out subject to paramountary of British crown)

The Indian independence Act 1947, created 2 independent and separate dominions of India and Pakistan and gave 3 opinion to the princely states viz:- joining India joining pak or remaining independent.

Out of 552 princely states situated within the geographical boundaries of India 549 joined India and remaining 3 (Hyderabad, Junagadh and Kashmir) refused to join India.

However in course of time they too also integrated with India. Hyderabad by mean of police action, Junagadh by means of referendum and Kashmir by the instrument of accession. In 1950, constitution contained 4-fold classification of states of union India.

Totally 29 in number:-

Part A :- 9 governors provinces of British India.

Part B :- 9 princely states in legislature

Part C :- 10 chief commissioner provinces of British India.

Part D :- Andaman and Nicobar island.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

DHAR COMMISSION AND NP COMMITTEE:-

- There had been a demand from different region, particularly south India, for recognition of states on linguistic basis, according to June 1948 the govt of India appointed the linguistic provinces committee under chairmanship of S.K dhas to examine the feasibility of this commission submitted its report in Dec 1948 and recommended the reorganisation of states on the basis of administrative convenience rather than linguistic basis.
- This led to much resentment and thus another linguistic province committee was constituted and it was popularly known as JVP committee consisted of Jawaharlal Nehru, Vallabhai Patel and Pattabhi Sitharamaiah. It submitted the report in April 1949 and formally rejected languages as the basis for reorganisation of states.
- However in Dec, 1953 the government of India was forced to create the first linguistic state known as Andhra Pradesh, by separating the Telugu speaking areas from the Madras state this followed a prolonged popular agitation and the death of Potti Srimulu, a Congress person of standing, after a 56 day hunger strike for the cause.

Faral Ali Commission:-

- The creation of Andhra state intensified the demand from other region for creation of states on linguistic basis.
- This forced the GOI to appoint a 3 member state reorganisation commission under the chairmanship of Faral Ali to re-examine the



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

whole question its other two member were K.M pannithkar and H.N kunzru.

- It submitted its report in 1955 and broadly accepted language as a basis of reorganisation of states, but it rejected the theory of one language one state. Its view was that the unity of India should be regarded as primary consideration of the country political units.
- The commission abolished the four-fold classification of states under original constitution and creation of 16 states and 3 centrally administered territories.
- By the state reorganisation Act of 1956 and 7th CAA, part A,B,C,D, was abolished.
- 14 states and 6 UT were created on Nov 1, 1956.

New states and UT's created after 1956

YEAR

STATE

1960	-	Gujarat – 15 th state of Indian union
1961	-	Dadar and Nagar Haveli – converted to UT by 10 th CAA
1961	-	Goa, dui, Daman – UT by 12 th CAA

However in 1987, Goa was coffered a state hood daman and dui was made a separate UT

1962	-	Pondicherry – UT by 14th CAA
1936	-	Nagaland - 16 th state of Indian union.
1966	-	Haryana, Chandigarh, Himachel Pradesh– Chandigarh was Indian union
1972	-	Manipur, Jaipura, Meghalaya



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

CITIZENSHIP:-

- India has 2 kinds of people:-
 - Citizens
 - Aliens
- Citizens are full members of Indian state and enjoy all civil and political rights.
Aliens on other hand do not enjoy all the civil and political rights.
- Aliens: - Friendly Aliens → have cordial relation in India.
An enemy Aliens → subject of that country with whom we are in was with.
- Enemy aliens enjoy lesser rights than the friendly aliens.
- Eg, they do not enjoy protection against arrest and detention (A.22)
- The constitution confers the following rights and privilege to Indian citizens and denies it to aliens.
 - 1) Article - 15, 16, 19, (29&30) +
 - 2) Right to contest for the membership of parliament and state legislature.
 - 3) Eligibility to hold certain public offices that are president, vice president, SC & HC judges, governor of states, attorney general and advocate general of states.
- Along with this rights citizens own certain duties like paying taxes, respecting national flag, anthem, defending country etc.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

In India both a citizen by birth and naturalised citizen are eligible for officer of president while in USA, only a citizen by birth is eligible to become president.

Constitutional provisions:-

- The constitution deals with the citizenship from Article - 5 to 11 under part 2.
- However it does not have any elaborate provisions in this regard.
- It only tells who can become citizens of India at its commencement (Jan 26, 1950).
- It does not deal with acquisition or loss of citizenship subsequent to commencement.
- The constitution empowers parliament to enact laws of any matter relating to citizenship.
- According to parliament has enacted the citizenship Act 1953, which has been amended in 1986, 1992, 2003, 2005, 2015, 2016.
- According to constitution to that following 4 categories of person became the Indian citizens during its commencement

Article 5

A person who has his domicile in India and has fulfilled only one of the 3 conditions

- If he has been born in India .
- If either of his parents born in India
- If he has been ordinary resident of India immediately before 26/01/1950



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Article 6

- A Person navigated to India from Pakistan become an Indian citizen if he or either of his
- Parent or any of his grand parent was born in undivided India

Article 7

A Person who migrated to Pakistan from India after march 1. 1947 but later returned to India for resettlement could become an India citizen for these he had to reside in India for 6 months preceding the date of his application for registration

Article 8

- It cover the overseas Indians who mag want to acquires Indian citizenship
- A person or any of whose parents or grand parent was born in undivided India but residing out side India shell become an Indian citizen if he has been registered as a citizen of India by the diplomatic or consular representative of Indian on that country of his residence whether before or after the commencement of constitution
- If sum up these provisions of deals with the citizen ship of
 - Person domiciled in India
 - Person migrated from Pakistan
 - Person migrated to Pakistan but later returned
 - Person of India origin residing outside India



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Article 9

No person shall be Indian citizen if he has voluntarily acquired to citizenship of any foreign state

Article 10

Every person shall continue to be such citizen subject to the permission of law made by parliament

Article 11

Parliament have the power to make any provision with respect to the acquisition & termination and all matters relating to citizenship

CITIZENSHIP ACT:1955

- Provides for acquisition & loss of citizenship after the commencement of constitution
- Amended in 1957, 1960, 1985, 1986, 1992, 2003, 2005, 2015 it has been amended 8 times

Acquisition

1. By birth

- A person born in India on or after 26/01/1950 but before 1/7/1987 is a citizen of India
- A person born after 1/7/1987 becomes citizen if either of his parents were Indian citizen at his birth
- A person from after 3/12/2004 becomes Indian citizen if both of his parents are citizen of India or one of the parents is a citizen of India & other is not the illegal migrant at the time of their birth



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- The children of foreign diplomats posted in India and aliens cannot acquire Indian citizenship

2. By descent

- A person born outside India on or after 26/01/1950 but before 10/12/1992 is a citizen by descent if his was a citizen of India at the time of his birth
- A person born on or after 10/12/1992 becomes Indian citizen if either of his parents is an Indian citizen
- From 3/12/2004 a person born outside India shall be a citizen by descent if his birth is registered at an Indian consulate within one year of the date of his birth or with the permission from the central government

3. By Registration :

The central government may on an application register as a person as Indian citizen if

- The person is ordinary resident in India for 7 years before making application
- The person is married to an Indian citizen and resident in India for 7 years
- Minor children of persons who are citizens of India

4. By naturalization :

It can be granted to any person, if following qualification

- If he is not a subject or citizen of any country where Indian citizens are prevented from becoming citizens of that country by naturalization



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- He is of good character.
- He has adequate knowledge of language specified in 8th schedule
- A person who has rendered distinguished service in science, philosophy art, literature, world peace or human progress every naturalised citizen must taken an both of allegiance to the constitution of Indian.

5. By incorporation of Tertiary:

- If any foreign territory become a part of India the govt of India specifies those citizen as Indian citizen
- Eg. when Pondicherry become a part of India, the GOI issued the citizenship order 1962 under citizenship act-1955

Loss of citizen

1. By renunciation

- Any citizen of India of age & capacity can make a declaration renouncing his Indian citizenship
- Upon the registration of the declaration, person ceases to be a citizen of India
- However if such a declaration is made when India is engaged in war its registration shall be withheld by the central govt
- Further when a person renounces his Indian citizenship every minor child of that person loses Indian citizenship

2. By termination

- When an Indian citizen voluntarily acquires citizenship of another country, his Indian citizenship automatically termination



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. By deprivation

It is compulsory termination of Indian citizenship by the central govt if:

- The citizen has obtained the citizenship by fraud
- The citizen has shown disloyalty to the constitution of India
- The citizen has unlawfully traded or communicated with an enemy during a war.
- The citizen has been ordinarily resident out of India for 7 years continuously
- The citizen has, within 5 years after registration or naturalization been imprisoned in any country for two years

FUNDAMENTAL RIGHTS

1. The fundamental rights are enshrined in part 3 of the constitution from article 12 to 35
2. The framers of the constitution derived inspiration from the constitution of USA (ie, bill of rights)
3. Part 3 is rightly described as magna carta of India
4. Fundamental rights in one constitution are more elaborate than those found in the constitution of any other country in the world including USA
5. Fundamental rights guarantee equality of all individuals and are meant for promoting the ideal of political democracy

Originally constitution provided for seven fundamental rights namely

1. Right to equality (A-14-18)
2. Right to freedom (A-19-22)
3. Right against exploitation (A-23,



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

4. Right to freedom of religion (A-25-28)
5. Cultural & educational rights (A-29-30)
6. Right to property (A-31)
7. Right to constitutional remedies (A-32)

However the right to property was deleted from the list of fundamental rights by the 44th C.A, A 1978 it is made a legal rights under A-300A in part 12 of the constitution so at present there are only 6 fundamental rights

FEATURES OF FUNDAMENTAL RIGHTS

Some of there are available only to the citizen while others are available to all person whether citizens, foreigners or all persons whether citizens, foreigners pr legal person like corporation & company

FUNDAMENTAL RIGHT

FEATURES OF FUNDAMENTAL RIGHT

- Some of there are available only to the citizen while others are available to all person whether citizen foreign or legal person like corporations & company
- They are not absolute but qualified the state can impose reasonable restriction are reasonable or not is to be decide by the consts
- Most of them are available against the arbitry action of the state
- Some them are negative in character that is some limitation on the authority of the state, while other are positive in nature, confusing certain on the person .



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- They are instable, allowing person to move the courts for their enforcement, if and when they are violated.
- They are defended and guarded by the s.e.
- They are not of permanent the parliament can curtail or repeal them but only by a constitutional amendment act and not by an ordinary act.
- They can be suspended during the operation of a national emergency except the rights granted by article 20 & 21, art 19 can be suspended only when emergency is declared on the grounds of war/external aggression & not on the ground of armed rebellion / internal emergency.
- Their scope of operation is limited by article 3A, 3B & 3/C.
- 3/A (sparing of laws providing for acquisition of state etc).
- Article 31(B) { Validation of certain acts & regulations included in 9th schedule }.
- Article 31(C) saving of laws giving effect to certain directive principles.
- Their application to the members of armed forces, paramilitary forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the parliament (Article 33).
- Their application can be restricted while martial law is in force in any area martial law means military rule imposed under abnormal circumstances to restore order

LAWS INCONSISTENT WITH FUNDAMENTAL RIGHT

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void in other words, it expressly provides for the doctrine of judicial review.

FUNDAMENTAL RIGHT AT A GLANCE

Category	Consists of
Rights to equality (Articles 14-18)	<ul style="list-style-type: none"> • Equality before law and equal protection of laws (article 14) • Prohibition of discrimination on grounds of religion. Race caste, sex or place of birth (article 15) • Equality of opportunity in matters of public employment (article 16) • Abolition of untouchability and prohibition of its practice (article 17) • Abolition of titles except military and academic (article 18)



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Right to freedom (article 19-22)	<ul style="list-style-type: none">• Protection of six rights regarding freedom of:<ul style="list-style-type: none">○ Speech and expression○ Assembly○ Association○ Movement○ Residence○ Profession (Article 19).• Protection in respect of convention for offences (Article 20).• Protection of life and personal liberty (Article 21)• Right to elementary education in certain cases (Article 22)
Right against exploitation (Articles 23-24)	<ul style="list-style-type: none">• Prohibition of traffic in human beings and forced labour (Article 23)• Prohibition of employment of children in factories, etc. (Article 24).
Right to freedom of religion (Article 25-28)	<ul style="list-style-type: none">• Freedom of conscience and free profession, practice and propagation of religion (Article 25).• Freedom to manage religious affairs (Article 26).• Freedom from payment of taxes for promotion of any religion (Article 27).• Freedom from attending religious instruction or worship in certain educational institutions (Article 28).
Cultural and educational rights (Articles 29-30)	<ul style="list-style-type: none">• Protection of language, script and culture of minorities (Article 29).

	<ul style="list-style-type: none"> • Right of minorities to establish and administer educational institutions (Article 30).
Right to constitutional remedies (Article 32)	<p>Right to move the supreme Court for the enforcement of fundamental rights including the writs of</p> <ul style="list-style-type: none"> ○ Habeas corpus ○ Mandamus ○ Prohibition ○ Certiorari ○ Quo war-rentro (Article 32).

FUNDAMENTAL RIGHTS OF FOREIGNERS

Fundamental rights only to citizen and not to foreigners	Fundamental available to both citizen and foreigners (except enemy aliens)
Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15)	Equality before law and equal protection of laws (Article 14)
Equality of opportunity in matters of public employment (Article 16)	Protection on respect of conviction for offences (Article 20)
Protection of six rights regarding freedom of: <ul style="list-style-type: none"> • Speech and expression • Assembly 	Protection of life and personal liberty (ARTICLE 21)



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

<ul style="list-style-type: none"> • Association • Movement • Residence • Profession (Article 19) 	
Protection of language, script and culture of minorities (Article 29)	Rights to elementary education (article 21A)
Right of minorities to establish and administer educational institutions (Article 30)	Protection against arrest and detention in certain cases (Article 22)
	Prohibition of traffic in human beings and forced labour (Article 23)
	Prohibition of employment of children in factories etc., (Article 24)
	Freedom of conscience and free profession, practice and propagation of religion (Article 25)
	Freedom to manage religious affairs (Article 26)
	Freedom from payment of taxes for promotion of any religion (Article 27)
	Freedom from attending religious instruction or worship in certain education institution (Article 28)



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

RIGHT TO EQUALITY

1. Equality before law and equal protection of laws

The concept of equality before law is of British origin while the concept of equal protection of laws has been taken from the American constitution .

Rule of law : The concept of equality before law is an element of the concept of rule of law propounded by A.V Dicey, the British jurist

The supreme court held that the Rule of law as embodied in Article 14 is a basic feature of the constitution Hence, it cannot be destroyed even by an amendment.

EXCEPTIONS TO EQUALITY

1. The president of India and the governor of states enjoy the following immunities (article 361)
 - The president or the governor is not answerable to any court for the exercise and performance of the powers and duties of his office.
 - No criminal proceedings shall be instituted or continued against the president or the governor in any court during his term of office.
 - No process for the arrest or imprisonment of the president or the governor shall be issued from any court during his term of office
 - No civil proceedings against the president or the governor shall be instituted during his term of office in any court in respect of any act done by him in his personal capacity, whether before or after he entered upon his office, until the expiration of two months next after notice has been delivered to him



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

2. No person shall be liable to any civil or criminal proceeding in any court in respect of the publication in a newspapers (or by radio or television) of a substantially true report of any proceeding of either house of parliament or either house of the legislature of a state (Article 361-A)
3. No member of parliament shall be liable to any proceeding in any court in respect of anything said or any vote given by him in parliament or any committee there of (Article 105)
4. No member of the legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the legislature or any committee there of (Article 194)
5. Article 31-C is an exception to Article 14. It provides that the laws made by the state for implementing the directive principles contained in clause (b) or clause (c) of Article 39 cannot be challenged on the ground that they are violative of Article 14. The supreme court held that where Article 31-C comes in, Article 14 goes out
6. The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.
7. The UNO and its agencies enjoy the diplomatic immunity.

2. Prohibition of discrimination on certain grounds

Article 15 provides that the state shall not discriminate against any citizen on ground only of religion, race, caste, sex or place of birth. The use of the word only connotes that discrimination on other grounds is not prohibited.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

EXCEPTIONS

- The state is permitted to make any special provision for women and children .for example, reservation of seats for women in local bodies or provision of free education for children
- The state is permitted to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled tribes .for example ,reservation of seats or fee concession in public educational institutions.
- The state is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institution, whether aided or unaided by the state

The last provision was added by the 93 rd amendment Act of 2005 in order to give effect to this provision, the centre enacted the central educational institution act 2006, providing a quota of 27% for candidates belonging to the other backward classes

3. Equality of opportunity in public Employment

Article 16 provides for equality of opportunity for all citizen in matters of employment or appointment to any office under the state. no citizen can be discriminated against or be ineligible for any employment or office under the state on grounds of only religion, race caste, sex, descent, place of birth or residence.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

EXCEPTION

- Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority. As the public employment act of 1957 expired in 1974, there is no such provision for any state except Andhra Pradesh
- The state can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state service.
- A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular religion or denomination.

Mandal commission

- The morarji desai government appointed the second backward classes commission under the chairmanship of B P Mandal, a member of parliament, in terms of article 340 of the constitution to investigate the condition of the socially and educationally backward. Classes and suggest measures for their advancement. The commission submitted its report in 1980 and identified as many as 3743 castes as socially and educationally backward classes. They constitute nearly 52% component of the population ,excluding the scheduled castes and the scheduled tribes the commission recommended for reservation of 27% government jobs for the other backward classes so that the total reservation for all amount to 50% it was after ten years in 1990 that the V P singh government jobs for the OBCs Against in 1991, the narasimha rao



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

government introduced two changes (a) preference to the poorer sections among the OBCs in the 27% quota, i.e adoption of the economic criteria in granting reservation, and (b) reservation of another 10% of jobs for poorer sections of higher castes who are not covered by any existing schemes of reservation.

4. Abolition of untouchability

- Article 17 abolishes untouchability and forbids its practice in any form. In 1976, the untouchability Act 1955 has been comprehensively amended and renamed as the protection of civil rights Act, 1955
- Under the protection of civil rights Act (1955), the offences committed on the ground of untouchability are punishable either by imprisonment up to six months or by fine upto Rs 500 or both. A person convicted of the offence of untouchability is disqualified for election to the parliament or state legislature. The act declares the following acts as offences:

5. Abolition of titles

Article 18 abolishes titles and makes four provision in the

Regard:

- It prohibits the state from conferring any title on any body, whether a citizen or a foreigner.
- It prohibits a citizen of India from accepting any title from any foreign state



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the president.
- No citizen or foreigner holding any office of profit or trust under the state is to accept any present, emolument or office consent of the president.

RIGHT TO FREEDOM

PROTECTION OF SIX RIGHTS

Article 19 guarantees to all citizen the six rights these are :

- Right to freedom of speech and expression.
- Right to assemble peaceably and without arms.
- Right to from associations or unions or co-operative societies.
- Right to move freely throughout the territory of India.
- Right to reside and settle in any part of the territory of India
- Right to practice any profession or to carry on any occupation, trade or business

Originally, Article 19 contained seven rights. But, the right to acquire, hold and dispose of property was deleted by the 44 the Amendment act of 1978.

1. FREEDOM OF SPEECH AND EXPRESSOIN

It implies that every citizen has the right to express his views, opinions, belief and conviction freely by word of mouth, writing, printing, picturing or in any other manner.

- Right to propagate one`s views as well as views of others



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- Freedom of the press.
- Freedom of commercial advertisement
- Right against tapping of telephonic conversation.
- Right to telecast, that is, government has no monopoly on electronic media .
- Right against bundh called by a political party or organisation.
- Right to know about government activities.
- Freedom of silence.
- Right against imposition of pre-censorship on a newspaper.
- Right to demonstration or picketing but not right to strike.

Freedom of Assembly

- Every citizen has the right to assemble peaceably and Without arms it includes the right to hold public meetings, demonstration and take out procession. This freedom can be exercised only on public land and the assembly must be peaceful and unarmed.
- Freedom of Association: all citizen have the right to from association or unions or co-operative societies. It includes the right to from political parties, companies, partnership firms, societies, clubs, organisations, trade unions or any body of person.
- Freedom of movement: this freedom entitles every citizen to move freely throughout the territory of the country. He can move freely from one state to another or from one place to another within a state. This right underline the idea is one unit so far as the citizen are concerned. Thus the purpose os to promote national feeling and not parochialism,



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- **Freedom of Residence:** Every citizen has the right to reside and settle in any part of the territory of the country this right has two parts (a) the right to reside in any part of the country, which means to stay at any place temporarily, and (b) the right to settle in any part of the country, which means to set up a home or domicile at any place permanently
- **Freedom of profession:** all citizens are given the right to practise any profession or to carry on any occupation, trade or business. This right is very wide as it covers all the means of earning one's livelihood.

2. Protection in respect of conviction for offences

Article 20 grants protection against arbitrary and excessive

Punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation, it contains three provisions in that direction:

- **No ex-post-facto law:** no person shall be (i) convicted of any offence except for violation of a law in force at the time of the commission of the act, nor (ii) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.
- **No double jeopardy:** no person shall be prosecuted and punished for the same offence more than once
- **No self-incrimination:** no person accused of any offence shall be compelled to be a witness against himself.

3. Protection of Life and personal liberty

Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizen and non-citizen.

The supreme court has reaffirmed its judgement in the menaka case in the subsequent cases. It has declared the following rights as part of article 21:

- Right to live with human dignity.
- Right to decent environment including pollution free water and air and protection against hazardous industries.
- Right to livelihood
- Right to privacy.
- Right to shelter.
- Right to health.
- Right to free education up to 14 years of age.
- Right to free legal aid.
- Right against solitary confinement.
- Right to speedy trial.
- Right against handcuffing. Etc

4. Right to Education :

Article 21 A declares that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may determine. Thus this provision makes only elementary education a fundamental Right and not higher or professional education

5. Protection Against Arrest and Detention :

Article 22 grants protection to person who are arrested or detained. Detention is of two types, namely, punitive and preventive. PUNITIVE DETENTION is to punish a person for an offence committed by him after trial and conviction in a court preventive detention, on the other hand means detention of a person without trial and conviction by a court. Its purpose is not to punish a person for a past offence but to prevent him from committing detention is only the near future.

RIGHTS AGAINST EXPLOITATION

1. Prohibition of Traffic in human Beings and forced labour

- Article 23 prohibits traffic in human beings, beggar and other similar forms of forced labour. Any contravention of this provision shall be an offence punishable in accordance with law. This right is available to both citizen and non-citizen.
- The expression traffic in human beings include
 - Selling and buying of men, women and children like goods
 - Immoral traffic in women and children, including prostitution
 - Devadasis
 - Slavery.
- The term `begar` means compulsory work without remuneration.
- Article 23 prohibits other similar forms of forced labour like bonded labour the term forced labour means compelling a person to work against his will.
- Article 23 also provides for an exception to this provision. It permits the state to impose compulsory service for public purpose,



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

as for example, military service or social service, for which it is not bound to pay

2. Prohibition of Employment of children in Factories,

- Article 24 prohibition the employment of children below the age Of 14 years in any factory, mine or other hazardous activities
- Like construction work or railway. But it does not prohibit their employment in any harmless or innocent work.
- The child labour (prohibition and Regulation) Act 1986, the most important law in this direction.
- In 2006, the government banned the employment of children as
- Domestic servants or workers in business establishments like
- Hotels, dhabas, restaurant, shops, factories, resorts, spas,
- Tea-shops, and so on. It warned that anyone employing children below 14 years of age would be liable for prosecution and penal action

RIGHT TO FREEDOM OF RELIGION

1. Freedom of conscience and free profession, practice and propagation of Religion

Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. The implications of these are;

- (a) freedom of conscience: inner freedom of an individual to mould his relation with god or creatures in whatever way he desires.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar,
North Bangalore-560079, Mob:9513804777/9513809777

- (b) Right to profess: declaration of one's religious beliefs and faith openly and freely.
- (c) Right to practice: performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas
- (d) Right to propagate: transmission and dissemination of one's religious beliefs to other or exposition of the tenets of one's religion.

Article 25 also contains two explanations:

one, wearing and carrying of kirpans is to be included in the profession of the sikh religion ; and two, the hindus, in this context, include Sikhs, jains and Buddhists.

2. Freedom to manage religious Affairs

According to Article 26, every religious denomination or any of its section shall have the following rights:

- (a) Right to establish and maintain institutions for religious and charitable purpose;
- (b) Right to manage its own affairs in matters of religion;
- (c) Right to own and acquire movable and immovable property ;and
- (d) Right to administer such property in accordance with law.

Article 26 protects collective freedom of religion.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. Freedom from Taxation for promotion of a religion

Article 27 lays down that no person shall be compelled to pay any Taxes for the promotion or maintenance of any particular religion or religious denomination. In other words, the state should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion.

4. Freedom from Attending Religious Instruction

Under Article 28, no religious instruction shall be provided in any education wholly maintained out of state funds.

No person attending any educational institution recognised by the state or receiving aid out of state funds shall be required to attend any religious instruction or worship in that consent of his guardian is needed.

Types of educational institutions

- (a) Institutions wholly maintained by the state.
- (b) Institutions administered by the state but established under any endowment or trust.
- (c) Institutions recognised by the state.
- (d) Institutions receiving aid from the state. In
 - Religious instruction is completely prohibited while in
 - Religious instruction is permitted.
 - Religious instruction is permitted on a voluntary basis.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

CULTURAL AND EDUCATIONAL RIGHTS

1. Protection of interests of minorities

Article 29 provides that any section of the citizen residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same

Article 29 grants protection to both religious minorities as well as linguistic minorities.

2. Right of minorities to Establish and Administer Educational Institutions

- All minorities shall have the right to establish and administer educational institutions of their choice.
- The compensation amount fixed by the state for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them
- In granting aid, the state shall not discriminate against any educational institution managed by a minority.

Thus, the protection under Article 30 is confined only to minorities and does not extend to any section of citizens

RIGHT TO CONSTITUTIONAL REMEDIES

A mere declaration of fundamental rights in the constitution is meaningless, useless and worthless without providing an effective machinery for their enforcement, if and when they are violated hence Article 32 confers the right to remedies for the enforcement of the



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

fundamental right of an aggrieved citizen in other words, the right to get the fundamental rights protected is in itself a fundamental right. This makes the fundamental rights real.

- The right to move the supreme court by appropriate proceedings for the fundamental rights is guaranteed.
- The supreme court shall have power to issue directions or orders or writs for the enforcement of any of the fundamental rights. The writs issued may include habeas corpus mandamus, prohibition, certiorari and quo-warranto.

The purpose of Article 32 is not providing a guaranteed, effective, expeditious, inexpensive and summary remedy for the protection of the fundamental right only the fundamental rights guaranteed by the constitution can be enforced under Article 32

However, the supreme court has ruled that where relief through high court is available under Article 226, the aggrieved party should first move the high court.

WRITS – TYPES AND SCOPE

The supreme court and the high court can issue the writs of habeas corpus, mandamus, prohibition, certiorari and quo-warranto. Further any other court to issue these writs.

These writs are borrowed from English law where they are known as prerogative writs. Later the high court started issuing these writs as extraordinary remedies to uphold the rights and liberties of the British people.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

1. The supreme court can issue writs only for the enforcement of fundamental rights whereas a high court can issue writs not only for the enforcement of fundamental rights for any other purpose.
2. A remedy under Article 32 is in itself a fundamental right and hence, the supreme court may not refuse to exercise its writ jurisdiction.

Habeas Corpus

It is a Latin term which literally means to have the body of it is an order issued by the court to a person who has detained another person, to produce the body of the latter before it

The writ of habeas corpus can be issued against both public authorities as well as private individuals.

Mandamus

It literally means we command it is command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform the writ of mandamus cannot be issued (a) against a private individual or body

3. To enforce departmental instruction that does not possess statutory force; (c) when the duty is discretionary and not mandatory ;(d) to enforce a contractual obligation ;(e) against the president of India or the state governors; and (f) against the chief justice of a high court acting in judicial capacity.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Prohibition

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

The writ of prohibition can be issued only against judicial and quasi-judicial authorities.

Certiorari

In the literal sense, it means to be certified or to be informed it is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in case.

Till recently, the writ of certiorari could be issued only against judicial and quasi-judicial authorities.

QUO-WARRANTO

In the literal sense, it means by what authority or warrant it is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person

It cannot be issued in cases of ministerial office or private office

ARMED FORCES AND FUNDAMENTAL RIGHTS

Article 33 empowers the parliament to restrict or abrogate the fundamental right of the member of armed forces, para-military force, police force intelligence agencies and analogous forces



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

MARTIAL LAW AND FUNDAMENTAL RIGHTS

Article 34 provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India

CRITICISM OF FUNDAMENTAL RIGHTS

1. Excessive limitations
2. No social and economic rights
3. No clarity
4. No permanency
5. Suspension during emergency
6. Expensive Remedy
7. Preventive detention

DIRECTIVE PRINCIPLES OF STATE POLICY

The principle of state policy are enumerated in part IV of the constitution from Article 36 to 51. The framers of the constitution borrowed this idea from the Irish constitution of 1937, which had copied it from the Spanish constitution. Dr B R Ambedkar described these principles as novel features of the Indian constitution. The directive principles along with the fundamental right contain the philosophy of the constitution and is the soul of the constitution. Granville Austin has described the Directive principles and the fundamental right as the conscience of the constitution



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

FEATURES OF THE DIRECTIVE PRINCIPLES

1. The phrase directive principles of state policy denotes the ideals that the state should keep in mind while formulating policies and enacting laws.
2. The directive principles constitute a very comprehensive economic, social and political programme for a modern democratic state they aim at realising the high ideals of justice, liberty, equality and fraternity as outlined in the preamble to the constitution.
3. The directive principles are non-justiciable in nature, that is they are not legally enforceable by the court for their violation
4. The directive principles, though non-justiciable in nature, help the court in examining and determining the constitutional validity of a law. The supreme court has ruled many a times that in determining the constitutionality of any law, if a court finds that the law in question seeks to give effect to a directive principle, it may consider such law to be reasonable in relation to Article 14 and thus save such law from unconstitutionality.

CLASSIFICATION OF THE DIRECTIVE PRINCIPLES

They can be classified into three broad categories, Socialistic, Gandhian and liberal-intellectual.

SOCIALISTIC PRINCIPLES :

These principles reflect the ideology of socialism. They lay Down the framework of a democratic socialist state, aim at Providing social and economic justice, and set the path Towards welfare state. They direct the state;



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

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



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

GANDHIAN PRINCIPLES :

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

1. To organise village panchayats and endow them with necessary power and authority to enable them to function as unit of self-government (Article 40)
2. To promote cottage industries on an individual or co-operative basis in rural areas (Article 43)
3. To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B)
4. To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation (Article 46)
5. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47)
6. To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (Article 48)

LIBERAL-INTELLECTUAL PRINCIPLES :

The principles included in this category represent the Ideology of liberalism. They direct the state;

1. To secure for all citizen a uniform civil code throughout the country (Article 44).



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

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

NEW DIRECTIVE PRINCIPLES

The 42nd Amendment Act of 1976 added four new directive principles to the original list. They require the state;

- To secure opportunities for healthy development of children (Article 39).
- To promote equal justice and to provide free legal aid to the poor (Article 39 A).

1. To take steps to secure the participation of workers in the management of industries (Article 43A).
2. To protect and improve the environment and to safeguard forests and wild life (Article 48 A).



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. The 44th Amendment Act of 1978 added one more directive principle, which requires the state to minimise inequalities in income, status, facilities and opportunities (Article 38). Again, the 86th amendment act of 2002 changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A the amended directive requires the state to provide early childhood care and education for all children until they complete the age of six years.
4. The 97th amendment act of 2011 added a new directive principle relating to co-operative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).

Utility of directive principles

Constitution itself declares that they are fundamental to the governance of the country according to L M singhvi, an eminent jurist and diplomat the directive are the life giving provisions of the constitution.

CONFLICT BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

The justifiability of fundamental right and non justifiability of directive principles on the one hand and the moral obligation of state to implement directive principles (Article 37) on the other hand have led to a conflict between the two since the commencement of the constitution. In the champakam Dorairajan case (1951), the supreme



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

court ruled that in case of any conflict between the former would prevail. It declared that the directive principles have to conform to and run as subsidiary to the fundamental rights, but, it also held that the fundamental rights could be amended by the parliament by enacting constitutional amendments acts. As a result, the parliament made the first amendment act (1951), the fourth amendment act(1955)and the seventeenth amendment act(1964) to implement some of the directive.

The above situation underwent a major change in 1967 following the supreme court`s judgement in the golaknath case (1967). In that case, the supreme court ruled that the parliament cannot take away or abridge any of the fundamental right cannot be amended for the implementation of the directive principles.

The parliament reacted to the supreme court`s judgement in the golaknath case (1967)by enacting the 24th amendment act (1971)and the 25th amendment act (1971). The 24th amendment act declared that the parliament has the power to abridge or take away any of the fundamental right by enacting constitutional amendment acts. The 25th amendment act interested anew Article 31C which contained the following two provision;

1. 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
2. No laws containing a declaration for giving effect to such policy shall be question in any court on the ground that it does not give effect to such a policy.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. In the kesavananda bharati case 24 (1973), the supreme court declared the above second provision of Article 31 C was held to be constitutional and valid.
4. Later, the 42nd amendment act (1976) extended the scope of the above first provision of Article 31C by including within its protection any law to implement any of the directive principles and not merely those specified in Article 39 (b) and(c). In other word, the 42nd amendment act accorded the position of legal primary and supremacy to the directive principles over the fundamental right conferred by Articles 14, 19 and 31. However, this extension was declared as unconstitutional and invalid by the supreme court in the Minerva mills case 25 (1980).
5. It means that the directive principles were once again made subordinate to the fundamental rights. But the fundamental rights conferred by Article 14 and Article 19 were accepted as subordinate to the directive principles specified in article 39 (b)and (c). Further, Article 31 was abolished by the 44th amendment act (1978).
6. Therefore, the present position is that fundamental rights enjoy supremacy over the directive principles. Yet, this does not mean that the directive principles cannot 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.

