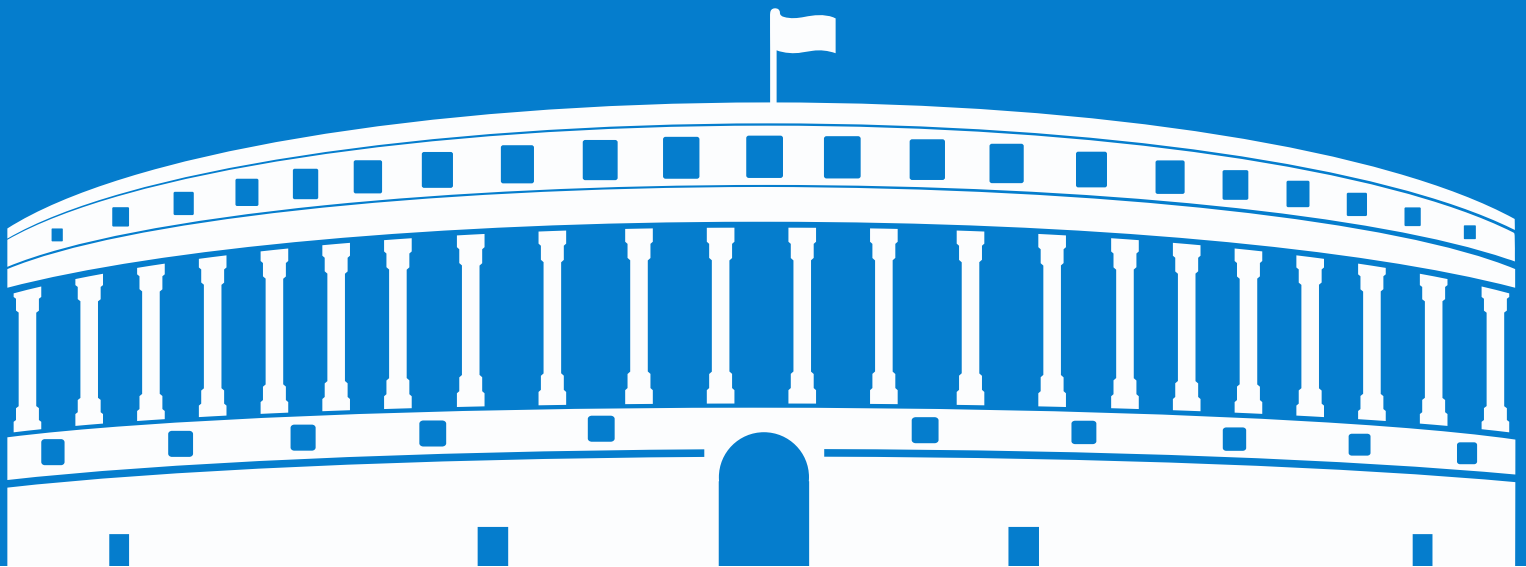


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# Polity and Constitution

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## Syllabus

- Indian Constitution— historical underpinnings, evolution, features, amendments, significant provisions and basic structure.
- Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein.
- Separation of powers between various organs dispute redressal mechanisms and institutions.
- Comparison of the Indian constitutional scheme with that of other countries.
- Parliament and State legislatures—structure, functioning, conduct of business, powers & privileges and issues arising out of these.
- Structure, organization and functioning of the Executive and the Judiciary—Ministries and Departments of the Government; pressure groups and formal/informal associations and their role in the Polity.
- Salient features of the Representation of People's Act.
- Appointment to various Constitutional posts, powers, functions and responsibilities of various
- Constitutional Bodies.
- Statutory, regulatory and various quasi-judicial bodies.

## Previous Years Questions

2024

1. Examine the need for electoral reforms as suggested by various committees with particular reference to “one nation – one election” principle.
2. Explain and distinguish between Lok Adalats And Arbitration Tribunals. Whether they entertain civil as well as criminal cases?
3. “The growth of cabinet system has practically resulted in the marginalisation of the parliamentary supremacy.” Elucidate.
4. “The duty of the Comptroller and Auditor General is not merely to ensure the legality of expenditure but also its propriety.” Comment.
5. Analyse the role of local bodies in providing good governance at local level and bring out the pros and cons merging the rural local bodies with the urban local bodies.
6. What are the aims and objects of recently passed and enforced, The Public Examination (Prevention of Unfair Means) Act, 2024? Whether University/State Education Board examinations, too, are covered under the Act?.

7. Right to privacy is intrinsic to life and personal liberty and is inherently protected under Article 21 of the constitution. Explain. In this reference discuss the law relating to D.N.A. testing of child in the womb to establish its paternity.
8. What changes has the Union Government recently introduced in the domain of Centre-State relations? Suggest measures to be adopted to build the trust between the Centre and the States and for strengthening federalism.
9. Explain the reasons for the growth of public interest litigation in India. As a result of it, has the Indian Supreme Court emerged as the world's most powerful judiciary?.
10. Discuss India as a secular state and compare with the secular principles of the US constitution.

2023

1. "Constitutionally guaranteed judicial independence is a prerequisite of democracy." Comment.
2. Who are entitled to receive free legal aid? Assess the role of the National Legal Services Authority (NALSA) in rendering free legal aid in India.
3. "The states in India seem reluctant to empower urban local bodies both functionally as well as financially." Comment.
4. Compare and contrast the British and Indian approaches to Parliamentary sovereignty.
5. Discuss the role of Presiding Officers of state legislatures in maintaining order and impartiality in conducting legislative work and in facilitating best democratic practices.
6. "The Constitution of India is a living instrument with capabilities of enormous dynamism. It is a constitution made for a progressive society." Illustrate with special reference to the expanding horizons of the right to life and personal liberty.
7. Explain the constitutional perspectives of Gender Justice with the help of relevant Constitutional Provisions and case laws.
8. Account for the legal and political factors responsible for the reduced frequency of using Article 356 by the Union Governments since mid 1990s.
9. Explain the significance of the 101st Constitutional Amendment Act. To what extent does it reflect the accommodative spirit of federalism?
10. Explain the structure of the Parliamentary Committee system. How far have the financial committees helped in the institutionalisation of Indian Parliament?

2022

1. The most significant achievement of modern law in India is the constitutionalization of environmental problems by the Supreme Court. Discuss this statement with the help of relevant case laws.

2. Right of movement and residence throughout the territory of India are freely available to Indian citizens, but these rights are not absolute.
3. Discuss the role of the Vice President of India as the chairman of Rajya Sabha.
4. Discuss the role of the National Commission for Backward Classes in the wake of its transformation from a statutory body to a constitutional body.
5. Discuss the procedures to decide the disputes arising out of the election of a Member of the Parliament or State Legislature under The Representation of the People Act, 1951. What are the grounds on which the election of any returned candidate may be declared void? What remedy is available to the aggrieved party against the decision? Refer to the case laws.
6. Discuss the essential conditions for the exercise of the legislative powers by the Governor. Discuss the legality of the re-promulgation of ordinances by the Governor without placing them before the Legislature.
7. While the national political parties in India favour centralisation, the regional parties are in favour of State autonomy.” Comment.
8. Critically examine the procedures through which the Presidents of India and France are elected.
9. Discuss the role of the Election Commission of India in light of the evolution of the Model Code of Conduct.

2021

1. How have the recommendations of the 14th Finance Commission of India enabled the States to improve their fiscal position?
2. “Besides being a moral imperative of a Welfare State, primary health structure is a necessary precondition for sustainable development.”
3. “‘Earn while you learn’ scheme needs to be strengthened to make vocational education and skill training meaningful”
4. Though the Human Rights Commissions have contributed immensely to the protection of human rights in India, yet they have failed to assert themselves against the mighty and powerful. Analysing their structural and practical limitations, suggest remedial measures.
5. Has digital literacy, particularly in rural areas, coupled with lack of Information and Communication Technology (ICT) accessibility hindered socio-economic development? Examine with justification.
6. ‘Constitutional Morality’ is rooted in the Constitution itself and is founded on its essential facets. Explain the doctrine of ‘Constitutional Morality’ with the help of relevant judicial decisions.
7. Analyse the distinguishing features of the notion of the Right to Equality in the Constitutions of the USA and India.

8. Explain the constitutional provisions under which Legislative Councils are established. Review the working and current status of Legislative Councils with suitable illustrations.

2020

1. “There is a need for simplification of procedure for disqualification of persons found guilty of corrupt practices under the Representation of Peoples Act”. Comment. (10m, 150words)
2. “Recent amendments to the Right to Information Act will have profound impact on the autonomy and independence of the Information Commission”. Discuss. (10m, 150words)
3. How far do you think cooperation, competition, and confrontation have shaped the nature of federation in India? Cite some recent examples to validate your answer. (10m, 150words)
4. The judicial systems in India and UK seem to be converging as well as diverging in recent times. Highlight the key points of convergence and divergence between the two nations in terms of their judicial practices. (10m, 150words)
5. ‘Once a Speaker, Always a Speaker’! Do you think this practice should be adopted to impart objectivity to the office of the Speaker of Lok Sabha? What could be its implications for the robust functioning of parliamentary business in India? (10m, 150words)
6. Indian Constitution exhibits centralising tendencies to maintain unity and integrity of the nation. Elucidate in the perspective of the Epidemic Diseases Act, 1897; The Disaster Management Act, 2005 and recently passed Farm Acts. (15m, 250words)
7. Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of large number of public interest petitions praying for issuing guidelines to executive authorities. (15m, 250words)
8. The strength and sustenance of local institutions in India has shifted from their formative phase of ‘Functions, Functionaries and Funds’ to the contemporary stage of ‘Functionality’. Highlight the critical challenges faced by local institutions in terms of their functionality in recent times. (15m, 250words)
9. Rajya Sabha has been transformed from a ‘useless stepney tyre’ to the most useful supporting organ in past few decades. Highlight the factors as well as the areas in which this transformation could be visible. (15m, 250words)
10. Which steps are required for constitutionalization of a Commission? Do you think imparting constitutionality to the National Commission for Women would ensure greater gender justice and empowerment in India? Give reasons. (15m, 250words)

2019

1. On what grounds a people's representative can be disqualified under the Representation of People Act, 1951? Also mention the remedies available to such person against his disqualification.
2. "Parliament's power to amend the Constitution is a limited power and it cannot be enlarged into absolute power." In the light of this statement explain whether Parliament under Article 368 of the Constitution can destroy the Basic Structure of the Constitution by expanding its amending power?
3. "The reservation of seats for women in the institutions of local self- government has had a limited impact on the patriarchal character of the Indian Political Process." Comment.
4. "The Attorney-General is the chief legal adviser and lawyer of the Government of India." Discuss
5. Do you think that constitution of India does not accept principle of strict separation of powers rather it is based on the principle of 'checks and balance'?
6. From the resolution of contentious issues regarding distribution of legislative powers by the courts, 'Principle of Federal Supremacy' and 'Harmonious Construction' have emerged. Explain.
7. What can France learn from the Indian Constitution's approach to secularism?

2018

1. How far do you agree with the view that tribunals curtail the jurisdiction of ordinary courts? In view of the above, discuss the constitutional validity and competency of the tribunals in India?
2. India and USA are the two large democracies. Examine the basic tenets on which the two political systems are based.
3. How is the Finance Commission of India constituted? What do you know about the terms of reference of the recently constituted Finance Commission? Discuss.
4. Assess the importance of the Panchayat system in India as a part of local government. Apart from government grants, what sources the Panchayats can look out for financing development projects?
5. Multiplicity of various commissions for the vulnerable sections of the society leads to problems of overlapping jurisdiction & duplication of functions. Is it better to merge all commissions into an umbrella human rights commission? Argue your case.
6. In the light of recent controversy regarding the use of Electronic Voting Machine (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India?
7. Whether National Commission for Scheduled Castes (NCSC) can enforce the implementation of constitutional reservation for the Scheduled Castes in the religious minority institutions? Examine.

8. Under what circumstances can the Financial Emergency be proclaimed by the President of India? What consequences follow when such a declaration remain in force?
9. Why do you think the committees are considered to be useful for parliamentary work? Discuss, in this context, the role of the Estimates Committee.
10. "The Comptroller and Auditor General (CAG) has a very vital role to play." Explain how this is reflected in the method and terms of his appointment as well as the range of powers he can exercise.
11. Whether the Supreme Court Judgment (July 2018) can settle the political tussle between the Lt.Governor and elected government of Delhi? Examine.

2017

1. Explain the salient features of the constitution (One Hundred and First Amendment) Act, 2016. Do you think it is efficacious enough 'to remove cascading effect of taxes and provide for common national market for goods and services'?
2. Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy.
3. The Indian Constitution has provisions for holding a joint session of the two houses of the Parliament. Enumerate the occasions when this would normally happen and also the occasions when it cannot, with reasons thereof.
4. To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful?
5. "The local self government system in India has not proved to be effective instrument of governance". Critically examine the statement and give your views to improve the situation.
6. Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India.
7. 'Simultaneous election to the Lok Sabha and the State Assemblies will limit the amount of time and money spent in electioneering but it will reduce the government's accountability to the people' Discuss.
8. How do pressure groups influence Indian political process? Do you agree with this view that informal pressure groups have emerged as powerful as formal pressure groups in recent years?

2016

1. Exercise of CAG's powers in relation to the accounts of the Union and the States is derived from Article 149 of the Indian Constitution. Discuss whether audit of the Government's policy implementation could amount to overstepping its own (CAG) jurisdiction
2. Discuss each adjective attached to the word 'Republic' in the 'Preamble'. Are they defensible in the present circumstances?
3. What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution
4. Did the Government of India Act, 1935 lay down a federal constitution? Discuss.
5. What is quasi judicial body? Explain with the help of concrete examples.
6. Discuss the essentials of the 69th Constitutional Amendment Act and anomalies, if any, that have led to recent reported conflicts between the elected representatives and institution of Lieutenant Governor in the administration of Delhi. Do you think that this will give rise to a new trend in the functioning of the Indian Federal Politics?
7. To what extent is Article 370 of the Indian Constitution, bearing marginal note "Temporary provision with respect to the State of Jammu and Kashmir", temporary? Discuss the future prospects of this provision in the context of Indian polity.
8. "The Indian party system is passing through a phase of transition which looks to be full of contradictions and paradoxes." Discuss.

2015

1. Khap panchayats have been in the news for functioning as extra-constitutional authorities, often delivering pronouncements amounting to human rights violations. Discuss critically the actions taken by the legislative, executive and the judiciary to set the things right in this regard.
2. Resorting to ordinances has always raised concern on violation of the spirit of separation of powers doctrine. While noting the rationales justifying the power to promulgate ordinances, analyse whether the decisions of the Supreme Court on the issue have further facilitated resorting to this power. Should the power to promulgate the ordinances be repealed?
3. What are the major changes brought in the Arbitration and Conciliation Act, 1996 through the recent Ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss.
4. Does the right to clean environment entail legal regulation on burning crackers during Diwali? Discuss in the light of Article 21 of Indian Constitution and Judgement(s) of the Apex court in this regard
5. Discuss the possible factors that inhibit India from enacting for its citizen a uniform civil code as provided for in the Directive Principles of State Policy.



6. The concept of cooperative federalism has been increasingly emphasised in recent years. Highlight the drawbacks in the existing structure and the extent to which cooperative federalism would answer the shortcomings.
7. In absence of well-educated and organised local level government system, 'Panchayats' and 'Samitis' have remained mainly political institutions and not effective instruments of governance. Critically discuss.

2014

1. What do you understand by the concept "freedom of speech and expression"? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of expression? Discuss
2. Instances of President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time limit specified for the President to accept/reject such petitions? Analyse.
3. National Human Rights Commission (NHRC) in India can be most effective when its tasks are adequately supported by other mechanisms that ensure the accountability of a government. In light of the above observation assess the role of NHRC as an effective complement to the judiciary and other institutions in promoting and protecting human rights standards.
4. Starting from inventing the 'basic structure' doctrine, the judiciary has played a highly proactive role in ensuring that India develops into a thriving democracy. In light of the statement, evaluate the role played by judicial activism in achieving the ideals of democracy.
5. Though the federal principle is dominant in our Constitution and that principle is one of its basic features, but it is equally true that federalism under the Indian Constitution leans in favour of a strong Centre, a feature that militates against the concept of strong federalism. Discuss.
6. The 'Powers, Privileges and Immunities of Parliament and its Members' as envisaged in Article 105 of the Constitution leave room for a large number of un-codified and un-enumerated privileges to continue. Assess the reasons for the absence of legal codification of the 'parliamentary privileges'. How can this problem be addressed?

2013

1. The role of individual MPs (Members of Parliament) has diminished over the years and as a result healthy constructive debates on policy issues are not usually witnessed. How far can this be attributed to the anti-defection law which was legislated but with a different intention?

2. Discuss Section 66A of IT Act, with reference to its alleged violation of Article 19 of the Constitution
3. Recent directives from Ministry of Petroleum and Natural Gas are perceived by the 'Nagas' as a threat to override the exceptional status enjoyed by the State. Discuss in light of Article 371A of the Indian Constitution
4. 'The Supreme Court of India keeps a check on arbitrary power of the Parliament in amending the Constitution.' Discuss critically.
5. Constitutional mechanisms to resolve the inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss.
6. Pressure group politics is sometimes seen as the informal face of politics. With regards to the above, assess the structure and functioning of pressure groups in India.

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# Polity and Constitution

## Constitution

A Constitution of a state is a fundamental set of principles or established precedents according to which the state is governed. It outlines the organization, powers, and limits of government institutions, as well as the rights and duties of citizens.

It serves as the supreme law of the land, providing a framework for the functioning of the government, the protection of individual liberties, and the maintenance of social order.

## Importance of the Constitution

- **Power Distribution:** It lays down the functions for smooth governance. Governance basically involves three core functions - making laws, enforcing these laws and adjudicating on disputes arising in the process of enforcing these laws. According to the Indian Constitution
- **Checks and Balances:** The Indian Constitution has also laid down an effective mechanism of checks and balances between the three organs of governance, to ensure that none of the three become too powerful
- **Fundamental Regulations and Principles:** The Constitution is the embodiment of fundamental regulations and principles according to which the country, state, and its people are supposed to work.
- **Smooth functioning of the Nation:** rules and regulations lay down the base of the nation so that it can run without any threat of a civil breakdown
- **Apex body:** A Constitution is superior to all the laws of the country which means any law or provision that is circulated in the nation is passed down by the constitution itself.
- **Goals of a Country:** The Constitution lays down the national goals of any country such as, Democracy, secularism, Socialism, and National Integration

- **Limitations on government:** The Constitution imposes limitations on what a government can impose on its citizens. E.g. fundamental rights.
- **Source of Authority for Government Formation:** The Indian Constitution clearly specifies that India will have a democratic form of government indicating that the people of the country will choose the Government.
- **Relation between Centre and States:** E.g., 7th Schedule which defines domains of both centre and states. The role of Government is derived as per the provision of the constitution.

