

### *composition of constituent assembly*

#### *Description*

The Constituent Assembly, consisting of indirectly elected representatives, was established to draft a constitution for India (including the now-separate countries of Pakistan and Bangladesh). It existed for almost three years, the first parliament of India after independence in 1947. The Assembly was not elected on the basis of universal adult suffrage, and Muslims and Sikhs received special representation as minorities. The Muslim League boycotted the Assembly after failing to prevent its creation. Although a large part of the Constituent Assembly was drawn from the Congress Party in a one-party environment, the Congress Party included a wide diversity of opinions—from conservative industrialists and radical Marxists to Hindu revivalists—all of whom participated in the process.

The Assembly met for the first time in New Delhi on 9 December 1946, and its last session was held on 24 January 1950. During this period (two years, eleven months and eighteen days) the Assembly held eleven sessions, sitting for a total of 166 days. The hope of the Assembly was expressed by Jawaharlal Nehru:

The first task of this Assembly is to free India through a new constitution, to feed the starving people, and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity. This is certainly a great task. Look at India today. We, are sitting here and there in despair in many places, and unrest in many cities. The atmosphere is surcharged with these quarrels and feuds which are called communal disturbances, and unfortunately we sometimes cannot avoid them. But at present the greatest and most important question in India is how to solve the problem of the poor and the starving. Wherever we turn, we are confronted with this problem. If we cannot solve this problem soon, all our paper constitutions will become useless and purposeless. Keeping this aspect in view, who could suggest to us to postpone and wait?

— Jawaharlal Nehru, Constituent Assembly Debates (Proceedings), Vol. II

#### *Background and election*

The Constituent Assembly was established while India was under British rule, following negotiations between Indian leaders and members of the 1946 Cabinet Mission to India from the United Kingdom. Provincial assembly elections were held early in 1946. Constituent Assembly members were elected indirectly by members of the newly elected provincial assemblies, and initially included representatives for those provinces which formed part of Pakistan (some of which are now in Bangladesh). The Constituent Assembly had 299 representatives, including nine women.

The Interim Government of India was formed on 2 September 1946 from the newly elected Constituent Assembly. The Congress held a large majority in the Assembly (69 percent of the seats), and the Muslim League held nearly all the seats

reserved in the Assembly for Muslims. There were also members of smaller parties, such as the Scheduled Caste Federation, the Communist Party of India and the Unionist Party.

In June 1947 delegations from Sindh, East Bengal, Baluchistan, West Punjab and the North West Frontier Province withdrew to form the Constituent Assembly of Pakistan, meeting in Karachi. On 15 August 1947 the Dominion of India and Dominion of Pakistan became independent nations, and members of the Constituent Assembly who had not withdrawn to Karachi became India's Parliament. Twenty-eight members of the Muslim League joined the Indian Assembly, and 93 members were later nominated from the princely states; the Congress Party secured a majority of 82 percent.

#### *Constitution and elections*

At 11 am on 9 December 1946 the Assembly began its first session, with 208 members attending. By early 1947, representatives of the Muslim League and princely states joined, and the Assembly approved the draft constitution on 26 November 1949. On 26 January 1950 the constitution took effect (commemorated as Republic Day), and the Constituent Assembly became the Provisional Parliament of India (continuing until after the first elections under the new constitution in 1952).

#### *Organization*

Dr. Sachchidananda Sinha was the first elected chairman (temporary) of Constituent Assembly. Later Dr. Rajendra Prasad was elected as the president and its vice-president was Harendra Coomar Mookerjee, a Christian from Bengal and former vice-chancellor of Calcutta University. Also chairing the assembly's Minorities Committee, Mookerjee was appointed governor of West Bengal after India became a republic. Jurist Benegal Narsing Rau was appointed constitutional adviser to the assembly; Rau prepared the original draft of the constitution, and was later appointed a judge in the Permanent Court of International Justice in The Hague.

The assembly's work had five stages:

- Committees presented reports on issues.
- Benegal Narsing Rau prepared an initial draft based on the reports and his research into the constitutions of other nations.
- The drafting committee, chaired by B. R. Ambedkar, presented a detailed draft constitution which was published for public discussion.
- The draft constitution was discussed, and amendments proposed and enacted.
- The constitution was adopted, with a committee of experts led by the Congress Party (known as the Congress Assembly Party) played a pivotal role.

#### *Timeline*

- 9 December 1946: The first meeting of the Constituent Assembly was held in the constitution hall (now the Central Hall of Parliament House). Demanding a separate state, the Muslim League boycotted the meeting. Sachchidananda

Sinha was elected temporary president of the assembly, in accordance with French practice.

- 11 December 1946: Rajendra Prasad and H. C. Mukherjee were elected as assembly president and vice-president, respectively. B. N. Rau appointed its constitutional adviser.
- 13 December 1946: An "objective resolution" was introduced by Jawaharlal Nehru, laying down the underlying principles of the constitution.
- 22 January 1947: Objective resolution unanimously adopted.
- 22 July 1947: National flag adopted.
- 24 January 1950: "Jana Gana Mana" adopted as the national anthem, with the first two verses of "Vande Mataram" the national song. Rajendra Prasad elected the first president of India.

The assembly was chaired by Prasad when it met as a constituent body, and by G. V. Mavlankar when it met as a legislative body. It completed the task of drafting a constitution in two years, eleven months and eighteen days, at a total expenditure of ₹6.4 million.

#### *Principal committees and chairs*

- Committee on the Rules of Procedure: Rajendra Prasad
- Drafting Committee: B.R. Ambedkar
- Steering Committee: Rajendra Prasad
- Finance and Staff Committee: Rajendra Prasad
- Credential Committee: Alladi Krishnaswami Aiyar
- House Committee: B. Pattabhi Sitaramayya
- Order of Business Committee: K. M. Munshi
- Ad Hoc Committee on National Flag: Rajendra Prasad
- Committee on Functions of Constituent Assembly: G.V. Mavlankar
- States Committee: Jawaharlal Nehru
- Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas: Vallabhbhai Patel
- Minorities Sub-Committee: H. C. Mookherjee
- Fundamental Rights Sub-Committee: J. B. Kriplani
- North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee: Gopinath Bardoloi
- Excluded and Partially Excluded Areas (Other than Those in Assam) Sub-Committee: A. V. Thakkar
- Union Powers Committee: Jawaharlal Nehru
- Union Constitution Committee: Jawaharlal Nehru

#### *Members*

- Jawaharlal Nehru, first Prime Minister of India
- Sardar Vallabhbhai Patel, first Deputy Prime Minister and Home

#### *Minister*

- B. R. Ambedkar, Minister for Law; Chairman of Drafting Committee

- Maulana Azad, Minister for Education
- Rajendra Prasad, Chair
- C. Rajagopalachari, Governor-General of India
- Sarat Chandra Bose, Governor-General
- Krishna Sinha, first Chief Minister, Bihar
- Binodanand Jha, Minister, Bihar
- Shyam Nandan Prasad Mishra
- Anugrah Narayan Sinha, Deputy Chief Minister and Finance Minister, Bihar
- Rafi Ahmed Kidwai
- Asaf Ali
- Galib Sahib
- Syama Prasad Mookerjee, Industries Minister, President, Hindu Mahasabha
- Moturi Satyanarayana, Freedom Fighter
- Rajkumari Amrit Kaur, Health Minister
- Hansa Mehta, President, All India Women's Conference
- N. G. Ranga
- Deep Narayan Singh, Minister, Bihar
- P. Subbarayan
- Kailashnath Katju
- N. Gopalaswami Ayyangar
- T. T. Krishnamachari
- Rameshwar Prasad Sinha
- Durgabai Deshmukh
- K. M. Munshi
- Krishana Ballabh Sahay
- Frank Anthony, Anglo-Indian representative
- Sarvepalli Radhakrishnan
- John Mathai
- Pratap Singh Kairon
- Bharat Ratna Chidambaram Subramaniam

### *Preamble to the Constitution of India*

#### *Historic background*

It is based on the Objectives Resolution which was drafted and moved in the Constituent Assembly by Jawaharlal Nehru on 13 December 1946. The preamble-page, along with other pages of the original Constitution of India, was designed and decorated solely by renowned painter Beohar Rammanohar Sinha of Jabalpur who was at Shantiniketan with acharya Nandalal Bose at that time. Nandalal Bose endorsed Beohar Rammanohar Sinha's artwork without any alteration whatsoever. As such, the page bears Beohar Rammanohar Sinha's short signature Ram in Devanagari lower-right corner. Dr. Ambedkar said:

"it was, indeed, a way of life, which recognizes liberty, equality and fraternity as the principles of life and which cannot be divorced from each other: Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the

supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things."

That the preamble is not an integral part of the Indian constitution was declared by the Supreme Court of India in BeruBari case therefore it is not enforceable in a court of law. However, Supreme Court of India has, in the Kesavananda case, overruled earlier decisions and recognised that the preamble may be used to interpret ambiguous areas of the constitution where differing interpretations present themselves. In the 1995 case of Union Government Vs LIC of India also, the Supreme Court has once again held that Preamble is the integral part of the Constitution.

As originally enacted the preamble described the state as a "sovereign democratic republic". In 1976 the Forty-second Amendment changed this to read "sovereign socialist secular democratic republic".

### *Text of the Preamble*

These are the opening words of the preamble of the Indian Constitution

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

JUSTICE, social, economic and political;

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

EQUALITY of status and of opportunity; and to promote among them all

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

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

### *Meaning*

The Preamble reflects the philosophy as well as fundamental values of Indian Constitution. It clarifies four important aspects

1. It mentions that the Constitution derives its Authority from the people of India
2. It declares India to be sovereign, socialist, secular, democratic and republic country.
3. It clarifies the objectives of the Constitution are Justice, Liberty, Equality and Fraternity.

4. It states the date of Adoption i.e., 26 November 1949

### *Enacting formula*

The enacting words, "We, the people of India ...in our constituent assembly ...do here by adopt, enact and give to ourselves this constitution", signify the democratic principle that power is ultimately rested in the hands of the people. It also emphasises that the constitution is made by and for the Indian people and not given to them by any outside power (such as the British Parliament). The phrase "we the people" emphasises the concept of popular sovereignty as laid down by J. J. Rousseau: All the power emanates from the people and the political system will be accountable and responsible to the people.

### *Sovereign*

It means free from the control of any foreign power and internally; has a free government which is directly elected by the people and makes laws that govern the people. She allies in peace and war. The Popular sovereignty is also one of the basic structures of constitution of India. Hence, Citizens of India also enjoy sovereign power to elect their representatives in elections held for parliament, state legislature and local bodies as well. People have supreme right to make decisions on internal as well as external matters. No external power can dictate the government of India. India's membership of the commonwealth or of the United Nations does not impose any external limit on her sovereignty. The Commonwealth is a free association of sovereign Nations. It is no longer British Commonwealth. India does not accept the British Queen as the head of state. The sovereignty empowers India to either acquire a foreign territory or cede a part of its territory in favour of a foreign state.

### *Socialist*

Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy. The term socialist here means democratic socialism i.e. achievement of socialistic goals through democratic, evolutionary and non-violent means. A mixed economy in which both Public sector and Private sector run together as two wheels of economic development.

### *Secular*

Secular means the relationship between the government and the people which is determined according to constitution and law. By the 42nd Amendment, the term "Secular" was also incorporated in the Preamble. Secularism is the basic structure of the Indian constitution. The Government respects all religions. It does not uplift or degrade any particular religion. There is no such thing as a state religion for India. In *S.R. Bommai vs UOI* (1994) The SC of India held "A state which does not recognise any religion as the state religion, it treats all religions equally". Positively, Indian secularism guarantees equal freedom to all religion. It stands for the right to freedom of religion for all citizens. Explaining the meaning of secularism

as adopted by India, Alexander Owics has written, "Secularism is a part of the basic of the Indian Constitution and it means equal freedom and respect for all religions."

### *Democratic*

The first part of the preamble "We, the people of India" and, its last part "give to ourselves this Constitution" clearly indicate the democratic spirit involved even in the Constitution. India is a democracy. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as "one man one vote". Every citizen of India, who is 18 years of age and above and not otherwise debarred by law, is entitled to vote. Every citizen enjoys this right without any discrimination on the basis of caste, creed, colour, sex, Religious intolerance or education. The word 'democratic' not only refer to political but also to social & economic democracy.

### *Republic*

In a republic form of government the head of the state is an elected person and not a heredity monarch . This word denotes a government where no one holds a public power as proprietary right . As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years. The post of the President of India is not hereditary. Every citizen of India is eligible to become the President of the country. The leader of the state is elected by the people.

### *Justice*

The term 'justice' used in the preamble refers to three varying aspects - Political, Social and Economic which are secured through different provisions of Fundamental Rights & Directive Principles of State Policy.

### *Liberty*

The idea of Liberty refers to the freedom on the activities of Indian nationals. This establishes that there are no unreasonable restrictions on Indian citizens in term of what they think , their manner of expressions and the way they wish to follow up their thoughts in action. This is found to be an important tool in ensuring democratic framework. All the citizens are secured with liberty of thought, expression, belief, faith & worship through the Fundamental Rights which are justified in nature. However, liberty does not mean freedom to do anything, and it must be exercised within the constitutional limits.this is second provision

### *Equality*

This envisages that no section of the society enjoys special privileges and individuals are provided with adequate opportunities without any discrimination. Again, there are three dimensions of Equality - Political, Economic & Civic.

### *Fraternity*

This refers to a feeling of brotherhood & a sense of belonging with the country among its people. It embraces psychological as well as territorial dimensions of National Integration. It leaves no room for regionalism, communalism, casteism etc. which hinders the Unity of the State. The inclusion of the word "Fraternity" is proposed by Dr. B.R Ambedkar.

### *Amendability*

It has been clarified by the Supreme Court of India that being a part of Constitution, the Preamble can be subjected to Constitutional Amendments exercised under article 368, however, the basic structure cannot be altered.

### *Forty-second Amendment*

The preamble has been amended only once so far. On 18 December 1976, during the Emergency in India, the Indira Gandhi government pushed through several changes in the Forty-second Amendment of the constitution. A committee under the chairmanship of Sardar Swaran Singh recommended that this amendment be enacted after being constituted to study the question of amending the constitution in the light of past experience. Through this amendment the words "socialist" and "secular" were added between the words "sovereign" and "democratic" and the words "unity of the Nation" were changed to "unity and integrity of the Nation".

## Constitution of India

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### *Background*

The major portion of the Indian subcontinent was under British rule from 1857 to 1947. When the Constitution of India came into force on 26 January 1950, it repealed the Indian Independence Act. India ceased to be a dominion of the British Crown and became a sovereign democratic republic.

Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392, 393 and 394 came into force on 26 Nov 1949 and remaining articles on 26 Jan 1950.

### *Previous legislation used as sources*

The Constitution of India is drawn from many sources. Keeping in mind the needs and conditions of India the framers of the Constitution of India borrowed different features freely from previous legislation viz. Government of India Act 1858, Indian Councils Act 1861, Indian Councils Act 1892, Indian Councils Act 1909, Government of India Act 1919, Government of India Act 1935 and the Indian Independence Act 1947. The last legislation which led to the creation of the two independent nations of India and Pakistan provided for the division of the erstwhile Constituent Assembly into two, with each new assembly having sovereign powers

transferred to it, to enable each to draft and enact a new constitution, for the separate states.

### *Constituent assembly*

The Constitution was drafted by the Constituent Assembly, which was elected by the elected members of the provincial assemblies. The 389 member Constituent Assembly took almost three years (two years, eleven months and eighteen days to be precise) to complete its historic task of drafting the Constitution for Independent India. During this period, it held eleven sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution. On 29 August 1947, the Constituent Assembly set up a Drafting Committee under the Chairmanship of Dr. B.R. Ambedkar to prepare a Draft Constitution for India. While deliberating upon the draft Constitution, the Assembly moved, discussed and disposed of as many as 2,473 amendments out of a total of 7,635 tabled. Dr B.R. Ambedkar, Sanjay Phakey, Jawaharlal Nehru, C. Rajagopalachari, Rajendra Prasad, Sardar Vallabhbhai Patel, Kanaiyalal Munshi, Ganesh Vasudev Mavalankar, Sandipkumar Patel, Maulana Abul Kalam Azad, Shyama Prasad Mukherjee, Nalini Ranjan Ghosh, and Balwantrao Mehta were some important figures in the Assembly. There were more than 30 members of the scheduled classes. Frank Anthony represented the Anglo-Indian community, and the Parsis were represented by H. P. Modi. The Chairman of the Minorities Committee was Harendra Coomars Mookerjee, a distinguished Christian who represented all Christians other than Anglo-Indians. Ari Bahadur Gurung represented the Gorkha Community. Prominent jurists like Alladi Krishnaswamy Iyer, Benegal Narsing Rau and K. M. Munshi, Ganesh Mavalankar were also members of the Assembly. Sarojini Naidu, Hansa Mehta, Durgabai Deshmukh, Rajkumari Amrit Kaur and Vijayalakshmi Pandit were important women members.

The first temporary 2-day president of the Constituent Assembly was Dr Sachchidananda Sinha. Later, Rajendra Prasad was elected president of the Constituent Assembly. The members of the Constituent Assembly met for the first time on 9 December 1946.

### *Drafting*

On the 14 August 1947 meeting of the Assembly, a proposal for forming various committees was presented.[10] Such committees included a Committee on Fundamental Rights, the Union Powers Committee and Union Constitution Committee. On 29 August 1947, the Drafting Committee was appointed, with Dr B. R. Ambedkar as the Chairman along with six other members assisted by a constitutional advisor. These members were Pandit Govind Ballabh Pant, Kanaiyalal Maneklal Munshi (K M Munshi, Ex- Home Minister, Bombay), Alladi Krishnaswamy Iyer (Ex- Advocate General, Madras State), N Gopalaswami Ayengar (Ex-Prime Minister, J&K and later member of Nehru Cabinet), B L Mitter (Ex-Advocate General, India), Md. Saadullah (Ex- Chief Minister of Assam, Muslim League member) and D P Khaitan (Scion of Khaitan Business family and a renowned lawyer). The constitutional advisor was Sir Benegal Narsing Rau (who became First Indian Judge in International Court of Justice, 1950–54). Later B L Mitter resigned and was replaced by Madhav Rao (Legal Advisor of Maharaja of Vadodara). Owing to death

of D P Khaitan, T T Krishnamachari was chosen to be included in the drafting committee. A Draft Constitution was prepared by the committee and submitted to the Assembly on 4 November 1947. Draft constitution was debated and over 2000 amendments were moved over a period of two years. Finally on 26 November 1949, the process was completed and Constituent assembly adopted the constitution. 284 members signed the document and the process of constitution making was complete. This day is celebrated as National Law Day or Constitution Day.

The Assembly met in sessions open to the public, for 166 days, spread over a period of 2 years, 11 months and 18 days before adopting the Constitution, the 308 members of the Assembly signed two copies of the document (one each in Hindi and English) on 24 January 1950. The original Constitution of India is hand-written with beautiful calligraphy, each page beautified and decorated by artists from Shantiniketan including Beohar Rammanohar Sinha and Nandalal Bose. The illustrations on the cover and pages represent styles from the different civilizations of the subcontinent, ranging from the prehistoric Mohenjodaro civilisation, in the Indus Valley, to the present. The calligraphy in the book was done by Prem Behari Narain Raizda. It was published in Dehra Dun, and photolithographed at the offices of Survey of India. The entire exercise to produce the original took nearly five years. Two days later, on 26 January 1950, the Constitution of India became the law of all the States and territories of India. Rs.1,00,00,000 was official estimate of expenditure on constituent assembly. The Constitution has undergone many amendments since its enactment.

The original 1950 Constitution of India is preserved in helium cases in the Parliament house, New Delhi. There are two original versions of this - one in Hindi and the other in English. The original constitution can be viewed [here](#).

### *Influence of other constitutions*

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| <ul style="list-style-type: none"> <li>➤ British Constitution <ul style="list-style-type: none"> <li>• Parliamentary form of government</li> <li>• The idea of single citizenship</li> <li>• The idea of the Rule of law</li> <li>• Institution of Speaker and his role</li> <li>• Lawmaking procedure</li> <li>• Procedure established by Law</li> </ul> </li> <li>➤ United States Constitution <ul style="list-style-type: none"> <li>• Charter of</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>➤ Australian Constitution <ul style="list-style-type: none"> <li>• Freedom of trade and commerce within the country and between the states</li> <li>• Power of the national legislature to make laws for implementing treaties, even on matters outside normal Federal jurisdiction</li> <li>• Concurrent List</li> <li>• Terminology for the Preamble</li> </ul> </li> <li>➤ French Constitution <ul style="list-style-type: none"> <li>• Ideals of Liberty, Equality</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>➤ Other Constitutions <ul style="list-style-type: none"> <li>• Emergency Provision u/a 356, Weimar Constitution (Germany)</li> <li>• Amendment of Constitution, South Africa</li> <li>• Due Procedure of Law, Japan</li> </ul> </li> </ul> |
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| <p>Fundamental Rights</p> <ul style="list-style-type: none"> <li>• Federal structure of government</li> <li>• Electoral College</li> <li>• Independence of the judiciary and separation of powers among the three branches of the government</li> <li>• Judicial review</li> <li>• President as supreme commander of armed forces</li> <li>• Equal Protection under law <ul style="list-style-type: none"> <li>◦ Irish Constitution</li> </ul> </li> <li>• Directive principles of state policy</li> </ul> | <p>and Fraternity</p> <p>➤ Canadian Constitution</p> <ul style="list-style-type: none"> <li>• A quasi-federal form of government — a federal system with a strong central government</li> <li>• Distribution of powers between the central government and state governments</li> <li>• Residual powers retained by the central government <ul style="list-style-type: none"> <li>◦ Constitution of the Soviet Union</li> </ul> </li> <li>• Fundamental Duties u/a 51-A</li> <li>• A Constitutionally mandated Planning Commission to oversee the development of the economy</li> </ul> |  |
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### Structure

The Indian constitution is the world's longest constitution. At the time of commencement, the constitution had 395 articles in 22 parts and 8 schedules. It consists of almost 80,000 words. The Constitution, in its current form (September 2012), consists of a preamble, 25 parts containing 448 articles, 12[Note 4] schedules, 5 appendices and 100 amendments, the latest of which came into force on 1 August 2015.

### Parts

The individual Articles of the Constitution are grouped together into the following Parts:

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| <ul style="list-style-type: none"> <li>• Preamble</li> </ul> <p>with the words "socialist" and "secular" added to it in 1976 by the 42nd constitutional amendment (mini constitution).</p> <ul style="list-style-type: none"> <li>▪ Part I – Union and its Territory</li> <li>▪ Part II – Citizenship.</li> <li>▪ Part III – Fundamental Rights</li> <li>▪ Part IV – Directive Principles of State</li> </ul> | <ul style="list-style-type: none"> <li>▪ Part XII – Finance, Property, Contracts and Suits</li> <li>▪ Part XIII – Trade and Commerce within the territory of India</li> <li>▪ Part XIV – Services Under the Union, the States</li> <li>▪ Part XIVA – Tribunals</li> <li>▪ Part XV – Elections</li> <li>▪ Part XVI – Special Provisions</li> </ul> |
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| <p>Policy</p> <ul style="list-style-type: none"> <li>▪ Part IVA – Fundamental Duties</li> <li>▪ Part V – The Union</li> <li>▪ Part VI – The States</li> <li>▪ Part VII – States in the B part of the First schedule (repealed)</li> <li>▪ Part VIII – The Union Territories</li> <li>▪ Part IX – The Panchayats</li> <li>▪ Part IXA – The Municipalities</li> <li>▪ Part IXB – The Co-operative Societies.</li> <li>▪ Part X – The scheduled and Tribal Areas</li> <li>▪ Part XI – Relations between the Union and the States</li> </ul> | <p>Relating to certain Classes</p> <ul style="list-style-type: none"> <li>▪ Part XVII – Languages</li> <li>▪ Part XVIII – Emergency Provisions</li> <li>▪ Part XIX – Miscellaneous</li> <li>▪ Part XX – Amendment of the Constitution</li> <li>▪ Part XXI – Temporary, Transitional and Special Provisions</li> <li>▪ Part XXII – Short title, date of commencement, Authoritative text in Hindi and Repeals.</li> </ul> |
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## Schedules

Schedules are lists in the Constitution that categorize and tabulate bureaucratic activity and policy of the Government.

- First Schedule (Articles 1 and 4) - This lists the states and territories of India, lists any changes to their borders and the laws used to make that change.
- Second Schedule (Articles 59(3), 65(3), 75(6), 97, 125, 148(3), 158(3), 164(5), 186 and 221)- – This lists the salaries of officials holding public office, judges, and Comptroller and Auditor General of India.
- Third Schedule (Articles 75(4), 99, 124(6), 148(2), 164(3), 188 and 219)—Forms of Oaths – This lists the oaths of offices for elected officials and judges.
- Fourth Schedule (Articles 4(1) and 80(2)) – This details the allocation of seats in the Rajya Sabha (the upper house of Parliament) per State or Union Territory.
- Fifth Schedule (Article 244(1)) – This provides for the administration and control of Scheduled Areas[Note 5] and Scheduled Tribes[Note 6] (areas and tribes needing special protection due to disadvantageous conditions).
- Sixth Schedule (Articles 244(2) and 275(1))— Provisions made for the administration of tribal areas in Assam, Meghalaya, Tripura, and Mizoram.
- Seventh Schedule (Article 246) —The union (central government), state, and concurrent lists of responsibilities.
- Eighth Schedule (Articles 344(1) and 351)—The official languages.
- Ninth Schedule (Article 31-B) – Validation of certain Acts and Regulations.
- Tenth Schedule (Articles 102(2) and 191(2))—"Anti-defection" provisions for Members of Parliament and Members of the State Legislatures.

- Eleventh Schedule (Article 243-G) —Panchayat Raj (rural local government),
- Twelfth Schedule (Article 243-W) — Municipalities (urban local government).

## *Appendices*

- Appendix I—The Constitution (Application to Jammu and Kashmir) Order, 1954.
- Appendix II— Re-statement, with reference to the present text of the Constitution, of the exceptions and modifications subject to which the Constitution applies to the State of Jammu and Kashmir.
- Appendix III—Extracts from the Constitution (Forty-fourth Amendment) Act, 1978.
- Appendix IV—The Constitution (Eighty-sixth Amendment) Act, 2002.
- Appendix V— The Constitution (Eighty-eighth Amendment) Act, 2003.

## *The constitution and the government*

Institutions of governance, such as the Parliament, the President, the Judiciary, the Executive, etc. did not exist before the adoption of the constitution, by the people of India, and were created by it.[38][dubious – discuss] With the aid of the Constitution, India is governed by a parliamentary system of government with the executive directly accountable to the legislature. It states that there shall be a President of India who shall be the head of the executive, under Articles 52 and 53. The President's duty is to preserve, protect and defend the constitution and the law under Article 60 of the Indian constitution. Article 74 provides that there shall be a Prime Minister as the head of union cabinet which would aid and advice the President in performing his constitutional duty. Union cabinet is collectively responsible to the House of the People as per Article 75(3).

The Constitution of India is federal in nature but unitary in spirit. The common features of a federation such as written Constitution, supremacy of Constitution, rigidity of Constitution, two government, division of powers, bicameralism and independent judiciary as well as unitary features like single Constitution, single citizenship, integrated judiciary, flexible Constitution, a strong Centre, appointment of state governor by the Centre, All-India Services, Emergency Provisions etc. can be seen in Indian Constitution. This unique combination makes it quasi-federal in form.

Each state and each Union territory of India has its own government. Analogous to President and Prime Minister, each has a Governor (in case of states) or Lieutenant Governor (in the case of Union territories) and a Chief Minister. Article 356 permits the President to dismiss a state government when a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. This power was abused earlier as state governments came to be dismissed on the flimsiest of grounds, and more due to the political discomfiture of the party in power at the centre. Post - Bommai judgment, such a course of action has been rendered rather difficult, as the courts have asserted their

right to review it. Consequently, very few state governments have been disbanded since.

The 73rd and 74th Amendment Act also introduced the system of Panchayati Raj in rural areas and Municipality in urban areas. Also, Article 370 of the Constitution gives special status to the State of Jammu and Kashmir.

### *The constitution and the legislature*

#### *Amendment*

The process of addition, variation or repeal of any part of the constitution by the Parliament under its constituent powers, is called amendment of the constitution. The procedure is laid out in Article 368. An amendment bill must be passed by each House of the Parliament by a majority of the total membership of that House when at least two-thirds members are present and voted. In addition to this, certain amendments which pertain to the federal nature of the Constitution must be ratified by a majority of state legislatures. Unlike the ordinary bills under legislative powers of Parliament as per Article 245 (with exception to money bills), there is no provision for joint sitting of the two houses (Lok Sabha and Rajya Sabha) of the parliament to pass a constitutional amendment bill. During recess of Parliament, President can not promulgate ordinances under his legislative powers as per Article 123, Chapter III which needs constitutional amendment. Deemed amendments to the constitution which can be passed under legislative powers of Parliament, are no more valid after the addition of Article 368 (1) by Twenty-fourth Amendment of the Constitution of India.

As of September 2015, there have been 120 amendment bills presented in the Parliament, out of which 100 have been passed to become Amendment Acts. Most of these amendments address issues dealt with by statute in other democracies. However, the Constitution is so specific in spelling out government powers that many of these issues must be addressed by constitutional amendment. As a result, the document is amended roughly thrice in a two year's duration.

In 2000 the National Commission to Review the Working of the Constitution (NCRWC) was set up to look into updating the constitution. Government of India, establishes term based law commissions to recommend law reforms for maximising justice in society and for promoting good governance under the rule of law.