DISTINCTION BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

Fundamental Rights	Directive principles
<ul style="list-style-type: none"> These are negative as they prohibit the state from doing certain things. 	<ul style="list-style-type: none"> These are positive as they require the state to do certain things.
<ul style="list-style-type: none"> These are justifiable, that is, they are legally enforceable by the courts in case of their violation 	<ul style="list-style-type: none"> These are non-justifiable, that is, they are not legally enforceable by the court for their violation.
<ul style="list-style-type: none"> They aim at establishing political democracy in the country. 	<ul style="list-style-type: none"> They aim at establishing social and economic democracy in the country
<ul style="list-style-type: none"> These have legal sanctions. 	<ul style="list-style-type: none"> These have moral and political sanctions.
<ul style="list-style-type: none"> They promote the welfare of the individual. Hence, they are personal and individualistic. 	<ul style="list-style-type: none"> They promote the welfare of the community. Hence, they are sociitarian and socialistic.
<ul style="list-style-type: none"> They do not require any legislation for their implementation. They are automatically enforced. 	<ul style="list-style-type: none"> They require legislation for their implementation they are not automatically enforced.

Articles Related To Directive Principles of State Policy at a glance

Article No	Subject- matter
36.	Definition of state
37.	Application of the principles contained in this part
38.	State to secure a social order for the promotion
39.	Certain principles of policy
39A.	Equal justice and free legal aid
40.	Organisation of village pachayats
41.	Right to work
42.	Provision for just and humane condition of work
43.	Living wage, etc
43A.	Participation of work
43B.	Promotion of co-operative societies
44.	Uniform civil code for the citizen
45.	Provision early childhood
46.	Promotion of education
47.	Duty of the state to raise the level
48.	Organisation of agriculture
48A.	Protection of improvement of environment
49.	Protection of monuments
50.	Separation of judiciary from executive
51.	Promotion of international peace and security



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

FUNDAMENTAL DUTIES

In 1976, the fundamental duties of citizens were added in the constitution. In 2002, one more fundamental Duty was added.

The fundamental duties in the Indian constitution are inspired by the constitution of erstwhile USSR.

SWARAN SINGH COMMITTEE RECOMMENDATIONS

- In 1976, the congress party set up the Sardar Swaran Singh committee to make recommendations about fundamental duties
- The committee recommended the inclusion of a separate chapter on fundamental duties in the constitution.
- Centre accepted these recommendations and enacted the 42nd constitutional amendment act in 1976 this amendment added a new part, namely part IVA to the constitution. This new part consists of only one article, that is, article 51A

LIST OF FUNDAMENTAL DUTIES

According to article 51 A, it shall be the duty of every citizen of India;

1. to abide by the constitution and respect its ideals and institutions, the national flag and the national anthem;
2. to cherish and follow the noble ideals that inspired the national struggle for freedom;
3. To uphold and protect the sovereignty, unity and integrity of India;
4. To defend the country and render national service when called upon to do so;



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

5. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
6. To value and preserve the rich heritage of the country's composite culture;
7. To protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures;
8. To develop scientific temper, humanism and the spirit of inquiry and reform;
9. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher level of endeavour and achievement; and
10. To safeguard public property and to abjure violence;
11. To provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th constitutional amendment act 2002.

FEATURES OF THE FUNDAMENTAL DUTIES

- Some of them are moral duties while others are civic duties.
- The fundamental duties are confined to citizen only and do not extend to foreigners.
- Like the directive principles, the fundamental duties are also non-justiciable.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

AMENDMENT OF THE CONSTITUTION

Indian constitution is neither flexible nor rigid but a synthesis of both. Article 368 in part xx of the constitution deals with the power of parliament to amend the constitution and its procedure. However, the parliament cannot amend those provision which from the basic structure of the constitution. This was ruled by the supreme court in the Kesavananda bharati case (1973)

PROCEDURE FOR AMENDMENT

The procedure for the amendment of the constitution as laid down in Article 368 is as follows;

1. An amendment of the constitution can be initiated only by the introduction of a bill for the purpose in either house of parliament and not in the state legislatures.
2. The bill can be introduced either by a minister or by a private member and does not require prior 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-third of the members of the house present and voting
4. Each house must pass the bill separately. In case of a disagreement between the two house there is no provision for holding a joint sitting of the two house for the purpose of deliberation and passage of the bill.
5. If the bill seek to amend the federal provisions of the constitution, it must also be ratified by the legislature of half of the state by a

simple majority, that is a, majority of the members of the house present and voting.

6. After duly passed by both the houses of parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
7. The president must give his assent to the bill. He can neither without 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 and the constitution stands amended in accordance with the terms of the Act.

TYPES OF AMENDMENTS

The constitution can be amended in three ways:

1. Amendment by simple majority of the parliament,
2. Amendment by special majority of the parliament, and
3. Amendment by special majority of the parliament and the ratification of half of the state legislatures.

BY SIMPLE MAJORITY OF PARLIMENT

A member of provision in the constitution can be amended by a simple majority of the two house of parliament outside the scope of article 368. These provisions include:

1. Admission or establishment of new states.
2. Formation of new states and alteration of areas, boundaries or names of existing states.
3. Abolition or creation of legislative councils in states.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

4. Second schedule – emoluments, allowances, privileges and so on of the president, the governors, the speakers, judges, etc.
5. Quorum in parliament.
6. Salaries and allowance of the members of parliament.
7. Rules of procedure in parliament.
8. Privileges of the parliament, its member and its committees.
9. Use of English language in parliament .
10. Number of puisne judges in the supreme court.
11. Conferment of more jurisdiction on the supreme court.
12. Use of official language.
13. Citizenship – acquisition and termination.
14. Elections to parliament and state legislatures.
15. Delimitation of constituencies.
16. Union territories.
17. Fifth schedule- administration of scheduled areas and scheduled tribes.
18. Sixth schedule- administration of tribal areas.

By special Majority of parliament

The majority of the provisions in the constitution need to be amended by a special majority of the parliament, that is, a majority of the total membership of each house and majority of two- third of the members of each house [resent and voting.]

The provisions which can be amended by this way includes:

- Fundamental rights
- Directive principles of state policy



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- All other provisions which are not covered by the first and third categories.

By Special majority of parliament and consent of states

Those provisions of the constitution which are related to the federal structure of the polity can be amended by a special majority of the parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed.

The following provisions can be amended in this way:

1. Election of the president and its manner.
2. Extent of the executive power of the union and the states.
3. Supreme court and high court.
4. Distribution of legislative powers between the union and the states.
5. Any of the lists in the seventh schedule.
6. Representation of states in parliament.
7. Power of parliament to amend the constitution and its procedure (Article 368 itself)



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

BASIC STRUCTURE OF THE CONSTITUTION

- In the Shankari Prasad case1 (1951), the constitution validity of the first amendment act (1951), which curtailed the right property, was challenged. The supreme court ruled that the power of the parliament to amend fundamental right.
- But in the golak nath case2 (1967), the supreme court ruled that the fundamentals rights are given a transcendental and immutable position and hence, the parliament cannot abridge or take away any of these rights
- In the kesavananda bharati case3 (1973), the supreme court overruled its judgement in the golak nath case (1967). It upheld the validity of the 24th amendment act (1971) and stated that parliament is empowered to abridge or take away any of the fundamental rights. At the same time, it laid down a new doctrine of the basic structure of the constitution. It ruled that the constituent power of parliament under article 368 does not enable it to alter the basic structure of the constitution.
- Again, the parliament reacted to this judicially innovated doctrine of basic structure by enacting the 42nd amendment act (1976). This act amended article 368 and declared that there is no limitation on the constituent power of parliament and no amendment can be questioned in any court on any ground including that of the contravention of any of the fundamental right.
- However, the supreme court in the Minerva mills case4 (1980)
- Invalidated this provision as it excluded judicial review which is a basic feature of the constitution



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- Parliament cannot, under article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the constitution or to destroy its basic features.

ELEMENTS OF THE BASIC STRUCTURE

The present position is that the parliament under article 368 can amend any part of the constitution including the fundamental right but without affecting the basic structure of the constitution.

From the various judgement, the following have emerged as` basic features` of the constitution

1. Supremacy of the constitution
2. Sovereign, democratic and republican nature of the Indian polity
3. Secular character of the constitution
4. Separation of power between the legislature, the executive and the judiciary
5. Federal character of the constitution
6. Unity and integrity of the nation
7. Welfare state(socio- economic justice)
8. Judicial review
9. Freedom and dignity of the individual
10. Parliamentary system
11. Rule of law
12. Harmony and balance between fundamental right and directive principles
13. Principle of equality
14. Free and fair elections



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

15. Independence of elections

16. Limited power of parliament to amend the constitution

17. Effective access to justice

18. Principle of reasonableness

Power of the supreme court under article 32, 136, 141 and 142

PARLIMENTARY SYSTEM :-

- The constitution of India provides for a parliamentary form of government, both at the centre and in the states. Article 74 and 75 deal with the parliamentary system at the centre and article 163 and 164 in the states.
- The parliamentary system of government is the one in which the executive is responsible to the legislature for its policies and acts.
- The parliamentary government is also known as cabinet government or responsible government or Westminster model of government and is prevalent in Britain, Japan, Canada, India among others.
- Ivor Jennings called the parliamentary system as 'cabinet system' because the cabinet is the nucleus of power in a parliamentary system. The parliamentary government is also known as 'responsible government' as the cabinet is accountable to parliament and stays in office so long as it enjoys the latter's confidence, it is described as 'Westminster model of government' after the location of the British parliament, where the parliamentary system originated.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

FEATURES OF PARLIMENTARY GOVERNMENT :

1. Nominal and Real Executives :

The president is the nominal executive while the prime minister is the real executive thus, the president is head of the state, while the prime minister is head of the government. Article 74 provides for a council of ministers headed by the prime minister to aid and advise the president in the exercise of his functions.

2. Majority Party Rule:

The political party which secures majority seats in the lok sabha forms the government. The leader of the party is appointed as the prime minister by the president; other ministers are appointed by the president on the advice of the prime minister

3. Collective Responsibility:

The ministers are collective responsible to the parliament in general and to the lok sabha in particular (Article 75).

4. Political Homogeneity :

Usually members of the council of minister belong to the same political party, and hence they share the same political ideology.

5. Double Membership:

The ministers are members of both the legislature and the executive. This means that a person cannot be a minister without being a member of the parliament.

6. Leadership of the prime minister:

He is the leader of council of ministers, leader of the parliament and leader of the party in power. In these capacities, he plays a significant and highly crucial role in the functioning of the government.

7. Dissolution of the lower house :

The lower house of the parliament can be dissolved by the president on recommendation of the prime minister.

8. Secrecy:

The ministers operate on the principle of secrecy of procedure and cannot divulge information about their proceedings, policies and decisions.

MERITS OF THE PARLIAMENTARY SYSTEM :

1. Harmony between legislature and executive :

The greatest advantage of the parliamentary system is that it ensures harmonious relationship and cooperation between the legislative and executive organs of the government. The executive is a part of the legislature and both are inter dependent at work.

2. Responsible Government:

The ministers are responsible to the parliament for all their acts of omission and commission. The parliament exercises control over the ministers through various devices like question hour, discussions, adjournment motion .no confidence motion etc



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. Prevents Depotism :

Under this system the executive authority is vested in a group of individuals and not in a single person.

4. Ready alternative government:

In case the ruling party loses its majority the head of the state can invite the opposition party to form the government. This means an alternative government can be formed without fresh elections

5. Wide representation :

In a parliamentary system, the executive consists of a group of individuals hence it is possible to provide representation to all sections and regions in the government

DEMERITS OF THE PARLIMENTARY SYSTEM :

1. Unstable government:

The parliamentary system does not provide a stable government. There is no guarantee that a government can survive its tenure.

2. No continuity of policies :

A change in the ruling party is usually followed by change in the policies of the government.

3. Dictatorship of the cabinet:

When the ruling party enjoys absolute majority in the parliament, the cabinet becomes autocratic and exercises nearly unlimited power.

4. Against separation of power :

In the parliamentary system, the legislature and the executive are together and inseparable.

5. Government by Amateurs :

The parliamentary system is not conducive to administrative efficiency as the ministers are not experts in their fields.

<u>Parliamentary system</u>	<u>Presidential system</u>
<u>Features:</u> <ol style="list-style-type: none"> 1. Dual executive 2. Majority party rule 3. Collective responsibility. 4. Political homogeneity 5. Double membership 6. Leadership of prime minister. 7. Dissolution of lower house. 8. Fusion of powers. 	<u>Features</u> <ol style="list-style-type: none"> 1. Single executive 2. President and legislators elected separately for a fixed term. 3. Non-responsibility 4. Political homogeneity may not exist 5. Single membership 6. Domination of president 7. No dissolution of lower house 8. Separation of powers.
<u>Merits:</u> <ol style="list-style-type: none"> 1. Harmony between legislature and executive. 2. Responsible government 3. Prevent despotism 4. Wide representation 	<u>Demerits</u> <ol style="list-style-type: none"> 1. Conflict between legislature and executive 2. Non responsible government 3. May lead to autocracy 4. Narrow representation

<p><u>Demerits</u></p> <ol style="list-style-type: none"> 1. Unstable government 2. No continuity of policies 3. Against separation of power 4. Government by amateurs. 	<p><u>Merits:</u></p> <ol style="list-style-type: none"> 1. Stable government 2. Definiteness in policies 3. Based on separation of power 4. Government by experts
--	---

13 FEDERAL SYSTEM :

A federal government, on is one in which powers are divided between the national government and the regional governments by the constitution itself and both operate in respective jurisdictions independently

The specific feature of the federal and unitary governments are mentioned below in a comparative manner

Comparing features of federal and unitary governments

<u>Federal government</u>	<u>Unitary government</u>
1. Dual government (that is, national government and regional government)	1. Single government, that is, the national government which may create regional government
2. Written constitution	2. constitution may be written or unwritten
3. Division of power between the national and regional government	3. no division of power. All power are vested in the national government
4. Supremacy of the constitution	4. constitution may be supreme or may not be supreme



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

5. Rigid constitution	5. constitution may be rigid or flexible
6. Independent judiciary	6. judiciary may be independent or may not be independent
7. Bicameral legislature	7. legislature may be bicameral or unicameral

FEDERAL FEATURES OF THE CONSTITUTION

1. Dual polity:

The constitution establishes a dual polity consisting the union at the centre and the states at the periphery.

2. Written constitution:

The constitution is not only a written document but also the lengthiest constitution of the world. Originally, it contained a preamble, 395 article and 8 schedules 2 .

3. Division of powers:

The constitution divided the power between the centre and the states in terms of the union list, state list and concurrent list in the seventh schedule. the union list consists of 100 subjects the state list 61 subjects and the concurrent list 52 subjects

4. Supremacy of the constitution :

The constitution is the supreme law of the land. The laws enacted by the centre and the states must confirm to its provisions.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

5. Rigid constitution:

The division of power established by the constitution as well as the supremacy of the constitution can be maintained only if the method of its amendment is rigid. Hence, the constitution is rigid to the extent that those provisions which are concerned with the federal structure

6. Independent Judiciary:

The constitution establishes an independent judiciary headed by the supreme court for two purpose :one, the protect the supremacy of the constitution by exercising the power of judicial review; and two, to settle the disputes between the centre and the states or between the states.

7. Bicameralism:

The constitution provides for a bicameral legislature consisting of an upper house and a lower house

UNITARY FEATURES OF THE CONSTITUTION

1. Strong centre :

The division of power is in favour of the centre and highly inequitable from the federal angel. Firstly, the union list contains more subjects than the state list secondly, the more important subjects have been included in the union list

2. States Not Indestructible:

Unlike in other federations, the states in India have no right to territorial integrity.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. Single constitution:

Usually, in a federations, the states have the right to frame their own constitution separate from that of the centre. In India, on the contrary, no such power is given to the states the constitution of India embodies not only

4. Flexibility of the constitution :

The process of constitutional amendment is less rigid than what is found in other federation. The bulk of the constitution can be amended by the unilateral action of the parliament, either by simple majority or by special majority.

5. No equation of state representation:

The states are given representation in the rajya sabha on the basis of population. Hence, the membership varies from 1 to 31 . in US, on the other hand, the principle of equality

6. Emergency provisions:

The constitution stipulates three types of emergencies-national, state and financial, during an emergency, the central government becomes all powerful and the states go into the total control of the centre.

7. Single citizenship :

In spite of a polity, the constitution of India, like that of Canada, adopted the system of single citizenship. There is only Indian citizenship and no separate state citizenship. All citizens irrespective of the state in which they are born or reside enjoy the same rights all over the country



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

8. Integrated judiciary:

The Indian constitution has established an integrated judicial system with the supreme court at the top and the state high courts below it. This single system of courts enforces both the central law as well as the state laws. In US, on the other hand, there is a double system of courts whereby the federal laws are enforced by the federal judiciary and the state laws by the state judiciary.

9. All- India Services:

In US, the federal government and the state governments have their separate public services. In India also, the central and state have their separate public service. But in addition, there are common to both the centre and the states.

10. Integrated audit machinery:

The controller and auditor-general of India audits the accounts of not only the central government but also those of the states.

11. Parliament's authority over state list:

Even in the limited sphere of authority allotted to them, the states do not have exclusive control. The parliament is empowered to legislate. This means that the legislative competence of the parliament can be extended without amending the constitution. Notably, this can be done when there is no emergency of any kind.

12. Appointment of governor:

The governor, who is the head of the state, is appointed by the president. He holds office during the pleasure of the president. He also



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

acts as an agent of the centre. Through him, the centre exercises control over the states. The American constitution, on the contrary, provided for an elected head in the states. In this respect, Indian adopted the Canadian system.

13. Integrated election machinery:

The election commission conducts elections not only to the central legislature but also to the state legislatures. But, this body is constituted by the president and the states have no say in this matter. The position is same with regard to the removal of its members as well. On the other hand, US has separate machineries for the conduct of elections at the federal and state levels.

14. Veto over state bills:

The governor is empowered to reserve certain types of bills passed by the state legislature for the consideration of the president. The president can withhold his assent to such bills not only in the first instance but also in the second instance. Thus, the president enjoys absolute veto over state bills. But in US and Australia, the states are autonomous within their fields and there is no provision for any such reservation.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Centre- state Relations

The centre-state relations can be studied under three heads;

- Legislative relations.
- Administrative relations.
- Financial relations.

LEGISLATIVE RELATIONS

Article 245 to 255 in part XI of the constitution deal with the legislative relations between the centre and the states.

Thus, there are four aspects in the centre- state legislative relations,

- Territorial extent of central and state legislation;
- Distribution of legislative subject;
- Parliamentary legislation in the state field; and
- Centre`s control over state legislation.

1. Territorial extent of central and state legislation:

The constitution defined the territorial limits of the legislative power vested in the centre and the states in the following way:

- ✓ The parliament can make laws for the whole or any part of the territory of India the territory of India includes the states. The union territories, and any other area for the time being included in the territory of India
- ✓ A state legislature can make laws for the whole or any part of the state.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- ✓ The parliament alone can make `extra- territorial legislation`. Thus the laws of the parliament are also applicable to the Indian citizen and their property in any part of the world.

2. Distribution of legislative subjects:

The constitution provides for a three-fold distribution of legislative subjects between the centre and the states, viz., list-I(THE UNION LIST), list-II(the state list),and list-III(The concurrent list)in the seventh schedule;

- ✓ The parliament has exclusive power to make laws with respect to any of the matter enumerated in the union list. This list has at present 100 subject like defence, banking, foreign affairs, currency, atomic energy, insurance, communication, inter- state trade and commerce, census, audit and so on.
- ✓ The state legislature has in normal circumstances exclusive power to make laws with respect to any of the matter enumerated in the state list. This has at present 61 subjects like public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, theatres, gambling and so on.
- ✓ Both the parliament and state legislature can make laws with respect to any of the matters enumerated in the concurrent list this list has at present 52 subjects like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning drugs, newspapers, books and printing press, and other.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. Parliamentary legislation in the state field:

when rajya sabha passes a resolution if the rajya sabha declares that it is necessary in the national interest that parliament should make laws on a matter in the state list, then the parliament becomes competent to make laws on that matter such a resolution must be supported by two-thirds of the members present and voting.

- ✓ During a national emergency : the parliament acquires the power to legislate with respect to matters in the state list, while a proclamation of national emergency is in operation. The laws become inoperative on the expiration of six months after the emergency has ceased to operate.
- ✓ When state make a request: when the legislatures of two or more states pass resolutions requesting the parliament to enact laws on a matter in the state list then the parliament can make laws for regulating the matter.
- ✓ To Implement International Agreements: the parliament can make laws on any matter in the state list for implementing the international treaties, agreements or conventions.
- ✓ During president`s Rule: when the president`s rule is imposed in a state, the parliament becomes empowered to make laws with respect to any matter in the state list in relation to the state.

4. Centre`s control over state legislation :

- ✓ The governor can reserve legislature for the consideration of the president. The president enjoys absolute veto over them



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- ✓ Bills on certain matters enumerated in the state list can be introduced in the state legislature only with the previous sanction of the president.
- ✓ The president can direct the states to reserve money bills and other financial bills passed by the state legislature for his consideration during a financial emergency.

ADMINISTRATIVE RELATION

Article 256 to 263 XI of the constitution deal with the administrative relation between the centre and the states.

DISTRABUTION OF EXECUTIVE POWER

The executive power has been divided between the centre and the states on the lines of the distribution of legislative power of the centre extend to the whole of India:

Obligation of states and the centre

The constitution has placed two restriction on the executive power of the states in order to give ample scope to the centre for exercising its executive power of every state is to be exercised in such a way (a)as to ensure compliance with the laws made by the parliament and any existing law which apply in the state; and (b)as not to impede or prejudice the exercise of executive power of the centre in the state. While the former lays down a general obligation upon the state the latter imposes a specific obligation on the state not to hamper the executive power of the centre.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Centre's Directions to the States: in addition to the above two cases, the centre is empowered to give direction to the states with regard to the exercise of their executive power in the following matters:

- ✓ The construction and maintenance of means of communication
- ✓ The measures to be taken for the protection of the railway within the state;
- ✓ The provision of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups in the state; and
- ✓ The drawing up and execution of the specified schemes for the welfare of the scheduled tribes in the state.

ALL-India Services

- Like in any other federation, the centre and the states also have their separate public services called as the central services and the state services respectively. In addition, there are all- India services- IAS, IPS and IFS. The members of these services occupy top positions under both the centre and state and serve them by turns. But, they are recruited and trained by the centre.
- These services are controlled jointly by the centre and the states. The ultimate control lies with the central government while the immediate control vests with the state governments.
- Through the all- India services violate the principle of federalism under the constitution by restricting the autonomy and patronage of the states, they are supported on the ground that
 - They help in maintaining high standard of administration in the central well as in the states



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- They help to ensure uniformity of the administrative system throughout the country; and
- They facilitate liaison, cooperation, coordination and joint action on the issues of common interest between the centre and states.

Public Service commissions

- The chairman and members of a state public service commission, though appointed by the governor of the state, can be removed only by the president.
- The parliament can establish a joint state public service commission for two or more states on the request of the state legislatures concerned. The chairman and members of the JSPSC are appointed by the president
- The union public service commission can serve the needs of a state on the request of the state governor and with the approval of the president
- The UPSC assists the states in framing and operating schemes of joint recruitment for any service for which candidates possessing special qualifications are required.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

INTEGRATED JUDICIAL SYSTEM

Though India has a dual polity, there is no dual system of administration of justice. The constitution, on the other hand, established an integrated judicial system with the supreme court at the top and the state high court below it, this single system of courts enforces both the central law as well as the state laws. This is done to eliminate diversities in the remedial procedure.

RELATIONS DURING EMERGENCIES

- During the operation of a national emergency the centre becomes entitled to give executive directions to a state on any matter.
- When the president's rule is imposed in a state the president can assume to himself the functions of the state government and power vested in the governor or any other executive authority in the state
- during the operation of a financial emergency the centre can direct the states to observe canons of financial propriety and the president

OTHER PROVISIONS

- Article 355 imposes two duties on the centre:
 - To protect every state against external aggression and internal disturbance
 - To ensure that the government of every state is carried on in accordance with the provisions of the constitution.
- The governor of a state is appointed by the president. He holds office during the pleasure of the president. In addition to the constitutional



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- The state election commissioner, though appointed by the governor of the state, can be removed only by the president.

FINANCIAL RELATIONS

Article 268 to 293 in XII of the constitution deal with centre –state financial relations.

ALLOCATION OF TAXING POWER

1. A state legislature can impose taxes on professions, trades, callings and employments.
2. A state legislature can impose taxes on the sale or purchase of goods
3. A state legislature can impose tax on the consumption or sale of electricity.
4. A state legislature can impose a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by parliament
 - TAXES LEVIED BY THE CENTRE BUT COLLECTED AND APPROPRIATED BY THE STATES(Article 268):
 - SERVICE TAX LEVIED BY THE CENTRE BUT COLLECTED AND APPROPRIATED BY THE CENTRE AND THE STATES (Article 268-A):
 - TAXES LEVIED AND COLLECTED BY THE CENTRE BUT ASSIGNED TO THE STATES (Article 269):
 - Taxes levied and collected by the centre but distributed between the centre and the states (Article 270):



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- Surcharge on certain taxes and duties for purpose of the centre(Article 271):
- Taxes levied and collected and retained by the states

GRANTS-IN-AID TO THE STATES

Besides sharing of taxes between the centre and the states, the constitution provides for grants-in-aid to the states from the central resources. There are two types of grants-in-aid, viz, statutory grants and discretionary grants:

STATUTORY GRANTS

Article 275 empowers the parliament to make grants to the states which are in need of financial assistance and not to every state. Also different sums may be fixed for different states these sum are charged on the consolidated fund of India every year.

DISCRETIONARY GRANTS

Article 282 empowers both the centre and the states to make any grants for any public purpose, even if it is not within their respective legislative competence.

OTHER GRANTS

The constitution also provided for a third type of grants-in-aid , but for a temporary period.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

FINANCE COMMOSSION

Article 280 provides for a finance commission as a quasi-judicial body. It is constituted by the president every fifth year or even earlier. It is required to make recommendations to the president on the following matters:

1. The principles which should govern the grants-in-aid to the states by the centre (i.e., out of the consolidated fund of India).
2. The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the state finance commission²
3. Any other matter referred to it by the president in the interest of sound finance.

SARKARIA COMMISSION

- In 1983, the central government appointed a three member commission on centre-state relations under the chairmanship of R S sarakaria, a retired judge of the supreme court the commission was asked to examine and review the working of existing arrangemanta between the centre and states in all spheres and recommend appropriate changes and measures. It was initially given one year to complete its work but it term was extended four times the final report was submitted on October 1987 and the summary was later officially released in January 1988
- The commission did not favour structural changes and regard the existing constitutional arrangements and principles relating to the institutions basically sound but it emphasised on the need for changes in the functional pr operational aspects. It observed that

federalism is more a functional arrangement for co-operative action than a static institutional concept it out rightly rejected the demand for curtailing the power of the centre and stated that a strong centre is essential to safeguard the national unity and integrity which is being threatened by the fissiparous tendencies in the boy politic. However, it did not equate strong centre with centralisation of power. It observed that over-centralisation leads to blood pressure at the centre and anaemia at the periphery.

- The commission made 247 recommendations to improve centre-state relations. The important recommendation are mentioned below
- The second commission on centre-state relations was set-up by the government of India in April 2007 under the chairmanship of madan mohan punchhi, former chief justice of India it was required to look into the issue of centre-state relations keeping in view the sea-changes that have taken place in the polity and economy of India since the sarakaria commission had last looked at the issue of centre-state relations over two decades ago

Article related to centre- state legislative relation at a glance

Article no	Subject-matter
245.	Extent of laws made by parliament and by the legislatures of stares
246	Subject-matter of laws made by parliament and by the legislature of states
247	Power of parliament of provide for the establishment of certain additional court
248	Residuary power of legislation

249	Power of parliament to legislate with respect to a matter in the state list in the national interest
250	Power of parliament to legislate with respect to any matter in the state
251	Inconsistency between laws made by parliament
252	Power of parliament to legislate for two or more states
253	Legislation for giving effect to international agreements
254	Inconsistency between laws made by parliament and laws
255	Requirement as to recommendations and previous sanctions to be regard as matter of procedure only

Article related centre – state administrative at a glance

Article no	Subject - matter
256	Obligation of state and the union
257	Control of the union over states in certain case
257A	Assistance to states by deployment of armed
258	Power of the union to confer powers,
258A	Power of the states of entrust function
259	Armed forces in states in part B of the first schedule
260	Jurisdiction of the union in relation
261	Public acts, records
262	Adjudication of disputes relating to waters
263	Provision with respect to an inter-state council

Article related to centre-state financial relations at a glance

Distribution of revenues between the union and the states

Article no	Subject-matter
268	Duties levied by the union but collected and appropriated by the states
268A	Service tax levied by union and collected
269	Taxes levied and collected by the union
270	Taxes levied and distributed between the union and states
271	Surcharge on certain duties and taxes for purpose of the union
272	Taxes which are levied and collected by the union
273	Grants in lieu of export duty on jute and jute products
274	Prior recommendation of president reduried to bill affecting taxation
275	Grants from the union to certain states
276	Taxes on profession, trade, callings and employment
277	Savings
278	Agreement with states in part B of the first schedule with regard
279	Calculation of `net proceeds` etc
280	Finance commission
281	Recommendation of the financial commission

Miscellaneous Financial provisions

Article no	Subject-matter
282	Expenditure defrayable by the union or a state out of its revenues
283	Custody, etc., of consolidated funds, contingency funds and moneys credited to the public
284	Custody of suitors deposits and other money received by public
285	Exemption of property of the union from state taxation
286	Restriction as to imposition of tax on the sale or purchase of goods
287	Exemption from taxes on electricity
288	Exemption from taxation by states in respect of water
289	Exemption of property and income of a state from union taxation
290	Adjustment in respect of certain expenses and pensions
290A	Annual payment to certain devaswom funds
291	Privy purse sums of rulers
292	Borrowing by the government of India
293	Borrowing by states

INTER STATE RELATION

The successful functioning of the Indian federal system depends not only on the harmonious relations and close cooperation between the centre and the states but also between the states inter se hence, the constitution makes the following provisions with regard to inter-state comity

1. Adjudication of inter-state water disputes.
2. Coordination through inter-state councils.
3. Mutual recognition of public acts, records and judicial proceedings.
4. Freedom of inter-state trade, commerce and intercourse.

In addition, the zonal councils have been established by the parliament to promote inter-state cooperation and coordination.

INTER-STATE WATER DISPUTES

Article 262 of the constitution provides for the adjudication of inter-state water disputes. It makes two provisions:

- parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and valley.
- Parliament may also provide that neither the supreme court nor any other court is to exercise jurisdiction in respect of any such dispute or complaint.
 - Under this provision, the parliament has enacted two laws [the river board act(1956)and the inter-state water disputes

acts (1956)].the river boards act provides for the establishment of river boards for the regulation and development of inter-state river and river valleys. A river board is established by the central government on the request of the state governments concerned to advise them.

- The inter-state water disputes act empowers the central government to set up an ad hoc tribunal for the adjudication of a dispute between two or more states in relation to the water of an inter-state river or river valley.
- So far (2013), the central government has set up eight inter-state water dispute tribunals.

INTER-STATE WATER DISPUTE TRIBUNALS SET-UP SO FAR

SL. NO	NAME	STE-UP IN	STATE INVOLVED
1	Krishna water disputes tribunal	1969	Maharashtra, Karnataka and Andhra pradesh
2	Godavari water disputes tribunal	1969	Maharashtra, Karnataka Andhra Pradesh
3	Narmada water disputes tribunal	1969	Rajasthan, Gujarat, Madhya Pradesh
4	Ravi and beas water disputes tribunal	1986	Punjab and Haryana
5	Cauvery water disputes tribunal	1990	Karnataka, kerala, tamil nadu and puducherry
6	Second Krishna water disputes tribunal	2004	Maharashtra, Karnataka and Andhra Pradesh

7	Vansadhara water disputes tribunal	2010	Odisha and Andhra Pradesh
8	Mahadayi water disputes tribunal	2010	Goa, Karnataka and maharashtra

INTER-STATE COUNCILS

Article 263 contemplates the establishment of an inter-state council to effect coordination between the states and between centre and states.

Even though the president is empowered to define the duties of an inter-state council, article 263 specifies the duties that can be assigned to it on the following manner:

- Enquiring into and advising upon disputes which may arise between states;
- Investigating and discussing subjects in which the states or the centre and the states have a common interest; and
- Making recommendations upon any subject, and particularly for the better co-ordination of policy action on it.

Under the above provisions of article 263, the president has established the following councils to make recommendations for the better coordination of policy and action in the related subjects:

1. Central council of health.
2. Central council of local government and urban development.
3. Four regional councils for sales tax for the northern, eastern, western and southern zones.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

ESTABLISHMENT OF INTER-STATE COUNCIL

The Sarkaria commission on centre –state relations (1983-87) made a strong case for the establishment of a permanent inter-state council under article 263 of the constitution. It recommended that in order bodies established under the same article 263, it must be called as the inter-government council

In pursuance of the above recommendations of the Sarkaria commission, the Janata Dal government headed by V P Singh established the inter state council in 1990. It consists of the following members:

1. Prime minister as the chairman
2. Chief ministers of all the states
3. Chief ministers of union territories having legislative assemblies
4. Administrators of union territories not having legislative assemblies
5. Governors of states under president's rule
6. Six central cabinet ministers, including the home minister, to be nominated by the prime minister.