## Constitutionalism

- Constitutionalism is the doctrine that a government's authority is determined by a body of laws or a constitution. It refers to efforts to prevent arbitrary government. It prevents the government from turning the democratic setup into dictatorial and authoritative.
- Constitutionalism means limited government or limitation on government. Constitutionalism recognizes the need for a government with powers but at the same time insists that limitations be placed on those powers.
- It ensures that the freedoms of the individual are given primacy, and the State does not encroach upon the liberty of the citizen.

## Basic Elements of Constitutionalism

- **Popular Sovereignty:** Public is the source of all government authority. The legitimacy of any power is derived from the consent of the people.
- **Separation of Powers:** Power is not concentrated in any one organ of the state. It's diffused among legislature, executive and judiciary.
- **Responsible and Accountable Government:** The government assumes power on behalf of the public for the benefit of the public and hence is responsible and accountable to the public which can vote it out in free and fair elections.
- **Rule of Law:** Rule of law denotes a government of laws and not of men.

- **Independent Judiciary:** Independent judiciary maintains the supremacy of the Constitution, and upholds Individual rights
- **Ensure and Respect Individual Rights.** The incorporation of the rights of individuals in the Constitution in the form of Fundamental rights is a constraint on the powers of government.
- **Civilian control of the Military:** The democratically elected government is allowed to govern and control the military, hence limiting the power of armed forces.
- **Police governed by Law and Judicial Control:** Constitutionalism requires the police to honour and respect the rights, dignity and freedom of individuals including wrongdoers and people suspected of offence. Every person is presumed innocent until proven guilty subject to some exceptions.

## Acceptance of Constitutionalism in India

- **S.R. Chaudhuri v. State of Punjab (2001):** The Supreme Court said the mere existence of a Constitution, by itself, does not ensure constitutionalism. Constitutional restraints must not be ignored if found inconvenient to suit "political expediency". We should not allow the erosion of the principles of constitutionalism.
- **New India Assurance Company Ltd. v. Nusli Neville Wadia (2007):** The Court said that "For proper interpretation of Constitutional provisions not only the basic principles of natural justice have to be borne in mind, but also principles of constitutionalism involved therein."
- **IR Coehlo versus the state of Tamil Nadu:** the court held that "constitutionalism is a legal principle that requires control over the exercise of government power to ensure that the democratic principles on which the government is formed shall never be destroyed."

## Salient Features of the Indian Constitution

- **Longthiest Written Constitution:** It consists of 448 Articles divided into 25 parts and 12 schedules.

- **Drawn from Various Sources:** like the Government of India Act, 1935, the USA's constitution, the Irish constitution, British constitution, among others.
- **Blend of Rigidity and Flexibility:** Some provisions can be amended by a simple majority of the Parliament while others need a special majority and ratification by at least half of the states.
- **Federal System with Unitary Bias:** The Constitution has federal features such as dual government polity, division of power, written constitution and supremacy of the Constitution. But it also has unitary features such as a strong Centre, single constitution, single citizenship and appointment of governors by the Centre etc.
- **Parliamentary Form of Government:** The features of Parliamentary government in India are: Presence of nominal and real executive, Majority party rule, Collective responsibility of executive to the legislature, Executive is a part of the legislative branch, Leadership of the Prime Minister or chief minister, Dissolution of the lower house.
- **Synthesis of Parliamentary Sovereignty and Judicial Supremacy:** Supremacy of Parliament is associated with the British Constitution and Judicial Supremacy is associated with the American Constitution. The Supreme Court can declare the laws of Parliament unconstitutional. The Parliament can amend major portions of the Constitution.
- **Integrated and Independent Judiciary:** A single system of courts enforces both central as well as state laws unlike in the USA.
- **Fundamental Rights.** Part three of the Constitution guarantees six fundamental rights to all citizens. The fundamental rights are meant to promote the idea of political democracy. Fundamental rights are subject to reasonable restrictions.
- **Fundamental Duties**
- **Secular State:** The Constitution does not uphold any religion as the official religion of India. The secular nature of the Indian state can be seen in Preamble, Article 14, Article 15, Article 16, Article 25, Article 26 and so on.
- **Universal Adult Franchise:** Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, religion, race, sex, literacy, wealth and so on.
- **Single Citizenship:** Unlike in the USA where each citizen is not only a citizen of the USA but also of a particular state, in India, the Constitution envisages single citizenship.

- **Independent Bodies:** The Constitution establishes certain independent bodies such as the Election Commission, CAG, UPSC etc
- **Emergency Provisions:** The constitution contains emergency provisions to deal with extraordinary situations. The Constitution envisages three types of emergency.
- **Three-Tier Government:** The 73rd and 74th Constitutional Amendment Act, 1992 added a third tier of government which is not found in any other Constitution of the world.

## Concept of the Session : Constitutional Morality

- Constitutional morality is the idea of respecting and upholding the core values and principles that are laid out in a country's Constitution, both in law and in daily life. It's not just about following the rules, but about following the spirit of the Constitution — the values of justice, equality, liberty, and democracy.
- The concept of constitutional morality was propounded by the British Classicist George Grote in the 19th century.
- He described CM as a “paramount reverence for the forms of the Constitution” of the land.
- In India, the term was first used by Dr. B.R. Ambedkar.
- The term "constitutional morality" is not explicitly mentioned in the Indian Constitution. However, the concept is inherent in the document's core principles, emphasising values like justice, equality, and liberty.

## Judgments Upholding Constitutional Morality

- **Kesavananda Bharati v. State of Kerala, 1973:** This case established the "basic structure doctrine," which essentially limits Parliament's power to amend the Constitution and ensures its core principles remain intact. This can be seen as an early instance of the court upholding the spirit of the Constitution.

- **Naz Foundation v. Government of NCT of Delhi, 2009:** This judgment decriminalised consensual same-sex relationships between adults. The court emphasised that "constitutional morality" should prevail over societal perceptions of morality, upholding individual rights.
- **Indian Young Lawyers Association v. State of Kerala (Sabarimala Case), 2018:** The court struck down the practice of excluding women of a certain age group from the Sabarimala temple. It emphasised that "constitutional morality" includes principles of justice, equality, liberty, and fraternity, which outweighed religious customs restricting women's entry.

## Challenges to Constitutional Morality in India

**Political Interference:** Political interference poses a significant challenge to constitutional morality in India, as elected representatives often attempt to influence judicial and legislative processes for partisan gains. This undermines the integrity of the constitution by promoting decisions that align with political interests rather than principles of justice, equality, and fairness. Such interference can erode the public's faith in democratic institutions and the rule of law, compromising constitutional values.

**Judicial Activism vs. Judicial Restraint:** The tension between judicial activism and judicial restraint remains a critical challenge in upholding constitutional morality. Judicial activism, where the judiciary takes an active role in shaping policies and laws, can sometimes overstep its boundaries and encroach upon the legislature's domain. On the other hand, judicial restraint, though essential to maintain the separation of powers, may at times result in the judiciary not addressing critical constitutional issues, leaving gaps in the protection of fundamental rights and liberties.

**Enforcement and Compliance:** The enforcement and compliance of constitutional provisions in India often face practical difficulties. While the constitution lays down clear guidelines for governance and citizens' rights, the challenge lies in translating these principles into effective action. A lack of strong enforcement mechanisms, delays in judicial processes, and inconsistent



implementation of laws can lead to widespread non-compliance, thus undermining the rule of law and constitutional morality.

## Way Forward

**Strengthening Institutions:** To promote constitutional morality, strengthening democratic institutions is crucial. This involves ensuring the independence of the judiciary, empowering legislative bodies, and enhancing the transparency and accountability of executive institutions. Strong institutions act as safeguards against misuse of power and ensure that the principles enshrined in the constitution are respected and upheld in practice.

**Promoting Civic Education:** Promoting civic education is essential to ensure that citizens understand their rights and responsibilities within the framework of the constitution. By fostering awareness of constitutional values such as justice, equality, and the rule of law, individuals can actively participate in democratic processes and hold institutions accountable, strengthening the moral fabric of the constitution.

**Enhancing Access to Justice:** Enhancing access to justice is fundamental to addressing disparities in legal recourse. This involves improving legal aid services, reducing case backlogs, and making the judicial process more accessible to marginalized and economically disadvantaged groups. Ensuring that all citizens have equal access to justice reinforces the principles of equality and fairness central to constitutional morality.

**Encouraging Ethical Leadership:** Encouraging ethical leadership across political, judicial, and administrative spheres is vital for upholding constitutional values. Leaders who are committed to integrity, fairness, and transparency set a positive example for the rest of society and help to foster a culture of respect for the rule of law and constitutional principles.

**Adapting to Evolving Challenges:** The constitution must be interpreted and applied in a way that adapts to evolving social, economic, and technological challenges. As new issues arise, such as digital privacy concerns or environmental crises, constitutional morality must evolve to ensure

that the rights and freedoms of citizens are protected in a rapidly changing world, while maintaining the core principles of justice and equality.

## Constitution, Constitutionalism , Constitutional Morality

- **Constitution:** The legal document that sets out the rules and framework of government.
- **Constitutionalism:** The principle or belief in limiting government power according to the Constitution to protect rights and ensure democratic governance.
- **Constitutional Morality:** The respect for and commitment to the constitutional values (like justice, equality, and liberty) in both government actions and the behavior of citizens.

### Summary with Example:

- The Constitution is like a rulebook (e.g., the Indian Constitution).
- Constitutionalism is the belief that the government should always follow this rulebook and respect the principles inside it.
- Constitutional Morality is the practice of living by these constitutional principles, respecting not just the written rules but also the core values of fairness, justice, and equality that the Constitution promotes.

### Article 368 and Basic Structure Doctrine

- Confers constituent power to the Parliament
- Constituent power refers to the power to amend the Constitution
- Constitutional Amendments under Art. 368
- Can only be introduced in Central Legislatures (A unitary form of Federalism)

- The majority of the total (irrespective of the vacancies/absentees) membership of each house (more than 50%) and the majority of two-thirds of the members of each house present and voting
- Must be passed by more than half of State Legislatures (including UTs with Legislatures) via a simple majority (In case of impacting the federal structure)
- Cannot be returned or rejected by the President

## Meaning of the Doctrine of Basic Structure

The Doctrine of the Basic Structure of the Constitution refers to the principle established by the Indian Judiciary that certain core principles and features of the Constitution are inviolable and cannot be amended or altered by the Parliament.

As per this doctrine, any amendment that seeks to alter or abolish these basic features is deemed unconstitutional and void.

**Thus, this doctrine acts as a safeguard against arbitrary or radical changes to the Constitution, ensuring its stability, continuity, and adherence to core constitutional values.**

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## Evolution of the Doctrine of Basic Structure

- The Doctrine of Basic Structure of the Constitution is not expressly provided for in the Constitution.
- It is a judicial doctrine, which has evolved through a series of judgments of the Supreme Court on cases related to the amending power of the Parliament.
- The debate regarding the scope of the power of the Parliament to amend the Constitution under Article 368 started way back in 1951.
- This issue initiated a tussle between the Legislature and the Judiciary, which ultimately culminated in the evolution of the doctrine of the Basic Structure of the Constitution.

### Shankari Prasad Case, 1951

In this case, the Supreme Court ruled that the term 'law' in Article 13 includes only ordinary laws and not Constitutional Amendment Acts. Thus, Parliament can take away or abridge any of the Fundamental Rights by enacting a Constitutional Amendment Act.

**Golak Nath Case, 1967**

In this case, the Supreme Court reversed its earlier stand and held that the term 'law' in Article 13 also includes Constitutional Amendment Acts. Hence, the Parliament cannot take away or abridge a Fundamental Right through a Constitutional Amendment Act.

**24th Constitutional Amendment Act, 1971**

To counter the Supreme Court verdict in the Golak Nath Case, the Parliament passed the 24th Constitutional Amendment Act, 1971, which amended Article 13 and Article 368. It declared that the Parliament can take away or abridge any of the Fundamental Rights through a Constitutional Amendment Act under Article 368 and such an act will not be considered a law under the meaning of Article 13.

**Kesavananda Bharati Case, 1973**

- In this case, the Supreme Court upheld the validity of the 24th Constitutional Amendment Act and stated that the Parliament can take away or abridge any of the Fundamental Rights.
- However, it laid down a new Doctrine of the Basic Structure of the Constitution, according to which, the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution.
- Thus, the overall position after the pronouncement of this judgment is that the Parliament cannot take away or abridge a Fundamental Right that forms a part of the 'basic structure' of the Constitution.

**42nd Constitutional Amendment Act, 1976**

As a reaction to the new Doctrine of Basic Structure, the Parliament enacted the 42nd Constitutional Amendment Act, of 1976. It amended Article 368 to declare that there is no

limitation on the constituent power of Parliament. Accordingly, no amendment can be questioned in the court of law on any ground, including that of the contravention of the Fundamental Rights.

**Minerva Mills Case, 1980**

In this case, the Supreme Court invalidated the above provision of the 42nd Constitutional Amendment Act of 1976 on the ground that it excluded Judicial Review which is a 'basic feature' of the Constitution.

**Waman Rao Case, 1981**

In this case, the Supreme Court adhered to the Doctrine of Basic Structure and clarified that it would apply to all the Constitutional Amendment Acts enacted after the date of the Kesavananda Bharati Case Judgment i.e., April 24, 1973.

**Present Position**

Thus, the present position is that the Parliament under Article 368 can amend any part of the Constitution, including Fundamental Rights, but without affecting the Basic Structure of the Constitution.

**Elements of the Basic Structure of the Indian Constitution**

The Supreme Court has not yet defined what constitutes the 'basic structure' of the Constitution. It has kept evolving the elements of basic structure through various judgments.

- Sovereign, Democratic, and Republican nature of the Indian Polity
- Secular Character of the Constitution
- Separation of powers between the legislature, the executive and the judiciary
- Federal character of the Constitution
- Unity and integrity of the nation
- Welfare State (socio-economic justice)
- Judicial Review

- Freedom and dignity of the individual
- Parliamentary system
- Rule of law
- Harmony and balance between Fundamental Rights and Directive Principles
- Principle of Equality
- Free and fair elections
- Independence of Judiciary
- Limited Power of Parliament to amend the Constitution
- Effective access to justice
- Principles (or essence) underlying fundamental rights
- Powers of the Supreme Court under Articles 32, 136, 141 and 142
- Powers of the High Courts under Articles 226 and 227
- Supremacy of the Constitution

## Significance of the Basic Structure Doctrine

- Preserves Constitutional Integrity
- Maintains Supremacy of the Constitution
- Upholds Constitutional Morality
- Prevents Authoritarianism
- Ensures Stability and Consistency
- Protects Democracy
- Protects Fundamental Rights
- Promotes Judicial Review
- Significance of the Basic Structure Doctrine

## Criticism of the Basic Structure Doctrine

While the Doctrine of Basic Structure of the Constitution has been instrumental in safeguarding constitutional integrity and protecting fundamental principles, it has also faced criticism from various quarters on the following grounds:

- **Lack of Constitutional Basis** – One common criticism is that the doctrine is not supported by any explicit provision in the Constitution.
- **Lack of Clarity** – This doctrine lacks precise definition and clarity regarding its elements. This ambiguity opens the door to judicial discretion and interpretation, leading to uncertainty and inconsistency in its application.
- **Inherent Subjectivity** – The determination of what constitutes the Basic Structure is inherently subjective and varies based on individual judges' interpretations which can lead to conflicting decisions by different benches of the judiciary.
- **Judicial Activism** – Critics argue that the Basic Structure doctrine vests excessive power in the judiciary, enabling judges to engage in judicial activism and make subjective determinations about constitutional amendments.
- **Violation of Separation of Powers** – By allowing the judiciary to intervene in the legislative and constituent power of the Parliament, it leads to a violation of the principle of the separation of powers.
- **Undemocratic Nature** – At times, it leads to undemocratic practices as it allows unelected judges to override decisions made by democratically elected representatives.
- **Stifling Constitutional Evolution** – By imposing rigid constraints on the amending power of the legislature, the doctrine may impede the evolution of the Constitution in response to new challenges and circumstances in response to changing societal needs.

## Analysis and Future of Basic Structure Doctrine:

- **Judiciary as the Primary Custodian:** The Judiciary is likely the more appropriate guardian of the Constitution compared to the Legislature.

- **Challenges Traditional Judicial Review:** The doctrine challenges conventional views on the scope of Judicial Review. It redefines the boundaries of what judicial review can entail.
- **Judiciary's Role in Protecting Democracy:** The doctrine represents the Judiciary's intervention to safeguard Indian democracy. The doctrine was a crucial step by the Judiciary to defend democratic values.
- **Reconsideration Requires 13 Judges:** Revisiting the Kesavananda Bharti case would need a minimum of 13 judges. Revising the doctrine involves a significant judicial process.
- **Immunity from Overruling:** The doctrine cannot be overturned through legitimate authority; only extra-constitutional means could attempt this, which are unlikely. The doctrine is protected from being invalidated by conventional legal methods.

## Conclusion

- **Unlimited Amendment Powers Undermine Constitution:** Granting Parliament unlimited authority to amend the Constitution would undermine its fundamental purpose.
- **Questionable Amendments for Ulterior Motives:** Governments have sometimes made controversial constitutional amendments to serve their own interests, particularly during the Emergency Era (42nd Amendment, 1976). Absolute
- **Power Corrupts:** Holding unchecked power can lead to corruption.
- **Respect for Democratic Mandate:** The Supreme Court must balance respect for the democratic mandate of the Government with upholding collective morality for the benefit of the people.