### *Constituent Assembly debates*

The framers of the Constitution were neither in favour of the traditional theory of federalism, which entrusts the task of constitutional amendment to a body other than the Legislature, nor did they favour a rigid special procedure for such amendments. They also never wanted to have a British-style system where Parliament is supreme. The framers, instead, adopted a combination of the "theory of fundamental law", which underlies the written Constitution of the United States with the "theory of parliamentary sovereignty" as existing in the United Kingdom. The Constitution of India vests constituent power upon the Parliament subject to the special procedure laid down therein.

During the discussion in the Constituent Assembly on this aspect, some members were in favour of adopting an easier mode of amending procedure for the initial five to ten years. Explaining why it was necessary to introduce an element of flexibility in the Constitution, Jawaharlal Nehru observed in the Constituent Assembly on 8 November 1948, "While we want this Constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop a nation's growth, the growth of a living, vital, organic people. Therefore, it has to be flexible ... while we, who are assembled in this House, undoubtedly represent the people of India, nevertheless I think it can be said, and truthfully, that when a new House, by whatever name it goes, is elected in terms of this Constitution, and every adult in India has the right to vote - man and woman - the House that emerges then will certainly be fully representative of every section of the Indian people. It is right that House elected so - under this Constitution of course it will have the right to do anything - should have an easy opportunity to make such changes as it wants to. But in any event, we should not make a Constitution, such as some other great countries have, which are so rigid that they do not and cannot be adapted easily to changing conditions. Today especially, when the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow. Therefore, while we make a Constitution which is sound and as basic as we can, it should also be flexible ..."

Dr. P.S. Deshmukh believed that the amendment of the Constitution should be made easier as he felt there were contradictory provisions in some places which would be more and more apparent when the provisions were interpreted, and that the whole administration would suffer, if the amendment to the Constitution was not made easy. Brajeshwar Prasad also favoured a flexible Constitution so as to make it survive the test of time. He was of the opinion that rigidity tends to check progressive legislation or gradual innovation. On the other hand, H.V. Kamath favoured ensuring procedural safeguards to avoid the possibility of hasty amendment to the Constitution.

"It is said that the provisions contained in the Draft make amendment difficult. It is proposed that the Constitution should be amendable by a simple majority at least for some years. The argument is subtle and ingenious. It is said that this Constituent Assembly is not elected on adult suffrage while the future Parliament will be elected on adult suffrage and yet the former has been given the right to pass the Constitution by a simple majority while the latter has been denied the same right. It is paraded as one of the absurdities of the Draft Constitution. I must repudiate the charge because it is without foundation. To know how simple are the provisions of the Draft Constitution in respect of amending the Constitution one has only to study the provisions for amendment contained in the American and Australian Constitutions. Compared to them those contained in the Draft Constitution will be found to be the simplest. The Draft Constitution has eliminated the elaborate and difficult procedures such as a decision by a convention or a referendum ... It is only for amendments of specific matters—and they are only few—that the ratification of the State Legislatures is required. All other Articles of the Constitution are left to be amended by Parliament. The only limitation is that it shall be done by a majority of not less than two-thirds of the members of each House present and voting and a majority of the total membership of each House. It is difficult to conceive a simpler

method of amending the Constitution. What is said to be the absurdity of the amending provisions is founded upon a misconception of the position of the Constituent Assembly and of the future Parliament elected under the Constitution. The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable Constitution it has no axe to grind. In considering the Articles of the Constitution it has no eye on getting through a particular measure. The future Parliament if it met as Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some Article of the Constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none. That is the difference between the Constituent Assembly and the future Parliament. That explains why the Constituent Assembly though elected on limited franchise can be trusted to pass the Constitution by simple majority and why the Parliament though elected on adult suffrage cannot be trusted with the same power to amend it."

—B.R. Ambedkar, speaking in the Constituent Assembly on 4 November 1948

### *Procedure*

The Constitution of India provides for a distinctive amending process when compared to the Constitutions of other nations. It can be described as partly flexible and partly rigid. The Constitution provides for a variety in the amending process. This feature has been commended by Australian academic Sir Kenneth Wheare who felt that uniformity in the amending process imposed "quite unnecessary restrictions" upon the amendment of parts of a Constitution. An amendment of the Constitution can be initiated only by the introduction of a Bill in either House of Parliament. The Bill must then be passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.[3] There is no provision for a joint sitting in case of disagreement between the two Houses. The Bill, passed by the required majority, is then presented to the President who shall give his assent to the Bill. If the amendment seeks to make any change in any of the provisions mentioned in the proviso to article 368, it must be ratified by the Legislatures of not less than one-half of the States. Although, there is no prescribed time limit for ratification, it must be completed before the amending Bill is presented to the President for his assent.

Every constitutional amendment is formulated as a statute. The first amendment is called the "Constitution (First Amendment) Act", the second, the "Constitution (Second Amendment) Act", and so forth. Each usually has the long title "An Act further to amend the Constitution of India".

### *Types of amendments*

The original constitution provided for three categories of amendments. The first category of amendments are those contemplated in articles 4 (2), 169 (3) -1962, 239A (2) -1962, 239AA (7b) -1991, 243M (4b) -1992, 243ZC (3) -1992, 244A (4) -1969, 356 (1)c, para 7(2) of Schedule V and para 21(2) of Schedule VI.[4] These amendments can be effected by Parliament by a simple majority such as that

required for the passing of any ordinary law. The amendments under this category are specifically excluded from the purview of article 368 which is the specific provision in the Constitution dealing with the power and the procedure for the amendment of the Constitution. Article 4 provides that laws made by Parliament under article 2 (relating to admission or establishment of new States) and article 3 (relating to formation of new States and alteration of areas, boundaries or names of existing States) effecting amendments in the First Schedule or the Fourth Schedule and supplemental, incidental and consequential matters, shall not be deemed to be amendments of the Constitution for the purposes of article 368. For example, the States Reorganisation Act, 1956, which brought about reorganisation of the States in India, was passed by Parliament as an ordinary piece of legislation. In *Mangal Singh v. Union of India* (A.I.R. 1967 S.C. 944), the Supreme Court held that power to reduce the total number of members of Legislative Assembly below the minimum prescribed under article 170 (1) is implicit in the authority to make laws under article 4. Article 169 empowers Parliament to provide by law for the abolition or creation of the Legislative Councils in States and specifies that though such law shall contain such provisions for the amendment of the Constitution as may be necessary, it shall not be deemed to be an amendment of the Constitution for the purposes of article 368. The Legislative Councils Act, 1957, which provided for the creation of a Legislative Council in Andhra Pradesh and for increasing the strength of the Legislative Councils in certain other States, is an example of a law passed by Parliament in exercise of its powers under article 169. The Fifth Schedule contains provisions as to the administration and control of the Schedule Areas and Scheduled Tribes. Para 7 of the Schedule vests Parliament with plenary powers to enact laws amending the Schedule and lays down that no such law shall be deemed to be an amendment of the Constitution for the purposes of article 368. Under Para 21 of the Sixth Schedule, Parliament has full power to enact laws amending the Sixth Schedule which contains provisions for the administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram. No such law, will be deemed to be an amendment of the Constitution for the purposes of article 368.

The second category includes amendments that can be effected by Parliament by a prescribed 'special majority'; and the third category of amendments includes those that require, in addition to such "special majority", ratification by at least one half of the State Legislatures. The last two categories are governed by article 368.

Ambedkar speaking in the Constituent Assembly on 17 September 1949, pointed out that there were "innumerable articles in the Constitution" which left matters subject to laws made by Parliament. Under article 11, Parliament may make any provision relating to citizenship notwithstanding anything in article 5 to 10. Thus, by passing ordinary laws, Parliament may, in effect, provide, modify or annul the operation of certain provisions of the Constitution without actually amending them within the meaning of article 368. Since such laws do not in fact make any change whatsoever in the letter of the Constitution, they cannot be regarded as amendments of the Constitution nor categorised as such. Other examples include Part XXI of the Constitution—"Temporary, Transitional and Special Provisions" whereby "Notwithstanding anything in this Constitution" power is given to Parliament to make laws with respect to certain matters included in the State List (article 369); article 370 (1) (d) which empowers the President to modify, by order, provisions of the

Constitution in their application to the State of Jammu and Kashmir; provisos to articles 83 (2) and 172 (1) empower Parliament to extend the lives of the House of the People and the Legislative Assembly of every State beyond a period of five years during the operation of a Proclamation of Emergency; and articles 83(1) and 172 (2) provide that the Council of States/Legislative Council of a State shall not be subject to dissolution but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

### *Amendments under article 368*

Article 368 (1) of the Constitution of India grants constituent power to make formal amendments and empowers Parliament to amend the Constitution by way of addition, variation or repeal of any provision according to the procedure laid down therein, which is different from the procedure for ordinary legislation. Article 368 has been amended by the 24th and 42nd Amendments in 1971 and 1976 respectively. The following is the full text of Article 368 of the Constitution, which governs constitutional amendments. New clauses 368 (1) and 368 (3) were added by the 24th Amendment in 1971, which also added a new clause (4) in article 13 which reads, "Nothing in this article shall apply to any amendment of this Constitution made under article 368." The provisions in italics were inserted by the 42nd Amendment, but were later declared unconstitutional by the Supreme Court in *Minerva Mills v. Union of India* in 1980. After the 24th amendment, Article 4(2), etc. of the constitution are superseded/made void by article 368 (1) which is the only procedure for amending the constitution however marginal may be the nature of the amendment. Supreme court ruled that the constituent power under article 368 must be exercised by the Parliament in the prescribed manner and can not be exercised under the legislative powers of the Parliament.

#### 368. Power of Parliament to amend the Constitution and Procedure therefor:

- (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
- (2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:
  1. Provided that if such amendment seeks to make any change in –
    - (a) article 54, article 55, article 73, article 162 or article 241, or
    - (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
    - (c) any of the Lists in the Seventh Schedule, or

- (d) the representation of States in Parliament, or
  - (e) the provisions of this article,
2. the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.
- (3) Nothing in article 13 shall apply to any amendment made under this article.
  - (4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Fortysecond Amendment) Act, 1976 shall be called in question in any court on any ground.
  - (5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

As per the procedure laid out by article 368 for amendment of the Constitution, an amendment can be initiated only by the introduction of a Bill in either House of Parliament. The Bill must then be passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. There is no provision for a joint sitting in case of disagreement between the two Houses. Total membership in this context has been defined to mean the total number of members comprising the House irrespective of any vacancies or absentees on any account vide Explanation to Rule 159 of the Rules of Procedure and Conduct of Business in Lok Sabha.

The Bill, passed by the required majority, is then presented to the President who shall give his assent to the Bill. If the amendment seeks to make any change in any of the provisions mentioned in the proviso to article 368, it must be ratified by the Legislatures of not less than one-half of the States. These provisions relate to certain matters concerning the federal structure or of common interest to both the Union and the States viz., the election of the President (articles 54 and 55); the extent of the executive power of the Union and the States (articles 73 and 162); the High Courts for Union territories (article 241); The Union Judiciary and the High Courts in the States (Chapter IV of Part V and Chapter V of Part VI); the distribution of legislative powers between the Union and the States (Chapter I of Part XI and Seventh Schedule); the representation of States in Parliament; and the provision for amendment of the Constitution laid down in article 368. Ratification is done by a resolution passed by the State Legislatures. There is no specific time limit for the ratification of an amending Bill by the State Legislatures. However, the resolutions ratifying the proposed amendment must be passed before the amending Bill is presented to the President for his assent.

### *Rules of Procedure in Parliament*

Article 368 does not specify the legislative procedure to be followed at various stages of enacting an amendment. There are gaps in the procedure as to how and

after what notice a Bill is to be introduced, how it is to be passed by each House and how the President's assent is to be obtained. This point was decided by the Supreme Court in *Shankari Prasad Singh Deo v. Union of India* (AIR 1951 SC 458). Delivering the judgment, Patanjali Sastri J. observed, "Having provided for the constitution of a Parliament and prescribed a certain procedure for the conduct of its ordinary legislative business to be supplemented by rules made by each House (article 118), the makers of the Constitution must be taken to have intended Parliament to follow that procedure, so far as it may be applicable consistently with the express provisions of article 368, when they entrusted to it power of amending the Constitution." Hence, barring the requirements of special majority, ratification by the State Legislatures in certain cases, and the mandatory assent by the President, a Bill for amending the Constitution is dealt with the Parliament following the same legislative process as applicable to an ordinary piece of legislation. The Rules of the House in the Rajya Sabha do not contain special provisions with regard to Bills for the amendment of the Constitution and the Rules relating to ordinary Bills apply, subject to the requirements of article 368.

The Rules of Procedure and Conduct of Business make certain specific provisions regarding amendment bills in the Lok Sabha. They relate to the voting procedure in the House at various stages of such Bills, in the light of the requirements of article 368; and the procedure before introduction in the case of such Bills, if sponsored by Private Members. Although the "special majority", required by article 368 is *prima facie* applicable only to the voting at the final stage, the Lok Sabha Rules prescribe adherence to this constitutional requirement at all the effective stages of the Bill, i.e., for adoption of the motion that the Bill be taken into consideration; that the Bill as reported by the Select/Joint Committee be taken into consideration, in case a Bill has been referred to a Committee; for adoption of each clause or schedule or clause or schedule as amended, of a Bill; or that the Bill or the Bill as amended, as the case may be, be passed.

This provision was arrived at after consultation with the Attorney-General and detailed discussions in the Rules Committee. It has been described as "*evidenti ex abundanti cautela*", a Latin phrase, which in law, describes someone taking precautions against a very remote contingency. By strictly adhering to article 368, the provision is intended to ensure the validity of the procedure adopted, but also guard against the possibility of violation of the spirit and scheme of that article 29 by the consideration of a Bill seeking to amend the Constitution including its consideration clause by clause being concluded in the House with only the bare quorum present. Voting at all the above stages is by division. However, the Speaker may, with the concurrence of the House, put any group of clauses or schedules together to the vote of the House, provided that the Speaker will permit any of the clauses or schedules be put separately, if any member requests that. The Short Title, Enacting Formula and the Long Title are adopted by a simple majority. The adoption of amendments to clauses or schedules of the Bill, requires a majority of members present and voting in the same manner as in the case of any other Bill.

### *Private Members' Bills*

A Bill for amendment of the Constitution by a Private Member is governed by the rules applicable to Private Members' Bills in general. The period of one month's

notice applies to such a Bill also. In addition, in Lok Sabha, such a Bill has to be examined and recommended by the Committee on Private Members' Bills before it is included in the List of Business. The Committee has laid down the following principles as guiding criteria in making their recommendations in regard to these Bills:

- I. "(i) The Constitution should be considered as a sacred document — a document which should not be lightly interfered with and it should be amended only when it is found absolutely necessary to do so. Such amendments may generally be brought forward when it is found that the interpretation of the various articles and provisions of the Constitution has not been in accordance with the intention behind such provisions and cases of lacunae or glaring inconsistencies have come to light. Such amendments should, however, normally be brought by the Government after considering the matter in all its aspects and consulting experts, and taking such other advice as they may deem fit.
- II. (ii) Some time should elapse before a proper assessment of the working of the Constitution and its general effect is made so that any amendments that may be necessary are suggested as a result of sufficient experience.  
(iii) Generally speaking, notice of Bills from Private Members should be examined in the background of the proposal or measures which the Government may be considering at the time so that consolidated proposals are brought forward before the House by the Government after collecting sufficient material and taking expert advice.  
(iv) Whenever a Private Member's Bill raises issues of far-reaching importance and public interest, the Bill might be allowed to be introduced so that public opinion is ascertained and gauged to enable the House to consider the matter further. In determining whether a matter is of sufficient public importance, it should be examined whether the particular provisions in the Constitution are adequate to satisfy the current ideas and public demand at the time. In other words, the Constitution should be adapted to the current needs and demands of the progressive society and any rigidity which may impede progress should be avoided."

### *Role of state legislatures*

The role of the states in constitutional amendment is limited. State legislatures cannot initiate any Bill or proposal for amendment of the Constitution. They are associated in the process of the amendment only through the ratification procedure laid down in article 368, in case the amendment seeks to make any change in the any of the provisions mentioned in the proviso to article 368. The only other provision for constitutional changes by state legislatures is to initiate the process for creating or abolishing Legislative Councils in their respective legislatures, and to give their views on a proposed Parliamentary bill seeking to affect the area, boundaries or name of any State or States which has been referred to them under the proviso to Article 3. However, this referral does not restrict Parliament's power to make any further amendments of the Bill.

Article 169 (1) reads, "Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting." The proviso of article 3 provides that no bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the bill has been referred by the President to the Legislature of the State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

### *Role of Union territories*

Union territories have no say in constitutional amendments, including the ratification process which is only open to States. Delhi and Puducherry are two union territories that are entitled, by special constitutional amendments, to have an elected Legislative Assembly and a Cabinet of ministers, thereby enjoying partial statehood powers. However, neither of these territories can participate in the ratification process because they are not States, as defined by the Constitution.

### *Limitations*

The Constitution can be amended only by Parliament; and only in the manner provided. Although Parliament must preserve the basic framework of the Constitution, there is no other limitation placed upon the amending power, meaning that there is no provision of the Constitution that cannot be amended. In *Abdul Rahiman Jamaluddin v. Vithal Arjun* (AIR 1958 Bombay, 94, (1957)), the Bombay High Court held that any attempt to amend the Constitution by a Legislature other than Parliament, and in a manner different from that provided for, will be void and inoperative.

The Supreme Court first struck down a constitutional amendment in 1967, ruling in the case of *I.C. Golak Nath and Ors. vs. State of Punjab and Anr.* An amendment was struck down on the basis that it violated Article 13: "The State shall not make any law which takes away or abridges the rights conferred by [the charter of Fundamental Rights]". The term "law" in this article was interpreted as including a constitutional amendment. Parliament responded by enacting the twenty-fourth Amendment of the Constitution of India which declared that "nothing in Article 13 shall apply to any amendment of this Constitution".

The current limitation on amendments comes from *Kesavananda Bharati v. The State of Kerala*, where the Supreme Court ruled that amendments of the constitution must respect the "basic structure" of the constitution, and certain fundamental features of the constitution cannot be altered by amendment. Parliament attempted to remove this limitation by enacting the Forty-second Amendment, which declared, among other provisions, that "there shall be no limitation whatever on the constituent power of Parliament to amend ...this

Constitution". However, this change was itself later declared invalid by the Supreme Court in *Minerva Mills v. Union of India*.

The issue of whether an entire constitutional amendment is void for want of ratification or only an amended provision required to be ratified under proviso to clause (2) of article 368 was debated before the Supreme Court in *Kihota Hollohon v. Zachilhu* (AIR 1993 SC 412), in which the constitutional validity of the Tenth Schedule of the Constitution inserted by the 52nd Amendment in 1985 was challenged. The decisions of the Speakers/Chairmen on disqualification, which had been challenged in different High Courts through different petitions, were heard by a five-member Constitution Bench of the Supreme Court. The case, now popularly known as Anti-Defection case, was decided in 1992. The Constitution Bench in its majority judgement upheld the validity of the Tenth Schedule, but declared Paragraph 7 of the Schedule invalid because it was not ratified by the required number of the Legislatures of the States as it brought about in terms and effect, a change in articles 136, 226 and 227 of the Constitution. While doing so, the majority treated Paragraph 7 as a severable part from the rest of the Schedule. However, in the dissenting opinion, the minority of the Judges held that the entire Amendment is invalid for want of ratification.

### *Parts frequently amended*

Despite the super majority requirement in the Constitution, it is one of the most frequently amended governing documents in the world, and the most amended national constitution in the world; amendments have averaged about two a year. This is partly because the Constitution is so specific in spelling out government powers that amendments are often required to deal with matters that could be addressed by ordinary statutes in other democracies. As a result, it is the longest constitution of any sovereign nation in the world. It currently consists of over 117,000 words (450 articles plus 115 amendments). Another reason is that the Parliament of India is elected by means of single seat districts, under the plurality voting system, used in the United Kingdom and the United States. This means that, it is possible for a party to win two thirds of the seats in Parliament without securing two thirds of the vote. For example, in the first two Lok Sabha elections held under the Constitution, the Indian National Congress party won less than one half of the national vote but roughly two thirds of seats in the chamber.

### *Fundamental Rights*

The most important and frequent reason for amendments to the Constitution is the curtailment of the Fundamental Rights charter. This is achieved by inserting laws contrary to the fundamental rights provisions into Schedule 9 of the Constitution. Schedule 9 protects such laws from judicial review. The typical areas of restriction include laws relating to property rights, and affirmative action in favour of minority groups such as the "scheduled castes", "scheduled tribes", and other "backward classes" and also lower classes people.

In a landmark ruling in January 2007, a nine judge constitutional bench of the Supreme Court of India confirmed that all laws (including those in Schedule 9) would be open to judicial review if they violate the "basic structure of the constitution". Chief

Justice Yogesh Kumar Sabharwal noted, "If laws put in the Ninth Schedule abridge or abrogate fundamental rights resulting in violation of the basic structure of the constitution, such laws need to be invalidated".

### *Territorial changes*

Constitutional amendments have been made to facilitate changes in the territorial extent of the Republic of India due to the incorporation of the former French colony of Pondicherry, the former Portuguese colony of Goa, and a minor exchange of territory with Pakistan. Amendments are also necessary with regard to littoral rights over the exclusive economic zone of 200 mi and the formation of new states and union territories by the reorganization of existing states. Constitutional amendment under article 368 allows peaceful division of the country provided fundamental rights (Article 13) are ensured in all the resultant countries. The constitution (ninth amendment) act, 1960 is an example which has ceded territory to old Pakistan.

### *Transitional provisions*

The constitution includes transitional provisions intended to remain in force only for a limited period. These need to be renewed periodically. For example, for continuing reservation in parliamentary seats for scheduled castes and scheduled tribes an constitutional amendment is enacted once in every ten years.

### *Democratic reform*

Amendments have been made with the intent of reform the system of government and incorporating new "checks and balances" in the Constitution. These have included the following:

- Creation of the National Commission for Scheduled Castes.
- Creation of the National Commission for Scheduled Tribes.
- Creation of mechanisms for Panchayati Raj (local self governance).
- Disqualification of members from changing party allegiance.
- Restrictions on the size of the cabinet.
- Restrictions on imposition of an internal emergency.

| No. | Amendments  | Enforced since | Objectives   |
|-----|---|----------------|--|
| 1   | Amend articles 15, 19, 85, 87, 174, 176, 341, 342, 372 and 376.<br>Insert articles 31A and 31B.<br>Insert schedule 9. | 18 June 1951   | Added special provision for the advancement of any socially and educationally backward classes or for the Scheduled Castes and the Scheduled Tribes. To fully secure the constitutional validity of zamindari abolition laws and to place reasonable restriction on freedom of speech. A new constitutional device, called |

|   |  |                   |  |
|---|--|-------------------|--|
|   |  |                   | Schedule 9 introduced to protect laws that are contrary to the Constitutionally guaranteed fundamental rights. These laws encroach upon property rights, freedom of speech and equality before law   |
| 2 | Amend article 81(1)(b).  | 1 May 1953        | Removed the upper population limit for a parliamentary constituency by amending Article 81(1)(b).  |
| 3 | Amend schedule 7.  | 22 February 1955  | Re-enacted entry 33 of the Concurrent List in the Seventh Schedule with relation to include trade and commerce in, and the production, supply and distribution of 4 classes of essential commodities, viz., foodstuffs, including edible oil seeds and oils; cattle fodder, including oilcakes and other concentrates; raw cotton whether ginned or unginned, and cotton seeds; and raw jute.                              |
| 4 | Amend articles 31, 35 and 305.<br>Amend schedule 9.  | 27 April 1955     | Restrictions on property rights and inclusion of related bills in Schedule 9 of the constitution   |
| 5 | Amend article 3.   | 24 December 1955  | Empowered the President to prescribe a time limit for a State Legislature to convey its views on proposed Central laws relating to the formation of new States and alteration of areas, boundaries or names of existing States. Also permitted the President to extend the prescribed limit, and prohibited any such bill from being introduced in Parliament until after the expiry of the prescribed or extended period. |
| 6 | Amend articles 269 and 286.<br>Amend schedule 7.   | 11 September 1956 | Amend the Union and State Lists with respect to raising of taxes   |
| 7 | Amend articles 1, 3, 49, 80, 81, 82, 131, 153, 158, 168, 170, 171, 216, 217, 220, 222, 224, 230, 231 and 232.<br>Insert articles 258A, 290A, 298, 350A, 350B, 371, 372A and 378A.<br>Amend part 8. | 1 November 1956   | Reorganization of states on linguistic lines, abolition of Class A, B, C, D states and introduction of Union Territories   |

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|    | Amend schedules 1, 2, 4 and 7.  |                  |   |
| 8  | Amend article 334.  | 5 January 1960   | Extended the period of reservation of seats for the Scheduled Castes and Scheduled Tribes and Anglo-Indians in the Lok Sabha and the State Legislative Assemblies till 1970   |
| 9  | Amend schedule 1.   | 28 December 1960 | Minor adjustments to territory of Indian Union consequent to agreement with Pakistan for settlement of disputes by demarcation of border villages, etc.   |
| 10 | Amend article 240.<br>Amend schedule 1.   | 11 August 1961   | Incorporation of Dadra, Nagar and Haveli as a Union Territory, consequent to acquisition from Portugal  |
| 11 | Amend articles 66 and 71.   | 19 December 1961 | Election of Vice President by Electoral College consisting of members of both Houses of Parliament, instead of election by a Joint Sitting of Parliament.<br>Indemnify the President and Vice President Election procedure from challenge on grounds of existence of any vacancies in the electoral college |
| 12 | Amend article 240.<br>Amend schedule 1.   | 20 December 1961 | Incorporation of Goa, Daman and Diu as a Union Territory, consequent to acquisition from Portugal   |
| 13 | Amend article 170.<br>Insert new article 371A.  | 1 December 1963  | Formation of State of Nagaland, with special protection under Article 371A  |
| 14 | Amend articles 81 and 240.<br>Insert article 239A.<br>Amend schedules 1 and 4.                              | 28 December 1962 | Incorporation of Pondicherry into the Union of India and creation of Legislative Assemblies for Himachal Pradesh, Tripura, Manipur and Goa  |
| 15 | Amend articles 124, 128, 217, 222, 224, 226, 297, 311 and 316.<br>Insert article 224A.<br>Amend schedule 7. | 5 October 1963   | Raise retirement age of High court judges from 60 to 62 and other minor amendments for rationalizing interpretation of rules regarding judges etc.  |
| 16 | Amend articles 19, 84 and 173.<br>Amend schedule 3.   | 5 October 1963   | Make it obligatory for seekers of public office to swear their allegiance to the Indian Republic and prescribe the various obligatory templates   |
| 17 | Amend article 31A.  | 20 June          | To secure the constitutional validity   |

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|    | Amend schedule 9.  | 1964              | of acquisition of Estates and place land acquisition laws in Schedule 9 of the constitution   |
| 18 | Amend article 3.   | 27 August 1966    | Technical Amendment to include Union Territories in Article 3 and hence permit reorganisation of Union Territories  |
| 19 | Amend article 324.   | 11 December 1966  | Abolish Election Tribunals and enable trial of election petitions by regular High Courts  |
| 20 | Insert article 233A.   | 22 December 1966  | Indemnify & validate judgments, decrees, orders and sentences passed by judges and to validate the appointment, posting, promotion and transfer of judges barring a few who were not eligible for appointment under article 233. Amendment needed to overcome the effect of judgment invalidating appointments of certain judges in the state of Uttar Pradesh                                |
| 21 | Amend schedule 8.  | 10 April 1967     | Include Sindhi as an Official Language  |
| 22 | Amend article 275.<br>Insert articles 244A and 371B.                       | 25 September 1969 | Provision to form Autonomous states within the State of Assam   |
| 23 | Amend articles 330, 332, 333 and 334.                                      | 23 January 1970   | Discontinued reservation of seats for the Scheduled Tribes in Nagaland, both in the Lok Sabha and the State Legislative Assembly and stipulated that not more than one Anglo-Indian could be nominated by the Governor to any State Legislative Assembly. Extend reservation for SC/ST and Anglo Indian members in the Lok Sabha and State Assemblies for another ten years, i.e. up to 1980. |
| 24 | Amend articles 13 and 368.   | 5 November 1971   | Enable parliament to dilute fundamental rights through amendments to the constitution   |
| 25 | Amend article 31.<br>Insert article 31C.                                   | 20 April 1972     | Restrict property rights and compensation in case the state takes over private property   |
| 26 | Amend article 366.<br>Insert article 363A.<br>Remove articles 291 and 362. | 28 December 1971  | Abolition of privy purse paid to former rulers of princely states which were incorporated into the Indian Republic  |
| 27 | Amend articles 239A and 240.   | 15 February       | Reorganization of Mizoram into a Union Territory with a legislature   |

