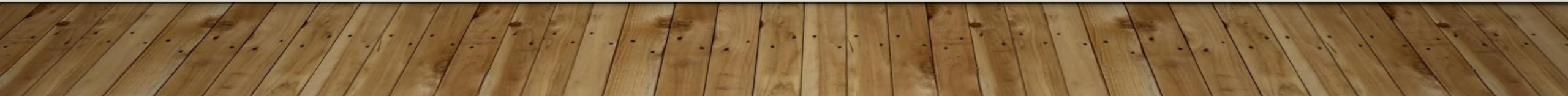


INTRODUCTION TO THE CONSTITUTION OF INDIA

MODULE I



MODULE I COMPRISES OF:

- Definition of Constitution
- Historical Background
- Salient Features of the Constitution
- Preamble of the Constitution
- Citizenship

WHAT IS A CONSTITUTION ?

- The constitution of a country is the FUNDAMENTAL LAW of the land
- It pertains to the institution of the State and Government of that country

Some features of any constitution

- Delineates the power and responsibilities of the various instrumentalities (judiciary, executive, legislative) of the States
- Imposes limitation upon them
- Regulates the relations between the State and its population

THE CONSTITUTION OF INDIA

- Supreme Law of India
- "Fundamental Law" of the country which reflects people's faith and aspirations
- The Constitution of India came into force on 26th January, 1950.
- At the time of its adoption, the Constitution contained 395 Articles and 8 Schedules and was about 145,000 words long, making it the longest national Constitution to ever be adopted.
- Every Article in the Constitution was debated by the members of the Constituent Assembly, who sat for 11 sessions and 167 days to frame the Constitution, over a period of 2 years and 11 months.

HISTORICAL BACKGROUND OF THE CONSTITUTION OF INDIA

- The constitution of India was adopted on the 26th of November, in the year 1949. However, it came to effect on the 26th of January, 1950. Therefore, 26th of January is celebrated as the Republic Day of India.
- It was adopted by the Constitution Assembly. Dr. B. R. Ambedkar, the chairman of the Drafting Committee, is widely considered to be the architect of the Constitution of India. After, the adoption of the constitution, The Union of India became the contemporary and modern Republic of India

HISTORICAL BACKGROUND OF THE CONSTITUTION OF INDIA

- However, origins of our current Constitution can be traced back to the times where the British Crown assumed sovereignty over India from the East India Company. Various acts and reports passed by the imperial power can be said to have paved way. Some of them are as follows:
- GOVERNMENT OF INDIA ACT, 1858, 1919, 1935
- INDIAN COUNCILS ACT, 1861, 1892, 1909
- THE MORLEY-MINTO REFORMS
- THE MONTAGU-CHELMS-FORD REPORT

THE CONSTITUENT ASSEMBLY OF INDIA

- In 1934, M N Roy first proposed the idea of a constituent assembly. The demand was taken up by the Congress Party in 1935 as an official demand.
- Under the Cabinet Mission plan of 1946, elections were held for the formation of the constituent assembly.
- The constituent assembly was formed for the purpose of writing a constitution for independent India.

COMMITTEES OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly appointed eight major committees, which are mentioned below:

Constitution Making Union Powers Committee

Union Constitution Committee

Provincial Constitution Committee

Drafting Committee

Advisory Committee on Fundamental rights and Minorities

Rules of Procedure Committee

States Committee

Jawaharlal Nehru Steering Committee

THE CONSTITUENT ASSEMBLY OF INDIA

COMPOSITION OF CONSTITUENT ASSEMBLY

- Initially, the number of members was 389. After partition, some of the members went to Pakistan and the number came down to 299.
- Dr. Sachchidananda Sinha was the first temporary chairman of the Constituent Assembly. Later, Dr. Rajendra Prasad was elected as the President and its Vice President was Harendra Coomar Mookerjee. BN Rau was the constitutional advisor.
- The assembly first met on 9 December 1946.
- It took the assembly 2 years, 11 months and 17 days to frame the constitution with an estimated budget of Rs.64 lakhs
- The final document had 22 parts, 395 articles and 8 schedules.
- The draft was published in January 1948 and the country's people were asked for their feedback and inputs within 8 months
- The Constitution came into force on 26 January 1950
- The Constituent Assembly had researched and deliberated upon every single Article, Schedule and Part of the Constitution

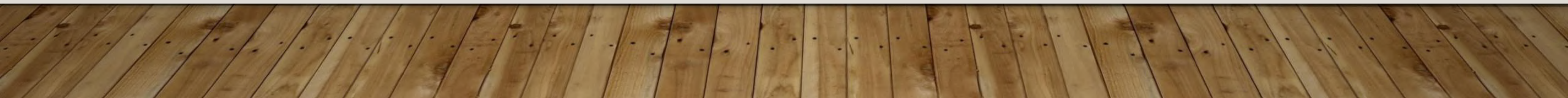
SALIENT FEATURES OF THE CONSTITUTION

- **PARLIAMENTARY FORM OF GOVERNMENT**
- **FEDERAL IN STRUCTURE WITH CERTAIN UNITARY FEATURES**
- **DRAWN FROM VARIOUS SOURCES**
- **SUPPLEMENTED BY AMENDMENTS**
- **LONGEST KNOWN CONSTITUTION**
- **INDEPENDENCE OF JUDICIARY**
- **UNIVERSAL ADULT FRANCHISE**
- **UNIQUE BLEND OF RIGIDITY AND FLEXIBILITY**
- **SINGLE CITIZENSHIP**
- **SECULAR STATE**
- **JUDICIAL REVIEW**
- **PREAMBLE, FUNDAMENTAL RIGHTS, FUNDAMENTAL DUTIES, DPSPs**
- **EMERGENCY PROVISIONS**

PARLIAMENTARY FORM OF GOVERNMENT

- In a **parliamentary system**, the head of the state may be a monarch or a president, but both of these positions are ceremonial. The head of the **government**, who is generally called as the Prime Minister, is the real head. Thus, all the real executive powers are vested in the Prime Minister
- India chose a parliamentary form of government primarily because the constitution-makers were greatly influenced by the system in England.
- In this system, the parliament is generally supreme and the executive is responsible to the legislature. It is also known as the Cabinet form of government.

- **Features of the parliamentary system**

- **Close relationship between the legislature and the executive:** Here, the Prime Minister along with the Council of Ministers form the executive and the Parliament is the legislature. The PM and the ministers are elected from the members of parliament, implying that the executive emerges out of the legislature.
 - **Executive responsible to the legislature:** The executive is responsible to the legislature. There is a collective responsibility, that is, each minister's responsibility is the responsibility of the whole Council.
 - **Dual executive:** There are two executives – the real executive and the titular executive. The nominal executive is the head of state (president or monarch) while the real executive is the Prime Minister, who is the head of government.
 - **Leadership of the Prime Minister:** The leader of this form of government is the Prime Minister. Generally, the leader of the party that wins a majority in the lower house is appointed as the PM..
 - **No fixed tenure:** The term of the government depends on its majority support in the lower house. If the government does not win a vote of no confidence, the council of ministers has to resign. Elections will be held and a new government is formed.
- 

FEDERAL IN STRUCTURE WITH CERTAIN UNITARY FEATURES

- Federalism is a system of government in which powers have been divided between the centre and its constituent parts such as states or provinces. It is an institutional mechanism to accommodate two sets of politics, one at the centre or national level and second at the regional or provincial level
- **India is a federal system but with more tilt towards a unitary system of government.** It is sometimes considered a quasi-federal system as it has features of both a federal and a unitary system.
- In a unitary system of government, all powers are vested in Centre while in a federal system, the powers are divided between the centre and the states by the constitution. The Indian Constitution is also called quasi-federal because it has features of both federal and unitary types of governments. It has been called a unique blend of unitary and federal features by the Supreme Court.

DRAWN FROM VARIOUS SOURCES

- Many of the features of the Constitution of India are borrowed from various other Constitutions around the globe:
- Directive Principles of State Policy – Ireland
- Japan – Procedure established by Law
- USSR (now Russia) - Fundamental duties, Ideals of justice (social, economic and political) in the Preamble
- US – Fundamental Rights, Judicial Review, Independence of Judiciary
- UK – Parliamentary Form of Government, Rule of Law, Writs
- France- Ideals of liberty, equality and fraternity

SUPPLEMENTED BY AMENDMENTS

- **Amending the Constitution of India** is the process of making changes to the nation's fundamental law or supreme law. The procedure of amendment in the constitution is laid down in Part XX (Article 368)
- This procedure ensures the sanctity of the Constitution of India
- The Constitution provides for a variety in the amending process.
- 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 (Special Majority)
- .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 provision to article 368, it must be ratified by the Legislatures of not less than one-half of the States.
- As of January 2020, there have been **104 amendments** of the Constitution of India since it was first enacted in 1950.

INDEPENDENCE OF JUDICIARY

- Judicial independence is the concept that the judiciary should be independent from the other branches of government.
- Judicial independence can be defined as the ability of individual judges and the judiciary as a whole to perform their duties free of influence or control by other actors
- Independence of Judiciary is indispensable in democratic system of governance.
- Independent Judiciary is required to maintain balance between the interests of individuals and society
- Independence of Judiciary is part of the BASIC STRUCTURE OF THE CONSTITUTION OF INDIA

ADULT SUFFRAGE

- Another feature of the Constitution is that it provides for universal adult suffrage. All men and women enjoy an equal right to vote. Each adult man and woman above the age of 18 years has the right to vote. All registered voters get the opportunity to vote in elections.

SECULAR STATE

- **The Constitution (Forty-second Amendment) Act, 1976 – introduced the term ‘Secular’ into the Constitution of India**
- The meaning of a secular state is that it does not prioritize any one religion for the country and its people.
- Secularism calls for a doctrine where all religions are given equal status, recognition and support from the state or it can also be defined as a doctrine that promotes separation of state from religion.
- In S.R Bommai Case 1994, the Supreme Court upheld the validity of ‘Secularism’ as the basic feature of the Constitution

JUDICIAL REVIEW

- Any act of the ordinary law making bodies which contravenes the provisions of the Constitution must be void and the judiciary acts as an organ which possess the power or authority to pronounce such legislative acts void.
- The constitution of India provides an express provision for judicial review in the shape of Article 13. This power has been conferred on the High courts and the Supreme court of India which can declare a law unconstitutional if it is inconsistent with any of the provisions of Part III of the constitution
- Article 32 – Right to move to the SC
- Article 226 - Right to move to High Courts

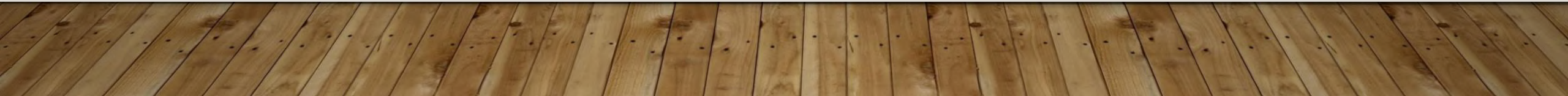
EMERGENCY PROVISIONS

- Emergency Provisions are contained in Part Eighteen of the Constitution of India
- The Constitution stipulates three types of emergencies-
 - ❖ National Emergency
 - ❖ Constitutional Emergency
 - ❖ Financial Emergency
- The President of India has the power to impose emergency rule in any or all the Indian states if the security of part or all of India is threatened by:
 - ❖ war or
 - ❖ external aggression or
 - ❖ armed rebellion

Note: term 'armed rebellion' is inserted from the **44th amendment**. Before this term it was known as internal disturbance.

PREAMBLE OF THE CONSTITUTION

- A preamble is an introductory statement in a document that explains the document's **philosophy and objectives**.
- In a Constitution, it presents the **intention of its framers**, the **history behind its creation**, and the **core values and principles of the nation**.
- The preamble basically gives idea of the following things/objects:
 - **Source of the Constitution**
 - **Nature of Indian State**
 - **Statement of its objectives**



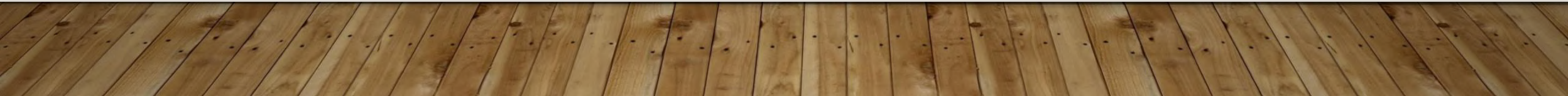
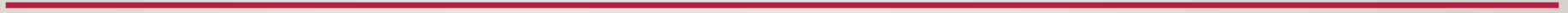
KEY WORDS IN THE PREAMBLE

- **We, the people of India:** It indicates the ultimate sovereignty of the people of India. Sovereignty means the independent authority of the State, not being subject to the control of any other State or external power.
- **Sovereign:** The term means that India has its own independent authority and it is not a dominion of any other external power. In the country, the legislature has the power to make laws which are subject to certain limitations.
- **Socialist:** The term means the achievement of socialist ends through democratic means. It holds faith in a mixed economy where both private and public sectors co-exist side by side (added in the Preamble by 42nd Amendment, 1976).
- **Secular:** The term means that all the religions in India get equal respect, protection and support from the state (incorporated in the Preamble by 42nd Constitutional Amendment, 1976).
- **Democratic:** The term implies that the Constitution of India has an established form of Constitution which gets its authority from the will of the people expressed in an election.
- **Republic:** The term indicates that the head of the state is elected by the people. In India, the President of India is the elected head of the state.

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- **Equality:** The term 'Equality' means no section of society has any special privileges and all the people have given equal opportunities for everything without any discriminations. Everyone is equal before the law.
 - **Liberty:** The term 'Liberty' means freedom for the people to choose their way of life, have political views and behavior in society. Liberty does not mean freedom to do anything, a person can do anything but in the limit set by the law.
 - **Fraternity:** The term 'Fraternity' means a feeling of brotherhood and an emotional attachment with the country and all the people. Fraternity helps to promote dignity and unity in the nation

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- In the landmark judgment of **Kesavananda Bharati vs State of Kerala case (1973)** through which the concept of BASIC STRUCTURE of the Constitution came into existence stated that **‘Preamble of the Constitution will now be considered as part of the Constitution’**.
 - **This overturned the Berubari case where the court stated that ‘Preamble is the key to open the mind of the makers’ but it can not be considered as part of the Constitution. Therefore it is not enforceable in a court of law.’**

CITIZENSHIP



- Citizenship signifies the **relationship between individual and state.**

- Citizenship can be acquired by:

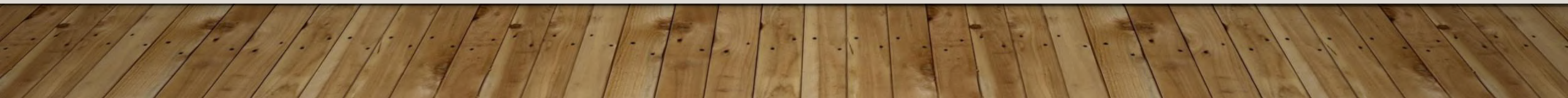
- ❖ Birth
- ❖ Descent
- ❖ Registration
- ❖ Naturalization
- ❖ Incorporation of territory
- ❖ Termination
- ❖ Renunciation
- ❖ Acquisition of another country
- ❖ Deprivation

India has **two kinds of people—citizens and aliens.** Citizens are full members of the Indian State and owe allegiance to it. They enjoy **all civil and political rights.**

CONSTITUTIONAL PROVISIONS REGARDING CITIZENSHIP

- Citizenship is listed in the Union List under the Constitution and thus is under the exclusive jurisdiction of Parliament
- The Constitution does not define the term 'citizen' but details of various categories of persons who are entitled to citizenship are given in Part II (Articles 5 to 11)
- **Article 5:** It provided for citizenship on commencement of the Constitution. Under this, citizenship is conferred upon those persons who have their domicile in Indian territory and –
 - Who was born in Indian territory; or
 - Whose either parent was born in Indian territory; or
 - Who has ordinarily been a resident of India for not less than 5 years immediately preceding the commencement of the Constitution.