INTER-STATE TRADE AND COMMERCE

Article 301 to 307 in part XIII of the constitution deal with the trade, commerce and intercourse within the territory of India.

ZONAL COUNCILS

The zonal councils are the statutory bodies. They are established by an act of the parliament, that is states reorganisation act of 1956. The



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

act divided the country into five zones and provided a zonal council for each zone.

Each zonal council consists of the following members

- Home minister of central government.
- Chief ministers of all the states in the zone.
- Two other ministers from each states in the zone.
- Administrator of each union territory in the zone

The objectives of the zonal council in detail, are as follows:

1. To achieve an emotional integration of the country
2. To help in arresting the growth of acute state consciousness, regionalism, linguism and particularistic trends.
3. To help in removing the after-effects of separation in some cases so that the process of reorganisation, integration and economic advancement may synchronise.
4. To enable the centre and states to cooperate with each other in social and economic matters and exchange ideas and experience in order to evolve uniform policies.
5. To cooperate with each other in the successful and speedy execution of major development projects.
6. To secure some kind of political equilibrium between different regions of the country.

NORTH-EASTERN COUNCIL

In addition to the above zonal councils, a north-eastern council was created by a separate act of parliament-the north-eastern council act



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

1971. Its members include assam, Manipur, Mizoram, arunchal Pradesh, Nagaland, Meghalaya, Tripura and Sikkim.

ZONAL COUNCILS AT A GLANCE

NAME	MEMBERS	HEADQUARTERS
northern zonal council	Jammu and Kashmir, himachal Pradesh, Haryana, Punjab, rajasthan, dehli, and chandigarh	New dehli
central zonal council	Uttar Pradesh, uttarakhand, Chhattisgarh, and Madhya pradesh	Allahabad
eastern zonal council	Bihar, Jharkhand	Kolkata
4 western zonal council	Gujarat, maharastra, goa, dadra and nagar haveli	Mumbai
5 southern zonal council	Andhra Pradesh, Karnataka, tamil nadu	Chennai

Mutual recognition of public acts, etc

261	Public acts, records and judicial proceedings
-----	---

Disputes relating to waters

262	Adjudication of disputes relating to water of inter-state rivers or river valleys
-----	---

Co- ordination between states

263	Provisions with respect to an inter-state council
-----	---

Inter-state trade and commerce

301	Freedom of trade, commerce and intercourse
302	Power of parliament to impose restriction on trade
303	Restrictions on the legislative power of the union
304	Restriction on trade, commerce and inter course among states
305	Saving of existing laws and laws of providing for state monopolies
306	Power of certain states in part B of the first schedule to impose
307	Appointment of authority for carrying out the purpose of articles 301 to 304

Emergency Provision

The emergency provisions are contained in part XVIII of the constitution, from article 352 to 360. These provisions enable the central government to meet any abnormal situation affectively. The rationality behind the incorporation of these provisions in the constitution 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 the total control of the centre. It converts the federal structure into a unitary one without a formal amendment of the constitution.

The constitution stipulates three types of emergencies:



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

1. An emergency due to war, external aggression or armed rebellion (article 352). This is popularly known as 'national emergency'
2. An emergency due to the failure of the constitutional machinery in the states (article 356). This is popularly known as 'president's rule'. It is also known by two other names-state emergency or constitutional emergency however, the constitution does not use the word emergency for this situation.
3. Financial emergency due to a threat to the financial stability or credit of India (article 360).

NATIONAL EMERGENCY

- Grounds of declaration: under article 352, the president can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion. It may be noted that the president can declare a national emergency even before the actual occurrence of war or external aggression or armed rebellion, if he is satisfied that there is an imminent danger.
- When a national emergency is declared on the ground of war or external aggression it is known as external emergency on the hand when it is declared on the ground of armed rebellion it is known as internal emergency
- A proclamation of national emergency may be applicable to the entire country or only a part of it. The 42nd amendment act of 1976 enable the president to limit the operation of a national emergency to a specified part of India.
- The 44th amendment act of 1978 substituted the words armed rebellion for internal disturbance thus it is no longer possible to



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

declare a national emergency on the ground of internal disturbance as was done in 1975 by the congress government headed by Indira Gandhi.

- The president, however, can proclaim a national emergency only after receiving a written recommendation from the cabinet³. This means that the emergency can be declared only on the concurrence of the cabinet and not merely on the advice of the prime minister. In 1975, the then prime minister, Indira Gandhi advised the president to proclamation after it was made as a fait accompli. The 44th amendment act of 1978 introduced this safeguard to eliminate any possibility of the prime minister alone taking a decision in this regard.
- The 38th amendment act of 1975 made the declaration of a national emergency immune from the judicial review. But this provision was subsequently deleted by the 44th amendment act of 1978. Further, in the Minerva Mills case⁴, (1980), the supreme court held that the proclamation of a national emergency can be challenged in a court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts or is absurd or perverse.

Parliamentary Approval and duration

the proclamation of emergency must be approved by both the house of parliament within one month from the date of its issue. Originally, the period allowed for approval by the parliament was two months but was reduced by the 44th amendment act of 1978.

If approved by both the houses of parliament, the emergency continues for six months, and can be extended to an indefinite period with an approval of the parliament for every six months. This provision for periodical parliamentary approval was also added by the 44th amendment act of 1978, before that, the emergency, once approved by the parliament could remain in operation as long as the executive desired. However, if the dissolution of the lok sabha takes place during the period of six months without approving the further continuance of emergency, then the proclamation survives until 30 days from the first sitting of the lok sabha after its reconstitution

Every resolution approving the proclamation of emergency or its continuance must be passed by either house of parliament by a special majority,

The special majority provision was introduced by the 44th amendment act of 1978. Previously, such resolution could be passed by a simple majority of the parliament.

Revocation of proclamation

The president must revoke a proclamation if the lok sabha passes a resolution disapproving its continuation. Again, this safeguard was introduced by the 44th amendment act of 1978. Before the amendment, a proclamation could be revoked by the president on his own and the lok sabha had no control in this regard.

EFFECT OF NATIONAL EMERGENCY

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

1. Effect on the Centre-state relations,
2. Effect on the life of the Lok Sabha and State assembly, and
3. Effect on the Fundamental Rights

Effect on the Centre-state Relations:

- **Executive**

During a national emergency, the executive power of the centre extends to directing any state regarding the manner in which its executive power to be exercised. In normal times, the centre can give executive directions to a state only on certain specified matters. However, during a national emergency, the centre becomes entitled to give executive directions to a state on 'any' matter. Thus, the state government are brought under the complete control of the centre, though they are not suspended.

- **Legislative**

during a national emergency, the Parliament becomes empowered to make laws on any subject mentioned in the State list. Although the legislative power of a state legislature is not suspended, it becomes subject to the overriding power of the parliament.

- the laws made by parliament on the state subjects during a national emergency become inoperative six months after the emergency has ceased to operate.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- The 42nd amendment act of 1976 provides that the two consequences Mentioned above extended not only to a state where the emergency is in Operation but also to any other state.

- **Financial**

while a proclamation of national emergency is in operation, the president can modify the constitution distribution of revenues between the centre and the state. This means that the president can either reduce or cancel the transfer of finances from centre to the states. Such modification continues till the end of the financial year in which the emergency ceases to operate.

EFFECT ON THE LIFE OF THE LOK SABHA AND STATE ASSEMBLY :

while a proclamation of national emergency is in operation, the life of the lok sabha may be extended beyond its normal term by a law of parliament for one year at a time.

EFFECTS ON THE FUNDAMENTAL RIGHTS

Articles 358 and 359 describe the effects of a national emergency on the fundamental rights article 358 deals with the suspension of the fundamental right guaranteed by article 19, while article 359 deals with the suspension of other fundamental right (except those guaranteed by articles 20 and 21).



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Suspension of fundamental rights under article 19:

according to article 358, when a proclamation of national emergency is made, the six fundamental rights under article 19 for their suspension is required.

The 44th amendment act of 1978 restricted the scope of article 358 in two ways, firstly, the six fundamental rights under article 19 can be suspended only when the national emergency is declared on the ground of war or external aggression and not on the ground of armed rebellion. Secondly, only those laws which are related with the emergency are protected from being challenged and not other laws. Also the executive action taken only under such a law is protected.

DECLARATIONS MADE SO FAR

- This type of emergency has been proclaimed three times so far-in 1962, 1971 and 1975.
- The first proclamation of national emergency was issued in October 1962 on account of Chinese aggression in the NEFA (north-east frontier Agency-now Arunachal Pradesh), and was in force till January 1968.
- hence a fresh proclamation was not needed at the time of war against Pakistan in 1965.
- The second two proclamations of national emergency were made in December 1971 and March 1973.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

1971 in the wake of attack by Pakistan. Even when this emergency was in operation, a third proclamation of national emergency was made in June 1975. Both the second and third proclamations were revoked in march 1977.

The first two proclamations (1962 and 1971) were made on the ground external aggression, while the third proclamation (1975) was made on the ground of internal distribution that is certain persons have been inciting the police and the armed forces against the discharge of their duties and their normal functioning.

PRESIDENT`S RULE

Ground of imposition :article 355 imposes a duty on the centre to ensure that the government of every state is carried on in accordance with the provision of the constitution. It is this duty in the performance of which the centre takes over the government of a state under article 356 in case of failure of constitutional machinery in state. This popularly known as president`s rule it is also known as state emergency or constitutional emergency`.

under article The president`s rule can be proclaimed 356 on two grounds-one mentioned in article 356 itself and another in article 365:

1. Article 356 empower the president to issue a proclamation, if he is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provision of the constitution

2. Article 365 says that whenever a state fails to comply with or to give effect to any direction from the centre, it will be lawful for the president to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the constitution.

PARLIMENTARY APPROVAL AND DURATION

A proclamation imposing president's rule must be approved by both the houses of parliament within two months from the date of its issue however, if the proclamation of president's rule is issued at a time when the lok sabha has been dissolved or the dissolution of the lok sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the lok sabha after its reconstitution, provided the rajya sabha approves it in the mean time.

If approved by both the houses of parliament, the president's rule continues for six months it can be extended for a maximum period of three years with in approval of parliament, every six months.

The 44th amendment act of 1978 introduced a new provision to put restraint on the power of parliament to extend a proclamation of president's rule beyond one year. Thus it provided that, beyond one year, the president's rule can be extended by six months at a time only when the following two condition are fulfilled;

1. A proclamation of national emergency should be in operation in the whole of India or in the whole or any part of the state; and



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

2. The election commission must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.

A proclamation of president's rule may be revoked by the president at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

CONSEQUENCE OF PRESIDENT'S RULE

The president acquires the following extraordinary power when the president's rule is imposed in state:

1. He can take up the function of the state government and power vested in the governor or any other executive authority in the state
2. He can declare that the power of the state. Legislature are to be exercised by the parliament.
3. He can take all other necessary steps including the suspension of the constitutional provision relating to any body or authority in the state.

There fore, when the president's rule is imposed in a state, the president dismisses the state council of the ministers headed by the chief minister. The state governor, on behalf of the president, carries on the state administration with the help of the chief secretary of the state or the advisors appointed by the president.

COMPARING NATIONAL EMERGENCY AND PRESIDENT'S RULE

National emergency (article 352)	President's rule (article 356)
<ul style="list-style-type: none"> it can be proclaimed only when the security of India or a part of it is threatened by war, external aggression or armed rebellion 	<ul style="list-style-type: none"> it can be proclaimed when the government of a state cannot be carried on in accordance with the provision of the constitution due to reason which may not have connection with war, external aggression or armed rebellion.
<ul style="list-style-type: none"> during its operation, the state executive and legislature continue to function and exercise the power assigned to them under the constitution its effect is that the centre gets concurrent power of administration 	<ul style="list-style-type: none"> during its operation the state executive is dismissed and the state legislature is either suspended or dissolved the president administers the state through the governor and the parliament
<ul style="list-style-type: none"> under this the parliament can make laws on the subject enumerated in the state list only by itself, that is it cannot delegate the same to any other body or authority 	<ul style="list-style-type: none"> under this the parliament can delegate the power to make laws for the state to the president or to any other authority specified by him. So far the practice has been for the president make laws for the state in consultation with the members of parliament from that state.
<ul style="list-style-type: none"> there is no maximum period prescribed for its operation, it 	<ul style="list-style-type: none"> there is a maximum period prescribed for its operation



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

can be continued indefinitely with the approval of parliament for every six months.	that is three years thereafter, it must come to an end and the normal constitutional machinery must be restored in the state.
<ul style="list-style-type: none">• under this the relationship of the centre with all the states undergoes a modification,	<ul style="list-style-type: none">• under this the relationship of only the state under emergency with the centre undergoes a modification.
<ul style="list-style-type: none">• every resolution of parliament approving its proclamation or its continuance must be passed by a special majority.	<ul style="list-style-type: none">• every resolution of parliament approving its proclamation or its continuance can be passed only by a simple majority.
<ul style="list-style-type: none">• it affects fundamental rights of the citizens.	<ul style="list-style-type: none">• it has no effect on fundamental right of the citizens.
<ul style="list-style-type: none">• lok sabha can pass a resolution for its revocation.	<ul style="list-style-type: none">• there is no such provision it can be revoked by the president only on his own.

USE OF ARTICLE 356

- Since 1950, the president's rule has been imposed on more than 100 occasions,
- That is, on an average twice a year. Further, on a number of occasions,
- President's rule has been imposed in an arbitrary manner for political or
- Or personal reasons. Hence, article 356 has become one of the most

Controversial and most criticised provision of the constitution.

For the first time, the president's rule was imposed in Punjab in 1951. By now, all most all the states have been brought under the president's rule once or twice or more.

In a landmark judgement in Bommai case (1994), the supreme court upheld the validity of the proclamation on the ground that secularism is a basic feature of the constitution. But the court did not uphold the validity of the imposition of the president's rule in Nagaland in 1988, Karnataka in 1989 and Meghalaya in 1991.

Dr B R Ambedkar, while replying to the critics of this provision in the constituent assembly, hoped that the drastic power conferred by article 356 would remain a dead-letter and would be used only as a measure of last resort.

SCOPE OF JUDICIAL REVIEW

The 38th amendment act 1975 made the satisfaction of the president in invoking article 356 final and conclusive which could not be challenged in any court on any ground. But, this provision was subsequently deleted by the 44th amendment act of 1978 implying that the satisfaction of the president is not beyond judicial review.

In Bommai case (1994), the following propositions have been laid down by the supreme court on imposition of president's rule in a state under article 356:

1. The presidential proclamation imposing president's rule is subject to judicial review.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

2. The satisfaction of the president must be based on relevant material.
3. Burden lies on the centre to prove that relevant material exist to justify the imposition of the president's rule
4. If the court holds the presidential proclamation to be unconstitutional and invalid, it has power to restore the dismissed state government and revive the state legislative assembly if it was suspended or dissolved.
5. The state legislative assembly should be dissolved only after the parliament has approved the presidential proclamation.
6. Secularism is one of the basic features of the constitution. Hence, a state government pursuing anti-secular politics is liable to action under article 356.
7. The question of the state government losing the confidence of the legislative assembly should be decided on the floor of the house and until that is done the ministry should not be unseated.
8. Where a new political party assumes power at the centre, it will not have the authority to dismiss ministries formed by other parties in the states.
9. The power under article 356 is an exceptional power and should be used only occasionally to meet the requirements of special situations.

FINANCIAL EMERGENCY

GROUND OF DECLARATION

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

The 38th amendment act of 1975 made. The satisfaction of the president in declaring a financial emergency final and conclusive and not questionable in any court on any ground. But this provision was subsequently deleted by the 44th amendment act of 1978 implying that the satisfaction of the president is not beyond judicial review.

PARLIMENTARY APPROVAL AND DURATION

- A proclamation declaring financial emergency must be approved by both the houses of parliament within two months from the date of its issued
- Once approved by both the houses of parliament the financial emergency continues indefinitely till it is revoked. This implies two things:
- A proclamation of financial emergency may be revoked by the president at any time by a subsequent proclamation such a proclamation does not require the parliamentary approval

EFFECTS OF FINANCIAL EMERGENCY

The consequences of the proclamation of a financial emergency are as follows:

1. The executive authority of the centre extends (a) to directing any state to observe such canons of financial propriety as are specified by it; and (b) to directions as the president may deem necessary and adequate for the purpose.
2. Any such direction may include a provision requiring (a) the reduction of salaries and allowances of all or any class of persons serving in the state; and (b) the reservation of all money bills or other financial bills for the consideration of the president after they are passed by the legislature of the state.
3. The president may issue directions for the reduction of salaries and allowances of (a) all or any class of persons serving the union; and (b) the judges of the supreme court and the high court.

CRITICISM OF THE EMERGENCY PROVISIONS

1. The federal character of the constitution will be destroyed and the union will become all powerful
2. The power of the state-both the union and the units-will entirely be concentrated in the hands of the union executive.
3. The president will become a dictator.
4. The financial autonomy of the state will be nullified
5. Fundamental rights will become meaningless and as a result, the democratic foundations of the constitution will be destroyed.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

PRESIDENT

- Article 52 to 78 in part V of the constitution deal with the union executive
- The union executive consists of the president, the vice-president, the prime minister
- The council of ministers and the attorney general of India the president is the head of the Indian state he is the first citizen of India and act as the symbol of unity, integrity and solidarity of the nation.

ELECTION OF THE PRESIDENT

The president is elected not directly by the people but by member of electoral college consisting of :

1. The elected members of both the houses of parliament ;
2. The elected members of the legislative assemblies of the states;
3. The elected members of the legislative assemblies of the union territories of Delhi and puducherry.

Thus, the nominated members of both of houses of parliament, the nominated members of the state legislative assemblies, the members of the state legislative councils and the nominated members of the legislative assemblies of dehli and puducherry do not participate in the election of the president.

- The president`s election is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot.
- A candidate, must secure a fixed quota of votes



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- Each member of the electoral college is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1,2,3,4, etc. Against the names of candidates.
- In the first phase, the first preference votes are counted. In case a candidate secure the required quota in this phase, he is declared elected otherwise, the process of transfer of votes is set in motion. The ballots of the candidate securing the least number of first preference votes are cancelled and his second first preference votes are transferred to the first preference votes of other candidates. This process continues till a candidate secures the required quota.
- All doubts and disputes in connection with election of the president are inquired into and decided by the supreme court whose decision is final.

QUALIFICATIONS, OATH AND CONDITIONS

QUALIFICATIONS FOR ELECTION AS PRESIDENT

A person to be eligible for election as president should fulfil the following questions

1. He should be a citizen of India
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the lok sabha.
4. He should not hold any office of profit under the union government or any state government or any local authority or any other public authority



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Further, the nomination of a candidate for election to the office of president must be subscribed by at least 50 electors as proposers and 50 electors as seconders. every candidate has to make a security deposit of Rs 15000 in the reserve bank of India.

TERM, IMPEACHMENT AND VACANCY

TERM OF PRESIDENT'S OFFICE

The president holds office for a term of five years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the vice-president.

IMPEACHMENT OF PRESIDENT

The president can be removed from office by a process of impeachment for violation of the constitution however the constitution does not define the meaning of the phrase violation of the constitution the impeachment charges can be initiated by either house of parliament. these charges should be signed by one-fourth members of the house and a 14 days notice should be given to the president after the impeachment resolution is passed by a majority of two- third of the total membership of the house, it is sent to the other house, which should investigate the charges the president has the right to appear and to be represented at such investigation. If the other house also sustains the charges and passes the impeachment resolution by a majority of two-thirds of the total membership, then the president stands removed from his office from the date on which the bill is so passed thus an impeachment is a quasi- judicial procedure in the parliament. In this context, two things should be noted(a) the nominated members of either house of parliament



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

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 dehli and puducherry do not participate in the impeachment of the president through they participate in his election.

No president has so far been impeached.

Vacancy in the president`s office

A vacancy in the president`s office can occur in any of the following ways:

1. On the expiry of his tenure of five years.
2. By his resignation.
3. On his removal by the process of impeachment.
4. By his death.
5. Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

When the vacancy is going to be caused by the expiration of the term of the sitting president an election to fill the vacancy must be held before the expiration of the term in case of any delay in conducting the election of new president by any reason, the outgoing president continues to hold office until his successor assumes charges

If the office falls vacant by resignation, removal death or otherwise, then election to fill the vacancy should be held within six months from the date of the occurrence of such a vacancy the newly-elected president remains in office for a full term of five years from the date he assumes charge of his office.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

When a vacancy occurs in the office of the president due to his resignation, removal, death or otherwise, the vice-president act as the president until a new president is elected.

In case the office of vice-president is vacant, the chief justice of India acts as the president or discharges the function of the president.

POWER AND FUNCTIONS OF THE PRESIDENT

the power enjoyed and the functions performed by the president can be studied under the following heads.

1. Executive powers
2. Legislative powers
3. Financial power
4. Judicial powers
5. Diplomatic powers
6. Military powers
7. Emergency powers

EXECUTIVE POWERS

THE EXECUTIVE POWERS AND FUNCTIONS OF THE PRESIDENT ARE:

- All executive actions of the government of India are formally taken in his name.
- He can make rules specifying the manner in which the orders and other instruments made and executed in this name shall be authenticated.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- He can make rules for more convenient transaction of business of the union government , and for allocation of the said business among the ministers.
- He appoints the prime minister and the other ministers. They hold office during his pleasure
- He appoints the attorney general of India and determines his remuneration the attorney general holds office during the pleasure of the president.
- He appoints the comptroller and auditor general of India the chief election commissioners. The chairman and members of the union public service commission, the governors of states. The chairman and members of finance commission and so on.
- He can seek any information related to the administration of affairs of the union and proposals for legislation from the prime minister.
- He can require the prime minister 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.
- He can appoint a commission to investigate into the conditions of SCs STs and other backward classes.
- He can appoint an inter-state council to promote centre-state and inter- state cooperation.
- He directly administers the union territories through administrators appointed by him.
- He can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

LEGISLATIVE POWERS

- He can summon or prorogue the parliament and dissolve the lok sabha. He can also summon a joint sitting of both the houses of parliament, which is presided over by the speaker of the lok sabha
- He can address the parliament at the commencement of the first session after each general election and the first session of each year.
- He can send message to the houses of parliament, whether with respect to a bill pending in the parliament or otherwise.
- He can appoint any member of the lok sabha to preside over is proceedings when the offices of both the speaker and the deputy speaker fall vacant.
- He nominates 12 members of the rajya sabha from amongst persons having special knowledge or particle experience in literature science, art and social service.
- He can nominate two members to the lok sabha from the angol-India community
- He decides on questions as to disqualifications of members of the parliament, in consultation with the election commission.
- He prior recommendation or permission is needed to introduce certain types of bills involving expenditure from the consolidated fund of India
- When a bill is sent to the president after it has been passed by the parliament, he can:
 - give his assent to the bill, or
 - withhold his assent to the bill, or
 - return the bill for reconsideration of the parliament.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- When a bill passed by a state legislature is reserved by the governor for consideration of the president, the president can:
 - give his assent to the bill, or
 - withhold his assent to the bill, or
 - direct the governor to return the bill for reconsideration of the state legislature.
- He can promulgate ordinances when the parliament is not in session
- He lays the report of the comptroller and auditor general, union public service commission, finance commission, and others, before the parliament.
- He can make regulations for the peace, progress and good government of the Andaman and nicobar islands, Lakshadweep, dadar and nagar haveli and daman and diu.

FINANCIAL POWERS

The financial powers and functions of the president are:

- Money bills can be introduced in the parliament only with his prior recommendation.
- He causes to be laid before the parliament the annual financial statement
- No demand for a grant can be made except on his recommendation.
- He can make advances out of the contingency fund of India to meet any unforeseen expenditure.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- He constitutes a finance commission after every five years to recommend the distribution of revenues between the centre and the states.

JUDICIAL POWERS

- The judicial powers and functions of the president are:
- He appoints the chief justice and the judges of supreme court and high court.
- He can seek advice from the supreme court on any question of law or fact. However, advice tendered by the supreme court is not binding on the president.
- He can grant pardon, reprieve, respite and remission of punishment or suspend, remit or commute the sentence of any person convicted of any offence:
 - In all cases where the punishment or sentence is by a court martial;
 - In all cases where the punishment or sentence is for an offence against union law; and
 - In all cases where the sentence is a sentence of death.

DIPLOMATIC POWERS

The international treaties and agreements are negotiated and concluded on behalf of the president; however, they are subject to the approval of the parliament. He represents India in international forums and affairs and sends and receives diplomats like ambassadors, high commissioners, and so on.

Military power

peace, subject to the approval He is the supreme commander of the defence forces of India. In that capacity, he appoints the chiefs of the army, the navy and the air force. He can declare war or conclude of the parliament.

Emergency powers

In addition to the normal powers mentioned above, the constitution confers extraordinary powers on the president to deal with the following three types of emergencies:

- National emergency (Article 352);
- President`s rule (Article 356 & 365); and
- Financial emergency (Article 360)

VETO POWER OF THE PRESIDENT

1. Absolute veto, that is, withholding of assent to the bill passed by the legislature.
2. Qualified veto, which can be overridden by the legislature with a higher majority.
3. Suspensive veto, which can be over ridden by the legislature with an ordinary majority.
4. Pocket veto, that is, taking no action on the bill passed by the legislature.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Absolute veto

It refers to the power of the president to withhold his assent to a bill passed by the parliament. The bill then ends and does not become an act. Usually, this veto is exercised in the following two cases:

- with respect to private members' bill introduced by any member of parliament who is not a minister and
- with respect to the government bill when the cabinet resigns and the new cabinet advises the president not to give his assent to such bills.

SUSPENSIVE VETO

The president exercises this veto when he returns a bill for reconsideration of the parliament. However if the bill is passed again by the parliament with or without amendments and again presented to the president, it is obligatory for the president to give his assent to the bill.

POCKET VETO

In this case, the president neither ratifies nor rejects nor returns the bill, but simply keeps the bill pending for an indefinite period. This power of the president not to take any action on the bill is known as the pocket veto.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

PRESIDENT VETO OVER STATE LEGISLATION

The president has veto power with respect to state legislation also a bill passed by a state legislature can become an act only if it receives the assent of the governor or the president

When a bill passed by a state legislature is presented to the governor for his assent, he has four alternatives

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or
3. He may return the bill for reconsideration of the state legislature or
4. He may reserve the bill for the consideration of the president.

When a bill is reserved by the governor for the consideration of the president, the president has three alternatives

1. He may give his assent to the bill, or
2. He may withhold his assent to the bill, or
3. He may direct the governor to return the bill for the reconsideration of the state legislature.

ORDINANCE- MAKING POWER OF THE PRESIDENT

Article 123 of the constitution empowers the president to promulgate ordinances during the recess of parliament. These ordinances have the same force and effect as an act of parliament, but are in the nature of temporary laws.

The ordinance- making power is the most important legislative power of the president.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

1. He can promulgate an ordinance only when both the houses of parliament are not in session or when either of the two houses of parliament is not in session.
2. He can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action.
3. His ordinance- making power is coextensive as regards all matters except duration with the law- making power of the parliament. This has two implications:
 - An ordinance can be issued only on those subjects on which the parliament can make laws.
 - An ordinance is subject to the same constitutional limitation as an of parliament. Hence an ordinance cannot abridge or take away any of the fundamental right
4. Every ordinance issued by the president by the president during the recess of parliament must be laid before both the houses of parliament when it reassembles. If the ordinance is approved by both the houses. It becomes an act. If parliament takes no action at all the ordinance ceases to operate on the expiry of six weeks from the reassembly of parliament tax law also however it cannot be issued to amend the constitution.

So far, no case has gone to the supreme court regarding repromulgation of ordinance by the president.

PARDONING POWER OF THE PRESIDENT

Article 72 of the constitution empowers the president to grant pardons to persons who have been tried and convicted of any offence in all cases where the :

- Punishment or sentence is for an offence against a union law;
 - Punishment or sentence is by a court martial ; and
 - Sentence is a sentence of death.
1. To keep the door open for correcting any judicial errors in the operation of law; and
 2. To afford relief from a sentence, which the president regard as unduly harsh.

The pardoning power of the president includes the following:

1. **Pardon**: It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.
2. **Commutation**: it denotes the substitution of one form of punishment for a lighter form. For example a death sentence may be commuted to rigorous imprisonment ,
3. **Remission** : it implies reducing the period of sentence without changing its character for example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.
4. **Respite**: it denotes awarding a lesser sentence in place of one originally awarded due to some special fact such as the physical disability of a convict or the pregnancy of a woman offender.

5. Reprieve: it implies as stay of the execution of a sentence for a temporary period its purpose is to enable the convict to have time to seek pardon or commutation from the president. Under article 161 of the constitution, the governor of a state also possesses the pardoning power. Hence, the governor can also grant pardons reprieves, respites and remissions of punishment or suspend

- The president can pardon sentences inflicted by court martial while the governor cannot.
- The president can pardon death sentence while governor cannot. Even if a state law

The supreme court examined the pardoning power of the president under different cases and laid down the following principles:

1. The petitioner for mercy has no right to an oral hearing by the president.
2. The president can examine the evidence afresh and take a view different from the view taken by the court.
3. The power is to be exercised by the president on the advice of the union cabinet.
4. The president is not bound to give reasons for his order.
5. The president can afford relief not only from a sentence that he regards as unduly harsh but also from an evident mistake.
6. There is no need for the supreme court to lay down specific guidelines for the exercise of power by the president
7. The exercise of power by the president is not subject to judicial review except where the presidential decision
8. Where the earlier petition for stay cannot be obtained by filing another petition.

CONSTITUTIONAL POSITION OF THE PRESIDENT

President has to exercise his power and functions with the aid and advise of the council of ministers headed by the prime minister.

1. The executive power of the union shall be vested in president and shall be exercised by him either directly or through officers subordinates, act in accordance with such advice (Article 53)
2. There shall be a council of ministers with the prime minister at the head to aid and advise the president who shall in the exercise of his functions, act in accordance with such advice (Article 74).
3. The council of ministers shall be collectively responsible to the lok sabha (Article 75).

The 42th constitutional amendment act 1976 made the president bound by the advice of the council of

ARTICLE RELATED TO PRESIDENT AT A GLANCE

Article no.	Subject- matter
52	The president of India
53	Executive power of the union
54	Election of president
55	Manner of election of president
56	Term of office of president
57	Eligibility for re-election
58	Qualifications for election as president
59	Condition of president's office
60	Oath or affirmation by the president
61	Procedure for impeachment of the president
62	Time of holding election to fill vacancy in the office of

GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

	president
65	Vice president to act as president or to discharge his functions
71	Matter relating to the election of president
72	Power of president to grant pardon etc.
74	Council of ministers to aid and advice the president
75	Other provisions as to ministers like appointment, term salaries etc
76	Attorney- general of India
77	Conduct of business of the government of India
78	Duties of prime minister in respect to furnishing of information to the president
85	Sessions of parliament , prorogation and dissolution
111	Assent to bill passed bt the parliament
112	Union budget
123	Power of president to promulgate ordinances
143	Power of president to consult supreme court



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

VICE- PRESIDENT

The vice- president occupies the second highest office in the country.

ELECTION

The vice- president, like the president, is elected not directly by the people but by the method of indirect election he is elect by the members of an electoral college consisting of the members of the houses of parliament. Thus this electoral colleges is different from the electoral college for the election of the president in the following two respects:

1. It consists of both elected and nominated of the members of the parliament
2. It does not include the members of the state legislative assemblies

QUALIFICATIONS

To be eligible for election as vice- president, a person should fulfil the following qualifications:

1. He should be a citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the rajya sabha.
4. He should not hold any office of profit under the union government or any state government or any local authority or any other public authority.

Further, the nomination of a candidate for election to the office of vice- president must be subscribed by at least 20 electors as proposers and 20 electors as seconders.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

OATH OR AFFIRMATION

Before entering upon his office, the vice- president has to make and subscribe to an oath or affirmation in his oath, the vice- president swears:

1. To bear true faith and allegiance to the constitution of India; and
2. To faithfully discharge the duties of his office the oath of office to the vice- president is administered by the president or some person appointed in that behalf by him.

CONDITIONS OF OFFICE

The constitution lays down the following two conditions of the vice- president's office:

1. He should not be member of either house of parliament or a house of the state legislature if any such person is elected vice- president
2. He should not hold any other office of profit.

TERM OF OFFICE

The vice- president holds office for a term of five years from the date on which he enters upon his office. A formal impeachment is not required for his removal he can be removed by a resolution of the rajya sabha passed by an absolute majority and agreed to by the lok sabha . but , no such resolution can be moved unless at least 14 days advance notice has been given.

VACANCY IN OFFICE

1. On the expiry of his tenure of five years.
2. By his resignation.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. On his removal.
4. By his death.
5. Otherwise, for example, when he becomes disqualified to hold office or when his election is declared void.

ELECTION DISPUTES

All doubts and disputes in connection with election of the vice-president are inquired into and decided by the supreme court whose decision is final.

POWER AND FUNCTIONS

The functions of vice- president are two- fold:

1. He acts as the ex- officio chairman of rajya sabha in this capacity, his powers and functions are similar to those of the speaker of lok sabha
2. He acts as president when a vacancy occurs in the office of the president due to his resignation, removal, death or otherwise. He can acts as president only for a maximum period of six months within which a new president has to be elected. While acting as president or discharging the functions of president, the vice-president does not perform the duties of the office of the chairman of rajya sabha during this period those duties are performed by the deputy chairman of rajya sabha.

EMOLUMENTS

The constitution has not fixed any emoluments for the vice-president in that capacity. He draws his regular salary in his capacity as the ex- officio chairman of the rajya sabha . in 2008, the parliament increased the salary of the chairman of the rajya sabha from Rs 40000 to 1.25 lakh per moth in addition, he is entitled to daily allowance, free furnished residence, medical, travel and other facilities.