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|    | Insert articles 239B and 371C.   | 1972             | and council of ministers  |
| 28 | Insert article 312A.<br>Remove article 314.  | 29 August 1972   | Rationalize Civil Service rules to make it uniform across those appointed prior to Independence and post independence   |
| 29 | Amend schedule 9.  | 9 June 1972      | Place land reform acts and amendments to these act under Schedule 9 of the constitution   |
| 30 | Amend article 133.   | 27 February 1973 | Change the basis for appeals in Supreme Court of India in case of Civil Suits from value criteria to one involving substantial question of law                                      |
| 31 | Amend articles 81, 330 and 332.  | 17 October 1973  | Increase size of Parliament from 525 to 545 seats. Increased seats going to the new states formed in North East India and minor adjustment consequent to 1971 Delimitation exercise |
| 32 | Amend article 371.<br>Insert articles 371D and 371E.<br>Amend schedule 7.  | 1 July 1974      | Protection of regional rights in Telangana and Andhra regions of State of Andhra Pradesh  |
| 33 | Amend articles 101 and 190.  | 19 May 1974      | Prescribes procedure for resignation by members of parliament and state legislatures and the procedure for verification and acceptance of resignation by house speaker              |
| 34 | Amend schedule 9.  | 7 September 1974 | Place land reform acts and amendments to these act under Schedule 9 of the constitution   |
| 35 | Amend articles 80 and 81.<br>Insert article 2A.<br>Insert schedule 10.   | 1 March 1975     | Terms and Conditions for the Incorporation of Sikkim into the Union of India  |
| 36 | Amend articles 80 and 81.<br>Insert article 371F.<br>Remove article 2A.<br>Amend schedules 1 and 4.<br>Remove schedule 10. | 26 April 1975    | Formation of Sikkim as a State within the Indian Union  |
| 37 | Amend articles 239A and 240.   | 3 May 1975       | Formation of Arunachal Pradesh legislative assembly   |
| 38 | Amend articles 123, 213, 239B, 352, 356, 359 and 360.  | 1 August 1975    | Enhances the powers of President and Governors to pass ordinances   |
| 39 | Amend articles 71 and 329.<br>Insert article 329A.<br>Amend schedule 9.  | 10 August 1975   | Amendment designed to negate the judgement of Allahabad High Court invalidating Prime Minister Indira Gandhi's election to  |

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|    |   |                  | parliament. Amendment placed restrictions on judicial scrutiny of post of Prime Minister. The amendment was introduced and passed in the Lok Sabha on August 7, 1975 and again introduced and passed in the Rajya Sabha on August 8, 1975. As many as 17 State Assemblies, summoned on Saturday, August 9 ratified this amendment and President Fakhruddin Ali Ahmad gave his assent on Sunday, August 10 and the civil servants issued gazette notification on Sunday, August 10, 1975. As a consequence of this amendment to the Constitution of India, Supreme Court of India's scheduled hearing on August 11, 1975 of Petition challenging Prime Minister Indira Gandhi's election became infructuous. |
| 40 | Amend article 297.<br>Amend schedule 9.   | 27 May 1976      | Enable Parliament to make laws with respect to Exclusive Economic Zone and vest the mineral wealth with Union of India<br>Place land reform & other acts and amendments to these act under Schedule 9 of the constitution   |
| 41 | Amend article 316.  | 7 September 1976 | Raise Retirement Age Limit of Chairmen and Members of Joint Public Service Commissions and State Public Service Commissions from sixty to sixty two.  |
| 42 | Amend articles 31, 31C, 39, 55, 74, 77, 81, 82, 83, 100, 102, 103, 105, 118, 145, 150, 166, 170, 172, 189, 191, 192, 194, 208, 217, 225, 226, 227, 228, 311, 312, 330, 352, 353, 356, 357, 358, 359, 366, 368 and 371F.<br>Insert articles 31D, 32A, 39A, 43A, 48A, 131A, 139A, 144A, 226A, 228A and 257A.<br>Insert parts 4A and 14A.<br>Amend schedule 7. | 2 November 1976  | Amendment passed during internal emergency by Indira Gandhi. Provides for curtailment of fundamental rights, imposes fundamental duties and changes to the basic structure of the constitution by making India a "Socialist Secular" Republic   |
| 43 | Amend articles 145, 226,  | 13 April         | Amendment passed after  |

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|    | 228 and 366.<br>Remove articles 31D, 32A, 131A, 144A, 226A and 228A.   | 1978              | revocation of internal emergency in the Country. Repeals some of the more 'Anti-Freedom' amendments enacted through Amendment Bill 42  |
| 44 | Amend articles 19, 22, 30, 31A, 31C, 38, 71, 74, 77, 83, 103, 105, 123, 132, 133, 134, 139A, 150, 166, 172, 192, 194, 213, 217, 225, 226, 227, 239B, 329, 352, 356, 358, 359, 360 and 371F.<br>Insert articles 134A and 361A.<br>Remove articles 31, 257A and 329A.<br>Amend part 12.<br>Amend schedule 9. | 6 September 1978  | Amendment passed after revocation of internal emergency in the Country. Provides for human rights safeguards and mechanisms to prevent abuse of executive and legislative authority. Annuls some Amendments enacted in Amendment Bill 42 |
| 45 | Amend article 334.   | 25 January 1980   | Extend reservation for SC / ST and nomination of Anglo Indian members in Parliament and State Assemblies for another ten years i.e. up to 1990   |
| 46 | Amend articles 269, 286 and 366.<br>Amend schedule 7.  | 2 February 1983   | Amendment to negate judicial pronouncements on scope and applicability on Sales Tax  |
| 47 | Amend schedule 9.  | 26 August 1984    | Place land reform acts and amendments to these act under Schedule 9 of the constitution  |
| 48 | Amend article 356.   | 1 April 1985      | Article 356 amended to permit President's rule up to two years in the state of Punjab  |
| 49 | Amend article 244.<br>Amend schedules 5 and 6.   | 11 September 1984 | Recognize Tripura as a Tribal State and enable the creation of a Tripura Tribal Areas Autonomous District Council  |
| 50 | Amend article 33.  | 11 September 1984 | Technical Amendment to curtailment of Fundamental Rights as per Part III as prescribed in Article 33 to cover Security Personnel protecting property and communication infrastructure  |
| 51 | Amend articles 330 and 332.  | 16 June 1986      | Provide reservation to Scheduled Tribes in Nagaland, Meghalaya, Mizoram and Arunachal Pradesh Legislative Assemblies   |
| 52 | Amend articles 101, 102, 190 and 191.<br>Insert schedule 10.   | 1 March 1985      | Anti Defection Law - Provide disqualification of members from parliament and assembly in case of   |

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|    |  |                   | defection from one party to other  |
| 53 | Insert article 371G.                             | 20 February 1987  | Special provision with respect to the State of Mizoram.  |
| 54 | Amend articles 125 and 221.<br>Amend schedule 2. | 1 April 1986      | Increase the salary of Chief Justice of India & other Judges and to provide for determining future increases without the need for constitutional amendment   |
| 55 | Insert article 371H.                             | 20 February 1987  | Special powers to Governor consequent to formation of state of Arunachal Pradesh   |
| 56 | Insert article 371I.                             | 30 May 1987       | Transition provision to enable formation of state of Goa   |
| 57 | Amend article 332.                               | 21 September 1987 | Provide reservation to Scheduled Tribes in Nagaland, Meghalaya, Mizoram and Arunachal Pradesh Legislative Assemblies   |
| 58 | Insert article 394A.<br>Amend part 22.           | 9 December 1987   | Provision to publish authentic Hindi translation of constitution as on date and provision to publish authentic Hindi translation of future amendments  |
| 59 | Amend article 356.<br>Insert article 359A.       | 30 March 1988     | Article 356 amended to permit President's rule up to three years in the state of Punjab, Articles 352 and Article 359A amended to permit imposing emergency in state of Punjab or in specific districts of the state of Punjab |
| 60 | Amend article 276.                               | 20 December 1988  | Profession Tax increased from a minimum of Rs. 250/- to a maximum of Rs. 2500/-  |
| 61 | Amend article 326.                               | 28 March 1989     | Reduce age for voting rights from 21 to 18   |
| 62 | Amend article 334.                               | 20 December 1989  | Extend reservation for SC / ST and nomination of Anglo Indian members in Parliament and State Assemblies for another ten years i.e. up to 2000   |
| 63 | Amend article 356.<br>Remove article 359A.       | 6 January 1990    | Emergency powers applicable to State of Punjab, accorded in Article 359A as per amendment 59 repealed  |
| 64 | Amend article 356.                               | 16 April 1990     | Article 356 amended to permit President's rule up to three years and six months in the state of Punjab   |
| 65 | Amend article 338.                               | 12 March 1990     | National Commission for Scheduled Castes and Scheduled   |

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|    |                                  |                  | Tribes formed and its statutory powers specified in The Constitution.   |
| 66 | Amend schedule 9.                | 7 June 1990      | Place land reform acts and amendments to these act under Schedule 9 of the constitution   |
| 67 | Amend article 356.               | 4 October 1990   | Article 356 amended to permit President's rule up to four years in the state of Punjab  |
| 68 | Amend article 356.               | 12 March 1991    | Article 356 amended to permit President's rule up to five years in the state of Punjab  |
| 69 | Insert articles 239AA and 239AB. | 1 February 1992  | To provide for a legislative assembly and council of ministers for Federal National Capital of Delhi. Delhi continues to be a Union Territory |
| 70 | Amend articles 54 and 239AA.     | 21 December 1991 | Include National Capital of Delhi and Union Territory of Pondicherry in electoral college for Presidential Election                           |
| 71 | Amend schedule 8.                | 31 August 1992   | Include Konkani, Manipuri and Nepali as Official Languages  |
| 72 | Amend article 332.               | 5 December 1992  | Provide reservation to Scheduled Tribes in Tripura State Legislative Assembly   |
| 73 | Insert part 9.                   | 24 April 1992    | Statutory provisions for Panchyat Raj as third level of administration in villages  |
| 74 | Insert part 9A.                  | 1 June 1992      | Statutory provisions for Local Administrative bodies as third level of administration in urban areas such as towns and cities                 |
| 75 | Amend article 323B.              | 15 May 1994      | Provisions for setting up Rent Control Tribunals  |
| 76 | Amend schedule 9.                | 31 August 1994   | Enable continuance of 69% reservation in Tamil Nadu by including the relevant Tamil Nadu Act under 9th Schedule of the constitution           |
| 77 | Amend article 16.                | 17 June 1995     | A technical amendment to protect reservation to SC/ST Employees in promotions   |
| 78 | Amend schedule 9.                | 30 August 1995   | Place land reform acts and amendments to these act under Schedule 9 of the constitution   |
| 79 | Amend article 334.               | 25 January 2000  | Extend reservation for SC / ST and nomination of Anglo Indian members in Parliament and State Assemblies for another ten years                |

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|    |  |                   | i.e. up to 2010   |
| 80 | Amend articles 269 and 270.<br>Remove article 272.                       | 9 June 2000       | Implement Tenth Finance Commission recommendation to simplify the tax structures by pooling and sharing all taxes between states and The Centre                                     |
| 81 | Amend article 16.  | 9 June 2000       | Protect SC / ST reservation in filling backlog of vacancies   |
| 82 | Amend article 335.   | 8 September 2000  | Permit relaxation of qualifying marks and other criteria in reservation in promotion for SC / ST candidates   |
| 83 | Amend article 243M.  | 8 September 2000  | Exempt Arunachal Pradesh from reservation for Scheduled Castes in Panchayati Raj institutions   |
| 84 | Amend articles 55, 81, 82, 170, 330 and 332.                             | 21 February 2002  | Extend the usage of 1971 national census population figures for statewide distribution of parliamentary seats   |
| 85 | Amend article 16.  | 4 January 2002    | A technical amendment to protect Consequential seniority in case of promotions of SC/ST Employees   |
| 86 | Amend articles 45 and 51A.<br>Insert article 21A.                        | 12 December 2002  | Provides Right to Education until the age of fourteen and Early childhood care until the age of six   |
| 87 | Amend articles 81, 82, 170 and 330.                                      | 22 June 2003      | Extend the usage of 2001 national census population figures for statewide distribution of parliamentary seats   |
| 88 | Amend article 270.<br>Insert article 268A.<br>Amend schedule 7.          | 15 January 2004   | To extend statutory cover for levy and utilization of Service Tax   |
| 89 | Amend article 338.<br>Insert article 338A.                               | 28 September 2003 | The National Commission for Scheduled Castes and Scheduled Tribes was bifurcated into The National Commission for Scheduled Castes and The National Commission for Scheduled Tribes |
| 90 | Amend article 332.   | 28 September 2003 | Reservation in Assam Assembly relating to Bodoland Territory Area   |
| 91 | Amend articles 75 and 164.<br>Insert article 361B.<br>Amend schedule 10. | 1 January 2004    | Restrict the size of council of ministers to 15% of legislative members & to strengthen Anti Defection laws   |
| 92 | Amend schedule 8.  | 7 January 2004    | Include Bodo, Dogri, Santali and Maithali as official languages   |
| 93 | Amend article 15.  | 20 January 2006   | To enable provision of reservation(27%) for other   |

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|     |  |                   | backward classes (O.B.C.) in government as well as private educational institutions   |
| 94  | Amend article 164.   | 12 June 2006      | To provide for a Minister of Tribal Welfare in newly created Jharkhand and Chhattisgarh States including Madhya Pradesh, Orissa.  |
| 95  | Amend article 334.   | 25 January 2010   | To extend the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Sixty years to Seventy years   |
| 96  | Amend schedule 8.  | 23 September 2011 | Substituted "Odia" for "Oriya"  |
| 97  | Amend Art 19 and added Part IXB.   | 12 January 2012   | Added the words "or co-operative societies" after the word "or unions" in Article 19(l)(c) and insertion of article 43B i.e., Promotion of Co-operative Societies and added Part-IXB i.e., The Co-operative Societies.<br>The amendment objective is to encourage economic activities of cooperatives which in turn help progress of rural India. It is expected to not only ensure autonomous and democratic functioning of cooperatives, but also the accountability of the management to the members and other stakeholders. |
| 98  | To insert Article 371J in the Constitution   | 2 January 2013    | To empower the Governor of Karnataka to take steps to develop the Hyderabad-Karnataka Region.   |
| 99  | Insertion of new articles 124A, 124B and 124C. Amendments to Articles 127, 128, 217, 222, 224A, 231. | 13 April 2015     | The amendment provides for the formation of a National Judicial Appointments Commission. 16 State assemblies out of 29 States including Goa, Rajasthan, Tripura, Gujarat and Telangana ratified the Central Legislation, enabling the President of India to give assent to the bill.[105] The amendment is in toto quashed by Supreme Court on 16 October 2015.   |
| 100 | Amendment of First Schedule to Constitution  | 1 August 2015     | Exchange of certain enclave territories with Bangladesh and conferment of citizenship rights to residents of enclaves consequent to signing of Land Boundary  |

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|  |  |  | Agreement (LBA) Treaty between India and Bangladesh. |
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### *Limitations*

The Supreme Court has ruled in *Kesavananda Bharati v. State of Kerala* case that an amendment cannot destroy what it seeks to modify, which means while amending anything, it cannot tinker with the "basic structure" or framework of the constitution, which is immutable. Such an amendment will be declared invalid even though no part of the constitution is explicitly prevented from being amended, nor does the Basic Structure Doctrine protect any single provision of the Constitution. Yet, this "Doctrine of Basic Features" lays down that, the Constitution when "read as a whole", that what comes to be understood as its basic features cannot be abridged, deleted or abrogated. What these "basic features" are, have not been defined exhaustively anywhere, and whether a particular provision of the Constitution of India is a "basic feature" is decided as and when an issue is raised before a court in an instant case.

Former Chief Justice of India, Justice Sarv Mittra Sikri laid down the following as the basic structure of the constitution of India (During the *Kesavananda Bharati v. State of Kerala* case):

1. The Supremacy of the Constitution
2. Republican and Democratic form of the Government
3. Secular Character of the Constitution
4. Maintenance of Separation of powers
5. The Federal Character of the Constitution

This implies that the Parliament, while amending the Constitution, can only amend it to the extent so as to not destroy any of the aforesaid characters. The Supreme Court/High Court(s) may declare the amendment null and void if this is violated, by performing Judicial review. This is typical of Parliamentary governments, where the Judiciary has to exercise an effective check on the exercise of the powers of the Parliament, which in many respects is supreme.

In the *Golak Nath v. State of Punjab* case of 1967, the Supreme Court ruled that the State of Punjab could not restrict any of the Fundamental rights protected by the basic structure doctrine. Extent of land ownership and practice of profession, in this case, were held to be a fundamental right. The ruling of the *Golak Nath v. State of Punjab* case was eventually overturned with the ratification of the 24th Amendment in 1971.

### *The constitution and the judiciary*

The Judiciary interprets the Constitution as its final arbiter. It is its duty as mandated by the Constitution, to be its watchdog, by calling for scrutiny any act of the legislature or the executive, who otherwise, are free to enact or implement these, from overstepping bounds set for them by the Constitution. It acts like a guardian in

protecting the fundamental rights of the people, as enshrined in the Constitution, from infringement by any organ of the state. It also balances the conflicting exercise of power between the centre and a state or among states, as assigned to them by the Constitution.

While pronouncing decisions under its constitutional mandate, it is expected to remain unaffected by pulls and pressures exerted by other branches of the state, citizens or interest groups. And crucially, independence of the judiciary has been held to be a basic feature of the Constitution, and which being inalienable, has come to mean - that which cannot be taken away from it by any act or amendment by the legislature or the executive.

### *Judicial review*

Judicial review is adopted in the Constitution of India from judicial review in the United States . In the Indian constitution, Judicial review is dealt with under Article 43. Judicial Review refers that the Constitution is the supreme power of the nation and all laws are under its supremacy. Article 43 states that:

1. All pre-constitutional laws, if in part or completely in conflict with the Constitution, shall have all conflicting provisions deemed ineffective until an amendment to the Constitution ends the conflict. In such situation the provision of that law will again come into force, if it is compatible with the constitution as amended. This is called the Doctrine of Eclipse.
2. In a similar manner, laws made after adoption of the Constitution by the Constituent Assembly must be compatible with the constitution, otherwise the laws and amendments will be deemed to be void ab initio.
3. In such situations, the Supreme Court or High Court interprets the laws to decide if they are in conformity with the Constitution. If such an interpretation is not possible because of inconsistency, and where a separation is possible, the provision that is inconsistent with constitution is considered to be void. In addition to article 13, articles 32, 226 and 227 provide a constitutional basis to judicial review in India.

Due to the adoption of the thirty-eighth amendment, the Indian Supreme Court was not allowed to preside over any laws adopted during a state of emergency that infringes upon fundamental rights under article 32 i.e. Right to Constitutional Remedies.[58] Later with the Forty-second Amendment of the Constitution of India, article 31 C was widened and article 368(4) and 368(5) were added, which stated that any law passed by the parliament can't be challenged in the court on any ground. The Supreme court in the *Minerva Mills v. Union of India* case said that Judicial Review is one of the basic character of the constitution and therefore can't be taken away quashing Article 368(4)&(5) as well as 31 C.

### *The constitution - a living document*

"The Indian Constitution is first and foremost a social document, and is aided by its Parts III & IV (Fundamental Rights & Directive Principles of State Policy, respectively) acting together, as its chief instruments and its conscience, in realising the goals set by it for all its people."

The Constitution's provisions have consciously been worded in generalities, though not in vague terms, instead of making them rigid and static with a fixed meaning or content as in an ordinary statute, so that they may be interpreted by coming generations of citizens with the onward march of time, to apply to new and ever-changing and demanding situations, making the Constitution a living and an organic document. Justice Marshall asserts: "It is the nature of (a) Constitution that only its great outlines be marked". It is a document intended "to endure for ages" and therefore, it has to be interpreted not merely on the basis of the intention and understanding of the its framers but on the experience of its working effectively, in the existing social and political context.

For instance, "right to life" as guaranteed under Article 21, has by interpretation been expanded to progressively mean a whole lot of human rights

In the conclusion of his Making of India's Constitution, Justice Khanna writes:

"If the Indian constitution is our heritage bequeathed to us by our founding fathers, no less are we, the people of India, the trustees and custodians of the values which pulsate within its provisions! A constitution is not a parchment of paper, it is a way of life and has to be lived up to. Eternal vigilance is the price of liberty and in the final analysis, its only keepers are the people."

### *Fundamental rights*

## *Genesis*

The development of constitutionally guaranteed fundamental human rights in India was inspired by historical examples such as England's Bill of Rights (1689), the United States Bill of Rights (approved on 17 September 1787, final ratification on 15 December 1791) and France's Declaration of the Rights of Man (created during the revolution of 1789, and ratified on 26 August 1789).

In 1919, the Rowlatt Act gave extensive powers to the British government and police, and allowed indefinite arrest and detention of individuals, warrant-less searches and seizures, restrictions on public gatherings, and intensive censorship of media and publications. The public opposition to this act eventually led to mass campaigns of non-violent civil disobedience throughout the country demanding guaranteed civil freedoms, and limitations on government power. Indians, who were seeking independence and their own government, were particularly influenced by the independence of Ireland and the development of the Irish constitution. Also, the directive principles of state policy in Irish constitution were looked upon by the people of India as an inspiration for the independent India's government to comprehensively tackle complex social and economic challenges across a vast, diverse nation and population.

In 1928, the Nehru Commission composing of representatives of Indian political parties proposed constitutional reforms for India that apart from calling for dominion status for India and elections under universal suffrage, would guarantee rights deemed fundamental, representation for religious and ethnic minorities, and

limit the powers of the government. In 1931, the Indian National Congress (the largest Indian political party of the time) adopted resolutions committing itself to the defence of fundamental civil rights, as well as socio-economic rights such as the minimum wage and the abolition of untouchability and serfdom. Committing themselves to socialism in 1936, the Congress leaders took examples from the Constitution of the Soviet Union, which inspired the fundamental duties of citizens as a means of collective patriotic responsibility for national interests and challenges.

Task of developing a constitution for the nation was undertaken by the Constituent Assembly of India, composing of elected representatives. The Constituent Assembly first met on December 9, 1946 under the presidency of Dr. Sachidanand later Dr. Rajendra Prasad was made its President. While members of Congress composed of a large majority, Congress leaders appointed persons from diverse political backgrounds to responsibilities of developing the constitution and national laws. Notably, Bhimrao Ramji Ambedkar became the chairperson of the drafting committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became chairpersons of committees and sub-committees responsible for different subjects. A notable development during that period having significant effect on the Indian constitution took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights and called upon all member states to adopt these rights in their respective constitutions.

The fundamental rights were included in the First Draft Constitution (February 1948), the Second Draft Constitution (17 October 1948) and final Third Draft Constitution (26 November 1949), prepared by the Drafting Committee.

### *Significance and characteristics*

The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. The writers of the constitution regarded democracy of no avail if civil liberties, like freedom of speech and religion were not recognised and protected by the State. According to them, "democracy" is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the people of a democratic nation. For this purpose, the constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of the fundamental rights.

All people, irrespective of race, religion, caste or sex, have been given the right to move the Supreme Court and the High Courts for the enforcement of their fundamental rights. It is not necessary that the aggrieved party has to be the one to do so. Poverty stricken people may not have the means to do so and therefore, in the public interest, anyone can commence litigation in the court on their behalf. This is known as "Public interest litigation". In some cases, High Court judges have acted on their own on the basis of newspaper reports.

These fundamental rights help not only in protection but also the prevention of gross violations of human rights. They emphasise on the fundamental unity of India by guaranteeing to all citizens the access and use of the same facilities, irrespective of background. Some fundamental rights apply for persons of any nationality

whereas others are available only to the citizens of India. The right to life and personal liberty is available to all people and so is the right to freedom of religion. On the other hand, freedoms of speech and expression and freedom to reside and settle in any part of the country are reserved to citizens alone, including non-resident Indian citizens. The right to equality in matters of public employment cannot be conferred to overseas citizens of India.

Fundamental rights primarily protect individuals from any arbitrary state actions, but some rights are enforceable against individuals. For instance, the Constitution abolishes untouchability and also prohibits begar. These provisions act as a check both on state action as well as the action of private individuals. However, these rights are not absolute or uncontrolled and are subject to reasonable restrictions as necessary for the protection of general welfare. They can also be selectively curtailed. The Supreme Court has ruled that all provisions of the Constitution, including fundamental rights can be amended. However, the Parliament cannot alter the basic structure of the constitution. Since the fundamental rights can be altered only by a constitutional amendment, their inclusion is a check not only on the executive branch but also on the Parliament and state legislatures.

A state of national emergency has an adverse effect on these rights. Under such a state, the rights conferred by Article 19 (freedoms of speech, assembly and movement, etc.) remain suspended. Hence, in such a situation, the legislature may make laws that go against the rights given in Article 19. Also, the President may by order suspend the right to move court for the enforcement of other rights as well.

### *Right to equality*

Right to equality is an important right provided for in Articles 14, 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights and liberties, and guarantees the following:

- **Equality before law:** Article 14 of the constitution guarantees that all people shall be equally protected by the laws of the country. It means that the State will treat people in the same circumstances alike. This article also means that individuals, whether citizens of India or otherwise shall be treated differently if the circumstances are different.
- **Social equality and equal access to public areas:** Article 15 of the constitution states that no person shall be discriminated on the basis of religion, race, caste, sex or place of birth. Every person shall have equal access to public places like public parks, museums, wells, bathing ghats and temples etc. However, the State may make any special provision for women and children. Special provisions may be made for the advancements of any socially or educationally backward class or scheduled castes or scheduled tribes.
- **Equality in matters of public employment:** Article 16 of the constitution lays down that the State cannot discriminate against anyone in the matters of employment. All citizens can apply for government jobs. There are some exceptions. The Parliament may enact a law stating that certain jobs can be filled only by applicants who are domiciled in the area. This may be meant for posts that require knowledge of the locality and language of the area. The

State may also reserve posts for members of backward classes, scheduled castes or scheduled tribes which are not adequately represented in the services under the State to bring up the weaker sections of the society. Also, there a law may be passed that requires that the holder of an office of any religious institution shall also be a person professing that particular religion. According to the Citizenship (Amendment) Bill, 2003, this right shall not be conferred to Overseas citizens of India.

- Abolition of untouchability: Article 17 of the constitution abolishes the practice of untouchability. Practice of untouchability is an offence and anyone doing so is punishable by law. The Untouchability Offences Act of 1955 (renamed to Protection of Civil Rights Act in 1976) provided penalties for preventing a person from entering a place of worship or from taking water from a tank or well.
- Abolition of Titles: Article 18 of the constitution prohibits the State from conferring any titles. Citizens of India cannot accept titles from a foreign State. The British government had created an aristocratic class known as Rai Bahadurs and Khan Bahadurs in India – these titles were also abolished. However, Military and academic distinctions can be conferred on the citizens of India. The awards of Bharat Ratna and Padma Vibhushan cannot be used by the recipient as a title and do not, accordingly, come within the constitutional prohibition". The Supreme Court, on 15 December 1995, upheld the validity of such awards.

### *Right to freedom*

The Constitution of India contains the right to freedom, given in articles 19, 20, 21, 21A and 22, with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. It is a cluster of four main laws. The right to freedom in Article 19 guarantees the following six freedoms:

- Freedom of speech and expression, on which the State can impose reasonable restrictions in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.
- Freedom to assemble peacefully without arms on which the State can impose reasonable restrictions in the interest of public order and the sovereignty and integrity of India.
- The Freedom to form associations or unions or co-operative societies on which the State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.
- Freedom to move freely throughout the territory of India though reasonable restrictions can be imposed on this right in the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics.
- Freedom to reside and settle in any part of the territory of India, subject to reasonable restrictions by the State in the interest of the general public or for the protection of the scheduled tribes because certain safeguards as are envisaged here seem to be justified to protect indigenous and tribal

peoples from exploitation and coercion. Article 370 restricts citizens from other Indian states and Kashmiri women who marry men from other states from purchasing land or property in Jammu & Kashmir.

- Freedom to practice any profession or to carry on any occupation, trade or business on which the State may impose reasonable restrictions in the interest of the general public. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practising any profession or carrying on any trade.

21A education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

The constitution also imposes restrictions on these rights. The government restricts these freedoms in the interest of the independence, sovereignty and integrity of India. In the interest of morality and public order, the government can also impose restrictions. However, the right to life and personal liberty cannot be suspended. The six freedoms are also automatically suspended or have restrictions imposed on them during a state of emergency.

### *Right To Information(RTI)*

Right To Information and has been given the status of a fundamental right under Article 19(1) of the Constitution in 2005. Article 19 (1) under which every citizen has freedom of speech and expression and have the right to know how the government works, what role does it play, what are its functions and so on.

### *Right against exploitation*

The right against exploitation, given in Articles 23 and 24, provides for two provisions, namely the abolition of trafficking in human beings and Begar (forced labour), and abolition of employment of children below the age of 14 years in dangerous jobs like factories, mines, etc. Child labour is considered a gross violation of the spirit and provisions of the constitution. Begar, practised in the past by landlords, has been declared a crime and is punishable by law. Trafficking in humans for the purpose of slave trade or prostitution is also prohibited by law. An exception is made in employment without payment for compulsory services for public purposes. Compulsory military conscription is covered by this provision.

### *Right to freedom of religion*

Right to freedom of religion, covered in Articles 25, 26, 27 and 28, provides religious freedom to all citizens of India. The objective of this right is to sustain the principle of secularism in India. According to the Constitution, all religions are equal before the State and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice.

Religious communities can set up charitable institutions of their own. However, activities in such institutions that are not religious are performed according

to the laws laid down by the government. Establishing a charitable institution can also be restricted in the interest of public order, morality and health. No person shall be compelled to pay taxes for the promotion of a particular religion. A State run institution cannot impart education that is pro-religion. Also, nothing in this article shall affect the operation of any existing law or prevent the State from making any further law regulating or restricting any economic, financial, political or other secular activity that may be associated with religious practice, or providing for social welfare and reform.