-
- **Article 6:** It provided rights of citizenship of certain persons who have migrated to India from Pakistan. Since Independence was preceded by Partition and migration, Article 6 laid down that anyone who migrated to India before July 19, 1949, would automatically become an Indian citizen if either of his parents or grandparents was born in India. But those who entered India after this date needed to register themselves.
 - **Article 7:** Provided Rights of citizenship of certain migrants to Pakistan. Those who had migrated to Pakistan after March 1, 1947 but subsequently returned on resettlement permits were included within the citizenship net. The law was more sympathetic to those who migrated from Pakistan and called them refugees than to those who, in a state of confusion, were stranded in Pakistan or went there but decided to return soon.

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- **Article 8:** Provided Rights of citizenship of certain persons of Indian origin residing outside India. Any Person of Indian Origin residing outside India who, or either of whose parents or grandparents, was born in India could register himself or herself as an Indian citizen with Indian Diplomatic Mission.
 - **Article 9:** Provided that if any person voluntarily acquired the citizenship of a foreign State will no longer be a citizen of India.
 - **Article 10:** It says that every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.
 - **Article 11:** It empowers Parliament to make any provision with respect to the acquisition and termination of citizenship and all matters relating to it.
- 

CITIZENSHIP ACT, 1955

- Legal provisions relating to acquisition and termination of citizenship of India are contained in the **Citizenship Act, 1955**.
- The Act does **not provide for dual citizenship or dual nationality**. There are **four ways** in which Indian citizenship can be acquired:
 - ❖ **Birth**
 - ❖ **Descent:**
 - ❖ **Registration**
 - ❖ **Naturalisation**

I) BIRTH

- every person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of his/her parents.
- Every person born in India between 01.07.1987 and 02.12.2004 is a citizen of India given either of his/her parents is a citizen of the country at the time of his/her birth.
- Every person born in India on or after 3.12.2004 is a citizen of the country given both his/her parents are Indians or at least one parent is a citizen and the other is not an illegal migrant at the time of birth

2) By Registration

Citizenship can also be acquired by registration. Some of the mandatory rules are:

- A person of **Indian origin** who has **been a resident of India for 7 years** before applying for registration.
- A person of Indian origin who is a resident of any country outside undivided India.
- A person **who is married to an Indian citizen** and is ordinarily **resident for 7 years** before applying for registration.
- **Minor children** of persons who are **citizens of India**.

3) **By Descent:**

- A person born outside India on or after January 26, 1950 is a citizen of India by descent if **his/her father was a citizen of India by birth.**
- A person born outside India on or after December 10, 1992, but before December 3, 2004 if either of his/her parent was a citizen of India by birth.
- If a person born outside India on or after December 3, 2004 has to acquire citizenship, his/her parents have to declare that the minor does not hold a passport of another country and his/her birth is registered at an Indian consulate within one year of birth.

4) By Naturalisation



A person can acquire citizenship by naturalisation if **he/she is ordinarily resident of India for 12 years**(throughout 12 months preceding the date of application and 11 years in the aggregate) and fulfils all **qualifications in the third schedule** of the Citizenship Act.

CITIZENSHIP (AMENDMENT) ACT 2019:

- The Act seeks to amend the definition of illegal immigrant for Hindu, Sikh, Parsi, Buddhist and Christian immigrants from Pakistan, Afghanistan and Bangladesh, who have lived in India without documentation. They will be granted fast track Indian citizenship in six years. So far 12 years of residence has been the standard eligibility requirement for naturalization.
- The legislation applies to those who were “forced or compelled to seek shelter in India due to persecution on the ground of religion”. It aims to protect such people from proceedings of illegal migration. The cut-off date for citizenship is December 31, 2014
- The implementation of the act saw widespread protests by human rights activists as the act discriminates against Muslims and violates the right to equality enshrined in the Constitution.

TERMINATION OF INDIAN CITIZENSHIP

- **Renunciation:** If any citizen of India who is also a national of another country renounces his Indian citizenship through a declaration in the prescribed manner, he ceases to be an Indian citizen
- **Termination**
- **Deprivation:** The government of India can deprive a person of his citizenship in some cases. But this is not applicable for all citizens. It is applicable only in the case of citizens who have acquired the citizenship by registration, naturalization, or only by Article 5

Union and its Territory

Part I of Indian Constitution is titled The Union and its Territory. It includes articles from 1-4.

ARTICLE I : NAME AND TERRITORY OF THE UNION

- (1) India, that is Bharat, shall be a Union of States.
- (2) The States and the territories thereof shall be as specified in the First Schedule.
- (3) The territory of India shall comprise –
 - (a) the territories of the States;
 - (b) the Union territories specified in the First Schedule; and
 - (c) such other territories as may be acquired.

ARTICLE 2 :ADMISSION OR ESTABLISHMENT OF NEW STATES

Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

ARTICLE 2A: SIKKIM TO BE ASSOCIATED WITH THE UNION

{...}

ARTICLE 3: FORMATION OF NEW STATES AND ALTERATION OF AREAS, BOUNDARIES OR NAMES OF EXISTING STATES

Parliament may by law –

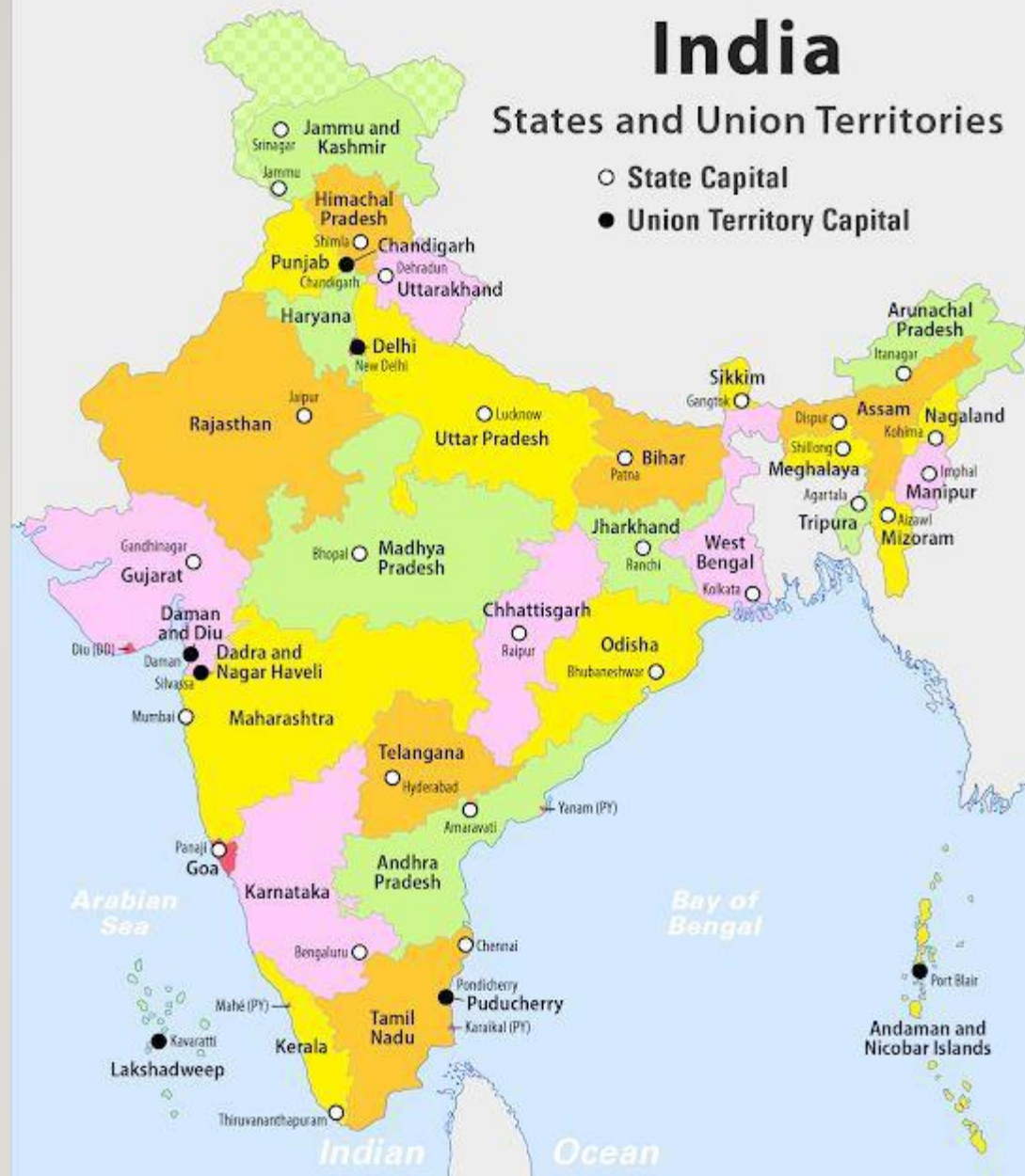
- (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- (b) increase the area of any State;
- (c) diminish the area of any State;
- (d) alter the boundaries of any State;
- (e) alter the name of any State

ARTICLE 4: LAWS MADE UNDER ARTICLES 2 AND 3 TO PROVIDE FOR THE AMENDMENT OF THE FIRST AND THE FOURTH SCHEDULE AND SUPPLEMENTAL, INCIDENTAL AND CONSEQUENTIAL MATTERS

India

States and Union Territories

- State Capital
- Union Territory Capital



MODULE 2

FUNDAMENTAL RIGHTS, DPSPs, FUNDAMENTAL DUTIES





STATE UNDER ARTICLE 12

- ▶ According to Article 12 of the **Constitution** of **India**, the term '**State**' can be used to denote the union and **state** governments, the **Parliament** and **state** legislatures and all local or other authorities within the territory of **India** or under the control of the **Indian** government.
- ▶ The Fundamental Rights guaranteed under Part III can be enforced against the state
- ▶ Article 12 states:

“Definition In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India”

FUNDAMENTAL RIGHTS



FUNDAMENTAL RIGHTS

What are the Fundamental Rights?

Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens. They are applied without discrimination on the basis of race, religion, gender, etc. Significantly, **fundamental rights are enforceable by the courts**, subject to certain conditions.

Why are they called Fundamental Rights?

These rights are called fundamental rights because of two reasons:

- ▶ They are enshrined in the Constitution which guarantees them
- ▶ They are justiciable (enforceable by courts). In case of a violation, a person can approach a court of law.

Articles 12-35 of Indian Constitution deal with Fundamental Rights. These human rights are conferred upon the citizens of India for the Constitution tells that these rights are inviolable.





FUNDAMENTAL RIGHTS

- ▶ Our Constitution does not permit the legislature and the executive to curb these rights either by law or by an executive order. The Supreme Court or the High Courts can set aside any law that is found to be infringing or abridging the Fundamental Rights.
- ▶ Some of the Fundamental Rights are also enjoyed by foreigners, for example, the Right to Equality before Law and Right to Freedom of Religion are enjoyed by both i.e. citizens as well as foreigners.
- ▶ The Fundamental Rights though justiciable are not absolute. The Constitution empowers the government to impose certain restrictions on the enjoyment of our rights in the interest of public good.



LIST OF FUNDAMENTAL RIGHTS

- ▶ These are the six fundamental rights of Indian Constitution along with the constitutional articles related to them:
- ▶ Right to Equality (Article 14-18)
- ▶ Right to Freedom (Article 19-22)
- ▶ Right against Exploitation (Article 23-24)
- ▶ Right to Freedom of Religion (Article 25-28)
- ▶ Cultural and Educational Rights (Article 29-30)
- ▶ Right to Constitutional Remedies (Article 32)

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- 
- Recently by the 86th Amendment Act, the **Right to Education** has been included in the list of Fundamental Rights as part of the Right to Freedom by adding Article 21(A).
 - The **Right to Property** was removed from the list of Fundamental Rights by the 44th Amendment Act of the Constitution in the year 1976. Since then, it has been made a legal right.



RIGHT TO EQUALITY

Article 14-18



Article 14-18 contains provisions regarding 'RIGHT TO EQUALITY'

- ▶ Article 14 – Equality before the law and equal protection of laws
- ▶ Article 15- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- ▶ Article 16- Equality of opportunity in matters of public employment
- ▶ Article 17- Abolition of untouchability and the prohibition of the practice
- ▶ Article 18- Abolition of titles except military and academic

ARTICLE 14

▶ Article 14 states:


“Equality before law:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”

▶ Article 14 represents the idea of equality, which states that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The equality before the law is guaranteed to all without regard to race, colour, or nationality.

▶ Article 14 ensures:

- Equality before the Law
- Equal Protection of the Law



Equality before Law v. Equal protection of Law

- ▶ May seem to be identical, but are not
- ▶ Equality before Law – negative concept implying the absence of any special privilege by reason of birth, creed and equal subjection of all classes to the ordinary law.
- ▶ Equal Protection of Law – positive concept that implies the right to equality of treatment in. equal circumstances
- ▶ Equality before Law is a necessary correlative to the concept of 'Rule of Law' whereas Equal protection of Law requires affirmative action by the State



ARTICLE 15

- ▶ Article 15 states that the state shall not discriminate against any citizen on grounds only of religion, caste, sex, place of birth, or any of them and would not be subject to any disability, liability, restriction, or condition.
- ▶ The provisions of Article 15, however, could not preclude the State from-
 - Special provisions for women and children
 - Making special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes
- ▶ Instances where special provisions were met out to some are: Sexual Harassment at Workplace Act, POCSO Act etc



Article 15 restricts discrimination on the ground of:

- ▶ **Religion** – It means that no person should be discriminated on the basis of religion from accessing any public place or policy by the state or any group.
- ▶ **Race** – Ethnic origin should not form a basis of discrimination. For example, a citizen of Afghan origin should not be discriminated from those of an Indian origin.
- ▶ **Caste** – Discrimination on the basis of caste is also prohibited to prevent atrocities on the lower castes by the upper caste.
- ▶ **Sex** – Gender of an individual shall not be a valid ground for discrimination in any matter. For example, discriminating transgenders, females, etc.
- ▶ **Place of birth** – A place where an individual is born should not become a reason for discriminating among other members of the country.