*Q. The 'basic structure' doctrine has gone a long way in ensuring that the State doesn't circumvent the implicit foundational principles enshrined in the constitution. Critically Comment*



## Preamble

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

JUSTICE, Social, Economic and Political;

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

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

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

In Our Constituent Assembly, this 26th day of November 1949, do HEREBY ADOPT, ENACT,  
and GIVE TO OURSELVES THIS CONSTITUTION

## Significance of Preamble of Indian Constitution

- The Preamble of the Indian Constitution embodies the basic philosophy and fundamental values on which the Constitution is based. Thus, it provides a glimpse of the Constitution of India.
- As the soul and key to the Constitution, it provides a guiding framework for the interpretation and implementation of the various provisions of the Constitution.
- It serves as the guiding light for governance, providing a moral compass for policymakers and lawmakers. It reminds them of the overarching goals of justice, equality, liberty, and fraternity that they must strive to achieve in their decision-making processes.
- It symbolizes the unity and diversity of India by acknowledging the plurality of its citizens and their diverse backgrounds, languages, cultures, and religions.
- It serves as an inspiration for citizens, reminding them of their rights, duties, and responsibilities towards the nation. It instills a sense of patriotism, civic duty, and commitment to the ideals of justice, equality, and fraternity among the populace.

*What is the significance of a preamble to a constitution? Bring out the philosophy of the Indian polity as enshrined in the Preamble of the Indian Constitution. (250 words) (2004, 30 Marks)*

# Fundamental Rights

## Significance of Fundamental Rights

The Fundamental Rights of the Indian Constitution are significant in the following respects:

- They form the bedrock of the democratic system and facilitate people's participation in the politico-administrative process.
- They serve as bulwarks of individual liberty and the rule of law by keeping a check on the authoritarianism of the state.
- They lay down the foundation of social justice and ensure the dignity of individuals.
- They protect the interests of minorities and weaker sections, thus promoting social justice.
- They strengthen the secular fabric of the nation.

## Criticism of the Fundamental Rights

- **Excessive Limitations** – They face numerous exceptions, restrictions, and qualifications, imposing restrictions on their scope and effectiveness.
- **No Social and Economic Rights** – The list lacks comprehensiveness, focusing primarily on political rights without including essential social and economic rights such as the right to social security, employment, rest, leisure, etc.
- **No Clarity** – There is a lack of clarity as a few terms are expressed vaguely and ambiguously without a clear definition, for example- 'public order', 'minorities', 'reasonable restrictions', etc.
- **No Permanency** – They are not sacrosanct or absolute, as the Parliament can curtail or abolish them, for example – the abolition of the fundamental right to property in 1978.

- **Suspension during Emergency** – The suspension of fundamental rights during a National Emergency, except for Articles 20 and 21, undermines the essence of democracy, posing a threat to the rights of millions of innocent individuals.
- **Expensive Remedy** – The judiciary bears the burden of safeguarding these rights from legislative and executive encroachments. However, the costly nature of the judicial process impedes ordinary citizens from effectively enforcing their rights through the courts.
- **Preventive Detention** – The provision of preventive detention (Article 22) undermines the essence of fundamental rights, granting excessive discretion to the State and infringing upon individual liberty.
- **No consistent philosophy** – The fundamental rights chapter lacks a coherent philosophical foundation. According to Sir Ivor Jennings, these rights are not grounded in any consistent philosophy, posing challenges for the judiciary in their interpretation.

## KEY DEBATES

### Important Articles → Article 19

Article 19 guarantees to every Citizen of India the following six basic, fundamental freedoms-

- 19(a). Freedom of speech and expression.
- 19(b). Freedom to assemble peaceably and without arms
- 19(c). Freedom to form associations or unions or co-operative societies
- 19(d). Freedom to move freely throughout the territory of India
- 19(e). Freedom to reside and settle in any part of the territory of India and
- 19(g). Freedom to practise any profession, or to carry on any occupation trade or business

### Restrictions on Freedom

- Sovereignty and integrity of the country.
- Friendly relations with foreign countries.
- Public order.

- Security of the State.
- Decency or morality.
- Defamation.
- Contempt of Court.
- Incitement to an Offence.

## Significance of Freedom of Speech and Expression

- In a democracy, the freedom of speech and expression is one of the prime liberties granted to the citizens. It forms a foundation for other rights granted to citizens, such as the freedom of the press. Freedom of the press, in turn, helps in inculcating a better-informed public and electorate.
- It ensures that citizens can express their opinions freely and hold their political leaders accountable. Also, this freedom ensures that important information is legally shared and circulated among citizens.
- It also provides a platform to make the marginalized and minority voices heard. Issues that concern these groups can be highlighted and brought to the forefront by using the right to freedom of speech and expression.
- The freedom of speech and expression protects the creative license of artists and allows them to develop and share ideas freely. These can be academic writings, satirical work, theatre, cartoons, visual arts, and stand-up comedies

## Landmark Judgements

- **In Romesh Thappar v State of Madras, 1950** the Supreme Court held that the freedom of speech and expression includes freedom to propagate ideas which is ensured by freedom of circulation of a publication. Moreover, freedom of speech and of the Press was declared to be the foundation of all democratic organisations.
- The cases of **Bennet and Coleman & Co. v. Union of India, 1973** and **Indian Express Newspapers (Bombay) P. Ltd v. Union of India, 1986** extended freedom of expression

to corporations and the SC declared that limitations on the right outside the purview of Article 19(2) are not valid.

- In **Maneka Gandhi v. Union of India, 1978** the SC ruled that freedom of speech and expression was not limited by geographical limitations or boundaries and claimed that Article 19(1)(a) encompasses both the right to speak and the freedom to express in India and abroad.
- In **People's Union for Civil Liberties (PUCL) v. Union of India, 1997** the SC declared that telephone tapping violates Article 19(1)(a) unless it comes within the grounds of reasonable restrictions under Article 19(2).
- The Supreme Court in the case of **Union of India v. Assn. for Democratic Reforms, 2002** observed that one-sided facts, disinformation, misinformation, and non-information all lead to democracy is a farce.”
- The Supreme Court introduced a new dimension to freedom of speech and expression in **Rakeysh Omprakash Mehra & Anr. v. Govt. of NCT of Delhi, 2013 (197) DLT 413:** That our written Constitution guarantees not only freedom of speech but also freedom after speech
- **Shreya Singhal v. Union of India**, the Supreme Court struck down Section 66-A of the Information Technology Act, 2000 on the ground that it gave unfettered discretion to the executive, in the absence of an elaborate definition of the words used in the provision, to initiate criminal prosecution against any person who caused annoyance in an indecent manner, a vague offense
- In **Anuradha Bhasin vs Union of India and Ors, 2020** the SC ruled that freedom to access the Internet is a fundamental right and is protected under Article 19(1)(a)

## Contempt of Court

- Restriction on the freedom of speech and expression can be imposed if it exceeds the reasonable and fair limit and amounts to contempt of court.
- The first Indian statute on the law of contempt, i.e., the Contempt of Courts Act was passed in 1926. It was later replaced by the Contempt of Courts Act, of 1952. The 1952 Act was subsequently replaced by the Contempt of Courts Act, of 1971.

- According to the 1971 Act, Contempt of court may be either ‘civil or ‘criminal.’ Civil contempt is 'wilful disobedience to any judgment/ decree/ direction/ order/ writ or other process of a court or wilful breach of an undertaking given to a court.'
- Criminal contempt includes the publication (in any form) of any matter or the doing of any other act whatsoever which scandalises the court or lowers its authority, or prejudices or interferes with court proceedings or administration of justice in any manner.
- Indian contempt law was amended in 2006 to make “truth” a defence. The qualification however is that such a defence should not cover up to escape from the consequences of a deliberate effort to scandalise the court.
- However, even after such an amendment, a person can be punished for the statement unless they were made in the public interest.
- In **Het Ram Beniwal v. Raghuveer Singh**, 2017 judgment the SC held that the power of contempt must be exercised sparingly and in cases when there is a calculated effort to undermine the judiciary, and not in a routine manner.

## Fake News / Disinformation

- Technology, Social Media, Cheaper Access to the Internet, and TRP Races are major contributors
- Fake news or disinformation in India usually takes the following forms:
- Targeting a minority and spreading false news implicating them in violent activities.
- Targeting individuals and spreading false news to tarnish their credibility and reputation.
- Spreading fake news about public personalities and their supposed heroics increases their standing and influences political outcomes.
- Malicious fake news is designed to spread paranoia and mistrust among people.

## Reasons for Prevalence:

It is increasingly used as a political tool by parties to influence and polarise opinion. The proliferation of technology, cheaper devices and affordable access to the internet has reduced the cost of spreading fake news. Increased use of private encrypted messaging apps and social media platforms whose business models thrive on “viral content” and number of views.

**Judgment:**

In Alakh Alok Srivastava v. Union of India, 2020 the SC recognized the problem of infodemics in India and passed an order asking the state governments to comply with the directions issued by the Centre to curb the menace of fake news.

**Conflation of Free Speech and Curbing Fake News in Legislation:** Information Technology Act, 2008 (IT Act) and IT Rules – Contrary to 2011 rules under the Act which provided immunity to social media platforms as ‘intermediaries’ for inception, transmission and reception of fake content through their networks, they are now directed to proactively censor content by the government. This is detrimental to free speech.

**Disaster Management Act, 2005 (DMA) – Section 54 of the DMA** purports to deal with ‘false alarm or warning as to disaster or its severity or magnitude, leading to panic’. The offence is punishable with imprisonment up to 1 year and the imposition of a fine. The provision is limited to the period of the disaster.

**What is the Right to Strike?**

- A strike is a collective refusal by employees to work under the conditions required by employers. Strikes arise for several reasons, though principally in response to economic conditions (defined as an economic strike and meant to improve wages and benefits) or labour practices (intended to improve work conditions).
- Each country, whether it is democratic, capitalist, or socialist, gives the right to strike to the workers. But this right must be the weapon of last resort because if this right is misused, it will create a problem in the production and financial profit of the industry.
- This would ultimately affect the economy of the country.
- In India, the right to protest is a fundamental right under Article 19 of the Constitution of India.

- But the right to strike is not a fundamental right but a legal right and with this right statutory restriction is attached in the Industrial Dispute Act, 1947.
  - The Industrial Dispute Act, 1947 is subsumed under The Industrial Relations Code, 2020.

## Article 21

- Article 21 read as: “ No person shall be deprived of his life and personal liberty except according to a procedure established by law.”
- The right has been held to be the heart of the Constitution, the most organised & progressive provision of our constitution, and the foundation of our laws.

## Right to Die

- **Suicide:** According to section 309 of IPC, "Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year [or with fine, or with both].
  - **P Rathinam vs UOI:** In this case, it was held that if a person has attempted to commit suicide, he must be unstable mentally and must be going through a lot already. And punishing a person for trying to end his life because he was in trouble, would not help his mental health at all.
  - **Smt. Gian Kaur v. the State of Punjab:** The Supreme Court held that the right to life is a natural right while suicide is an unnatural extinction of life and therefore the latter is inconsistent with the former. The court thus upheld the constitutional validity of Section 309.
- **Euthanasia:**
  - Active Euthanasia: involves an active intervention to end a person's life with substances or external force, such as administering a lethal injection.



- Passive / Negative or Non-aggressive Euthanasia is the denial of medical care necessary for maintaining life, such as the denial of antibiotics when the patient is likely to die without them.
  - i. Aruna Shanbaug case (2011): The SC allowed passive euthanasia.
  - ii. Common Cause Case (2018): The SC decided that passive euthanasia would be legally allowed henceforth in India and also laid down guidelines for living wills.
- The requirement for the Magistrate's approval has been replaced by an intimation to the Magistrate.
- The medical board must communicate its decision within 48 hours (no time limit earlier).
- Now a notary or gazetted officer can sign the living will in the presence of two witnesses instead of the Magistrate's countersign.
- In case the medical boards set up by the hospital refuse permission, it will now be open to the kin to approach the High Court which will form a fresh medical team.

## Death Sentence

- Section 354 (5) of the CrPC specifies that hanging is the method of execution in the civilian court system. According to the Army Act of 1950, the army court-martial system recognises both hanging and shooting as legitimate methods of execution. Between 2004 and 2015, approximately 1500 capital punishment verdicts were issued, but only four convicts were hanged.

## Basis of Death Penalty:

- **Retribution:** One of the key principles of retribution is that people should get what they deserve in proportion to the severity of their crime. This argument states that real justice requires people to suffer for their wrongdoing and to suffer in a way appropriate for the crime.
- **Deterrence:** Capital punishment is often justified with the argument that by executing convicted murderers, we will deter would-be murderers from killing people.

## Court on Death Penalty –

- **Bachan Singh vs State of Punjab:** It was determined that the death penalty is an exception and life imprisonment is the rule, but the Supreme Court's decision did not define the phrase 'rarest of rare.'
- **Swami Shraddhananda case:** The apex court had observed that where the apex court judges "may feel somewhat reluctant in endorsing the death penalty... the court would take recourse to the expanded option". The expanded option is imprisonment for the rest of life without remission.

## Reason the Death Penalty persists:

- **National Security:** Some acts like waging war against the State, terrorism etc. erode the sanctity of our National Security framework.
- **Acts that shake the collective conscience:** Supporters of Death Penalty says that there are some acts which shakes the collective conscience of society and deserves nothing except death penalty

## Arguments Against

- Capital punishment is of the view that **retribution is immoral**, and it is just a sanitised form of vengeance. Capital punishment doesn't rehabilitate the prisoners and return them to society.
- **Social Factors Against Capital Punishment:** An analysis of the possible reasons to avert the death penalty is reflected in a series of recent verdicts such as *Lochan Shrivastava vs State of Chhattisgarh* (2021) and *Bhagchandrarao vs State of Madhya Pradesh* (2021). These reasons might include socio-economic backwardness, mental health, heredity, parenting, socialisation, education, etc.
- **Spent considerable time in jail due to an error by the State.** However, if a person is wrongly hanged, then no amount of compensation can bring back the person and mitigate the error.
- **Inhumane:** Human rights and dignity are incompatible with the death penalty. The death sentence is a violation of the right to life, which is the most fundamental of all human rights.
- **Global Precedent** – No correlation with low crime rates: Scandinavian countries like Norway, Sweden and Finland have one of the lowest crime rates in the world without the

death penalty. They focus on reforming the criminal rather than deterring him/her with stricter and harsh punishments.

- The **Law Commission** in its 262nd report proposed that the death penalty should be abolished for all crimes excluding terrorism-related offences and war.
- The **experience of the Scandinavian countries** also supports this view. However, till the time it happens, there should be proper implementation of the Bachan Singh Judgment by the Indian Courts.

## Procedure Established by Law VS Due Process of Law

After a discussion between the Constitutional Assembly Advisor, Sir B.N. Rau, and Frankfurter J. of the United States of America Supreme Court, who stated that the due process clause is undemocratic and burdensome to the judiciary because it empowers judges to invalidate legislation enacted, the constituent assembly used the term 'procedure established by law'.

The constituent debate's preference for "process defined by law" was to give parliamentary supremacy in law making with appropriate constitutional and judicial safeguards for "personal liberty" against judicial supremacy. The supremacy of the legislature was maintained by the constituent assembly. It signifies that if a law has been passed by the Parliament by following the proper procedure, then it will be a valid law. Implementing this concept indicates that a person might be deprived of his life or personal liberty according to the procedure established by law.

- **AK Gopalan vs UOI:** AK Gopalan, a political leader, was arrested in Madras under the Preventive Detention act 1950. He claimed that the action taken under the Prevention Detention Act violated his fundamental rights under Article 14, 19 and Article 21 of the Indian Constitution. He also claimed that the phrase procedure established by law in Article 21 refers to due process of law. In his case, the procedure followed was not proper, resulting in a breach of Article 21 of the Indian Constitution.
  - The Supreme Court ruled that if the government takes away an individual's freedom in accordance with the procedure established by law, i.e., if the imprisonment was done by following the proper procedure, then it will not be

considered a breach of Articles 14, 19, and 21 of the Indian Constitution. The Court took a narrow interpretation of Article 21 in this case.

- However, in this case, Justice Fazal Ali gave a dissenting opinion. He said that the meaning of the term procedure established by law also implies the due process of law, which indicates that no one should be left without the opportunity of being heard i.e., Audi alteram partem (no person shall be left unheard) since it is one of the important principles of natural justice.
- **Maneka Gandhi v. Union of India:** The passport of Maneka Gandhi was detained by officials under the provisions of the Passport act. The petitioner went to the Supreme Court under Article 32 and argued that the government's act of seizing her passport was a clear violation of her personal liberty under Article 21. This decision greatly expanded the ambit of Article 21 and accomplished the purpose of making our country a welfare state, as mentioned in the Preamble. The Court concluded that the procedure established by law ought to be fair, just, and reasonable.
  - The Court noted that the procedure specified by law for depriving a person of his right to life and personal liberty must be proper, reasonable, and fair, rather than discretionary, whimsical, and oppressive.
  - An individual's life and freedoms can be taken away only when the following requirements are satisfied:
    - i. The law must be valid.
    - ii. There must be a proper procedure.
    - iii. That procedure should be just, fair, and not arbitrary.
    - iv. If the procedure provided by law is frivolous, oppressive, or unreasonable, then it should not be considered a procedure at all. A system must be reasonable or just to represent the idea of natural justice.

## Right to be Forgotten

It is the right to have publicly available personal information removed from the internet, search engines, databases, websites or any other public platforms. One can seek this right when their

personal information is no longer necessary or relevant and the presence of his/her digital footprint violates their right to privacy. This right has been recognised as a statutory right in the EU (as “right to erasure”) under the General Data Protection Regulation (GDPR) and has been upheld by a number of courts in the UK and elsewhere in Europe.

### **Position in India:**

In India, there is no statutory framework that prescribes the right to be forgotten.

However, the Personal Data Protection Bill 2019 and court rulings have expressly recognised this right.

### **The Personal Data Protection (PDP) Bill 2019:**

- The Bill gave an individual the right to restrict or prevent the continued disclosure of their personal data when such data -
  - Has served the purpose for which it was collected.
  - Was made with the individual's consent, which has since been withdrawn.
  - Was made contrary to the PDP Bill or any law in force.

### **The court rulings:**

- The SC in the landmark *KS Puttaswamy or Right to privacy judgement* (2017) recognised that the right to control his/her own life would also encompass his/her right to control their existence on the internet.
- Since the right to privacy verdict, high courts have taken a broader view of the issue. For example,
  - In 2019, the Delhi HC said the “right to be forgotten” and “right to be left alone” are inherent aspects of the right to privacy.
  - In 2021, the Delhi HC extended the right to be forgotten to even a criminal case by ruling to take down search results relating to an American law student (acquitted in a customs case).
  - In 2020, the Orissa HC held that the right to be forgotten is a thorny issue in terms of practicality and technological nuances and needs a widespread debate.