### *Right to life*

The constitution guarantees the right to life and personal liberty, which in turn cites specific provisions in which these rights are applied and enforced:

- Protection with respect to conviction for offences is guaranteed in the right to life and personal liberty. According to Article 20, no one can be awarded punishment which is more than what the law of the land prescribes at that time. This legal axiom is based on the principle that no criminal law can be made retrospective, that is, for an act to become an offence, the essential condition is that it should have been an offence legally at the time of committing it. Moreover, no person accused of any offence shall be compelled to be a witness against himself. "Compulsion" in this article refers to what in law is called "Duress" (injury, beating or unlawful imprisonment to make a person do something that he does not want to do). This article is known as a safeguard against self incrimination. The other principle enshrined in this article is known as the principle of double jeopardy, that is, no person can be convicted twice for the same offence, which has been derived from Anglo Saxon law. This principle was first established in the Magna Carta.
- Protection of life and personal liberty is also stated under right to life and personal liberty. Article 21 declares that no citizen can be denied his life and liberty except by law. This means that a person's life and personal liberty can be disputed only if that person has committed a crime. However, the right to life does not include the right to die and hence, suicide or an attempt thereof, is an offence. (Attempted suicide being interpreted as a crime has seen many debates. The Supreme Court of India gave a landmark ruling in 1994. The court repealed section 309 of the Indian penal code, under which people attempting suicide could face prosecution and prison terms of up to one year. In 1996 however another Supreme Court ruling nullified the earlier one.) "Personal liberty" includes all the freedoms which are not included in Article 19 (that is, the six freedoms). The right to travel abroad is also covered under "personal liberty" in Article 21.
- In 2002, through the 86th Amendment Act, Article 21(A) was incorporated. It made the right to primary education part of the right to freedom, stating that the State would provide free and compulsory education to children from six to fourteen years of age. Six years after an amendment was made in the Indian Constitution, the union cabinet cleared the Right to Education Bill in 2008. It is now soon to be tabled in Parliament for approval before it makes a fundamental right of every child to get free and compulsory education.
- Rights of a person arrested under ordinary circumstances is laid down in the right to life and personal liberty. No one can be arrested without being told the

grounds for his arrest. If arrested, the person has the right to defend himself by a lawyer of his choice. Also an arrested citizen has to be brought before the nearest magistrate within 24 hours. The rights of a person arrested under ordinary circumstances are not available to an enemy alien. They are also not available to persons detained under the Preventive Detention Act. Under preventive detention, the government can imprison a person for a maximum of three months. It means that if the government feels that a person being at liberty can be a threat to the law and order or to the unity and integrity of the nation, it can detain or arrest that person to prevent him from doing this possible harm. After three months such a case is brought before an advisory board for review.

### *Cultural and educational rights*

As India is a country of many languages, religions, and cultures, the Constitution provides special measures, in Articles 29 and 30, to protect the rights of the minorities. Any community that has a language and a script of its own has the right to conserve and develop it. No citizen can be discriminated against for admission in State or State aided institutions.

All minorities, religious or linguistic, can set up their own educational institutions to preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution. But the right to administer does not mean that the State cannot interfere in case of maladministration. In a precedent-setting judgement in 1980, the Supreme Court held that the State can certainly take regulatory measures to promote the efficiency and excellence of educational standards. It can also issue guidelines for ensuring the security of the services of the teachers or other employees of the institution. In another landmark judgement delivered on 31 October 2002, the Supreme Court ruled that in case of aided minority institutions offering professional courses, admission could be only through a common entrance test conducted by State or a university. Even an unaided minority institution ought not to ignore the merit of the students for admission.

### *Right to constitutional remedies*

Right to constitutional remedies [Article 32 to 35] empowers the citizens to move a court of law in case of any denial of the fundamental rights. For instance, in case of imprisonment, the citizen can ask the court to see if it is according to the provisions of the law of the country. If the court finds that it is not, the person will have to be freed. This procedure of asking the courts to preserve or safeguard the citizens' fundamental rights can be done in various ways. The courts can issue various kinds of writs. These writs are habeas corpus, mandamus, prohibition, quo warranto and certiorari. When a national or state emergency is declared, this right is suspended by the central government.

## *Critical analysis*

The fundamental rights have been revised for many reasons. Political groups have demanded that the right to work, the right to economic assistance in case of unemployment, old age, and similar rights be enshrined as constitutional guarantees to address issues of poverty and economic insecurity, though these provisions have been enshrined in the Directive Principles of state policy. The right to freedom and personal liberty has a number of limiting clauses, and thus have been criticised for failing to check the sanctioning of powers often deemed "excessive". There is also the provision of preventive detention and suspension of fundamental rights in times of Emergency. The provisions of acts like the Maintenance of Internal Security Act (MISA) and the National Security Act (NSA) are a means of countering the fundamental rights, because they sanction excessive powers with the aim of fighting internal and cross-border terrorism and political violence, without safeguards for civil rights. The phrases "security of State", "public order" and "morality" are of wide implication. People of alternate sexuality are criminalized in India with prison term up to 10 years. The meaning of phrases like "reasonable restrictions" and "the interest of public order" have not been explicitly stated in the constitution, and this ambiguity leads to unnecessary litigation. The freedom to assemble peaceably and without arms is exercised, but in some cases, these meetings are broken up by the police through the use of non-fatal methods.

"Freedom of press" has not been included in the right to freedom, which is necessary for formulating public opinion and to make freedom of expression more legitimate. Employment of child labour in hazardous job environments has been reduced, but their employment even in non-hazardous jobs, including their prevalent employment as domestic help violates the spirit and ideals of the constitution. More than 16.5 million children are employed and working in India. India was ranked 88 out of 159 in 2005, according to the degree to which corruption is perceived to exist among public officials and politicians worldwide. But in 2014, India has improved marginally to a rank of 85. The right to equality in matters regarding public employment shall not be conferred to overseas citizens of India, according to the Citizenship (Amendment) Bill, 2003.

As per Article 19 of Part 3 of the Indian constitution, the fundamental rights of people such as freedom of speech and expression, gathering peaceably without arms and forming associations or unions shall not effect the interests of the sovereignty and integrity of India but not unity of India. The words sovereignty and integrity are the qualities to be cultivated / emulated by Indian people as urged by the Indian constitution but not used related to territory of India. Article 1 of Part 1 of the Indian constitution, defines India (Bharat) as union of sovereign states. In nutshell, India is its people not its land as enshrined in its constitution.

## *Amendments*

Changes to the fundamental rights require a constitutional amendment, which has to be passed by a special majority of both houses of Parliament. This means that an amendment requires the approval of two-thirds of the members present and voting. However, the number of members voting should not be less than the simple majority of the house – whether the Lok Sabha or Rajya Sabha.

The right to education at elementary level has been made one of the fundamental rights under the Eighty-Sixth Amendment of 2002.

### *Right to property*

The Constitution originally provided for the right to property under Articles 19 and 31. Article 19 guaranteed to all citizens the right to acquire, hold and dispose of property. Article 31 provided that "no person shall be deprived of his property save by authority of law." It also provided that compensation would be paid to a person whose property has been taken for public purposes.

The provisions relating to the right to property were changed a number of times. The Forty-Fourth Amendment of 1978 deleted the right to property from the list of fundamental rights. A new provision, Article 300-A, was added to the constitution, which provided that "no person shall be deprived of his property save by authority of law". Thus if a legislature makes a law depriving a person of his property, there would be no obligation on the part of the State to pay anything as compensation. The aggrieved person shall have no right to move the court under Article 32. Thus, the right to property is no longer a fundamental right, though it is still a constitutional right. If the government appears to have acted unfairly, the action can be challenged in a court of law by citizens.

The liberalisation of the economy and the government's initiative to set up special economic zones has led to many protests by farmers and have led to calls for the reinstatement of the fundamental right to private property. The Supreme Court has sent a notice to the government questioning why the right should not be brought back but in 2010 the court rejected the PIL.

### *Right to education*

Article 21A – On 2 April 2010, India joined a group of few countries in the world, with a historic law making education a fundamental right of every child coming into force. Making elementary education an entitlement for children in the 6–14 age group, the Right of Children to Free and Compulsory Education Act will directly benefit children who do not go to school at present.

Prime Minister Manmohan Singh announced the operationalisation of the Act. Children, who had either dropped out of schools or never been to any educational institution, will get elementary education as it will be binding on the part of the local and State governments to ensure that all children in the 6–14 age group get schooling. As per the Act, private educational institutions should reserve 25 per cent seats for children from the weaker sections of society. The Centre and the States have agreed to share the financial burden in the ratio of 55:45, while the Finance Commission has given Rs.250 billion to the States for implementing the Act. The Centre has approved an outlay of Rs.150 billion for 2010–2011.

The school management committee or the local authority will identify the drop-outs or out-of-school children aged above six and admit them in classes appropriate to their age after giving special training.

### *Type of writ*

Under the Indian legal system, jurisdiction to issue 'prerogative writs' is given to the Supreme Court, and to the High Courts of Judicature of all Indian states. Parts of the law relating to writs are set forth in the Constitution of India. The Supreme Court, the highest in the country, may issue writs under Article 32 of the Constitution for enforcement of Fundamental Rights and under Articles 139 for enforcement of rights other than Fundamental Rights, while High Courts, the superior courts of the States, may issue writs under Articles 226. The Constitution broadly provides for five kinds of "prerogative" writs: habeas corpus, certiorari, mandamus, quo warranto and prohibition.

- The writ of prohibition is issued by a higher court to a lower court prohibiting it from taking up a case because it falls outside the jurisdiction of the lower court. Thus, the higher court transfers the case to itself.
- The writ of habeas corpus is issued to a detaining authority, ordering the detainer to produce the detained person in the issuing court, along with the cause of his or her detention. If the detention is found to be illegal, the court issues an order to set the person free.
- The writ of certiorari is issued to a lower court directing that the record of a case be sent up for review, together with all supporting files, evidence and documents, usually with the intention of overruling the judgement of the lower court. It is one of the mechanisms by which the fundamental rights of the citizens are upheld.
- The writ of mandamus is issued to a subordinate court, an officer of government, or a corporation or other institution commanding the performance of certain acts or duties.
- The writ of quo warranto is issued against a person who claims or usurps a public office. Through this writ the court inquires 'by what authority' the person supports his or her claim.

### *Directive Principles of State Policy*

#### *History*

The concept of Directive Principles of State Policy was borrowed from the Irish Constitution. The makers of the Constitution of India were influenced by the Irish nationalist movement. Hence, the Directive Principles of the Indian constitution have been greatly influenced by the Directive Principles of State Policy. The idea of such policies "can be traced to the Declaration of the Rights of Man proclaimed by Revolutionary France and the Declaration of Independence by the American Colonies." The Indian constitution was also influenced by the United Nations Universal Declaration of Human Rights.

In 1919, the Rowlatt Acts gave extensive powers to the British government and police, and allowed indefinite arrest and detention of individuals, warrant-less searches and seizures, restrictions on public gatherings, and intensive censorship of media and publications. The public opposition to this act eventually led to mass campaigns of non-violent civil disobedience throughout the country, demanding

guaranteed civil freedoms, and limitations on government power. Indians, who were seeking independence and their own government, were particularly influenced by the independence of Ireland and the development of the Irish constitution. Also, the directive principles of state policy in the Irish Constitution were looked upon by the people of India as an inspiration for the independent India's government to comprehensively tackle complex social and economic challenges across a vast, diverse nation and population.

In 1928, the Nehru Commission composing of representatives of Indian political parties proposed constitutional reforms for India that apart from calling for dominion status for India and elections under universal suffrage, would guarantee rights deemed fundamental, representation for religious and ethnic minorities, and limit the powers of the government. In 1931, the Indian National Congress (the largest Indian political party of the time) adopted resolutions committing itself to the defense of fundamental civil rights, as well as socio-economic rights such as the minimum wage and the abolition of untouchability and serfdom. Committing themselves to socialism in 1936, the Congress leaders took examples from the constitution of the erstwhile USSR, which inspired the fundamental duties of citizens as a means of collective patriotic responsibility for national interests and challenges.

When India obtained independence on 15 August 1947, the task of developing a constitution for the nation was undertaken by the Constituent Assembly of India, composing of elected representatives under the presidency of Dr. Rajendra Prasad. While members of Congress composed of a large majority, Congress leaders appointed persons from diverse political backgrounds to responsibilities of developing the constitution and national laws. Notably, Bhimrao Ramji Ambedkar became the chairperson of the drafting committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became chairpersons of committees and sub-committees responsible for different subjects. A notable development during that period having significant effect on the Indian constitution took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights and called upon all member states to adopt these rights in their respective constitutions.

Both the Fundamental Rights and the Directive Principles of State Policy were included in the I Draft Constitution (February 1948), the II Draft Constitution (17 October 1948) and the III & final Draft Constitution (26 November 1949), prepared by the Drafting Committee.

## *Characteristics*

DPSPs aim to create social and economic conditions under which the citizens can lead a good life. They also aim to establish social and economic democracy through a welfare state. They act as a check on the government, theorized as a yardstick in the hands of the people to measure the performance of the government and vote it out of power if it does not fulfill the promises made during the elections. The Directive Principles are non-justiciable rights of the people. Article 31-C, inserted by the 25th Amendment Act of 1971 seeks to upgrade the Directive Principles. If laws are made to give effect to the Directive Principles over Fundamental Rights, they shall not be invalid on the grounds that they take away the Fundamental Rights.

In case of a conflict between Fundamental Rights and DPSP's, if the DPSP aims at promoting larger interest of the society, the courts shall have to uphold the case in favour of the DPSP. The Directive Principles, though not justiciable, are fundamental in the governance of the country. It shall be the duty of the State to apply these principles in making laws. Besides, all executive agencies should also be guided by these principles. Even the judiciary has to keep them in mind in deciding cases.

## *Directives*

The directive principles ensure that the State shall strive to promote the welfare of the people by promoting a social order in which social, economic and political justice is informed in all institutions of life. Also, the State shall work towards reducing economic inequality as well as inequalities in status and opportunities, not only among individuals, but also among groups of people residing in different areas or engaged in different vocations. The State shall aim for securing right to an adequate means of livelihood for all citizens, both men and women as well as equal pay for equal work for both men and women. The State should work to prevent concentration of wealth and means of production in a few hands, and try to ensure that ownership and control of the material resources is distributed to best serve the common good. Child abuse and exploitation of workers should be prevented. Children should be allowed to develop in a healthy manner and should be protected against exploitation and against moral and material abandonment. The State shall provide free legal aid to ensure that equal opportunities for securing justice is ensured to all, and is not denied by reason of economic or other disabilities. The State shall also work for organisation of village panchayats and help enable them to function as units of self-government. The State shall endeavour to provide the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, within the limits of economic capacity, as well as provide for just and humane conditions of work and maternity relief.

The State should also ensure living wage and proper working conditions for workers, with full enjoyment of leisure and social and cultural activities. Also, the promotion of cottage industries in rural areas is one of the obligations of the State. The State shall take steps to promote their participation in management of industrial undertakings.

Also, the State shall endeavour to secure a uniform civil code for all citizens, and provide free and compulsory education to all children till they attain the age of 14 years. This directive regarding education of children was added by the 86th Amendment Act, 2002. It should and work for the economic and educational upliftment of scheduled castes, scheduled tribes and other weaker sections of the society.

The directive principles commit the State to raise the level of nutrition and the standard of living and to improve public health, particularly by prohibiting intoxicating drinks and drugs injurious to health except for medicinal purposes. It should also organise agriculture and animal husbandry on modern and scientific lines by improving breeds and prohibiting slaughter of cows, calves, other milch and draught cattle. It should protect and improve the environment and safeguard the forests and

wild life of the country. This directive, regarding protection of forests and wildlife was added by the 42nd Amendment Act, 1976.

Protection of monuments, places and objects of historic and artistic interest and national importance against destruction and damage, and separation of judiciary from executive in public services are also the obligations of the State as laid down in the directive principles. Finally, the directive principles, in Article 51 ensure that the State shall strive for the promotion and maintenance of international peace and security, just and honourable relations between nations, respect for international law and treaty obligations, as well as settlement of international disputes by arbitration.

## *Implementation*

The State has made and is making many efforts to implement the Directive Principles. The Programme of Universalisation of Elementary Education and the five-year plans has been accorded the highest priority in order to provide free education to all children up to the age of 14 years. The 86th constitutional amendment of 2002 inserted a new article, Article 21-A, into the Constitution, that seeks to provide free and compulsory education to all children aged 6 to 14 years. Welfare schemes for the weaker sections are being implemented both by the Central and State governments. These include programmes such as boys' and girls' hostels for scheduled castes' or scheduled tribes' students. The year 1990-1991 was declared as the "Year of Social Justice" in the memory of B.R. Ambedkar. The government provides free textbooks to students belonging to scheduled castes or scheduled tribes pursuing medicine and engineering courses. During 2002-2003, a sum of Rs. 47.7 million was released for this purpose. In order that scheduled castes and scheduled tribes are protected from atrocities, the Government enacted the Prevention of Atrocities Act, which provided severe punishments for such atrocities.

Several Land Reform Acts were enacted to provide ownership rights to poor farmers. Up to September 2001, more than 20,000,000 acres (80,000 km<sup>2</sup>) of land had been distributed to scheduled castes, scheduled tribes and the landless poor. The thrust of banking policy in India has been to improve banking facilities in the rural areas. The Minimum Wages Act of 1948 empowers government to fix minimum wages for employees engaged in various employments. The Consumer Protection Act of 1986 provides for the better protection of consumers. The act is intended to provide simple, speedy and inexpensive redressal to the consumers' grievances, award relief and compensation wherever appropriate to the consumer.[citation needed] The Equal Remuneration Act of 1976, provides for equal pay for equal work for both men and women. The Sampoorna Grameen Rozgar Yojana was launched in 2001 to attain the objective of gainful employment for the rural poor. The programme was implemented through the Panchayati Raj institutions.

Panchayati Raj now covers almost all states and Union territories. One-third of the total number of seats have been reserved for women in Panchayats at every level; in the case of Bihar, half the seats have been reserved for women. Legal aid at the expense of the State has been made compulsory in all cases pertaining to criminal law, if the accused is too poor to engage a lawyer. Judiciary has been separated from the executive in all the states and Union territories except Jammu and Kashmir and Nagaland.

India's Foreign Policy has also to some degree been influenced by the DPSPs. India has in the past condemned all acts of aggression and has also supported the United Nations' peace-keeping activities. By 2004, the Indian Army had participated in 37 UN peace-keeping operations. India played a key role in the passing of a UN resolution in 2003, which envisaged better cooperation between the Security Council and the troop-contributing countries. India has also been in favour of nuclear disarmament.

## *Amendments*

Changes in Directive Principles require a Constitutional amendment which has to be passed by a special majority of both houses of the Parliament. This means that an amendment requires the approval of two-thirds of the members present and voting. However, the number of members voting should not be less than the simple majority of the house – whether the Lok Sabha or Rajya Sabha.

- Article 31-C, inserted into the Directive Principles of State Policy by the 25th Amendment Act of 1971 seeks to upgrade the DPSPs. If laws are made to give effect to the Directive Principles over Fundamental Rights, they shall not be invalid on the grounds that they take away the Fundamental Rights.
- Article 45, which ensures Provision for free and compulsory education for children, was added by the 86th Amendment Act, 2002.
- Article 48-A, which ensures Protection and improvement of environment and safeguarding of forests and wild life, was added by the 42nd Amendment Act, 1976.

## *Fundamental Duties*

The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the Swaran Singh Committee that was constituted by the government earlier that year. Originally ten in number, the Fundamental Duties were increased to eleven by the 86th Amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years. The other Fundamental Duties obligate all citizens to respect the national symbols of India, including the Constitution, to cherish its heritage, preserve its composite culture and assist in its defence. They also obligate all Indians to promote the spirit of common brotherhood, protect the environment and public property, develop scientific temper, abjure violence, and strive towards excellence in all spheres of life. Citizens are morally obligated by the Constitution to perform these duties. However, like the Directive Principles, these are non-justifiable, without any legal sanction in case of their violation or non-compliance. There is reference to such duties in international instruments such as the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, and Article 51A brings the Indian Constitution into conformity with these treaties.

The Fundamental Duties noted in the constitution are as follows:

—It shall be the duty of every citizen of India —

- to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- to cherish and follow the noble ideals which inspired our national struggle for freedom;
- to uphold and protect the sovereignty, unity and integrity of India;
- to defend the country and render national service when called upon to do so;
- to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- to value and preserve the rich heritage of our composite culture;
- to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- to develop the scientific temper, humanism and the spirit of inquiry and reform;
- to safeguard public property and to abjure violence;
- to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- who is a parent or guardian to provide opportunities for education to his child or ward, as the case may be, between the age of six and fourteen years

### *Citizenship*

#### *Citizenship at the commencement of the constitution of India*

Persons domiciled in the territory of India as on 26 November 1949 automatically became Indian citizens by virtue of operation of the relevant provisions of the Indian Constitution coming into force, and most of these constitutional provisions came into force on 26 January 1950. The Constitution of India also made provision regarding citizenship for migrants from the territories of Pakistan which had been part of India before partition.

#### *Citizenship by birth*

Any person born in India on or after 26 January 1950, but prior to the commencement of the 1986 Act on 1 July 1987, is a citizen of India by birth. A person born in India on or after 1 July 1987 is a citizen of India if either parent was a citizen of India at the time of the birth. Those born in India on or after 3 December 2004 are considered citizens of India only if both of their parents are citizens of India or if one parent is a citizen of India and the other is not an illegal migrant at the time of their birth. In September 2013, Bombay High Court gave a judgement that a birth certificate, passport or even an Aadhaar card alone may not be enough to prove Indian citizenship, unless the parents are Indian citizens.

#### *Citizenship by descent*

Persons born outside India on or after 26 January 1950 but before 10 December 1992 are citizens of India by descent if their father was a citizen of India at the time of their birth.

Persons born outside India on or after 10 December 1992 are considered citizens of India if either of their parents is a citizen of India at the time of their birth.

From 3 December 2004 onwards, persons born outside of India shall not be considered citizens of India unless their birth is registered at an Indian diplomatic mission within one year of the date of birth. In certain circumstances it is possible to register after one year with the permission of the Central Government. The application for registration of the birth of a child must be made to an Indian diplomatic mission and must be accompanied by an undertaking in writing from the parents of the child that he or she does not hold the passport of another country.

### *Citizenship by registration*

The Central Government may, on an application, register as a citizen of India under section 5 of the Citizenship Act 1955 any person (not being an illegal migrant) if s/he belongs to any of the following categories:

- a person of Indian origin who is ordinarily resident in India for seven years before making application under section 5(1)(a) (throughout the period of twelve months immediately before making application and for six years in the aggregate in the eight years preceding the 12 months).
- a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
- minor children of persons who are citizens of India;
- a person of full age and capacity whose parents are registered as citizens of India.
- a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;
- a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration.

### *Citizenship by naturalisation*

Citizenship of India by naturalisation can be acquired by a foreigner (not illegal migrant) who is ordinarily resident in India for 12 years (throughout the period of 12 months immediately preceding the date of application and for 11 years in the aggregate in the 14 years preceding the 12 months) and other qualifications as specified in Third Schedule to the Citizen Act.

## ***President***

The President of India is the Head of State and the Supreme Commander of the Indian Armed Forces.

The President is indirectly elected by the people through elected members of both the houses of Parliament and the Legislative Assemblies of New Delhi and Puducherry and serves for a renewable term of five years. The oath of the President is taken in the presence of the Chief Justice of India, and in his/her absence, by the most senior judge of the Supreme Court.

Although Article 53 of the Constitution of India states that the President can exercise his powers directly or by subordinate authority,[3] with few exceptions, all of the executive authority vested in the President are, in practice, exercised by the Prime Minister with the help of the Council of Ministers.

The President of India resides in an estate in New Delhi known as the Rashtrapati Bhavan (which roughly translates as President's House). The presidential retreat is The Retreat in Chharabra, Shimla and Rashtrapati Nilayam (President's Place) in Hyderabad.

The 13th and current President is Pranab Mukherjee, who was elected on 22 July 2012, and sworn in on 25 July 2012. He is also the first Bengali to be elected as President.

### *Qualifications*

Article 58 of the Constitution sets the principle qualifications one must meet to be eligible to the office of the President. A President must be:

- A citizen of India
- Of 35 years of age or above
- Qualified to become a member of the Lok Sabha

A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Certain office-holders, however, are permitted to stand as Presidential candidates. These are:

- The current Vice President.
- The Governor of any State.
- A Minister of the Union or of any State (Including Prime Minister and Chief Ministers).

In the event that the Vice President, a State Governor or a Minister is elected President, they are considered to have vacated their previous office on the date they begin serving as President.

Under The Presidential and Vice-Presidential Elections Act, 1952, a candidate to be nominated for the office of president needs 50 electors as proposers and 50 electors as seconders for his name to appear on ballot.

## *Election*

Whenever the office becomes vacant, the new President is chosen by an electoral college consisting of the elected members of both houses of Parliament (M.P.s), the elected members of the State Legislative Assemblies (Vidhan Sabha) of all States and the elected members of the legislative assemblies (M.L.A.s) of two Union Territories (i.e., National Capital Territory (NCT) of Delhi and Union Territory of Puducherry).

The nomination of a candidate for election to the office of the President must be subscribed by at least 50 electors as proposers and 50 electors as seconders. Each candidate has to make a security deposit of ₹15,000 (US\$220) in the Reserve Bank of India. The security deposit is liable to be forfeited in case the candidate fails to secure one-sixth of the votes polled.

The election is held in accordance to the system of Proportional representation by means of the Single transferable vote method. The voting takes place by secret ballot system. The manner of election of President is provided by Article 55 of the Constitution.

Each elector casts a different number of votes. The general principle is that the total number of votes cast by Members of Parliament equals the total number of votes cast by State Legislators. Also, legislators from larger states cast more votes than those from smaller states. Finally, the number of legislators in a state matters; if a state has few legislators, then each legislator has more votes; if a state has many legislators, then each legislator has fewer votes.

The actual calculation for votes cast by a particular state is calculated by dividing the state's population by 1000, which is divided again by the number of legislators from the State voting in the electoral college. This number is the number of votes per legislator in a given state. Every elected member of the parliament enjoys the same number of votes, which may be obtained by dividing the total number of votes assigned to the members of legislative assemblies by the total number of elected representatives of the parliament.

Although Indian presidential elections involve actual voting by MPs and MLAs, they tend to vote for the candidate supported by their respective parties.

## *Terms*

Under article 6, the president shall hold office for a term of 5 years. He may resign his office by writing under his hand addressed to the vice president.

## *Impeachment*

A President can be removed for violation of the Constitution of India.

## *Vacancy*

The Office of the President falls vacant in the following scenarios:

1. On the expiry of his/her term
2. By reason of death
3. By reason of resignation
4. Removal by impeachment

In such an eventuality, the Chief Justice, or in his absence, the senior most Judge of the Supreme Court of India available discharges the functions of the President until a newly elected President enters upon his office or a newly elected Vice President begins to act as President. The election to be held within 6 month of the vacancy.

## *Powers*

### *Legislative powers*

Legislative power is constitutionally vested by the Parliament of India of which the president is the head, to facilitate the law making process as per the constitution (Article 78, Article 86, etc.). The President summons both the Houses (the Lok Sabha and the Rajya Sabha) of the Parliament and prorogues them. He can dissolve the Lok Sabha. As per Article 74, the President shall abide by the aid and advice of the Council of Ministers headed by the Prime Minister, provided the given advice is in accordance with the constitution. Article 143 gave power to the president to consult the Supreme Court about the constitutional validity of any issue.

The President inaugurates Parliament by addressing it after the general elections and also at the beginning of the first session each year; this is mentioned in Article 87(1). The Presidential address on these occasions is generally meant to outline the new policies of the government.

All bills passed by the Parliament can become laws only after receiving the assent of the President. After a bill is presented to him, the President shall declare either that he assents to the Bill, or that he withholds his assent from it. As a third option, he can return a bill to Parliament, if it is not a money bill or a constitutional amendment bill, for reconsideration. When, after reconsideration, the bill is passed and presented to the President, with or without amendments, the President cannot withhold his assent from it. The President can also withhold his assent to a bill when it is initially presented to him (rather than return it to Parliament) thereby exercising a pocket veto.

When either of the two Houses of the Parliament of India is not in session, and if the government feels the need for an immediate procedure, the President can promulgate ordinances which have the same force and effect as laws passed by Parliament. These are in the nature of interim or temporary legislation and their continuance is subject to parliamentary approval. Ordinances remain valid for no more than six weeks from the date the Parliament is convened unless approved by it earlier. Under article 123, President as the upholder of the constitution shall be satisfied that immediate action is mandatory as advised by the central cabinet and he is confident that the government commands majority support in the Parliament needed for the passing of the ordinance into an act and Parliament can be summoned to deliberate on the passing of the ordinance as soon as possible. The

promulgated ordinance is treated as an act of Parliament when in force and it is the responsibility of the President to withdraw the ordinance as soon as the reasons for promulgation of the ordinance are no longer applicable. Bringing laws in the form of ordinances has become a routine matter by the government and President, but the provisions made in Article 123 are meant for mitigating unusual circumstances where immediate action is inevitable when the extant constitutional provisions are inadequate. The President should take moral responsibility when an ordinance elapses automatically or is not approved by the Parliament. The President is liable for prosecution for his wrong deeds.

### *Executive powers*

As per Article 53, the executive power of the country is vested in the President and is exercised by President either directly or through officers subordinate to him in accordance with the Constitution. Union cabinet with Prime Minister as its head, should aid and advice the President in performing his functions. As per Article 74 (2), the council of ministers or Prime Minister are not accountable legally to the advice tendered to the President but it is the sole responsibility of the President to ensure compliance with the constitution in performing his duties.

### *Appointment powers*

The President appoints, as Prime Minister, the person most likely to command the support of the majority in the Lok Sabha (usually the leader of the majority party or coalition). The President then appoints the other members of the Council of Ministers, distributing portfolios to them on the advice of the Prime Minister.

The Council of Ministers remains in power at the 'pleasure' of the President.

The President appoints 12 members of the Rajya Sabha from amongst persons who have special knowledge or practical experience in respect of such matters as literature, science, art and social service.