Article related to vice- president at a glance

Article no.	Subject- matter
63	The vice- president of India
64	The vice- president to be ex- officio chairman of the council of state
65	The vice- president to act as president or to discharge his functions during casual vacancies in the office
66	Election of vice- president
67	Term of office of vice- president
68	Time of holding election to fill vacancy in the office of vice- president
69	Oath or affirmation by the vice- president
70	Discharge of president`s function`s function in other contingencies
71	Matters relating to, or connected with, the election of vice- president



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Prime Minister

In the scheme of parliamentary system of government provided by the constitution, the president is the normal executive authority and prime minister is the real executive authority. In other words, president is the head of the state while prime minister is the head of the government.

APPOINTMENT OF THE PRIME MINISTER

- Article 75 says only that the prime minister shall be appointed by the president
- The president has to appoint the leader of the majority part in the lok sabha as the prime minister.
- The president may first appoint him the prime minister and then ask him to prove his majority in the lok sabha within a reasonable period.

OATH, TERM AND SALARY

1. To bear true faith and allegiance to the constitution of India,
2. To uphold the sovereignty and integrity of India,
3. To faithfully and conscientiously discharge the duties of his office, and
4. To do right to all manner of people in accordance with the constitution and the law, without fear or favour, affection or ill will

The term of the prime minister is not fixed so long as the prime minister enjoys the majority support in the lok sabha he cannot be



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

dismissed by the president. However if he loses the confidence of the lok sabha he must resign or the president can dismiss him.

POWER AND FUNCTIONS OF THE PRIME MINISTER **IN RELATION TO COUNCIL OF MINISTERS**

1. He recommends person who can be appointed as ministers by the president.
2. He allocates and reshuffles various portfolios among the ministers.
3. He can ask a minister to resign or advise the president to dismiss him in case of difference of opinion.
4. He presides over the meeting of council of ministers and influences its decision.
5. He guides, directs, controls, and coordinates the activities of all the ministers.
6. He can bring about the collapse of the council of ministers by resigning from office.

The resignation or death of an incumbent prime minister automatically dissolves the council of ministers and thereby generates a vacuum.

IN RELATION TO THE PRESIDENT

1. He is the principle channel of communication between the president and the council of ministers.
 - a) To communicate to the president all decisions of the council of ministers relating to the administration of the affairs of the union and proposals for legislation;



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- b) To furnish such information relating to the administration of the affairs of the union and proposals for legislation as the president may call for; and
 - c) If the president so requires, to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council.
2. He advises the president with regard to the appointment of important officials like attorney general of India.

IN RELATION TO PARLIAMENT

- 1. He advises the president with regard to summoning and proroguing of the sessions of the parliament.
- 2. He can recommend dissolution of the lok sabha to president at any time.
- 3. He announces government policies on the floor of the house.

OTHER POWER & FUNCTIONS

- 1. He is the chairman of the planning commission, national development council, national integration council, inter- state council and national water resources council.
- 2. He plays a significant role in shaping the foreign policy of the country.
- 3. He is the chief spokesman of the union government.
- 4. He is the crisis manager- in –chief at the political level during emergencies.

5. As a leader of the nation, he meets various section of people in different states and receives memoranda from them regarding their problems, and so on
6. He is leader of the party in power.
7. He is political head of the services.

RELATIONSHIP WITH THE PRESIDENT

1. Article 74 :

there shall be a council of ministers with the prime minister at the head to aid and advise the president.

2. Article 75 : (a)

the prime minister shall be appointed by the president and the other ministers shall be appointed by the president on the advice of the prime minister;

3. Article 78 : it shall be the duty of the prime minister:

- To communication to the president all decisions of the council of minister relating to the administration of the affairs of the union and proposals for legislation;
- To furnish such information relating to the administration of the affairs of the president may call for- and
- If the president so requires to submit for the consideration of the council of minister any matter on which a decision has been taken by a minister but which has not been considered by the council.

ARTICLE RELATED TO PRIME MINISTER AT A GLANCE

<u>Article no</u>	<u>Subject- matter</u>
74	Council of ministers to aid advise president
75	Other provision as to ministers
77	Conduct of business of the government of India
78	Duties of prime minister as respects the furnishing of information to the president, etc

CENTRAL COUNCIL OF MINISTERS

Article 74- council of ministers to aid and advice president

1. There shall be a council of ministers with the prime minister at the head to aid and advise the president who shall, in the exercise of the functions, act in accordance with such advice.
2. The advice tendered by ministers to the president shall not be inquired into in any court.

ARTICLE 75- OTHER PROVISIONS AS TO MINISTERS

1. The prime minister shall be appointed by the president and the other ministers shall be appointed by the president on the advice of the prime minister
2. The total number of ministers, including the prime minister, in the council of ministers shall not exceed 15% of the total strength of the lok sabha the provision was added by the 91th amendment act of 2003 .
3. A member of either house of parliament belonging to any political party who is disqualified on the ground of defection shall also be



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

disqualified to be appointed as a minister. This provision was also added by the 91st amendment act 2003.

4. The ministers shall hold office during the pleasure of the president.
5. The council of ministers shall be collectively responsible to the lok sabha
6. The president shall administer the oaths of office and secrecy to a minister.
7. A minister who is not a member of the parliament for any period of six consecutive months shall cease to be minister.
8. The salaries and allowances of ministers shall be determined by the parliament.

Article 77 – conduct of business of the government of India

1. All executive action of the government of India shall be expressed to be taken in the name of the president
2. Orders and other instruments made and executed in the name of the president shall be authenticated in such manner as may be specified in rules to be made by the president.
3. The president shall make rules for the more convenient transaction of the business of the government of India , and for the allocation among the minister of the said business.

ARTICLE 78- DUTIES OF PRIME MINISTER

1. The communicate to the president all to the administration of the affairs of the union and proposals for legislation.
2. To furnish such information relating to the administration of the union and proposals for legislation as the president may call for



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. If the president so requires to submit for the consideration of the council of ministers any matter on which a decision has been taken by a minister but which has not been considered by the council

APPOINTMENT OF MINISTERS

- The prime minister is appointed by the president while the other ministers are appointed by the president on the advice of the prime minister.
- Usually the member of parliament either lok sabha or rajya sabha are appointed as minister a person who is not a member of either house of parliament can also be appointed as a minister but within six months he must become a member of either houses of parliament, otherwise, he ceases to be a minister
- A minister who is a member of one house of parliament has the right to speak and no take part in the proceeding of the other house also but he can vote only in the house of which he is a member

RESPONSIBILITY OF MINISTERS

COLLECTIVE RESPONSIBILITY

- Article 75 clearly states that the council of ministers is collectively responsible to the lok sabha.
- Cabinet decision bind all cabinet ministers even if they differed in the cabinet meeting it is the duty of every minister to stand by cabinet decisions and support them both within and outside the parliament.

INDIVIDUAL RESPONSIBILITY

- Article 75 also contain the principle of individual responsibility. President can remove a ministers even at a time when the council of ministers enjoy the confidence of the lok sabha.

COMPOSITION OF THE COUNCIL OF MINISTERS

- The council of ministers consists of three categories of ministers, namely, cabinet ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the prime minister- the supreme governing authority of the country.
- The cabinet ministers head the important ministers of the central government like home defence finance, external affairs and so forth.
- The ministers of state can either be given independent charge of ministries/departments or can be attached to cabinet ministers.

COUNCIL OF MINISTERS VS CABINET

Council of ministers	Cabinet
<ul style="list-style-type: none"> • It is a wider body consisting of 60 to 70 ministers. 	<ul style="list-style-type: none"> • It is a smaller body consisting of 15 to 20 ministers
<ul style="list-style-type: none"> • It includes all the three categories of ministers that is cabinet ministers 	<ul style="list-style-type: none"> • It includes the cabinet ministers only
<ul style="list-style-type: none"> • It does not meet as a body to transact government business 	<ul style="list-style-type: none"> • it meets as a body frequently and usually once in a week to

	deliberate
<ul style="list-style-type: none"> It is vested with all powers but in theory. 	<ul style="list-style-type: none"> it exercise, in practice. The power of the council of ministers and thus,
<ul style="list-style-type: none"> its function are determined by the cabinet 	<ul style="list-style-type: none"> it directs the council of ministers by taking policy decision
<ul style="list-style-type: none"> it implements the decisions taken by the cabinet 	<ul style="list-style-type: none"> it supervise the implementation of its decision by the council of ministers
<ul style="list-style-type: none"> if is a constitution body, dealt in detail by the article 74 and 74 of the constitution 	<ul style="list-style-type: none"> it was interested in article 352 of the constitution in 1978 by the 44th constitution amendment act thus, it did not find a place in the original text
<ul style="list-style-type: none"> it is collectively responsible to the power house of the parliament. 	<ul style="list-style-type: none"> it enforces the collective responsibility of the council of ministers to the lower house of parliament

KITCHEN CABINET

The cabinet a small body consisting of the prime minister as its head and some 15 to 20 most important ministers, is the highest decision- making body in the formal sense. However, a still smaller body called the inner cabinet or kitchen cabinet has become the real centre of power. This information body consist of the prime minister and two to four influential colleagues in whom he has faith and with whom he can discuss every problem.

Article related to central council of ministers at a glance

Article no	Subject – matter
74	Council of ministers to aid and advise president
75	Other provision as to ministers
76	Conduct of business of the government of India
77	Duties of prime minister as respect the furnishing of information to the president etc

21 CABINET COMMITTEES

FEATURES OF CABINET COMMITTEES

1. they are extra- constitution in emergence. In other words they are not mentioned in the constitution
2. they are of two types- standing and ad hoc.
3. They are set up by the prime minister according to the exigencies of the
4. Their membership varies from three to eight
5. They not only included the ministers in charge of subjects covered by them but also include other senior ministers.
6. They are mostly headed by the prime minister some times other cabinet ministers particularly the home ministers or the finance minister, also acts as their chairman.
7. They not only sort out issues and formulate proposals for the consideration of the cabinet, but also take decisions. However, the cabinet can review their decisions.
8. They are an organisational device to reduce the enormous workload of the cabinet.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

LIST OF CABINET COMMITTEES

1. Cabinet committee on political affairs
2. Cabinet committee on natural calamities
3. Cabinet committee on parliamentary affairs
4. Appointments committee of the cabinet
5. Cabinet committee on accommodation
6. Cabinet committee on foreign investment
7. Cabinet committee on drug abuse control
8. Cabinet committee on prices
9. Cabinet committee on minority welfare
10. Cabinet committee on economic affairs
11. Cabinet committee on trade and investment
12. Cabinet committee on expenditure
13. Cabinet committee on infrastructure

THE FOLLOWING 10 CABINET COMMITTEES ARE FUNCTIONAL

1. Cabinet committee on economic affairs
2. Cabinet committee on prices
3. Cabinet committee on political affairs
4. Appointment committee of the cabinet
5. Cabinet committee on security
6. Cabinet committee on world trade organisation matters
7. Cabinet committee on investment
8. Cabinet committee on unique identification authority of India related issues



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

9. Cabinet committee on parliamentary affairs
10. Cabinet committee on accommodation

FUNCTION OF CABINET COMMITTEES

1. The political affairs committee deals with all policy matters pertaining to domestic and foreign affairs.
2. The economic affairs committee directs and coordinates the governmental activities in the economic sphere.
3. Appointments committee decides all higher level appointment in the central secretariat, public enterprises, banks and financial institutions.
4. Parliamentary affairs committee looks after the progress of government business in the parliament.

GROUPS OF MINISTERS

In addition to cabinet committees, several groups of ministers have been constituted to look into different issues / subjects. Some of these GoMs have been empowered to take decisions on behalf of the cabinet whereas the others make recommendations to the cabinet



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Parliament

- The parliament is the legislative organ of the union government . also known as Westminster model of government
- Article 79 to 122 in part V of the constitution deal with the organisation, composition, duration, officers, procedures, privileges, power and so on of the parliament.

ORGANISATION OF PARLIAMENT

- Under the constitution, the parliament of India consists of three parts viz, the president the council of states and the house of the people
- The Rajya sabha is the upper house and the lok sabha is the lower house
- the former represents the states and union territories of the Indian union, while the latter represents the presidents the people of India as a whole.
- Though the president of India is not a member of either house of parliament and does not sit in the parliament to attend its meeting he is an integral part of the parliament. This is because a bill passed by both the houses of parliament cannot become law without the president`s assent he also performs certain functions relating to the proceeding of the parliament, for example, he summons and pro- rogues both the houses, dissolves the lok sabha, addresses both the houses, issues ordinances when they are not in session, and so on.
- The parliamentary form of government emphasises on the interdependence between the legislative and executive organs.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Hence, we have the president – in – parliament like the crown- in – parliament in Britain

COMPOSITION OF THE TWO HOUSES

1. Composition of Rajya sabha

The maximum strength of the Rajya sabha is fixed at 250, out of which 238 are to be the representatives of the states and union territories and 12 are nominated by the president.

At present the Rajya sabha has 245 members of these 229 members represent the state. 4 members represent the union territories and 12 members are nominated by the president.

The fourth schedule of the constitution deals with the allocation of seats in the Rajya sabha to the states and union territories

REPRESENTATION OF STATES :

The representatives of states in the Rajya sabha are elected by the elected member of state legislative assemblies the election is held in accordance with the system of proportional representation by means to the single transferable vote. The seats are allocated to the states in the rajya sabha on the basis of population. Hence the number of representative varies from state to state.

REPRESENTATION OF UNION TERRITORIES:

The representatives of each union territory in the rajya sabha are indirectly elected by members of an electoral college is also held in accordance with the system of proportional representation by means of the single transferable vote. Out of the seven union territories, only two



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

have representation in rajya sabha . the population of other five union territories are too small to have any representative in the rajya sabha.

NOMINATED MEMBERS:

The president nominates 12 members to the Rajya sabha from people who have special knowledge or practical experience in art literature, science and social service. The rational behind this principle of nomination is to provide eminent person a place in the Rajya sabha without going through the process of election

2. COMPOSITION OF LOK SABHA

The maximum strength of the lok sabha is fixed at 552. Out of this 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and 2 members are to be nominated by the president from the Anglo- Indian community.

At present the lok sabha has 545 members. Of these , 530 members represent the states, 143 members represent the union territories and 2 Anglo- Indian members are nominated by the president.

REPRESENTATION OF STATES :

The representative of state in the lok sabha are directly elected by the people from the territories constituencies in the state. The election is based on the principle of universal abult franchise.

REPRESENTATION OF UNION TERRITORIES :

The parliament has enacted the union territories act 1965 by which the members of lok sabha from the union territories are also chosen by direct election.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

NOMINATED MEMBERS:

The president can nominate two members from the Anglo- Indian community if the community is not adequately represented in the lok sabha.

SYSTEM OF ELECTIONS TO LOK SABHA

TERRITORIAL CONSTITUENCIES

For the purpose of holding direct elections to the lok sabha, each state is divide into territorial constituencies. In this respect, the constitution makes the following two provision:

- Each state is allotted a number of seats in the lok sabha in such a manner that the ratio between that number and its population is the same fi=or all states .
- Each state is divided into territorial constituencies in such a manner that the ration between the population of each constituency and the number of seats allotted to it is the same throughout the state.

READJUSTMENT AFTER A EACH CENSUS

After every census, a readjustment is to be made in (a) allocation of seats in the lok sabha to the states, and (b) division of each state into territorial constituencies. Parliament is empowered to determine the authority and the manner in which it is to be made. Accordingly, the parliament has enacted the delimitation commission acts in 1952, 1962, 1972 and 2002 for this purpose.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

RESERVATION OF SEATS FOR SCs AND STs

Though the constitution has abandoned the system of communal representation, it provides for the reservation of seats for scheduled castes and scheduled tribes in the lok sabha on the basis of population ratios.

Originally, this reservation was to operate for ten years, but it has been extended continuously since then by 10 years each time. Now, under the 95th amendment act of 2009, this reservation is to last 2020.

DURATION OF TWO HOUSES

DURATION OF RAJYA SABHA

The Rajya sabha is a continuing chamber, that is, it is a permanent body and not subject to dissolution however one- third of its members retire every second year. Their seats are filled up by fresh elections and presidential nominations at the beginning of every third year. The retiring members are eligible for re- election and recombination any number of times.

DURATION OF LOK SABHA

Unlike the Rajya sabha, the lok sabha is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections. After which it automatically dissolves however the president is authorised to dissolve the lok sabha at any time even before the completion of five years and this cannot be challenged in a court of law.

Further, the term of the lok sabha can be extended during the period of national emergency by a law of parliament for one year at a



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

time for any length beyond a period of six months after the emergency has ceased to operate.

MEMBERSHIP OF PARLIMENT

QUALIFICATIONS

1. He must be a citizen of India.
2. He must make and subscribe to an oath or affirmation before the person authorised by the election commission for this purpose. In his oath or affirmation, he swears
 - a) to bear true faith and allegiance to the constitution of India.
 - b) To uphold the sovereignty and integrity of integrity of India
3. He must be not less than 30 years of age in the case of the Rajya sabha and not less than 25 years of age in the case of the lok sabha.
4. He must posses other qualification prescribed by parliament. The parliament has laid down the following additional qualifications in the representation of people act 1951.
 - a) He must be registered as an elector for a parliamentary constituency. This is same in the case of both, the Rajya sabha and the lok sabha the requirement that a candidate contesting an election to the Rajya sabha from a particular states should be an elector in that particular state.
 - b) He must be a member of a schedule caste or scheduled tribe in any state or union territory if he wants to contest a seat reserved for them

DISQUALIFICATIONS

Under the constitution, a person shall be disqualified for being elected as a member of parliament:

- If he holds any office of profit under the union or state government
- If he is of unsound mind and stands so declared by a court.
- If he is an undischarged insolvent.
- If he is not citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state; and
- If he is so disqualified under any law made by parliament.

DISQUALIFICATION ON GROUND OF DEFECTION

- If he voluntarily gives up the membership of the political party on whose ticket he is elected to the house;
- If he votes or abstains from voting in the house contrary to any direction given by his political party;
- If any independently elected member joins any political party; and
- If any nominated member joins any political party after the expiry of six months

PRESIDING OFFICERS OF PARLIAMENT

Each house of parliament has its own presiding officer. There is a speaker and a deputy speaker for the lok sabha and a chairman and deputy chairman for the Rajya sabha.

SPEAKER OF LOK SABHA

ELECTION AND TENURE :

The speaker is elected by the lok sabha from amongst its member whenever the office of the speaker falls vacant, the lok sabha elects another member to fill the vacancy the date of election of the speaker is fixed by the president

Usually the speaker remains in office during the life of the lok sabha however, he has to vacate his office earlier in any of the following three cases:

- If he ceases to be member of the lok sabha;
- If he resigns by writing to the deputy speaker ; and
- If he is removed by a resolution passed a majority of all the members of the lok sabha. When a resolution for the removal of the speaker is under consideration of the house, he cannot preside at the sitting of the house, though he may be present. It should be noted here that, whenever the lok sabha is dissolved, the speaker does not vacate his office and continues till the newly- elected lok sabha meets.

ROLE, POWER AND FUNCTIONS

The speaker of the lok sabha derives his powers and duties from three sources, that is the constitution of India the rules of procedure and conduct of business of lok sabha and parliamentary conventions altogether, he has the following powers and duties :



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

1. He maintains order and decorum in the house for conducting its business and regulating its proceeding. This is his primary responsibility and he has final power in this regard .
2. He is the final interpreter of the provisions of (a) the constitution of India, (b) the rule of procedure and conduct of business of lok sabha, and (c) the parliamentary precedents, within the house.
3. He adjourns the house or suspends the meeting in absence of a quorum.
4. He does not vote in the first instance but he can exercise a casting vote in the case of a tie. In other words,
5. He presides over a joint sitting of the two houses of parliament such a sitting is summoned by the president
6. He can allow a secret sitting of the house at the request of the leader of the house when the house sits in secret no stranger can be present in the chamber,
7. He decides whether a bill is a money bill or not and his decision on this question is final. When a money bill is transmitted to the Rajya sabha
8. He decides the questions of disqualification of a member of the lok sabha, arising on the ground of defection under the provisions of the tenth schedule . in 1992, the supreme court ruled that the decision of the speaker in this regard is subject to judicial review.
9. He acts as the ex- officio chairman of the Indian parliamentary groups of the Inter – parliamentary union. He also acts as the ex-officio chairman of the conference of presiding officers of legislative bodies in the country.
10. He appoints the chairman of all the parliamentary committees of the lok sabha and supervises of the business advisory



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

committee, the rules committee and the lok sabha and chairman of the business advisory committee the rules committee and the general purpose committee.

DEPUTY SPEAKER OF LOK SABHA

Like the speaker, the deputy speaker is also elected by the lok sabha itself from amongst its members he is elected after the election of the speaker has taken place. The date of election of the deputy speaker is fixed by the speaker whenever the office of the deputy speaker falls vacant, the lok sabha elects another member to fill the vacancy.

The deputy speaker performs the duties of the speaker's office when it is vacant he also acts as speaker when the latter is absent from the sitting of the house. In both the cases he assumes all the powers of the speaker he also presides over the joint sitting of both the houses of parliament, in case the speaker is absent from such a sitting.

The deputy speaker has one special privilege, that is, whenever he is appointed as a member of a parliamentary committee, he automatically becomes its chairman.

When the speaker presides over the house, the deputy speaker is like any other ordinary member of the house. He can speak in the house, participate in its proceedings and vote on any question before the house. Mavalankar and ananthasayanam ayyangar had the distinction of being the first speaker and the first deputy speaker of the lok sabha.

SPEALER PRO TEM

As provided by the constitution, the speaker of the last lok sabha vacates his office immediately before the first meeting of the newly – elected lok sabha therefore the president appoints a member of the lok



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

sabha as the speaker pro tem usually, the seniormost member is selected for this. The president himself administers oath to the speaker pro tem. The speaker pro tem has all the power of the speaker he presides over the first sitting of the newly- elected lok sabha. His main duty is to administer oath to the new members. He also enables the house to elect the new speaker.

CHAIRMAN OF RAJYA SABHA

The presiding officer of the Rajya sabha is known as the chairman. The vice- president of India is the ex- officio chairman of the rajya sabha during any period when the vice- president acts as president or discharges the functions of the president, he does not perform the duties of the office of the chairman of rajya sabha.

The chairman of the rajya sabha can be removed from his office only if he is removed from the office of the vice- president . functions of the chairman in the rajya sabha are similar to those of the speaker in the lok sabha. However the speaker has two special powers which are not enjoyed by the chairman :

1. The speaker decides whether a bill is a money bill or not and his decision on this question is final.
2. The speaker presides over a joint sitting of two house of parliament.

The vice- president cannot preside over a sitting of the rajya sabha as its chairman when a resolution for his removal is under consideration.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

DEPUTY CHAIRMAN OF RAJYA SABHA

The deputy chairman is elected by the rajya sabha itself from amongst its members. Whenever the office of the deputy chairman falls vacant, the rajya sabha elects another member to fill the vacancy.

The deputy chairman performs the duties of the chairman's acts as president or discharges the functions of the president he also acts as the chairman when the latter is absent from the sitting of the house. In both the cases, he has all the powers of the chairman.

Like the chairman, the deputy chairman, while presiding over the house cannot vote in the first instance; he can only exercise a casting vote in the case of a tie.

LEADERS IN PARLIAMENT

LEADER OF THE HOUSE

Under the rules of lok sabha, the leader of the house means the prime minister there is also a leader of the house in the rajya sabha he is a minister and a member of the rajya sabha and is nominated by the prime minister to function as such .

LEADER OF THE OPPOSITION

- In each house of parliament, there is the leader of the opposition. the leader of the largest opposition party having not less one- tenth seats of the total strength of the house is recognised as the leader of the opposition in the house.
- His main functions are to provide a constructive criticism of the policies of the government and to provide an alternative government.

- The British political system has an unique institution called the shadow cabinet it is formed by the opposition party to balance the ruling cabinet and to prepare its members for future ministerial offices. In this shadowed by a corresponding member in the opposition cabinet. This shadow cabinet serves the alternate cabinet if there is change of government.

SESSIONS OF PARLIAMENT

SUMMONING

The president from time to time summons each house of parliament to meet but the maximum gap between two sessions of parliament cannot be more than six months. In other words the parliament should meet at least twice a year. There are usually three sessions in a year, viz

1. The budget sessions (February to may);
2. The monsoon sessions (july to September); and
3. The winter session (November to december).

A sessions of parliament is the period spanning between the first sitting of a house and its prorogation

Adjournment VS prorogation

adjournment	Prorogation
1. it only terminates a sitting and not a session of the house.	1. It not only terminates a sitting but also a session of the house.
2. It is done by presiding officer of the house.	2. It is done by president of India.
3. It does not affect the bills	3. It also not affect the bills or

or any other business pending before the house and the same can be resumed when the house meets again.	any other business pending before the house however all pending notices lapse on prorogation and fresh notices have to be given for the next session in British prorogation bring to an end all bills or any other business pending before the house.
--	---

ADJOURNMENT

A session of parliament consists of many meetings each meeting of a day consists of two sitting, that is a, morning sitting from 11 am to 1 pm and post- lunch sitting from 2 pm to 6 pm a sitting of parliament can be terminated by adjournment or adjournment sine die or prorogation or dissolution an adjournment suspends the work in a sitting for a specified time, which may be hours, day or weeks.

ADJOURNMENT SINE DIE

Adjournment sine die means terminating a sitting of parliament for an indefinite period in other words, when the house is adjournment without naming a day for reassembly it is called adjournment sine die.

PROROGATION

The presiding officer declares the house adjournment sine die when the business of a session is completed within the next few days, the president issues a notification for prorogation of the session. However, the president can also prorogue the house while in session.

DISSOLUTION

Rajya sabha. Being a parliament house, is not subject to dissolution. Only the lok sabha is subject to dissolution unlike a prorogation a dissolution ends the very life of the existing house and a new house is constituted after general elections are held the dissolution of the lok sabha may take place in either of two ways:

- Automatic dissolution, that is, on the expiry of its tenure of five years or the terms as extended during a national emergency; or
- Whenever the president decides to dissolve the house which he is authorised to do once the lok sabha is dissolved before the completion of its normal tenure the dissolution is irrevocable. When the lok sabha is dissolved, all business including bills, motion, resolutions, notices, petitions and so on pending before it or its committees lapse.
 - A bill pending in the lok sabha lapses (whether originating in the lok sabha or transmitted to it by the Rajya sabha).
 - A bill passed by the lok sabha but pending in the Rajya sabha lapses.
 - A bill not passed by the two houses due to disagreement and if the president has notified the holding of a joint sitting before the dissolution of lok sabha, does not lapse.
 - A bill pending in the Rajya sabha but not passed by the lok sabha does not lapse.
 - A bill passed by both houses but pending assent of the president does not lapse.
 - A bill passed by both houses but returned by the president for reconsideration of houses does not lapse.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

QUORUM

Quorum is the minimum number of members required to be present in the house before it can transact any business. It is one-tenth of the total number of member in each house including the presiding offices.

LANGUAGE IN PARLIMENT

The constitution has declared Hindi and English to be the languages for transacting business The parliament. However, the presiding officer can permit a member to address the house in his mother tongue.

RIGHTS OF MINISTERS AND ATTORNEY GENERAL

In addition to the members of a house, every minister and the attorney general of India have the right to speak and take part in the proceedings of right to speak and take part in the proceedings of either house, any joint sitting of both the house and any committee of parliament of which he is a member, without being entitled to vote. There are two reasons underlying this constitutional provision:

1. A minister can participate in the proceedings of a house, of which he is not a member in other words a minister belonging to the lok sabha can participant in thr proceedings of the Rajya sabha and vice- versa
2. A minister who is not a member of either house can participate in the proceedings of both house. It should be noted here that a person can remain a minister for six months, without being a member of either house of parliament.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

LAME – DUCK SESSION

It refers to the last session of the existing lok sabha after a new lok sabha has been elected. Those members of the existing lok sabha who could not get reelected to the new lok sabha are called lame – ducks.

DEVICES OF PARLIAMENTARY PROCEEDINGS

QUESTION HOUR

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

A STARRED QUESTION(distinguished by an asterisk)required an oral answer and hence supplementary question can follow.

- **An unstarred question** on the other hand requires a written answer and hence, supplementary question cannot follow .
- **A short notice question**: is one that is asked by giving a notice of less than ten days. It is answered orally.

ZERO HOUR

Unlike the question hour, the zero hour is not mentioned in the rules of procedure

The zero hour starts immediately after the question hour and lasts until the agenda for the day is taken up in other words, the time gap between the question hour and the agenda is known as zero hour. It is an Indian innovation in the field of parliamentary procedures and has been in existence since 1962.

MOTIONS

The motions moved by the members to arise discussions on various matters fall into three principal categories:

- **Substantive motion**: It is a self- contained independent proposal dealing with a very important matter like impeachment of the president or removal of chief election commissioner.
- **Substitute motion**: It is a motion that is moved in substitution of an original motion and proposes an alternative to it. If adopted by the house, it supersedes the original motion.
- **Subsidiary motion**: Is one that is asked by giving a notice of less than ten days. It is answered orally.

ZERO HOUR

Unlike the question hour, the zero hour is not mentioned in the rules of procedure.

The zero hour starts immediately after the question hour and lasts until the agenda for the day is taken up. In other words, the time gap between the question hour and the agenda is known as zero hour it is an India innovation in the field of parliamentary procedures and has been in existence since 1962.

MOTIONS

No discussion on a matter of general public importance can take place except on a motion made with the consent of the presiding officer. The house expresses the adoption or rejection of motions moved by either ministers or private members.

The motions moved by the members to raise discussions on various matters fall into three principle categories:

- **Substantive motion**: It is a self- contained independent proposal dealing with a very important matter like impeachment of the president or removal of chief election commissioner.
- **Substitute motion**: It is a motion that is moved in substitution of an original motion and proposes an alternative to it if adopted by the house, it supersedes the original motion.
- **Subsidiary motion** : It is a motion that by itself, has no meaning and cannot state the decision of the house without reference to the original motion or proceeding of the house. It is divided into three sub- categories:
 - **Ancillary motion**: It is used as the regular way of proceeding with various kinds of business.
 - **Superseding motion**: It is moved in the course of debate on another issue and seeks to supersede that issue.

Closure motion

It is a motion moved by a member to cut short the debate on a matter before the house. If the motion is approved by the house, debate is stopped forthwith and the matter is put to vote. there are four kinds of closure motions.

- **Simple closure**: It is one when a member moves that the matter having been sufficiently discussed be now put to vote.
- **Closure by compartment**: In this case, the clauses of a bill or a lengthy resolution are grouped into parts before the



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

commencement of the debate. The debate covers the parts as a whole and the entire part is put to vote.

- **Kangaroo closure**: Under this type, only important clauses are taken up for debate and voting and the intervening clauses are skipped over and taken as passed.
- **Guillotine closure** : It is one when the undiscussed clauses of a bill or a resolution are also put to vote along with the discussed ones due to want of time

Privilege motion :

It is concerned with the breach of parliamentary privileges by a minister. It is moved by a member when he feels that a minister has committed a breach of privilege of the house or one or more of its members by withholding facts of a case or by giving wrong or distorted facts. Its purpose is to censure the concerned minister.

Calling attention motion:

It is introduced in the parliamentary privileges by a minister to call the attention of the parliamentary by a member to call the attention of a minister to a matter of urgent public importance, and to seek an authoritative statement from him on that matter. Like the zero hour, it is also an Indian innovation in the parliamentary procedure and has been in existence since 1954. However, unlike the zero hour, it is mentioned in the rules of procedure.

Censure motion	No-confidence motion
<ul style="list-style-type: none"> It should state the reason for its adoption the lok sabha. 	<ul style="list-style-type: none"> It need not state the reasons for its adoption in the lok sabha
<ul style="list-style-type: none"> It can be moved against an individual minister or a group of ministers or the entire council of ministers. 	<ul style="list-style-type: none"> It can be moved against the entire council of ministers only.
<ul style="list-style-type: none"> It is moved for censuring the council of ministers for specific policies and actions. 	<ul style="list-style-type: none"> It is moved for ascertaining the confidence of lok sabha in the council of ministers.
<ul style="list-style-type: none"> If it is passed in the lok sabha, the council of ministers need not resign from the office. 	<ul style="list-style-type: none"> If it is passed in the lok sabha, the council of ministers must resign from office.

Adjournment motion :

It is introduced in the parliament to draw attention of the house to a definite matter of urgent public importance, and needs the support of 50 members to be admitted. As it interrupts the normal business of the house, it is regarded as an extraordinary device. It involves an element of ensure against the government and hence Rajya sabha is not permitted to make use of this device. The discussion on an adjournment motion should last for not less than two hours and thirty minutes.

The right to move a motion for an adjournment of the business of the house is subject to the following restrictions:

1. It should raise a matter which is definite, factual, urgent and of public importance;
2. It should not cover more than one matter;
3. It should be restricted to a specific matter of recent occurrence and should not be framed in general terms;
4. It should not raise a question of privileges ;
5. It should not revive discussion on a matter that has been discussed in the same session;
6. It should not deal with any matter that is under adjournment by court ; and
7. It should not raise any question that can be raised on a distinct motion.

Non-confidence motion:

Article 75 of the constitution says that the council of ministers shall be collectively responsible to the lok sabha. It means that the ministry stays in office so long as it enjoys confidence of the majority of the members of the lok sabha. In other words, the lok sabha can remove the ministry from office by passing a no-confidence motion the motion needs the support of 50 members to be admitted.

- **Censure motion:** A censure motion is different from a no-confidence motion as shown in table 22.2.
- **Motion of thanks:** The first session after each general election and the first session of every fiscal year is addressed by the president . in this address, the president outline the policies and programmes of the government in the preceding, year and ensuing year.

Legislative procedure in parliament

The legislative procedure is identical in both the houses of parliament. Every bill has to pass through the same stages in each house. A bill is a proposal for legislation and it becomes an act or law when duly enacted.