## Significance of the Right to be Forgotten

- The right to be forgotten is a complex legal concept that can have both advantages and disadvantages. Here are some of the key advantages of the right to be forgotten:
- **Protects Privacy:** The right to be forgotten can help individuals protect their privacy and personal information by allowing them to request the removal of their personal information from online platforms or search engines.
- **Reduces the Risk of Harm:** The right to be forgotten can help reduce the risk of harm to individuals by preventing their personal information from being used for malicious purposes, such as identity theft.
- **Supports Freedom of Expression:** The right to be forgotten can support freedom of expression by allowing individuals to control their personal information and ensure that it is accurate and up-to-date.

## Challenges

Here are some of the key challenges of the right to be forgotten:

- **Limitations on free speech:** The right to be forgotten can potentially limit freedom of speech and the public's right to access information, as it can result in the removal of legitimate and important information from online platforms or search engines.
- **Technical challenges:** The implementation of the right to be forgotten can be technically challenging, as it requires online platforms and search engines to develop complex systems for managing and removing personal information.
- **Conflicts with other legal rights:** The right to be forgotten can conflict with other legal rights, such as the right to access information, the right to freedom of expression, and the right to conduct research and journalism.

## Conclusion

Overall, the right to be forgotten is still in the process of development in India, and there is no specific case that has been solely responsible for its development. Moreover, with the recognition of the right to privacy as a fundamental right and the introduction of the Personal Data Protection

Bill, the right to be forgotten is gaining increasing attention from both the courts and the legislature in India. However, it is important to carefully balance the right to be forgotten with other legal and social interests, such as freedom of expression and access to information, in order to ensure that it is used in a responsible and ethical manner.

## Right to Protection from Climate Change Impacts

Recently, the Supreme Court of India acknowledged the right to protection from climate change impacts as part of the fundamental rights to life (Article 21) and equality (Article 14) enshrined in the Indian Constitution. This ruling came during a case concerning the conservation of the Great Indian Bustard and the Lesser Florican. SC noted that the intersection of climate change and human rights has been put into sharp focus in recent years.

### SC Judgment on Climate Change

The Supreme Court has extended the ambit of Articles 14 and 21 of the fundamental right and ruled that people have the right to be free from the adverse effects of climate change.

- Articles 14 and 21 of the Indian Constitution guarantee fundamental rights to equality and life respectively.
- In a very recent event, the right to a clean environment was also considered a fundamental right under the Right to Life of Article 21.
- The court also highlighted the interconnection between climate change and various human rights, including the right to health, indigenous rights, gender equality, and the right to development.

### Expanding the Scope of the Right to Life

- The Supreme Court, in its judgment, noted that the right to life under Article 21 must be interpreted progressively to include the right to a clean and healthy environment, which is essential for the enjoyment of other fundamental rights.

- Justice S. Ravindra Bhat stated that the “right to life” must be understood to include the “right to a healthy environment, free from the adverse effects of climate change.”
- This interpretation expands the traditional understanding of the right to life, recognizing the intrinsic link between human well-being and the state of the environment.

*Q. Discuss the significance of Supreme Court judgement in K.S. Puttaswamy case. What steps should the Indian government take to protect the privacy of Indian citizens?*

## Cooperative, Competitive and Confrontational Federalism

Cooperative federalism implies States and Centre cooperating with each other to realise the developmental goals of the country. It calls for a joint focus on the national development goals by the Centre and States, and the advocacy of concerns and issues of States and Union Territories with Central Ministries. The idea of competitive federalism, on the other hand, promotes competition between Centre and States as well as among States for economic benefits. In cooperative federalism, the relationship between States and Centre is horizontal, and in competitive federalism, it is vertical between States and Centre and horizontal among states.

In **Cooperative federalism** the Centre and states share a horizontal relationship, where they “cooperate” for national development and fulfill social goals together.

- In such federalism the resources and expertise of both centre and states are shared to achieve the common goal of development.
- It enables participation of states in the formulation and implementation of welfare policies.
- Union and the states are constitutionally obliged to cooperate with each other on the matters specified in Schedule VII of the constitution.
- It ensures convergence between the federating units i.e. centre and states.



In **Competitive federalism** the relationship between the Central and state governments is vertical and between state governments is horizontal.

- In early years of Independence, states were dependent on central grants distributed through the Finance Commission and Planning Commission.
- This idea of Competitive federalism gained significance in India post 1990s economic reforms.
- In a free-market economy, the endowments of states, available resource base and their comparative advantages all foster a spirit of competition. Increasing globalisation, however, increased the existing inequalities and imbalances between states.
- In Competitive federalism States need to compete among themselves and also with the Centre for benefits.
- States compete to attract funds and investment, which facilitates efficiency in administration and enhances developmental activities. eg: Investor summits in various states → Investors prefer more developed states for investing their money. The union government devolves funds to the states based on usage of previously allocated funds.
- Healthy competition strives to improve physical and social infrastructure within the state.

In **confrontational federalism**, the central Govt. tries to transgress into the powers of the state government.

- It is a relatively new phenomenon as compared to cooperative and competitive federalism.
- As per Constitutional experts, the central government's decision of using a concurrent List to make laws on state list subjects is a form of confrontational federalism.
- The passing of farm laws, despite agriculture being a state subject.
- The partisan role of the governor in many states has become a case of confrontational federalism. For instance, the role of the Governor in Tamil Nadu became controversial.

*Q. Cooperative, Confrontational, and Competitive Federalism represent different approaches to the dynamics between the Centre and States in India. Critically examine these three models in*

*the context of India's federal structure and discuss their implications for governance and development.*

## Preventive Detention

Preventive detention refers to taking into custody an individual who has not committed a crime yet but the authorities believe him to be a threat to law and order. The power to make Preventive Detention laws in India comes from the Constitution itself which empowers the Parliament to make such laws for reasons connected with Defence, Foreign Affairs or the Security of India. Parliament has exclusive legislative powers.

### Constitutional Provisions

1. Article 22 (3) (b): Allows for preventive detention and restriction on personal liberty for reasons of state security and public order.
2. Article 22(4): No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless:
  - An Advisory Board reports sufficient cause for extended detention.

### Data

1. **NCRB data:** More than 1.1 lakh people were arrested and detained under preventive detention laws (such as the National Security Act, 1980) in 2021 which is 23.7% rise over previous year.
2. **J&K:** Since the abrogation of article 370 from Jammu and Kashmir, there have been 450 preventive detentions in the erstwhile state, according to the central government data.
3. **CAA Protest:** In December 2019, when the nationwide protest of the Citizenship Amendment act (CAA) took place, 5558 people were detained for preventive measures in Uttar Pradesh only.

4. **Central government data:** As data produced by the central government, in 2017: 67084, in 2018: 98768, in 2019: 109912, people were detained under different laws that have preventive detention clauses.

## Legislation on Preventive detention

- **National Security Act, 1980:** provides for administrative detention for a period of up to one year
- **COFEPOSA 1974:** which provided for preventive detention to maintain and improve foreign exchange and to deter illegal trade.
- **TADA 1985:** the purpose of this legislation explicitly indicated that it was accepted based on practice that, in order to deter and successfully counter-terrorism and violent acts

## Grounds for Preventive Detention

- **Security of the State** – Threats to India's sovereignty, territorial integrity, or security (e.g., terrorism, espionage, rebellion).
- **Maintenance of Public Order** – Disruptions to peace, safety, and public order within the country (e.g., riots, violent protests).
- **Maintenance of Supplies and Essential Services and Defence** – Disruption of critical supplies and services or threats to national defense (e.g., hoarding, sabotage).
- **Foreign Affairs or Security of India** – Threats to India's international relations or external security (e.g., spying, assisting foreign enemies).

## Argument Against Preventive Detention

- **Breach of Liberty:** Detaining without charge or trial is a devastating blow to personal liberty.
- **Torturous:** Detaining poses a risk of psychological and physical torture.

- **Long Period:** The long period (3 months) of detention which may go up to 12 months in certain cases like in NSA is many times argued unnecessary.
- **No procedure of Protection:** It does not provide any procedural protections to detainees for vulnerability to torture and discriminatory treatment.
- **Misuse by States:** The Power of states to form similar legislations has been misused normally in the pretext of public safety

## Arguments in Favour of Preventive Detention

- **Tackle Terrorist Threats:** Such acts are required to deal with the terror elements such as terrorist attacks on innocent people which target a lot of lives.
- **Deterrence:** Having such kinds of acts has a restraining influence on the anti-social and protects the public from unnecessary violence.
- **Idealistic View:** The constitutional philosophy of personal liberty is an idealistic view, the curtailment of liberty for reasons of State's security; public order, disruption etc. are envisaged as a necessary evil to be administered.
- **Limited Use:** The number of persons detained in these acts is not a very large and due attention is made before preventive detention.

## Safeguards against the misuse of the power of Detention

1. **Law authorization:** Every case of preventive detention must be authorized by the law and not at the will of the executive.
2. **Fixed time period:** The Preventive detention cannot extend beyond a period of 3 months
3. **Proactive Advisory Board:** Every case of the preventive detention must be placed before an Advisory Board composed of the Judges of the High Court (or persons qualified for Judges of the High Court)
  - In fact, the case must be presented before the Advisory Board within 3 months.
  - A continued detention after 3 months must have consent of the Advisory Board.

4. **Opportunity for early representation:** In fact, the person will be given the opportunity to afford the earliest opportunity to make a representation against preventive detention.
5. **No indefinite clause:** No person can be detained indefinitely

## Important Judgements

- **Alijav v. District Magistrate, Dhanbad:** The SC stated that while criminal proceedings relate to punishing a person for an offence committed by him, preventive detention does not relate to an offence.
- **Ankul Chandra Pradhan v. Uol:** The Court stated that the object of preventive detention is not to punish but prevent the detainee from doing anything that is prejudicial to the security of the state.

## Way Forward

- The 177th Law Commission Report of 2001 reveals that more than 14 lakh persons were arrested under preventive provisions in India.
- It is paramount to review the continued usage of NSA and other PD laws and to close the loopholes that permit law enforcement agencies to abuse constitutional and statutory rights.
- Even, the Supreme Court has held that the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, is mandatory and vital.

Protecting the limited resources alongside preserving peace and order is essential for a developing country. India has undergone many disturbances or challenges since independence on the grounds of gender, class, race, faith, etc. Though preventive detention laws are not completely just, fair, and reasonable and need some changes or alterations to fit in well within the scope of the Right to life and liberty.

*Q. The preventive detention law, which grants the state arbitrary powers, must be scrutinized and applied only in the most exceptional cases. Considering this, what are the challenges associated with the implementation of preventive detention laws in India?*

## Federalism

It is a form of government in which the sovereign authority or political power is divided between the Centre and the States, each of whom are independent in their own sphere.

### Essential Features

- Dual Polity / Distribution of Power: Usually, matters of national importance are entrusted to the Centre, whereas local matters remain with the state.
- Supremacy of the Constitution: Having the powers originate from the Constitution ensures no authority arbitrarily takes over the powers of the other.
- Written Constitution: ensures there is no misunderstanding or disagreements. The
- Rigidity of the Constitution: A rigid constitution makes amendments very complicated and tough, thus ensuring that none of the governments can change it unilaterally. And any change in the constitution stems from both the authorities.
- Authority of the Courts: Since federalism is based on the division of power between co-ordinate governments, it is essential to maintain the same and ensure none transgresses into the domain of others. This must be done by some independent and impartial authority i.e. The judiciary. The Judiciary has the final authority to interpret the constitution and sit as an arbitrator of disputes between the Centre and state

## Centralizing features of Indian Federalism: (Centre → States)

- Emergency provisions
- Integrated judiciary
- Sharing of revenue through FC
- Concurrent list
- Residual powers lie with the Centre
- States not destructible
- Flexibility of the Constitution
- Veto over State Bills
- Appointment of Governor
- Parliament's authority over State list

## Federal Features of the Constitution:

- Dual Polity (Art 1) (Art 246)
- Supremacy of Constitution (Art 368)
- Written Constitution (Art 368)
- Rigidity of Constitution (Art 368)
- Independent Judiciary (Art 131)

## DEVIATIONS FROM FEDERAL CHARACTERISTICS/UNITARY BIAS

- Article 1 mentions India i.e. Bharat as a Union of states and not a federation of states.
- Legislative Relations: Article 248 confers residuary power in the Union U/a 249 Parliament is empowered to make law with matters enumerated in List II if necessary, in the national interest.
- Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation u/a 249.

- Parliament can also make laws for the states if two or more states request the parliament for the same u/a 252.
- Similarly, to give effect to international agreements, Parliament can make any legislation (Article 253). In case of inconsistency between laws made by Parliament and the state with respect to concurrent list matters, the laws made by parliament will prevail over law made by state to the extent of inconsistency (Article 254)
- Previous sanction of President is required to introduce certain bills in state legislature u/a 304
- **Financial Relations:** States largely depend upon the center for financial assistance through grants-in-aid. Further the taxation power of the state is comparatively restricted as compared to the Union because more important taxes such as income tax, wealth tax , excise duty etc. are reserved for the Union.
- **Executive/ Administrative Relations:** U/a 256, the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament U/a 257 talks about control of union over states in certain situations, wherein the Union will have the power to give such directions to a State as may appear to the Government of India to be necessary for that purpose.
- **Article 356** authorizes the President to hold that governance of a state is not being carried out in accordance with the constitution ,if the state fails to comply with directions of the Union and can impose State emergency.
- **Article 312** which speaks about all India Services ensures that the officers of such service at the state level ensure that Union's law and policy are being implemented properly.
- Parliament's power to form new states and alter the boundaries of existing states u/a 3 proves that states do not enjoy territorial integrity and depend upon the sweet will of the Union.
- **Appointment of Governor-** Governors are appointed by President and answerable to him, hence they act in a manner suitable to the centre ,even at the cost of the interest of the states.



- **Emergency Provisions:** During an emergency, the normal distribution of power undergoes drastic change, in favor of the center. Under article 356 state legislatures can be dissolved, and President's rule can be imposed.
- **Freedom of Trade and Commerce:** The provisions of part XIII seeks to make India a single comprehensive economic unit for the purpose of trade and commerce under the overall control of the Union.
- **Single and Uniform Citizenship** for the whole of India ,unlike USA where states have separate citizenship. Uniform and integrated Judicial system. Hence India is considered as an "Indestructible Union of destructible states"

## ASYMMETRICAL FEDERALISM

It is understood to be the unequal distribution of power amongst the constituting units of a federation in political, administrative and fiscal spheres. In India, this asymmetry is both vertical ( between the centre and states ) and horizontal ( amongst the states ). Like many federations, India has certain de facto asymmetrical federal features regarding differences in size, population, wealth, and influence between the federating units

### VERTICAL ASYMMETRY

It is a settled fact that India is not a true federation because the of its strong unitary tendencies. The main provisions which point to this asymmetry are –In India only the union is indestructible and not the states because they have no defined territory integrity as is clear from Article 3.

- Creation of Union Territories.
- Emergency provisions.
- States do not have an equal say in case of amendments and are asked to ratify law only if their interest is involved.
- Centre enjoys an overall legislative, administrative and fiscal precedence over the states in India.

## HORIZONTAL ASYMMETRY

- **Among States** : Not all states are equal in India and there is difference in order to accommodate specific local, historical and geographical contexts. Unequal representation in Rajya Sabha based on the population of the state. Special provisions' applicable to some States u/a 371 by empowering the Governors to discharge some special responsibilities, which he does in his discretion.
- Article 371 says the Governor of Maharashtra has a special responsibility to establish separate development boards for Vidarbha, Marathwada, and the rest of the State, while the Governor of Gujarat has a similar responsibility towards Saurashtra, Kutch and the rest of Gujarat.
- Under Article 371A no law made by Parliament in relation to Naga customary law and procedure, including civil and criminal justice matters, and ownership or transfer of land and resources will apply to Nagaland, unless the Legislative Assembly of Nagaland decides so. Further, the Governor of Nagaland has a 'special responsibility' regarding law and order in the State.
- Article 371B contained a special provision for Assam under which a committee of legislators from the tribal areas was formed to look after their interest. The tribal areas later became Meghalaya State.
- Under Article 371C, the Hill Areas of Manipur ought to have a committee of legislators. The Governor has a special responsibility to make an annual report to the President on the administration of the Hill Areas. The Centre is empowered to give directions to the State as far as these areas are concerned.
- The Sixth Schedule to the Constitution contains provisions for the administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram. These create autonomous districts and autonomous regions administered by District Councils and Regional Councils.
- These Councils can make laws with respect to allotment, occupation and use of land, management of forests, regulate social customs, marriage and divorce and property issues. E.g. In Assam, the Karbi-Anglong Autonomous Council, Dima Hasao Autonomous District Council etc. Ladakh has two autonomous hill development councils (Leh and Kargil). The Darjeeling Gorkha Hill Council is in West Bengal.

- Among Union Territories: Union territories are also not equal as – Puducherry and Delhi have legislatures, while the other territories under the Centre do not have legislatures or a ministerial council to advise the administrator.
- Even between Puducherry and Delhi, there is a notable difference as Puducherry has legislative powers on any matter mentioned in the State List or the Concurrent List, insofar as it applies to the Union Territory but Delhi cannot make laws on matters of police, land and public order. However, Parliament has overriding powers over any law made by the Assembly in the Union Territories.
- Puducherry has one more unique feature. Despite being a single administrative unit, the Union Territory is ‘non-contiguous’. That is, its territory is not limited to one extent of land as it has enclaves located within other States: Karaikal (Tamil Nadu) Yanam (Andhra Pradesh) and Mahe (Kerala)

**IMPORTANCE OF ASYMMETRIC FEDERALISM IN INDIA:**

- Ensures unity in diversity as it helps to respects and preserve vulnerable groups through special powers.
- Satisfy different needs of various federal units which are a result of an ethnic, linguistic or cultural difference
- Help to protect fundamental rights and compensate for initial inequalities in the social system.
- Allowance for separate laws to govern different religious groups, and provisions for various kinds of affirmative action for extremely disadvantaged groups help in ensuring social justice to them.
- Gives better representation to minority areas in the democracy

## Separation of Powers

### INTRODUCTION

Aristotle, in his book 'Politics', discussed the concept of separation of powers stating that every constitution should have a heterogeneous form of government consisting of mainly three branches: the deliberative, public officials and the judiciary. Montesquieu described the division of political powers among an executive, a legislature, and a judiciary. He based this model on the British Constitutional system, in which he perceived a separation of powers among the monarch, Parliament, and the courts of law. The Constitution recognizes the three-fold functional division of governmental powers. Article 50 expressly requires the State to apply the principle of separation of the judiciary from the executive as a sound principle of Government.