The President is responsible for making a wide variety of appointments. These include:

- Governors of States
- The Chief Justice, other judges of the Supreme Court and High Courts of India
- The Chief Minister of the National capital territory of Delhi (Article 239 AA 5 of the constitution)
- The Attorney General
- The Comptroller and Auditor General
- The Chief Election Commissioner and other Election Commissioners
- The Chairman and other Members of the Union Public Service Commission
- Vice Chancellor of the central university and academic staff of the central university through his nominee
- Ambassadors and High Commissioners to other countries (only through the list of names given by the Prime Minister).

### *Financial powers*

- A money bill can be introduced in the Parliament only with the President's recommendation.
- The President lays the Annual Financial Statement, i.e. the Union budget, before the Parliament.
- The President can take advances out of the Contingency Fund of India to meet unforeseen expenses.
- The President constitutes a Finance commission after every five years to recommend the distribution of the taxes between the centre and the States.

### *Judicial powers*

The President appoints the Chief Justice of the Union Judiciary and other judges on the advice of the Chief Justice. He dismisses the judges if and only if the two Houses of the Parliament pass resolutions to that effect by a two-thirds majority of the members present.

According to Article 143 of Indian Constitution, if the President considers a question of law or a matter of public importance has arisen, he can ask for the advisory opinion of the Supreme Court.

### *Diplomatic powers*

All international treaties and agreements are negotiated and concluded on behalf of the President. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign Minister). Also, such treaties are subject to the approval of the Parliament. The President represents India in international forums and affairs where such a function is chiefly ceremonial. The President may also send and receive diplomats, i.e. the officers from the Indian Foreign Service. The President is the first citizen of the country.

### *Military powers*

The President is the Supreme Commander of the Indian Armed Forces. The President can declare war or conclude peace, on the advice of the Union Council of Ministers headed by the Prime Minister. All important treaties and contracts are made in the President's name. He also appoints the chiefs of the service branches of the armed forces.

### *Pardoning Powers*

As mentioned in Article 72 of the Indian Constitution, the President is empowered with the powers to grant pardons in the following situations:

- Punishment is for an offence against Union Law
- Punishment is by a Military Court
- Sentence is that of death

The decisions involving pardoning and other rights by the President are independent of the opinion of the Prime Minister or the Lok Sabha majority. In most cases, however, the President exercises his executive powers on the advice of the Prime Minister and the cabinet

### *Emergency powers*

The President can declare three types of emergencies: national, state and financial, under articles 352, 356 & 360 in addition to promulgating ordinances under article

#### *National emergency*

A national emergency can be declared in the whole of India or a part of its territory for causes of war or armed rebellion or an external aggression. Such an emergency was declared in India in 1962 (Indo-China war), 1971 (Indo-Pakistan war), and 1975 to 1977 (declared by Indira Gandhi).

Under Article 352 of the India Constitution, the President can declare such an emergency only on the basis of a written request by the Cabinet Ministers headed by the Prime Minister. Such a proclamation must be approved by the Parliament within one month. Such an emergency can be imposed for six months. It can be extended by six months by repeated parliamentary approval-there is no maximum duration.

In such an emergency, Fundamental Rights of Indian citizens can be suspended. The six freedoms under Right to Freedom are automatically suspended. However, the Right to Life and Personal Liberty cannot be suspended.(Article 21)

The President can make laws on the 66 subjects of the State List (which contains subjects on which the state governments can make laws). Also, all money bills are referred to the President for approval. The term of the Lok Sabha can be extended by a period of up to one year, but not so as to extend the term of Parliament beyond six months after the end of the declared emergency.

National Emergency has only been proclaimed in India twice till date. It was declared first in 1962 by President Sarvepalli Radhakrishnan, during the Sino-Indian War. The second emergency in India was from 1975-77 proclaimed by President Fakhruddin Ali Ahmed, with Indira Gandhi as Prime Minister.

#### *State emergency*

If the President is fully satisfied, on the basis of the report of the Governor of the concerned state or from other sources that the governance in a state cannot be carried out according to the provisions in the Constitution, he can proclaim under Article 356 a state of emergency in the state. Such an emergency must be approved by the Parliament within a period of 2 months.

Under Article 356 of the Indian Constitution, it can be imposed from six months to a maximum period of three years with repeated parliamentary approval every six months. If the emergency needs to be extended for more than three years,

this can be achieved by a constitutional amendment, as has happened in Punjab and Jammu and Kashmir.

During such an emergency, the President can take over the entire work of the executive, and the Governor administers the state in the name of the President. The Legislative Assembly can be dissolved or may remain in suspended animation. The Parliament makes laws on the 66 subjects of the state list[29] (see National emergency for explanation).

A State Emergency can be imposed via the following:

1. By Article 356 – If that state failed to run constitutionally, i.e. constitutional machinery has failed
2. By Article 365 – If that state is not working according to the direction of the Union Government issued as per the provisions of the constitution.

This type of emergency needs the approval of the parliament within 2 months. It can last up to a maximum of three years via extensions after each 6-month period. However, after one year it can be extended only if

1. A state of National Emergency has been declared in the country or in the particular state.
2. The Election Commission finds it difficult to organise an election in that state.

The Sarkaria Commission held that presidents have unconstitutionally misused the provision of Article 356 many times for achieving political motives, by dismissing the state governments although there was no constitutional break down in the states. During 2005, President's rule was imposed in Bihar state, misusing Article 356 unconstitutionally to prevent the democratically elected state legislators to form a government after the state elections.

There is no provision in the constitution to re-promulgate president's rule in a state when the earlier promulgation ceased to operate for want of parliaments approval within two months duration. During 2014 in Andhra Pradesh, president's rule was first imposed on March 1, 2014 and it ceased to operate on April 30, 2014. President's rule was promulgated after being fully aware that the earliest parliament session is feasible in the end of May, 2014 after the general elections. It was reimposed again unconstitutionally on April 28, 2014 by the president.

#### *Financial emergency*

Article 282 accords financial autonomy in spending the financial resources available with the states for public purpose.

Under article 360 of the constitution, President can proclaim a financial emergency when the financial stability or credit of the nation or of any part of its territory is threatened. However, until now no guidelines defining the situation of financial emergency in the entire country or a state or a union territory or a

panchayat or a municipality or a corporation have been framed either by the finance commission or by the central government.

Such an emergency must be approved by the Parliament within two months by simple majority. It has never been declared. A state of financial emergency remains in force indefinitely until revoked by the President.

The President can reduce the salaries of all government officials, including judges of the Supreme Court and High Courts, in cases of a financial emergency. All money bills passed by the State legislatures are submitted to the President for approval. He can direct the state to observe certain principles (economy measures) relating to financial matters.

### *Vice President*

#### *Qualifications*

As in the case of the President, in order to be qualified to be elected as Vice President, a person must:

- Have completed more than 35 years of age
- Not hold any office of profit

While in order to be a President, a person must be qualified for election as a member of the Lok Sabha (House of Peoples), the Vice President must be qualified for election as a member of the Rajya Sabha (Council of States). This difference is because the Vice President is to act as the ex officio Chairman of the Rajya Sabha.

#### *Term*

The Vice President holds office for five years. He/she can be re-elected any number of times. However, the office may be terminated earlier by death, resignation or removal. The Constitution does not provide a mechanism of succession to the office of Vice President in the event of an extraordinary vacancy, apart from re-election. However, the Deputy Chairman of the Rajya Sabha can perform the duties of the Chairman of the Rajya Sabha in such an event.

#### *Removal*

The Vice President cannot be formally impeached, unlike the President. The Constitution states that the Vice President can be removed by a resolution of the Rajya Sabha passed by an effective majority (more than 50% of effective membership (total membership - Vacant seats)) and agreed to by a simple majority (50% of present and voting members) of the Lok Sabha (Article 67(b)). But no such resolution may be moved unless at least 14 days' advance notice has been given. Notably, the Constitution does not list grounds for removal.

No Vice President or ex officio Vice President has ever faced removal proceedings.

## *Prime Minister*

### *Role and power of the prime minister*

The prime minister leads the functioning and exercise of authority of the Government of India. He is invited by the President of India in the Parliament of India as leader of the majority party to form a government at the federal level (known as Central or Union Government in India) and exercise its powers. In practice the prime minister nominates the members of their Council of Ministers to the president. They also work upon to decide a core group of Ministers (known as the Cabinet) as in-charge of the important functions and ministries of the Government of India.

The prime minister is responsible for aiding and advising the president in distribution of work of the Government to various ministries and offices and in terms of the Government of India (Allocation of Business) Rules, 1961. The co-ordinating work is generally allocated to the Cabinet Secretariat While generally the work of the Government is divided into various Ministries, the prime minister may retain certain portfolios if they are not allocated to any member of the cabinet.

The prime minister, in consultation with the Cabinet, schedules and attends the sessions of the Houses of Parliament and is required to answer the question from the Members of Parliament to them as the in-charge of the portfolios in the capacity as Prime Minister of India.

Some specific ministries/department are not allocated to anyone in the cabinet but the prime minister himself. The prime minister is usually always in-charge/head of:

- Appointments Committee of the Cabinet;
- Ministry of Personnel, Public Grievances and Pensions;
- Ministry of Planning;
- Department of Atomic Energy; and
- Department of Space
- Nuclear Command Authority

The prime minister represents the country in various delegations, high level meetings and international organisations that require the attendance of the highest government office and also addresses to the nation on various issues of national or other importance.

## *Parliament of India*

The Parliament of India is the supreme legislative body of the Republic of India. Parliament is composed of the President of India, the houses. It is bicameral with two houses: Rajya Sabha (Council of States) and the Lok Sabha (House of the People). The President in his role as head of legislature has full powers to summon and prorogue either house of Parliament or to dissolve Lok Sabha. The president can exercise these powers only upon the advice of the Prime Minister and his Council of Ministers.

Those elected or nominated (by the President) to either house of Parliament are referred to as members of parliament (MP). The members of Lok Sabha are directly elected by the Indian public voting in single member districts and the members of Rajya Sabha are elected by the members of the State Legislative Assemblies by proportional representation. The Parliament has a sanctioned strength of 543 in Lok Sabha excluding the 2 nominees from the Anglo-Indians if so president of india felt desirable and 245 in Rajya Sabha including the 12 nominees from the expertise of different fields of science ,culture, art and history. The Parliament meets at Sansad Bhavan in New Delhi.

### *Lok Sabha*

Lok Sabha (House of the People) or the lower house has members from 545 representing parliamentary constituencies across the country. 543 members are directly elected by citizens of India on the basis of universal adult franchise and two are appointed by the President of India. Every citizen of India who is over 18 years of age, irrespective of gender, caste, religion or race, who is otherwise not disqualified, is eligible to vote for the lok sabha. The Constitution provides that the maximum strength of the House be 552 members. It has a term of five years. To be eligible for membership in the Lok Sabha, a person must be a citizen of India and must be 25 years of age or older, mentally sound, should not be bankrupt and should not be criminally convicted. The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States.

### *Zero Hour*

The time immediately following the Question Hour has come to be known as "Zero Hour". It starts at around 12 noon and members can, with prior notice to the Speaker, raise issues of importance during this time.

### *consolidated fund of india*

All revenues received, loans raised and all moneys received by the Government in repayment of loans are credited to the Consolidated Fund of India and all expenditures of the Government are incurred from this fund. Money can be spent through this fund only if appropriated by the Parliament. The consolidated Fund has further been divided into 'Revenue' and 'Capital' divisions. no money shall be drawn from the Treasury of the Commonwealth except under an appropriation made by law.

### *Contingencies Fund*

In the early part of the nineteenth Century the Civil Contingencies Fund was created in the United Kingdom. It is held by the Treasury, and its use is regulated by the Miscellaneous Financial Provisions Act 1946. It may be used for urgent expenditure in anticipation that the money will be approved by Parliament, or for small payments that were not included in the year's budget estimates.

The Contingencies Fund Act 1974 sets the size of the fund as two percent of the amount of the government budget in the preceding year.

When Parliament votes to approve the urgent expenditure, the monies are repaid into the Contingencies Fund. As Parliament is effectively forced to approve actions ex post facto (after they have happened), the Treasury's use of the fund is scrutinised in detail by the Public Accounts Committee.

#### Recognised national parties as of 16 September 2014

| No. | Name                               | Abbreviation | Foundation year | Current leader(s)        |
|-----|------------------------------------|--------------|-----------------|--------------------------|
| 1   | Bharatiya Janata Party             | BJP          | 1980            | Amit Shah                |
| 2   | Indian National Congress           | INC          | 1885            | Sonia Gandhi             |
| 3   | Communist Party of India (Marxist) | CPI-M        | 1964            | Sitaram Yechury          |
| 4   | Communist Party of India           | CPI          | 1925            | Suravaram Sudhakar Reddy |
| 5   | Bahujan Samaj Party                | BSP          | 1984            | Mayawati                 |
| 6   | Nationalist Congress Party         | NCP          | 1999            | Sharad Pawar             |

#### Recognised state parties as of 16 September 2014

| No. | Name                                     | Abbreviation | Foundation Year | Current leader(s)      | States/UT  |
|-----|--|--------------|-----------------|------------------------|--|
| 1   | Aam Aadmi Party                          | AAP          | 2012            | Arvind Kejriwal        | Delhi, Punjab                                    |
| 2   | All India Anna Dravida Munnetra Kazhagam | AIADMK       | 1972            | Jayalalithaa           | Puducherry, Tamil Nadu                           |
| 3   | All India Forward Bloc                   | AIFB         | 1939            | Debabrata Biswas       | West Bengal                                      |
| 4   | All India Majlis-e-Ittehadul Muslimeen   | AIMIM        | 1927            | Asaduddin Owaisi       | Telangana  |
| 5   | All India N.R. Congress                  | AINRC        | 2011            | N. Rangasamy           | Puducherry                                       |
| 6   | All India Trinamool Congress             | AITC         | 1998            | Mamata Banerjee        | Arunachal Pradesh, Manipur, Tripura, West Bengal |
| 7   | All India United Democratic Front        | AIUDF        | 2004            | Badruddin Ajmal        | Assam  |
| 8   | All Jharkhand Students Union             | AJSU         | 1986            | Sudesh Mahto           | Jharkhand  |
| 9   | Asom Gana Parishad                       | AGP          | 1985            | Prafulla Kumar Mahanta | Assam  |
| 10  | Biju Janata Dal                          | BJD          | 1997            | Naveen Patnaik         | Odisha   |
| 11  | Bodoland People's Front                  | BPF          | 1985            | Hagrama Mohilary       | Assam  |
| 12  | Desiya Murpokku Dravidar Kazhagam        | DMDK         | 2005            | Vijayakanth            | Tamil Nadu                                       |
| 13  | Dravida Munnetra Kazhagam                | DMK          | 1949            | M. Karunanidhi         | Puducherry, Tamil Nadu                           |
| 14  | Haryana Janhit Congress (BL)             | HJC(BL)      | 2007            | Kuldeep Bishnoi        | Haryana  |
| 15  | Hill State People's                      | HSPDP        | 1968            | H.S. Lyngdoh           | Meghalaya  |

|    |   |        |      |                      |                     |
|----|---|--------|------|----------------------|---------------------|
|    | Democratic Party                            |        |      |                      |                     |
| 16 | Indian National Lok Dal                     | INLD   | 1999 | Om Prakash Chautala  | Haryana             |
| 17 | Indian Union Muslim League                  | IUML   | 1948 | E. Ahamed            | Kerala              |
| 18 | Jammu & Kashmir National Conference         | JKNC   | 1932 | Omar Abdullah        | Jammu & Kashmir     |
| 19 | Jammu & Kashmir National Panthers Party     | JKNPP  | 1982 | Bhim Singh           | Jammu & Kashmir     |
| 20 | Jammu and Kashmir People's Democratic Party | JKPDP  | 1998 | Mehbooba Mufti       | Jammu & Kashmir     |
| 21 | Janata Dal (Secular)                        | JD(S)  | 1999 | H.D. Deve Gowda      | Karnataka, Kerala   |
| 22 | Janata Dal (United)                         | JD(U)  | 1999 | Sharad Yadav         | Bihar               |
| 23 | Jharkhand Mukti Morcha                      | JMM    | 1972 | Shibu Soren          | Jharkhand           |
| 24 | Jharkhand Vikas Morcha (Prajantrik)         | JVM(P) | 2006 | Babu Lal Marandi     | Jharkhand           |
| 25 | Kerala Congress (M)                         | KC(M)  | 1979 | C.F. Thomas          | Kerala              |
| 26 | Lok Janshakti Party                         | LJP    | 2000 | Ram Vilas Paswan     | Bihar               |
| 27 | Maharashtra Navnirman Sena                  | MNS    | 2006 | Raj Thackeray        | Maharashtra         |
| 28 | Maharashtrawadi Gomantak Party              | MGP    | 1963 | Shashikala Kakodkar  | Goa                 |
| 29 | Manipur State Congress Party                | MSCP   | 1997 | Wahengbam Nipamacha  | Manipur             |
| 30 | Mizo National Front                         | MNF    | 1959 | Pu Zoramthanga       | Mizoram             |
| 31 | Mizoram People's Conference                 | MPC    | 1972 | Pu Lalhmingthanga    | Mizoram             |
| 32 | Naga People's Front                         | NPF    | 2002 | Neiphiu Rio          | Manipur, Nagaland   |
| 33 | National People's Party                     | NPP    | 2013 | P.A. Sangma          | Meghalaya           |
| 34 | Pattali Makkal Katchi                       | PMK    | 1989 | G. K. Mani           | Puducherry          |
| 35 | People's Party of Arunachal                 | PPA    | 1987 | Tomo Riba            | Arunachal Pradesh   |
| 36 | Rashtriya Janata Dal                        | RJD    | 1997 | Lalu Prasad Yadav    | Bihar, Jharkhand    |
| 37 | Rashtriya Lok Dal                           | RLD    | 1996 | Ajit Singh           | Uttar Pradesh       |
| 38 | Rashtriya Lok Samta Party                   | RLSP   | 2013 | Upendra Kushwaha     | Bihar               |
| 39 | Revolutionary Socialist Party               | RSP    | 1940 | T. J. Chandrachoodan | Kerala, West Bengal |
| 40 | Samajwadi Party                             | SP     | 1992 | Mulayam Singh Yadav  | Uttar Pradesh       |
| 41 | Shiromani Akali Dal                         | SAD    | 1920 | Parkash Singh Badal  | Punjab              |
| 42 | Shiv Sena                                   | SS     | 1966 | Uddhav Thackeray     | Maharashtra         |
| 43 | Sikkim Democratic Front                     | SDF    | 1993 | Pawan Kumar Chamling | Sikkim              |

|    |                                    |       |      |                               |                           |
|----|------------------------------------|-------|------|-------------------------------|---------------------------|
| 44 | Sikkim Krantikari Morcha           | SKM   | 2013 | Prem Singh Tamang             | Sikkim                    |
| 45 | Telangana Rashtra Samithi          | TRS   | 2001 | Kalvakuntla Chandrashekar Rao | Telangana                 |
| 46 | Telugu Desam Party                 | TDP   | 1982 | N. Chandra Babu Naidu         | Andhra Pradesh, Telangana |
| 47 | United Democratic Party            | UDP   | 1972 | Donkumar Roy                  | Meghalaya                 |
| 48 | YSR Congress Party                 | YSRCP | 2009 | Y. S. Jaganmohan Reddy        | Andhra Pradesh, Telangana |
| 49 | Samajwadi Janata Party (Rashtriya) | SJP   | 1990 | Chandra Shekhar               | Uttar Pradesh             |

#### Unrecognised registered notable parties as of 16 September 2014

| Name                                   | Abbreviation | Foundation Year | Current leader(s)                         | States/UT                 |
|--|--------------|-----------------|---|---------------------------|
| All India Samathuva Makhal Katchi      | AISMK        | 2007            | R. Sarathkumar                            | Tamil Nadu                |
| Amra Bangali                           | AMB          | 1983            | Prabhat Ranjan Sarkar                     | West Bengal               |
| The Future India Party                 | FIP          | 2012            | Subi                                      | Tamil Nadu                |
| Jai Samaikyandhra Party                | JSP          | 2014            | Nallari Kiran Kumar Reddy                 | Andhra Pradesh            |
| Jana Sena Party                        | JSP          | 2014            | Pawan Kalyan                              | Andhra Pradesh, Telangana |
| Jan Shakti Party of India[7]           | JSPI         | 2015            | Gurjeet Singh Azad                        | Punjab                    |
| Kongunadu Makkal Desia Katchi          | KMDK         | 2013            | E. R. Eswaran                             | Tamil Nadu                |
| Kongunadu Makkal Katchi                | KMK          | 2001            |   | Tamil Nadu                |
| Kongunadu Munnetra Kazhagam            | KNMK         | 2001            |   | Tamil Nadu                |
| Lok Satta Party                        | LSP          | 2006            | Jayaprakash Narayan                       | Andhra Pradesh, Telangana |
| Rayalaseema Parirakshana Samithi       | RPS          | 2013            | Byreddy Rajasekhar Reddy                  | Andhra Pradesh            |
| Manipur Peoples Party                  | MPP          | 1968            | Sovakiran N.                              | Manipur                   |
| Manithaneyya Makkal Katchi             | MMK          | 2009            | M.Thamimun Ansari                         | Tamil Nadu                |
| Marumalarchi Dravida Munnetra Kazhagam | MDMK         | 1992            | Vaiko                                     | Tamil Nadu                |
| Naam Tamilar Katchi                    | NTK          | 2010            | Seeman                                    | Puducherry, Tamil Nadu    |
| Odisha Janmorcha                       | OJM          | 2013            | Pyarimohan Mohapatra                      | Odisha                    |
| Param Digvijay Dal                     | PDD          | 2014            | Adhyatmik Neta Krishna Mohan Shankar Yogi | Uttar Pradesh             |
| Puthiya Tamilagam                      | PTK          | 1996            | K. Krishnasamy                            | Tamil Nadu                |
| Tamilnadu Kongu Ilaingar Peravai       | KIP          | 2001            | U. Thaniyarasu                            | Tamil Nadu                |

|                                |     |      |                      |             |
|--------------------------------|-----|------|----------------------|-------------|
| Uttarakhand Kranti Dal         | UKD | 1979 | Kashi Singh Airy     | Uttarakhand |
| Viduthalai Chiruthaigal Katchi | VCK | 1972 | Thol. Thirumavalavan | Tamil Nadu  |

## *Supreme Court*

Article 124 Establishment and constitution of Supreme Court.

## *History*

In 1861 the Indian High Courts Act 1861 was enacted to create High Courts for various provinces and abolished Supreme Courts at Calcutta, Madras and Bombay and also the Sadar Adalats in Presidency towns which had acted as the highest court in their respective regions. These new High Courts had the distinction of being the highest Courts for all cases till the creation of Federal Court of India under the Government of India Act 1935. The Federal Court had jurisdiction to solve disputes between provinces and federal states and hear appeal against judgements of the High Courts.

The Supreme Court of India came into being on 28 January 1950.[3] It replaced both the Federal Court of India and the Judicial Committee of the Privy Council which were then at the apex of the Indian judicial system.

Supreme Court initially had its seat at Chamber of Princes in the Parliament building where the previous Federal Court of India sat from 1937 to 1950. The first Chief Justice of India was Sir H J Kania. In 1958, the Supreme Court moved to its present premises. Originally, Constitution of India envisaged a Supreme Court with a Chief Justice and seven Judges; leaving it to Parliament to increase this number. In formative years, the Supreme Court met from 10 to 12 in the morning and then 2 to 4 in the afternoon for 28 days in a year.

## *Composition*

### *Size of the court*

As originally enacted, the Constitution of India provided for a Supreme Court with a Chief Justice and 7 judges. The current Chief Justice of India is Justice TS Thakur. In the early years, a full bench of the Supreme Court sat together to hear the cases presented before them. As the work of the Court increased and cases began to accumulate, Parliament increased the number of judges from the original 8 in 1950 to 10 in 1956, 13 in 1960, 17 in 1977, 26 in 1986 and 31 in 2008 (current strength). As the number of the judges has increased, they sit in smaller benches of two or three (referred to as a division bench) — coming together in larger benches of five or more (referred to as a constitution bench) when required to settle fundamental questions of law. A bench may refer a case before it to a larger bench, should the need arise.

## ***Eligibility***

A citizen of India who has been

- a judge of one high court or more (continuously), for at least five years, or
- an advocate there, for at least ten years, or
- a distinguished jurist, in the opinion of the president,

is eligible to be recommended for appointment, a judge of the supreme court.

## ***Court demographics***

I am proud to be an Indian. India is the only country where a member of the minority Parsi community with a population of 1,67,000, like myself, can aspire to attain the post of the Chief Justice of India. These things do not happen in our neighbouring countries.

Former Chief Justice of India, S. H. Kapadia

In practice, judges of the supreme court have been selected so far, mostly from amongst judges of the high courts. Barely six - Justices S. M. Sikri, S. Chandra Roy, Kuldeep Singh, Santosh Hegde, R. F. Nariman and U. U. Lalit have been appointed to the supreme court directly from the bar (i.e. who were practising advocates).

The supreme court saw its first woman judge when Justice M. Fathima Beevi was sworn into office in 1989. The sixth and the most recent woman judge in the court is Justice R. Banumathi. In 2000 Justice K. G. Balakrishnan became the first judge from the dalit community. In 2007 he also became the first dalit Chief Justice of India. In 2010, Justice S. H. Kapadia coming from a Parsi minority community became the Chief Justice of India.

## ***Terms***

Supreme Court judges retire at the age of 65 which is 3 years more than the retirement age of a judge of the High Court. Hence a judge at the Supreme Court who has been elevated from a High Court serves at the Supreme Court for at least more than 3 years. However, there have been suggestions, including from the judges of the Supreme Court of India, to provide for a fixed term for the judges there including the Chief Justice of India.

## ***Removal***

A judge of the Supreme Court can be removed under the Constitution only on grounds of proven misconduct or incapacity and by an order of the President of India, after a notice signed by at least 100 members of the Lok Sabha (House of the People) or 50 members of the Rajya Sabha (Council of the States) is passed by a two-third majority in each House of the Parliament.

## *Jurisdiction*

### *Original jurisdiction*

It refers to the authority of a court to take cognizance of cases which can be tried and adjudicated upon in those courts in the first instance itself. It is different from appellate jurisdiction in the sense that in case of the latter, the courts rehear and review an already decided matter whereas in case of the former the cases are tried for the very first time. For example, the High Court of Allahabad has original jurisdiction with respect to matrimonial, testamentary, probate and company matters.

### *Writ jurisdiction*

Every individual has the right to move the Supreme Court can issue writ only in case of violation of any of the fundamental rights contained in Part-III of the constitution, while the High Courts can issue writs not only in case of violation of fundamental rights but also in case of violation of any legal rights of the citizens provided that a writ is a proper remedy in such cases, according to well-established principles.

### *Appellate Jurisdiction*

Appellate jurisdiction is a specific kind of legal authority which is oriented not toward legal matters and individuals under the legal system directly, but instead to the legal decisions which have already been made by other bodies in regard to these laws and persons. Appellate jurisdiction means that a court, judge, or other entity will be able to hear an appeal as to the rightness of a previous legal ruling and possibly overrule it.

### *Advisory jurisdiction*

The advisory jurisdiction of the Court invoked through Presidential References, is governed by Article 143 of the Constitution. Under Article 143 of the Constitution of India, the President is empowered to refer to the Supreme Court any matter of law or fact. The opinion of the Court may be sought in relation to issues that have arisen or are likely to arise. A Presidential Reference may be made in matters that are of public importance and where it is expedient to obtain the opinion of the Supreme Court. The Court may refuse to answer all or any of the queries raised in the Reference.

## *Governors*

Nominal executive head in state.

In India, a lieutenant governor is in charge of a union territory. However the rank is present only in the union territories of Andaman and Nicobar Islands, Delhi and Puducherry (the other territories have an administrator appointed, who is an IAS officer). However the governor of Punjab acts as the administrator of Chandigarh. However Lieutenant-governors does not hold the same rank as a governor of a state in the list of precedence.

The governors and lieutenant-governors are appointed by the president for a term of 5 years.

### *Qualifications*

Article 157 and Article 158 of the Constitution of India specify eligibility requirements for the post of governor. They are as follows:

A governor must:

- be a citizen of India;
- be at least thirty-five (35) years old;
- not be a member of the either house of the parliament or house of the state legislature.
- not hold any other office of profit.

### *Powers and functions*

The primary function of the governor is to preserve, protect and defend the constitution and the law as incorporated in his oath of office under Article 159 of the Indian constitution in the administration of the State affairs. All his actions, recommendations and supervisory powers (Article 167 c, Article 200, Article 213, Article 355, etc.) over the executive and legislative entities of a State shall be used to implement the provisions of the Constitution. In this respect, the governor has many different types of powers:

- Executive powers related to administration, appointments and removals,
- Legislative powers related to lawmaking and the state legislature, that is Vidhan Sabha or Vidhan Parishad,
- Discretionary powers to be carried out according to the discretion of the governor.

### *Executive powers*

The Constitution vests in the governor all the executive powers of the state government. The governor appoints the chief minister, who enjoys the support of the majority in the Vidhan Sabha. The governor also appoints the other members of the Council of Ministers and distributes portfolios to them on the advice of the chief minister.

The Council of Ministers remain in power during the 'pleasure' of the governor, but in the real sense it means the pleasure of the Vidhan Sabha. As long as the majority in the Vidhan Sabha supports the government, the Council of Ministers cannot be dismissed.

The governor appoints the chief minister of a state. He/she also appoints the Advocate General and the chairman and members of the State Public Service Commission. The president consults the governor in the appointment of judges of

the High Courts and the governor appoints the judges of the District Courts. All administrations are carried on his/her name, he/she also has the power to appoint staff for his tenure in class one and class four as per constitution of India.