Bills introduced in the parliament are of two kinds: public bills and private bills

Public bill	Private bill
<ul style="list-style-type: none"> It is introduced in the parliament by a minister. 	<ul style="list-style-type: none"> It is introduced by any member of parliament other than a minister.
<ul style="list-style-type: none"> It reflects of the policies of the government 	<ul style="list-style-type: none"> It reflects the stand of opposition party on public matter.
<ul style="list-style-type: none"> It has greater chance to be approved by the parliament. 	<ul style="list-style-type: none"> It has lesser chance to be approved by the parliament.
<ul style="list-style-type: none"> Its rejection by the house amounts to the expression of want of parliamentary confidence in the government and may lead to its resignation. 	<ul style="list-style-type: none"> Its rejection by the house has no implication on the parliamentary confidence in the government or its resignation.
<ul style="list-style-type: none"> Its introduction in the house requires seven days notice. 	<ul style="list-style-type: none"> Its introduction in the house requires one month's notice.
<ul style="list-style-type: none"> It is drafted by the concerned department in consultation with the law department. 	<ul style="list-style-type: none"> It drafting is the responsibility of the member concerned.

The bills introduced in the parliament can also be classified into four categories:

- Ordinary bills, which are concerned with any matter other than financial subjects.
- Money bills, which are concerned with the financial matters like taxation, public expenditure, etc
- Financial bills, which are also concerned with financial matters
- Constitution amendment bills, which are concerned with the amendment of the provisions of the constitution.

The constitution has laid down separate procedures for the enactment of all the four types of bills.

Ordinary bills :

Every ordinary bill has to pass through the following five stages in the parliament before it finds a place on the statute book:

1. First reading:

On ordinary bill can be introduced in either by a minister. Such a bill can be introduced either by a minister or by any other member. No discussion on the bill takes place at this stages later the bill is published in the gazette before is introduction. The introduction of the bill and its publication in the GaZette constitute the first reading of the bill.

2. Second reading:

During this stage the bill receives not only the general but also the detailed scrutiny and assumes its final shape. Hence, it forms the most

important stage involves three more sub- stages, namely, stage of general discussion, committee stages, and consideration stages.

1. Stage of general discussion: the printed copies of the bill are distributed to all the members the principles of the bill and its provisions are discussed generally, but the details of the bill are not discussed. At this stage, the house can take any one of the following four actions:

- a) It may take the bill into consideration immediately or on some other fixed date;
- b) It may refer the bill to a joint committee of the two houses; and
- c) It may refer the bill to a joint committee of the two houses; and
- d) It may circulate the bill to elicit public opinion.

2. Committee stage : the usual practice is to refer the bill to a select committee of the house. This committee examines the bill thoroughly and in detail, clause by clause. It can also amend its provisions, but without altering the principles underlying it. After completing the scrutiny and discussion, the committee report the bill back to the house.

3. Consideration stage: the house, after receiving the bill from the select committee, considers the provisions of the bill clause. Each clause is discussed and voted upon separately. The members can also move amendment and if accepted, they become part of the bill.

3. Third reading : at this stage, the debate is confined to the acceptance or rejection of the bill as a whole and no amendments

are allowed , as the general principles underlying the bill have already been scrutinised during the stage of second reading if the majority of members presented and voting accept the bill, the bill is authenticated by the presiding officer of the house and transmitted to the second house for consideration and approval a bill is deemed to have passed by the parliament only when both the houses have agreed to it, either with or without amendments.

4. **Bill in the second house** : in the second house also, the bill passes through all the three stages, that is , first reading, second reading and third reading. There are four alternatives before this house:

- a) It may pass the bill as sent by the first house
- b) It may pass the bill with amendments and return it to the first house for reconsideration;
- c) It may reject the bill altogether; and
- d) It may not take any action and thus keep the bill pending.

5. **Assent of the president** : every bill after being passed by both houses of parliament either singly or at a joint sitting, is presented to the president for his assent. There are three alternatives before the president:

- a) He may give his assent to the bill; or
- b) He may withhold his assent to the bill; or
- c) He may return the bill for reconsideration of the house.

If the president gives his assent to the bill, the bill becomes an act and is placed on the statute book. If the president withholds his assent to the bill, it ends and does not become an act if the president returns the



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

bill for reconsideration and if it is passed by both the house again with or without amendment and president must give his assent to the bill. Thus the president enjoys only a “suspensive veto”

Money bills

Article 110 of the constitution deals with the definition of money bills. It states that a bill is deemed to be a money bill if it contains only provisions dealing with all or any of the following matters:

1. The imposition, abolition, remission, alteration or regulation of any tax;
2. The regulation of the borrowing of money by the union government;
3. The custody of the consolidated fund of India or the contingency fund of India, the payment of money into or the withdrawal of money from any such fund;
4. The appropriation of money out of the consolidated fund of India;
5. Declaration of any expenditure charged on the consolidated fund of India or the public account of India or the custody or issue of such money or the audit of the account of the union or of a state; or
6. Any matter incidental to any of the matters specified above.

If any question arises whether a bill is a money bill or not, the decision of the speaker of the lok sabha is final . when a money bill is transmitted to the Rajya sabha for recommendation and presented to the president for assent, the speaker endorses it as a money bill.

The constitution lays down a special procedure for the passing of money bills in the parliament. A money bill can only be introduced in the lok sabha and that too on the recommendation of the president.

After a money bill is passed by the lok sabha, it is transmitted to the Rajya sabha for its consideration the Rajya sabha has restricted powers with regard to a money bill. It cannot reject or amend a money bill. It can only make the recommendations. It must return the bill to the lok sabha within 14 days, wither with or without recommendations. The lok sabha can either accept or reject all or any of the recommendations of the Rajya sabha.

If the Rajya sabha does not return the bill to the lok sabha within 14 days, the bill is deemed to have been passed by the both the houses in the form originally passed by the lok sabha. Thus the lok sabha has more powers than Rajya sabha with regard to a money bill. On the other hand, both the houses have equal powers with regard to an ordinary bill.

Finally when a money bill is presented to the president he may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the houses. Normally, the president gives his assent to a money bill as it is introduced in the parliament with his prior permission.

Financial bills

Financial bills are those bills that deal with fiscal matters, that is, revenue or expenditure. However the constitution uses the term financial bill in a technical sense. Financial bills are of three kinds:

1. Money bills- article 110
2. Financial bills(I)- article 117(1)
3. Financial bills (II)- Article 117 (3)

All money bills are financial bills but all financial bills are not money bills. Only those financial bills are money bills which contain exclusively those matters which are mentioned in article 110 of the constitution these are also certified by the speaker of lok sabha as money bills.

Financial bills (I)

A financial bill (I) is a bill that contains not only any or all the matters mentioned in article 110 but also other matters of general legislation

Ordinary bill	Money bill
<ul style="list-style-type: none"> It can be introduced either in the lok sabha or the Rajya sabha 	<ul style="list-style-type: none"> It can be introduced only in the lok sabha and not in the Rajya sabha
<ul style="list-style-type: none"> It can be introduced either by a minister or by a private member. 	<ul style="list-style-type: none"> It can be introduced by a minister.
<ul style="list-style-type: none"> It is introduced with out the recommendation of the president. 	<ul style="list-style-type: none"> It can be introduced only on the recommendation of the president.
<ul style="list-style-type: none"> It can be amended or rejection by the Rajya sabha. 	<ul style="list-style-type: none"> It cannot be amended or rejection by the Rajya sabha. The Rajya sabha should return the bill with or without recommendations,
<ul style="list-style-type: none"> It can be detained by the Rajya sabha for a maximum period of six months. 	<ul style="list-style-type: none"> It can be detained by the Rajya sabha for a maximum period of 14 days only.
<ul style="list-style-type: none"> It does not require the 	<ul style="list-style-type: none"> It requires the certification of

certification of the speaker when transmitted to Rajya sabha	the speaker when transmitted to the Rajya sabha.
<ul style="list-style-type: none"> It is sent for the president's assent only after being approved by both the houses. In case of a deadlock due to disagreement between the two houses, 	<ul style="list-style-type: none"> It is sent for the president's assent even if it is approved by only lok sabha. There is no chance of any disagreement between the two houses and hence,
<ul style="list-style-type: none"> Its defeat in the lok sabha may lead to the resignation of the government 	<ul style="list-style-type: none"> Its defeat in the lok sabha leads to the resignation of the government
<ul style="list-style-type: none"> It can be rejected, approved, or returned for reconsideration by the president. 	<ul style="list-style-type: none"> It can be rejected or approved but cannot be returned for reconsideration by the president.

In two respects, a financial bill (I) is similar to a money bill-(a) both of them can be introduced only in the lok sabha and not in the Rajya sabha and (b) both of them can be introduced only on the recommendation of the president. In all other respects, a financial bill (I) is governed by the same legislative procedure applicable to an ordinary bill. Hence, it can be either rejected or amended by the Rajya sabha. In case of disagreement between the two houses over such a bill, the president can summon a joint sitting of the two houses to resolve the deadlock when the bill is presented to the president, he assent to the bill or return the bill for reconsideration of the houses.

Financial bills (II)

A financial bill(II) contains provisions involving expenditure from the consolidated fund of India, but does not include any of the matters mentioned in article 110. it is treated as an ordinary bill and in all respects, it is governed by the same legislative procedure which is applicable to an ordinary bill. The only special feature of this bill is that it cannot be passed by either house of parliament unless the president has recommended to that house the consideration of the bill. hence, financial bill (II) can be introduced in either house of parliament and recommendation of the president is not necessary for its introduction. It can be either house of parliament in case of a disagreement between the two houses over such a bill, the president can summon a joint sitting of the two houses to the president, he can either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the house.

Joint sitting of two houses

Joint sitting is an extraordinary machinery provided by the constitution to resolve a deadlock between the two houses over the passage of a bill.

- If the bill is rejected by the other house;
- If the houses have finally disagreed as to the amendments to the bill; or
- If more than six months have elapsed from the date of the receipt of the bill by the other house without the bill being passed by it.

In the above three situations, the president can summon both the houses to meet in a joint sitting for the purpose of deliberating and voting on the bill. It must be noted here that the provision of joint sitting is applicable to ordinary bills or constitution amendment bills. In the case of a money bill, the lok sabha has overriding powers, while a constitution amendment bill must be passed by each house separately.

If the bill has already lapsed due to the dissolution of the lok sabha, no joint sitting can be summoned but, the joint sitting can be held if the lok sabha is dissolved after the president has notified his intention to summon such a sitting of the two houses, none of the houses can proceed further with the bill.

The speaker of lok sabha presides over a joint sitting of the two houses and the deputy speaker, in his absence if the deputy speaker is also absent from a joint sitting the deputy chairman of Rajya sabha presides.

The quorum to constitute a joint sitting is one-tenth of the total number of members of the two houses the joint sitting is governed by the rules of procedure of lok sabha and not of Rajya sabha.

BUDGET IN PARLIAMENT

The constitution refers to the budget as the annual financial statement .

The budget is a statement of the estimated receipts and expenditure of the government of India in a financial statement that has been dealt with in article 112 of the constitution.

The budget is a statement of the estimated receipts and expenditure of the government of India in a financial year, which begins on 1 April and ends on 31 march of the following year. Overall, the budget contains the following :

1. Estimates to revenue and capital receipts;
2. Ways and means to raise the revenue;
3. Estimates of expenditure;
4. Details of the actual receipts and expenditure of the closing financial year and the reasons for any deficit or surplus in that year; and
5. Economic and financial policy of the coming year, that is , taxation proposals, prospects of revenue, spending programme and introduction of new schemes/projects.

The government of India has two budgets, namely, the railway budget and the general budget. While the former consists of the estimates of receipts and expenditures of only the ministry of railways, the latter consists of the estimates of receipts and expenditure of all the ministries of the government of India

The railway budget was separated from the general budget in 1921 on the recommendations of the Acworth committee.

Charged expenditure

The budget consist of two types of expenditure- the expenditure charged upon the consolidated fund of India and the expenditure made from the consolidated fund of India

The list of the charged expenditure is as follows:

1. Emoluments and allowances of the president and other expenditure relating to his office.
2. Salaries and allowances of the chairman and the deputy chairman of the Rajya sabha and the speaker and the deputy speaker of the lok sabha
3. Salaries, allowances and pensions of the judges of the supreme court.
4. Pensions of the judges of high court.
5. Salary, allowance and pension of the comptroller and auditor general of India.
6. Salaries, allowances and pension of the chairman and members of the union public service commission.
7. Administrative expenses of the supreme court, the office of the comptroller and auditor general of India and the union public service commission including the salaries, allowances and pensions of the persons serving in these offices.
8. The debt charges for which the government of India is liable, including interest, sinking fund charges and redemption charges

and other expenditure relating to the raising of loans and the service and redemption of debt.

9. Any sum requires to safety any judgement, decree or award of any court or arbitral tribunal
10. Any other expenditure declared by the parliament to be so charged.

Stages in enactment

The budget goes through the following six stages in the parliament:

1. Presentation of budget.
2. General discussion.
3. Scrutiny by departmental committees.
4. Voting on demands for grants.
5. Passing of appropriation bill.
6. Passing of finance bill.

1. Presentation of budget:

The budget is presented in two parts- railway budget and general budget both are governed by the same procedure. The introduction of railway budget precedes that of the general budget while the former is presented to the lok sabha by the railway minister in the third week of February, the latter is presented to the lok sabha by the finance minister on the last working day of February.

At the end of the speech in the lok sabha which can only discuss it and has no power to vote on the demands for grants.

2. General discussion :

The general discussion on budget beings a few days after its presentation it takes place in both the houses of parliament and lasts usually for three to four days.

3. Scrutiny by departmental committees :

After the general discussion on the budget is over the houses, are adjourned for about three to four weeks during this gap period the 24 departmental standing committees of parliament examine and discuss in detail the demands for grants of the concerned ministers and prepare report on them. These reports are submitted to both the houses of parliament for consideration.

4. Voting on demands for grants:

- In the light of the report of the departmental standing committees the lok sabha takes up voting of demands for grants the demands are presented ministry wise.
- The voting of demands for grants is the exclusive privilege of lok sabha that is the Rajya sabha has no power of voting the demands. The voting is confined to the votable part of the budget- the expenditure charged on the consolidated fund of India is not submitted to the vote.
- While the general budget has a total of 109 demands the railway budget has 32 demands each demands this voted separately by the lok sabha during this stage the member of parliament can discuss the details of the budget they can also move motions to reduce any



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

demand for grant such motions are called as cut motion which are of three kinds:

- **Policy cut motion** : It represents the disapproval of the policy underlying the demand it states that the amount of the demand be reduced to re 1. The members can also advocate an alternative policy.
- **Economy cut motion** : It represents the economy that can be effected in the proposed expenditure it states that the amount of the demand be reduced by a specified amount
- **Token cut motion** : It ventilates a specific grievance that is within the sphere of responsibility of the government of India it states that the amount of the demand be reduce by Rs 100.

5. Passing of appropriation bill:

The constitution states that no money shall be withdrawn from the consolidated fund of India except under appropriation made by law accordingly an appropriation bill is introduced to provide for the appropriation out of the consolidated fund of India all money required to meet:

- The grants voted by the lok sabha.
- The expenditure charged on the consolidated fund of India.

6. Passing of finance bill:

The finance bills introduced to give effect to the financial proposals of the government of India for the following year it is subjected to all conditions applicable to a money bill unlike the appropriation bill the amendments can be moved in the case of finance bill.

Other grants

1. Supplementary grant :

It is grants when the amount authorised by the parliament through the appropriation act for a particular service for the current financial year is found to be insufficient for that year.

2. Additional grant:

It is granted when a need has arisen during the current financial year

3. Excess grant :

It is granted when money has been spent on any service during a financial year in excess of the amount granted for that service in the budget for that year.

4. Vote of credit :

It is granted for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in a budget.

5. Exception grant :

It is granted for a special purpose and forms no part of the current service of any financial year.

6. Token grant:

It is granted when funds to meet the proposed expenditure on a new service can be made available by reappropriation.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Funds

The constitution of India provides for the following three kinds of funds for the central government:

1. Consolidated fund of India (article 266)
2. Public account of India (article 266)
3. Contingency fund of India (article 267)

1. Consolidated fund of India:

It is a fund to which all receipts are credited and all payments are debited in other words (a) all revenues received by the government of India; (b) all loans raised by the government by the issues of treasury bill's loans or ways and means of advances; and (c) all money received by the government in repayment of loans from the consolidated fund of India.

2. Public account of India:

All other public money received by or on behalf of the government of India shall be credited to the public account of India this includes provident fund deposits judicial deposits savings bank deposits departmental deposits remittances and so on.

3. Contingency fund of India :

The constitution authorised the parliament to establish a contingency fund of India into which amounts determined by law are paid from time to time accordingly the parliament enacted the contingency fund of India act in 1950.

Multifunctional role of parliament

In the India politico-administrative system, the parliament occupies a central position and has a multifunctional role.

Functions can be classified under the following heads:

1. Legislative powers and functions
2. Executive powers and functions
3. Financial powers and functions
4. Constituent powers and functions
5. Judicial powers and functions
6. Electoral powers and functions
7. Other powers and functions

1. Legislative powers and functions :

The primary functions of parliament is to make laws for the governance of the country it has exclusive power to make laws on the subjects enumerated in the union list and on the residuary subjects with regard to concurrent list , the parliament has overriding powers, that is, the law of parliament prevails over the law of the state legislature in case of a conflict between the two. the constitution also empowers the parliament to make laws on the subjects

- a) When Rajya sabha passes a resolution to that effect.
- b) When a proclamation of national emergency is in operation.
- c) When two or more states make a joint request to the parliament.
- d) When necessary to give effect to international agreements, treaties and conventions.
- e) When president's rule is in operation in the state.

All the ordinances issued by the president must be approved by the parliament within six weeks after its reassembly.

The parliament makes laws in a skeleton form and authorises the executive to make detailed rules and regulations within the framework of the parent law. This is known as delegated legislation or executive legislation or subordinate legislation.

2. Executive powers and functions :

The ministers are collectively responsible to the parliament in general and to the lok sabha in particular as a part of collective responsibility there is individual responsibility, that is, each minister is individual responsible for the efficient administration of the ministry under his charge.

The lok sabha can also express lack of confidence in the government in the following ways:

By not passing a motion of thanks on the president's inaugural address.

- a) By rejecting a money bill.
- b) By passing a censure motion or an adjournment motion.
- c) By defeating the government on a issue.
- d) By passing a cut motion.

Therefore, the first function of parliament can be said to be select the group which is to form the government, support and sustain it in power so long as it enjoys its confidence, and to expel it when it ceases to do so, and leave it to the people to decide at the next general election,



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. Financial powers and functions :

No tax can be levied or collected and no expenditure can be incurred by the executive except under the authority and with the approval of parliament hence, the budget is placed before the parliament for its approval. The enactment of the budget by the parliament legalises the receipts and expenditure of the government for the ensuing financial year.

The parliament also scrutinises government spending and financial performance with the help of its financial committees. These include public accounts committee, estimates committee and committee on public undertaking

The budget is based on the principle of annuality that is, the parliament grants money to the government for one financial year. If the granted money is not spent by the end of the financial year, then the balance expires and returns to the consolidated fund of India. This practice is known as the rule of lapse it facilitates effective financial control by the parliament as no reserve funds can be built without its authorisation however the observance of this rule leads to heavy rush of expenditure towards the close of the financial year. This is popularly called as 'march rush'

4. Constituent powers and functions :

The parliament is vested with the powers to amend the constitution by way of addition, variation or repeal of any provision. The major part of the constitution can be amended by the parliament with special majority, some other provisions of the constitution can be amended by the parliament with simple majority, only a few provisions of the constitution can be amended by the parliament and with the consent of at



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

least half of the state legislatures however, the power to initiate the process of the amendment of the constitution lies exclusively in the hands of the parliament and not the state legislature there is only one exception, that is the state legislature can pass a resolution requesting the parliament for the creation or abolition of the legislative council in the state. The constituent power of the parliament is not unlimited, it is subject to the basic structure of the constitution in other words the parliament can amend any provision of the constitution. This was ruled by the supreme court in the kesavananda bharati case (1973) and reaffirmed in the Minerva mills case (1980)

5. Judicial powers and functions :

Judicial powers and functions of the parliament include the following:

- a) It can impeach the president for the violation of the constitution.
- b) It can remove the vice- president for the violation office.
- c) It can recommend the removal of judges of the supreme court and the high court, chief election commissioner, comptroller and auditor general to the president
- d) It can punish its members or outsiders for the breach of its privileges or its contempt.

6. Electoral powers and functions :

The parliament participates in the election of the president and elects the vice- president. The lok sabha elects its speaker and deputy speaker, while the Rajya sabha elects its deputy chairman.

7. Other power and functions :

The various other power and functions of the parliament include:

- a) It serves as the highest deliberative body in the country. It discusses various issues of national and international significance.
- b) It approves all the three types of emergencies proclaimed by the president.
- c) It can create or abolish the state legislative council on the recommendation of the concerned state legislative assemblies
- d) It can increase or decrease the area. Alter the boundaries and change the names of states of the India union.
- e) It can regulate the organisation and jurisdiction of the supreme court and high court and can establish a common high court for two or more states.

1. Equal status with lok sabha :

In the following matters, the powers and status of the rajya sabha are equal to that of lok sabha :

- Introduction and passage of ordinary bills.
- Introduction and passage of constitution amendment bills.
- Introduction and passage of financial bills involving expenditure from the consolidated fund of India.
- Election and impeachment of the president.
- Election and removal of the vice- president however, Rajya sabha alone can initiate the removal of the vice- president.
- Making recommendation to the president for the removal of chief justice and judges of supreme court and high court, chief election commissioner and comptroller and auditor general.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- Approval of ordinances issued by the president.
- Approval of proclamation of all three types of emergencies by the president.
- Selection of ministers including the prime minister.
- Consideration of the report of the constitutional bodies like finance commission, union public service commission, comptroller and auditor general, etc.
- Enlargement of the jurisdiction of the supreme court and the union public service commission.

2. Unequal status with lok sabha :

In the following matters, the powers and status of the Rajya sabha are unequal to that of the lok sabha :

- A money bill can be introduced only in the lok sabha and can be introduced only in the lok sabha and not in the Rajya sabha.
- Rajya sabha cannot amend or reject a money bill. It should return the bill to the lok sabha within 14 days, either with recommendations or without recommendations.
- The lok sabha can either accept or reject all or any of the recommendations of the Rajya sabha. In both the cases, the money bill is deemed to have been passed by the two houses.
- A financial bill, not containing solely the matters of article 110, also can be introduced only in the lok sabha and not in the Rajya sabha
- The final power to decide whether a particular bill is a money bill or not is vested in the speaker of the lok sabha.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- The speaker of lok sabha presides over the joint sitting of both the houses.
- The lok sabha with greater number wins the battle in a joint sitting except when the combined strength of the ruling party in both the houses is less than that of the opposition parties.
- Rajya sabha can only discuss the budget but cannot vote on the demands for grants
- A resolution for the discontinuance of the national emergency can be passed only by the lok sabha and not by the Rajya sabha.
- The Rajya sabha cannot remove the council of ministers by passing a no- confidence motion. This is because the council of ministers is collectively responsible only to the lok sabha. But the Rajya sabha can discuss and criticise the policies and activities of the government.

3. Special powers of Rajya sabha :

Due to its federal character, the Rajya sabha has been given two exclusive or special powers that are not enjoyed by the lok sabha:

- It can authorise the parliament to make a law on a subject enumerated in the state list (Article 249).
- It can authorise the parliament to create new all- India services common to both the centre and states (article 312)

Classification

Parliamentary privileges can be classified into two broad categories:



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

1. Those that are enjoyed by each house of parliament collectively, and
2. Those that are enjoyed by the members individually.

Collective privileges : The privileges belonging to each house of parliament collectively are:

1. It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same. The 44th amendment act 1978 restored the freedom of the press to publish true report
2. It can exclude strangers from its proceedings and hold secret sitting to discuss some important matters.
3. It can punish members as well as outsiders for breach of its privileges or its contempt.
4. It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
5. The court are prohibited to inquire into the proceedings of a house or its committees.
6. No person can be arrested, and no legal process can be served within the precincts of the house without the permission of the presiding officer.

Individual privileges : The privileges belonging to the members individually are:

1. They cannot be arrested during the session of parliament and 40 days before the beginning and 40 days after the end of a session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

2. They have freedom of speech in parliament no member is liable to any proceeding in any court for anything said or any vote given by him in parliament or its committees.
3. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when parliament is in session.

Breach of privilege and contempt of the house

When any individual or authority disregards or attack any of the privileges, rights and immunities, either of the member individually or of the house in its collective capacity, the offence is termed as breach of privilege and is punishable by the house.

Parliamentary committees

Broadly, parliamentary committees are of two kinds- standing committees and Ad Hoc committees. The former are permanent and work on a continuous basis, while the latter are temporary and cease to exist on completion of the task assigned to them.

Standing committees

1. Financial committees

- Public accounts committee
- Estimates committee
- Committee on public undertakings



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

2. Departmental standing committees (24)

3. Committees to inquire

- Committee on petitions
- Committee on privileges
- Ethics committee

4. Committees to scrutinise and control

- Committee on government assurances
- Committee on subordinate legislation
- Committee on papers laid on the table
- Committee on welfare of SCs and STs
- Committee on empowerment of women
- Joint committee on offices of profit

5. Committees relating to the Day- to- Day business of the house

- Business advisory committee
- Committee on private members bills and resolutions
- Rules committee
- Committee on absence of members from sittings of the house

6. House- keeping committees or service committees

(i.e., committees concerned with the provision of facilities and services to member):

- General purpose committee
- House committee
- Library committee
- Joint committee on salaries and allowances of members



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Ad Hoc committees

Ad hoc committee can be divided into two categories, that is, inquiry committee and advisory committee.

1. Inquiry committees are constituted from time to time, either by the two houses on a motion adopted in that behalf, or by the speaker/ chairman, to inquire into and report on specific subjects.
2. Advisory committee include select or joint committees on bills, which are appointed to consider and report on particular bills. These committees are distinguishable from the other ad hoc committee in as much as they are concerned with bills and the procedure to be followed by them is laid down in the rules of procedure and the directions by the speaker chairman.

Financial committees

Public accounts committee

This committee was set up first in 1921 under the provisions of the government of India act of 1919. At present , it consists of 22 member (15 from the lok sabha and 7 from the Rajya sabha). The member are elected by the parliament every year from amongst its members.

The term of office of the members is one year. A minister cannot be elected as a member of the committee the chairman of the committee is appointed from amongst its members by the speaker until 1966- 67 the chairman of the committee belonged to the ruling party. However, since 1967 a convention has developed whereby the chairman of the committee is selected invariably from the opposition.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

The function of the committee is to examine the annual audit report of the comptroller and auditor general of India, which are laid before the parliamentary by the president.

IN MORE DETAIL, THE FUNCTIONS OF THE COMMITTEE ARE:

1. To examine the appropriation accounts and the finance accounts laid before the lok sabha
 2. In scrutinising the appropriation accounts and the audit report of CAG.
 3. TO Examine the accounts of state corporations, trading concerns and manufacturing projects and the audit report of CAG.
 4. To examine the accounts of autonomous and semi- autonomous bodies, the audit of which is conducted by the CAG
 5. To consider the report of the CAG relating to the audit of any receipt or to examine the accounts of stores and stocks
 6. To examine the money spent on any service during a financial year in excess of the amount granted by the lok sabha for that purpose
- In the fulfilment of the above functions, the committee is assisted by the CAG. In fact, the CAG acts as a guide, friend and philosopher of the committee.

Estimates Committee

The origin of this committee can be traced to the standing financial committee set up in 1921. The first estimates committee in the post-independence era was constituted in 1950 on the recommendation of John Mathai, the then finance minister. Originally, it had 25 members but



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

in 1956 its membership was raised to 30. All the thirty members are from lok sabha only. The Rajya sabha has no representation in this committee. These members are elected by the lok sabha every year from amongst its own members, the term of office is one year. The chairmen of the committee is appointed by the invariably from the ruling party.

The function of the committee is to examine the estimates included in the budget and suggest `economies` in public expenditure. Hence, it has been described as a continuous economy committee.

1. To report what economies, improvements in organisation,
2. To suggest alternative policies in order to bring about efficiency and economy in administration
3. To examine whether the money is well laid out within the limits of the policy implied in the estimates
4. To suggest the forth in which the estimates are to be presented to parliament

Committee on public undertakings

This committee was created in 1964 on the recommendation of the Krishna menon committee. Originally, it had 15 members. However, in 1974, its membership was raised to 22. The ,members of this committee are elected by the parliament every year from amongst its own members, all parties get due representation in it. The term of office of the members is one year. The chairman of the committee is appointed by the speaker from amongst its members who are drawn from the lok sabha only thus the members of the committee who are from the Rajya sabha cannot be appointed as the chairman.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

The functions of the committee are :

1. To examine the reports and accounts of public undertakings
2. To examine the reports of the comptroller and auditor general on public undertakings
3. To examine whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices
4. To examine such other functions vested in the public accounts committee and the estimates committee in relation to public undertakings which are allotted to it by the speaker from time to time.

Departmental standing committee

On the recommendation of the rules committee of the lok sabha, 17 departmentally- related standing committees were set up in the parliament in 2004, seven more such committee were setup, thus increasing their number from 17 to 24.

The main objective of the standing committee is to secure more accountability of the executive to the parliament, particularly financial accountability. They also assist the parliament in debating the budget more effectively.

The 24 standing committee cover under their jurisdiction all the ministers / departments of the central government.

Each standing committee consists of 31 members. The members of the lok sabha are nominated by the speaker from amongst its own members, just as the members of the Rajya sabha are nominated by the chairman from amongst its members.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

The term of office of each standing committee is one year from the date of its constitutions.

Out of the 24 standing committee, 8 work under the Rajya sabha and 16 under the lok sabha.

The functions of each of the standing committees are:

1. To consider the demands for grants of the concerned ministers / departments before they are discussed and voted in the lok sabha its report should not suggest anything of the nature of cut motions
2. To examine bills pertaining to the concerned ministers/ departments
3. To consider annual report of ministers/ departments
4. To consider national basic long -term policy documents presented to the houses

Committees to inquire

- Committee on petitions
- Committee of privileges
- Ethics committee

Committee to scrutinise and control

- Committee on government assurances
- Committee on subordinate legislation
- Committee on paper laid on the table
- Committee on welfare of SCs and STs
- Committee on empowerment of women
- Joint committee on offices of profit



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Committee relating to the day- to- day business of the house

- Business advisory committee
- Committee on private members` bill and resolutions
- Rules committee
- Committee on absence of members

House keeping committees

- General purpose committee
- House committee
- Library committee

Joint committee on salaries and allowances of members

Consultative committees: consultative committee are attached to various ministers/ departments of the central government they consist of members of both the houses of parliament. The minister/ minister of state in charge of the ministry concerned acts as the chairman of the consultative committee of that ministry.

The committee provide a forum for informal discussions between the ministers and the members of parliament on policies and programmes of the government and the manner of their implementation.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Supreme court

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.

Organisation of supreme court

- At present, the supreme court consists of thirty – one judges. In February 2009, the centre notified an increase in the number of supreme court judges from twenty- six to thirty – one, including the chief justice of India.
- This followed the enactment of the supreme court amendment act, 2008. Originally, the strength of the supreme court was fixed at eight. The parliament has increased this number of other judges progressively to ten in 1956, to thirteen in 1960, to seventeen in 1977 and to twenty- five in 1986.

Judges

Appointment of judges:

The judges of the supreme court are appointed by the president. The chief justice is appointed by the president after consultation with such judges of the supreme court and high court as he deems necessary the other judges are appointed by president after consultation with the chief justice and such other judges of the supreme court and the high court as he deems necessary.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Controversy over consultation:

The supreme court has given different interpretation of the word consultation in the above provision. In the first fudges case (1982), the court held that consultation does not mean concurrence and it only implies exchange of views but, in the second judges case (1993), the court reversed its earlier ruling and changed the meaning of the word consultation to concurrence. Hence it ruled that the advice tendered by the chief justice of India is binding on the president in the matters of appointment of the judges of the supreme court. But the chief justice would tender his advice on the matter after consulting two of his seniormost colleagues. Similarly, in the thir4d judges case (1998), the court opined that the consultation process to be adopted by the plurality judges. The sole opinion of the chief justice of India does not constitute the consultation process. He should consult a collegiums of four seniormost judges of the supreme court and even if two judges give an adverse opinion, he should not send the recommendation to the government. The court held that the recommendation made by the norms and requirements of the consultation process are not binding on the government.

Appointment of chief justice:

From 1950 to 1973, the practice has been to appoint the seniormost judges of the supreme court as the chief justice of India. This established convention was violated in 1973 when A N Ray was appointed as the chief justice of India by superseding the then senior- most judge. This discretion of the government was curtailed by the supreme court in the second judges case (1993), in which the supreme court ruled that the



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

senior – most judge of the supreme court should alone be appointed to the office of the chief justice of India.

Qualifications of judges:

1. He should be a citizen of India.
2. (a) he should have been a judge of ma high court for five years; or
(b) he should have been an advocate of a high court for ten years; or
(c) he should be a distinguished jurist in the opinion of the president. From the above, it is clear that the constitution has not prescribed a minimum age for appointment as a judge of the supreme court.

Oath or affirmation :

Has to make and subscribed an oath or affirmation before the president, or some person appointed by him for this purpose.

Tenure of judges :

The constitution has not fixed the tenure of a judge of the supreme court. However, it makes the following three provisions in this regard:

1. He holds office until he attains the age of 65 years. Any question regarding his age is to be determine by such authority and in such manner as provided by parliament.
2. He can resign his office by writing to the president.
3. He can be removed from his office by the president on the recommendation of the parliament.