## Objectives of Separation of Powers

- Firstly, it aims to eliminate arbitrariness, totalitarianism and tyranny and promote an accountable and democratic form of government.
- Secondly, it prevents the misuse of powers within the different organs of the government. The Indian Constitution provides certain limits and boundaries for each domain of the government and they are supposed to perform their function within such limits. In India, the Constitution is the ultimate sovereign and if anything goes beyond the provisions of the constitution, it will automatically be considered as null, void and unconstitutional.
- Thirdly, it keeps a check on all the branches of the government by making them accountable for themselves. • Fourthly, separation of powers maintains a balance among the three organs of government by dividing the powers among them so that powers do not concentrate on any one branch leading to arbitrariness. • Fifthly, this principle allows all the branches to specialize themselves in their respective field with an intention to enhance and improve the efficiency of the government.

**Separation of Powers - U.K. Constitution** • The United Kingdom practices the unitary parliamentary constitutional monarchy.

- The concept of separation of powers is applied in the UK but not in its rigid sense because the UK has an unwritten constitution.

- The Parliament is the sovereign rule-making body in the UK.
- The government is answerable to the Parliament. Practically, the executive is controlled by the House of Commons.
- The Judiciary, however, is independent of executive control.

But the judges of the Supreme Court can be removed on the address of both the houses if found with any charge of corruption

## Separation of Powers - U.S. Constitution

- The US has a written constitution and governed by the Presidential form of government
- This concept is well-defined and clear under the American Constitution.
- The President and his ministers are the executive authority and they are not members of the Congress.
- The ministers are accountable to the President only and not to the Congress.
- The tenure of the President is fixed and independent of the majority in Congress.
- Congress is the sovereign legislative authority. It consists of two houses- Senate and House of Representative.
- The impeachment of the President can be done by Congress.
- The treaties entered by the President are to be approved by the Senate. The Supreme Court of the USA is independent.
- It may declare any action of the executive as well as the legislature as unconstitutional if found so
- The President interferes in the functioning of Congress by exercising his veto power. He also makes the appointment of the Judges thus interfering in judicial powers.
- Similarly, Congress interferes in the powers of the Courts by passing procedural laws, making special courts and by approving the appointment of the judges.
- The judiciary, by exercising the power of judicial review interferes in the powers of Congress and the President.

### Critical Analysis:

## **The Indian perspective – Constitutional provisions**

- The Indian Constitution does not expressly mention the theory of separation of powers. In fact, the Constituent Assembly Debates indicate that separation of powers in its rigid or literal sense was never intended to be adopted by the constitution makers at all.
- This was evident when the insertion of a new Article 40-A, that prescribed a complete separation of powers between the three branches, to the Constitution was proposed by Prof. K T Shah in the Constituent Assembly.
- Dr. B.R Ambedkar, while acknowledging the separation of the executive from the judiciary, emphasized upon the importance of interdependence between the executive and legislature for the proper functioning of their complicated duties in the government.

## **CONSTITUTIONAL PROVISIONS SUPPORTING SOP**

### **Distinct institutions and core powers**

- Under **Articles 53(1) and 154** of the Constitution, the executive powers of the Union and States have been expressly vested in the President and the Governor, respectively.
- **Article 245** vests the Central and State lawmaking authority to the Parliament and State Legislatures respectively, empowering the Parliament to make laws for the whole country
- **Article 50** categorically prescribes the separation of the executive from the judiciary under the Indian governmental structure. Hence, an apparent demarcation between the three branches and their functions is found to be broadly laid out under the Constitution.

### **Autonomy and Independence**

- **Articles 122 and 212** of the Constitution avert the Courts from inquiring into the proceedings of the Parliament and State legislatures, respectively.
- **Articles 105 and 194** confer judicial immunity to the MPs and MLAs from anything spoken during their sessions
- **Article 361**, the President and Governor are also not accountable to the Courts for the exercise of their powers and duties in the office

- The Supreme and High Court judges are also immune from scrutiny of their conduct in the Parliament or State Legislature (Articles 121 and 211)

## Provisions leaning against a pure separation of Powers

### Overlapping personnel

- The Indian governmental structure is such that there is a commonality of personnel between the two organs, with the Union Council of Ministers being members of both the Parliament (Article 75) as well as the executive (Article 74).
- Even the President is regarded as part of the Legislature along with the Houses of the Parliament (Article 79).

### Overlapping powers (E & L)

- There is also a commonality of powers between the two organs, with the powers of the executive prescribed as co-extensive to that of the legislature (Article 74)
- The executive exercises legislative powers when it comes to the President's authority to issue ordinances when the Houses of the Parliament are not in session, which is considered equivalent to a Parliamentary Act (Article 123)
- The President's assent is required for the passing of bills proposed by the legislature (Article 111).
- The President also exercises legislative functions during the proclamation of State Emergency (Article 356), where he has the authority to make laws for the state upon the dissolution of the State Legislature
- Moreover, the very concept of delegated legislation is based on the conferment of legislative powers to the executive. This delegation is carried out in the name of administrative adjudication of the rights of the citizens and is implicitly allowed by the Constitution (Articles 372 and 13)
- The Council of Ministers is also collectively responsible to the Lok Sabha, indicating another overlap between the two organs (Article 75).

- Hence, it has been said that there is a fusion between the executive and the legislative in India, but without any friction occurring between them.

### Overlapping Powers (E & J )

- The President is empowered to grant pardon, reprieve, respite or remise to the sentence of any person convicted by Supreme Court of India, representing a judicial power (Article 72).
- The President also performs a judicial act in resolving disputes relating to the age of judges of the courts as regards their retirement from judicial office (Articles 124(2)(a) and 217(3)).
- On the other hand, the judiciary exercises executive functions under Article 227 of the Constitution wherein the High Courts have been granted the power of supervision over subordinate courts.
- Further, they carry out other administrative functions such as the transfer of cases under Article 228.

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### Overlapping Powers (L & J)

- The Parliament also performs judicial functions such as punishing its members or outsiders for contempt or breach of parliamentary privilege.
- The judiciary, on the other hand, performs legislative functions in laying down rules and procedures for court proceedings and practice (Article 145)

### Checks & Balances

- The Parliament has the authority to initiate impeachment proceedings against the President and exercises a check on his activities (Article 61).
- The Parliament and President together have the power to remove judges of the Supreme Court (Article 124) and High Courts (Article 217) and the President further possesses the



power to appoint the judges of the High Courts and the Supreme Court (Article 124 and 217).

- Most importantly, the power of judicial review possessed by the Courts under Articles 32, 226 and 136 reflects a paradigm of checks and balances, as it allows the Courts to strike down the laws of the Parliament or actions of the executive that are adjudged unconstitutional

## Judicial Approach Towards Separation of Power in India

- **Ram Jawaya Kapur v. State of Punjab:** The Constitution of India has not acknowledged the doctrine of separation of power emphatically but the functions and powers of all the organs have been adequately distinguished. India's constitutional structure sufficiently differentiates the functions and branches of the Government to prevent the assumption of functions of one organ by another.
- In the **Re Delhi Laws Act Case** – it was highlighted how the British Parliamentary system adopted by India entails the responsibility of the executive to the legislature as its essential feature and does not strictly follow the doctrine.
- **Indira Nehru Gandhi v. Raj Narain :** A rigid sense of separation of powers which has been given under the American and Australian constitutions does not apply to India. The separation of power is a part of the basic structure of the constitution. So, the schemes of the constitution cannot be changed even after restoring Article 368 of the Indian Constitution
- **Golak Nath v. State of Punjab:** All the organs must function within the spheres allotted to them by the constitution. No authority that is created by the Constitution is supreme.

*Q. The functional overlap among government branches weakens the principle of separation of powers. Comment*

# Emergency

## Rationale Behind Inclusion of Emergency Provisions in the Constitution

- **Safeguard:** To safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution.
- **Unforeseen Situation:** To deal with the unforeseen situation arising in case of any exigencies, where the national interest and unity are threatened.
- **Historical accounts:** Indicated that any sign of weakness of the Central government has led to Balkanization and disintegration of the Union.

## Constitutional Provisions

1. Article 352: The president can declare a national emergency if the security of India or a part of is threatened by war or external aggression or armed rebellion. He can do so even before the actual incident of war or armed rebellion or external aggression
2. 2. Articles 358 and 359: Narrates the effect of a National Emergency on the Fundamental Rights

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## NATIONAL EMERGENCY

### Effects of National Emergency

#### Effects on the centre-state relations:

- **Executive:** Centre becomes entitled to give executive directions to a state on 'any' matter.
- **Legislative:**
  - **Law making:** Parliament becomes empowered to make laws on any subject mentioned in the state list.
  - **Ordinance:** The President can issue ordinances on State subjects also, if the parliament is not in session.

- Operation of Law: Laws made on state subjects by the parliament becomes inoperative six months after the emergency ceases.
- Financial: The President can modify the constitutional distribution of revenues between the Centre and the states.

## **Effect on the life of the Lok Sabha and State Assembly:**

- LS: Life of the LS may be extended beyond the normal term for one year at a time.
- Limitations: Extension cannot continue beyond a period of 6 months after the emergency has ceased to operate.
- State Legislature: Parliament may extend the normal tenure of a State Legislative Assembly by one year each time during a national
- Limitation: Subject to a maximum period of 6 months after the emergency has ceased to operate.

## **Effect on Fundamental Rights:**

- Suspension of FR U/A 358: When a proclamation of National Emergency is made, the six
- FRs U/A 19 are automatically suspended.
- Revival: Article 19 is automatically revived after the expiry of the emergency.
- 44th Amendment Act: Article 19 can only be suspended when NE is laid on the grounds of war or external aggression and not in the case of armed rebellion.
- Suspension of FRs U/A 359: President authorised to suspend, the right to move any court for the enforcement of FRs. Thus, remedial measures are suspended and not FRs.
- Limitations: The suspension of enforcement relates to only those FRs that are specified in the Presidential Order.
- 44 Amendment Act: President cannot suspend the right to move the court for the enforcement of FRs guaranteed by Article 20 and 21.

**Major protagonists of the Emergency Provisions in the Constituent Assembly and their views can be seen as follows:**

- **Sir Alladi Krishnaswami Ayyar** viewed them as the “very life breath of the Constitution”.
- **Mahabir Tyagi** saw them as a “safety valve” for maintaining the constitutional order.
- **Dr. B.R. Ambedkar** acknowledged the possibility of the emergency provisions being abused or employed for political purposes while defending their inclusion in the Constitution.

## Important Judgements

- **Minerva Mills case (1980):** SC held that National Emergency can be challenged in the court on the ground of mala-fide or that the declaration was based on wholly extraneous and irrelevant facts.

## Arguments in Favour of Emergency Provisions

- **National Security and Integrity** – Emergency Provisions are seen as necessary to safeguard the nation’s security and territorial integrity in the face of external aggression, armed rebellion, or other threats to the constitutional order.
- **Effective Crisis Management** – The enhanced powers granted during emergencies enable the Central Government to quickly mobilize resources, coordinate responses, and take swift action to address urgent situations.
- **Maintaining Constitutional Order** – The emergency provisions, particularly the power to declare a President’s Rule in a State, are seen as a crucial mechanism for maintaining the constitutional order in India.
- **Ensuring Effective Governance** – In situations of crisis or breakdown of normal governance mechanisms, emergency provisions allow for the centralization of power, ensuring swift and effective decision-making to address pressing issues.
- **Flexibility and Adaptability** – The Emergency Provisions offer a degree of flexibility to the government, allowing it to adapt and respond to evolving crisis scenarios that may not be adequately addressed by normal constitutional mechanisms.
- **Historical Precedents** – The framers of the Constitution were influenced by the experiences of the colonial era and the need to prevent the recurrence of situations that led to the suspension of civil liberties and democratic processes.

## Arguments Against Emergency Provisions

- Threat to Federalism – There are concerns that the emergency provisions can be misused by the central government to consolidate power, suppress political opposition, and undermine the federal structure of the Constitution.
- Suspension of Fundamental Rights – Suspension of certain fundamental rights during an emergency raises concerns about the erosion of civil liberties and individual freedoms.
- Lack of Effective Checks and Balances – Critics argue that the emergency provisions do not have sufficient checks and balances to prevent the arbitrary or prolonged use of emergency powers.
- Centralisation of Power – The Emergency Provisions are seen by some as a means to concentrate power at the Central level, potentially undermining the autonomy and decision-making capabilities of the States.
- Potential for Dictatorship – As observed by T.T. Krishnamachari, these provisions may allow the President and the Executive to exercise a form of Constitutional Dictatorship.
- Weakening of Democratic Institutions – The invocation of Emergency Provisions, especially the imposition of the President's rule in States, can lead to the weakening of democratic institutions and the undermining of the principles of federalism and separation of powers.

## Way forward

- Not for political gains: The provisions of emergencies are provided keeping in view the security and stability in the nation. But they must not be used for political gains or disturbing the democratic structure of the nation.
- Only in real crisis situations: Provisions must be used only in cases of real crisis situations. If autocratic rule tries to destroy the democratic structure of India, the citizens have the powers to change the rule by general elections as done in 1977.
- Must not be abused: While defending the emergency provisions in the Constituent Assembly, Dr Ambedkar accepted the possibility of their misuse. He observed, 'I do not

altogether deny that there is a possibility of the Articles being abused or employed for political purposes.'

## PRESIDENT RULE

President's rule is the suspension of state government and imposition of direct central government rule in a state. The state will fall under the direct control of the Union government, and the Governor will continue to head the proceedings, representing the President of India. This is achieved through the invocation of Article 356 of the Constitution by the President on the advice of the Union Council of Ministers.

### Constitutional Provisions

- Article 355: Duty of the Union to ensure that the Governance of every State is carried on in accordance with the provisions of the Constitution.
- Article 356: President has the power to suspend state government and impose President's rule in any state in the country "if he is satisfied that a situation has arisen that government of the state cannot be carried on in accordance with the provisions of the Constitution".

### Data and Incidences

- Sarkaria Commission report: Since independence, it has been used over 100 times. In almost all cases it was used for political considerations rather than genuine problems.
- Irrational Use: Former PM Indira Gandhi used Article 356 for 35 times to remove majority governments on the ground of political stability, absence of clear mandate or withdrawal of support, etc.
- Partisan politics: In 1977, the Janata government removed nine state Congress governments, when they formed the government for the first time.

- Most targeted: The politically crucial states of Uttar Pradesh and Bihar, with their fragmented polity, have been on the center's radar.

## Conditions for President Rule

- Political Instability: When after general elections to the assembly, no party secures a majority,
- The Governor may impose President Rule.
- Majority party decline to take ministries: When the party having a majority in the assembly declines to form a government and the governor cannot find any alternative, he can prescribe presidential rule.
- Non-execution of constitutional direction: Where a constitutional direction of the Central government is disregarded by the state government.
- Internal subversion: For example, a government is deliberately acting against the Constitution and the law or is fomenting a violent revolt.
- Physical breakdown: When the government wilfully refuses to discharge its constitutional obligations endangering the security of the state.

## Effects of President Rule

### Executive:

- Functional Effect: The President assumes to himself all or any of functions of government of state or any authority in the state other than that of High Court.
- Effect on State Autonomy: The President dismisses the Council of Ministers headed by CM and run state administration with help of the Governor or advisors as he thinks fit.

### Legislative

- Conversion to Unitary system: On imposition of President Rule, President either suspends or dissolves the legislature of state and declares that the powers of legislature of state shall be vested with Parliament.
- Power of legislature: The Parliament can confer on the President the powers of legislature of state to make laws.

- Law making power: The President can promulgate the Ordinances in relation to administration of State when the Parliament is not in session.

**Financial**

- Appropriation of fund: President is authorized to give approval to pending sanction of expenditure from Consolidated Fund of State by Parliament when LS is not in session.
- Appropriation of fund: President is authorized to give approval to pending sanction of expenditure from Consolidated Fund of State by Parliament when LS is not in session.

**Misuse of President Rule**

- Possible reasons of a misuse of rule
  - Ideological differences: Used to dismiss state governments where the party in power is not the same as that ruling at the Centre.
  - Eroding neutral political character of Governor: Governor controlled by a ruling party is making decisions that could result in a different political party either retaining or losing power, as is currently the case in Arunachal Pradesh and Uttarakhand.
  - Rise of regional parties: The mid-1990s was marked by the rise of regional parties that lent an increasingly opportunistic and volatile character to Indian polity.
  - The defection of political members: Large scale defection to the opposition party to the party in power in the centre for claim to form government
  - Less secure governments: Governments who cannot handle opposition have a greater tendency to misuse President's Rule
- Inappropriate factors for imposing President rule
  - Imposition without finding alternative: When a ministry resigns or is dismissed on losing majority support in the assembly and the governor recommends imposition of President's Rule without probing the possibility of forming an alternative ministry.
  - Not allowing to prove majority: Where the governor recommends imposition of President's rule without allowing the party to prove its majority on the floor of the Assembly.



- Maladministration: Maladministration in the state or allegations of corruption against the ministry or stringent financial exigencies of the state.
- No prior warning: Where the state government is not given prior warning to rectify itself except in case of extreme urgency.
- Intra-party problems: Where the power is used to sort out inter-party problems with the ruling party

## Important Judgements

### **S.R. Bommai judgement (1994):**

- President's power not absolute: The verdict concluded that the power of the President to dismiss a State government is not absolute.
- Approval for Proclamation: President should exercise the power only after his proclamation is approved by both Houses of Parliament. Till then the President can only suspend the Legislative Assembly by suspending the provisions of the Constitution relating to the Legislative Assembly.
- Dissolution of SLA: The dissolution of the Legislative Assembly is not a matter of course. It should be resorted to only where it is found necessary for achieving the purposes of the proclamation.

### **Buta Singh Case (2005), 2005**

- The Governor's report could not be taken at face value and should be verified with the Council of Ministers.

## **Way Forward**

- The Administrative Reforms Commission (1968)
  - Objectivity: Any imposition of Article 356 should be accompanied with a report by the Governor to the President with relevant facts and details
- The Rajamannar Committee (1971)

- Deletion of articles: It recommended the deletion of Articles 356 and 357 from the Constitution of India. The necessary provisions for safeguards against arbitrary action of the ruling party at the Centre under Article 356 should be incorporated in the Constitution.
- Sarkaria Commission, 1987:
  - Minimal Use: Article 356 should be used very sparingly, in extreme cases only.
  - Adherence to Procedures: No dissolution of Assembly till proclamation is ratified by the parliament
- S.R. Bommai Judgment (1994).
  - Proper usage of power: The Supreme Court enlisted the situations where the exercise of power under Article 356 could be proper.
  - Hung Assembly: One such situation is that of 'Hung Assembly', i.e. where after general elections to the assembly, no party secures a majority.
- Punchhi Commission, 2010:
  - Limits of area and time: The commission recommended imposition of localized emergency i.e. in only a district or a part of it. Such an imposition should not be of a duration exceeding three months.
  - Amendments: It also recommended suitable amendments in Article 356 to incorporate the guidelines of the Supreme Court in S R Bommai case (1994) with regards to invoking the article under Article 356 should be incorporated in the Constitution.