### *Legislative powers*

The governor summons the sessions of both houses of the state legislature and prorogues them. The governor can even dissolve the Vidhan Sabha. These powers are formal and the governor while using these powers must act according to the advice of the Council of Ministers headed by the chief minister.

The governor inaugurates(to dedicate) the state legislature by addressing it after the assembly elections and also at the beginning of the first session every year. The governor's address on these occasions generally outlines new policies of the state government. A bill that the state legislature has passed, can become a law only after the governor gives assent. The governor can return a bill to the state legislature, if it is not a money bill, for reconsideration. However, if the state legislature sends it back to the governor for the second time, the governor must assent to it. The governor has the power to reserve certain bills for the president.

When the state legislature is not in session and the governor considers it necessary to have a law, then the governor can promulgate ordinances. These ordinances are submitted to the state legislature at its next session. They remain valid for no more than six weeks from the date the state legislature is reconvened unless approved by it earlier.

Governor is empowered under Article 192 to disqualify a member of a House of the State Legislature when the election commission recommends that the legislator is no longer complying with provisions of Article 191.

### *Financial powers*

Money bills can be introduced in the State Legislative Assembly only on the prior recommendation of the governor. He also causes to be laid before the State Legislature the annual financial statement which is the State Budget. Further no demand for grant shall be made except on his recommendation. He can also make advances out of the Contingency Fund of the State to meet any unforeseen expenditure. Moreover, he constitutes the State Finance Commission.

### *Discretionary powers*

The governor can use these powers:

- If no party gets an absolute majority, the governor can use his discretion in the selection of the chief minister.
- During an emergency he can override the advice of the council of ministers. At such times, he acts as an agent of the president and becomes the real ruler of the state.

- He uses his discretion in submitting a report to the president regarding the affairs of the state.
- He can withhold his assent to a bill and send it to the president for his approval.

## *Emoluments*

| Governor's pay   |                    |
|------------------|--------------------|
| Date established | Salary (per month) |
| 1 January 2006   | 110000 (US\$1,600) |
| Source           |                    |

Various emoluments, allowances and privileges available to a governor are determined by the Governors (Emoluments, Allowances and Privileges) Act, 1982.

In addition to the monthly salary, the governor is entitled to rent free official residence, free household facilities and conveyance. The governor and his family are provided with free medical attendance, accommodation and treatment for life.

## *Removal*

The term of governor's office is normally 5 years but it can be terminated earlier by:

1. Dismissal by the president ( usually on the advice of the prime minister of the country) at whose pleasure the governor holds office.
2. Resignation by the governor

There is no provision of impeachment, as it happens for the president.

## *Legal immunity*

Under Article 361 of the constitution, governor can not be summoned for questioning except on his voluntary willingness to testify in the court in support of his controversial deeds though the unconstitutional decisions taken by the governor would be declared invalid by the courts. The case would be decided by the courts based on the facts furnished by the union government for the governor's role. As clarified by the Supreme Court in the case 'Rameshwar Prasad & Ors vs Union Of India & Anr on 24 January 2006', though governor can not be prosecuted and imprisoned during his term of office, he can be prosecuted after his term of office for the guilty committed during his term of governorship as declared earlier by the courts. No governor has resigned on impropriety to continue in office for declaring and nullifying his decisions as unconstitutional by the courts till now. No criminal case at least on the grounds of disrespecting constitution is lodged till now against former governors to punish them for their unconstitutional acts though many decisions taken during the term of governorship had been declared by Supreme Court as unconstitutional, mala fide, void, ultra vires, etc.

## *Analysis of role in Government*

While the President of India is "elected", the governor is "selected" by the incumbent central government. That is why there have been many instances when governors appointed by a previous government are removed by an incoming government. The reasons are more political. The supreme court has ruled that governors should be given security of term but this is generally not adhered to.

Political observers have described governorship as "plush old age homes" wherein the governor does not stay impartial and act against popular state leaders. In 1984, Congressman Ram Lal dismissed the NT Rama Rao government and allowed Nadendla Bhaskar Rao as chief minister of Andhra Pradesh for 31 days.[6]

In January 2014, the Central Bureau of Investigation (CBI) approached the Union Law Ministry under the UPA Government to record statements of West Bengal Governor M.K. Narayanan and Goa Governor Bharat Vir Wanchoo. Their statements were considered vital as Narayanan was National Security Adviser and Wanchoo was Chief of Special Protection Group (SPG) at the time of signing of contract with AgustaWestland. Their views were also considered before Indian Government signed the contract with AgustaWestland. However, Union Law ministry stonewalled CBI probe by rejecting CBI's request to examine them claiming they had 'immunity'. UPA was defeated in the 2014 general election and with the incoming NDA Government's permission, West Bengal Governor M.K. Narayanan became the first ever Governor to be questioned by police in a criminal case. The CBI questioned MK Narayanan as a "witness" in 3600-crore 2013 Indian helicopter bribery scandal. The CBI said Goa Governor Bharat Vir Wanchoo would be questioned in the same case.

### *Chief Minister*

Real executive head of the Govt. at the state level.

The position of chief minister at the state level is analogous to the prime minister at the centre.

The governor of the state who is the appointing authority. Other ministers are appointed by the governor on the advice of the chief minister.

## *Selection process*

### *Eligibility*

The Constitution of India sets the principle qualifications one must meet to be eligible to the office of the Chief Minister. A Chief Minister must be:

- a citizen of India.
- should be a member of the state legislature. If a person is elected chief minister who is not a member of the legislature, then he/she must take sign from governor.
- of 25 years of age or more

## ***Election***

The chief minister is elected through a majority in the state legislative assembly. This is procedurally established by the vote of confidence in the legislative assembly, as suggested by the governor of the state who is the appointing authority.

## ***State Lagislature***

For every state, there is a legislature, which consists of Governor and one House or, two Houses as the case may be. In Bihar, Andhra Pradesh, Telangana, Jammu and Kashmir, Karnataka, Maharashtra and Uttar Pradesh, there are two Houses known as legislative council and legislative assembly. In the remaining states, there is only one House known as legislative assembly. Parliament may, by law, provide for abolition of an existing legislative council or for creation of one where it does not exist, if proposal is supported by a resolution of the legislative assembly concerned.

**Legislative Council (Vidhan Parishad):** of a state comprises not more than one-third of total number of members in legislative assembly of the state and in no case less than 40 members (Legislative Council of Jammu and Kashmir has 36 members vide Section 50 of the Constitution of Jammu and Kashmir). About one-third of members of the council are elected by members of legislative assembly from amongst persons who are not its members, one-third by electorates consisting of members of municipalities, district boards and other local authorities in the state, one-twelfth by electorate consisting of persons who have been, for at least three years, engaged in teaching in educational institutions within the state not lower in standard than secondary school and a further one-twelfth by registered graduates of more than three years standing. Remaining members are nominated by Governor from among those who have distinguished themselves in literature, science, art, cooperative movement and social service. Legislative councils are not subject to dissolution but one-third of their members retire every second year.

**Legislative Assembly (Vidhan Sabha):** of a state consists of not more than 500 and not less than 60 members (Legislative Assembly of Sikkim has 32 members vide Article 371F of the Constitution) chosen by direct election from territorial constituencies in the state. Demarcation of territorial constituencies is to be done in such a manner that the ratio between population of each constituency and number of seats allotted to it, as far as practicable, is the same throughout the state. Term of an assembly is five years unless it is dissolved earlier.

## ***Powers and Functions***

State legislature has exclusive powers over subjects enumerated in List II of the Seventh Schedule of the Constitution and concurrent powers over those enumerated in List III. Financial powers of legislature include authorisation of all expenditure, taxation and borrowing by the state government. Legislative assembly alone has power to originate money bills. Legislative council can make only recommendations in respect of changes it considers necessary within a period of fourteen days of the receipt of money bills from Assembly. Assembly can accept or reject these recommendations.

### *Reservation of Bills*

The Governor of a state may reserve any Bill for the consideration of the President. Bills relating to subjects like compulsory acquisition of property, measures affecting powers and position of High Courts and imposition of taxes on storage, distribution and sale of water or electricity in Inter-state River or river valley development projects should necessarily be so reserved. No Bills seeking to impose restrictions on inter-state trade can be introduced in a state legislature without previous sanction of the President.

### *Control Over Executive*

State legislatures, apart from exercising the usual power of financial control, use all normal parliamentary devices like questions, discussions, debates, adjournments and no-confidence motions and resolutions to keep a watch over day-to-day work of the executive. They also have their committees on estimates and public accounts to ensure that grants sanctioned by legislature are properly utilised.

There is overall 4120 Assembly seats in states and UTs in India. Andhra Pradesh abolished its legislative council in 1984, but has set up a new legislative Council following elections in 2007.

| State             | Legislature type | Size |
|-------------------|------------------|------|
| West Bengal       | Unicameral       | 295  |
| Tamil Nadu        | Unicameral       | 234  |
| Madhya Pradesh    | Unicameral       | 230  |
| Rajasthan         | Unicameral       | 200  |
| Gujarat           | Unicameral       | 182  |
| Odisha            | Unicameral       | 147  |
| Kerala            | Unicameral       | 140  |
| Assam             | Unicameral       | 126  |
| Punjab            | Unicameral       | 117  |
| Chhattisgarh      | Unicameral       | 90   |
| Haryana           | Unicameral       | 90   |
| Jharkhand         | Unicameral       | 81   |
| Uttarakhand       | Unicameral       | 70   |
| Delhi             | Unicameral       | 70   |
| Himachal Pradesh  | Unicameral       | 68   |
| Arunachal Pradesh | Unicameral       | 60   |
| Manipur           | Unicameral       | 60   |
| Meghalaya         | Unicameral       | 60   |
| Nagaland          | Unicameral       | 60   |
| Tripura           | Unicameral       | 60   |
| Goa               | Unicameral       | 40   |
| Mizoram           | Unicameral       | 40   |
| Sikkim            | Unicameral       | 32   |
| Puducherry        | Unicameral       | 30   |

| State             | Legislature type | Size      |
|-------------------|------------------|-----------|
| Uttar Pradesh     | Bicameral        | 403 + 100 |
| Maharashtra       | Bicameral        | 288 + 78  |
| Bihar             | Bicameral        | 243 + 75  |
| Karnataka         | Bicameral        | 224 + 75  |
| Andhra Pradesh    | Bicameral        | 175 + 50  |
| Telangana         | Bicameral        | 119 + 40  |
| Jammu and Kashmir | Bicameral        | 87 + 36   |

### *Politics*

Many regional parties and national parties are in power in states of India. Coalition cabinet exists in some states.

### *Executive*

State Executive consists of Governor and Council of Ministers with Chief Minister as its head. The Governor of a State is appointed by the President for a term of five years and holds office during his pleasure. Only Indian citizens above 35 years of age are eligible for appointment to this office. Executive power of the State is vested in Governor.

#### *Council Of Ministers*

The Chief Minister is appointed by the Governor who also appoints other ministers on the advice of the Chief Minister. The Council of Ministers is collectively responsible to legislative assembly of the State.

Council of Ministers with Chief Minister as head aids and advises Governor in exercise of his functions except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion. In respect of Nagaland, Governor has special responsibility under Article 371 A of the Constitution with respect to law and order and even though it is necessary for him to consult Council of Ministers in matters relating to law and order, he can exercise his individual judgement as to the action to be taken.

Similarly, in respect of Arunachal Pradesh, Governor has special responsibility under Article 371H of the Constitution with respect to law and order and in discharge of his functions in relation thereto. Governor shall, after consulting Council of Ministers, exercise his individual judgement as to the action to be taken. These are, however, temporary provisions if President, on receipt of a report from Governor or otherwise is satisfied that it is no longer necessary for Governor to have special responsibility with respect to law and order, he may so direct by an order.

Likewise, in the Sixth Schedule which applies to tribal areas of Assam, Meghalaya, Tripura and Mizoram as specified in para 20 of that Schedule, discretionary powers are given to Governor in matters relating to sharing of royalties

between district council and state government. Sixth Schedule vests additional discretionary powers in Governors of Mizoram and Tripura in almost all their functions (except approving regulations for levy of taxes and money lending by non-tribal by district councils) since December 1998. In Sikkim, Governor has been given special responsibility for peace and social and economic advancement of different sections of population.

All Governors while discharging such constitutional functions as appointment of Chief Minister of a State or sending a report to President about failure of constitutional machinery in a State or in respect of matters relating to assent to a Bill passed by legislature, exercise their own judgement.

### *Judiciary*

State High courts have jurisdiction over the whole state, but report to the Supreme Court of India, which may override the high court's judgements and rulings.

### *High court*

In order to implement the scheme of States reorganisation, it is necessary to make numerous amendments in the Constitution with effect from the 1st October, 1956. This bill seeks to make these amendments and also some other amendments to certain provisions of the Constitution relating to the High Courts and High Court Judges, the executive power of the Union and the States, and a few entries in the legislative lists. The reasons for making the amendments are indicated below

Article 216 empowers the President to appoint to a High Court as many judges as he may from time to time deem it necessary and also to fix the maximum number of judges for each High Court by a separate order. The proviso is of little significance from the practical point of view, since the order fixing the maximum may be changed by the President whenever necessary. The appointment of additional and acting judges for which provision is sought to be made in clause 14 will also involve either frequent modifications in the order or a fixation of the maximum number at a high figure. It is, therefore, proposed to omit the proviso to article 216.

An important factor affecting the selection of High Court judges from the bar is the total prohibition contained in article 220 on practice after their retirement from the bench. It is proposed to revise the article so as to relax this complete ban and permit a retired judge to practise in the Supreme Court and in any High Court other than the one in the which he was a permanent judge.

Article 222 empowers the President to transfer judges from one High Court to another. Clause (2) of this article goes on to provide that when a judge is so transferred he shall be entitled to receive in addition to his salary a compensatory allowance. It is felt that there is no real justification for granting such an allowance and it is accordingly proposed to omit clause (2).

The provision in article 224 for recalling retired judges to function on the bench of a High Court for short periods has been found to be neither adequate nor

satisfactory. It is, therefore, proposed to replace this article by a provision for the appointment of additional judges to clear off arrears and for the appointment of acting judges in temporary vacancies.

It is proposed to revise and simplify articles 230, 231 and 232 having regard to the constitutional position of States and Union territories after reorganisation. While under article 214 there will normally be a separate High Court for each State, power will be required to establish common High Courts for two or more States. Power will also be required to extend the jurisdiction of a High Court to a Union territory, wherever necessary, and to exclude the jurisdiction of a High Court from such territory. The revised articles 230 and 231 are designed to make these provisions.

### *Qualifications of High Court Judges*

Each High Court could consist of a chief justice and up to 15 judges. Under §3 of the Act, judges could be selected from barristers (with 5 years of experience), civil servants (with 10 years of experience including 3 years as a zillah judge), judges of small cause courts or sudder ameen (with 5 years of experience), or pleaders of sudder courts or High Courts (with 10 years of experience).

The High Court of a State is the highest court of the State and all other courts of the State work under it. Normally there is one High Court in every State but there can be only one High Court for two or more States as well, according to the constitution. There is one High Court at Chandigarh for Punjab, Haryana and Union Territory of Chandigarh. Similarly there is one High Court at Guwahati which serves Assam, Arunachal Pradesh, Mizoram and Nagaland.

#### *Composition:*

In every High Court, there is a Chief Justice and many other judges whose number is defined by the President of India.

**Appointment of the Judges:** The Chief Justice of a High Court is appointed by the President with the consultation of the Chief Justice of the Supreme Court and the Governor of the State. The other judges are appointed by the will of President, Governor and the Chief Justice of High Court.

#### *Qualifications for the Judges*

- a. He should be a citizen of India.
- b. He should have been (i) a judge for 10 years of Subordinate court under the Judicial Service of the State or (ii) an Advocate for 10 years in a High Courts in India (Article 217).

**Tenure:** Originally the age of the retirement of the judges of the High Courts was fixed at 60 but it was raised to 62 in 1963 according to the 15th amendment of the Constitution.

**Removal of the Judges:** A judge may leave his office by resigning. He will send his letter of resignation to the President. His office would be considered to have been vacated if he is appointed as a judge of the Supreme Court or is transferred to some other High Court. A judge of a High Court may also be removed like a judge of the Supreme Court. A judge of High Court may be removed by the President if the Parliament passes a motion against him by an absolute majority and 2/3rd majority of the members present and voting, both the Houses sitting separately.

#### *Salary:*

The pay of the Chief Justice of a High Court is rupees 90,000/- per month and that of the other judges is rupees 85,000/- per month.

### *Powers and Functions*

#### *Original Jurisdiction:*

The original jurisdiction of the High Court is restricted.

- a. Every High Court under Article 226 is empowered to issue writs, orders, directions including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari or any of them to any person or authority within its territory for the enforcement of the Fundamental Rights and for any other purpose.
- b. The original jurisdiction of High Court extends to matters of admiralty, matrimonial, contempt of court and cases ordered to be transferred to High Court by lower court.
- c. The High Courts of Mumbai, Kolkata and Chennai have original jurisdiction on hearing straightway cases involving the Christians and Parsies.
- d. The High Courts of Mumbai, Kolkata and Chennai exercise original civil jurisdiction when the amount involved is more than two thousand rupees.

#### *Appellate Jurisdiction:*

The appellate jurisdiction of the High Courts extends so:

- a. The High Court can hear appeals in civil cases if the amount involved in the case is at least Rs. 5000.
- b. The High Court in criminal cases hears the appeal in which the accused has been sentenced to four years imprisonment by the Sessions Judge. v
- c. The death sentence awarded by Sessions Judge is subject to approval by the High Court.
- d. The High Court hear the cases involving interpretation of the Constitution or Law.
- e. The High Court hears the cases on income tax, sales tax etc.

#### *Power of Judicial Review:*

The States High Courts like the Supreme Court has the power of Judicial Review. A High Court has the power to strike down any law of the State or any order

of the executive if it violates any provision of the constitution or curtails or takes any of the Fundamental Rights of the people.

#### *Administrative and Supervisory Power:*

The State High Court performs many administrative functions within its Territorial Jurisdiction. It exercises the power of superintendence and control over all courts and tribunals throughout the territory except the military tribunals.

#### *Judicial Tenure and Seniority*

Under §5 of the Act, judges served at the pleasure of Her Majesty. The chief justice had precedence over judges, whereas judges had seniority based on appointment. Under §14, the chief justice had the power to form divisions of two or more judges to hear cases.

#### *Term*

Originally the age of the retirement of the judges of the High Courts was fixed at 60 but it was raised to 62 in 1963 according to the 15th amendment of the Constitution.

#### *Jurisdiction*

Under §9 of the Act, each High Court had "all such powers and authority for and in relation to the administration of justice" including original and appellate jurisdiction over civil, criminal, admiralty, vice-admiralty, testamentary, intestate, and matrimonial matters.

#### *Panchayati Raj*

The Panchayati Raj in India generally refers to the system introduced by constitutional amendment in 1992, although it is based upon the traditional panchayat system of South Asia. The modern panchayati raj and its gram panchayats are not to be confused with the extra-constitutional khap panchayats (or caste panchayats) found in northern India. While the panchayati raj system was formalized in 1992, leading up to that change, a number of Indian committees studied various ways of implementing more decentralized administration.

Mahatma Gandhi advocated panchayati raj as the foundation of India's political system, it would have been a decentralized form of government where each village would be responsible for its own affairs. The term for such a vision was Gram Swaraj ("village self-governance"). Instead India developed a highly centralized form of government. However, this has been moderated by the delegation of several administrative functions to the local level, empowering elected gram panchayats. There are significant differences between (1) the traditional panchayati raj system, (2) that envisioned by Gandhi, and (3) the system formalized in India in 1992.

In India, the Panchayati Raj now functions as a system of governance in which gram panchayats are the basic unit of local administration. The system has

three levels: gram panchayat (village level), mandal parishad or block samiti or panchayat samiti (block level) and zila parishad (district level).[6] It was formalized in 1992 by the 73rd amendment to the Indian Constitution.

*Various Committees on Panchayati Raj :*

- 1) Balwant Rai Mehta : Estd 1957
- 2) V.T.Krishnammachari : 1960
- 3) Takhatmal Jain Study Group: 1966
- 4) Ashok Mehta Committee : 1977
- 5) G.V.K Rao committee :1985
- 6) Dr.L.M.Singhvi Committee:1986

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*Recommendations of Balwant Rai Mehta Committee*

The Balwant Rai Mehta Committee, headed by MP Balwantrai Mehta, was a committee appointed by the Government of India in January 1957 to examine the working of the Community Development Programme (1952) and the National Extension Service (1953) and to suggest measures for their better working. The recommendations of the committee were approved by NDC in January 1958 and this set the stage for the launching of Panchayati Raj Institutions throughout the country. The committee recommended the establishment of the scheme of 'democratic decentralisation' which finally came to be known as Panchayati Raj.

(i) Establishment of a 3-tier Panchayati Raj system - Gram Panchayat at the village level, Panchayat Samiti at the block level, and Zila Parishad at the district level.

The panchayat raj system was first adopted by the state of Rajasthan in Nagaur district on 2nd Oct 1959. The second state was Andhra Pradesh, while Maharashtra was the Ninth state. This system was adopted by state governments during the 1950s and 60s, as laws were passed to establish panchayats in various states. It also found backing in the Indian Constitution, with the 73rd amendment in

1992 to accommodate the idea. The Amendment Act of 1992 contains provision for devolution of powers and responsibilities to the panchayats, both for the preparation of economic development plans and social justice, as well as for implementation in relation to 29 subjects listed in the eleventh schedule of the constitution.

The panchayats receive funds from three sources:

1. Local body grants, as recommended by the Central Finance Commission
2. Funds for implementation of centrally sponsored schemes
3. Funds released by the state governments on the recommendations of the State Finance Commissions

In the history of Panchayati Raj, in India, on 24 April 1993, the Constitutional (73rd Amendment) Act 1992 came into force to provide constitutional status to the Panchayati Raj institutions. This act was extended to Panchayats in the tribal areas of eight states, namely Andhra Pradesh, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Odisha and Rajasthan starting 24 December 1996. Currently, the Panchayati Raj system exists in all the states except Nagaland, Meghalaya and Mizoram, and in all Union Territories except Delhi.[9] The Balwant Rai Mehta Committee was a committee appointed by the Government of India in January 1957 to examine the working of the Community Development Programme (1952). The Act aims to provide a 3-tier system of Panchayati Raj for all States having a population of over 2 million, to hold Panchayat elections regularly every 5 years, to provide seats reservations for scheduled castes, scheduled tribes and women; to appoint a State Finance Commission to make recommendations regarding the financial powers of the Panchayats and to constitute a District Planning Committee, to prepare a development plan draft for the district. The 3-tier system of Panchayati Raj consists of:

1. Village-level Panchayats
2. Block-level Panchayats
3. District-level Panchayats.

Powers and responsibilities are delegated to panchayats at the appropriate level:

- Preparation of the economic development plan and social justice plan.
- Implementation of schemes for economic development and social justice in relation to 29 subjects given in the Eleventh Schedule of the Constitution.
- To levy and collect appropriate taxes, duties, tolls and fees.

#### *Block level panchayat*

A panchayat samiti (block panchayat) is a local government body at the tehsil level. This body works for the villages of the tehsil that together are called a "development block". The panchayat samiti is the link between the gram panchayat and the district administration. Just as the "tehsil" goes by other names in various part of India, notably "mandal" and "taluka", there are a number of variations in nomenclature for the block panchayat. For example, it is known as "mandal praja

parishad" in Andhra Pradesh, "taluka panchayat" in Gujarat, "mandal panchayat" in Karnataka, and "panchayat samiti" in Maharashtra. In general, the block panchayat has the same form as the gram panchayat but at a higher level.

#### *Constituency*

Membership in the block panchayat is mostly ex-official, it is composed of all of the sarpanchas (gram panchayat chairmen) in the panchayat samiti area, the MPs and MLAs of the area and the sub-district officer (SDO) of the subdivision, co-opt members (representatives of the SC/ST and women), associate members (a farmer of the area, a representative of the cooperative societies and one from marketing services), and some elected members.

The panchayat samiti is elected for a term of five years and is headed by a chairman and a deputy chairman.

#### *Departments*

The common departments in the Samiti are as follows:

1. General administration
2. Finance
3. Public work
4. Agriculture
5. Health
6. Education
7. Social welfare
8. Information technology,
9. Water Supply Dept.
10. Animal Husbandry and others.

There is an officer for every department. A government appointed Block Development Officer (BDO) is the executive officer to the Samiti and the chief of its administration. BDO is responsible for his work to the CEO of ZP.

#### *Functions*

1. Implementation of schemes for the development of agriculture and infrastructure.
2. Establishment of primary health centres and primary schools.
3. Supply of drinking water, drainage and construction/repair of roads.
4. Development of cottage and small-scale industries, and the opening of cooperative societies.
5. Establishment of youth organisations.

#### *District level panchayat*

The governing of the system of advance system at district level in Panchayat Raj is also popularly known as "Zila Parishad". Chief of administration is an officer of the IAS cadre.

### *Functions*

1. Provide essential services and facilities to the rural population
2. Supply improved seeds to farmers. Inform them of new farming techniques
3. Set up and run schools and libraries in the rural areas
4. Start Primary Health Centers and hospitals in villages. Start vaccination drives against epidemics
5. Execute plans for the development of the scheduled castes and tribes. Run ashramshalas for adivasi children. Set up free hostels for them
6. Encourage entrepreneurs to start small-scale industries and implement rural employment schemes
7. Construct bridges, roads & other public facilities and their maintenance
8. Provide employment

### *Sources of Income*

1. Taxes on water, pilgrimage, markets, and many more.
2. Fixed grant from the State Government in proportion with the land revenue and money for works and schemes assigned to the Parishad.

### *Village level panchayat*

A gram panchayat is a village level administrative body. It has a Sarpanch as its elected head. The members of the Gram panchayat are elected for a period of five years. The members of the Gram Panchayat are elected by the members of Gram Sabha.

### *Reservation for women in PRIs in India*

The Union Cabinet of the Government of India, on 27 August 2009, approved 50% reservation for women in PRIs (Panchayati Raj Institutions). The Indian states Madhya Pradesh, Bihar, Uttarakhand, Himachal Pradesh, Andhra Pradesh, Chhattisgarh, Jharkhand, Kerala, Karnataka, Maharashtra, Orissa, Rajasthan and Tripura have implemented 50% reservation for women in PRIs. Majority of candidates in these Panchayaths are women. Currently 100% of elected members in Kodassery Panchayat in Kerala are Women.

### *panchayat*

A gram panchayat is the cornerstone of a local self-government organisation in India of the panchayati raj system at the village or small town level and has a sarpanch as its elected head.

The failed attempts to deal with local matters at the national level caused, in 1992, the reintroduction of panchayats for their previously used purpose as an organisation for local self-governance. There are about 250,000 gram panchayats in India.

## *Structure*

Gram panchayats are panchayats at base level in panchayat raj institutions (or PRIs), governed by the 73rd Amendment, which is concerned with Rural Local Governments.

- Panchayat at District(or apex) Level
- Panchayat at Intermediate Level
- Panchayat at Base Level

## *Municipal Corporations*

In India, Municipal Corporations or City Corporation or Mahanagar Palika or Mahanagar Nigam are urban local government that works for the development of a city, which has a population of more than one million (ten lakh). The growing population and urbanization in various cities of India were in need of a local governing body that can work for providing necessary community services like health care, educational institution, housing, transport etc. by collecting property tax and fixed grant from the State Government.

The 74th amendment made the provisions relating to Urban Local Governments (Nagarpalikas).

### *Three Tier Structure:*

- Municipal Corporations
- Municipal Councils
- Nagar Panchayats

## *Terms used for Municipal Corporation*

In India a Municipal Corporation is called by different names which varies from state to state(owing to the official language of the state or due to other regional language variations) all of which are translated to "Municipal Corporation" in English, these names including Nagar Nigam(in Delhi, Uttar Pradesh, Bihar, Rajasthan, Haryana), Mahanagar Palika(in Maharashtra, Goa, Karnataka), Pouro Nigom(in West Bengal), etc. The term Nagar Palika Nigam is used in Madhya Pradesh for Municipal Corporation. In Tripura, the sole Municipal Corporation of the city of Agartala is called Agartala Pur Porishod in Bengali. Also, the Vadodara Municipal Corporation is typically called by the name "Vadodara Mahanagar Seva Sadan". The detailed structure of these urban bodies varies from state to state, as per the laws passed by the state legislature(Vidhan Sabha) but the basic structure and function is almost the same. Under the panchayati raj system, it interacts directly with the state government, though it is administratively part of the district it is located in.

## *Constitution*

Each Municipal Corporation has a committee consisting of a Mayor with Councillors. They are formed under the Corporations Act of 1835 of Panchayati Raj system which mainly deals in providing essential services in Metropolitan Cities. The no. of councillors depend upon the area and population of the city that minimum of 3,00,000. Municipal Corporation members are elected from the several wards of the specific city on the basis of adult franchise for a term of five years. There are seats reserved for Scheduled Castes, Scheduled Tribes, backward classes and women. The Councillors are chosen by direct election from electoral wards in the Municipal Corporation.

The largest corporations are in the six metropolitan cities of India, viz. Delhi, Mumbai, Kolkata, Chennai, Bangalore and Hyderabad and among these Mumbai is the most populous and largest metropolitan city of India. These cities not only have a large population, but are also the administrative as well as commercial centres of the country.

## *Administration*

Mayor is the head of the Municipal Corporations in India. The Municipal Commissioner is the official in charge of this organization. Executive Officers monitor the implementation of all the programs related to planning and development of the corporation with the coordination of Mayor and Councillors.

### *Mayor and Councillors*

This model is also known as the Commissioner system, taking its name from the role of the city administrator who is generally a state-appointed officer. In such a system the Mayor in the Municipal Corporation is usually chosen through indirect election by the Councillors from among themselves for a term of one year, which is renewable.