Cases on 'Right to Equality'


- ▶ **Air India v. Nargesh Meerza**
- ▶ **John Vallamattom v. Union of India**
- ▶ **D.S. Nakara v. Union of India**
- ▶ **Indra Swahney v. Union of India – Reservation case**
- ▶ **Shayara Bano v. Union of India – Triple Talaq case**
- ▶ **NALSA v. Union of India – Third Gender rights case**
- ▶ **Indian Young Lawyer's Association v. State of Kerala – Sabrimala case**
- ▶ **Joseph Shine v. UOI – Adultery case**



Right to Freedom

Article 19-22



- 
- ▶ Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees freedom to citizens. The right to freedom guarantees freedom for citizens to live a life of dignity among other things. These are given in Articles 19, 20, 21A and 22 of the Indian Constitution:
 - ▶ Protection of various rights regarding freedom – Article 19
 - ▶ Protection in respect of conviction for offences – Article 20
 - ▶ Protection of life and personal liberty – Article 21
 - ▶ Right to elementary education – Article 21A
 - ▶ Protection against arrest and detention in certain cases – Article 22



ARTICLE 19

Article 19 guarantees that citizens have the following rights:

- 1) Freedom of Speech and Expression,
- 2) Freedom of Assembly,
- 3) Freedom to form associations,
- 4) Freedom of Movement,
- 5) Freedom to reside and to settle, and
- 6) Freedom of profession, occupation, trade, or business.



ARTICLE 20

Article 20 guarantees protection in certain respects against conviction for offences, by prohibiting

- Retrospective criminal legislations, commonly known as ex post facto legislation
- Double jeopardy or punishment for the same offence more than once
- Compulsion to give self incriminating evidence




Protection against Ex post facto legislation

- ▶ An ex-post-facto law is a law which imposes penalties retroactively, that is, upon acts already done, or which increases the penalty for the past acts.
- ▶ Under the Constitution of India, no person can be convicted for an ex post facto law.
- ▶ They can only be convicted under a law in force at the time of commission of that act.
- ▶ Eg: This is the reason why the minor rapist in the Nirbhaya case was not given the same punishment as the other rapists. He was below the age of 18 at the time of committing the rape. The law has hence been changed to reduce the age of criminal liability from the age of 18 to 16 in case of offence of rape.



Protection from Double jeopardy

- ▶ **Double jeopardy** means that person must not be punished twice for the offence.
- ▶ Doctrine against Double Jeopardy in Constitution of India, Article 20(2) says that 'no person shall be prosecuted and punished for the same offence more than once.' But it is subjected to certain restrictions. And it is to be noted that Article 20(2) of Constitution of India does not apply to a continuing offence.
- ▶ If a person is indicated again for the same offence in the court then he has the plea of Double Jeopardy as a valid defense



Protection from compulsion to give self incriminating evidence

- ▶ Under the Constitutional mandate, *'No person accused of an offence shall be compelled to be a witness against himself'*.
- ▶ The word 'witness' includes oral as well as documentary evidence so that no person can be compelled to be a witness to support a prosecution against himself.
- ▶ Article 20 (3) provides protection against self-incrimination and gives the accused the right to remain silent over any matter which tends to incriminate him.
- ▶ This prohibition cannot be applied in cases where an object or document is searched or seized from the possession of the accused.
- ▶ For the same reason, the clause does not bar the medical examination of the accused or the obtaining of thumb-impression or specimen signature from him.



ARTICLE 21

Article 21 denotes RIGHT TO FREEDOM.

Article 21 states:

“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”

Article 21 secures two rights:

- ▶ 1) Right to life, and
- ▶ 2) Right to personal liberty.

The Article prohibits the deprivation of the above rights except according to a procedure established by law. Article 21 applies to natural persons. The right is available to every person, citizen or alien. Thus, even a foreigner can claim this right.


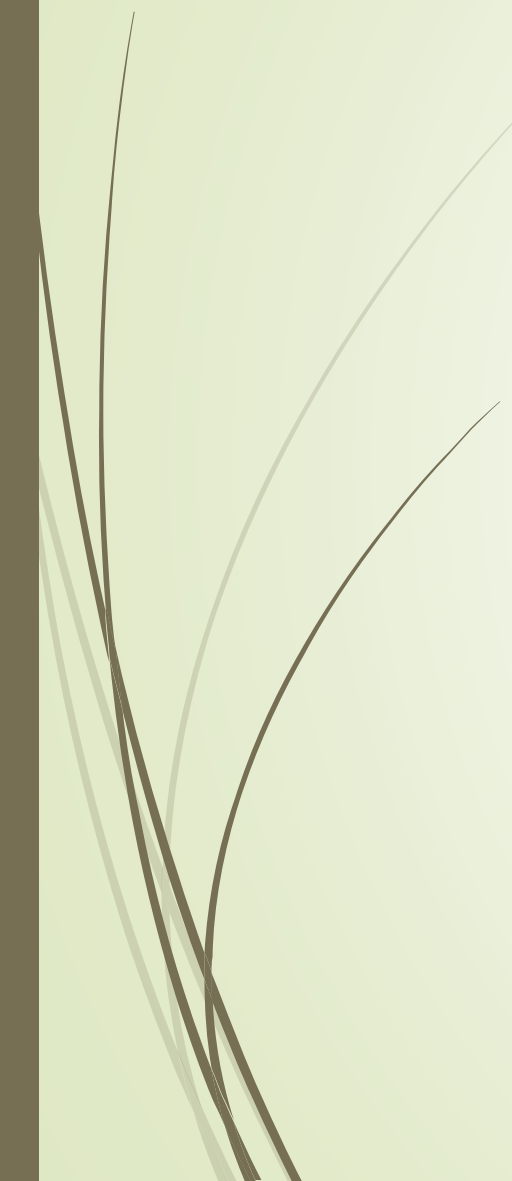
Right to Life

- ▶ 'Life' in Article 21 of the Constitution is not merely the physical act of breathing. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc.
- ▶ Right to Life extends to:
- ▶ Right to Live with Human Dignity - Maneka Gandhi v. Union of India
- ▶ Right Against Sexual Harassment At Workplace - Vishakha v. State of Rajasthan
- ▶ Right To Livelihood - Olga Tellis v. Bombay Municipal Corporation
- ▶ Right To Medical Care - Parmananda Katara v. Union of India
- ▶ Right to Privacy – Sunil Batra v. Delhi Adminsitration
- ▶ Right to clean environment – M.C. Mehta v. Union of India etc.



Article 22


- ▶ Article 22 safeguards the rights of individuals who have been arrested and detained for committing an offence.
- ▶ Subclause (1) of Article 22 says that *"No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."*
- ▶ This means that if a person has been arrested cannot be detained without knowing his grounds of arrest and he shall not be denied the right to consult and be defended by a lawyer/legal practitioner of his/her choice.

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- ▶ Subclause (2) of Article 22 says that *"Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."*
 - ▶ This means that the arrested person who has been detained in custody has to be produced before the nearest magistrate within the time-frame of twenty-four hours of such arrest which excludes the time taken to travel from the jail to the court of the magistrate. No detainee shall be kept in custody beyond this time-frame without the approval of the magistrate.

RIGHT AGAINST EXPLOITATION

Article 23-24


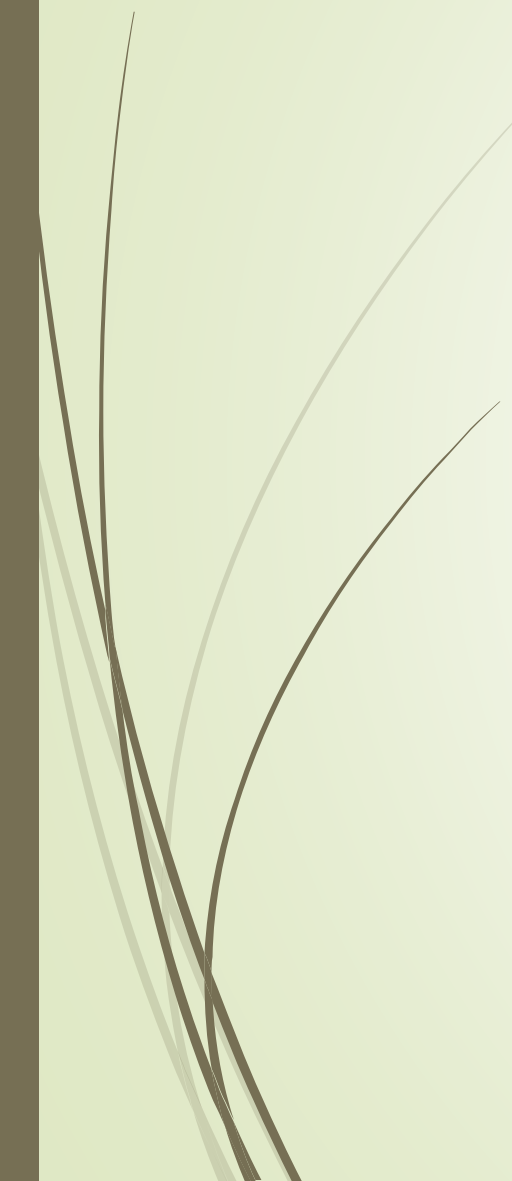


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- ▶ The Right against Exploitation is enshrined in Articles 23 and 24 of the Indian Constitution. These are important Fundamental Rights that guarantee every citizen protection from any kind of forced labour.
 - ▶ There are two articles of the Constitution which guarantee the right against exploitation:
 - Article 23 – Prohibition of traffic in human beings and forced labour
 - Article 24 – Prohibition of employment of children in factories, etc.
 - ▶ Article 23(1) states that traffic in human beings and the beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.
 - ▶ Article 24 says that “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”



Right to Freedom of Religion

(Article 25-28)

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- ▶ India is a secular nation. India's concept of secularism is to equalize all religions so that the state neither actively chooses, nor demonstrates through legislation, a preference or prejudice of one religion over others.
 - ▶ The Indian Secularism is also reflected in its fundamental rights (Article 25-28) where it guarantees each of its citizens the right to practice any religion.
 - ▶ In **S.R. Bommai v. Union of India** the **Supreme Court** has held that “**secularism is a basic feature of the Constitution**”. The state treats equally all religions and religious denominations.



Article 25: Freedom of conscience and free profession, practice and propagation of religion

Article 26: Freedom to manage religious affairs

Article 27: Freedom as to payment of taxes for promotion of any particular religion

Article 28: Freedom as to attendance at religious instructions or religious worship in certain educational institutions


Article 25


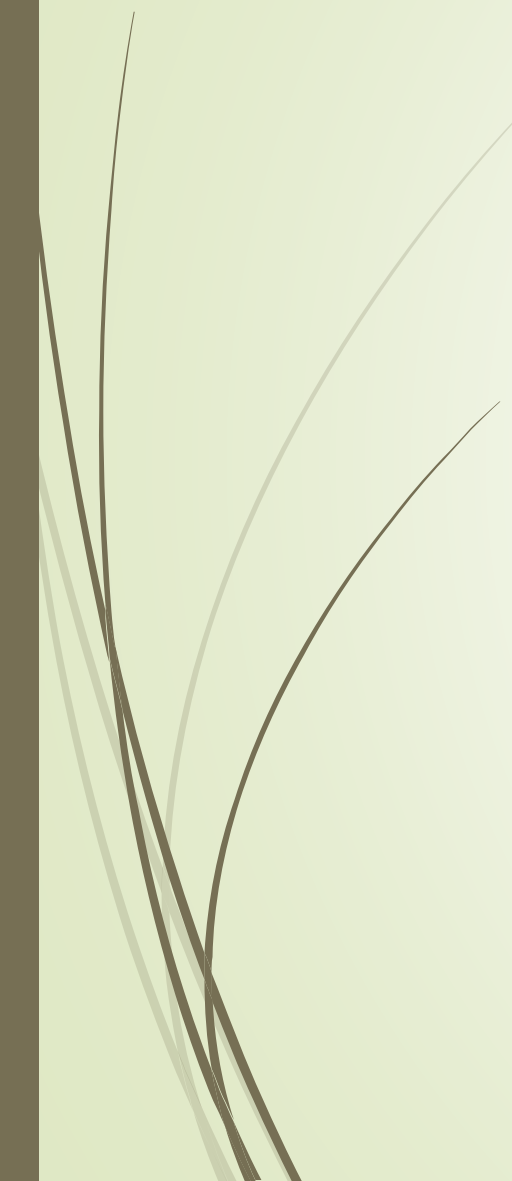
- ▶ Freedom of conscience is meaningful only if and when the expression of **spiritual conviction or religious belief is allowed both in word and action**. **Freedom to profess religion** means the right of the believer to give expression to their belief in public. **Freedom to practice religion** means conveying one's belief to another and to persuade them to subscribe to it. It does not, however, amount to forcible or coercive conversion.
- ▶ The rights guaranteed under Article 25 (1), like other constitutional rights, is **not absolute**. This right is **subject to public order, morality and health**, and to the other provisions of Part III of the Constitution.
- ▶ In **Mohd. Hanif Quarashi v. State of Bihar** it was held that the sacrifice of cows on Eid al-Adha was not an essential part of Mohammedan religion and hence, could be prohibited by the state
- ▶ The existence of this article in the Constitution is why the entry of women into Sabrimala and practices such as triple talaq existed. Any challenges to these practices were earlier defended under Article 25. However, in the present day, the Supreme Court has exercised its judicial wisdom to strike down such practices which violate the fundamental rights under Article 14 and Article 21.

Cultural and Educational Rights

Article 29-30





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- ▶ Cultural and educational rights provide the rights to all section of society and it saves their culture script or language.
 - ▶ Thus one of the fundamental rights is the right of the minorities to save their culture. Minorities are groups which have common language or religion and live in a particular part of the country. These communities have a culture, language and a script of their own, and have the right to preserve and develop these.

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- ▶ Under Article 29 and Article 30, two major provisions are there:
 - ▶ **Protection of interests of minorities:** Any minority community having a distinct language, script or culture of its own shall have the right to preserve the same. The minority people can take admission into any educational institution maintained by the government or receiving funds from government, on grounds only of religion, race, caste, language or any of them.
 - ▶ **Right of minorities to set up and administer educational institutions:** All Minorities, whether based on religion or language, have the right to establish and administer educational institutions of their own choice. The government, while granting funds to educational institutions, will not differentiate against any educational institution on the basis that it comes under the management of a minority community.



Right to Constitutional Remedies

Article 32

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- ▶ The declaration of Fundamental Rights is meaningless unless there is an effective machinery for the enforcement of these rights.
 - ▶ It is remedy which makes the right real. If there is no remedy there is no right at all.
 - ▶ It was therefore, in the mind of the Constitution makers that there should be an effective remedy for the enforcement of these rights under Article 32 of the Constitution.
 - ▶ Article 32 is itself a fundamental right and Article 226 also empowers High Courts to issue writs for the enforcement of Fundamental Rights.
 - ▶ It is the right to move to Supreme Court for the enforcement of the Fundamental Rights.
 - ▶ This right has been held to be an important and integral part of the basic structure of the Constitution.
 - ▶ The Supreme Court is empowered by the Constitution to issue writs.