It needs to be remembered that only the spirit of "cooperative federalism" can preserve the balance between the Union and the States and promote the good of the people and not an attitude of dominance or superiority. Under our constitutional system, no single entity can claim superiority. Sovereignty doesn't lie in any one institution or in any one wing of the government. The power of governance is distributed in several organs and institutions - a sine qua non for good governance.

## FINANCIAL EMERGENCY

Article 360 empowers the President to proclaim a financial emergency if he is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened. However, the 44th Amendment Act of 1978 implying that the satisfaction of the president is not beyond judicial review. The Financial Emergency is revoked by the President at any time by a subsequent proclamation.

### Effects of Financial Emergency

- Administrative Effects
  - Transfer of executive authority: The executive authority of the Centre expands and it can give financial orders to any state according to its own.
  - No checks on extension of authority: The authority of the Centre extends to directions as the president may deem necessary and adequate for the purpose
  - Provide canon of financial propriety: To direct any state to observe such canons of financial propriety as are specified by it
- Legislative Effects
  - Limitation on passing of Money Bill: All money bills or other financial bills that come up for the President's consideration after being passed by the state legislature can be reserved.
  - Convert of Federal structure into Unitary: It converts the federal structure into a unitary one without a formal amendment of the Constitution
- Financial Effects
  - Reduction of salary in State: Salaries and allowances of all or any class of persons serving in the state can be reduced.
  - Reduction of salary in Centre: President may issue directions for the reduction of salaries and allowances of;
    - All or any class of persons serving the Union and
    - The judges of the Supreme Court and the High Court

- Political Effects
  - Financial sovereignty: The Center gets full control over states in financial matters, which is a threat to the state's financial autonomy.
  - Effect on Federal Structure: Financial emergency pose a serious threat to the financial autonomy of the states that is against the federal structure of the country.

## Grounds to invoke Financial Emergency

There are various cases where the central government can invoke a financial emergency. Here is list of some of situations where central government may proceed for financial emergency:

### Increase in fiscal deficit

- Increase in current account deficit
- Reduction in Gross domestic Production •Reduction in credit ratings of country
- Doubt on financial stability of country
- Reduction in value of Indian rupee
- Economic Slowdown

## Arguments Against of Financial Emergency

- Deterioration of Political Structure: The conversion of the federal system into unitary has its own implications.
  - Dual Challenges: The government is currently faced with a dual challenge- to save lives of its people and also to safeguard economic interests of the nation. The merits and demerits of financial emergency is a subject of lengthy and non-ending debates
- Affect economic autonomy of States: This would greatly affect the financial autonomy of the state as the centre will be all powerful to make decisions.

## Arguments in favour of Financial Emergency

- **Crisis Management:** Instances like the Financial Crisis of 1991 or Corona Pandemic etc. can be managed by imposing a Financial Emergency as it gives certain economic powers to the centre to control the dire circumstances.
- **Reduce Inequality:** Power to cut down salaries of Government functionaries and such other steps may help in reducing glaring inequities in income and wealth in different sections of society.
- **Shield against Sovereign Default:** To save the country from facing Sri Lanka like sovereign default that may affect Political stability and cause public unrest, strict measures like Financial Emergency can be taken by the Government. The provisions of a financial emergency were provided with the intention of upholding the Constitution's honour.
- The protection of the constitutional system, not its destruction, is the goal of power accumulation. India never even attempted to use the provisions, despite going through severe financial crisis, starvation, war and pandemic. Declaring a financial emergency harms the reputation of the country. Therefore, this provision has still not been utilized by the Central Government.

## Union & State Executive

### Ordinances

- Ordinances are temporary laws issued by the President or Governor during a recess of Parliament or State Legislature under Articles 123 and 213.
- They can only be issued when either house of Parliament or State Legislature is not in session.
- Ordinances can only be issued within the scope of Parliament's or State Legislatures' ordinary legislative powers.

- Constitutional amendments cannot be made through ordinances.
- Ordinances must be approved within six weeks of the reassembly of the respective house.
- The maximum tenure of an ordinance is 30 weeks (6 months and 6 weeks).
- Ordinances are subject to judicial review for compliance with fundamental rights and legislative competence.
- The President or Governor can return or reject ordinances.
- Governors cannot promulgate ordinances on matters requiring Presidential approval.

## Why are they Provided For?

- Enabling the executive to meet any unforeseen or urgent situation arising in the country when Parliament is not in session, and which it cannot deal with under the ordinary law
- We do not have all-year-round functioning legislatures
- The duration of an ordinance was highly criticised in the constituent assembly debates

## International Scenario of Ordinances:

1. Limited Usage Globally: Only three parliamentary democracies— India, Pakistan, and Bangladesh—permit the issuance of ordinances by the executive. This mechanism is relatively rare and highlights the uniqueness of the ordinance system in these countries.
2. Historical Context in India: The practice of issuing ordinances in India was inherited from the colonial era, specifically from the Government of India Act, of 1935. This act allowed the Governor- General to issue ordinances when the legislature was not in session, a power later transferred to the President and Governors in independent India.

## Reasons for Issuing Ordinances (Misuse)

- **Reluctance to Face the Legislature:** The executive may issue ordinances to avoid parliamentary debate and scrutiny on controversial or sensitive issues, allowing them to implement policies without facing immediate opposition or criticism from lawmakers.
- **Fear of Defeat in the Upper House:** When the ruling government lacks a majority in the Upper House (Rajya Sabha), it may resort to ordinances to pass legislation that is likely to be blocked or defeated due to insufficient support.
- **Overcoming Legislative Standoff:** Ordinances can be used to circumvent legislative deadlock caused by continuous and deliberate disruptions from opposition parties, ensuring that essential governance functions and urgent laws are enacted without delay.
- **Political Instability:** In periods of political instability or weak coalition governments, ordinances provide a means to maintain governance and pass necessary laws without relying on a potentially unstable legislative process that might struggle to function effectively.

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## Judicial Judgements

- **A.K. Roy v. Union of India (1982):** Ordinances should not be used as a replacement for parliamentary legislation but only in cases of extreme urgency or unforeseen emergency situations.
  - **Excessive Re-promulgation:** It was highlighted that excessive re-promulgation of ordinances undermines the democratic legislative process and is deemed unconstitutional.
- **DC Wadhwa vs. State of Bihar (1987):** Repeatedly re-promulgating ordinances is considered a misuse of the ordinance power, constituting a violation of the democratic law-making process.
- **Krishna Kumar Singh v. State of Bihar (2017):** Ordinances must be presented before the legislature when it reconvenes, ensuring that they undergo proper legislative scrutiny.

- R.C. Cooper v. Union of India (1970): The President's satisfaction in issuing an ordinance can be challenged if it is shown to be made in bad faith or based on irrelevant considerations.
- S.R. Bommai v. Union of India (1994): Judicial review of the President's satisfaction for issuing an ordinance is allowed if it involves mala fides, arbitrary, or irrational use of power, including a review of the urgency claimed.

## **Ordinances can be challenged on the following grounds:**

- Colourable Legislation: As established in DC Wadhwa vs. State of Bihar (1987), an ordinance can be challenged if it is essentially a disguised attempt to enact legislation that the legislature is not currently in session to debate. If the ordinance is used to achieve what would otherwise require a regular legislative process, it is deemed an abuse of power.
- Violation of Fundamental Rights: In A.K. Roy v. Union of India (1982), it was held that an ordinance cannot contravene fundamental rights guaranteed by the Constitution. If an ordinance infringes on such rights, it can be challenged for its constitutionality.
- Substantive Provisions: According to R.C. Cooper v. Union of India (1970), ordinances must conform to the substantive provisions of the Constitution, including Article 301, which deals with trade, commerce, and intercourse within the territory of India. If an ordinance violates such substantive provisions, it can be challenged.
- Retroactivity: The case of Sat Pal & Co. v. Lt. Gov. Delhi (1979) established that ordinances cannot have retroactive effects that adversely affect rights or legal situations existing before the ordinance was enacted. Retroactive ordinances are considered unconstitutional as they undermine legal certainty and fairness.



## Impact of Ordinances:

- **Parliamentary Democracy:**
  - **Undermined due to Excessive Re-promulgation:** Frequent re-promulgation of ordinances bypasses the normal legislative process and can weaken the role of Parliament in lawmaking, as it reduces the opportunity for debate and scrutiny.
  - **Bypassing the Legislatures:** Ordinances allow the executive to enact laws without the approval of Parliament or State Legislatures, which undermines democratic principles where elected representatives are supposed to make laws.
- **Separation of Powers:**
  - **Diluted due to Executive Substituting Itself as Lawmakers:** When the executive issues ordinances, it effectively takes on the role of the legislature, blurring the clear separation of powers between the legislative and executive branches. This can lead to an imbalance in governance where the executive exerts undue legislative authority.
- **Federalism:**
  - **Compromised due to Constitutional Flexibility:** In a federal system, the Governor (or President) can sometimes act in the central interest, which may compromise the autonomy of State Governments. While Governors are expected to act on the advice of the Council of Ministers, they have the constitutional power to act independently in certain situations, potentially impacting the federal balance.
- **Judicial Review:**
  - **Heightened as Courts Scrutinize Ordinance Validity:** Courts have the authority to review ordinances to ensure they do not violate constitutional provisions, are not enacted in bad faith, and are based on valid grounds of urgency. This judicial oversight ensures that ordinances adhere to legal standards and checks against misuse of power.

## Cost-Benefit Analysis of Ordinances:

### Benefits:

- **Timely Response to Urgent Issues:** Ordinances enable swift action on pressing issues without waiting for Parliament or State Legislatures to be in session. This can be crucial for addressing emergencies or urgent societal problems. For example:
  - **Criminal Law (Amendment) Ordinance, 2018:** This ordinance allowed for the imposition of the death penalty for heinous sexual assaults on minors, responding to the public outcry following the Kathua rape case and demonstrating a quick legislative response to a critical issue.
- **Efficient Legal Processes:** Ordinances can streamline and expedite legal processes, improving efficiency in specific areas. For example:
  - **Changes to Commercial Courts Act (2015) via Ordinance:** The ordinance lowered the threshold for commercial disputes and mandated pre-suit mediation, aimed at improving the ease of doing business (EoDB) and expediting commercial litigation.
- **Addressing Specific Issues:** Ordinances can address particular issues that may not be immediately on the legislative agenda but are nonetheless important. For example:
  - **Fugitive Economic Offenders Ordinance, 2018:** This ordinance allowed for the seizure of assets of economic offenders who fled the country, targeting high-profile cases like those involving Vijay Mallya and Nirav Modi.

### Costs:

- **Erosion of Democratic Processes:** The use of ordinances can undermine the democratic process by bypassing elected representatives. This can reduce legislative scrutiny and debate, leading to less transparent lawmaking. For instance:
  - **Farm Law Ordinances, 2020:** The use of ordinances to implement controversial farm laws bypassed extensive parliamentary debate, leading to widespread protests and criticisms about the lack of legislative deliberation.

- Potential for Abuse: Excessive or improper use of ordinances can lead to their misuse or overuse, eroding trust in democratic institutions and leading to governance issues. For example:
  - Delhi Govt Ordinance, 2023: If not used judiciously, ordinances may be seen as a way to bypass regular legislative processes, leading to accusations of authoritarianism or undermining democratic norms.
- Legal and Constitutional Challenges: Ordinances are subject to judicial review and can be challenged on various grounds, such as violation of fundamental rights or the separation of powers. This can lead to legal uncertainties and challenges. For example:
  - The Homoeopathy Central Council (Amendment) Ordinance, 2021: Changes made through ordinances can face legal scrutiny, and if found unconstitutional, they may be invalidated, leading to potential legal and administrative issues.

## Overall Impact

Ordinances provide a mechanism for quick action in urgent situations, but their use must be balanced against the need for democratic accountability and legislative oversight. Excessive use or misuse can undermine democratic principles, while judicious use can facilitate timely responses to critical issues.

## Governor

### Why are Governors in the News?

- Kerala and Tamil Nadu governments have petitioned the SC over the delay of the Governor in assenting to Bills
- West Bengal Governor and leadership in a crisis of conflict including but not limited to ○ Appointment of Vice Chancellors Assenting to Bills

- Governor's actions in Karnataka and Maharashtra pertaining to electoral forwards were deeply questioned

## Why Do We Have Governors?

- Dual Role:
  - Key Figure in Federal Setup: Governors play a crucial role in India's federal structure, acting as a bridge between the central and state governments. They help maintain the balance of power between these two levels of government and ensure the proper functioning of the federal system.
- Head of Executive for the States:
  - Role in State Governance: In each state, the Governor serves as the nominal head of the executive branch, overseeing the state administration. While the Chief Minister and the Council of Ministers exercise real executive power, the Governor represents the central authority at the state level and performs ceremonial duties.
- Eyes and Ears of the Center:
  - Central Oversight: Governors act as the central government's representatives in the states, keeping the central authorities informed about the state's political and administrative affairs. This role involves monitoring state governance and reporting back to the central government, which helps in maintaining cohesion in the federal structure.

The office of the Governor has two facets, namely the occupant + the powers vested in them.  
(Discretionary Powers)

## Criticism by KT Shah:

More than a Figurehead: KT Shah criticized the role of the Governor as established by the 1935 Act, arguing that the position was more than just a ceremonial figurehead. Shah believed that the Governor held substantial powers that could influence state governance and political dynamics.

## H.V. Kamath's Observation:

Lack of Consideration: Constituent Assembly member H.V. Kamath remarked that the incorporation of the Government of India Act, 1935 into the Indian Constitution seemed to be done without thorough scrutiny. Kamath suggested that the role of the Governor might have been adopted without fully considering its implications on the democratic and federal structure of India.

The primary constitutional provisions related to the Governor in India are:

- Article 154(1): The executive power of the state is vested in the Governor, who acts as the constitutional head of the state government.
- Article 155: The President of India appoints the Governor of a state. This appointment is typically made based on the recommendation of the central government, reflecting the central government's significant influence in this process.
- Article 156(1): The Governor serves at the "pleasure" of the President, meaning the President can remove the Governor without requiring any procedural formalities. This provision can lead to instability in a Governor's tenure.
- Article 157: Specifies the eligibility criteria for the office of Governor, stating that any citizen of India who is at least 35 years old is eligible to hold the position.
- Under Article 157, any Indian citizen over the age of 35 can be appointed as Governor, which means individuals with varying political or professional backgrounds can hold the position, regardless of their suitability.
- Article 163(1): Establishes that there will be a Council of Ministers headed by the Chief Minister to aid and advise the Governor in the exercise of his functions, except when the Governor is required to act in his discretion as per the Constitution.

- Article 163(3): States that the advice given by the Council of Ministers to the Governor is not subject to judicial review.
- Article 164: Specifies that while the Chief Minister's position is secured, other ministers serve at the pleasure of the Governor, meaning they can be removed by the Governor at their discretion.
- Article 361: Grants the Governor absolute immunity from civil and criminal proceedings for actions taken in the performance of their duties, ensuring they are shielded from legal accountability for their official actions.

## Constitutional Discretion

This refers to the discretionary powers explicitly granted by the Constitution, where the Governor is not bound by the aid and advice of the Council of Ministers.

- Selection of Chief Minister: The Governor has the discretion to select the Chief Minister from the party or coalition that has a majority in the Legislative Assembly. If no party has a clear majority, the Governor must use their discretion to choose a leader who is most likely to command the confidence of the Assembly.
- Dissolution of the Legislative Assembly: The Governor can decide to dissolve the Legislative Assembly when it is deemed necessary, typically when a government loses its majority or fails to function effectively.
- Refusing Assent to Bills: The Governor can refuse to give assent to a Bill passed by the State Legislature, sending it back for reconsideration or reserving it for the President's assent under Article 200.
- Reserving Bills for President's Assent: Under Article 200, the Governor can reserve a Bill passed by the State Legislature for the President's assent, especially if it conflicts with national interests or constitutional provisions.
- Promulgation of Ordinances: The Governor may seek instructions from the President before promulgating an Ordinance on certain matters, especially when it involves national interests or emergencies.

- Advising the President on Emergency Proclamation: The Governor advises the President on the proclamation of emergency under Article 356, especially when a state government fails to function according to the Constitution.
- Administrative Matters in Tribal Areas: For states like Assam, the Governor has special responsibilities related to tribal areas, such as settling disputes over mining royalties and administrative issues related to autonomous districts.

### Situational Discretion

This involves discretionary powers exercised in specific situations where the Governor must make judgments based on the circumstances.

- Dismissal of a Ministry: The Governor can dismiss a Ministry if it loses the confidence of the Legislative Assembly or is unable to function effectively.
- Dissolution of the Legislative Assembly: As mentioned earlier, the Governor has the discretion to dissolve the Assembly in certain situations, especially when there is political instability.

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### Implied Discretion

These are powers not explicitly mentioned in the Constitution but are implied through practice and tradition.

- Asking for Information: The Governor can request information from the Chief Minister regarding legislative and administrative matters, ensuring that the Governor is well-informed about the functioning of the state government.
- Submission of Matters for Council of Ministers' Consideration: The Governor can ask the Chief Minister to submit any matter that has been decided by a Minister but has not yet been considered by the Council of Ministers.

## Judicial Decisions

### **State of Punjab v Principal Secretary to the Governor of Punjab and Anr (2023)**

- Key Point: This case addressed the Governor's role in relation to bills passed by the state legislature.
- Judgment: The Supreme Court emphasized that while the Governor acts as a symbolic head of the state, they cannot indefinitely withhold action on bills passed by the legislature. The Court held that the Governor must act on the advice of the Council of Ministers or provide reasons for withholding assent, and this action must be taken within a reasonable time frame.
- This ruling underscores that the Governor's role is largely ceremonial concerning legislative matters and should not be used to obstruct the legislative process unduly.

### **Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly (2017)**

- Key Point: This case focused on the extent of the Governor's powers to convene and address the state legislative assembly.
- Judgment: The Supreme Court ruled that the Governor cannot independently convene the legislative assembly, dictate its legislative agenda, or address the assembly without prior consultation with the Chief Minister. The Court emphasized that the Governor's role is to act on the advice of the Council of Ministers and that any actions related to the assembly must respect the principles of parliamentary democracy and the proper functioning of the state government.