The Mayor generally lacks executive authority. This is due to the British roots of the system that remain from the time when the administrator was the representative of the colonial power, not to the fact that it operates under a council-manager system whereby the executive would be accountable to the elected representatives. In this context, the indirect election of the Mayor combined with his short one-year tenure renders the role little more than that of a figurehead.

Councillors act by committee, the most powerful being the Standing Committee with its role of the steering committee exercising executive, supervisory, financial and personnel powers. It is composed of elected members varying in number between seven and sixteen through a system of proportional representation of Councillors.

### *The executive arm of the corporation*

The Municipal Commissioner is the chief Executive Officer and head of the executive arm of the Municipal Corporation. All executive powers are vested in the Municipal Commissioner. Although the Municipal Corporation is the legislative body that lays down policies for the governance of the city, it is the Commissioner who is responsible for the execution of the policies. The Commissioner is appointed for a fixed term as defined by state statute. The Commissioner's term in office can be extended or reduced. The powers of the Commissioner are those provided by statute and those delegated by the Corporation or the Standing Committee. This is the closest that India has come to the council-manager system, with the critical difference of accountability of the manager to the elected arm of government; and the fact that the power of the unelected executive arm of government is thus weighted in its favour.

### *Functions*

- Water supply
- Hospitals
- Roads
- Over bridge
- Street lighting
- Drainage
- Solid waste
- Fire brigades
- Market places
- Records of births and deaths

it also helps in education and primary health care

### *Sources of Income*

Its sources of income are taxes on water, houses, markets, entertainment and vehicles paid by residents of the town and grants from the state government.

### *The Comptroller and Auditor-General*

### *Appointment*

The Comptroller and Auditor-General of India is appointed by the President of India following a recommendation by the Prime Minister. On appointment, he/she has to make an oath or affirmation before the President of India.

### *Recent achievements*

Recently the CAG under Vinod Rai has constantly been in the limelight for its reports exposing mega corruption, particularly in 2G Spectrum Scam, Commonwealth Games scam and other scams.

### *Suggested reforms*

In June 2012, Lal Krishna Advani a veteran Indian politician and former Deputy Prime Minister of India (as well as former Leader of the Opposition in Indian Parliament) suggested that CAG's appointment should be made by a bipartisan collegium consisting of the prime minister, the Chief Justice, the Law Minister and the Leaders of the Opposition in the Lok Sabha and the Rajya Sabha.[8][9] Subsequently, M Karunanidhi, the head of Dravida Munnetra Kazhagam (DMK) party and five times Chief Minister of Tamil Nadu supported the suggestion. Advani made this demand to remove any impression of bias or lack of transparency and fairness because, according to him, the current system was open to "manipulation and partisanship". Similar demand was made by many former CEC's such as B B Tandon, N Gopalaswamy and S Y Quraishi, however the government did not seem too keen. CPI MP GURUDAS DASGUPTA wrote a letter to The PM and demand CAG has appointed by the collegium of consisting the PM, the CJI and the leader of the opposition in Lok Sabha but The PM Declined it. former CAG V. K. Shunglu has suggested in its CWG scam report that THE CAG has made a multimember body. PMO minister V. Narayanasamy in his interview with PTI said govt. is considering the shunglu panel report. but PM and Finance Minister declined it. Later V. Narayanasamy said he misquoted but PTI reaffirmed it.

### *Compensation*

The salary and other conditions of service of the CAG are determined by the Parliament of India through "The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971". As per the act, his salary is the same as salary of a Judge of Supreme Court of India. Neither his salary nor rights in respect of leave of absence, pension or age of retirement can be varied to his disadvantage after his appointment. The CAG is not eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office. These provisions are in order to ensure the independence of CAG.

| Salary of CAG  |                     |
|----------------|---------------------|
| Date           | Salary              |
| 1 January 2006 | ₹90,000 (US\$1,300) |

### *Removal*

The CAG can be removed only on an address from both house of parliament on the ground of proved misbehaviour or incapacity. The CAG vacates the office on attaining the age of 65 years age even without completing the 6 years term.

## *Indian Audit and Accounts Service*

The Constitution of India [Article 148] provides for an independent office to the CAG of India. He or she is the head of Indian Audit and Accounts Department. She or he has a duty to uphold the Constitution of India and laws of the Parliament to safeguard the interests of the public exchequer.

The Indian Audit and Accounts Service aids the CAG in the discharge of his/her functions.

### *Scope of audits*

"CAG is not a munimji or an accountant or something like that... He is a constitutional authority who can examine the revenue allocation and matters relating to the economy. CAG is the principal auditor whose function is to go into the economy, effectiveness and efficiency of the use of resources by the government. If the CAG will not do, then who else will do it"

– Observation of a bench of Supreme Court of India while dismissing a petition challenging CAG reports on 2G spectrum, Coal Blocks Allotment, etc.

Audit of government accounts (including the accounts of the state governments) in India is entrusted to the CAG of India who is empowered to audit all expenditure from the Consolidated Fund of the union or state governments, whether incurred within India or outside, all revenue into the Consolidated Funds and all transactions relating to the Public Accounts and the Contingency Funds of the Union and the states. Specifically, audits include:

- Transactions relating to debt, deposits, remittances, Trading, and manufacturing
- Profit and loss accounts and balance sheets kept under the order of the President or Governors
- Receipts and stock accounts. CAG also audits the books of accounts of the government companies as per Companies Act.

In addition, the CAG also executes performance and compliance audits of various functions and departments of the government. Recently, the CAG as a part of thematic review on "Introduction of New Trains" is deputing an auditors' team on selected trains, originating and terminating at Sealdah and Howrah stations, to assess the necessity of their introduction. In a path-breaking judgement, the Supreme Court of India ruled that the CAG General could audit private firms in revenue-share deals with government.

CAG has been appointed as external auditor of three major UN organisations: the Vienna-based International Atomic Energy Agency (IAEA), the Geneva-based World Intellectual Property Organisation (WIPO) and World Food Programme (WFP).

CAG has been elected the Chairman of the United Nations' panel of external auditors.

Rebecca Mathai is an Indian who is

presently the External Auditor of UN organisation World Food Programme(WFP) Headquartered at Rome, Italy.

### *Reforms suggested by former CAG Vinod Rai*

In November 2009, the CAG requested the government to amend the 1971 Audit Act to bring all private-public partnerships (PPPs), Panchayati Raj Institutions and societies getting government funds within the ambit of the CAG. The amendment further proposes to enhance CAG's powers to access information under the Audit Act. In the past, almost 30% of the documents demanded by CAG officials have been denied to them. The PPP model has become a favourite mode of executing big infrastructure projects worth millions of rupees and these projects may or may not come under the audit purview of the CAG, depending on sources of funds and the nature of revenue sharing agreements between the government and the private entities. Currently, it is estimated that 65 percent of government spending does not come under the scrutiny of the CAG.

### *Prominent audit reports*

Following are some of the most debated CAG reports:

#### *Krishna-Godavari(KG)D6 gas block*

The oil ministry imposed a fine of 7000 Rs. crores on Mukesh Ambani's company for the sharp drop in production of gas and violations mentioned in CAG's 2011 report. Oil ministry did not approve company's US\$7.2 billion stake in deal with BP. So Jaipal Reddy known for his honesty was shifted from oil ministry to the Science and Technology ministry owing to pressure from Reliance group of Industries. RIL allowed the CAG to begin the audit in April this year after stalling it for a year. But unresolved issues could stall audit of KG Basin, again. Then Reliance appointed Defence Secretary Shashikant Sharma as new CAG to audit KG Basin, said Prashant Bhushan. In KG D-6, most of the cost had been recovered by the private player and the increase in price would only go as profit. About 90% of receipts from K-G D-6 were so far booked as expenditure and in the remaining 10%, only 1% was paid to the government and rest 9% went to the operator as profit.

### *List of Comptroller and Auditors General of India*

| No. | Comptroller and Auditor General of India | Year tenure began | Year tenure ended |
|-----|--|-------------------|-------------------|
| 1   | V. Narahari Rao                          | 1949              | 1954              |
| 2   | A. K. Chanda                             | 1954              | 1960              |
| 3   | A. K. Roy                                | 1960              | 1966              |
| 4   | S. Ranganathan                           | 1966              | 1972              |
| 5   | A. Bakshi                                | 1972              | 1978              |
| 6   | Gian Prakash                             | 1978              | 1984              |

|    |                    |      |   |
|----|--------------------|------|---|
| 7  | T. N. Chaturvedi   | 1984 | 1990  |
| 8  | C. G. Somiah       | 1990 | 1996  |
| 9  | V. K. Shunglu      | 1996 | 2002  |
| 10 | VN Kaul            | 2002 | 2008  |
| 11 | Vinod Rai          | 2008 | 2013  |
| 12 | Shashi Kant Sharma | 2013 | Incumbent (6 years tenure or 65 years of age, whichever is earlier) |

### *Attorney General of India*

The Attorney General for India is the Indian government's chief legal advisor, and its primary lawyer in the Supreme Court of India. He is appointed by the President of India under Article 76(1) of the Constitution and holds office during the pleasure of the President. He must be a person qualified to be appointed as a Judge of the Supreme Court, also must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist, in the opinion of the President and must be a citizen of India.

The 14th and current Attorney General is Mukul Rohatgi. He was appointed by Pranab Mukherjee, the President of India. He has been formally appointed as Attorney General of India with effect from 12 June 2014 and shall have a tenure of 5 years.

### *Powers and duties*

The Attorney General is necessary for giving advice to the Government of India in legal matters referred to him. He also performs other legal duties assigned to him by the President. The Attorney General has the right of audience in all Courts in India as well as the right to participate in the proceedings of the Parliament, though not to vote. The Attorney General appears on behalf of Government of India in all cases (including suits, appeals and other proceedings) in the Supreme Court in which Government of India is concerned. He also represents the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.

Unlike the Attorney General of the United States, the Attorney General of India does not have any executive authority. Those functions are performed by the Law Minister of India.

The Attorney General can accept briefs but cannot appear against the Government. He cannot defend an accused in the criminal proceedings and accept the directorship of a company without the permission of the Government.

The Attorney General is assisted by a Solicitor General and four Additional Solicitor Generals. The Attorney General is to be consulted only in legal matters of real importance and only after the Ministry of Law has been consulted. All references to the Attorney General are made by the Law Ministry.

### *Fee and allowances payable*

Fee and allowances payable to the law officers (including Attorney General of India, Solicitor General of India and the Additional Solicitors General) of the Government of India are as under:

| S.No. | Nomenclature of the item of work  | Rates of fees payable for appearance and other work |
|-------|---|---|
| (1)   | Suits, writ petitions, appeals and references under article 143   | Rs. 16,000/- per case per day                       |
| (2)   | Special leave petitions and other applications  | Rs. 10,000/- per case per day                       |
| (3)   | Settling pleadings (including affidavits)   | Rs. 5,000/- per pleading                            |
| (4)   | Settling Statement of Case  | Rs. 6,000/- per case                                |
| (5)   | For giving opinions in statements of cases sent by the Ministry of Law  | Rs. 10,000/- per case                               |
| (6)   | For written submission before the Supreme Court, High Court, and Commissions of Inquiry or Tribunals and the like | Rs. 10,000/- per case                               |
| (7)   | Appearance in Courts outside Delhi  | Rs. 40,000/- per day per case                       |

In addition to the above fee payable for cases, a retainer fee is paid to the Attorney General of India, Solicitor General of India and the Additional Solicitors General at the rate of Rs. 50,000, Rs. 40,000, and Rs. 30,000 per month, respectively. Moreover, the Attorney General of India is also paid a sumptuary allowance of rupees four thousand per month, except during the period of his leave.

### *Politicization of the Attorney General*

Further information: Indian Emergency (1975–77), Bofors scandal, Taj corridor case, 2G spectrum scam and Indian coal mining controversy

It has become a tradition that the Attorney General resigns when a new government is formed. The Attorney General is selected by the Government and acts as its advocate, and hence is not a neutral person. Nevertheless, it is a constitutional authority, and his or her opinions are subject to public scrutiny. On several occasions however, the opinions pursued by the Attorney General appear to have been extremely politicised.

During some of the AG tenures, it has been felt that the attorney general has gone too far. Niren De during Indira Gandhi replied to a question by Hans Raj Khanna stating that even the right to life can be suspended during emergency.

Similarly, in 2005, when the UPA government was planning a possible coalition with Mayawati, Milon K. Banerjee's opinion absolving Mayawati in the Taj corridor case was ignored by the Supreme Court. In a direct condemnation of the government which asked the CBI to heed attorney general Milon Banerjee's opinion

and close the case against Mayawati, the Supreme Court told the agency not to go solely on the AG's opinion and place all evidence before it.

In 2009, Milon K. Banerjee's opinion absolving Ottavio Quattrocchi in the Bofors scandal has also been viewed as "devaluing and eroding the Attorney General's position".

During the UPA-II government (2009–2014), the conduct of Attorney General Goolam Vahanvati was criticised in a number of cases. In 2G spectrum scam, he became the first Attorney General in India's history who had to testify as a witness in a corruption case in a trial court. In late April 2013, in Coal-gate scandal, Vahanvati was accused of misrepresenting facts in the top most court of India. Again in the same case, Vahanvati's role came under scrutiny after allegations of impropriety and coercion emerged from his junior law officer, Harin P. Raval, who resigned from the post of Additional Solicitor General as a result.

### *List of Attorneys General for India*

The Attorneys General for India since independence are listed below:

| Attorney General        | Term                                    | Incumbent Prime Minister              |
|-------------------------|---|---------------------------------------|
| M. C. Setalvad          | 28 January 1950 – 1 March 1963          | Jawaharlal Nehru                      |
| C.K.Daphtary            | 2 March 1963 – 30 October 1968          | Jawaharlal Nehru; Lal Bahadur Shastri |
| Niren De                | 1 November 1968 – 31 March 1977         | Indira Gandhi                         |
| S.V. Gupte              | 1 April 1977 – 8 August 1979            | Morarji Desai                         |
| L.N. Sinha              | 9 August 1979 – 8 August 1983           | Indira Gandhi                         |
| K. Parasaran            | 9 August 1983 – 8 December 1989         | Indira Gandhi; Rajiv Gandhi           |
| Soli Sorabjee           | 9 December 1989 – 2 December 1990       | V. P. Singh; Chandra Shekhar          |
| G. Ramaswamy            | 3 December 1990 – 23 November 1992      | Chandra Shekhar; P. V. Narasimha Rao  |
| Milon K. Banerji        | 21 November 1992 – 8 July 1996          | P. V. Narasimha Rao                   |
| Ashok Desai             | 9 July 1996 – 6 April 1998              | H. D. Devegowda; Inder Kumar Gujral   |
| Soli Sorabjee           | 7 April 1998 – 4 June 2004              | Atal Bihari Vajpayee                  |
| Milon K. Banerji        | 5 June 2004 – 7 June 2009               | Manmohan Singh                        |
| Goolam Essaji Vahanvati | 8 June 2009 – 11 June 2014              | Manmohan Singh                        |
| Mukul Rohatgi           | 19 June 2014 – 18 June 2017 (Incumbent) | Narendra Damodardas Modi              |

## *Union Public Service Commission*

The Union Public Service Commission is India's central agency authorised to conduct the Civil Services Examination, Indian Forest Service examination, Engineering Services Examination, Combined Defence Services Examination, National Defence Academy Examination, Naval Academy Examination, Combined Medical Services Examination, Special Class Railway Apprentice, Indian Economic Service/Indian Statistical Service Examination, Combined Geoscientist and Geologist Examination, and Central Armed Police Forces(Assistant Commandant) Examination.

The agency's charter is granted by the Constitution of India. Articles 315 to 323 of Part XIV of the constitution, titled as Services Under the Union and the States, provide for a Public Service Commission for the Union and for each state. The examination is one of the toughest examinations in India with success rate of 0.1%–0.3%.

### *History*

The Royal Commission on the Superior Civil Services in India under the Chairmanship of Lord Lee, which submitted its Report in 1924, recommended the setting up of the Public Service Commission. This led to the establishment of the first Public Service Commission on 1 October 1926 under the Chairmanship of Sir Ross Barker. The limited advisory function accorded to the Public Service Commission and the continued stress on this aspect by the leaders of our freedom movement resulted in the setting up of a Federal Public Service Commission under the Government of India Act, 1935. The Federal Public Service Commission became the Union Public Service Commission after Independence and it was given a Constitutional status with promulgation of constitution of india on 26 January 1950.

### *Administration and control*

The Commission consists of a chairman and ten members. The terms and conditions of service of chairman and members of the Commission are governed by the Union Public Service Commission (Members) Regulations, 1969. The Chairman and other members of the UPSC (Union Public Service Commission) are appointed by the President of India. At least half of the members of the Commission are Civil Servants (working or retired) with minimum ten years of experience either in Central or State service.

The Commission is serviced by a Secretariat headed by a Secretary with two Additional Secretaries, a number of Joint Secretaries, Deputy Secretaries and other supporting staff.

Every member holds office for a term of six years or until he attains the age of sixty-five years, whichever is earlier.

He can submit his resignation at any time to the President of India. He may be removed from his office by the President of India on the ground of misbehaviour

(only if an inquiry of such misbehaviour is made and upheld by Supreme Court) or if he is adjudged insolvent, or engages during his term of office in any paid employment outside the duties of his office, or in the opinion of the President unfit to continue in office by reason of infirmity of mind or body.

UPSC is amongst the few institutions which function with both autonomy and freedom along with the country's higher judiciary and lately the Election Commission.

As of 12 May 2015, the Commission consists of a chairman and 10 members. The names of the members are:

### *Chairman*

1. Deepak Gupta a retired IAS officer of Jharkhand cadre and younger brother of former Home Secretary Madhukar Gupta is the Current chairman of the commission.

### *Members*

2. Smt Alka Sirohi (IAS-Madhya Pradesh Cadre)
3. Prof David R Syiemlieh (Academician, Former VC of R G University)
4. Shri Manbir Singh (ex-IFS)
5. Vice Admiral D K Dewan (Retd) AVSM, PVSM
6. Shri Vinay Mittal (Former Railway Board Chairman)
7. Dr (Smt) P Kilemsungla (Indian educationist)
8. Shri Chhatar Singh (Former Prin Sec to Haryana CM)
9. Prof. Hem Chandra Gupta (Former Professor, IIT Delhi)
10. Shri. Arvind Saxena (Former Director and Ex-officio Special Secretary, Aviation Research Centre (ARC))
11. Prof(Dr)Pradeep Kumar Joshi (Former Chairman of Chhattisgarh & Madhya Pradesh Public Service Commission)

The government has enhanced the status of chairman and members of the Commission by Chairman has been placed in Article 9A with Chief Election Commissioner and Members have been placed as Equivalents in Article 11 along with Election Commissioners, in the Warrant of Precedence.

### *Recruitment rules*

In accordance with the provisions contained in Article 320 of the Constitution read with the provisions of Union Public Service Commission (Exemption from Consultation) Regulations 1958, Recruitment Rules of all Group 'A' and Group 'B' posts in various Ministries/Departments of Government of India are required to be framed in Consultation with the Commission. Consultation with the Commission is also necessary for framing/amending Recruitment Rules for certain categories of posts under the Employees State Insurance Corporation, The Delhi Municipal Corporation, The New Delhi Municipal Coil, Employees Provid. Various examinations

are conducted by UPSC every year on an all India basis. These include:- Examinations for recruitment to services/posts in various fields, such as Civil Services, Engineering, Medical and Forest Service, etc. Recruitment is made by one of the following three methods: 1) Direct Recruitment; 2) Promotion; and 3) Transfer. Currently Union Public Service Commission of India has 42 regular examination centers, where each year they conduct Several Indian Civil Services Examination.

### *Gender issue in application form*

While the notification of UPSC claims "Government strives to have a workforce which reflects gender balance and women candidates are encouraged to apply", the application form available online doesn't have the option for "others" under the category of sex. This was highlighted through an RTI appeal filed by a Madurai-based 23-year-transgender, Swapna.

Transgender Swapna and gender activist Gopi Shankar from Srishti Madurai[10] staged the protest in Madurai collectorate on 7th October 2013 demanding reservation and to permit alternate genders to appear for examinations conducted by TNPSC, UPSC, SSC and Bank Exams. Later Swapna was incidentally, had successfully moved the Madras High Court in 2013 seeking permission to write the TNPSC Group II exam as a 'woman' candidate.

### *Reports*

The UPSC annually submits a report of its work to the President of India. Further it is sent to each house of Parliament for discussion. The commission submits an annual report on the work done by it to the president. The president places the report of the commission before the parliament along with a memorandum with regard to the cases where the advice of the commission was not accepted and the reasons for such non-acceptance.

### *Finance Commission of India*

The Finance Commission of India came into existence in 1951. It was established under Article 280 of the Indian Constitution by the President of India. It was formed to define the financial relations between the centre and the state. The Finance Commission Act of 1951 states the terms of qualification, appointment and disqualification, the term, eligibility and powers of the Finance Commission. As per the Constitution, the commission is appointed every five years and consists of a chairman and four other members. Since the institution of the first finance commission, stark changes have occurred in the Indian economy causing changes in the macroeconomic scenario. This has led to major changes in the Finance Commission's recommendations over the years. Till date, Fourteen Finance Commissions have submitted their reports.

### *History: Genesis of the Finance Commission*

The Indian State, like all other federations, is also ridden by the problems of Vertical and Horizontal Imbalances. Explaining vertical Imbalances result because

states are assigned responsibilities and in the process of fulfilling those that they incur expenditures disproportionate to their sources of revenue, Dr. B.R. Ambedkar, the then incumbent Law minister, established the Finance Commission of India. This is because the states are able to gauge the needs and concerns of their people more effectively, and hence, are more efficient in addressing them. Factors like historical backgrounds, differences in resource endowments etc. lead to widening Horizontal Imbalances. Thus, as he has enshrined in the Constitution of India, in recognition of these two problems, Dr. Ambedkar has made several provisions to bridge the gap of finances between the Centre and the States. These include various articles in the constitution like Article 268, which facilitates levy of duties by the Centre but equips the states to collect and retain the same. Similarly, there are Articles 269, 270, 275, 282 and 293 all of which specify ways and means of sharing resources between Union and States. Apart from the above-mentioned provisions, The Indian Constitution provides an institutional framework to facilitate Centre- State Transfers. This body is the Finance Commission, which came into existence in 1951, under Article 280 of the Indian Constitution, which states:

1. The President will constitute a Finance Commission within two years from the commencement of the Constitution and thereafter at the end of every fifth year or earlier, as the deemed necessary by him/her, which shall include a chairman and four other members.
2. Parliament may by law determine the requisite qualifications for appointment as members of the Commission and the procedure of selection.
3. The Commission is constituted to make recommendations to the president about the distribution of the net proceeds of taxes between the Union and States and also the allocation of the same amongst the States themselves. It is also under the ambit of the Finance Commission to define the financial relations between the Union and the States. They also deal with devolution of non-plan revenue resources.

Recently fourteenth finance commission is constituted under the chairmanship of Y.V. Reddy, former RBI Governor.

### *Functions*

1. Distribution of net proceeds of taxes between Center and the States, to be divided as per their respective contributions to the taxes.
2. Determine factors governing Grants-in Aid to the states and the magnitude of the same.
3. To make recommendations to president as to the measures needed to augment the Consolidated Fund of a State to supplement the resources of the panchayats and municipalities in the state on the basis of the recommendations made by the Finance Commission of the state.
4. any other matter related to it by the president in the interest of sound finance

## *The Finance Commission (Miscellaneous Provisions) Act, 1951*

With the objective of giving a structured format to the Finance Commission of India and to bring it at par with world standards, The Finance Commission (Miscellaneous Provisions) Act, 1951 was passed. It lays down rules regarding qualification and disqualification of members of the Commission, their appointment, term, eligibility and powers.

### *Qualifications of the members*

The Chairman of the Finance Commission is selected among people who have had the experience of public affairs. The other four other members are selected from people who:

1. Are, or have been, or are qualified, as judges of High Court, or
2. Have knowledge of Government finances or accounts, or
3. Have had experience in administration and financial expertise; or
4. Have special knowledge of economics

### *Procedure and Powers of the Commission*

The Commission has the power determine their own procedure and:

1. Has all powers of the civil court as per the Court of Civil Procedure, 1908.
2. Can summon and enforce the attendance of any witness or ask any person to deliver information or produce a document, which it deems relevant.
3. Can ask for the production of any public record or document from any court or office.
4. Shall be deemed to be a civil court for purposes of Sections 480 and 482 of the Code of Criminal Procedure, 1898

### *Disqualification from being a member of the Commission*

A member may be disqualified if:

1. He is mentally unsound;
2. He is an undischarged insolvent;
3. He has been convicted of an immoral offence;
4. His financial and other interests are such that it hinders smooth functioning of the Commission.

### *Terms of Office of Members and eligibility for Reappointment*

Every member will be in office for the time period as specified in the order of the president, but is eligible for reappointment provided he has, by means of a letter addressed to the president, resigned his office.

#### *Salaries and Allowances of the members*

The members of the Commission shall provide full- time or part- time service to the Commission, as the president specifies in his order. The members shall be paid Salaries and Allowances as per the provisions made by the Central Government. So far, 13 Finance commissions(v. kelkar) have submitted their recommendations. More or less, all of them have been accepted by the Union Government.

### *Finance Commissions appointed so far*

So far 14 Finance Commissions have been appointed which are as follows:

| Finance Commission | Year of Establishment | Chairman             | Operational Duration |
|--------------------|-----------------------|----------------------|----------------------|
| First              | 1951                  | K. C. Neogy          | 1952–57              |
| Second             | 1956                  | K. Santhanam         | 1957–62              |
| Third              | 1960                  | A. K. Chanda         | 1962–66              |
| Fourth             | 1964                  | P. V. Rajamannar     | 1966–69              |
| Fifth              | 1968                  | Mahaveer Tyagi       | 1969–74              |
| Sixth              | 1972                  | K. Brahmananda Reddy | 1974–79              |
| Seventh            | 1977                  | J. M. Shelat         | 1979–84              |
| Eighth             | 1983                  | Y. B. Chavan         | 1984–89              |
| Ninth              | 1987                  | N. K. P. Salve       | 1989–95              |
| Tenth              | 1992                  | K. C. Pant           | 1995–2000            |
| Eleventh           | 1998                  | A. M. Khusro         | 2000–2005            |
| Twelfth            | 2002                  | C. Rangarajan        | 2005–2010            |
| Thirteenth         | 2007                  | Dr. Vijay L. Kelkar  | 2010–2015            |
| Fourteenth         | 2013                  | Dr. Y. V Reddy       | 2015–2020            |

### *Proposals to 14th finance commission*

- As the states are subjected to more and more interstate migrant workers and illegal migrants from the neighbouring countries, the finance commission shall give appropriate weight-age in distribution of the total taxes to the states based on these criteria. The states which are giving more employment to interstate workers are ahead in demographic transition. Demographic transition of a state is a real index & status of all round human and economical development.
- The states with coast line shall be given appropriate share from the royalty / taxes collected by the central government from the minerals produced (including oil & natural gas) from the area of territorial waters and exclusive economic zone similar to land based minerals production.

Articles 1 & 3 of the constitution define India as union of two entities only which are either states or union territories. There is no third entity such as territorial waters or exclusive economic zone. These are parts of states / union territories under Indian union.

- Article 282 accords financial autonomy in spending the resources available with the states for public purpose. Finance commission should desist from specific expenditure related grant in aids to the states out of the Consolidated Fund of India.
- Under article 360 of the constitution, President can proclaim financial emergency when the financial stability or credit of the nation or of any part of its territory is threatened. Finance commission should bring out the guidelines which may warrant the imposition of financial emergency in the entire country or a state or a union territory or a panchayat or a municipality or a corporation to take up precautions for improving their financial soundness.
- Finance commission should deliberate and recommend whether government advertisements other than educational advertisements are serving public purpose for deserving government expenditure under article 282 of the constitution.
- The finance commissions shall deliberate and recommend on all issues related to government spendings which are taken up by various law commissions earlier and of public topics with wide public attention

### *Finance Commissions, their Terms of Reference and Recommendations*

- Major Recommendation
  - tions of 14th Finance Commission headed by Prof. Y V Reddy
1. The share of states in the net proceeds of the shareable Central taxes should be 42%. This is 10% points higher than the recommendation of 13th Finance Commission.
  2. Revenue deficit to be progressively reduced and eliminated.
  3. Fiscal deficit to be reduced to 3% of the GDP by 2017–18.
  4. A target of 62% of GDP for the combined debt of centre and states.
  5. The Medium Term Fiscal Plan(MTFP) should be reformed and made the statement of commitment rather than a statement of intent.
  6. FRBM Act need to be amended to mention the nature of shocks which shall require targets relaxation.
  7. Both centre and states should conclude 'Grand Bargain' to implement the model Goods and Services Act(GST).
  8. Initiatives to reduce the number of Central Sponsored Schemes(CSS) and to restore the predominance of formula based plan grants.
  9. States need to address the problem of losses in the power sector in time bound manner.
  - 10.

- Major Recommendations of 13th Finance Commission headed by shri Vijay Kelkar.
  1. The share of states in the net proceeds of the shareable Central taxes should be 32%. This is 1.5% points higher than the recommendation of 12th Finance Commission.
  2. Revenue deficit to be progressively reduced and eliminated, followed by revenue surplus by 2013–14.
  3. Fiscal deficit to be reduced to 3% of the GDP by 2014–15.
  4. A target of 68% of GDP for the combined debt of centre and states.
  5. The Medium Term Fiscal Plan (MTFP) should be reformed and made the statement of commitment rather than a statement of intent.
  6. FRBM Act need to be amended to mention the nature of shocks which shall require targets relaxation.
  7. Both centre and states should conclude 'Grand Bargain' to implement the model Goods and Services Act (GST). To incentivise the states, the commission recommended a sanction of the grant of Rs 500 billion.
  8. Initiatives to reduce the number of Central Sponsored Schemes (CSS) and to restore the predominance of formula based plan grants.
  9. States need to address the problem of losses in the power sector in time bound manner.