WRITS

- ▶ A writ petition is essentially a court petition for extraordinary review, asking a court to intervene in a lower court's decision. Under the Indian legal system, jurisdiction to issue 'prerogative writs' is given to the Supreme Court and the High Courts of Judicature of all Indian states. Parts of the law relating to writs are outlined in the Constitution of India.
- ▶ The following are the writs:
 - Habeas Corpus
 - Certiorari
 - Prohibition
 - Mandamus
 - Quo Warranto



Habeas Corpus

- ▶ Habeas Corpus is a writ that is enforced to protect the fundamental right to liberty of an individual against unlawful detention.
- ▶ This writ commands a public official to deliver a detained person in front of the court and provide valid reasons for the detention.
- ▶ However, this writ cannot be issued in case the proceeding is for contempt of a legislature or a court.



Certiorari

- ▶ The writ of certiorari is issued to a lower court directing that the transfer of a case for review, usually to overrule the judgment of the lower court.
- ▶ The Supreme Court issues the writ of Certiorari in case the decision passed by the lower court is challenged by the party.
- ▶ It is issued in case the higher court finds it a matter of over jurisdiction or lack of jurisdiction.
- ▶ It is one of the mechanisms by which the fundamental rights of the citizens are upheld.



Prohibition

- ▶ Prohibition is a writ issued by a higher court to a lower court to enforce inactivity in the jurisdiction.
- ▶ It happens only in case the higher court is of the discretion that the case falls outside the jurisdiction of the lower court.
- ▶ Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.



Writ of Mandamus

- ▶ The writ of mandamus is issued to a subordinate court, an officer of the government, or a corporation or other institution commanding the performance of certain acts or duties.
- ▶ Unlike Habeas Corpus, Mandamus cannot be issued against a private individual.
- ▶ The writ of mandamus can be used to order the completion of a task or in other cases, it may require an activity to be ceased.


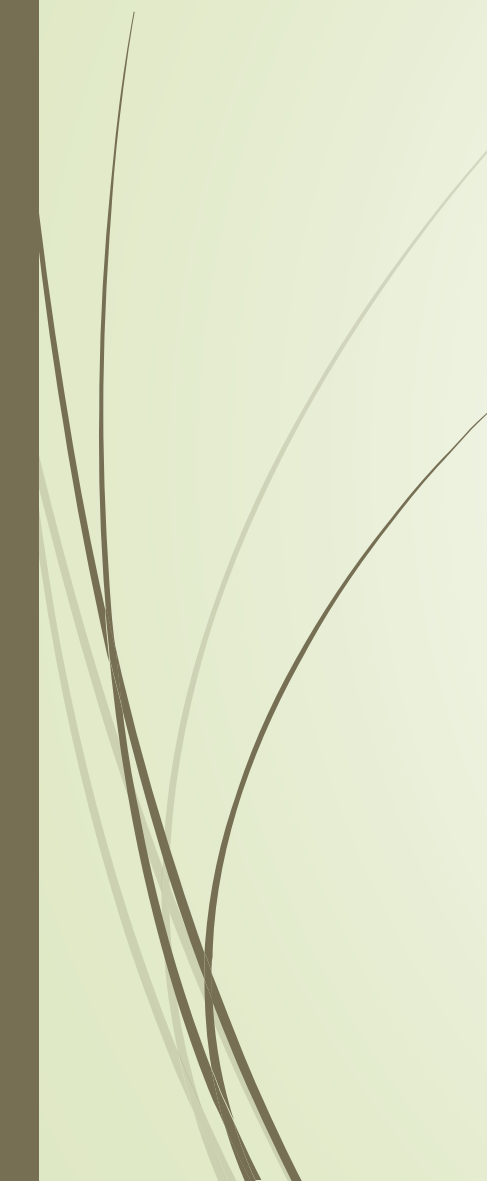


Quo-Warranto

- ▶ 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.
- ▶ Through this writ, the court enquires into the legality of a claim of a person to a public office. This writ prevents the illegal assumption of a public office by an individual.


Directive Principles of State Policy (DPSP)




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- ▶ Articles 36-51 under Part-IV of Indian Constitution deal with Directive Principles of State Policy (DPSP).
 - ▶ The Sapru Committee in 1945 suggested two categories of individual rights. One being JUSTICIABLE and the other being NON-JUSTICIABLE RIGHTS. The justiciable rights, as we know, are the Fundamental rights, whereas the non-justiciable ones are the Directive Principles of State Policy.
 - ▶ DPSP are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws.
 - ▶ They seek to establish economic and social democracy in the country and they set the path towards the welfare state.
 - ▶ Unlike Fundamental Rights, the Directive Principles of State Policy (DPSP) are non-binding in nature which means they are not enforceable by the courts for their violation.

DPSPs

- ▶ **ARTICLE 38:** STATE TO SECURE A SOCIAL ORDER FOR THE PROMOTION OF THE WELFARE OF THE PEOPLE
- ▶ **ARTICLE 39:** CERTAIN PRINCIPLES OF POLICY TO BE FOLLOWED BY THE STATE SUCH AS EQUAL PAY FOR EQUAL WORK, OWNERSHIP AND CONTROL OF THE MATERIAL RESOURCES OF THE COMMUNITY ARE SO DISTRIBUTED AS BEST TO SUBSERVE THE COMMON GOOD ETC.
- ▶ **ARTICLE 39A:** EQUAL JUSTICE AND FREE LEGAL AID
- ▶ **ARTICLE 40:** ORGANISATION OF VILLAGE PANCHAYATS
- ▶ **ARTICLE 41:** RIGHT TO WORK, TO EDUCATION AND TO PUBLIC ASSISTANCE IN CERTAIN CASES
- ▶ **ARTICLE 42:** PROVISION FOR JUST AND HUMANE CONDITIONS OF WORK AND MATERNITY RELIEF
- ▶ **ARTICLE 43:** LIVING WAGE, ETC., FOR WORKERS
- ▶ **ARTICLE 43A:** PARTICIPATION OF WORKERS IN MANAGEMENT OF INDUSTRIES
- ▶ **ARTICLE 44:** UNIFORM CIVIL CODE FOR THE CITIZEN

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- **ARTICLE 45:** PROVISION FOR FREE AND COMPULSORY EDUCATION FOR CHILDREN
 - **ARTICLE 47:** DUTY OF THE STATE TO RAISE THE LEVEL OF NUTRITION AND THE STANDARD OF LIVING AND TO IMPROVE PUBLIC HEALTH
 - **ARTICLE 48:** ORGANIZATION OF AGRICULTURE AND ANIMAL HUSBANDRY
 - **ARTICLE 48A:** PROTECTION AND IMPROVEMENT OF ENVIRONMENT AND SAFEGUARDING OF FORESTS AND WILDLIFE
 - **ARTICLE 49:** PROTECTION OF MONUMENTS AND PLACES AND OBJECTS OF NATIONAL IMPORTANCE
 - **ARTICLE 50:** SEPARATION OF JUDICIARY FROM THE EXECUTIVE
 - **ARTICLE 51:** PROMOTION OF INTERNATIONAL PEACE AND SECURITY


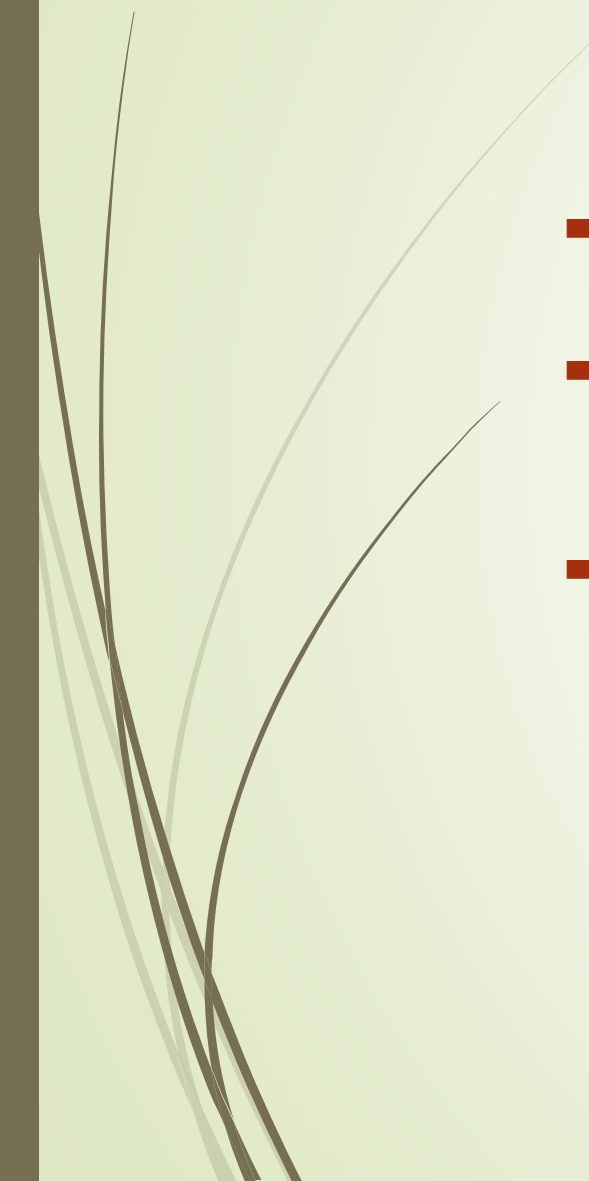


Criticism of Directive Principles of State Policy

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

FUNDAMENTAL DUTIES





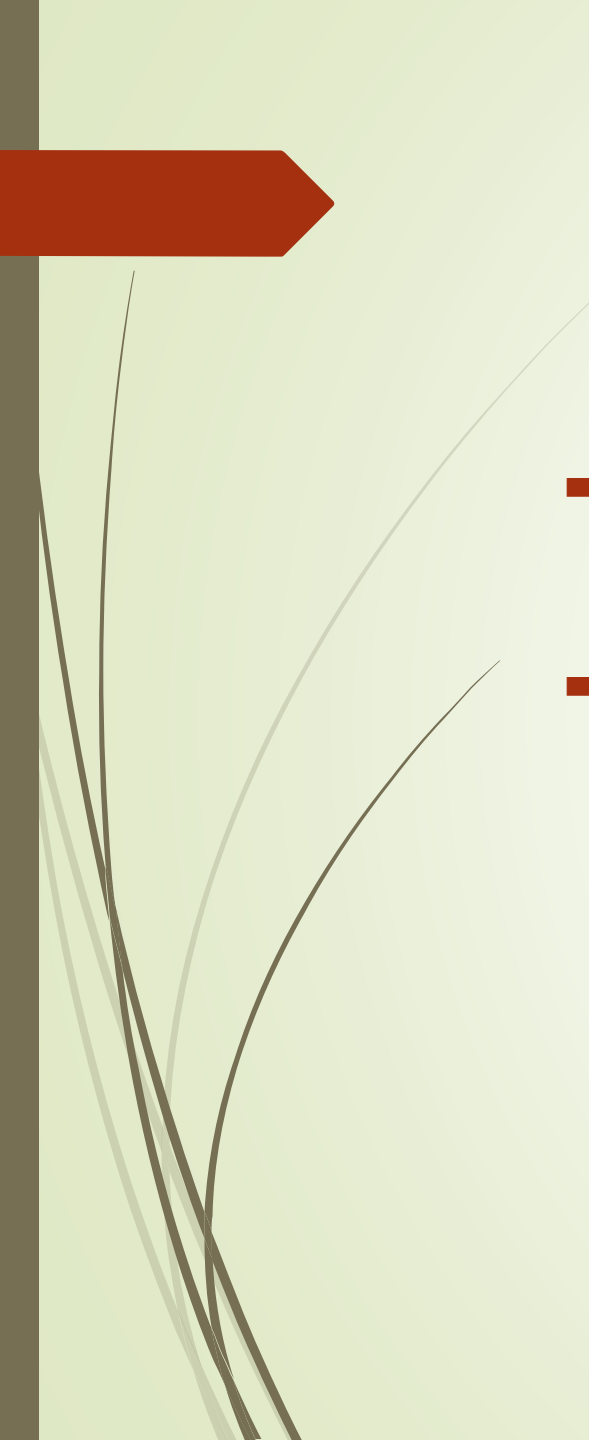
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- ▶ Part IVA of the Indian Constitution deals with Fundamental Duties. As of now, there are 11 Fundamental duties.
 - ▶ Originally, the Constitution of India did not contain these duties. Fundamental duties were added by 42nd and 86th Constitutional Amendment acts.
 - ▶ Citizens are morally obligated by the Constitution to perform these duties. However, like the Directive Principles, these are non-justifiable, without any legal sanction in case of their violation or non-compliance.



Article 51A: Fundamental duties

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

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- ▶ (f) to value and preserve the rich heritage of our composite culture;
 - ▶ (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
 - ▶ (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
 - ▶ (i) to safeguard public property and to abjure violence;
 - ▶ (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
 - ▶ (k) to provide opportunities for education by the parent the guardian, to his child, or a ward between the age of 6-14 years as the case may be.

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- ▶ The inclusion of Fundamental Duties brought our Constitution in line with article 29 (1) of the Universal Declaration of Human Rights and with provisions in several modern Constitutions of other countries.
 - ▶ Out of the ten clauses in article 51A, six are positive duties and the other five are negative duties. Clauses (b), (d), (f), (h), (j) and (k) require the citizens to perform these Fundamental Duties actively.

MODULE 3 COMPRISES OF:

- The Union Executive
 - The President
 - The Vice President
 - The Prime Minister
 - Attorney General
- The Parliament
 - Rajya Sabha
 - Lok Sabha
- Union Judiciary

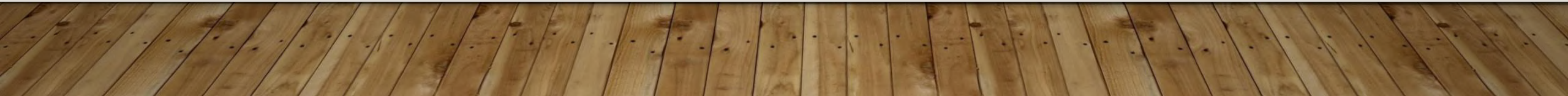
UNION EXECUTIVE (ARTICLES 52-78)

- part of the political executive, that comprises three important posts:
 - **President** (Article 52-62)
 - **Prime Minister & Council of Ministers** (Article 74-75 & Article 78)
 - **Attorney-General of India** (Article 76)

THE PRESIDENT OF INDIA

- Head of the state
- The first citizen of India
- Articles related to President (Article 52-62)
- He is a part of Union Executive along with the Vice-President, Prime Minister, Council of Ministers, and Attorney-General of India.