## Current Debate Around Article 361

The Supreme Court of India has recently decided to review the immunity provided to Governors from criminal prosecution under Article 361 of the Constitution. This decision follows a plea from a female employee at Raj Bhavan who lodged a sexual harassment complaint against the Governor of West Bengal.



## Immunities Provided to the Governor under Article 361

### Origin of Governor's Immunity:

The concept originates from the Latin maxim "rex non potest peccare," meaning "the king can do no wrong." During the Constituent Assembly's discussions on Article 361, member H. V. Kamath questioned the scope of criminal immunity for the President and Governors, specifically concerning the initiation of criminal proceedings against them.

Despite these concerns, the article was adopted without further debate.

### Immunities under Article 361:

- **Non-Answerable to Courts:** Article 361(1) specifies that the President or a State Governor is not accountable to any court for their actions taken while exercising their powers and duties.
- **Exception to Article 14:** Article 361 stands as an exception to the Right to Equality guaranteed under Article 14.
- **Protection from Criminal Proceedings:** Article 361(2) stipulates that no criminal proceedings can be initiated or continued against the President or a Governor during their term in office.
- **No Arrest:** Article 361(3) prevents any arrest or imprisonment of the President or Governor during their tenure.
- **Protection from Civil Proceedings:** Article 361(4) bars civil lawsuits against the President or Governor for personal acts during their term, unless two months' written notice is given. The notice must detail the nature of the proceedings, the cause of action, the party initiating the lawsuit, and the relief sought.

### How have the Courts Interpreted Article 361?

- **Dr SC Barat And Anr vs. Hari Vinayak Pataskar Case, 1961:** In this, a distinction was made between the Governor's official and personal conduct. While complete immunity is granted for official actions, civil proceedings can be initiated with the prior notice of 2 months for the Governor's actions.

- Rameshwar Prasad vs. Union of India Case, 2006: The Supreme Court acknowledged the Governor's "complete immunity" under Article 361(1) for constitutional actions but allowed judicial scrutiny for malafide actions.
- This case established that while official actions are protected, there are mechanisms for accountability.
- Telangana High Court Judgment (2024): The High Court noted that there is no explicit or implicit constitutional provision that bars judicial review of actions taken by the Governor. The court clarified that the immunity granted under Article 361 is personal and does not preclude judicial review.

## Judicial Decisions

### Harish Rawat v. Union of India (2016)

- Key Point: This case dealt with the Governor's actions during a political crisis and the need for a floor test in the assembly.
- Judgment: The Supreme Court mandated a floor test in the state assembly to determine the actual majority support for the government. The Court's decision highlighted the importance of upholding parliamentary democracy and ensuring that the elected government's legitimacy is tested through a floor test rather than being decided by the Governor's unilateral actions. This case reinforced the principle that the Governor must respect democratic processes and not interfere in the internal functioning of the state assembly beyond their constitutional mandate.

*Outline the constitutional provisions related to the immunity of the Governor in India. Explain how this immunity protects the Governor's role and discuss its limitations. (15 Marks, 250 Words)*

## Way Forward

- Judicial Clarity and Recommendations

- Supreme Court Ruling (1979): Governors are independent constitutional officers, not subordinate to the Government of India. This emphasizes the need for their autonomy from the central government, ensuring they act impartially and independently.

#### Recommendations from Various Commissions

- First Administrative Reforms Commission:
  - Consultation with States: States should be consulted in the appointment process of Governors to ensure that the appointee is acceptable and suitable for the specific state. This can help mitigate any potential conflicts between the state government and the Governor.
- Sarkaria Commission Recommendations:
  - Eminent Individuals: The Governor should be an eminent person from some field of life,
  - ensuring they bring a high level of expertise, respect, and integrity to the office.
  - Non-Domicile Requirement: The appointee should not be domiciled in the state of their appointment. This helps ensure that the Governor remains detached from local politics and can act impartially.
  - Political Detachment: The Governor should be detached from local politics to avoid biases and conflicts of interest. This requires that they do not have close political affiliations or vested interests in the state they govern.

Governors should fulfil their constitutional duties with benevolence, rather than acting as authoritarian figures promoting the agenda of a partisan central government. While some governors have demonstrated bad faith, there are also instances where they have defended public interest and constitutionality against the state executive's improper actions.

Governors should serve as a 'link' between the centre and the state, not as the centre's 'agent.'

## Gram Nyayalayas

## Why in the News?

The Supreme Court of India has instructed States and High Courts to provide detailed reports on the setup and operation of Gram Nyayalayas. This action follows concerns about the delayed implementation of these rural courts.

Background: Gram Nyayalayas are rural courts established to provide affordable and accessible justice to people in rural areas. They aim to handle minor civil and criminal cases, thereby easing the burden on higher courts and improving legal access for rural communities.

- **Need:**

- Constitutional Mandate: Article 39-A of the Indian Constitution requires providing free legal aid to the poor and weaker sections of society.
- Law Commission Recommendation: The 114th report of the Law Commission of India recommended setting up Gram Nyayalayas to ensure speedy, substantial, and inexpensive justice for common people.

- **Jurisdiction:**

- Area of Operation: Gram Nyayalayas operate in areas designated by a notification from the State Government, in consultation with the respective High Court.
- Types of Jurisdiction: They handle both civil and criminal cases.
- Pecuniary Jurisdiction: The financial limits for cases are determined by the respective High Courts.
- Evidence Rules: They have the authority to accept certain types of evidence that might not be admissible under the Indian Evidence Act.

## Issues:

- Infrastructure Deficiency: Inadequate buildings, office spaces, and related equipment.
- Manpower Shortage: Insufficient personnel, including notaries and stamp vendors, particularly at the sub-district level.

- Central Assistance: Inadequate financial and logistical support from the central government.
- Ineffectiveness: Most disputes resolved by Gram Nyayalayas are appealed to District Courts, rendering them ineffective in reducing the burden on higher courts.
- Absence of Regular Cadre: Lack of a regular cadre of Gram Nyayadhikaris (judicial officers).
- Reluctance in State Functionaries: Only a few states have operationalized Gram Nyayalayas; many state officials are hesitant to invoke their jurisdiction.
- Jurisdictional Ambiguity: Overlapping jurisdictions with alternative dispute resolution mechanisms, tribunals, and Adalats create confusion.
- Lack of Awareness: Stakeholders, including the rural population, are often unaware of the existence and benefits of Gram Nyayalayas.

## Way Forward:

- Targeted Establishment: Set clear, time-bound goals for establishing Gram Nyayalayas based on population density and caseload.
- Training Programs: Implement training for Nyayadhikaris, conciliators, and stakeholders to enhance their effectiveness.
- Community Engagement: Work with tribal communities to address concerns and develop culturally sensitive procedures, ensuring that Gram Nyayalayas complement, rather than replace, traditional justice systems.
- Simplified Procedures: Conduct proceedings in local languages and simplify processes to make them accessible.
- Jurisdiction Clarity: Clearly define the jurisdiction of Gram Nyayalayas vis-à-vis specialized courts to eliminate confusion and ensure efficient case allocation.
- Legal Provisions: Consider making provisions for Contempt of Nyaya Panchayat within the Gram Nyayalaya Act.
- Performance Monitoring: Develop a robust data collection and evaluation system to track performance, ensuring transparency and accountability through public reporting.

- **Public Awareness Campaigns:** Launch targeted awareness campaigns in rural areas, using local media and community leaders to educate citizens about the benefits of Gram Nyayalayas

Despite existing challenges, Gram Nyayalayas hold significant potential in providing access to justice for marginalized communities and reducing the case burden on higher courts.

However, achieving these objectives requires a revamp of their organizational and jurisdictional framework.

*Q. Analyze the difficulties encountered in the implementation of Gram Nyayalayas in India. What is the effect of these challenges on access to justice in rural regions?*

*Answer Writing Practice*

## ONE CANDIDATE ONE CONSTITUENCY

*BAN ON EXIT POLLS AND OPINION POLLS*

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### Why in News?

The Chief Election Commissioner recently urged the Ministry of Law and Justice to amend the Representation of the People Act (RPA) of 1951, proposing that candidates be allowed to contest elections from only one constituency. This suggestion has gained traction amidst ongoing discussions about electoral reforms, including the "One Nation, One Election" idea. Additionally, the Election Commission recommended a ban on exit polls and opinion polls during the election process to maintain the integrity of the electoral system

### Background of the Issue

Provisions under the Representation of the People Act (RPA), 1951

- Section 33(7) of the RPA permits candidates to contest from up to two constituencies in a single election. Prior to 1996, there was no upper limit, and candidates could contest from multiple constituencies. The RPA was amended in 1996 to restrict the number to two.
- However, Section 70 of the same Act stipulates that a candidate can represent only one seat in Parliament or the State Assembly, which leads to contradictions in the electoral system.

## Reasons for Contesting Multiple Seats

Candidates contesting from multiple constituencies often use it as a strategy to:

- Divide the Opponent's Vote: By contesting in multiple constituencies, candidates can spread their political influence and siphon votes from their opponents.
- Demonstrate Party Dominance: Contesting from multiple constituencies can also be used as a tool to project the party's widespread influence.
- Political Ripple Effect: In some cases, a candidate contests from multiple seats to create a ripple effect in the surrounding constituencies, boosting the party's prospects in those areas

## Issues with Contesting Multiple Seats

### Contradictory Provisions in the Law

- Section 33(7) allows contesting from two constituencies, but Section 70 bars the simultaneous representation of two constituencies, leading to a paradox where the candidate can win both seats but must vacate one, triggering a by-election. This creates an inherent contradiction within the law.

### Financial Implications

- By-election Costs: After vacating one seat, a by-election is automatically triggered, leading to unnecessary financial strain on the public exchequer. For instance, in 2014, after PM Narendra Modi won both Vadodara and Varanasi, he vacated his Vadodara seat, necessitating a by-election. The administrative and operational cost of such by-elections

often runs into crores, which could have been avoided if candidates were restricted to contesting from a single seat.

- **Burden on Voters:** Repeated elections, often within a short period, can lead to voter fatigue, diminishing voter turnout and interest in the electoral process. This is particularly true for by-elections, which typically see lower participation compared to general elections.

## **Arguments in Favor of Contesting from Multiple Seats**

- **Wider Choice for Voters**
  - Allowing candidates to contest from multiple constituencies provides voters with a broader selection of candidates, giving them more options during elections. Removing this provision could limit political choice and could be seen as an infringement on the candidate's right to contest and the public's right to choose.
- **Safety Net for Candidates**
  - Contesting from multiple constituencies offers a safety net for candidates, especially in highly competitive or unpredictable constituencies. If they lose in one seat, they still have the option to win in another.

## **Amendment to RPA**

The Election Commission has consistently advocated for limiting candidates to contesting only one seat. The Commission proposed this change in 2004, 2010, 2016, and again in 2018. It has called for the following reforms:

- **Financial Responsibility:** Candidates who contest from two constituencies and win both must bear the financial cost of conducting a by-election in one of the constituencies.
  - **Cost:** Rs. 5 lakh for a Vidhan Sabha election and Rs. 10 lakh for a Lok Sabha election.



- By-election after One Year: The Election Commission has also recommended that by-elections be held after a year, giving voters sufficient time to reflect on their choice and allowing the defeated candidates to prepare properly for the subsequent election.

## Exit and Opinion Polls: Concerns and Recommendations

### What are Opinion and Exit Polls?

- Opinion Polls are conducted before the election to gauge public opinion on various political issues.
- Exit Polls are conducted immediately after voters cast their ballots to predict the outcome of the election.

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### Problems with Opinion and Exit Polls

- Bias: These polls can be biased depending on the agency conducting them, influencing public opinion in favor of one party or candidate.
- Manipulation: Political parties often allege that these polls are sponsored by rivals and are used as a tool for psychological manipulation of voters.
- Distortion of Electoral Results: Poll results can distort voter perception, especially in prolonged elections, leading to premature conclusions about the likely outcome

*Q. "Critically analyze the role of opinion and exit polls in Indian elections. How do they impact voter behavior and electoral integrity? Should the Election Commission ban these polls during elections?"*

# Right to Disconnect

## Why in News?

Recently, the discussion around Right to Disconnect has gained momentum as a potential measure to enhance employee productivity and well-being. The aim is to recognize this right to help workers maintain a healthy work-life balance and reduce burnout, especially in the context of increasing digital connectivity and the blurring of boundaries between work and personal life.

## What is the Right to Disconnect?

The Right to Disconnect refers to the employee's right to disengage from work-related communications (such as emails, calls, texts) outside of official working hours. Employees are not obligated to respond to work-related messages once their workday ends.

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## Objectives

- **Improve Work-Life Balance:** Defining boundaries between work and personal life.
- **Reduce Burnout:** Limiting the continuous flow of work communications prevents mental fatigue.
- **Increase Employee Satisfaction:** Ensures employees have time for personal activities and recovery.

## Employee Rights

Employees can decline work-related communications outside working hours without facing any negative consequences. This includes not being required to monitor, read, or respond to emails or messages related to work.

**Exceptions**

In cases of critical business needs, pre-agreed arrangements, or when there is an immediate risk to health or safety, contacting employees outside of work hours may be necessary.

**Constitutional Safeguards in India**

- Article 38: Promotes the welfare of people, emphasizing the broader societal need to protect workers.
- Article 39(e): Aims at securing the health and strength of workers and preventing exploitation.

In India, MP Supriya Sule introduced a Private Member Bill in 2018 to legally recognize the right to disconnect after work hours, proposing penalties for companies failing to comply with its provisions.

**Global Recognition of the Right to Disconnect**

Several countries have passed laws recognizing the right to disconnect:

- France (2017): Companies with 50+ employees must negotiate guidelines to allow workers to disconnect from emails and communications after hours.
- Italy (2017): Employees have the right to disconnect during rest periods, especially under remote work.
- Spain (2018): A law within the Data Protection and Digital Rights Law mandates employers to develop the right to disconnect policies.
- Ireland (2021): Introduced a code of practice protecting employees from penalties for not being available after work hours.
- Belgium (2022): Initially for federal civil servants, this law promotes mental well-being and work-life balance.
- Australia (2024): New laws allow employees to ignore work communications after hours without fear of reprisal.

## Why India Needs the Right to Disconnect

- Improved Work-Life Balance
  - Employees can spend more time on personal pursuits, family, and rest, fostering better relationships and personal growth.
- Reduced Stress and Burnout
  - Disconnecting after work reduces stress, helping prevent physical and mental health issues like anxiety, fatigue, and heart diseases.
- Enhanced Productivity
  - Employees with time to recharge return to work refreshed, increasing overall efficiency and output. Research shows a direct correlation between happiness and productivity.
- Protection of Privacy
  - Employees can maintain control over their personal time, ensuring that their personal lives are not intruded upon by work.
- Optimized Resource Use
  - Better use of working hours can lead to fewer distractions, increasing output and reducing unnecessary costs for employers.
- Healthier Communities
  - Reducing prolonged work hours can decrease stress-related health problems, contributing to a healthier workforce and reducing healthcare costs.
- Economic Benefits
  - Healthier employees, with lower stress levels, reduce the economic burden on healthcare systems, potentially saving costs in the long term.

## Challenges of Implementing the Right to Disconnect in India

- Economic Challenges
  - Sectors like IT, customer service, and finance often require round-the-clock availability to meet global demands. A strict right to disconnect could affect client satisfaction and global competitiveness.

- Growth-Oriented Economy
  - India's focus on rapid economic growth may clash with work-life balance initiatives. A strict right to disconnect could reduce work output, potentially hindering national priorities.
- Global Competitiveness
  - For Indian businesses competing globally, availability and responsiveness outside of regular hours are seen as advantages, particularly in industries with global clients.
- Dependence on Hustle Culture
  - In sectors like startups and high-growth businesses, the hustle culture thrives, where long hours are often seen as necessary for growth. Introducing a right to disconnect might discourage employees eager to climb the corporate ladder.
- Large Informal Sector
  - A significant part of India's workforce is in the informal sector, where labor laws are weak. Extending the right to disconnect in this segment would be complex and difficult to implement.
- Cultural and Social Factors
  - Many Indians view work as integral to their identity and success. Disconnecting from work may be perceived as a barrier to growth in a highly competitive job market.
- Enforcement Difficulties
  - The diversity in Indian workplace settings makes it challenging to monitor and enforce disconnection policies uniformly across sectors.
- Impact on Small and Medium Enterprises (SMEs)
  - SMEs may face difficulties adapting to policies related to disconnecting due to limited resources and reliance on flexible work hours.
- Young Workforce Expectations
  - The growing young workforce in India often values opportunities for career advancement and may be less inclined to embrace a strict right to disconnect, preferring flexibility to gain experience and progress in their careers.

## Way Forward

- Balancing Productivity and Well-being
  - A balance must be struck between maintaining high productivity and safeguarding employees' mental and physical health.
- Gradual Implementation
  - The Right to Disconnect could be gradually introduced, starting with industries that have high digital connectivity and demanding work cultures, such as IT, finance, and telecommunications.
- Collaborative Efforts
  - Government, industry leaders, and employees must collaborate to shape policies that are flexible and allow for both professional growth and work-life balance.
- Policy Evolution
  - Work-life balance policies should evolve gradually, starting with high-stress sectors, before being expanded to other industries.

## Comparison of the Indian Constitutional Scheme with that of other countries

### United States of America

#### Similarities

##### Constitutional

- Written Constitution: Both nations have a written constitution; the Indian constitutional existence is also credited to the written text of the USA's Constitution.
- Preamble: Both nations have a preamble as their introductory statements to their constitutions.
- Fundamental Rights: Both nations have the concept of Fundamental rights in their constitutions, in the US, enumerated rights that are incorporated are so fundamental that

any law restricting such a right must both serve a compelling state purpose and be narrowly tailored to that compelling purpose.

- **Emergency Provisions:** An emergency can be declared on the ground of War and Armed Rebellion, US does not use the phrase of emergency but says that in case of Rebellion and Invasion of Public Safety, the writ of Habeas Corpus can be suspended.
- **Office of Vice President:** Both nations have the office of the vice president, with the US asserting more powers and importance to the post than India.