*The Twelfth Finance Commission of India*

**Introduction** The Twelfth Finance Commission was appointed on 1 November 2002 to make recommendations on the distribution of net proceeds of shareable taxes between union and states. The commission was headed by veteran economist of India, C. Rangarajan. The commission submitted its report on 30 November 2004 and covered the period from 2005 to 2010.

*Major Recommendations of 12th Finance Commission*

- a. **Macro-economic stability** The total Fiscal Deficit for Centre & states to be reduced to 3% of GDP and The total tax-gdp ratio of both centre & states to be increased to 17.6% of gdp in 2009–10. The revenue deficit for the centre & states combined to be reduced to 0% by 2008.
- b. **Distribution of Union Tax** The total share of states in the total shareable central taxes to be fixed at 30.5% and the share of states will come down to 29.5% if the states levy sales tax on sugar, textiles & tobacco.
- c. **Grants to local bodies** The total grant that will have to given to the states for panchayati raj institutions and local urban bodies for the period of 2005–09 will be Rs 200 billion & Rs 50 billion respectively.
- d. **Calamity Relief Fund** The calamity relief fund scheme will continue as it was in the previous plans with central & states contributing in the ratio of 75: 25. The size of fund will be Rs 213.33 billion for the period of 2005–10.
- e. **Grant in aids to the states** For the period of 2005–10, the total non-plan revenue deficit grant of Rs 568.56 billion is recommended to 15 states and the total grant of Rs 10172 is recommended for 8 educationally backward states. A grant of Rs 150 billion is recommended for building

roads & bridges which is in addition to the normal expenditure of the states while the grants that is recommended to the states for maintenance of public buildings, forests, heritage conservation and specific needs of states is Rs 5 billion, Rs 1 billion, Rs 6.25 billion & Rs 71 billion.

*The Eleventh Finance Commission of India*

The Eleventh Finance Commission was appointed by the president on 3 July 1998 for the period 2000–05. It was chaired by : Prof. A.M. Khusro and its members were Shri N.C Jain, Shri J.C Jetly, Dr. Amaresh Bagchi, Shri T.N. Srivastava. The Commission was asked to make recommendations to the president with regard to the following:- (a) With regard to Chapter I of Part XII of the Constitution, the distribution between the Centre and the States of the net proceeds of taxes and the allocation between the States of the shares of these proceeds (b) The principles governing the grants-in-aid of the revenues of the States out of the Consolidated Fund of India and with regard to article 275- the sums to be paid to the States which are in need of assistance by way of grants-in-aid of their revenues for purposes other than those specified in the provisos to clause (1) of that article; (c) With regard to the recommendations made by the Finance Commission of the State; the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats and Municipalities in the State (d) Suggestions for a restructuring of the public finances so as to restore budgetary balance and maintain macro-economic stability. With regard to the TOR the following were the recommendations made by the FC:- a) the total share of the States in the net proceeds of central taxes and duties would be 29.5 per cent for the next five years b) With regard to the revenue deficit grants to States, a lump-sum amount of Rs. 110 billion in the Central Budget 2000–01. c) Grants – For the five years commencing from 1 April 2000, Rs.49726.3 million be given for up gradation of standards of administration and specific grants to certain States for special problems. – For the five years commencing from 1 April 2000, Rs.100 billion for local bodies, to be directed for maintenance of civic services Rs.16 billion per annum is for rural local bodies and Rs.4 billion per annum is for urban local bodies. d) With reference to the Grants-in-Aid under Article 275 (1) of the Constitution, which amounts to a total of Rs.353.59 billion for the period 2000–2005 to be provided to such States (15 States) which will have deficit non-plan revenue account even after the devolution of central tax revenues, equal to the amount of deficits assessed during the period 2000–2005. e) With regard to the Calamity Relief Funds in States with an aggregate size of Rs.110075.9 million during 2000–05. – The tax devolution from the Centre to the State should not exceed 37.5 per cent of total Centre's revenues this should be inclusive of the Central taxes/duties to States and grants-in-aid to States. The FC recommended that each State be given a share as specified the net proceeds of all shareable union taxes and duties except the expenditure tax and service tax. Data for percentage share for certain states is Bihar-14.597, Maharashtra-4.632, Kerala-3.057, Uttar Pradesh-19.798, Punjab-1.147

**Terms of Reference** The commission shall make recommendations on the following matters:

- (1) The distribution of net proceed of taxes between union and states which are to be divided under chapter 1 part 12 of the constitution.

- (2) The policies required to increase the consolidated fund of states on the basis of recommendation made by the finance commission of states to supplement the resources of municipalities and panchayats in the state.

In making the recommendation, the commission shall have its regard, among other considerations to :

- (1) The resources of the union government and state government for five years starting from 1 April 2005 on the basis of the total tax and non-tax that it will likely to receive by the end of 2003–04.
- (2) The demand of the resources by the central government, in particular the need of expenditure on civil administration, internal security, defence, debt servicing and other committed expenditure and liabilities.

#### *The Tenth Finance Commission of India*

The Tenth Finance Commission was incorporated in the year 1995 consisting of Shri Krishna Chandra Pant as the chairman and the following four other Members, namely

Debi Prosad Pal, Member of Parliament, Member Shri B.P.R. Vithal, Member C. Rangarajan, Member Shri M.C. Gupta, Member Secretary

**Recommendations** The share of the Union Territories would not be determined on the grounds used for state share but it would be decided on the basis of population solely. The percentage would be 0.927% for the years 1995–2000. The proceeds from the 'penalties' and 'interest recovered' under the miscellaneous receipts should be included in the divisible income tax pool as recommended by Ninth commission with effect from 1 April 1995. The share of the net proceeds would be 77.5% for five years. The commission dropped the collection factor as the criterion for distribution. The distribution of the net proceeds among states would be as follows:-

§ 20% on the basis of population of 1971

§ 60% on basis of distance of per capita income

§ 5% on basis of area adjusted

§ 5% on basis of infrastructure index

§ 10% on basis of tax effort

#### *The Ninth Finance Commission of India*

The Ninth Finance Commission was set up in June 1987 under the chairmanship of Mr. N.K.P Salve along with the following members

Shri Justice Abdus Sattar Qureshi Dr. Raja J. Chelliah Shri Lal Thanhawla  
Shri Mahesh Prasad Shri S. Venkitaramanan Shri Venkitaramanan Shri R. Keishing  
Shri K.V.R. Nair

**Terms of References** The commission has been asked to adopt a normative approach in assessing the receipts and the expenditures on the revenue account not only of the states but also of the centre with due regard to the special problems of each state and the special requirement of the centre. Generating surpluses on revenue account of both the states and centre for capital investment should also be considered. Changes in the principles that govern the distribution between the union and the states and also the states inter se of the net proceeds of central taxes are to be made

The commission will also make recommendations regarding the principles which should govern the grants in aid of the revenue of the state out of the Consolidated Fund of India. It is to assess the debt position of the states as on 31 March 1989 and suggest corrective measures. In regard to the financing of the relief expenditure by the states affected by natural calamities the commission is to examine the feasibility of establishing a National Insurance Fund to which the state governments may contribute a percentage of their revenue receipts. The government's decision to accept all the major recommendations of this commission which would bring substantial benefits to the state during the eighth five-year plan period (especially in relation to debt relief) shows the upper hand enjoyed by this body

**Recommendations** **Income Tax** – 85% of the divisible pool of the income tax to be assigned to the state and out of the net distributable proceeds a sum equal to 1.437% should be deemed to represent the proceeds attributable to the union territories. **Relief Funds** – The Existing arrangements to be replaced by a new order under which the states will have greater autonomy and accountability. A calamity relief fund to be constituted for each state to which contribution is to be made in the ratio 75:25 (centre: state) **Debt Relief** – The commission recommended that the RBI may work out a formula for amortization of the states' market borrowings. From 1990 to 1991 the direct central loans for states' plans should have a maturity period of 20 years with 50% of the loans enjoying a grace period of 5 years. The loans given to the federating states for drought relief during 1986–89 as outstanding on 31 March 1989 are to be waived. The state plan loans advance to the states during the 1984–89 period and outstanding on 31 March 1990 should be consolidated, rescheduled to 15 years in the case of all the states.

*The Eighth Finance Commission of India*

The Eighth Finance Commission was constituted by the President of India, on 28 April 1984 under the chairmanship of Shri Y.B. Chavan. The commission also consisted of the following members

Shri Justice Sabya Sachi Mukherjee Dr. C.H. Hanumantha Rao Shri G.C. Baveja Shri A.R. Shirali Shri Justice T.P.S. Chawla Shri N.V. Krishnan, Secretary

It was asked to make recommendations on

The distribution of net proceeds of taxes between the union and the states which are to be or may be divided between them under chapter 1 of Part XII of the constitution and allocation between the states of the respective shares of the same. The principles which govern the grants in aid of the revenues of the states out of the Consolidated Fund of India and the amount to be paid to the needy States which seeks assistance by way of grants in aid of their revenues under Article 275 of the constitution for purposes other than those specified in the provisions to clause (i) of that article

The commission is to examine the possibility for increasing revenue from the taxes and duties mentioned in article 269 of the constitution but which are not levied at present. It will probe into the scope for enhancing revenue from the duties mentioned in the article 268. Making an assessment of the non-plan capital gap of the states on a uniform and comparable basis for the 5 years ending with 1988–89 also comes under its agenda. It will review the policy and arrangement in regards to the financing of relief expenditure by the States affected by natural calamities and make appropriate suggestions. The commission shall make its report by 31 October 1986 on each of the matters aforesaid

The major objective of the Eighth Finance Commission was to reduce interstate disparities through their scheme of devolution

**Recommendations**

**Sharing of Income Tax** – To retain the share of the States in the proceeds of the income tax at 85% level. Withdrawal of surcharge on income tax from the financial year 1985–86 is also recommended

**Union Excise Duties** – Recommended its increase from 40% to 45%. It made a beginning by using one unified formula to distribute the net yield from Union Excise Duties and 90% share of the income tax

**Additional Excise Duties** – The distribution from the net yield from additional duties of the excise was made 50% on the basis of the share of each state in the average state domestic products of all the states for the years from 1976–77 to 1978–79 and 50% on the basis of the population figures as given in 1971 census

**Grants in Lieu of tax on railway passenger fair** – It has boldly defended the case of the state government in regard to their claim on the tax on railway fair. The compensatory grant which replaced the tax was increased to Rs.950 million

**Grants in Aid** – They have been made more flexible. The commission has provided for an annual growth of 5% in respect of the amount of grants payable in nature of the forecast period commencing from 1984 to 1985. The recommendation to write off a substantial portion of loan amounting to Rs.22853.9 million is an appropriate step towards strengthening the state finances

#### *The Seventh Finance Commission of India*

**Introduction** The Seventh Finance Commission was incorporated in the year 1978 consisting of Shri J.M. Shelat as the chairman and the following four other Members, namely:-

Dr. Raj Krishna Dr. C.H. Hanumantha Rao Shri H.N. Ray Shri V.B. Eswaran,  
Member Secretary

**Recommendations** The share of the states in the net proceeds should be raised to 85% excepting the share of the Union Territories which would be 2.19% of net proceeds

The inter se distribution between the states should include 10% contribution factor and rest 90% would be on basis of population. The 10% allotment would be based on the State-wise net assessments

#### *The Sixth Finance Commission of India*

The Sixth Finance Commission was incorporated in the year 1973 consisting of Shri K. Brahmananda Reddi as the chairman and the following four other Members, namely:-

Shri Justice Syed Sadat Abal Masud Dr. B.S. Minhas Dr. I.S. Gulati Shri G. Ramachandran, Member Secretary

**Recommendations** The States demanded the inclusion of corporation tax into the divisible income tax and 100% allocation of the net proceeds to them. The commission expressed that such inclusion was constitutionally forbidden but it can be reviewed by National Development Council

States share was increase from 75% to 80% due to the decrease in the divisible pool as the arrears of the advance tax collection had been cleared

In view of the increasing integration of the national economy and for eliminating the regional imbalances the contribution factor was kept at 10% in the distribution of share amongst the states. The distribution inter se the states should be on the basis of fixed percentages

Out of the net proceeds of the income tax, 1.79% should be allocated to the Union Territories

#### *The Fifth Finance Commission of India*

The Fifth Finance Commission was constituted by the President of India on 15 March 1968. The Terms of Reference of the Fifth Finance Commission were wider than those of the earlier ones. Apart from the matters referred to in the earlier Commissions, this Commission was required to:

Examine the desirability or otherwise of maintaining the existing arrangements in regard to additional excise duties levied in lieu of Sales Tax and the scope for extension of such arrangements to other items

To inquire into the unauthorized overdrafts of the States and recommend the procedure for avoiding such overdrafts

Examine the scope for raising revenue from taxes and duties mentioned in Article 269, the scope for States in raising additional revenue from their sources as

well their scope for better fiscal management and economy in expenditure, and make a comprehensive study of the States' expenditure on various subjects

Grants-in-aid recommended under Article 275 (1) are to be for purposes 'other than the requirements of the Five Year Plan', and while making its recommendations, the Commission was called upon to have regard to "the resources of the Central Government and the demands thereon" on account of expenditure on civil administration, defence, debt servicing, etc.

The Commission was asked for the first time to indicate the basis of its findings and make available relevant information. Since then these were made clear in the Terms of Reference of every successive Finance Commission

#### *The Fourth Finance Commission of India*

The Fourth Finance Commission was constituted on 18 May 1964, under the chairmanship of Dr. P.V. Rajamannar. Other members of the Commission included

Shri Mohan Lal Gautam Shri D.G. Karve Prof. Bhabatosh Datta Shri P.C. Mathew, Member Secretary.

The Commission suggested in its report that there should be greater co-ordination between the Centre and the States in common financial interests for which it recommended the establishment of a permanent organization in the Ministry of Finance

Recommendations Tax sharing and allocation of Income-tax and Union Excise Duties.

Grants-in –aid to States in need of assistance, having regard to:

The revenue resources of States for Five Years ending with 1970–71 on the basis of the levels of taxation likely to be reached at the end of 1965–66; Creation of a fund out of Estate Duty proceeds over a specified limit, for repayment of State's debt to the centre; and Scope for economy with efficiency in States' administrative expenditure.

The changes to be made in the principles governing the distribution amongst the States of the grant to be made available to the States in lieu of taxes on railway fares;

To study the combined incidence of Sales Tax and Union Excise Duties on the production, consumption or export of products, the duties on which are shareable with the State.

The changes to be made in the principles governing the distribution of the net proceeds in any financial year of the additional excise duties levied on commodities, namely, cotton fabrics, silk fabrics, woollen fabrics, sugar and tobacco- in replacement in the States' tax formerly levied by the state governments.

The Third Finance Commission was appointed in the year 1960, for the period 1960–64, by the president and was chaired by Shri A.K. Chanda and the its members were :- Shri Govinda Menon, Shri Dwijendra Nath Roy, Prof. M.V. Mathur, Shri G.R. Kamat, Member Secretary. The Commission was asked to make recommendations to the president with regard to the following:- 1) On account of Tax Sharing between the Centre and the State and allocation of Income Tax and Central Excise Duties 2) Under Article 275, Grants-in-Aid to States in need of assistance, other than the sums specified in the provisos to Clause of article 275 a) With regard to the requirements of third five-year plan b) Secondly, with regard to the efforts to be made by those states to raise additional revenue amount 3) Allocation of duties, namely, additional excise duty and estate duty 4) The manner of distribution of Ad hoc Grants-in-lieu of tax on Railway Passenger Fares With regard to the TOR the following were the recommendations made by the FC:- The Finance Commission recommended the formulation of an independent commission to assess the tax potential of each state, to review its tax structure and to recommend rates under different heads of the levies of the state list :- Income Tax With regard to the divisible pool of income tax among the states the FC adopted the criterion of the first FC that 80% be distributed on the basis of population and 20% on the basis of collection. The recommended percentage share of the states in divisible pool of the Income Tax: Maharashtra – 13.41, Bihar – 9.33, Punjab – 4.49, Uttar Pradesh – 14.12, Kerala – 3.55 Union Excise Duty With regard to the distribution of the proceeds of UED the FC decided to cover all commodities on the existing list. It recommended that 20% of the net proceeds of UED on all commodities on which such duties were collected and the yield of which exceeded Rs. 5 million in 1960-61 should be allocated to the state. The share of each state in the distribution of UED was determined by the Commission on the basis of population and it rejected consumption as the basis of distribution due to two major reasons a) Reliable data on consumption wasn't available b) As it would have given advantage to the more urbanised and financially stronger states. Percentage share of the 20% of proceeds of the UED for certain major states were:- Maharashtra – 5.73, Bihar – 11.56, Punjab – 6.71, Uttar Pradesh – 10.68, Kerala – 5.46 Additional Duties of Excise The GOI in consultation with the state governments, decided that an AED be levied on mill-made textiles, sugar, tobacco, rayon among others and the net proceeds of which should be distributed among them subject to then income derived by each state being assured to it. The Commission rejected this contention as the rates of sales taxes had been revised by them since then. The commission distributed the guaranteed amount of Rs. 325.4 million among the States and the remaining amount was distributed, first, on the basis of the percentage increase in the collection of sales tax in each state since 1957– 58 when AED were imposed and then on the basis of the population. The Act imposing a tax on the railway passenger fares was repealed after the Third Finance Commission had been constituted. Hence, the commission was asked to make recommendations on the principle on which the ad hoc grant should be distributed among the states. The commission adopted the principle of compensation based on which the grants should be distributed.

The Second Finance Commission was constituted by president Rajendra Prasad, on 1 June 1956. The Commission was chaired by Shri K. Santhanam and consisted of Shri Ujjal Singh, Shri L.S. Misra (Retired Chief Justice, Hyderabad), Shri M.V. Rangachari and Dr. B.N. Ganguli, as its other members.

The Commission was asked to make the following recommendations:

1. Grants-in-Aid to certain States, in need of assistance under Article 275, having regard to the requirements of Second Five Year Plan and the efforts made by those states to raise additional revenue.
2. Allocation of Estate Duty and Tax on Railway Passenger Fares proposed to be levied by the Railway Passenger Fares Bill, 1957, introduced in the Lok Sabha on 15 May 1957.
3. Grants-in-Aid to the States of Assam, Bihar, Orissa and West Bengal, to compensate for their share of the export duty on jute and jute products as per Article 273.
4. The principles which should govern the distribution under article 269 of the net proceeds of estate duty in respect of property other than agricultural land, levied by the Government of India in the States within which such duty is leviable.
5. Revisions, if any, of the rates of interest on loans made by the Centre to the States between 15 August 1947 to 31 March 1956 and their terms of repayment. The phenomenal growth of the Union loans to the States justified such adjustments.
6. Apportionments of the net proceeds of the additional Excise Duties proposed to be levied in view of States' Sales Taxes on the mill made textiles, sugar and tobacco, and the amounts which should be assured to the States as the income now derived by them from the levy on these commodities and the States Sales Tax (which is to be replaced by the additional duty of excise).

With regard to the distribution of Income Tax, the Commission made the following recommendations:

- Despite the receding contribution by the Income Tax to the devolution of revenue to the States, the Commission recommended an increase in the per cent of the net proceeds to the States from 55 to 60, and the share of the Union Territories should be 1 per cent.
- It was recommended that the distribution of the share of Income tax among the States should be 10 per cent on the basis of collection and 90 per cent of the basis of population, thereby giving greater importance to population than it was earlier.

As far as the allocation to the States from the Union duties of excise on matches, tobacco, vegetable products, tea, coffee, sugar, paper and vegetable non-essential oils was concerned, the Commission considered that it should be 25 per cent.

The table below summarizes what each State was to expect in each of the five years starting from 1 April 1957 under the Second Finance Commission's recommendations:

| States         | Share of Taxes | Grants under Article 273 | Grants under Article 275 | TOTAL |
|----------------|----------------|--------------------------|--------------------------|-------|
| Andhra Pradesh | 8.50           | –                        | 4.00                     | 12.50 |
| Assam          | 2.75           | 0.45                     | 4.05                     | 7.25  |
| Bihar          | 10.00          | 0.43                     | 3.80                     | 14.23 |
| Bombay         | 14.75          | –                        | –                        | 14.75 |
| Kerala         | 3.75           | –                        | 1.75                     | 5.50  |
| Madhya Pradesh | 7.00           | –                        | 3.00                     | 10.00 |
| Madras         | 8.25           | –                        | –                        | 8.25  |
| Mysore         | 5.50           | –                        | 6.00                     | 11.50 |
| Orissa         | 4.00           | 0.09                     | 3.35                     | 7.44  |
| Punjab         | 4.25           | –                        | 2.25                     | 6.50  |
| Rajasthan      | 4.25           | –                        | 2.50                     | 6.75  |

#### *First Finance Commission*

The First Finance Commission was appointed by the president on 20 November 1951, which was chaired by Mr. K.C. Neogy. Other members of the commission included Mr. V.P. Menon, Mr. R. Kaushalendra Rao, Dr. BK Madan and Mr. M.U. Rangachari. After Mr. V.P. Menon's resignation on 18 February 1952, Mr. V.L. Mehta was appointed as a member. The commission was asked to make recommendations regarding:

1. Allocations of income tax and Union Excise Duties and tax sharing.
2. Amounts payable as Grants- in-Aid to the States in need of Assistance under the 'substantive portion of Clause 1 of Article 275'.
3. Grants-in-Aid to certain States in lieu of their share of export duty on jute and jute products according to Article 273 # Continuation or adjustment of the terms of agreement with Part B States under Article 278 (1) or under Article 306.

#### *Recommendations*

- The share of States in the proceeds of income tax was to be 55 per cent.
- The First Commission recommended that shares of States in the Union excise duties be 40 per cent of the proceeds of the tax on three commodities, 25 per cent of the proceeds of the tax on eight commodities and 20 per cent of the proceeds of the tax on 35 commodities, respectively.
- As far as Horizontal Distribution is concerned, overwhelming weightage is given to Population (80%). Only residual weightage of 20% given to contribution.

- No recommendations regarding grants for meeting capital requirements of the state were made by the commission.
- The Commission provided Grants in- Aid (under Article 273) to only four states, namely, Assam Bihar, Orissa and West Bengal. However, Grants were provided to many states under Substantive Portion of Article 275 (1) and under the head of Primary education grants.

All recommendations made by the commission were accepted by the Union Government.

### *Finance commission Versus planning commission*

It is alleged that Planning Commission (India) (PC) which is neither a constitutional nor a statutory body has usurped the role of Finance Commission(FC). PC has restricted FC's role to mere recommend grants to states on revenue account only under article 275 of Indian constitution. However, after the formation of NITI Aayog (National Institute of Transforming India), which comes to replace the Planning Commission seeks to empower FC with the originally envisaged task of distribution of revenue to the states.

### *National Symbol of india*

| Title             | Symbol                   | Notes  |
|-------------------|--------------------------|--|
| National flag     | Flag of India            | A horizontal rectangular tricolour with equally sized deep saffron at the top, white in the middle and India green at the bottom. In the center is a navy blue wheel with twenty-four spokes, known as the Ashoka Chakra. The flag is based on the Swaraj flag designed by Pingali Venkayya.   |
| National emblem   | National Emblem of India | An adaptation of Lion Capital of Asoka at Sarnath was adopted as the National Emblem of India on 26 January 1950, the day India became a republic. Forming an integral part of the emblem is the motto inscribed below the abacus in Devanagari script: "Satyameva jayate" (English: Truth Alone Triumphs), a quote taken from Mundaka Upanishad, the concluding part of the sacred Hindu Vedas. |
| National calendar | Saka calendar            | Saka calendar was introduced by the Calendar Committee in  |

|                    |                 |  |
|--------------------|-----------------|--|
|                    |                 | 1957, as part of the Indian Ephemeris and Nautical Almanac, which also contained other astronomical data, as well as timings and formula for preparing Hindu religious calendars. Usage officially started at 1 Chaitra 1879 Saka Era, or 22 March 1957. |
| National anthem    | Jana Gana Mana  | Jana Gana Mana by Rabindranath Tagore was officially adopted by the Constituent Assembly as the Indian national anthem on 24 January 1950.   |
| National song      | Vande Mataram   | The first two verses of Vande Mataram by Bankim Chandra Chatterjee was adopted as the National song of India in 1950. "Vande Mataram" was sung during the 1896 session of the Indian National Congress by Rabindranath Tagore.                           |
| Oath of allegiance | National Pledge | It was written in Telugu by Pydimarri Venkata Subba Rao in 1962. Central Advisory Board on Education directed that the pledge to be sung in Schools and that this practice to be introduced by 26 January 1965.  |
| National flower    | Indian lotus    | Lotus ( <i>Nelumbo nucifera</i> ) is a sacred flower and occupies a unique position in the art and mythology of ancient India and has been an auspicious symbol of Indian culture.   |
| National fruit     | Mango           | Mango ( <i>Mangifera indica</i> ) originated in India and the country is home to more than 100 varieties of the fruit.   |
| National river     | Ganga           | Ganga is the longest river of India with the most heavily populated river basin in the world. The river is revered by Hindus as the most sacred river on earth.  |
| National tree      | Indian banyan   | Indian banyan ( <i>Ficus bengalensis</i> ) root themselves to form new trees and grow over large areas. Because of this  |

|                         |                    |  |
|-------------------------|--------------------|--|
|                         |                    | characteristic and its longevity, this tree is considered immortal and is an integral part of the myths and legends of India.  |
| National animal         | Royal Bengal tiger | Bengal tiger ( <i>Panthera tigris tigris</i> ), the largest carnivore is found only in the Indian subcontinent and can be found in most regions of the country.  |
| National aquatic animal | River dolphin      | Gangetic dolphin ( <i>Platanista gangetica</i> ) is said to represent the purity of the holy Ganga River as it can only survive in pure and fresh water.   |
| National bird           | Indian peacock     | Indian peacock ( <i>Pavo cristatus</i> ) is designated as the national bird of India. A bird indigenous to the subcontinent, peacock represents the unity of vivid colours and finds references in Indian culture.   |
| National currency       | Indian Rupee       | Indian Rupee (ISO code: INR) is the official currency of the Republic of India. The issuance of the currency is controlled by the Reserve Bank of India. The Indian rupee symbol is derived from the Devanagari consonant "₹" (ra) and the Latin letter "R" was adopted in 2010. |

### *National Insignia of India*

#### *India's National Flag*

The Indian flag was designed as a symbol of freedom. The late Prime Minister Nehru called it a flag not only of freedom for ourselves, but a symbol of freedom to all people.

The Indian flag is a horizontal tri-color in equal proportion of deep Saffron on the top symbol of strength, courage, sacrifice and the spirit of renunciation of the country, white in the middle symbol of peace, purity and truth with Dharma Chakra and dark green at the bottom symbol of fertility, faith, growth and auspiciousness of the land.

The ratio of the width to the length of the flag is two is to three. In the centre of the white band, there is a wheel in Navy Blue known as Dharma Chakra (Ashok Chakra) replaced the Gandhian spinning wheel to add historical "depth" and separate the national flag from that of the Indian National Congress. Its diameter

approximates the width of the white band and it has 24 spokes. This Dharma Chakra depicted the “wheel of the law” in the Sarnath Lion Capital made by the 3rd-century BC Mauryan Emperor Ashoka. The chakra intends to show that there is life in movement and death in stagnation.

#### *National Anthem of India*

Jana Gana Mana is the national anthem of India. Written in Bengali, it is the first of five stanzas of an ode composed by Rabindranath Tagore, the song Jana Gana Mana was first sung on December 27, 1911 at the Calcutta session of the Indian National Congress. On January 24, 1950, the Constituent Assembly adopted the song as the National Anthem of India. The complete song consists of five stanzas. The first stanza comprises the full version of the National.

#### *India's National Emblem*

The National Emblem of India is a replica of the Lion of Sarnath, near Varanasi in Uttar Pradesh. The Lion Capital was erected in the third century BC by Emperor Ashoka to mark the spot where Buddha first proclaimed his gospel of peace and emancipation to the four quarters of the universe. The National emblem is thus symbolic of contemporary India's reaffirmation of its ancient commitment to world peace and goodwill.

The four lions (one hidden from view) – symbolizing power, courage and confidence – rest on a circular abacus. The abacus is girded by four smaller animals – guardians of the four directions: the lion of the north, the elephant of the east, the horse of the south and the bull of the west. The abacus rests on a lotus in full bloom, exemplifying the fountainhead of life and creative inspiration. The motto ‘Satyameva Jayate’ inscribed below the emblem in Devanagari script means ‘truth alone triumphs’.

#### *National Song of India*

Composed by Bankim Chandra, this song appears in the Bengali novel Anand Math. The English translation of Vande Mataram rendered by Shree Aurobindo, is considered to be the “official” and best. The first stanza of this song has been given the status of our national song.

#### *India's National Sport*

Hockey is the National Game of India. Unmatched excellence and incomparable virtuosity brought India a string of Olympic gold medals. The brilliant Indians brought a touch of black magic to their play and the ball juggling feats of the Indians were a sheer delight.

The Golden Era of hockey in India was the period from 1928 – 1956 when India won 6 consecutive gold medals in the Olympics. During the Golden Era, India played 24 Olympic matches, won all 24, scored 178 goals (at an average of 7.43 goals per match) and conceded only 7 goals. The two other gold medals for India came in the 1964 Tokyo Olympics and the 1980 Moscow Olympics.