- **ARTICLE 52:** THE PRESIDENT OF INDIA
- **ARTICLE 53:** EXECUTIVE POWER OF THE UNION
- **ARTICLE 54:** ELECTION OF PRESIDENT
- **ARTICLE 55:** MANNER OF ELECTION OF PRESIDENT
- **ARTICLE 56:** TERM OF OFFICE OF PRESIDENT
- **ARTICLE 57:** ELIGIBILITY FOR RE-ELECTION
- **ARTICLE 58:** QUALIFICATIONS FOR ELECTION AS PRESIDENT
- **ARTICLE 59:** CONDITIONS OF PRESIDENT'S OFFICE
- **ARTICLE 60:** OATH OR AFFIRMATION BY THE PRESIDENT
- **ARTICLE 61:** PROCEDURE FOR IMPEACHMENT OF THE PRESIDENT
- **ARTICLE 62:** TIME OF HOLDING ELECTION TO FILL VACANCY IN THE OFFICE OF PRESIDENT AND THE TERM OF OFFICE OR PERSON ELECTED TO FILL CASUAL VACANCY



President election

An electoral college elects him. The electoral college responsible for President's elections comprises elected members of:

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

The value of the vote of an MLA is given below

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

The value of the vote of an MP is given below

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

Qualifications of the President

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

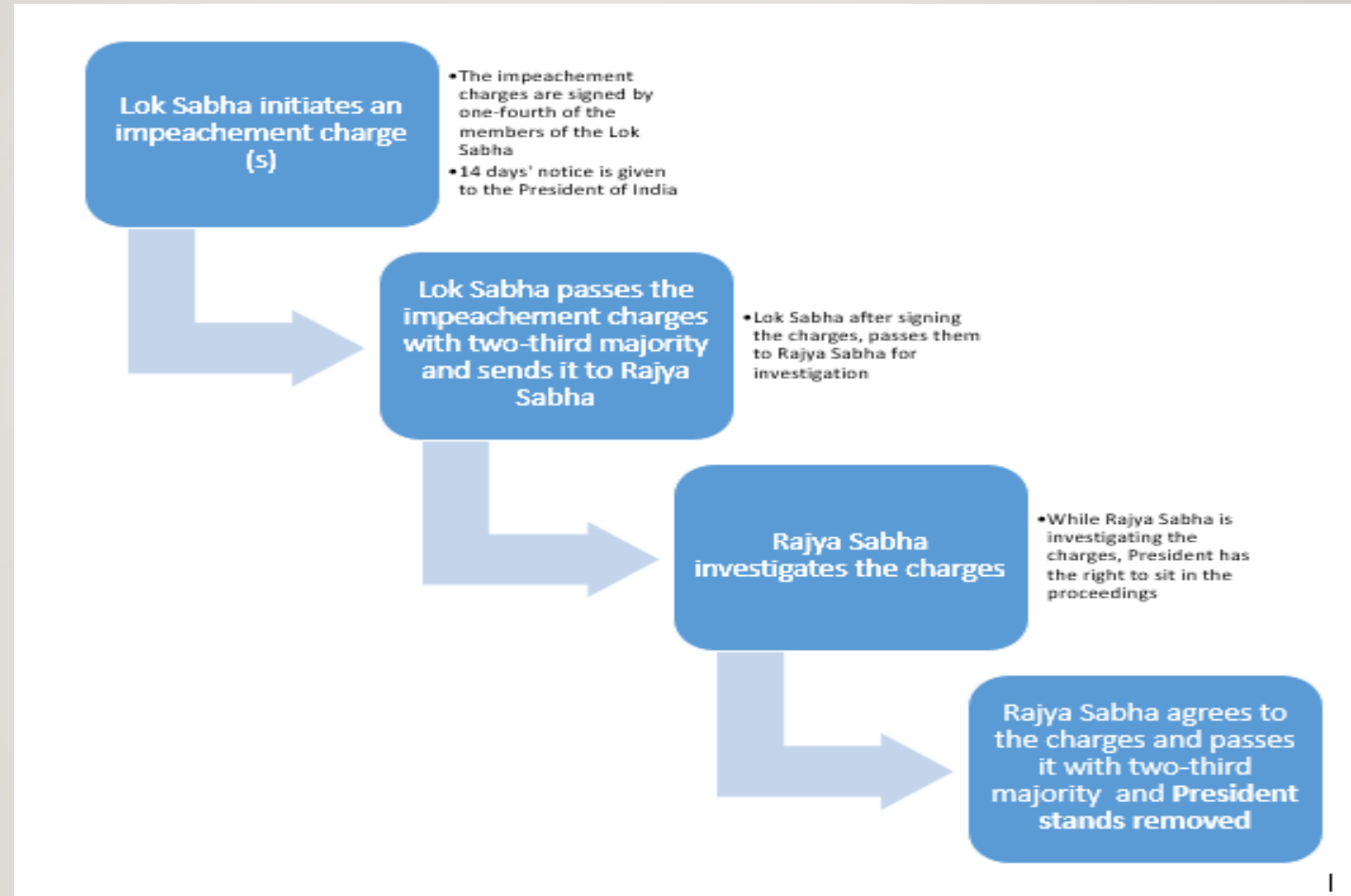
1. He should be an Indian Citizen
2. His age should be a minimum of 35 years
3. He should qualify the conditions to be elected as a member of the Lok Sabha
4. He should not hold any office of profit under the central government, state government, or any public authority

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

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

Procedure for impeachment of a President

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



Can the President's office be vacant?

His office can be vacant in the following ways:

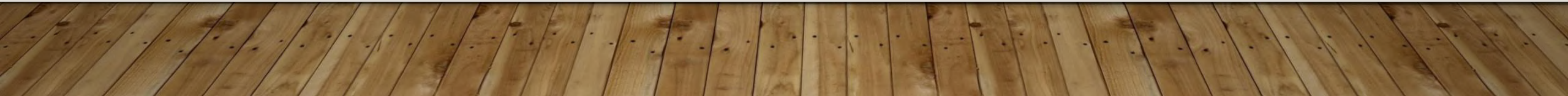
- When the President of India completes his term of five years in the office
- If the President resigns by putting forward his resignation to the Vice-President of India
- If Lok Sabha/Rajya Sabha initiates an impeachment charge and they stand valid, he is removed
- If he dies in the office 5. If the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

POWERS AND FUNCTIONS OF THE PRESIDENT

Executive Powers of President

1. For every executive action that the Indian government takes, is to be taken in his name
2. He may/may not make rules to simplify the transaction of business of the central government
3. He appoints the attorney general of India and determines his remuneration
4. He appoints the following people:
 1. Comptroller and Auditor General of India (CAG)
 2. Chief Election Commissioner and other Election Commissioners
 3. Chairman and members of the Union Public Service Commission
 4. State Governors
 5. Finance Commission of India chairman and members
5. He seeks administrative information from the Union government

6. He requires PM to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council
7. He appoints National Commissions of:
 1. Scheduled Castes
 2. Scheduled Tribes
 3. Other Backward Classes
8. He appoints inter-state council
9. He appoints administrators of union territories
10. He can declare any area as a scheduled area and has powers with respect to the administration of scheduled areas and tribal areas



Legislative Powers of President

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

Financial Powers of President

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

Judicial Powers of President

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

Diplomatic Powers of President

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

Military Powers of President

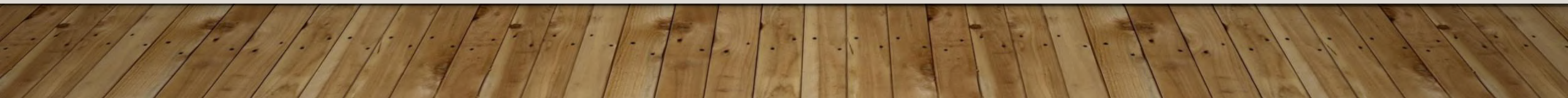
He is the commander of the defence forces of India. He appoints:

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

Emergency Powers of President

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

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

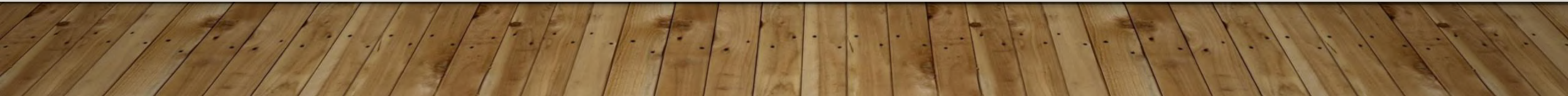


Ordinance Making Power of the President

Article 123 deals with the ordinance making power of the President. The President has many legislative powers and this power is one of them. He promulgates an ordinance on the recommendation of the union cabinet.

Veto Power of the President

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



VICE PRESIDENT OF INDIA

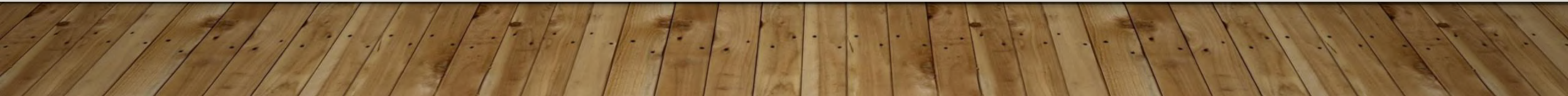
- Vice-President has the second-highest office in the country.
- Article 63 of the Indian Constitution mentions the post of Vice-President.
- An Indian citizen can qualify for the post of Vice President if he is 35 years old or more. Another qualification for a candidate to run for vice-presidential elections is to be qualified to be elected as Rajya Sabha member. An office of profit cannot be held by the Vice President of India. The qualifications of this post are on the same lines of Presidential qualifications.

How the Vice President is elected in India?

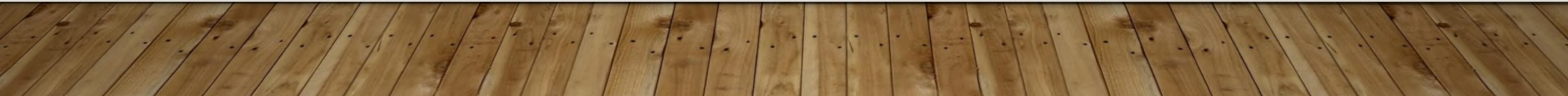
There is no direct election for the Vice-President of India however, he/she is indirectly elected by an Electoral College. The election process is quite similar to that of the President of India but the electoral college that elects President is different from the electoral college responsible for the election of Vice-President of India.

The difference between the electoral college that elects President and the one electing Vice-President of India is given below:

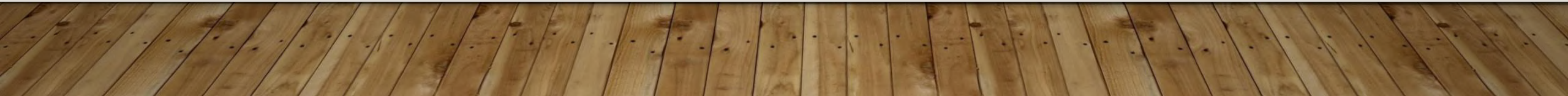
1. In electoral college for Vice President, both elected and nominated members of both the Houses of Parliament take part. In presidential elections, nominated members are not a part of the electoral college.
2. For Vice President's elections, states have no role to play unlike in President's elections where state legislative assemblies' elected members are a part of the electoral college.



- Article 63 - There shall be a Vice President of India
- Article 64 - The Vice-President shall be ex-officio Chairman of the Council of States and shall not hold any other office of profit
- Article 65 - The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President
- Article 66 - The Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament. The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State.
- Article 67 - The Vice-President shall hold office for a term of five years from the date of his appointment.



- Article 68 - An election to fill a vacancy created because of the completion of the term of office of Vice-President shall be completed before the expiry of the term. The election to fill a vacancy created because of the death, resignation or removal of Vice-President shall be held as soon as possible.
- Article 69 - Every Vice-President shall make an Oath or Affirmation on entering upon his office before the President, or some person appointed in that behalf by him
- Article 70 - Discharge of President's functions in other contingencies
- Article 71 - Matters relating to, or connected with, the election of a president or vice-president



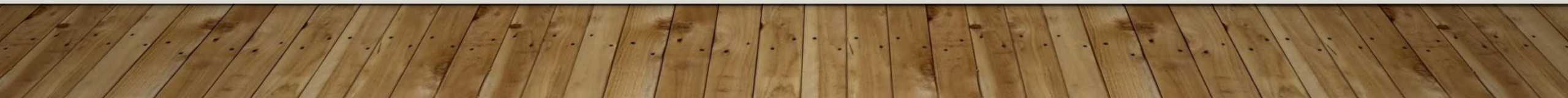
What is the term of office of Vice President?

From the date, he enters his office, Vice President holds the position for five years. However, he can resign before five years by handing over his resignation to the President. The other ways where a vacancy is created in the office of Vice President are given below:

- When he completes his term of five years
- When he resigns
- When he is removed
- On his death
- When his election is declared void

Is Vice President also impeached as President of India?

Unlike President of India who can be impeached formally; there is no formal impeachment for Vice President. Rajya Sabha simply can pass a resolution with a majority and Lok Sabha can pass it. Also, unlike President of India who can be impeached on the ground of 'Violation of Constitution,' there is no ground mentioned in the constitution for the removal of Vice President of India.

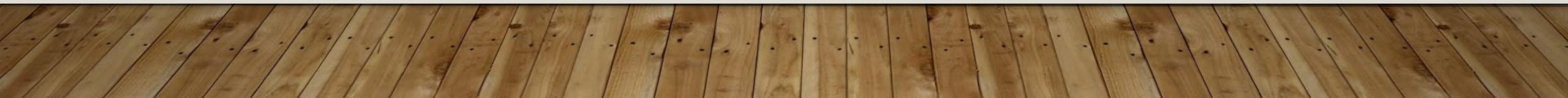


PRIME MINISTER

Article 75 of the Indian Constitution mentions that a Prime Minister is one who is appointed by the President.

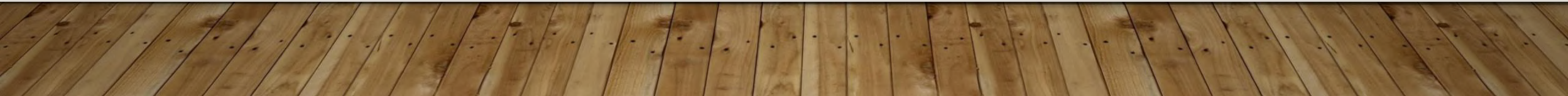
Article 74(I) states that there shall be a Council of Ministers with a Prime Minister at the head to aid and advise the President.

President of India appoints a person as the Prime Minister who is either the leader of the party which holds a majority of seats in the Lok Sabha or is a person who is able to win the confidence of the Lok Sabha by gaining the support of other political parties. All other ministers are appointed by the President on the advice of the Prime Minister.