Removal of judges :

A judge of the supreme court can be removed from his office by an order of the president. The president can issue the removal order only after an address by parliament has been presented to him in the same session for such removal. The address must be supported by a special majority of each house of parliament. The grounds of removal are two-proved misbehaviour or incapacity.

The judges enquiry act (1968) regulates the procedure relating to the removal of a judge of the supreme court by the process of impeachment:

1. A removal motion signed by 100 members or 50 members is to be given to the speaker/ chairman.
2. The speaker/ chairman may admit the motion or refuse to admit it.
3. If it is admitted, then the speaker/ chairman is to constitute a three-members committee to investigate into the charges.
4. The committee should consist of (a) the chief justice or a judge of the supreme court, (b) a chief justice of a high court, and (c) a distinguished jurist.
5. If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the house can take up the consideration of the judge.
6. After the motion is passed by each house of parliament by special majority, an address is presented to the president for removal of the judge.
7. Finally, the president passes an order removing the judge.
 - a. It is interesting to know that no judge of the supreme court has been impeached so far. The first and the only case of



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

impeachment is that of justice V Ramaswami of the supreme court (1991-1993). Though the enquiry committee found him guilty of misbehaviour. He could not be removed as the impeachment motion was defeated in the lok sabha. The congress party abstained from voting.

Salaries and allowances :

The salaries, allowances, privileges, leave and pension of the judges of the supreme court are determined from time to time by the parliament.

Acting chief justice:

The president can appoint a judge of the supreme court as an acting chief justice of India when:

1. The office of chief justice of India is vacant; or
2. The chief justice of India is temporarily absent; or
3. The chief justice of India is unable to perform the duties of his office.

Ad hoc judge :

When there is a lack of quorum of the permanent judges to hold continue any session of the supreme court, the chief justice of India can appoint a judge of a high court as an ad hoc judge of the supreme court for a temporary period he can do so only after consultation with the chief justice of the high court concerned and with the previous consent of the president.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Retired judges:

At any time, the chief justice of India can request a retired judge of the supreme court or a retired judge of a high court to act as a judge of the supreme court for a temporary period he can do so only with the previous consent of the president and also of the person to be so appointed such a judge is entitled to such allowances as the president may determine.

SEAT OF SUPREME COURT

The constitution declares dehli as the seat of the supreme court. But it also authorises the chief justice of India to appoint other place or places as seat of the supreme court he can take decision in this regard only with the approval of the president.

JURISDICTION AND POWERS OF SUPREME COURT

The constitution has conferred a very extensive jurisdiction and vast powers on the supreme court. It is not only a federal court like the American supreme court but also a final court of appeal like the British house of lords. It is also the final interpreter and guardian of the constitution and guarantor of the fundamental rights of the citizens. Further, it has advisory and supervisory powers. Therefore, Alladi krishnaswamy ayyar, a member of the drafting committee of the constitution, rightly remarked: the supreme court in any part of the supreme court can be classified into the following:



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

1. Original jurisdiction.
2. Writ jurisdiction.
3. Appellate jurisdiction.
4. Advisory jurisdiction.
5. A court of record.
6. Power of judicial review.
7. Other powers.

1. Original jurisdiction:

As a federal court, the supreme court decides the disputes between different units of the India federation. More elaborately, any dispute between:

- The centre and one or more states; or
- The centre and any state or states on one side and one or more states on the other; or
- Between two or more states.

In the above federal disputes, the supreme court has exclusive original jurisdiction. Exclusive means. No other court can decide such disputes and original means, the power to hear such disputes in the first instance, not by way of appeal.

Further, this jurisdiction of the supreme court does not extend to the following:

1. a disputes arising out of any pre- constitution treaty, agreement, covenant, engagement, sanad or other similar instrument.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

2. A disputes arising out of any treaty, agreement etc., which specifically provides that the said jurisdiction does not extent to such a dispute.
3. Inter- state water disputes.
4. Matters referred to the finance commission.
5. Adjustment of certain expenses and pensions between the centre and the state.
6. Ordinary disputes of commercial nature between the centre and the states.
7. Recovery of damages by a state against the centre.

2. Writ jurisdiction :

The constitution has constituted the supreme court as the guarantor and defender of the fundamental rights of the citizen. The supreme court is empowered to issue writs including habeas corpus, mandamus, prohibition, quo- warrento and certiorari for the enforcement of the fundamental rights of an aggrieved citizen. However the writ jurisdiction of the supreme court is not exclusive the high court are also empowered to issue writs for the enforcement of the fundamental rights. It means, when the fundamental rights of a citizen are violated, the aggrieved party has the option of directly.

There is also a difference between the writ jurisdiction of the supreme court and that of the high court. The supreme court can issue writs only for the enforcement of the fundamental rights and not for other purposes. The high court, on the other hand, can issue writs not only for the enforcement of the fundamental right but also for other purpose it means that the writ jurisdiction of the high court .

3. Appellate jurisdiction :

As mentioned earlier, the supreme court has not only succeeded the federal court of India but also replaced the British privy council as the highest court of appeal. The supreme alleals against the appellate jurisdiction which can be classified under four heads:

- Appeals in constitutional matters.
- Appeals in civil matters.
- Appeals in criminal matters.
- Appeals by special leave.

a) Constitutional matters: In the constitutional cases, an appeal can be made to the supreme court against the judgement of a high court if the high court certifies that the case involves a substantial question of law that requires the interpretation of the constitution. Based on the certificate, the party in the case can appeal to the supreme court on the ground that the question has been wrongly decided.

b) Civil matters : In civil cases, an appeal lies to the supreme court from any judgement of a high court if the high court certifies

- (i) That the case involves a substantial question of a law of general importance; and
- (ii) That the question needs to be decided by the supreme court.

c) Criminal matters:

Articles related to supreme court at a glance

Article no.	Subject- matter
124	Establishment and constitution of supreme court
125	Salaries, etc., of judges
126	Appointment of acting chief justice
127	Appointment of ad hoc judges
128	Attendance of retired judges at sitting of the supreme court
129	Supreme court to be a court of record
130	Seat of supreme court
131	Original jurisdiction of the supreme court
131A	Exclusive jurisdiction of the supreme court in regard to question as to constitutional validity of central laws
132	Appellate jurisdiction of supreme court in appeals from high court in certain cases
133	Appellate jurisdiction of supreme court in appeals from high court in regard to civil matters
134	Appellate jurisdiction of supreme court in regard to criminal matters
134A	Certificate for appeal to the supreme court
135	Jurisdiction and powers of the federal court under existing law to be exercisable by the supreme court
136	Special leave to appeal by the supreme court
137	Review of judgment or order by the supreme court
138	Enlargement of the jurisdiction of the supreme court
139	Conferment on the supreme court of powers to issue certain writs
139A	Transfer of certain cases
140	Ancillary powers of supreme court

GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

141	Law declared by supreme court to be binding on all court
142	Enforcement of decrees and order of supreme court and orders as to discovery, etc.
143	Power of president to consult supreme court
144	Civil and judicial authorities to act in aid of the supreme court
144A	Special provision as to disposal of questions relating to constitutional validity of laws
145	Rules of court, etc.
146	Officers and servants and the expenses of the supreme court
147	interpretation



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

GOVERNOR

Part VI of the constitution, which deals with the government in the states, is not applicable to the state of jammu and Kashmir, which enjoys a special status and has a separate constitution of its own.

Article 153 to 167 in part VI of the constitution deal with the state executive. The chief minister, the state.

The governor is the chief executive head of the state. But, like the president, he is a nominal executive head. The governor also acts as an agent of the central government therefore, the office of governor has a dual role.

Usually, there is a governor for each state, but the 7th constitutional amendment act of 1956 facilitated the appointment of the same person as a governor for two or more states.

APPOINTMENT OF GOVERNOR

The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president.

The constitution lays down only two qualifications for the appointment of a person as a governor these are:

1. He should be a citizen of India.
2. He should have completed the age of 35 years.

He should be an outsider, that is, he should not belong to the state where he is appointed, so that he is free from the local politics. Second, while appointing the governor, the president is required to consult the



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

chief minister of the state concerned, so that the smooth functioning of the constitutions have been violated in some of the cases.

CONDITIONS OF GOVERNOR'S OFFICE

1. He should not be a member of either house of parliament or a house of the state legislature. If any such person is appointed as governor, he is deemed to have vacated his seat in that house on the date on which he enters upon his office as the governor.
2. He should not hold any other office of profit.
3. He is entitled without payment of rent to the use of his official residence.
4. He is entitled to such emoluments, allowances and privileges as may be determined by parliament.
5. When the same person is appointed as the governor of two or more states, the emoluments and allowances payable to him are shared by the states in such proportion as determined by the president.
6. His emoluments and allowances cannot be diminished during his term of office.

TERM OF GOVERNOR'S OFFICE

A governor holds office for a term of five years from the date on which he enters upon his office. However, this term of five years is subject to the pleasure of the president further, he can resign at any time by addressing a resignation letter to the president.

POWERS AND FUNCTIONS OF GOVERNOR

The powers and functions of the governor can be studied under the following heads:

1. Executive powers.
2. Legislative powers.
3. Financial powers.
4. Judicial powers.

1. EXECUTIVE POWERS

The executive powers and functions of the governor are:

1. All executive actions of the government of a state are formally taken in his name.
2. He can make rules specifying the manner in which the orders and other instruments made and executed in his names shall be authenticated.
3. He can make rules for more convenient transaction of the business of a state government and for the allocation among the ministers of the said business.
4. He appoints the chief minister and other ministers. They also hold office during his pleasure.
5. He appoints the advocate general of a state and determines his remuneration.
6. He appoints the state election commissioner and determines his conditions of service and tenure of office.
7. He appoints the chairman and members of the state public service commission.

8. He can seek any information relating to the administration of the affairs of the state and proposals for legislation from the chief minister.
9. He can recommend the imposition of constitutional emergency in a state to the president
10. He acts as the chancellor of universities in the state he also appoints the vice- chancellors of universities in the state.

2. Legislative powers

A governor is an integral part of the state legislature. In that capacity, he has the following legislative powers and functions:

1. He can summon or prorogue the state legislature and dissolve the state legislative assembly.
2. He can address the state legislature at the commencement of the first session after each general election and the first session of each year.
3. He can send messages to the house or houses of the state legislature, with respect to a bill pending in the legislature or otherwise.
4. He can appoint any member of the state legislative assembly to preside over its proceedings when the offices of both the speaker fall vacant.
5. He nominates one- sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, arts, cooperative movement and social service.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

6. He can nominate one member to the state legislature assembly from the anglo- India community.
7. He decides on the question of disqualification of members of the state legislature in consultation with the election commission.
- (b) reserve the bill for the consideration of the president.

3. Financial powers

1. He sees that the annual financial statement is laid before the state legislature.
2. Money bill can be introduced in the state legislature only with his prior recommendation
3. No demand for a grant can be made except on his recommendation.
4. He can make advances out of the contingency fund of the state to meet any unforeseen expenditure.
5. He constitutes a finance commission after every five years to review the financial position of the panchayats and the municipalities.

4. Judicial powers

1. He can grants pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.
2. He is consulted by the president while appointing the judges of the concerned state high court.
3. He makes appointment, postings and promotions of the district judges in consultation with the state high court.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

4. He also appoints person to the judicial service of the state in consultation with the state high court and the state public service commission.

Constitutional position of governor

1. The executive power of the state shall be vested in the governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this constitution (artical 154)
2. There shall be a council of ministers with the chief minister as the head to aid and advise the governor in the
3. The council of ministers shall be collectively responsible to the legislative assembly of the state this provision is the foundation of the parliamentary system of government in the state .

The governor has constitutional direction in the following cases:

1. Reservation of bill for the consideration of the president.
2. Recommendation for the imposition of the president`s rule in the state.
3. While exercising his functions as the administrator of an adjoining union territory
4. Determining the amount payable by the government of Assam, Meghalaya, Tripura and Mizoram to an autonomous tribal district council as royalty accruing from licences for mineral exploration.
5. Seeking information from the chief minister with regard to the administrative and legislative matters of the state.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

The governor, like the president, also has situational discretion in the following cases:

1. Appointment of chief minister when no party has a clear-cut majority in the state legislative assembly or when the chief minister in office dies suddenly and there is no obvious successor.
2. Dismissal of the council of ministers when cannot prove the confidence of the state legislative assembly.
3. Dissolution of the state legislative assembly if the council of ministers has lost its majority.

Chief Minister

The governor is the nominal executive authority and the chief minister is the real executive authority. In other words, the governor is the head of the state while the chief minister is the head of the government.

Appointment of chief minister

Article 164 says that the chief minister shall be appointed by the governor. In accordance with the conventions of the parliamentary system of government, the governor has to appoint the leader of the majority party in the state legislative assembly as the chief minister. But when no party has a clear majority in the assembly, then the governor may exercise his personal discretion in the selection and appointment of the chief minister. In such a situation, the governor usually appoints the leader of the largest party or coalition in the assembly as the chief minister and ask him to seek a vote of confidence in the house within a month.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

The constitution does not require that a person must prove his majority in the legislative assembly before he is appointed as the chief minister. The governor may first appoint him as the chief minister and then ask him to prove his majority in the legislative assembly within a reasonable period

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

The term of the chief minister is not fixed and he holds office during the pleasure of the governor however, this does not mean that the governor can dismiss him at any time. He cannot be dismissed by the governor as long as he enjoys the majority support in the legislative assembly

IN RELATION TO COUNCIL OF MINISTERS

1. The governor appoints only those person as ministers who are recommended by the chief minister.
2. He allocates and reshuffles the portfolios among ministers.
3. He can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.
4. He presides over the meetings of the council of ministers and influences its decisions.
5. He guides, directs, controls and coordinates the activities of all ministers.
6. He can bring about the collapse of the council of ministers by resigning from office. Since the chief minister is the head of the



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

council of ministers, his resignation or death automatically dissolves the council of ministers. The resignation or death of any other minister, on the other hand, merely creates a vacancy, which the chief minister may not like to fill.

IN RELATION TO THE GOVERNOR

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



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

IN RELATION TO STATE LEGISLATURE

1. He advise the governor with regard to the summoning and proroguing of the sessions of the state legislature.
2. He can recommended the dissolution of the legislative assembly to the governor at any time.
3. He announces the government policies on the floor of the house.

OTHER POWERS AND FUNCTIONS

1. He is the chairman of the state planning board
2. He acts as a vice- chairman of the concerned Zonal council by rotation, holding office for a period of one year at a time.
3. He is a member of the inter- state council and the national development council, both headed by the prime minister.
4. He is the chief spokesman of the state government.
5. He is the crisis manager- in – chief at the political level during emergencies.
6. As a leader of the state, he meets various sections of the people and receives memoranda from them regarding their problems, and so on.
7. He is the political head of the services.

RELATIONSHIP WITH THE GOVERNOR

1. Article 163: there shall be a council of ministers with the chief minister as the head to aid and advise the governor on the exercise of his functions, except in so far as he is required to exercise his functions or any of them in his discretion.
2. Article 164:

- a. The chief minister shall be appointed by the governor and other ministers shall be appointed by the governor on the advise of the chief minister;
 - b. The ministers shall hold office during the pleasure of the governor; and
 - c. The council of ministers shall be collectively responsible to the legislative assembly of the state.
3. Article 167: it shall be the duty of the chief minister :
- a. To communicate to the governor of the state all decisions of the council of ministers relating to the administration of the affairs of the state and proposals for legislation;
 - b. To furnish such information relating to the administration of the affairs of the state and proposals for legislation as the governor may call for; and
 - c. If the governor so requires, to submit for the consideration of the council of ministers any matters on which a decision has been taken by a minister but which has not been considered by the council.

Article related to chief minister at a glance

Article no.	Subject- matter
163	Council of ministers to aid and advise governor
164	Other provision as to ministers
166	Conduct of business of the government of a state
167	Duties of chief minister as respects the furnishing of information to governor, etc

State council of ministers

Article 163- council of ministers to aid and advise governor

1. There shall be a council of ministers with the chief minister as the head to aid and advise the governor in the exercise of his functions, except in so far as he is required to exercise his function in his discretion.
2. If any question arises whether a matter falls within the governor's discretion or not, decision of the governor shall be final. And the validity of any thing done by the ground that he ought or ought not to have acted in his discretion.
3. The advice tendered by ministers to the governor shall not be inquired into in any court.

Article 164- other provisions as to ministers

1. The chief ministers shall be appointed by the governor and the ministers shall be appointed by the governor on the advice of the chief minister.
2. The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed 15 per cent of the total strength of the legislative assembly of that state. But, the provision was added by the 91st amendment act of 2003.
3. A member of either house of state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. The provision was also added by the 91st amendment act of 2003.
4. The minister shall hold office during the pleasure of the governor.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

5. The council of ministers shall be collectively responsible to the state legislative assembly.
6. The governor shall administer the oaths of office and secrecy to a minister.
7. A minister who is not a member of the state legislature for any period of six consecutive months shall cease to be minister.
8. The salaries and allowances of ministers shall be determined by the state legislature.

Appointment of ministers

The chief minister is appointed by the governor. The other ministers are appointed by the governor on the advice of the chief minister. This means that the governor can appoint only those persons as ministers who are recommended by the chief minister.

RESPONSIBILITY OF MINISTERS

COLLECTIVE RESPONSIBILITY

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility. Article 164 clearly states that the council of ministers is collectively responsible to the legislative assembly of the state. This means that all the ministers own joint responsibility to the legislative assembly for all their acts of omission and commission. They work as a team and swim or sink together. When the legislative assembly passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the legislative council.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

The principle of collective responsibility also mean that the cabinet decision bind all cabinet ministers even if they deferred in the cabinet meeting it is the duty of every minister to stand by the cabinet decision and support them both within and outside the state legislature. If any ministers disagrees with a cabinet decision and is not prepared to defend it. He must resign.

INDIVIDUAL RESPONSIBILITY

Article 164 also contains the principle of individual responsibility. It states that the ministers hold office during the pleasure of the governor, this , means that the governor can remove a minister at a time when the council of ministers enjoys the confidence of the legislative assembly. But, the governor can remove a minister only on the advice of the chief minister. In case of difference of opinion or dissatisfaction with the performance of a minister, the chief minister can ask him to resign or advice the governor to dismiss him.

COMPOSITION OF THE COUNCIL OF MINISTERS

Like at the centre, in the state too, the council of ministers consist of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments, and political importance. At the top of all these ministers stands the chief minister- supreme governing authority in the state.

The cabinet ministers head the important departments of the state government like home, education, finance, agriculture and so forth.

The ministers of state can either be given independent charge of departments or can be attached to cabinet ministers. However, they are not members of the cabinet and do not attend the cabinet meetings



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

unless specially invited when something related to their departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of departments. They are attached to the cabinet ministers and assist them in their administrative, political and parliamentary duties. They are not members of the cabinet and do not attend cabinet meeting.

CABINET

A smaller body called cabinet is the nucleus of the council of ministers. It consists of only the cabinet ministers. It is the real centre of authority in the state government. It performs the following role:

1. It is the highest decisionmaking authority in the politico-administrative system of a state.
2. It is the chief policy formulating body of the state government.
3. It is the supreme executive authority of the state government.
4. It is the chief coordinator of state administration
5. It is an advisory body to the governor
6. It is the chief crisis manager and thus deals with all emergency situations.
7. It deals with all major legislative and financial matters.
8. It exercise control over higher appointments like constitutional authorities and senior secretariat administrators.

Cabinet committee

The cabinet works through various committee called cabinet committees. They are of two types- standing and ad hoc. The former are of a permanent nature while the latter are of a temporary nature.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

State legislature

Article 168 to 212 in part VI of the constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature.

Organisation of state legislature

There is no uniformity in the organisation of state legislature. Most of the state have an unicameral system, while others have a bicameral system. At present(2013), only 7 state have two house. These are Andhra Pradesh, uttar Pradesh, Bihar, Maharashtra , Karnataka and Jammu and Kashmi rand telangana

The twenty- two states have unicameral system. Here, the state legislature consists of the governor and the legislative assembly. In the state having dicameral system, the state legislature consists of the governor, the legislative council and the legislative assembly. The legislative council is the upper house, while the legislative council and the legislative assembly. The legislative council the upper house, while the legislative assembly is the lo0wer house.

The constitution provides for the abolition or creation of legislative councils in states. Accordingly, the parliament can also a legislative council or create it, if the legislative assembly of the concerned state passes a resolution to that effect. Such a specific resolution must be passed by the state assembly by a special majority,

This act of parliament is not to be deemed as an amendment of the constitution for the purposes of article 368 and is passed like an ordinary piece of legislation.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Composition of two houses

Composition of assembly

Strength

The legislative assembly consists of representative directly elected by the people on the basis of universal adult franchise. Its maximum strength is fixed at 500 and minimum strength at 60. It means that its strength varies from 60 to 500 depending on the population size of the state. However, in case of Arunachal Pradesh, Sikkim and Goa, the minimum number is fixed at 30 and in case of Mizoram and Nagaland, it is 40 and 46 respectively.

Nominated member

The governor can nominate one member from the anglo- Indian community, originally, this provision was to operate for ten years. But this duration has been extended continuously since then by 10 years each time. Now, under the 95th amendment act of 2009, this is to last until 2020.

Territorial constituencies

For the purpose of holding direct elections to the assembly, each state is divided into territorial constituencies. The demarcation of these constituencies is done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Readjustment after each census

After each census, a readjustment is to be made in the (a) total number of seats in the assembly of each state and (b) the division of each state into territorial constituencies.

The 42nd amendment act of 1976 had frozen total number of seats in the assembly of each state and the division of such state into territorial constituencies till the year 2000 at the 1971 level. This ban on readjustment has been extended for another years by the 84th amendment act of 2001 with the same objective of encouraging population limiting measures.

Reservation of seats for SCs and STs

The constitution provides for the reservation of seats for scheduled castes and scheduled tribes in the assembly of each state on the basis of population ratios. Originally, this reservation was to operate for ten years. But this duration has been extended continuously since then by 10 years each time. Now, under the 95th amendment act of 2009, this reservation is to last until 2020.

Composition of council

Strength

Unlike the members of the legislative assembly, the members of the legislative council are indirectly elected. The maximum strength of the council is fixed at one- third of the total strength of the assembly and the minimum strength is fixed at 40. It means that the size of the council depends on the size of the assembly of the concerned state. This is done to ensure the predominance of the directly elected house in the legislative affairs of the state. Though the constitution has fixed the



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

maximum and the minimum limits, the actual strength of a council is fixed by parliament.

Manner of election

Of the total number of members of a legislative council:

1. $\frac{1}{3}$ are elected by the members of local bodies in the state like municipalities, district boards, etc.,
2. $\frac{1}{12}$ are elected by graduates of three years standing and residing within the state,
3. $\frac{1}{12}$ are elected by teachers of three years standing in the state, not lower in standard than secondary school,
4. $\frac{1}{3}$ are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and
5. The remainder are nominated by the governor from amongst persons who have a special knowledge or practical experience of literature, science, art, cooperative movement and social service.

Duration of two houses

Duration of assembly

Like the lok sabha, the legislative assembly is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections. The expiration of the period of five years operates as automatic dissolution of the assembly. However, the governor is authorised to dissolve the assembly at any time to pave the way for fresh elections. Further, the term of the assembly can be extended during the period of national emergency by a law of parliament



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

for one year at a time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate this means that the assembly should be re- elected within six months after the revocation of emergency.

Duration of council

Like the Rajya sabha, the legislative council is a continuing chamber, that is, it is a permanent body and is not subject to dissolution. But, one- third of its members retire on the expiration of every second year. So, a member continues as such for six years. The vacant seats are filled up by fresh elections and nominations at the beginning of every third year. The retiring members are also eligible for re- election and re- nomination any number of times.

Membership of state legislature

Qualifications:

The constitution lays down the following qualifications for a person to be chosen a member of the state legislature.

1. He must be a citizen of India.
2. He must make and subscribe to an oath or affirmation before the person authorised by the election commission for this purpose.
3. He must be not less than 30 years of age in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly .
4. He must possess other qualifications prescribed by parliament.

Accordingly, the parliament has laid down the following additional qualifications in the representation of people act(1951):



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- A person to be elected to the legislative council must be an elector for an assembly constituency in the concerned state and to be qualified for the governor's nomination, he must be a resident in the concerned state.
- A person to be elected to the legislative assembly must be an elector for an assembly constituency in the concerned state.
- He must be a member of a scheduled caste or scheduled tribe if he wants to contest a seat reserved for them.

Disqualifications

Under the constitution, a person shall be disqualified for being chosen as and for being a member of the legislative assembly or legislative council of a state:

1. If he holds any office of profit under the union or state government
2. If he is of unsound mind and stands so declared by a court,
3. If he is an undischarged insolvent,
4. If he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state.
5. If he is so disqualified under any law made by parliament.

Accordingly, the parliament has prescribed a number of additional disqualification in the representation of people act (1951). These are similar to those for parliament. These are mentioned here:

- a) He must not have been found guilty of certain election offences or corrupt practices in the elections.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- b) He must not have been convicted for any of fence resulting in imprisonment for two or more years. But, the detention of a person under a prevention detention law is not a disqualification.
- c) He must not have failed to lodge an account of his election expenses within the time.
- d) He must not have any interest in government contracts, works or service.
- e) He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has least 25 per cent share.
- f) He must not have been dismissed from government service for corruption or disloyalty to the state.
- g) He must not have been convicted for promoting enmity between different groups or for the offence of birbery.
- h) He must not have been convicted for promoting enmity practicing social crime such as untouchability, dowry and sati.

Disqualification on ground of defection:

The constitution also lays down that a person shall be disqualified for being a member of either house of state legislature if he is so disqualified on the ground of defection under the provisions of the tenth schedule.

The question of disqualification under the tenth schedule is decide by the chairman, in the case of legislative council and, speaker, in the case of legislative assembly. In 1992, the supreme court ruled that the decision of chairman/ speaker in this regard is subject to judicial review.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

PRESIDING OFFICERS OF STATE LEGISLATURE

Each house of state legislature has its own presiding officer. There is a speaker and a deputy speaker for the legislative assembly and chairman and a deputy chairman for the legislative council.

Speaker of assembly

The speaker is elected by the assembly itself from amongst its members.

1. If he ceases to be a member of the assembly;
2. If he resigns by writing to the deputy speaker; and
3. If he is removed by a resolution passed by a majority of all the then members of the assembly.

The speaker has the following powers and duties:

1. He maintains order and decorum in the assembly for conducting its business and regulating its proceedings. This is his primary responsibility and he has final power in this regard.
2. He is the final interpreter of the provisions of (a) the constitution of India, (b) the rules of procedure and conduct of business of assembly, and (c) the legislative precedents, within the assembly.
3. He adjourns the assembly or suspends the meeting in the absence of a quorum.
4. He does not vote in the first instance. But he can exercise a casting vote in the case of a tie.
5. He can allow a secret sitting of house at the request of the leader of the house.
6. He decides whether a bill is a money bill or not and his decision on this question is final.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

7. He decides the questions of disqualification of a member of the assembly. Arising on the ground of defection under the provisions of the tenth schedule.
8. He appoints the chairman of all the committees of the assembly and supervises their functioning. He himself is the chairman of the business advisory committee, the rules committee and the general purpose committee.

Deputy speaker of assembly

Like the speaker, the deputy speaker is also elected by the assembly itself from amongst its members. He is elected after the election of the speaker has taken place.

The deputy speaker performs the duties of the speaker's office when it is vacant. He also acts as the speaker when the latter is absent from the sitting of assembly. In both the cases, he has all the powers of the speaker.

The speaker nominates from amongst the members a panel of chairmen. Any one of them can preside over the assembly in the absence of the speaker or the deputy speaker.

Chairman of council

The chairman is elected by the council itself from amongst its members.

1. If he ceases to be a member of the council .
2. If he resigns by writing to the deputy chairman; and
3. If he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

As a presiding office, the powers and functions of the chairman in the council are similar to those of the speaker in the assembly, however, the speaker has one special power which is not enjoyed by the chairman. The speaker decides whether a bill is a money bill or not and his decision on this question is final.

Deputy chairman of council

Like the chairman, the deputy chairman is also elected by the council itself from amongst its members.

The deputy chairman performs the duties of the chairman's office when it is vacant. He also acts as the chairman when the latter is absent from the sitting of the council. In both the cases, he has all the powers of the chairman.

SESSIONS OF STATE LEGISLATURE

SUMMONING

The governor from time to time summons each house of state legislature to meet. The maximum gap between the two sessions of state legislature cannot be more than six months, i.e., the state legislature should meet at least twice a year. A session of the state legislature consists of many sittings.

Adjournment

An adjournment suspends the work in a sitting for a specified time which may be hours, days or weeks. Adjournment sine die means terminating a sitting of the state legislature for an indefinite period. The

power of the adjournment as well as adjournment sine die lies with the presiding officer of the house.

Prorogation

The presiding officer declares the house adjourned sine die, when the business of the session is completed. Within the next few days, the governor issues a notification for prorogation of the session.

However, the governor can also prorogue the house which is in session. Unlike an adjournment, a prorogation terminates a session of the house.

Dissolution

The legislative council, being a permanent house, is not subject to dissolution. Only the legislative assembly is subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing house, and a new house is constituted after the general elections are held.

The position with respect to lapsing of bills on the dissolution of the assembly is mentioned below:

1. A bill pending in the assembly lapses
2. A bill passed by the assembly but pending in the council lapses.
3. A bill pending in the council but not passed by the assembly does not lapse.
4. A bill passed by the assembly or passed by both the houses but pending assent of the governor or the president does not lapse.
5. A bill passed by the assembly or passed by both the houses but returned by the president for reconsideration of house(s) does not lapse.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Quorum

Quorum is the minimum number of members required to be present in the house before it can transact any business. It is ten members or one-tenth of the total number of members of the house, whichever is greater. If there is no quorum during a meeting of the house, it is the duty of the presiding officer either to adjourn the house or to suspend the meeting until there is a quorum.

Language in state legislature

The constitution has declared the official languages for transacting business in the state legislature. However, the presiding officer can permit a member to address the house in his mother-tongue.

Rights of ministers and advocate general

In addition to the members of a house, every minister and the advocate general of the state have the right to speak and take part in the proceedings

1. A minister can participate in the proceedings of a house, of which he is not a member.
2. A minister, who is not a member of either house, can participate in the proceeding of both the house.

Legislative procedure in state legislature

Ordinary bills

Bill in the originating house :

An ordinary bill can originate in either house of the state legislature. Such a bill can be introduced either by a minister or by

anyother member. The bill passes through three stages in the originating house, viz,

1. First reading,
2. Second reading, and
3. Third reading.

After the bill passed by the originating house, it is transmitted to the second house for consideration and passage. A bill is deemed to have been passed by the state legislature only when both the houses have agreed to it, either with or without amendments. In case of a unicameral legislature, a bill passed by the legislative assembly is sent directly to the governor for his assent.

Bill in the second house :

In the second house also, the bill passes through all the three stages, that is first reading, second reading and third reading.

when a bill is passed by the legislative assembly and transmitted to the legislative council, the latter has four alternatives before it:

1. It may pass the bill as sent assembly
2. It may pass the bill with amendment and return it to the assembly for reconsideration;
3. It may reject the bill altogether; and
4. It may not take any action and thus keep the bill pending

If the council passes the bill without amendments or the assembly accepts the amendments suggested by the council, the bill is deemed to have been passed by both the houses and the same is sent to the the governor for his assent. on the other hand, if the assembly reject the

amendments suggested by the council or the council rejects the bill altogether or the council does not take any action for three months, then the assembly may pass the bill again and transmit the same to the council. If the council rejects the bill again or passes the bill with amendments not acceptable to the assembly or does not pass the bill within one month, then the bill is deemed to have been passed by both the houses in the form in which it was passed by the assembly for the second time.

Therefore, the ultimate power of passing an ordinary bill is vested in the assembly. At the most, the council can detain or delay the bill for a period of four months- three months in the first instance and one month in the second instance. The constitution does not provide for the mechanism of joint sitting of both the houses over a bill. On the other hand, there is a provision for joint sitting of the lok sabha and the rajya sabha to resolve a disagreement between the two over an ordinary bill . moreover, when a bill, which has originated in the council and was sent to the assembly , the bill ends and becomes dead.

Thus, the council has been given much lesser significance, position and authority than that of the rajya sabha at the centre.

Assent of the governor :

Every bill, after it is passed by the assembly or by both the houses in case of a bicameral legislature, is presented to the governor for his assent. There are four alternatives before the governor:

If the governor gives his assent to the bill, the bill becomes an act and is placed on the statute book. If the governor withholds his assent to the bill, the bill ends and does not become an act if the governor returns the bill for reconsideration and if the bill is passed by the house or both

the house again, with or without amendments, and presented to the governor for his assent, the governor must give his assent to the bill. Thus, the governor enjoys only a suspensive veto. The position is same at the central level also.

Assent of the president :

When a bill is reserved by the governor for the consideration of the president, the president may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the house or houses of the state legislature. When a bill is so returned, the house or houses have to reconsider it within a period of six months. The bill is presented again to the presidential assent after it is passed by the house or houses with or without amendments. It is not mentioned in the constitution whether it is obligatory on the part of the president to give his assent to such a bill or not.

Money Bills

- The constitution lays down a special procedure for the passing of money bills in the state legislature. This is as follows:
- A money bill cannot be introduced in the legislative council. It can be introduced in the legislative assembly only and that too on the recommendation of the governor. Every such bill is considered to be a government bill and be introduced only by a minister.
- After a money bill is passed by the legislative assembly, it is transmitted to the legislative council for its consideration. The legislative council has restricted power with regard to a money bill. It cannot reject or amend a money bill. It can only make



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

recommendations and must return the bill to the legislative assembly within 14 days. The legislative assembly can either accept or reject all or any of the recommendations of the legislative council.