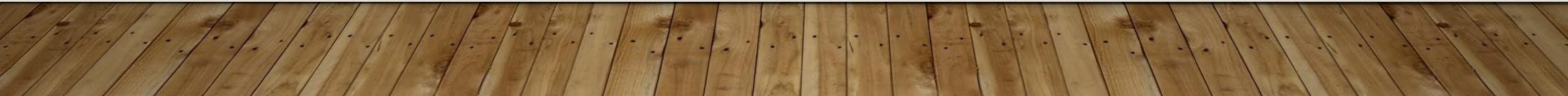


He performs his functions taking responsibilities as:

- The leader of Country: The Prime Minister of India is the Head of the Government of India.
- Portfolio allocation: The Prime Minister has the authority to assign portfolios to the Ministers.
- Chairman of the Cabinet: The Prime Minister is the chairman of the cabinet and presides the meetings of the Cabinet. He can impose his decision if there is a crucial opinion difference among the members.
- Official Representative of the country: Prime minister represents the country for high-level international meetings



- **The link between the President and the Cabinet:**The Prime Minister acts as the link between President and cabinet. He communicates all decisions of the Cabinet to the President which is related to the administration of the affairs of the Union and proposals for legislation.
- **Head:**The Prime Minister is the head of Nuclear Command Authority, NITI Aayog, Appointments Committee of the Cabinet, Department of Atomic Energy, Department of Space and Ministry of Personnel, Public Grievances and Pensions.
- **Chief Advisor:** He acts as the chief advisor to the President



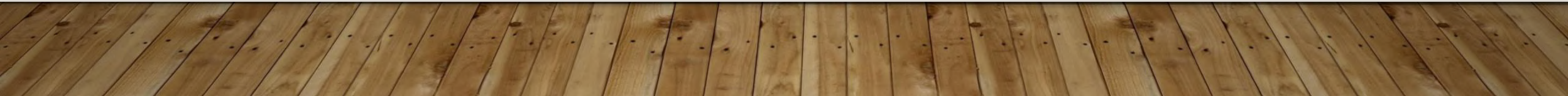
To become an Indian prime minister one has to be

- A citizen of India.
- A member of either Rajya Sabha or Lok Sabha
- He should have completed his 30 years if he is a member of the Rajya Sabha or can be 25 years of age if he is a member of the Lok Sabha

There are a few articles in the Indian Constitution that deal with the relationship both Prime Minister and the President share with each other.

The articles are:

- Article 74
- Article 75
- Article 78

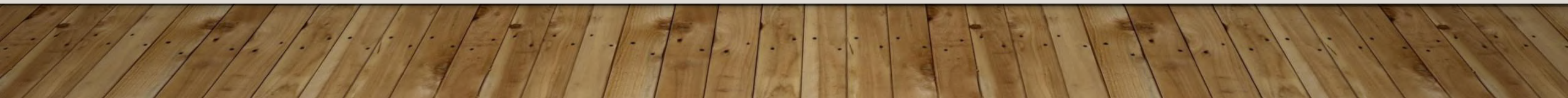


Article 74: Mentions how the Prime Minister and President are both connected with the council of ministers. The Council with PM as head advise President on various issues.

Article 75: Mentions three things:

- President appoints PM and other ministers are appointed by the President on the advice of the PM.
- Ministers hold their office during the pleasure of the President.
- Council of Ministers is collectively responsible to the Lok Sabha.

Article 78: PM communicates all decisions made by the council of members to the President. President can also refer issues for the consideration of the council of members.



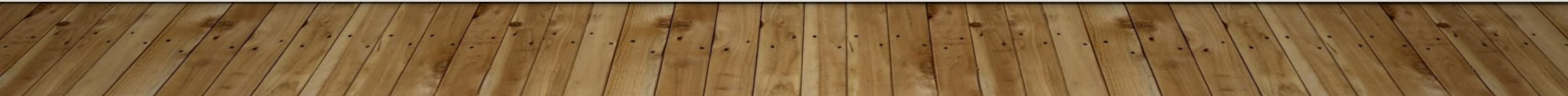
Council of Ministers

- Article 74 and Article 75 of the Indian Constitution deal with the Council of Ministers.
- Article 74 mentions that the council will be headed by the Prime Minister of India and will aid and advise the President
- Article 75 mentions the following things
 1. They are appointed by the President on the advice of Prime Minister.
 2. They along with the Prime Minister of India form 15% of the total strength of the lower house i.e. Lok Sabha. (The number cannot exceed 15%)
 3. 91st Amendment Act provided for the disqualification of the minister when he stands disqualified as a member of Parliament.
 4. A Minister ceased to exist as one if he is not a member of either house of Parliament for six consecutive months.
 5. Parliament decides the salary and allowances of the council of ministers.

Types of Ministers

The Indian Constitution does not categorize ministers into ranks, however, in practice seen in India, ministers are of four types:

1. Cabinet Ministers—He is present and he participates in every meeting of the Cabinet.
2. Minister of State with independent charge—He is a Minister of State who does not work under a Cabinet Minister. When any matter concerning his Department is on the agenda of the Cabinet, he is invited to attend the meeting.
3. Minister of State—He is a Minister who does not have independent charge of any Department and works under a Cabinet Minister. The work to such Minister is allotted by his Cabinet Minister.
4. Deputy Minister—He is a Minister who works under a Cabinet Minister or a Minister of State with independent charge. His work is allotted by the Minister under whom he is working



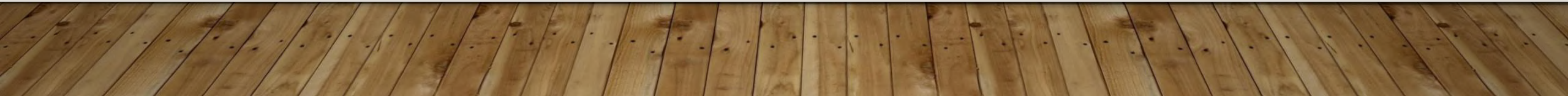
Attorney General of India

Attorney General of India (Article 76) of the Indian Constitution under its Part-V deals with the position of Attorney General of India

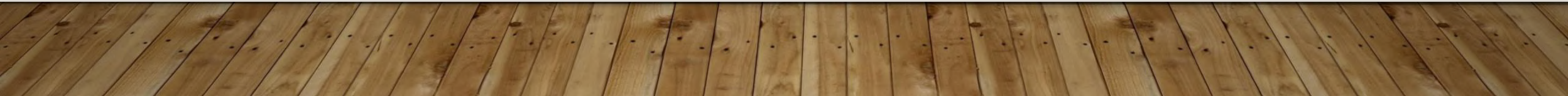
Article 76 of the constitution mentions that he/she is the highest law officer of India. As a chief legal advisor to the government of India, he advises the union government on all legal matters.

He also is the primary lawyer representing Union Government in the Supreme Court of India.

Attorney General is appointed by the President on the advice of the government.

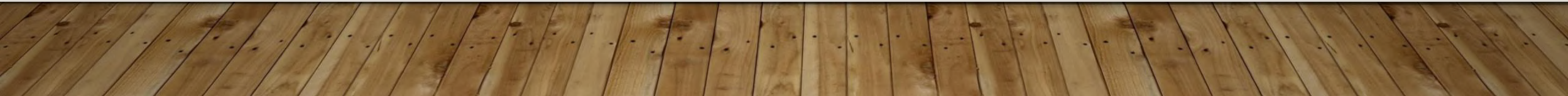


- There are the following qualifications:
 1. He should be an Indian Citizen
 2. He must have either completed 5 years in High Court of any Indian state as a judge or 10 years in High Court as an advocate
 3. He may be an eminent jurist too, in the eye of the President
- There is no fixed term for the Attorney General of India.
- He can be removed by the President at any time
- He can quit by submitting his resignation only to the President
- Since he is appointed by the President on the advice of the Council of Ministers, conventionally he is removed when the council is dissolved or replaced



Being the Chief Law Officer of the country, the Attorney General of India has to perform the following **duties**:

1. Whichever legal matters are referred to him by the President, he advises the Union government upon the same.
2. President keeps on referring him legal matters that suits his interest and Attorney General has to advise on those too
3. Apart from what President refers, he also performs the duties mentioned in the Constitution
4. The three duties that are assigned to him by the President are:
 - In any legal case where the government of India is related to, the Attorney General has to appear in the Supreme Court on its behalf
 - He has to represent the Union Government in any reference made by the president to the Supreme Court under Article 143 of the Constitution
 - He also appears in the High Court if any case is related to the Government of India

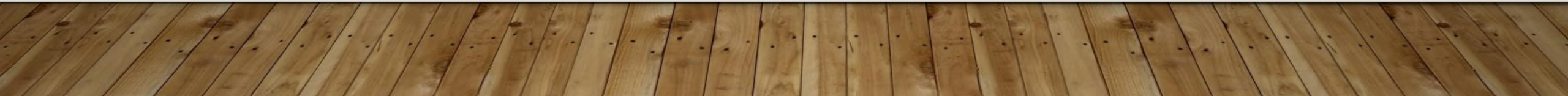


To avoid conflict of duty, there are a few **limitations** that are posted on the Attorney General which he should keep in mind while performing his duties:

1. He should not advise or hold a brief against the Government of India
2. He should not advise or hold a brief in cases in which he is called upon to advise or appear for the Government of India
3. He should not defend accused persons in criminal prosecutions without the permission of the Government of India
4. He should not accept appointment as a director in any company or corporation without the permission of the Government of India

The Parliament

- consisting of two houses
the Lok Sabha
the Rajya Sabha.
- The members of the Lok Sabha (House of the People) are directly elected by the people through the voting process.
- The members of the Rajya Sabha (Council of States) are elected by the members of the states' legislative assemblies.
- The Parliament consists of the two Houses and the President of India

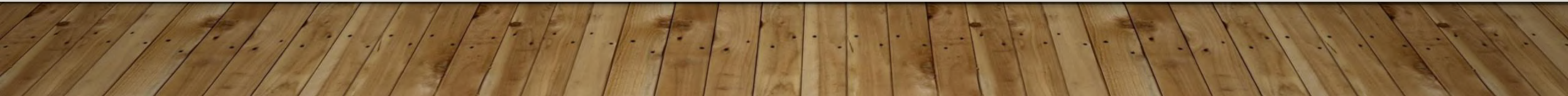


Functions of Parliament

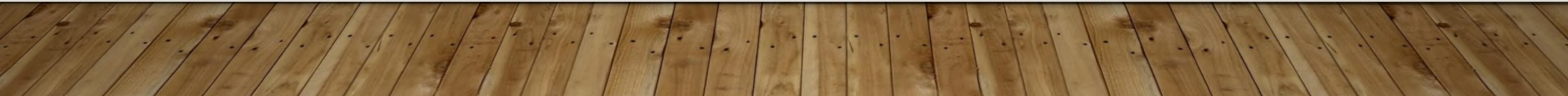
The functions of the Parliament are mentioned in the Indian Constitution in Chapter II of Part V.

Legislative Functions

- The Parliament legislates on all matters mentioned in the Union List and the Concurrent List.
- In the case of the Concurrent List, where the state legislatures and the Parliament have joint jurisdiction, the union law will prevail over the states unless the state law had received the earlier presidential assent. However, the Parliament can any time, enact a law adding to, amending, varying or repealing a law made by a state legislature



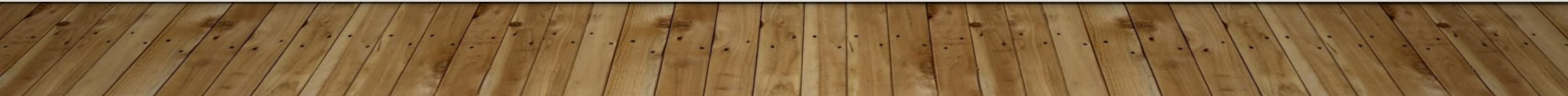
- The Parliament can also pass laws on items in the State List under the following circumstances:
 - If Emergency is in operation, or any state is placed under President's Rule (Article 356), the Parliament can enact laws on items in the State List as well.
 - As per Article 249, the Parliament can make laws on items in the State List if the Rajya Sabha passes a resolution by $\frac{2}{3}$ majority of its members present and voting, that it is necessary for the Parliament to make laws on any item enumerated in the State List, in the national interest.
 - As per Article 253, it can pass laws on the State List items if it is required for the implementation of international agreements or treaties with foreign powers.
 - According to Article 252, if the legislatures of two or more states pass a resolution to the effect that it is desirable to have a parliamentary law on any item listed in the State List, the Parliament can make laws for those states.



Executive Functions (Control over the Executive)

In the parliamentary form of government, the executive is responsible to the legislature. Hence, the Parliament exercises control over the executive by several measures.

- By a vote of no-confidence, the Parliament can remove the Cabinet (executive) out of power. It can reject a budget proposal or any other bill brought by the Cabinet. A motion of no-confidence is passed to remove a government from office.
- The MPs (Members of Parliament) can ask questions to the ministers on their omissions and commissions. Any lapses on the part of the government can be exposed in the Parliament.
- **Adjournment Motion:** Allowed only in the Lok Sabha, the chief objective of the adjournment motion is to draw the attention of the Parliament to any recent issue of urgent public interest.

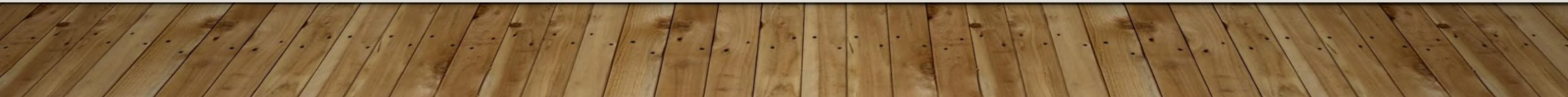


- The Parliament appoints a **Committee on Ministerial Assurances** that sees whether the promises made by the ministers to the Parliament are fulfilled or not.
- **Censure Motion:** A censure motion is moved by the opposition party members in the House to strongly disapprove any policy of the government. It can be moved only in the Lok Sabha. Immediately after a censure motion is passed, the government has to seek the confidence of the House. Unlike in the case of the no-confidence motion, the Council of Ministers need not resign if the censure motion is passed.
- **Cut Motion:** A cut motion is used to oppose any demand in the financial bill brought by the government.

Financial Functions

Parliament is the ultimate authority when it comes to finances. The Executive cannot spend a single pie without parliamentary approval.

- The Union Budget prepared by the Cabinet is submitted for approval by the Parliament. All proposals to impose taxes should also be approved by the Parliament.
- There are two standing committees (Public Accounts Committee and Estimates Committee) of the Parliament to keep a check on how the executive spends the money granted to it by the legislature



Amending Powers

The Parliament has the power to amend the Constitution of India. Both Houses of the Parliament have equal powers as far as amending the Constitution is concerned. Amendments will have to be passed in both the Lok Sabha and the Rajya Sabha for them to be effective.

Electoral Functions

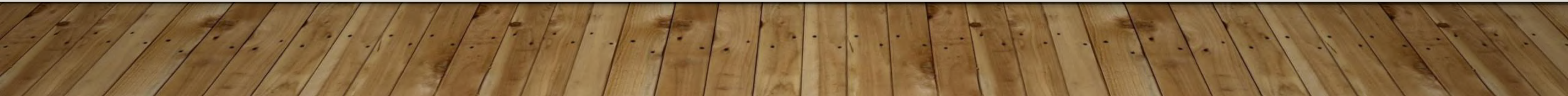
The Parliament takes part in the election of the President and the Vice President. The electoral college that elects the President comprises of, among others, the elected members of both Houses. The President can be removed by a resolution passed by the Rajya Sabha agreed to by the Lok Sabha

Judicial Functions

In case of breach of privilege by members of the House, the Parliament has punitive powers to punish them.