- If the legislative assembly accepts any recommendation, the bill is then deemed to have been passed by both the house in the modified form. If the legislative assembly does not accept to have been passed by both the houses in the form originally passed by the legislative assembly without any change.
- If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both houses at the expiry of the said period in the form originally passed by the legislative assembly. Thus, the legislative assembly has more powers than legislative council with regard to a money bill. At the most, the legislative council can detain or delay a money bill for a period of 14 days.
- Finally, when a money bill is presented to the governor, he may either give his assent, withhold his assent or reserve the bill for presidential assent but cannot return the bill for reconsideration of the state legislature. Normally, the governor gives his assent to a money bill as it is introduced in the state legislature with his prior permission.
- When a money bill is reserved for consideration of the president, the president may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the state legislature.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Position of legislative council

Equal with assembly

In the following matters, the powers and status of the council are broadly equal to that of the assembly:

1. Introduction and passage of ordinary bills. However, in case of disagreement between the two house, the will of the assembly prevails over that of the council.
2. Approval of ordinances issued by the governor.
3. Selection of ministers including the chief minister. Under the constitution the, ministers including the chief minister can be members of either house of the state legislature. However, irrespective of their membership, they are responsible only to the assembly.
4. Consideration of the report of the constitutional bodies like state finance commission, state public service commission and comptroller and auditor general of India.
5. Enlargement of the jurisdiction of the state public service commission.

Unequal with assembly

1. A money bill can be introduced only in the assembly and not in the council.
2. the council cannot amend or reject a money bill. It should return the bill to the assembly within 14 days, either with recommendations or without recommendations.
3. The assembly can either accept or reject all or any of the recommendation of the council. In both the cases, the money bill is deemed to have been passed by the two houses.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

4. The final power to decide whether a particular bill is a money or not is vested in the speaker of the assembly.
5. The final power of passing an ordinary bill also lies with the assembly. At the most, the council can detain or delay the bill for the period of four months – three months in the first instance and one month in the second instance.
6. The council can only discuss the budget but cannot vote on the demands for grants
7. The council cannot remove the council of ministers by passing a no- confidence motion.
8. When an ordinary bill, which has originated in the council and was sent to the assembly is rejected by the assembly, the bill ends and becomes dead.
9. The council does not participate in the election of the president of India and representatives of the state in the rajya sabha.
10. The council has no effective say in the ratification of a constitutional amendment bill.
11. Finally, the very existence of the council depends on the will of the assembly. The council can be abolished by the parliament on the recommendation of the assembly.

The rajya sabha has equal powers with the lok sabha in all spheres except financial matters and with regard to the control is subordinate to the assembly in all respects. Thus, the predominance of the assembly over the council is fully established.

Keeping in view its weak, powerless and insignificant position and role, the critics have described the council as a secondary chamber, costly or namental luxury, white elephant, etc. The critics have opined

that the council has served as a refuge for those who are defeated in the assembly elections. It enabled the unpopular, rejected and ambitious politicians to occupy the post of a chief minister or a minister or a member of the state legislature.

Even though the council has been given less powers as compared with the assembly, its utility is supported on the following grounds:

1. It checks the hasty, defective, careless and ill-considered legislation made by the assembly by making revision for revision and thought.
2. It facilitates representation of eminent professionals and experts who cannot face direct elections. The governor nominates one-sixth members of the council to provide representation to such people.

Privileges of state legislature

Privileges of a state legislature are a sum of special rights, immunities and exemptions enjoyed by the houses of state legislature, their committees and their members.

Collective privileges

The privileges belonging to each house of the state legislature collectively are:

1. It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same.
2. It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters .

3. It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
4. It can punish members as well as outsiders for breach of its privileges or its contempt
5. It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
6. It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.
7. The court are prohibited to inquire into the proceedings of a house or its committees.
8. No person can be arrested, and no legal process can be served within the precincts of the house without the permission of the presiding officer.

Individual privileges

The privileges belonging to the members individually are:

1. They cannot be arrested during the session of the state legislature and 40 days before the beginning and 40 days after the end of such session. The privileges is a available only in civil cases and not in criminal cases or preventive detention cases.
2. They have freedom of speech in the state legislature. No member is liable to any proceedings in any court for any thing said or any vote given by him in the state legislature or its committees. This freedom is subject to the provisions of the constitution and to the rules and standing orders regulating the procedure of the state legislature.

3. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when the state legislature is in session.

Articles related to state legislature at a glance

Article no	Subject- matter
General	
168	Constitution of legislature in states
169	abolition or creation of legislative council in states
170	Composition of the legislative assemblies
171	Composition of the legislative councils
172	Duration of state legislatures
173	Qualification of membership of the state legislature
174	Sessions of the state legislature, prorogation and dissolution
175	Right of governor to address and send messages to the house or house
176	Special address by the governor
177	Right of ministers and advocate- general as respects the houses
Officers of the state legislature	
178	The speaker and deputy speaker of the legislative assembly
179	Vacation and resignation of, and removal from, the officer of speaker
180	Power of the deputy speaker or other person to perform the duties of the office
181	The speaker or the deputy speaker not to preside while a resolution for his removal from office is under

	Consideration
182	The chairman and deputy chairman of the legislative council
183	Vacation and resignation of, and removal from, the offices of chairman and deputy chairman
184	Power of the deputy chairman or other person to perform the duties of the office,
185	The chairman or the deputy chairman not to preside while a resolution for his removal from office is under consideration
186	Salaries and allowance of the speaker and deputy speaker and the chairman and deputy chairman
187	Secretariat of state legislature
Conduct of business	
188	Oath or affirmation by members
189	Voting in houses, power of houses to act notwithstanding vacancies and quorum
Disqualification of members	
190	Vacation of seats
191	Disqualifications for membership
192	Decision on question as to disqualification of members
193	Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified
Powers, privileges and immunities of state legislatures and their members	
194	Powers, privileges, etc., of the house of legislature and of the members and committees thereof
195	Salaries and allowances of members
Legislative procedure	

196	Provisions as to introduction and passing of bills
197	Restriction on powers of legislative council as to bills other than money bills
198	Special procedure in respect of money bills
199	Definition of ``money bills``
200	Assent to bills
201	Bills reserved for consideration
Procedure in financial matters	
202	Annual financial statement
203	Procedure in legislature with respect to estimates
204	Appropriation bills
205	Supplementary, additional or excess grants
206	Votes on account, votes of credit and exceptional grants
207	Special provisions as to financial bills
Procedure general	
208	Rules of procedure
209	Regulation by law of procedure in the legislature of the state in relation to financial business
210	Language to be used in the legislature
211	Restriction on discussion in the legislature
212	Courts not to inquire into proceedings of the legislature
Legislative powers of the governor	
213	Power of governor to promulgate ordinances during recess of legislature



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

High court

- The judiciary in a state consists of a high court and a hierarchy of subordinate court. The high court occupies the top position in the judicial administration of a state.
- The institution of high court originated in India in 1862 when the high court were set up at Calcutta, Bombay and madras. In 1866, a fourth high court was established at Allahabad.
- The constitution of India provides for a high court for each state, but the seventh amendment act of 1956 authorised the parliament to establish a common high court for two or more states or for two or more state and a union territory.
- Article 214 to 231 in part VI of the constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the high court.

ORGANISATION OF HIGH COURT

Every high court consists of a chief justice and such other judges as the president may from time to time deem necessary to appoints.

Judges

Appointment of judges :

The judges of a high court are appointed by the president. The chief justice is appointed by the president after consultation with the chief justice of India and the governor of the state concerned. For appointment of other judges, the chief justice of the concerned high court is also consulted. In case of a common high court for two or more

states, the governors of all the states concerned are consulted by the president.

In the second judges case(1993), the supreme court ruled that no appointment of a judge of the high court can be made, unless it is in conformity with the opinion of the chief justice of India. In the third judges case(1998), the supreme court opined that in case of the appointment of high court judges, the chief justice of India should consult a collegiums of two senior- most judges of the supreme court

Qualifications of judges

1. He should be a citizen of India.
2. (a) He should have held a judicial office in the territory of India for ten years; or (b) he should have been an advocate of a high court for ten years.

Tenure of judges

1. He holds office until he attains the age of 62 years. Any questions regarding his age is to be decided by the president after consultation with the chief justice of India and the decision of the president is final.
2. He can resign his office by writing to the president.
3. He can be removed from his office by the president on the recommendation of the parliament.

Removal of judges

The judges enquiry act (1968) regulates the procedure relating to the removal of a judge of a high court by the process of impeachment:

A removal motion signed by 100 members or 50 members is to be given to the speaker/ chairman.

1. The speaker/ chairman may admit the motion or refuse to admit it.
2. If it is admitted, then the speaker / chairman is to constitute a three-member committee to investigate into the charges.
3. The committee should consists of (a) the chief justice or a judge of the supreme court, (b) a chief justice of a high court, and (c) a distinguished jurist.
4. If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the house can take up the consideration of the motion.
5. After the motion is passed by each house of parliament by special majority, an address is presented to the president for removal of the judge.
6. Finally, the motion is passed by each house of parliament by special majority, an address is presented to the president for removal of the judge.

From the above, it is clear that the procedure for the impeachment of a judge of a high court is the same as that for a judge of the supreme court.

JURISDICTION AND POWERS OF HIGH COURT

At present, a high court enjoys the following jurisdiction and powers:

1. Original jurisdiction.
2. Writ jurisdiction.
3. Appellate jurisdiction.

4. Supervisory jurisdiction.
5. Control over subordinate court.
6. A court of record.
7. Power of judicial review.

1. Original jurisdiction :

It means the power of a high court to hear disputes in the first instance, not by way of appeal. It extends to the following:

- a) Matters of admiralty, will, marriage, divorce, company laws and contempt of court.
- b) Disputes relating to the election of members of parliament and state legislatures.
- c) Regarding revenue matter or an act order or done in revenue collection.
- d) Enforcement of fundamental rights of citizens.
- e) Cases ordered to be transferred from a subordinate court involving the interpretation of the constitution to its own file.
- f) The four high court have original civil jurisdiction in cases of higher value.

2. Writ jurisdiction :

Article 226 of the constitution empowers a high court to issue writs including habeas corpus. Man damus, certiorari, prohibition and quo-warrento for the enforcement of the fundamental rights of the citizens and for any other purpose. The phrase for any other purpose refers to the enforcement of an ordinary legal right. The high court can issue writs to any person, authority and government not only within its territorial

jurisdiction but also outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction.

The writ jurisdiction of the high court is not exclusive but concurrent with the writ jurisdiction of the supreme court. It means when the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the supreme court. This is because, the supreme court can issue writs only for the other purpose, that is, it does not extend to a case where the breach of an ordinary legal right is alleged.

3. Appellate jurisdiction :

A high court is primarily a court of appeal. It hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction, it has appellate jurisdiction in both civil and criminal matters. Hence, the appellate jurisdiction of a high court is wider than its original jurisdiction.

4. Supervisory jurisdiction :

A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction thus, it may

- a) Call for returns from them;
- b) Make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;
- c) Prescribe forms in which books, entries and accounts are to be kept by them; and
- d) Settle the fees payable to the sheriff, clerks, officers and legal practitioners of them. This power of superintendence of a high courts is very board because,



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- It extends to all courts and tribunals whether they are subject to the appellate jurisdiction of the high court or not;
- It covers not only administrative superintendence but also judicial superintendence;
- It is a revisional jurisdiction
- It can be suo- motu and not necessarily on the application of a party.

5. Control over subordinate courts

- a) It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state
- b) It deals with the matters of posting promotion, grants of leave, transfers and discipline of the members of the judicial service of the state
- c) It can withdraw a case pending in a subordinate court if it involves a subordinate question of law that require the interpretation of the constitution. It can the either dispose of the case itself or determine the question if law and return the case to the subordinate court with its judgement.
- d) Its law is binding on all subordinate courts functioning within its territorial jurisdiction

6. A Court of Record : as a court of record, a high court has two powers:

- a) The judgement, proceedings and acts of the high court are recorded for perpetual memory and testimony. These records are admitted to

be of evidentiary value and cannot be questioned when produced before any subordinate court. They recognised as legal precedents and legal references.

- b) It has power to punish for contempt of court, either with simple imprisonment or with fine or with both.

7. Power of judicial review :

Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive order of both the central and state governments. On examination, if they are found to be violative of the constitution, they can be declared as illegal, unconstitutional and invalid by the high court. Consequently, they cannot be enforced by the government.

Article related to high courts at a glance

Article no.	Subject- matter
214	High courts for states
215	High courts to be courts of record
216	Constitutions of high courts
217	Appointment and conditions of the office of a judge of a high court
218	Application of certain provisions relating to supreme court to high court
219	Oath or affirmation by judges of high courts
220	Restriction on practice after being a permanent judge
221	Salaries etc., of judges
222	Transfer of a judges from one high court to another
223	Appointment of acting chief justice
224	Appointment of additional and acting judges

224A	Appointment of retired judges at sittings of high courts
225	Jurisdiction of existing high courts
226	Power of high courts to issue certain writs
226A	Constitutional validity of central laws not to be considered in proceedings under article 226
227	Power of superintendence over all courts by the high court.
228	Transfer of certain cases to high court
228A	special provisions as to disposal of questions relating to constitutional validity of state laws
229	Officers and servants and the expenses of high court.
230	Extension of jurisdiction of high courts to union territories
231	Establishment of a common high court for two or more states
232	Interpretation

Subordinate courts

The state judiciary consists of a high court and a hierarchy of subordinate courts, also known as lower courts. They function below and under the high court at district and lower levels.

Constitutional provisions

Article 233 to 237 in part VI of the constitution make the following provisions to regulate the organization of subordinate courts and to ensure their independence from the executive.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

1. Appointment of district judges :

The appointment , posting and promotion of district judges in a state are made by the governor of the state in consultation with the high court.

A person to be appointed as district judge should have the following qualifications:

- a) He should not already be in the service of the central or the state government.
- b) He should have been an advocate or a pleader for seven years.
- c) He should be recommended by the high court for appointment.

2. Appointment of other judges :

appointment of persons to the judicial service of a state are made by the governor of the state after consultation with the state public service commission and the high court.

STRUCTURE AND JURISDICTION

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

HIGH COURT

DISTRICT AND SESIONS JUDGE'S COURT

(CIVIL SIDE)

(CRIMINAL SIDE)

SUBORDINATE

CHIEF JUDICIAL

JUDGE'S COURT

MAGISTRATE'S COURT

(MUNSIFF`S COURT) (JUDICAL MAGISTRATE`S COURT)

The district judge is the highest judicial authority in the district. He possesses original and appellate jurisdiction in both civil as well as criminal matters. In other words, the district judge is also the sessions judge. When he deals with civil cases, he is known as the district judge and when he hears the criminal cases, he is called as the sessions judge.

A capital punishment. Passed by him is subject to confirmation by the high court, whether there is an appeal or not.

1. A subordinate judge is also known as civil judge, civil judge and so on. He may also be given the powers of an assistant sessions judge. In such a case, he combines in himself both civil as well as criminal powers like that of a district judge.
2. A munsiff is also known as civil judge, civil judge and so on.
3. Delhi, Bombay, Calcutta and madras were formerly called presidency towns.

special status of Jammu & Kashmir

Under article 1 of the Indian constitution, the state of Jammu and Kashmir is a constituent state of India union and its territory forms a part of the territory of India. On the other hand, article 370 in part XXI of the constitution grants a special status to it. Accordingly, all the provisions of the constitution of India do not apply to it. It is also the only state constitution- the constitution of Jammu and Kashmir.

ACCESSION OF J&K TO INDIA

With the end of the British paramountcy, the state of Jammu and Kashmir became independent on 15 August 1947. Initially its ruler, Maharaja Hari Singh, decided not to join India or Pakistan and thereby remain independent. On 20 October 1947, the Azad Kashmir forces supported by the Pakistan army attacked the frontiers of the state. Under this unusual and extraordinary political circumstance, the ruler of the state decided to accede the state to India. Accordingly, the instrument of accession of Jammu and Kashmir to India was signed by Pandit Jawaharlal Nehru and Maharaja Hari Singh on 26 October 1947.

At that time, the government of India made a commitment that the people of this state, through their own constituent assembly, would determine the internal constitution of this state.

In pursuance of this commitment, article 370 was incorporated in the constitution of India. It clearly states that the provisions with respect to the state of J&K are only temporary and not permanent, it became operative on 17 November 1952.

FEATURES OF J&K CONSTITUTION

The constitution of J&K was adopted on 17 November 1957, and came into force on 26 January 1957, its salient features are as follows:

1. It declares the state of J&K to be an integral part of India.
2. It secures justice, liberty, equality and fraternity to the people of the state.
3. It says that the state of J&K comprises all the territory that was under the ruler of the state on 15 August 1947. This means that the



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

territory of the state also includes the area which is under the occupation of Pakistan.

4. It clarifies that the permanent residents of the state entitled to all rights guaranteed under the constitution of India. But, any change in the definition of permanent can be made by the state legislature only.
5. It contains a list of directive principles that are to be treated as fundamental in the governance of the state. However, they are not judicially enforceable.
6. It provides for a bicameral legislature consisting of the legislative assembly and the legislative council. The assembly consists of 111 members directly elected by the people. Out of this, 24 seats are to remain vacant as they are allocated for the area that is under the occupation of Pakistan. Hence, as an interim measure, the total strength of the assembly is to be taken as 87 for all practical purpose. The council consists of 36 members, most of them are elected in an indirect manner and some of them are nominated by the governor, who is also an integral part of the state legislature.
7. It provides for a council of ministers headed by the chief minister to aid and advise the governor in the exercise of his functions. The council of ministers is collectively responsible to the assembly.
8. It establishes a high court consisting of a chief justice and two or more other judges. They are appointed by the president in consultation with the chief justice of India and the governor of the state.
9. It provides for governor's rule. Hence, the governor, with the concurrence of the president of India, can assume to himself all the powers of India, can assume to himself all the powers of the state

government, except those of the high court. He can dissolve the assembly dismiss the council of ministers. The governor's rule can be imposed when the state administration cannot be carried on in accordance with the provisions of the J&K constitution.

10. It declares urdu as the official language of the state. It also permit the use of English for official purpose unless the state legislature provides otherwise.

Important articles regarding Special provision for some states

Article related to special provisions for some states at a glance

Article no	Subject- matter
371	Special provision with respect to the state of Maharashtra and Gujarat
371A	Special provision with respect to the state of Nagaland
371B	Special provision with respect to the state of Assam
371C	Special provision with respect to the state of Manipur
371D	Special provision with respect of to the state of Andhra Pradesh
371E	Establishment of central university in Andhra Pradesh
371F	Special provision with respect to the state of Sikkim
371G	Special provision with respect to the state of Mizoram
371H	Special provision with respect to the state of



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

	Arunachal Pradesh
371-I	Special provision with respect to the state of Goa
371J	Special provision with respect to the state of Karnataka

Panchayati Raj

The term panchayati raj in India signifies the system of rural local self- government. It has been established in all the state of India by the acts of the state legislature to build democracy at the grass root level. It is entrusted with rural development. It was constitutionalised through the 73rd constitutional amendment act of 1992.

EVOLUTION OF PANCHAYATI RAJ

Balwant raj Mehta committee

In January 1957, the government of India appointed a committee to examine the working of the community development programme (1952) and the national extension service (1953) and the suggest measures for their better working. The chairman of this committee was Balwant raj G Mehta. The committee submitted its report in November 1957 and recommended the establishment of the scheme of democratic decentralisation, which ultimately came to be known as panchayati raj. The specific recommendations made by it are:

1. Establishment of a three- tier panchayati raj system- gram panchayat at the village level, panchayat samiti at the block level and zila parishad at the district level. These tiers should be organically linked through a device of indirect elections.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

2. The village panchayat should be constituted with directly elected representatives, whereas the panchayat samiti and zila parishad should be constituted with indirectly elected members.
3. All planning and development activities should be entrusted to these bodies.
4. The panchayat samiti should be the executive body while the zila parishad should be the advisory, coordinating and supervisory body.
5. The district collector should be the chairman of the zila parishad
6. There should be a genuine transfer of power and responsibility to those democratic bodies.
7. Adequate resources should be transferred to these bodies to enable them to discharge their functions and fulfil their responsibilities.
8. A system should be evolved to effect further devolution of authority in future.

Rajasthan was the first state to establish panchayati raj the scheme was inaugurated by the prime minister on October 2, 1959, in Nagaur district. Rajasthan was followed by Andhra Pradesh, which also adopted the system in 1959. Thereafter, most of the states adopted the system.

Though most of the states created panchayati raj institutions by mid 1960s, there were differences from one state to another with regard to the number of tiers, relative position of samiti and parishad, their tenure, composition, functions, finances and so on for example, Rajasthan adopted the three- tier system while Tamil Nadu adopted the two- tier system. West Bengal, on the other hand, adopted the four- tier system. Further, in the Rajasthan- Andhra Pradesh pattern, panchayat samiti was



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

powerful as the block was the unit of planning and development, while in Maharashtra- Gujarat pattern, zila parishad was powerful as the district was the unit of planning and development. Some states also established nyaya panchayats, that is, judicial panchayats to try petty civil and criminal cases.

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 132 recommendations to review and strengthen the declining panchayati raj system in the country. Its main recommendations were:

1. The three- tier system. Of panchayati raj should be replaced by the two- tier system, that is, zila parishad at the district level, and below it, the mandal panchayat consisting of a group of villages with a total population of 15000 to 20000.
2. A district should be the first point for decentralisation under popular supervision below the state level.
3. Zila parishad should be the executive body and made responsible for planning at the district level.
4. There should be an official participation of political parties at all levels of panchayat elections,
5. The panchayati raj institutions should have compulsory powers of taxation to mobilise their own financial resources.
6. There should be a regular social audit by a district level agency and by a committee of legislator to check whether the funds allotted for the vulnerable social and economic groups are actually spent on them.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

7. The state government should not supersede the panchayati raj institutions. In case of an imperative supersession, elections should be held within six months from the date of supersession.
8. The nanya panchayats should be kept as separate bodies from that of development panchayats. They should be presided over by a qualified judge.
9. The chief electoral officer of a state in consultation with the chief election commissioner should organise and conduct the panchayati raj elections.
10. Development functions should be transferred to the zila parishad and all development staff should work under its control and supervision.
11. The valuntry agencies should play an important role in mobilising the support of the people for panchayat i raj
12. A minister for panchayati raj should be appointed in the state council of ministers to look after the affairs of the panchayati raj institutions.
13. Seats for SCs and STs should be reserved on the basis of their population.
14. A constitutional recognition should be accorded to the panchayati raj institutions. This would give them the requisite status and an assurance of continuous functioning.

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. The committee came to conclusion that the



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

developmental process was gradually bureaucratised and divorced from the panchayati raj. This phenomena of bureaucratisation of development administration as against the democratisation weakened the panchayati raj institutions resulting in what is aptly called as grass without roots. Hence, the committee made the following recommendations to strengthen and revitalise the panchayati raj system:

1. The district level body, that is, zila parishad should be of pivotal importance in the scheme of democratic decentralisation. It stated that the district is the proper unit for planning and devepolment and the zila parishad should become the principal body for management of all development programmes which can be handled at that level.
2. The panchayati raj institutions at the distric and lower levels should be assigned an important role with respect to planning implementation and monitoring of rural development programmes.
3. Some of the planning functions at the state level should be transferred to the district level planning units for effective decentralized district planning.
4. A post of district development commissioner should be created. He should acts as the chief executive officer of the zila parishad and should be in charge of all the development departments at the district level.
5. Elections to the panchayati raj institutions should be held regularly. It found that elections became overdue for one or more tiers in 11 states. Thus the committee in its scheme of decentralised system of field administration, assigned a leading role to the panchayati raj in local planning and development. It is in this respect that the recommendation of the G, V. K Rao committee report (1986)



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

differed from those of the Dantwala committee report on block – level planning (1978) and the Hanumantha rao committee report on district planning (1984).

L M Singhvi committee

In 1986, rajiv Gandhi government appointment a committee on 'Revitalisation of panchayati raj institutions for democracy and development' under the chairmanship of L m SINGHVI. It made the following recommendations.

1. The panchayati raj institutions should be constitutionally recognised, protected and preserved. For this purpose, a new chapter should be added in the constitution of India. This will make their identity and integrity reasonably and substantially inviolate. It also suggested constitutional provisions to ensure regular, free and fair elections to the panchayati raj bodies.
2. Nyaya panchayats should be established for a cluster of villages.
3. The villages should be reorganised to make gram panchayats more viable. It also sabha and called it as the embodiment of direct democracy.
4. The village panchayats should have more financial resources.
5. The judicial tribunals should be established in each state to adjudicate controversies about election to the panchayati raj institutions, their dissolution and other matters related to their functioning.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Constitutionalisation

Rajiv Gandhi government :

The rajiv Gandhi government introduced the 64th constitutional amendment bill in the lok sabha in july 1989 to constitutionalise panchayati raj institutions and make them more powerful and board based. Although, the lok sabha passed the bill in august 1989, it was not approved by the rajya sabha. The bill was vehemently opposed by the opposition on the ground that it sought to strengthen centralisation in the federal system.

V P Singh government :

The national front government, soon after assuming office in November 1989 under the prime Ministership of V P singh was held to discuss the issues relating to the strengthening of the panchayati raj bodies, the conference approved the proposals for the introduction of a fresh constitutional amendment bill. Consequently, a constitutional amendment bill was introduced in the lok sabha in September 1990 however,. The fall of the government resulted in the lapse of the bill.

Narasimha Rao government :

The congress government under the prime ministership of P V Narimha rao once again considered the matter of the constitutionalisation of panchayati raj bodies. It drastically modified the proposals in this regard to delete the controversial aspects and introduced a constitutional amendment bill in the lok sabha in september, 1991. This bill finally emerged as the 73rd constitutional amendment act, 1992 and came into force on 24 April, 1993.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

73rd amendment act of 1992

Significance of the act :

This act has added a new part- IX to the constitution of India. It is entitled as the panchayats and consists of provisions from article 243 to 243 o. In addition, the act has also added a new eleventh schedule to the constitution. This schedule contains 29 functional items of the panchayats it deals with article 243- G

The act gives a constitutional status to the panchayati raj institutions. It has brought them under the purview of the justiciable part of the constitution

Salient features

Gram sabha :

The act provides for a gram sabha as the foundation of the panchayati raj system. It is a body consisting of persons registered in the electoral rolls of a village comprised within the area of panchayati at the village level. Thus, it is a village assembly consisting of all the registered voters in the area of a panchayat. It may exercise such powers and perform such functions at the village level as the legislature of a state determines.

Three- tier system :

The act provides for a three- tier system of panchayati raj in every state, that is, panchayats at the village, intermediate, and district levels. Thus, the act brings about uniformity in the structure of panchayati raj throughout the country however, a having a population not exceeding 20 lakh may not constitute panchayats at the intermediate level.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Election of members and chairperson :

The member of panchayats at the village, intermediate and district levels shall be elected directly by the people. Further, the chairperson of panchayats at the intermediate and district levels shall be elected indirectly- by and from amongst the elected members there of however, the chairperson of a panchayat at the village level shall be elected in such manner as the state legislature determines.

Reservation of seats :

The act provides for the reservation of seats for scheduled castes and scheduled tribes in every panchayat in proportion of their population to the state legislature shall provide for the reservation of offices of chairperson in the panchayat at the village or any other level for the SCs and STs

The act provides for the reservation of not less than one – third of the total number of seats for women further, not less than one- third of the total number of offices of chairpersons in the panchayats at each level shall be reserved for women.

Duration of panchayats:

The act provides for a five- year term of office to the panchayat at every level. However, it can be dissolved before the completion of its term. Further, fresh elections to constitute a panchayat shall be five years; or in case of dissolution, before the expiry of a period of six months from the date of its dissolution.

Disqualifications :

A person shall be disqualified for being chosen as or being a member of panchayat if he is so disqualified, (a) under any law for the



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

time being in force for the purpose of elections to the legislature of the state concerned, or (b) under any law made by the state legislature.

State election commission :

The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the panchayats shall be vested in the state election commissioner to be appointed by the governor. His conditions of service and tenure of office shall also be determined by the governor. He shall not be removed from the office except in the manner and on the grounds prescribed for the removal of a judge of the state high court. His conditions of service shall not be varied to his disadvantage after his appointment.

Powers and functions:

The state legislature may endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self- government. Such a scheme may contain provisions for the devolution of powers and responsibilities upon panchayats at the appropriate level with respect.

Finances :

The state legislature may (a) authorise a panchayat to levy, collect and appropriate taxes, duties, tolls and fees; (b) assign to a panchayat taxes, duties, tolls and fees levied and collected by the state government; (c) provide for making grants- in- aid to the panchayats from the consolidated fund of the state; and (d) provide for constitution of funds for crediting all money of the panchayats



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Finance commission :

The governor of a state shall, after every five years, constitute a finance commission to review the financial position of the panchayats. It shall make the following recommendations to the governor:

1. The principles that should govern:
 - a) The distribution between the state and the panchayats of the net proceeds of the taxes, duties, tolls and fees levied by the state.
 - b) The determination of taxes, duties, tolls and fees that may be assigned to the panchayats.
 - c) The grants – in – aid to the panchayats from the consolidated fund of the state.
2. The measures needed to improve the financial position of the panchayats.
3. Any other matter referred to it by the governor in the interests of sound finance of the panchayats. The central finance commission shall also suggest the measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats in the state.

• Audit of accounts :

The state legislature may make provisions with respect to the maintenance of accounts by the panchayats and the auditing of such accounts.

• Exempted states and areas :

The act does not apply to the states of Jammu and Kashmir, Nagaland, Meghalaya and Mizoram and certain other areas. These areas in the states, (a) the schedule areas and the tribal areas in the states, (b)

the hill area of Manipur for which a district council exists; and (c) Darjeeling district of west Bengal for which Darjeeling Gorkha hill council exists.

- **Eleventh schedule:**

It contains the following 29 functional items placed within the purview of panchayats

1. Agriculture, including agricultural extension
2. Land improvement, implementation of land reforms, land consolidation and soil conservation
3. Minor irrigation, water management and watershed development
4. Animal husbandry, dairying and poultry
5. Fisheries
6. Social- forestry and farm forestry
7. Minor forest produce
8. Small- scale industries, including food processing industries
9. Khadi, village and cottage industries
10. Rural housing
11. Drinking water
12. Fuel and fodder
13. Roads, culverts, bridges, ferries, waterways and other means of communication
14. Rural electrification, including distribution of electricity
15. Non- conventional energy sources
16. Poverty alleviation programme
17. Education, including primary and secondary schools
18. Technical training and vocational education
19. Adult and non- formal education



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

20. Libraries
21. Cultural activities
22. Markets and fairs
23. Health and sanitation including hospitals, primary health centres and dispensaries
24. Family welfare
25. Women and child development
26. Social welfare, including welfare of the handicapped and mentally retarded
27. Welfare of the weaker sections, and in particular, of the scheduled castes and the scheduled tribes
28. Public distribution system
29. Maintenance of community assets

Compulsory and voluntary provisions

1. Compulsory provisions

- Organisation of gram sabha in a village or group of villages.
- Establishment of panchayats at the village, intermediate and district levels.
- Direct elections to all seats in panchayats at the village, intermediate and district levels.
- Indirect elections to the post of chairperson of panchayats at the intermediate and district levels.
- 21 years to be the minimum age for contesting elections to panchayats.
- Reservation of seats for SCs and STs in panchayats at all the three levels.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- Reservation of one- third seats for women in panthayats at all the three levels.
- Fixing tenure of five years for panchayats at all levels and holding fresh elections within six months in the event of supersession of any panchayat.
- Establishment of a state election commission for conducting elections to the panchayats.
- Constitution of a state finance commission after every five years to review the financial position of the panchayats.

2. Voluntary provisions

- Giving representation to members of the parliament and the state legislature in the panchayats at different levels falling within their constituencies.
- [provides reservation of seats for backward classes in panchayats at any level.
- Granting powers and authority to the panchayats to enable them to function as institutions of self- government
- Devolution of powers and responsibilities upon panchayats to prepare plans for economic development and social justice; and to perform some or all of the 29 functions listed in the eleventh schedule of the constitution.
- Granting financial powers to the panchayats, that is, authorizing them to levy, collect and appropriate taxes, duties, tolls and fees.

PESA ACT OF 1996 (EXTENSION ACT)

The provisions of part IX of the constitution relating to the panchayats are not applicable to the fifth schedule areas. However, the parliament may extend these provision to such areas, subject to such exceptions and modifications as it may specify. Under this provision, the parliament has enacted the provisions of the panchayats act 1996 popularly known as the PESA act or the extension act.

At present (2013), nine states have fifth schedule areas . these are: Andhra Pradesh , chhatisgarh, Gujarat, himachal Pradesh Jharkand, Madhya Pradesh, Maharashtra, odisha and rajasthan. All nine states have enacted requisite compliance legislations by amending the respective panchayati raj acts.

Article related to panchayats at a glance

Article no	Subject- matter
243	Definitions
243A	Gram sabha
243B	Constitution of panchayats
243C	Composition of panchayats
243D	Reservation of seats
243E	Duration of panchayats, and so on
243F	Disqualifications for membership
243G	Powers, authority and responsibilities of panchayats
243H	Powers to impose taxes by, and funds of, the panchayats
243-I	Constitution of finance commission to review financial position
243J	Audit of accounts of panchayats
243K	Elections to the panchayats

243L	Application to union territories
243M	Part not to apply to certain areas
243N	Continuance of existing laws and panchayats
243O	Bar to interference by courts in electoral matters

Municipalities

The system of urban government was constitutionalised through the 74th constitutional amendment act of 1992.

Committees and commissions

In august 1989, the rajiv Gandhi government introduced the 65th constitutional amendment bill in the lok sabha. The bill aimed at strengthening and revamping the municipal bodies by conferring a constitutional status on them. Although the bill was passed in the lok sabha, it was defeated in the Rajya sabha in October 1989 and hence, lapsed. The national front government under V P Singh introduced the revised Nagarpalika bill in the lok sabha again in September 1990. However, the bill was not passed and finally lapsed due to the dissolution of the lok sabha.