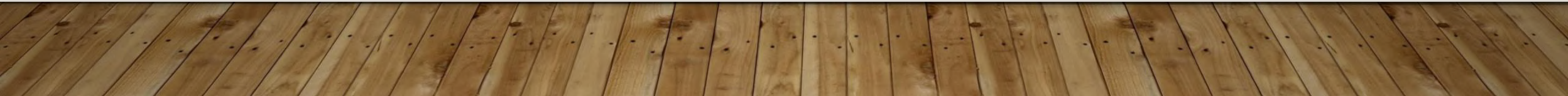
A breach of privilege is when there is an infringement of any of the privileges enjoyed by the MPs.

- A privilege motion is moved by a member when he feels that a minister or any member has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts.
- In the parliamentary system, legislative privileges are immune to judicial control.
- The power of the Parliament to punish its members is also generally not subject to judicial review.
- Other judicial functions of the Parliament include the power to impeach the President, the Vice President, the judges of the Supreme Court, High Courts, Auditor-General, etc.



Other powers/functions of the Parliament

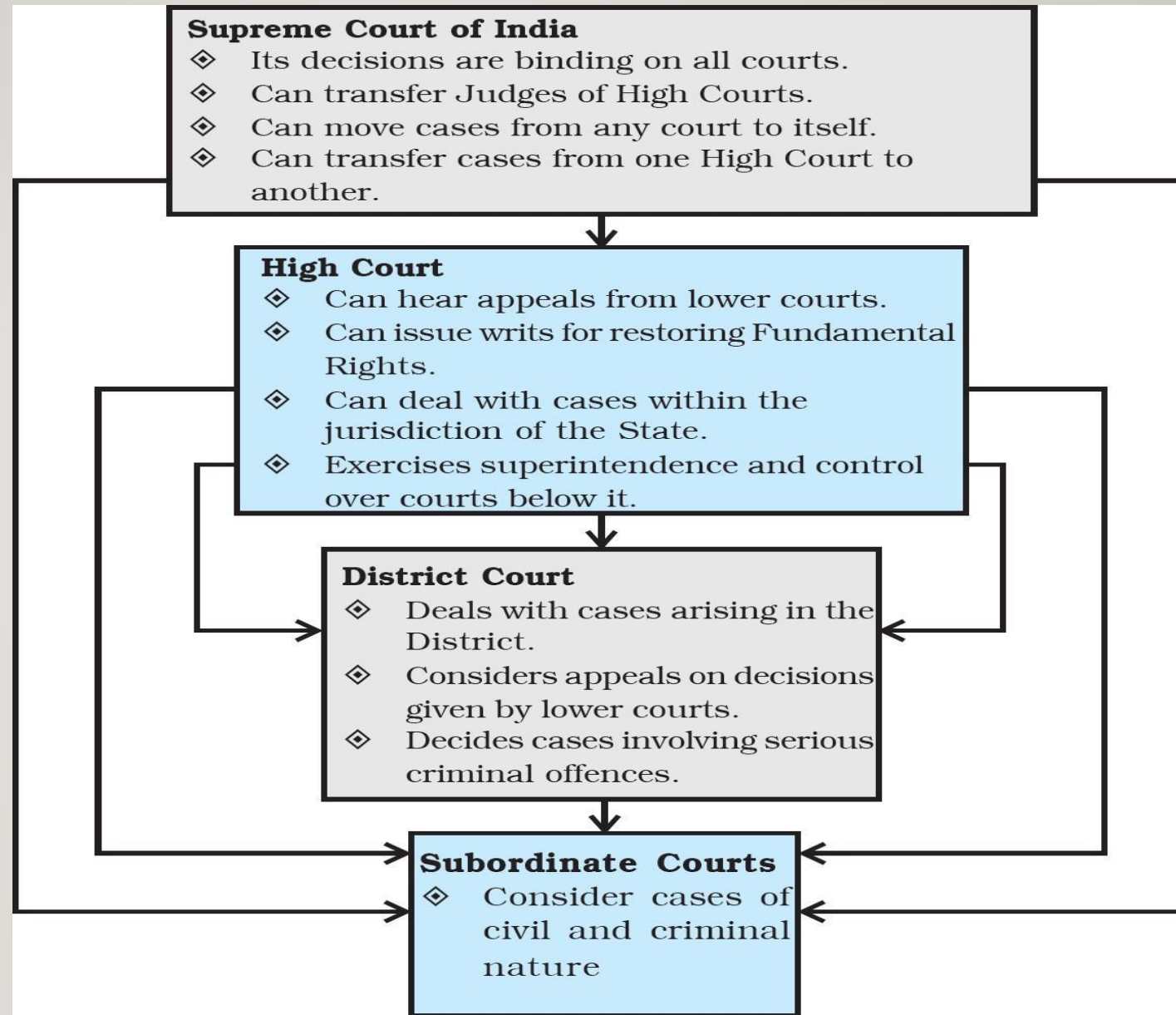
- Issues of national and international importance are discussed in the Parliament. The opposition plays an important role in this regard and ensures that the country is aware of alternate viewpoints.
- A Parliament is sometimes talked of as a 'nation in miniature'.
- In a democracy, the Parliament plays the vital function of deliberating matters of importance before laws or resolutions are passed.
- The Parliament has the power to alter, decrease or increase the boundaries of states/UTs.
- The Parliament also functions as an organ of information. The ministers are bound to provide information in the Houses when demanded by the members



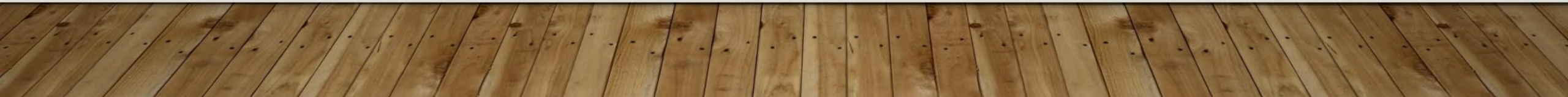
INDIAN JUDICIARY

- Indian administration is guided by three pillars – Legislature, Executives, and Judiciary
- The judiciary is that branch of the government that interprets the law, settles disputes and administers justice to all citizens.
- The judiciary is considered the watchdog of democracy, and also the guardian of the Constitution.

Indian Judiciary – Structure



- Apart from the above structure, there are also two branches of the legal system, which are:
 1. **Criminal Law:** These deal with the committing of a crime by any citizen/entity. A criminal case starts when the local police file a crime report. The court finally decides on the matter.
 2. **Civil Law:** These deal with disputes over the violation of the Fundamental Rights of a citizen
- The functions of the judiciary in India are:
 1. **Administration of justice:** The chief function of the judiciary is to apply the law to specific cases or in settling disputes. When a dispute is brought before the courts it 'determines the facts' involved through evidence presented by the contestants. The law then proceeds to decide what law is applicable to the case and applies it.
 2. **Creation of judge-case law:** In many cases, the judges are not able to, or find it difficult to select the appropriate law for application. In such cases, the judges decide what the appropriate law is on the basis of their wisdom and common sense. In doing so, judges have built up a great body of 'judge-made law' or 'case law.'



3. Guardian of the Constitution: The highest court in India, the SC, acts as the guardian of the Constitution. The conflicts of jurisdiction between the central government and the state governments or between the legislature and the executive are decided by the court. Any law or executive order which violates any provision of the constitution is declared unconstitutional or null and void by the judiciary. This is called 'judicial review.'

4. Protector of Fundamental Rights: The judiciary ensures that people's rights are not trampled upon by the State or any other agency. The superior courts enforce Fundamental Rights by issuing writs.

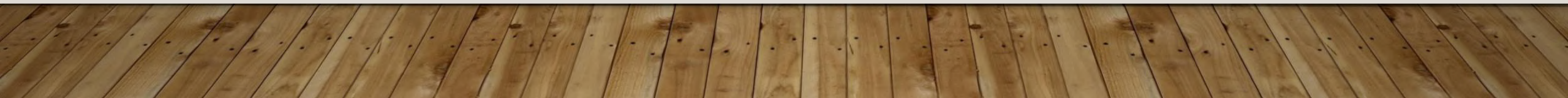
5. Supervisory functions: The higher courts also perform the function of supervising the subordinate courts in India

6. Advisory functions: The SC in India performs an advisory function as well. It can give its advisory opinions on constitutional questions. This is done in the absence of disputes and when the executive so desires

7. Administrative functions: Some functions of the courts are non-judicial or administrative in nature. The courts may grant certain licenses, administer the estates (property) of deceased persons and appoint receivers. They register marriages, appoint guardians of minor children and lunatics.

8. Special role in a federation: In a federal system like India's, the judiciary also performs the important task of settling disputes between the centre and states. It also acts as an arbiter of disputes between states.

9. Conducting judicial enquiries: Judges normally are called to head commissions that enquire into cases of errors or omissions on the part of public servants.



MODULE IV

The State Executive (Article 153 – 167)

The state executive consists of

the Governor,

the Chief Minister,

the Council of Minister and

the Advocate General of the state.

The Governor (Article 152-162)

- The Governor is the head of the state.
- **Executive power** is vested in the Governor. The power can be exercised directly or through officers subordinate to them (Article 154).
- Article 164 provides that the **Chief Minister shall be appointed by the Governor** and other ministers are to be appointed by the Governor on the recommendations of the Chief Minister. They hold office 'during the pleasure of the Governor'.
- Power of Governor extends to grant pardons, etc., and to suspend, remit or commute sentences in certain cases. (Article 161)
- Governor is the **Chancellor of all the Universities.**

Qualifications of Governor (Article 157)

- (a) is a **citizen of India**,
- (b) has completed the age of **thirty-five years**.

Conditions of Governor's Office (Article 158)

- (1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State
- (2) The Governor shall not hold any other office of profit.
- (3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law

Appointment of the Governor (Article 155)

The Governor of a State is **appointed by the President** by warrant under their hand and seal.

Term of Office of the Governor (Article 156)

- (1) The Governor shall hold office during **the pleasure of the President**.
- (2) The Governor may, by writing under his hand addressed to the President, resign his office.
- (3) A Governor shall hold office for a term of **five years** from the date on which he enters upon his office.

POWERS OF THE GOVERNOR

- Executive power

-Under [Article 154 \(1\)](#) , the executive powers have been vested to the Governor and he can choose to exercise them either directly himself or indirectly through his Council of ministers.

-As such, the Governor makes important appointments of the state such as the Chief Minister and Council of Ministers, Chairman and members of State Public Service Commission, State election commissioner, Advocate General, Chief Justice of the High Court, District judges and the Vice chancellors of Universities.

-Under [Article 356](#), the Governor can recommend the President for the imposition of a State Emergency and during such emergency he/she enjoys extensive executive powers as an agent of the President. He/She runs the state administration by extending control over the subjects in the state list and deciding the policies and portfolios of the various ministers.

- **Financial power**

- No money bill can be introduced in the state legislature without prior approval of the Governor.
- The Contingency Fund of the state is at his/her disposal and he/she can make withdrawals out of it to meet unforeseen expenditures.
- He/She makes sure that the Annual state budget is discussed and put before the State Legislature

- **Legislative power**

- The Governor has the power to summon and prorogue both houses of the Legislature. He/She has to make sure that the maximum gap between the two sessions of the houses is 6 months.
- Under [Article 192](#), the Governor has the authority to disqualify any legislator who fails to comply with the conditions given under [Article 191](#).
- The Governor has to address the state legislature at the beginning of the first session every year and after the state assembly elections.
- The Governor can hold a bill and send it to the President for his consideration. Other than this, the Governor can either give assent to a bill or withhold it or send it back for reconsideration (except for money bills).

The Council of Ministers

- The Council of Ministers comprises the Chief Minister and other ministers.
- Council of Ministers with the Chief Minister at the head **aid and advise the Governor in the exercise of their functions**
- **The Council of Ministers are collectively responsible to the Legislative Assembly (Niyamasabha).** That is, the Council can remain in power as long as it enjoys the confidence of the LA.
- The importance of the Council of Ministers is that the **Governor cannot exercise his powers without the advice of the Council.**
- the total number of Ministers in the Council of Ministers, including the Chief Minister, **shall not exceed fifteen per cent of the total number of members of the Legislative Assembly.**

The Chief Minister

- The Chief Minister is the **head of the Council of Ministers** and is the **leader of the state**.
- The Chief Minister is **appointed by the Governor**. Usually the Governor appoints the leader of the party that enjoys the majority support of the Legislative Assembly as the CM.
- The CM like other ministers **needs to be a member of LA**. However, he need not to be a member of LA at the time of appointment.
- CM is the **leader of the LA**
- The CM enjoys the status of *primus inter pares* with respect to his Council of Ministers.

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- The Chief Minister is **appointed by the Governor**. Usually the Governor appoints the leader of the party that enjoys the majority support of the Legislative Assembly as the CM.
- The CM like other ministers **needs to be a member of LA**. However, he need not to be a member of LA at the time of appointment.
- CM is the **leader of the LA**
- The CM enjoys the status of ***primus inter pares*** with respect to his Council of Ministers.

Roles of Chief Minister

- Head of the Council of Ministers
- Channel of communication between the Council of Ministers and the Governor
- They are a member of the Inter-State Council and the Governing Council of NITI Aayog, both headed by the PM.

The Advocate General

- The Advocate-General is the State Government's chief legal advisor, and is its principal barrister in the Courts.
- They must be a person qualified to be appointed as a Judge of the High Court.
- They also perform other legal duties assigned to them by the Governor.
- Advocate-General is appointed by the President.

The person who is eligible to hold the office of advocate general in India must meet the following criteria:

1. He must be an Indian Citizen
2. He should be eligible to be appointed as the judge of the High Court; i.e. he must meet one of the following eligibility criteria:
 - o A barrister having experience of more than 5 years.
 - o A civil servant with an experience of more than 10 years along with an experience as a servant in Zila Court for at least 3 years.
 - o A pleader over 10 years in any high court
3. He shouldn't be more than 62 years of age as is the age qualification for a High Court Judge.

The State Legislature

The legislative assembly of each State shall consist of not more than 500 and not less than 60, members chosen by direct election from territorial constituencies in the State.

- The total number of members in the Legislative Council shall not exceed one third of the total number of members in the Legislative Assembly of that State
- One-twelfth shall be elected by persons who have been for at least three years graduates of any university in the territory of India
- One-twelfth shall be elected by persons who have been engaged in teaching in such educational institutions within the state at least 3 years.
- One-third shall be elected by the members of the LA of the state from amongst persons who are not members of the Assembly
- The remainder one-sixth shall be nominated by the Governor from persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service.

Qualification of Membership

1. A citizen of India
2. Completed 25 years of age
3. Qualified under a law of Parliament

Disqualification of Membership

1. Is of unsound mind or;
2. Holds any office of profit under any government—Union or State or;
3. Is an undischarged insolvent or;
4. Is not a citizen of India or voluntarily renounced the Indian citizenship or;
5. Disqualified under any law made by the Parliament.