P V Narasimha rao's government also introduced the modified municipalities bill in the lok sabha in September 1991. It finally emerged as the 74th constitutional amendment act of 1992 and came into force on 1 June 1993

74th amendment Act of 1992

This act has added a new part IX – A to the constitution of India. It is entitled the municipalities and consists of provisions from article 243-P to 243-ZG. In addition, the act has also added a new twelfth schedule

to the constitution. This schedule contains eighteen functional items of municipalities. It deals with article 243-W.

The act gave constitutional status to the municipalities. It has brought them under the purview of Justiciable part of the constitution.

Three types of municipalities :

The act provides for the constitution of the following three types of municipalities in every state.

1. A nagar panchayat for a transitional area, that is, an area in transition from a rural area to an urban area.
2. A municipal council for a smaller urban area.
3. A municipal corporation for a larger urban area.

Twelfth schedule :

It contains the following 18 functional items placed within the purview of municipalities.

1. Urban planning including town planning;
2. Regulation of land use and construction of buildings;
3. Planning for economic and social development;
4. Roads and bridges;
5. Water supply for domestic, industrial and commercial purpose;
6. Public health, sanitation, conservancy and solid waste management;
7. Fire services;
8. Urban forestry, protection of the environment and promotion of ecological aspects;
9. Safeguarding the interest of weaker sections of society, including the handicapped and mentally retarded;



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

10. Slum improvement and upgradation;
11. Urban poverty alleviation;
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds;
13. Promotion of cultural, educational and aesthetic aspects ;
14. Burials and burial grounds, cremations and cremation grounds and electrical crematoriums;
15. Cattle ponds, prevention of cruelty to animals;
16. Vital statistics including registration of births and details;
17. Public amenities including street lighting parking lots, bus stops and public conveniences;
18. Regulation of slaughter houses and tanneries.

Types of urban governments

The following eight types of urban local bodies are created in India for the administration of urban areas:

1. Municipal corporation
2. Municipality
3. Notified area committee
4. Town area committee
5. Cantonment board
6. Township
7. Port trust
8. Special purpose agency

Article related to municipalities at a glance

Article no	Subject- matter
243 P	Definitions
243Q	Constitution of municipalities
243R	Composition of municipalities
243S	Constitution and composition of wards committees, and so on
243T	Reservation of seats
243U	Duration of municipalities, and so on
243V	Disqualifications for membership
243W	Powers, authority and responsibilities of municipalities, and so on
243X	Powers to impose taxes by, and funds of, the municipalities
243Y	Finance commission
243Z	Audit of accounts of municipalities
243ZA	Elections to the municipalities
243ZB	Application to union territories
243ZC	Part not to apply to certain areas
243ZD	Committee for district planning
243ZE	Committee for metropolitan planning
243ZF	Continuance of existing laws and municipalities
243ZG	Bar to interference by courts in electoral matters

Union Territories

At present, there are seven union territories. They are (along with the year of creation): (1) Andaman and Nicobar Islands- 1956, (2) Delhi- 1956, (3) Lakshadweep- 1956, (4) Dadra and Nagar haveli- 1961, (5) Daman and diu- 1962, (6) puducherry- 1962, and (7) Chandigarh- 1966. Till 1973, Lakshadweep was known by the name of Laccadive, Minicoy and Amindivi Islands. In 1992, DEHLI was redesignated as the national capital territory of Dehli. Till 2006, punducherry was known as Pondicherry .

The union territories have been created for a variety of reasons. These are mentioned below.

1. Political and administrative consideration- Delhi and Chandigarh.
2. Cultural distinctiveness- puducherry, Dadra and Nagar Haveli, and Daman and Diu.
3. Strategic importance- Andaman and Nicobar Islands and Lakshadweep.
4. Special treatment and care of the backward and tribal people- Mizoram, Manipur, Tripura and arunachal Pradesh which later became states.

ADMINISTRATION OF UNION TERRITORIES

Articles 239 to 241 in part VIII of the constitution deal with the union territories. Even though all the union territories belong to one category, there is no uniformity in their administrative system. every union territory is administered by the president acting through an administrator appointed by him. An administrator of a union territory is an agent of the president and not head of state like a governor. The



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

president can specify the designation of an administrator; it may be lieutenant governor or chief commissioner or administrator. At present, it is lieutenant governor in the case of DELHI, puducherry and Andaman and nicobar islands and administrator in the case of Chandigarh, dadra and nagar haveli, daman and diu and Lakshadweep. The president can also appoint the governor of a state as the administrator of an adjoining union territory. In that capacity, the governor is to act independently of his council of ministers.

The union territories of puducherry (in 1963) and delhi (in 1992) are provided with a legislative assembly and a council of ministers headed by a chief minister. The remaining five union territories do not have such popular political institutions. But, the establishment of such institutions in the union territories does not diminish the supreme control of the president and parliament over them.

The parliament can make on any subject of the three lists for the union territories. This power of parliament also extends to puducherry and delhi, which have their own local legislatures.

SPECIAL PROVISIONS OF DELHI

The 69th constitutional amendment act of 1991 provided a special status to the union territory of Delhi, and redesignated it the national capital territory of Delhi and designated the administrator of Delhi as the lieutenant governor. It created a legislative assembly and a council of ministers for Delhi.

The assembly can make laws on all the matters of the state list and the concurrent list except the three matters of the state list, that is, public order, police and land.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

The strength of the council of ministers is fixed at ten per cent of the total strength of the assembly, that is, seven- one chief minister and six other ministers. The chief minister is appointed by the president . the other ministers are appointed by the president on the advice of the chief minister.

Election commission

The election commission is a permanent and an independent body established by the constitution of India directly to ensure free and fair elections in the country. Article 324 of the constitution provides that the power of superintendence, direction and control of elections to parliament, state legislatures, the office of president of India and the office of vice- president of India shall be vested in the election commission. Thus, the election commission is an all- India body in the sense that it is common to both the central government and the state governments.

It must be noted here that the election commission is not concerned with the elections to panchayats and municipalities in the states. For this, the constitution of India provides for a separate state election commission.

Composition

Since its inception in 1950 and till 15 October 1989, the election commission functioned as a single member body consisting of the chief election commissioner. On 16 October 1989, the president appointed two more election commissioners to cope with the increased work of the election commission on account of lowering of the voting age from 21 to

18 years. Thereafter, the election commission functioned as a multimember body consisting of three election commissioners. However, the two posts of election commissioners were abolished in January 1990 and the election commission was reverted to the earlier position. Again October 1993, the president appointed two more election commissioners. Since then and till today, the election commission has been functioning as a multi-member body consisting of three commissioners.

They hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. They can resign at any time or can also be removed before the expiry of their term.

Powers and functions :

Classified into three categories, viz,

1. Administrative
2. Advisory
3. Quasi-judicial

In details, these powers and functions are:

1. To determine the territorial areas of the electoral constituencies throughout the country on the basis of the delimitation commission act of parliament.
2. To prepare and periodically revise electoral rolls and to register all eligible voters.
3. To notify the dates and schedules of elections and to scrutinise nomination papers.
4. To grant recognition to political parties and allot election symbols to them.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

5. To act as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.
6. To appoint officers for inquiring into disputes relating to electoral arrangements.
7. To determine the code of conduct to be observed by the parties and te candidates at the time of elections.
8. To prepare a roster for publicity of the policies of the political parties on radio and TV in times of elections.
9. To advise the president on matters relating to the disqualifications of the members of parliament.
10. To advise the governor on matters relating to the disqualifications of the members of state legislature.
11. To cancel polls in the event of rigging, booth capturing, violence and other irregularities.
12. To request the president or the governor for requisitioning the staff necessary for conducting elections.
13. To supervise the machinery of elections throughout the country to ensure free and fair elections.
14. To advise the president whether elections can be held in a state under president`s rule in order to extend the period of emergency after one year.
15. To register political parties for the purpose of elections and grants them the status of national or state parties on the basis of their poll performance.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Union Public Service Commission

The union public service commission is the central recruiting agency in India. Article 315 to 323 in part XIV of the constitution contain elaborate provisions regarding the along with the independence, powers and functions of the UPSC.

COMPOSITION

Usually the commission consists of nine to eleven members including the chairman. Further, no qualifications are prescribed for the commission's membership except that one- half of the members of the commission should be such persons who have held office for at least ten years either under the government of India or under the government of a state. The constitution also authorises the president to determine the conditions of service of the chairman and other members of the commission.

The chairman and members of the commission hold office for a term of six years or until they attain the age of 65 years,

FUNCTIONS

The UPSC performs the following functions:

1. It conducts examinations for appointments to the all- India service, central services and public service of the centrally administered territories.
2. It assists the states in farming and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. It serves all or any of the needs of a state on the request of the state governor and with the approval of the president of India.

State Public Service Commission

Parallel to the union public service commission at the centre, there is a state public service commission in a state the same set of article of the constitution also deal with the composition, appointment and removal of members, power and functions and independence of a SPSC.

COMPOSITION

A state public service commission consists of a chairman and other members appointed by the governor of the state.

The chairman and members of the commission hold office for a term of six years or until they attain the age of 62 years, whichever is earlier.

FUNCTIONS

A SPSC performs all those functions in respect of the state services as the UPSC does in relation to the service of the state.

1. It conducts examinations for appointments to the services of the state.
2. It is consulted on the following matters related to personnel management:
 - a) All matters relating to methods of recruitment to civil service and for civil posts.
 - b) The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another.

- c) The suitability of candidates for appointments to civil services and posts; for promotions and transfers from one service to another; and appointments by transfer or deputation. The concerned departments make recommendations for promotions and request the SPSC to ratify them.

Finance commission

Article 280 of the constitution of India provides for a finance commission as a quasi judicial body. It is constituted by the president of India every fifth year or at such earlier time as the considers necessary.

Composition

The financial commission consists of a chairman and four other members to be appointed by the president. They hold office for such period as specified by the president in his order. They are eligible for reappointment.

Functions

The finance commission is required to make recommendations to the president of India on the following matters:

1. The distribution of the net proceeds of taxes to be shared between the centre and the states, and the allocation between the states of the respective share of such proceeds.
2. The principles that should govern the grants in- aid to the states by the centre



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendation made by the state finance commission.
4. Any other matters referred to it by the president in the interests of sound finance.

Commission appointed

Till now, fourteen finance commission have been constituted.

National commission for SCs

The national commission for scheduled castes is a constitutional body in the sense that it is directly established by article 338 of the constitution. On the other hand, the other national commissions like the national commission for women(1992), the national commission for minorities (1993), the national commission for backward classes (1993), the national human rights commission (1993) and the national commission for protection of child rights (2007) are statutory bodies in the sense that they are established by acts of the parliament.

Evolution of the commission

The 89th constitutional amendment act of 2003 bifurcated the combined national commission for SCs and STs into separate bodies, namely, national commission for scheduled castes and national commission for scheduled tribes (under article 338- A).



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

The separate national commission for SCs came into existence in 2004. It consists of a chairperson, a vice- chairperson and three other members. They are appointed by the president by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the president.

Functions of the commission

The functions of the commission are :

1. To investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working;
2. To inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs
3. To participate and advise on the planning process of socio-economic development of the SCs and to evaluate the progress of their development under the union or a state;
4. To present to the president, annually and at such other times as it may deem fit, reports upon the working of those safeguards;
5. To make recommendations as measures that should be taken by the union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio- economic development of the SCs; and
6. To discharge such other functions in relation to the protection, welfare and development and advancement of the SCs as the president may specify.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

REPORT OF THE COMMISSION

The commission presents an annual report to the president. It can also submit a report as and when it thinks necessary.

Powers of the commission

The commission is vested with the power to regulate its own procedure. The commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:

1. Summoning and enforcing the attendance of any person from any part of India examining him on oath;
2. Requiring the discovery and production of any document;
3. Receiving evidence of affidavits;
4. Requisitioning any public record from any court or office;
5. Issuing summons for the examination of witnesses and documents;
- and
6. Any other matter which the president may determine.

National commission for STs

Like the national commission for scheduled castes, the national commission for scheduled tribes is also a constitutional body in the sense that it is directly established by article 338- A of the constitution.

SEPERATE COMMSIISION FOR STs

Geographically and culturally, the STs are different from the SCs. In 1999, a new ministry of tribal affairs was created to provide a sharp



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

focus to the welfare and development of the STs. in order to safeguard the interests of the STs more effectively, it was proposed to set separate national commission for STs by bifurcating the existing combined national commission for SCs and STs. This was done by passing the 89th constitutional amendment act of 2003. This act further amended article 338 and inserted a new article 338 – A in the constitution.

Functions of the commission

The functions of the commission are:

1. To investigate and monitor all matters relating to the constitutional and other legal safeguards for the STs and to evaluate their working ;
2. To enquire into specific complaints with respect to the deprivation of rights and safeguards of the STs;
3. To participate and advise on the planning process of socio-economic development of the STs and to evaluate the progress of their development under the union or a state;
4. To presents to the president, annually and at such other times as it may deem fit, reports upon the working of those safeguards;
5. To make recommendation as to the measures that should be taken by the union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio- economic development of the STs; and
6. To discharge such other functions in relation to the protection, welfare and development and advancement of the STs as the president may specify.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

Powers of the commission

The commission is vested with the power to regulate its own procedure. The commission, while investigating any matter or inquiring into complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters :

1. Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
2. Requiring the discovery and production of any document;
3. Receiving evidence on affidavits;
4. Requisitioning any public record from any court or office;
5. Issuing summons for the examination of witnesses and documents; and
6. Any other matter which the president may determine. The central government and the state governments are required to consult the commission on all major policy matters affecting the STs.

Comptroller and Auditor General of India

The constitution of India provides for an independent office of the comptroller and auditor general of India he is the head of the Indian audit and accounts department. He is the guardian of the public purse and controls the entire financial system of the country at both the levels- the centre and the state.

The CAG is appointed by the president of India.

DUTIES AND POWERS

The constitutional (article 149) authorities the parliament to prescribe the duties and powers of the CAG in relation to the accounts of the union and of the states.

1. He audits the accounts related to all expenditure from the consolidated fund of India, consolidated fund of each state and consolidated fund of each union territory having a legislative assembly.
2. He audits all expenditure from the contingency fund of India and the public accounts of India as well as the contingency fund of each state and the public accounts of each state.
3. He audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by any department of the central government and state governments.
4. He audits the receipts and expenditure of the centre and each state to satisfy himself that the rules and procedures in that behalf that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue.
5. He audit the receipts and expenditure of the following:
 - (a) All bodies and authorities substantially financial from the central or state revenues;
 - (b) Government companies; and
 - (c) Other corporations and bodies, when so required by related laws.
6. He audits all transactions of the central and state governments related suspense accounts and remittance business. He also audits



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

receipts, stock accounts and others, with approval of the president, or when required by the president.

7. He audits the accounts of any other authority when requested by the president or governor. For example, the audit of local bodies.
8. He advises the president with regard to prescription of the form in which the accounts of the centre and the states shall be kept (article 150).
9. He submit his audit reports relating to the accounts of a state to governor, who shall, in turn, place them before the state legislature (article 151).
10. He submit is audit reports relating to the accounts of a state to governor, who shall, in turn, place them before the state legislature (article 151).
11. He ascertains and certifies the net proceeds of any tax or duty (article 279). His certificate is final. The `net proceeds` means the proceeds of a tax or a duty minus the cost of collection.
12. He acts as a guide, friend and philosopher of the public accounts committee of the parliament.

The CAG submits three audit reports to the president- audit report on appropriation accounts, audit report on finance accounts, and audit report on public undertakings.

Attorney General of India

The constitution (article 76) has provided for the office of the attorney general for India. He is the highest law officer in the country



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

APPOINTMENT AND TERM

The attorney general is appointed by the president.

DUTIES AND FUNCTIONS

As the chief law officer of the government of India, the duties of the AG include the following:

1. To give advice to the government of India upon such legal matters, which are referred to him by the president.
2. To perform such other duties of a legal character that are assigned to him by the president.
3. To discharge the functions conferred on him by the constitution or any other law.

The president has assigned the following duties to the AG:

1. To appear on behalf of the government of India in all cases in the supreme court in which the government of India is concerned.
2. To represent the government of India in any reference made by the president to the constitution.
3. To appear in any high court in any case in which the government of India is concerned.

RIGHTS AND LIMITATIONS

In the performance of his official duties, the attorney general has the right of audience in all courts in the territory of India. Further, he has the right to speak and to take part in the proceedings of both the houses of parliament or their joint sitting and any committee of the parliament of which he may be named a member, but without a right to

vote. He enjoys all the privileges and immunities that are available to a member of parliament.

SOLICITOR GENERAL OF INDIA

In addition to the AG, there are other law officers of the government of India. They are the solicitor general of India additional solicitor general of India. They assist the AG in the fulfilment of his official responsibilities. It should be noted here that only the office of the AG is created by the constitution. In other words, article 76 does not mention about the solicitor general and additional solicitor general.

The AG is not a member of the central cabinet there is a separate law minister in the central cabinet to look after legal matters at the government level.

Article related to attorney- general of India at a Glance

Article no.	Subject- matter
76	Attorney – general of India
88	Rights of attorney- general as respects the houses of parliament and its committee
105	Powers, privileges and immunities of attorney- general

ADCOATE GENERAL OF THE STATE

The constitutional (article 165) has provided for the office of the advocate general for the state. He is the highest law officer in the state. Thus he corresponds to the attorney general of India.

APPOINTMENT AND TERM

The advocate general is appointed by the governor. He must be a person who is qualified to be appointed a judge of a high court. In other words, he must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years.

DUTIES AND FUNCTIONS

As the chief law officer of the government in the state, the duties of the advocate general include the following:

1. To give advice to the government of the state upon such legal matters which are referred to him by the governor.
2. To perform such other duties of a character that are assigned to him by the governor .
3. To discharge the functions conferred on him by the constitution or any other law.

In the performance of his official duties, the advocate general is entitled to appear before any court of law within the state. Further, he has the right to speak and to take part in the proceedings of both the houses of the state legislature or any committee of the state legislature of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that are available to a member of the state legislature.

Article related to advocate – general of the state at a glance

Article no	Subject- matter
165	Advocate- general of the state
177	Rights of advocate- general as respect the house of state legislature and its committee
194	Powers, privileges and immunities of advocate- general

Article related to constitutional bodies at a glance

Article no	Constitutional bodies
76	Attorney- general of India
148	Comptroller and audit- general of India
165	Advocate – general of the state
243-I	State finance commission
243- k	State election commission
243 ZD	District planning committee
243 ZE	Metropolitan planning committee
263	Inter- state council
280	Finance commission
307	Inter- state trade and commerce commission
315	Union public service commission and state public service commission
324	Election commission
338	National commission for schedule castes
338 A	National commission for schedule tribes
339	Schedule areas and schedule tribes commission
340	Backward classes commission
344	Official language commission and official language committee of parliament



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

350 B	Special officer for linguistic minorities

National development council

the national development council was established in august 1952 by an executive resolution of the government of India on the recommendation of the first five years plan . like the planning commission, it is neither a constitutional body nor a statutory body.

COMPOSITION

The NDC is composed of the following members.

1. Prime minister of India (as its chairman/ head)
2. All union cabinet ministers (since 1967).
3. Chief ministers of all states.
4. Chief ministers/ administrators of all union territories.
5. Members of the planning commission.

Functions

To realise the above objectives, the NDC is assigned with the following functions:

1. To prescribe guidelines for preparation of the national plan.
2. To consider the national plan as prepared by the planning commission.
3. To make an assessment of the resources that are required for implementing the plan and to suggest measures for augmenting them.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

4. To consider important questions of social and economic policy affecting national development.
5. To review the working of the national plan from time to time
6. To recommend measure to recommend measures for achievement of the aims and targets set out in the national plan

National Human Rights commission

The national human rights commission is a statutory body. It was established in 1993 under a legislation enacted by the parliament, namely, the protection of human rights act, 1993.

COMPOSITION OF THE COMMISSION

The commission is a multi- member body consisting of a chairman and four members. The chairman should be a retired chief justice of India, and members should be serving or retired judges of the supreme court, a serving or retired chief justice of a high court and two persons having knowledge or practical experience with respect to human rights. In addition to these full- time members, the commission also has four ex- officio members – the chairmen of the national commission for minorities, the national commission for SCs the national commission for STs and the national commission for women.

The chairman and members are appointed by the president on the recommendations of a six- member committee consisting of the prime minister as its head, the speaker of the lok sabha, the deputy chairman of the Rajya sabha, leaders of the oppositions in both the houses of parliament and the central home minister. Further, a sitting chief judge



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

of the supreme court can be appointed only after consultation with the chief justice of India

FUNCTIONS OF THE COMMISSION

The functions of the commission are:

1. To inquire into any violation of human rights or negligence in the any prevention of such violation by a public servant, either suo motu or on a petition presented to it or on an order of a court.
2. To intervene in any proceeding involving allegation of violation of human rights pending before a court.
3. To visit jails and detention places to study the living conditions of inmates and make recommendation thereon.
4. To review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
5. To review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.
6. To study treaties and other international instruments on human rights and make recommendations for their effective implementation.
7. To undertake and promote research in the field of human rights.
8. To spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.
9. To encourage the efforts of non- governmental organisations working in the field of human rights.

10. To undertake such other functions as it may consider necessary for the promotion of human rights.

State Human Rights Commission

The protection of human rights act of 1993 provides for the creation of not only the National human rights commission but also a state human rights commission at the state level.

COMPOSITION OF THE COMMISSION

The state human rights commission is a multimember body consisting of a chairperson and two members the chairperson should be a retired chief justice of a high court and members should be a serving or retired judge of a high court or a district judge in the state with a minimum of person having knowledge or practical experience with respect to human rights.

FUNCTIONS OF THE COMMISSION

The functions of the commission are:

1. To inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either suo motu or on a petition presented to it or on an order of a court.
2. To intervene in any proceeding involving allegation of violation of human rights pending before a court.
3. To visit jails and detention places to study the living conditions of inmates and make recommendation thereon.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

4. To review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
5. To review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.
6. To undertake and promote research in the field of human rights.
7. To spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.
8. To encourage the efforts of non – governmental organizations working in the field of human rights.
9. To undertake such other functions as it may consider necessary for the promotion of human rights.

Central Information Commission

The central information commission was established by the central government in 2005. It was constituted through an official gazette notification under the provisions of the right to information act (2005). Hence, it is not a constitutional body.

COMPOSITION

The commission consists of a chief information commissioner and not more than ten information commissioner. They are appointed by the president on the recommendation of a committee consisting of the prime minister as chairperson, the leader of opposition in the lok sabha and a union cabinet minister nominated by the prime minister. They should be persons of eminence in public life with wide knowledge and experience



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

in law. Science and technology, social service, management, journalism, mass media or administration and governance. They should not be member of parliament or member of the legislature of any state or union territory.

TENURE AND SERVICE CONDITION

The chief information commissioner and an information commissioner hold office for a term of 5 years or until they attain the age of 65 years whichever is earlier. They are not eligible for reappointment,

POWERS AND FUNCTIONS

The powers and functions of the central information commissioner are:

1. It is the duty of the commission to receive and inquire into a complaint from any person:
 - a) Who has not been able to submit an information request because of non- appointment of a public information officer;
 - b) Who has been refused information that was requested;
 - c) Who has not received response to his information request within the specified time limits;
 - d) Who thinks the fees charged are unreasonable;
 - e) Who thinks information given is incomplete, misleading or false; and
 - f) Any other matter relating to obtaining information.
2. The commission can order inquiry into any matter if there are reasonable grounds



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

3. While inquiring, the commission has the powers of a civil court in respect of the following matters:
 - a) Summoning and enforcing attendance of persons and compelling them to give oral document or things;
 - b) Requiring the discovery and inspection of documents;
 - c) Receiving evidence on affidavit;
 - d) Requisitioning any public record from any court or office;
 - e) Issuing summons for examination of witnesses or documents;
 - f) Any other matter which may be prescribed.
4. During the inquiry of a complaint, the commission may examine any record which is under the control of the public authority and no such record may be withheld from it on any grounds. In other words, all public records must be given to the commission during inquiry for examination.
5. The commission has the power to secure compliance of its decisions from the public authority. This includes:
 - a) Providing access to information in a particular from;
 - b) Directing the public authority to appoint a public information officer where none exist;
 - c) Publishing information or categories of information;
 - d) Making necessary changes to the practices relating to management, maintenance and destruction of records;
 - e) Enhancing training provision for officials on the right to information;
 - f) Seeking an annual report from the public authority on compliance with this act;
 - g) Requiring the public authority to compensate for any loss or other detriment suffered by the applicant;



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- h) Imposing penalties under this act; and
 - i) Rejecting the application.
6. The commission submit an annual report to the central government on the implementation of the provisions of this act. The central government places this report before each house of parliament.
7. When a public authority does not conform the provisions of this act, the commission may recommend steps which ought to be taken for promoting such conformity.

State Information Commission

The right to information act of 2005 provides for the creation of not only the central information commission but also a state information commission at the state level.

COMPOSITION

The commission consists of a state chief information commissioner and not more than ten state information commissioners. They are appointed by the governor on the recommendation of a committee consisting of the chief minister as chairperson, the leader of opposition in the legislative assembly and a state cabinet minister nominated by the chief minister they should be person of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

TENURE AND SERVICE CONDITIONS

The state chief information commissioner and a state information commissioner hold office for a term of 5 years or until they attain the age of 65 years ,

POWERS AND FUNCTIONS

The powers and functions of the state information commission are:

1. It is duty of the commission to receive and inquire into a complaint from any person:
 - a) Who has not been able to submit an information request because of non- appointment of a public information officer;
 - b) Who has been refused information that was requested;
 - c) Who has not received response to his information request within the specified time limits;
 - d) Who thinks the fees charged are unreasonable;
 - e) Who thinks information given is incomplete, misleading or false; and
 - f) Any other matter relating to obtaining information.
 - g)
2. The commission can order inquiry into any matter if there are reasonable grounds
3. While inquiring, the commission has the powers of a civil court in respect of the following matters;
 - a) Summoning and enforcing attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things;
 - b) Requiring the discovery and inspection of documents;



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

- c) Receiving evidence on affidavit;
 - d) Requisitioning any public record from any court or office;
 - e) Issuing summons for examination of witnesses or documents;
and
 - f) Any other matter which may be prescribed.
4. During the inquiry of a complaint, the commission may examine any record which is under the control of the public authority and no such record may be withheld from it on any grounds. In other words, all public records must be given to the commission during inquiry for examination.

Central Vigilance Commission

The central vigilance commission is the main agency for preventing corruption in the central government. It was established in 1964 by an executive resolution. Of the central government. Its establishment was recommended by the santhanam committee on prevention of corruption(1962- 64).

COMPOSITION

The CVC is a multi- member body consisting of a central vigilance commissioner and not more than two vigilance commissioners. They are appointed by the president by warrant under his hand and seal on the recommendation of a three- member committee consisting of the prime minister as its head, the union minister of home affairs and the leader of the opposition in the lok sabha. They hold office for a term of four years or until they attain the age of sixty five years, which ever is earlier.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

FUNCTIONS

The functions of the CVC are :

1. To inquire or cause an inquiry or investigation to be conducted on a made by the central government wherein it is alleged that a public servant being an employee of the central government or its authorities, has committed an offence under the prevention of corruption act, 1988.
2. To inquire or cause an inquiry or investigation to be conduct into any complaint against any official belonging to the below mentioned category of officials wherein it is alleged that he has committed act, 1998:
3. To exercise superintendence over the functioning of Delhi special police establishment in so far as it relates to the investigation of offences alleged to have been committed under the prevention of corruption act, 1988.
4. To give directions to the Delhi special police establishment for the purpose of discharging the responsibility entrusted to it under the Delhi special police establishment act, 1946.
5. To review the progress of investigations conducted by the Delhi special police establishment into offence alleged to have been committed under the prevention of corruption act, 1988.
6. To review the progress of applications pending with the competent authorities for sanction of prosecution under the prevention of corruption act, 1988.
7. To tender advise to the central government and its authorities on such matters as are referred to it by them.

Lokpal and Lokayuktas

The administrative reforms commission of India (1966- 1970) recommended the setting up of two special authorities designated as `lokpal` and `lo kayuta` for the redressal of citizens grievances. These institutions were to be set up on the pattern of the institution of ombudsman in Scandinavian countries and the parliamentary commissioner for investigation in new Zealand. The lokpal would deal with complaints against ministers and secretaries at central and state levels, and the lokayuta would deal with complaints against other specified higher officials. The ARC kept the judiciary outside the purview of lokpal and lokayuta as in newzealand. But, in Sweden the judiciary is within the purview of ombudsman.

According to the ARC, the lokpal would be appointed by the president after consultation with the chief justice of India, the speaker of lok sabha and chairman of the Rajya sabha.

The ARC also recommended that the institutions of lokpal and lokayukta should have the following features :

1. They should be demonstratively independent and impartial .
2. Their investigations and proceedings should be conducted in private and should be informal in character.
3. Their appointment should be, as far as possible, non- political.
4. Their status should compare with the highest judicial functionaries in the country.
5. They should deal with matters in the discretionary field involving acts of injustice, corruption or favouritism.
6. Their proceedings should not be subject to judicial interference.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

7. They should have the maximum latitude and powers in obtaining information relevant to their duties.
8. They should not look forward to any benefit or pecuniary advantage from the executive government,

LOKPAL AND LOKAYUKTAS BILL, 2011

The bill seeks to provide for the establishment of a body of lokpal for the union and lokayukta for state to enquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto. The salient features of the bill are enumerated here.

1. Lokpal to consist of a chairperson and up to eight members and not less than 50% of the members to be from SCs, STs, OBCs, minorities and women
2. provision for selection committee for selection of the chairperson and the members and a search committee of at least seven members not less than 50% whom to be from SCs, STs, OBCs, minorities and women
3. lokpal to have jurisdiction over public functionary who is or has been the prime minister; minister of the union; member of parliament; public servant as defined under the prevention of corruption act, 1988 belonging to group 'A', 'B', 'C' OR 'D', functionary of any body or board or corporation or authority or company or society or trust or autonomous body established by an act of parliament or wholly or partly financed by the central government or controlled by it; functionary of such bodies or organisations aided by the government the annual income of which exceeds an amount notified by the central government; functionary



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

of such bodies or organisations in receipt of donation from public and their annual income exceeding an amount notified by the central government or where such bodies/ organisations receive donation from any foreign source under FCRA in excess of Rs 10 lakh in a year

4. lokpal to have under it an independent and prosecution wing
5. separation of investigation from prosecution thereby, removing conflict of interest and increasing scope for professionalism and specialization
6. lokpal to have power of superintendence and directions over any investigation agency including the CBI, for cases referred to them by the lokpal
7. no prior sanction required for launching prosecution in cases inquired by lokpal or initiated on the direction and with the approval of the lokpal
8. provision for attachment and confiscation of property acquired by corruption means even while prosecution is pending
9. appointment of director, CBI to be on the recommendations of a high- powered committee chaired by the prime minister
10. specific timelines for preliminary inquiry, investigation and trial
11. enhancement of minimum and maximum punishment under the prevention of corruption act from six months to two years and from seven years to ten years, respectively
12. lokpal to have powers to recommend transfer or suspension of public servants connected with allegations of corruption
13. lokpal empowered to constitute sufficient number of special courts
14. to provide for lokayuktas in the state on similar lines.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

LOKAYUTAS

While the central government is still debating the establishment of the institution of lokpal, many states have already set up the institution of lokayutas.

It must be noted here that the institution of lokayukta was established first in Maharashtra in 1971. Although odisha had passed the act in this regard in 1970, it came into force only in 1983.

Till now (2013), 18 states and 1 union territory (Delhi) have established the institution of lokyuktas. The details in this regard are mentioned below in table 56.1.

The states which have not created the institution of lokyuktas are Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tamil Nadu, Tripura and west Bengal.

The various aspects of the institution of Lokayukta are:

STRUCTURE VARIATIONS

The structure of the lokayukta is not same in all the state. Some states like Rajasthan, Karnataka, Andhra Pradesh and Maharashtra have created the lokayukta as well as uplokayukta, while some other states like Punjab and Orissa that have designated officials as lokpal. This pattern was not suggested by the ARC in the states.

APPOINTMENT

The lokayukta and uplokayukta are appointed by the governor of the state. While appointing, the governor in most of the states consults (a) the chief justice of the state high court, and (b) the leader of opposition in the state legislative assembly.



GNANADHARE ACADEMY

#2 Sharada Arcade, Nagarbhavi Main Road Prashanth Nagar, Vijaynagar
North Bangalore-560079, Mob:9513804777/9513809777

QUALIFICATIONS

Judicial qualifications are prescribed for the lokayukta in the states of Uttar Pradesh, Andhra Pradesh, Gujarat, Orissa, Karnataka and Assam. But no specific qualifications are prescribed in the states of Bihar, Maharashtra and Rajasthan.

TENURE

In most of the states, the term of office fixed for lokayukta is of 5 years duration or 65 years of age, whichever is earlier. He is not eligible for reappointment for a second term.

JURISDICTION

There is no uniformity regarding the jurisdiction of lokayukta in all states. The following points can be noted in this regard:

1. The chief minister is included within the jurisdiction of lokayukta in the states of Himachal Pradesh, Andhra Pradesh, Madhya Pradesh and Gujarat, while he is excluded from the purview of lokayukta in the states of Maharashtra, Uttar Pradesh, Rajasthan, Bihar and Orissa.
2. Ministers and higher civil servants are included in the purview of lokayukta in almost all the states. Maharashtra has also included former ministers and civil servants.
3. Members of state legislature are included in the purview of lokayukta in the states of Andhra Pradesh, Himachal Pradesh, Gujarat, Uttar Pradesh and Assam.