Functions of the Legislature

- Basically the Legislature is also a law-making body.
- There are three lists – Union List, State List and the Concurrent List. The LA can make laws in State List.
- Along with the State Legislatures, the Parliament is empowered to make laws on the Concurrent List.

The State Judiciary

1) High Court

- A high court exist for each State. The high court is at the head of the judicial administration of a State.
- At present there are 25 high courts in India. (some High courts have jurisdiction over other states and Uts. Ex. Kerala High Court has jurisdiction over Lakshadweep).
- High court consists of a Chief Justice and other judges.
- High courts to be Courts of Record and so the high courts also enjoy the same powers as the Supreme Court.

Jurisdiction of High court

1. Writ Jurisdiction

- The high courts also have the **power to issue writs** like the Supreme Court. The writ issued by the high courts is **applicable only within its territorial limits**.

Writ Jurisdiction: A Comparison

Supreme Court	High Courts
Applicable throughout India	Applicable only within its territorial limits of the State
A fundamental right	Not a fundamental right
Only for enforcing fundamental right	Both for enforcing fundamental rights and other matters
In case fundamental right is infringed, no discretion to court	Have discretion

2. Power of Superintendence Over Subordinate Courts

- The high court has the power of 'superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction' (Article 227). It is noteworthy to mention here that the Supreme Court does not have the power to superintendence, although it is the apex court.

3. Appellate and Revisional Jurisdiction

- An aggrieved party can file an appeal to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

Module 5

Relations between the Union & the States

Legislative Relation

Distribution of legislative powers described in the VII Schedule of Indian Constitution

Union List - Only Union Parliament is empowered to make laws on the subjects given in the Union List. 98 subjects (after 42nd Constitution Amendment Act, 1976) (few important subjects listed below)

Defense, Foreign Relations, Post and Telegraph, International War and Peace, International Trade, Commerce, Citizenship, Coinage, Railway, Reserve Bank, International Debt, Atomic Energy, etc..

State List - Only State Legislature is empowered to make laws on the subjects given in the State List. 62 subjects (after 42nd Constitutional Amendment Act, 1976) (few important subjects listed below)

Public Health, Roads, Agriculture, Irrigation, Prisons, Local Administration, Distribution of Water, Police, etc..

Exception : In the case of Emergency, Union Parliament automatically grabs the power of legislation on the subjects given in the State List

Concurrent List - Both, Union Parliament as well as State Legislatures, have the the power of legislation on subjects given in the Concurrent List. 52 subjects (After the 42nd Constitutional Amendment Act, 1942) (few important subjects listed below)

Marriage, Divorce, News Papers, Trade Unions, Books, Press, Eatable Items, etc..

In case of disagreement, the legislation passed by Union Parliament shall prevail over the law passed by State Legislatures.

Residuary Powers : Article 248, Union Parliament shall make laws over the subjects not included in the above-given lists.

Administrative Relation

State's responsibility about the use of their executive powers – Article 256

Responsibility of the construction and maintenance of means of communication – Article 257 (2)

Responsibility of the protection of Railways – Article 257 (3)

Appointment of Governors by Centre – Article 155

Influence of Centre during National Emergency – Article 252

Influence of Centre during Constitutional Emergency – Article 356

To solve disputes regarding the distribution of water of inter – state rivers – Article 262

Protection of Federal property in the states

All India Services – Article 312

To establish Inter – State Council – Article 213

Direction for the welfare of Scheduled Tribes

Governor's discretionary power – Assam & Nagaland

Financial Relations

Custom and Export Duty

Income Tax

Corporation Tax

Estate Duty (Excluding Agriculture)

Excise Duty on Tobacco and other intoxicants

Succession Duty (Excluding Agriculture)

Inter - State Trade Tax, etc..

2 Sources of Revenue of State Governments

Taxes on agriculture, House Tax, Tax on Electricity, Toll Tax, Entertainment Tax, Tax on Boats, Tax on Vehicles, Tax on cattle and house-hold animals, Tax on Minerals, etc..

Grants to the States - Article 275

Appointment of Finance Commission - Article 280

5 Financial Emergency - Article 360

6 Provision of Comptroller and Auditor General

Finance Commission

- The finance commission of India came into existence in 1951. It was established under article 280 of Indian constitution by the president of India. It was formed to define the financial relations between the centre and the state. The financial commission act of 1951 states the terms of qualification, appointment and disqualification, the terms, eligibility and power of the finance commission.

Functions of Finance Commission

- The distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them and the allocation between the States of the respective shares of such proceeds.
- The measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of 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 Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State

Powers of Commission

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

Emergency Provision

WHAT IS AN EMERGENCY ?

- The term emergency maybe defined as a difficult situation arising suddenly and demanding immediate action by public authorities under powers specially granted to them by the Constitution.
- The Emergency provisions are contained in Part XVIII of the Constitution, from Articles 352 to 360.
- The rationality behind the incorporation of these provisions in the Constitution is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution.
- Dr. Ambedkar claimed that the Indian federation was unique in as much as in times of emergency it could convert itself into an entirely unitary state.
- The Constitution of India stipulates three types of emergency
 1. National Emergency (Article 352)
 2. State Emergency (Article 356)
 3. Financial Emergency (Article 360)

NATIONAL EMERGENCY (ARTICLE 352)

- If the President is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened due to,
 - War
 - External aggression
 - Armed Rebellion,
- He may by proclamation make a declaration to that respect of the whole of India or any part of India as may be specified.
- The proclamation of emergency made under clause (1) maybe varied or revoked by the president in a subsequent proclamation.
- The President shall not issue a proclamation under cl.(1) unless a decision of the Union Cabinet that such a proclamation maybe issued has been communicated to him in writing.
- Such a proclamation maybe made even before the actual occurrence of event if the president is satisfied that there is imminent danger.

SO FAR HOW MANY NATIONAL EMERGENCIES?

- There have been three proclamation of National Emergency in India,
 - In 1962- the time of Chinese Aggression
 - In 1971- the wake of war with Pakistan
 - In 1975- on the grounds of Internal Disturbance

CONSEQUENCES OF PROCLAMATION OF EMERGENCY

o Article 353

- Though the State Legislature and Government are not suspended the executive Legislative and Financial powers rest in the centre.
- The union Parliament acquires the power to legislate on any subject included in the list. (Article 353)
- But such emergency legislation ceases to have any effect at the expiry of six months.
- The State can make law but it is subject to the overriding power of the union Parliament.

o Article 354

This Article provides for acquisition of powers by Union Executive related to distribution of revenue.

o Article 83(2)

While a proclamation of Emergency is in operation, life of Parliament can be extended by law for a period not exceeding one year and not beyond a period of six months after the proclamation has ceased to operate.

o Article 358

- The freedoms guaranteed by Article 19 are automatically suspended, after the proclamation of emergency.
- The state can make any law or take any executive action abridging or taking away the fundamental rights under art.19.
- But any incompetent law will cease to have effect as soon as proclamation ceases to operate.
- However, if the emergency is declared under armed rebellion, freedoms under art.19 will not be suspended (44th amendment).
- Also art.358 will only protect “emergency laws” from being challenged and not other laws.

o Article 359

- During proclamation of emergency, the President may by Order declare that right to move any court for the enforcement of rights conferred by part III (except art.20 and 21) or all proceedings pending in the court, for a period not exceeding the proclamation.



STATE EMERGENCY (ARTICLE 356)


- Article 355 imposes a duty on the Centre to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. It is this duty in the performance of which the Centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in state. This is popularly known as 'President's Rule'.
- Article 356 says that if the President on receipt of a report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, he may issue a proclamation.
- Article 365 says that whenever a state fails to comply with or to give effect to any direction from the Centre, it will be lawful for the president to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution.
- A proclamation imposing President's Rule must be approved by both the Houses of Parliament within two months from the date of its issue.
- If approved by both the Houses of Parliament, the President's Rule continues for six months 6 . It can be extended for a maximum period of three years 7 with the approval of the Parliament, every six months.
- Every resolution approving the proclamation of President's Rule or its continuation can be passed by either House of Parliament only by a simple majority.

- The President acquires the following extraordinary powers when the President's Rule is imposed in a state:
 1. He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.
 2. He can declare that the powers of the state legislature are to be exercised by the Parliament.
 3. He can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state.

44th Amendment, 1978

- This amendment had amended Article 356 and restricted its scope. It substitutes the word "Six Months" for the word "one year" as it existed originally.
- Thus, it provided that, beyond one year, the President's Rule can be extended by six months at a time only when the following two conditions are fulfilled:
 1. a proclamation of National Emergency should be in operation in the whole of India, or in the whole or any part of the state; and
 2. the Election Commission must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.

FINANCIAL EMERGENCY (ARTICLE 360)

- The President is authorized by Article 360 to declare by proclamation financial emergency if he is satisfied that the financial stability or credit of India or any part of its territory is threatened.
 - It has to be laid before both houses of Parliament and ceases to operate at the expiration of 2 months, unless approved by the resolution of two houses.
 - Once approved it may continue indefinitely until revoked or varied.
 - During the operation of financial emergency, the executive authority of the union extends to the giving of directions to any state to observe certain financial propriety or any directions deemed necessary.
 - These directions may include reduction of salaries or allowances of all those serving a state and reserving for the president's consideration all money bills and other bills under Art.207 after these are passed by the state legislature.
 - The president may also direct reduction in salaries of all those serving in connection with the affairs of Union including Judges of the Supreme Court and the High Courts.
 - There has been no occasion for the promulgation of financial emergency in India.
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Freedom of trade, commerce, and intercourse

Article 301 talks about the freedom of trade, commerce, and intercourse throughout the country. It states that subject to other provisions under Part XIII, the freedom to carry on these activities shall be free. Freedom here means the right to freedom of movement of persons, property, things that may be tangible or intangible, unobstructed by barriers within the state (intra-scale) or across the states (inter-scale).

- The three main words used in this article are:
- Trade
- Trade means buying and selling of goods for profit-making purposes. Under Article 301, the word trade means an actual, organized & structured activity with a definite motive or purpose. For the motive of Article 301, the word trade is interchangeably used with business.

Commerce

- Commerce means transmission or movement by air, water, telephone, telegraph or any other medium; what is essential for commerce under Article 301 is transportation or transmission and not gain or profit.
- Intercourse
- It means the movement of goods from one place to another. It includes both commercial and non-commercial movements and dealings. It would include travel and all forms of dealing with others.

Restrictions on trade, commerce, and intercourse among States

- Clause (2) of [Article 304](#) guides the States to impose certain reasonable restrictions on the freedom of trade, commerce, and intercourse as may suit the public interest. But no Bill or Amendment for such shall be put forward in the State Legislature without the prior approval of the President. A law passed by the State to regulate interstate trade must thus fulfill the following conditions-
- An approval from the President must be taken beforehand,
- The restriction must be sensible and rational,
- It must be in the interests of the public.

Comptroller and Auditor General of India

Duties and Powers of the CAG

The Comptroller and Auditor General of India has an important constitutional duty and role in relation to the accounts of the Union Government, of the State Governments and of the Union Territory (with a Legislative Assembly).

The functions of Comptroller & Auditor General are derived in the main from the provisions of Articles 149, 150 and 151 of the Constitution of India.

Appointment and Removal of CAG

The Constitution safeguards the independence and freedom of the CAG in a variety of ways.

Article 148 of the Constitution provides that the CAG shall be appointed by the President by warrant under his hand and seal and that he can only be removed from office, if need arises, in like manner and on the like ground as a judge of the Supreme Court.

On his retirement, resignation or removal, the CAG would not be eligible for any other office under the Government.

The pay and allowances of the CAG and the administrative expenses of his office shall be charged upon the Consolidated Fund of India.

Public Services

- Public Services (alternatively known as **government services**) play a key role in smooth functioning of democracy in India.
- The public services in India are classified into three categories – all-India services, Central services and state services.

All-India Services (AIS)

All-India services are those services which are **common to both Central and state governments**. The members of these services occupy top positions (or key posts) under both the Centre and the states and serve them by turns.

- Indian Administrative Service (IAS)
- Indian Police Service (IPS)
- Indian Forest Service (IFS)

Public Services

Central Services

The personnel of Central services work under the exclusive jurisdiction of the **Central government**. They hold specialized (functional and technical) positions in **various departments of the Central government**.

Examples:

- Central Engineering Service
- Central Health Service
- Central Information Service
- Indian Economic Service
- Indian Foreign Service
- Indian Revenue Service

Public Services

State Services

The personnel of state services work under **the exclusive jurisdiction of the state government**. They hold different positions (general, functional and technical) in the departments of the state government. However, they occupy **lower positions** (in the administrative hierarchy of the state) than those held by the members of all-India services.

Examples:

- Civil Service
- Police Service
- Forest Service
- Agricultural Service
- Medical Service

Public Service Commission

- Create appropriate standards to select personnel to public services.
- Three types of PSCs:
 - Union Public Service Commission (UPSC)
 - State Public Service Commission (SPSC). Ex.: KPSC
 - Joint Public Service Commission (JPSC)
- Union Public Service Commission (UPSC) to conduct examinations for recruitment to the "*All India Services*" (AIS) and the "*Higher Central Services*" (HCS) and to advise the President on disciplinary matters.
- State Public Service Commission in every state to conduct examinations for recruitment to state services and to advise the governor on disciplinary matters.

Administrative Tribunals

- In Administrative law, the term 'tribunal' is used in a significant sense and refers to only the **adjudicatory bodies** which lie outside the sphere of the ordinary judicial system.
- To institute an effective system of the **judiciary with fewer complexities**, the judicial powers are delegated to the administrative authorities, thus, giving rise to administrative tribunals or administrative adjudicatory bodies which holds **quasi-judicial features**.
- Established to avoid **regular court approach** by public servants.
- It deals with service matters and is vested with **limited jurisdiction** to decide a particular issue.

Administrative Tribunals

Characteristics

- Administrative tribunals must have **statutory origin** i.e. they must be created by any statute.
- They must have **some features of the ordinary courts** but not all.
- An administrative tribunal performs the **quasi-judicial** and judicial functions and is bound to act judicially in every circumstance.
- They are **not adhered by strict rules of evidence and procedure**.
- Administrative tribunals are **independent** and not subject to any administrative interference
- In the procedural matters, an administrative tribunal possesses the **powers of a court** to summon witnesses, to administer oaths and to compel the production of documents, etc.
- These tribunals are bound to abide by the **principle of natural justice**.

Amendment of Constitution

- **Amending the Constitution of India** is the process of **making changes** to the nation's fundamental law or supreme law.
- This procedure **ensures the sanctity of the Constitution of India** and keeps a check on arbitrary power of the Parliament of India.
- These are **not easy provisions** and require compliance with other provisions.
- **Three forms** of amendments:
 - Simple majority in Parliament
 - Special majority in Parliament
 - Special majority of Parliament and the total state.
- **105 amendments have been made in the Constitution till date.**

Amendment of Constitution

Noticeable Amendments [just for information]

- 42nd Amendment (1977) : during Indira Gandhi – Emergency . 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.
- 61st Amendment (1989) : Reduce age for voting rights from 21 to 18.
- 101st Amendment (2017): Introduced GST
- 103rd Amendment (2019): 10% reservation for Economically Backward Classes