### **Legislature and Executive**

- **Elected Governments:** Both nations operate on different political models, but both have elected representatives and 2 houses of legislature.
- **State Representation:** Both nations have representations from their states in the central legislature.
- **Powers of defence and Diplomacy:** General regulation of major foreign policy issues and defence of the country is vested in the central/federal governments of both nations.
- **Impeachment of President:** Both nations have provisions for the removal of the President through impeachment motion in the legislature

### **Judiciary**

- **Judicial Review:** The Supreme Court of the USA has the power to reject or abrogate any law that does not conform to or violates the Constitution. Similar provisions exist in India, where the judiciary can strike down laws that are unconstitutional.
- **Due Process of Law:** Both nations uphold the principle that "the government cannot deprive anyone of life, liberty, or property without due process of law." In India, this concept was expanded upon with a wider interpretation in the Maneka Gandhi case.
- **Separation of Powers:** Both countries have a legislative, executive, and judicial branch, each with distinct but equally important duties. In India, there is a separation of functions, along with a system of checks and balances.

### **Differences**

#### **Constitutional**

- **Political Model:** The president is the head of the state in the U.S., and thus his administration is popularly referred to as the President's. In India, on the other hand, the

legislative system of government places real power in the hands of the Prime Minister and his cabinet, with the President being only a nominal head.

- Election: In the U.S., the President is elected directly, whereas in India, he is elected indirectly.
- Amenability: The U.S. Constitution has only been changed 27 times in over 200 years since the procedure is rigid and difficult to pass. The Constitution of India, which entered into force in 1950, has so far been amended 105 times.

### **Legislature and Executive**

- Citizenship: The Indian Constitution recognizes single citizenship. On the other hand, the United States Constitution allows for dual citizenship, where a person can be a citizen of both the United States and another country.
- Residuary Powers: In India, the residuary powers not mentioned in the Schedule VII are vested in the union, whereas in the U.S., they are vested with the states.
- Representation of States: In India, representatives to the Rajya Sabha are based on the state's population, whereas in the U.S. Senate, all states have equal representation.
- Houses of Legislature: Whereas the Lok Sabha, the lower house in India, is stronger, the Senate, the upper house, is stronger in the United States.
- Party Structure: In the U.S., there are very few political parties, mostly the Democrats and the Republicans, whereas in India there are multiple parties.

### **Judicial**

- Judicial Tenure: In the United States, a judge can hold the post for life as long as they enjoy good health. In India, however, judges have a mandatory retirement age.
- Supreme Court: In the U.S., every state has its own Supreme Court as the highest court of appeal for most cases, with the federal Supreme Court handling select federal cases. In contrast, India has an integrated judiciary with one Supreme Court.

## **Impeachment of the President**

### **India Versus USA**



*Q. Discuss the differences in the electoral systems of the U.S. and India for presidential elections.*

Specification	USA	India
<b>Applicability</b>	<b>President, Vice President, and all civil officers</b> of the Federal Government are subject to impeachment.	<b>Only President</b> (under Article 61 of constitution).
<b>Grounds of Impeachment</b>	Treason, Bribery, or other high crimes and misdemeanors.	Violation of the Constitution
<b>Charges preferred by</b>	<b>Any member</b> of the House of Representatives.	Either House of Parliament provided such charges are signed by <b>at least 1/4<sup>th</sup> of members</b> of the House.
<b>Voting</b>	<b>Simple majority</b> of the House of Representatives.	Resolution needs to be passed by <b>not less than 2/3<sup>rd</sup> of total membership</b> of each House. Once passed in one House, it is sent to another House, where an investigation into the charges precedes vote on resolution.
<b>Consequence</b>	Impeachment serves as an <b>indictment, not removal</b> . After impeachment, the Senate (upper house) is convened like a court. The President can only be <b>removed if at least 2/3<sup>rd</sup> of Senate votes</b> for it after the hearings.	Impeachment results in the <b>removal of the President</b> from office.
<b>Previous Examples</b>	Andrew Johnson, Bill Clinton, and Donald Trump were impeached but none were removed.	<b>No President has been impeached</b> so far.

## Differences in the Electoral Systems of the U.S. and India for Presidential Elections

The U.S. and India both use an electoral college system to elect their president, but the structure, process, and significance of the systems differ considerably. Here is a comparison of the two electoral systems:

### Composition of the Electoral College

#### U.S. Electoral College:

- The U.S. Electoral College consists of 538 electors. The number of electors per state is determined by the sum of that state's Senators (2) and Representatives (based on population).
- A candidate needs a majority of 270 electoral votes to win the presidency.
- Electors are chosen by political parties in each state based on the outcome of the popular vote in that state.

#### Indian Electoral College:

- The Indian Electoral College is composed of elected members of Parliament (MPs) and elected members of Legislative Assemblies (MLAs) across all states and union territories.
- The total number of electors is significantly larger, with MPs and MLAs from both houses of Parliament and state legislatures voting in the election.
- Unlike the U.S., state-specific electors contribute to the voting process, with the MLAs' vote value varying based on the population of their state.

### Nomination Process

#### U.S. Electoral College:

- In the U.S., candidates are selected by political parties, and they run for office through the popular vote in each state.
- Voters choose electors who have pledged to vote for a particular candidate in the Electoral College.

#### Indian Presidential Election:

- In India, a presidential candidate must be nominated and supported by a signed list of 50 proposers and 50 seconders, who are elected members of Parliament (MPs) and State Legislative Assemblies (MLAs).

- The nomination is more formal, and candidates must also submit details about their supporters as part of the electoral process.

### 3. Voting Process

#### U.S. Electoral College:

- U.S. citizens vote directly for electors in their state. The electors, in turn, cast their votes for president and vice president.
- The electoral votes are cast as a result of the popular vote within each state.

#### Indian Presidential Election:

- Voters from the electoral college do not vote directly for a party candidate but instead vote by indicating their preferences for presidential candidates.
- Preference voting allows MPs and MLAs to rank candidates in order of preference rather than casting a simple, direct vote for one candidate.

### Vote Value Calculation

#### U.S. Electoral College:

- In the U.S., the vote value of electors is uniform within each state based on the number of Senators and Representatives, with larger states having more electoral votes.
- There is no variation in the value of a single elector's vote; every elector from a state casts one vote for the candidate chosen by the state's popular vote.

#### Indian Presidential Election:

- The value of each vote is calculated differently for MPs and MLAs:
- MPs have a fixed vote value of 700.
- MLAs' votes are weighted based on the population of their respective states. For example, an MLA from Uttar Pradesh has the highest vote value of 208, while one from Arunachal Pradesh has the lowest at 8.
- This system ensures that larger states like Uttar Pradesh have a proportionally higher influence in the presidential election compared to smaller states.

## Winning Criteria

### U.S. Electoral College:

- A candidate needs a majority of electoral votes to win—270 out of 538 votes.
- If no candidate reaches the required majority, the election is decided by the House of Representatives.

### Indian Presidential Election:

- A candidate needs to secure more than 50% of the total votes cast, plus 1 additional vote, to win the election.
- The system in India is more complex because of the preference voting and the varying value of votes.

## Impact of the System

### U.S. Electoral College:

- A candidate can win the popular vote nationwide but still lose the presidency if they do not win enough states with sufficient electoral votes.
- This has occurred five times in U.S. history, most notably in the 2000 and 2016 elections where the popular vote winner did not win the Electoral College.

### Indian Presidential Election:

- In India, since the system is based on weighted votes and preference, a candidate needs to secure a clear majority in both houses and across states. The system reduces the likelihood of a mismatch between the popular vote and the final outcome.

## GREAT BRITAIN

## Similarities

### Political Conventions

- Political Model: Both the UK and India operate on the Parliamentary model of democracy with a bicameral legislature.

- Rule of Law: Both nations assert the primacy of the rule of law, where laws are paramount, and only those created through this process enjoy legitimacy.
- Amenability: British laws can be passed, amended, and repealed by a Simple Majority (50% of the members present and voting) of Parliament, similar to some provisions in the Indian Constitution.

## **2. Legislature and Executive**

- Cabinet System: Both India and the UK have a cabinet system with inner ministers holding various portfolios.
- Dual Heads of Government: There are two heads: one as the head of state, representing the nation and providing continuity to the administration, and the other as the head of government.
- Collective Responsibility: In the cabinet system, there is a principle of collective responsibility, making other ministers also important.
- Party Structure: Both India and the UK have multiple parties represented in the lower house of Parliament.

## **3. Judiciary**

- Removal of Judges: In the UK, judges can only be removed from office for serious misbehaviour and according to a procedure requiring the consent of both Houses of Parliament, like the procedure in India.

## **Differences**

### **1. Conventional**

- Type of Model: The UK is a constitutional monarchy with a regent at the top, whereas India has a republican form with an indirectly elected President at the top.
- Constitution: Britain has no written constitution and operates on conventions and traditional laws, whereas India has a written constitution.
- Federalism: India is a federal system with a unitary bias, while the UK is a unitary state with all powers vested in a single supreme Central Government.
- Parliamentary Sovereignty: The UK Parliament is sovereign in the sense of constitutional sovereignty, with powers not limited by a constitutional document. In contrast, the Indian Parliament is limited by the constitution itself.

- Prime Minister: In the UK, the Prime Minister must be elected from the lower house, unlike in India, where the Prime Minister can be elected from either house.

## **2. Legislature and Executive**

- Hereditary Members: The House of Lords in the UK has hereditary members holding titles, whereas in India, Article 18 prohibits any person from holding titles or having hereditary claims to political positions.
- Speaker: In the UK, there is a convention that "once a Speaker, always a Speaker," meaning a former Speaker holds no political membership. In contrast, in India, Speakers usually remain members of their parties.
- Citizenship: Indian citizenship and nationality law does not allow dual citizenship, whereas in the UK, one does not need to give up their present citizenship or nationality to become a British citizen.
- Religious Presence: The upper house in the UK includes members of the church, whereas in India, there is no such provision for religious members or organizations.

## **Judiciary**

- Judicial Review: Judicial review is a basic structure of the Indian Constitution, and Parliament is not sovereign; instead, the people of India are sovereign. However, in the UK, Parliament is sovereign, and review in this sense doesn't exist.
- Nature of Judiciary: The UK does not have a single unified legal system, with England, Scotland, and Wales having different structures, while India has an integrated judiciary.
- Separation of Powers: In the UK, there is no real separation of powers, but rather a fusion of powers, unlike in India, where the separation of powers exists to a larger extent.

## **FRANCE**

Aspect	Similarities	Differences
<b>Preamble and Fundamental Rights</b>	Both constitutions have a <b>preamble emphasizing fundamental principles</b> . India's <b>preamble emphasizes</b> justice, liberty, equality, and fraternity, mirroring France's commitment to liberty, equality, and fraternity.  <b>Fundamental Rights</b> are enshrined in both constitutions.	<b>French Constitution</b> emphasizes <b>secularism</b> (negative secularism: Complete separation between State and Religion); India adopts a more positive approach accommodating diverse religious practices (state promotes all religions).
<b>Parliamentary System</b>	Both countries have a <b>parliamentary form of government</b> with a President or Head of State and a Prime Minister as the Head of Government.	The <b>Indian President holds a more ceremonial role with limited powers</b> , while the French President possesses more <b>substantial executive authority</b> . This reflects the <b>semi-presidential system</b> in France.
<b>Directive Principles and Social Justice</b>	Both constitutions include <b>Directive Principles of State Policy</b> (India) and Objectives of the Republic (France), guiding the state in matters of social and economic welfare.	India's Directive Principles are <b>more detailed and comprehensive</b> ; France focuses on broad principles without detailed specificity.
<b>Federal Structure</b>	<b>Both constitutions provide for the division of powers between the centre and the states (India) or regions (France)</b>	India has a federal system, while France has a unitary system
<b>Amendment Procedure</b>	Both constitutions allow amendments to accommodate societal needs	India follows a <b>rigid amendment procedure requiring a special majority</b> ; France has a more flexible approach allowing amendments through a joint session of the Parliament.

<b>Influence</b>	Dr. B.R. Ambedkar and other constitutional makers	Montesquieu's influence
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*Q. What can France learn from the Indian Constitution's approach to secularism? (150 words, 10 marks)*

### **Differences between the concept of secularism in India and France:**

- Relation between state and religion: While French Secularism emphasizes on a strict separation of religion and state, Indian system relies more on what can be termed as 'Principled Distance approach'. In India the State is allowed to interfere in secular aspects of religions or in those religious practices which it finds oppressive or discriminatory in nature.
- Freedom of expression vs Religion: The French concept encourages absolute Freedom of expression and a spirit of inquiry. It gives primacy to Freedom of Expression over religious sentiments. On the other hand, India has a balanced approach. It puts reasonable restrictions on Freedom of Speech in order to maintain respect of all religions.
- Right to Religion: French Secularism does not recognize one's Right to Profess Religion. While Indian Constitution recognizes Right to Profess, Propagate, Practice Religion as a Fundamental Right.
- Religion in Public sphere: French system considers religion a strictly private matter and prevents any religious expression in the public sphere. For example, French government banned wearing religious symbols in schools such as a cross, burqa etc. India, on the other hand, recognizes individual and community right to practice religion and express their religious identity in the public sphere.



- Minority rights and identity: While the French Secularism is based on cultural assimilation, Indian Secularism thrives to protect minority rights and enable them to preserve their cultural identity.
- Positive discrimination: Indian model of Secularism, unlike the French model recognizes the need to protect minorities. Indian Constitution has put in place various provisions which discriminate positively in favour of religious and cultural minorities, such as Article 29 and 30 of the Constitution.

## JAPAN

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Aspect	Indian Constitution	Japanese Constitution	Key Differences/Lessons
Adopted	1950 (after independence from Britain in 1947)	1947 (post-WWII under U.S. occupation)	Both are relatively recent but shaped by very different historical contexts.
Nature of Constitution	Written Constitution, comprehensive with Parts, Schedules, and Articles. It is one of the longest constitutions in the world.	Written Constitution, but relatively short (103 articles).	Japan's Constitution is more concise than India's, but both are comprehensive.
Preamble	The Preamble includes key principles such as sovereign, socialist, secular, democratic republic, and justice, liberty, equality, fraternity.	The Preamble emphasizes sovereign state, democracy, and peace (rejects war).	India emphasizes secularism, socialism, and democracy; Japan emphasizes peace and democracy.
Type of Government	Federal system with a parliamentary democracy. The division of powers between central (Union) and state governments.	Unitary system with a parliamentary democracy, centralized power in the national government.	India's federal structure allows significant state autonomy, while Japan maintains centralized power.
Head of State	President of India (Ceremonial role)	Emperor of Japan (Ceremonial role)	Both are ceremonial heads of state, but India's President is elected, while Japan's Emperor is a monarch by hereditary succession.
Head of Government	Prime Minister (real executive power)	Prime Minister (real executive power)	Both countries have a parliamentary system, with a Prime Minister as the head of government.
Legislature	Bicameral legislature: Lok Sabha (Lower House) and Rajya Sabha (Upper House).	Bicameral legislature: House of Representatives (Lower House) and House of Councillors (Upper House).	Both countries have a bicameral legislature, but India's Rajya Sabha represents states, whereas Japan's House of Councillors represents regional districts.
Judiciary	Independent judiciary with the Supreme Court of India at the top, which has the power of judicial review.	Independent judiciary with the Supreme Court of Japan, but its judicial review power is more restrained.	India's judiciary is more active in interpreting laws and has broader judicial review, whereas Japan's judiciary plays a more conservative role in constitutional matters.
Amendment Process	The Constitution can be amended through Article 368, requiring approval from both houses of Parliament and, in some cases, state legislatures.	The Constitution can be amended by a two-thirds majority in both houses of the National Diet, followed by a referendum.	Both constitutions are rigid, but India's amendment process is more flexible in terms of parliamentary involvement, while Japan requires a referendum for amendments.

Fundamental Rights	Part III of the Constitution guarantees a wide range of fundamental rights (e.g., equality, freedom of speech, right to life).	Chapter III guarantees fundamental human rights, including equality, freedom of speech, and privacy.	Both constitutions protect fundamental rights, but India has more explicit protections in its directive principles (Part IV), whereas Japan focuses more on human rights as inviolable.
Secularism	Secular state, where the government must maintain neutrality toward all religions, but may provide some accommodation for religious practices.	Secular state, with a focus on complete separation of religion from state affairs, particularly no public funding for religious activities.	India's secularism allows for more religious accommodation, while Japan's is more strictly neutral.
Military Role	India maintains a standing military, with the President as the Commander-in-Chief. The military is controlled by civilian leadership.	Japan renounced war under Article 9, maintaining only Self-Defense Forces (SDF) for defensive purposes.	India maintains a strong defense and has military forces, while Japan is a pacifist country, with no offensive military capability.
Peace Clause	Article 51 promotes international peace and security as part of the state's foreign policy.	Article 9 renounces war and prohibits maintaining a military for offensive purposes, focusing on peace.	Japan has a much stronger commitment to peace (via Article 9) compared to India's more active international role in peacekeeping and security.

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## Australia

### Similarities

#### Constitutional Framework

- **Written Constitution:** Both Australia and India have written constitutions that outline the responsibilities of their federal governments.
- **Federal System:** Both nations operate under a federal system with a division of powers between the central government and the states or territories.
- **Legislature & Executive**
- **Second Readings of Bills:** Like in India, Australia allows for second readings of bills in committees, which can suggest amendments.

- Concurrent List: Both countries have a concurrent list where, in case of a conflict, the central laws prevail over state laws.
- Joint Sitting: Australia, like India, provides for a joint sitting of the legislature to resolve deadlocks between the two houses.

## Judiciary

- Final Court of Appeal: The Supreme Court in both countries serves as the final court of appeal in civil, criminal, and constitutional matters.
- Equality before Law: The Australian High Court, similar to the Indian Supreme Court, upholds the principle of equality before the law and has drawn on Indian legal opinions in its rulings.
- Appointment of Judges: In both countries, judges at the federal level are appointed by the head of state (Governor-General in Australia and President in India) based on the selection by the Cabinet.
- Removal of Judges: The process for removing judges in both countries requires an address from both houses of Parliament on grounds of proved misbehavior or incapacity.
- Separation of Powers: Both Australia and India emphasize the separation of powers and maintain an independent judiciary to ensure checks and balances within the government system.

## Differences

### Amenability:

Australia: The Constitution can be amended only through a national referendum, requiring approval from the electorate.

India: The Constitution can be amended by Parliament, with different procedures for different types of amendments (simple majority, special majority, or ratification by states).

### Legislature & Executive

- Voting System:
  - Australia: Uses a compulsory preferential voting system for lower house elections, where voters rank candidates in order of preference.
  - India: Uses a first-past-the-post system for Lok Sabha elections, where the candidate with the most votes wins.

- Questions in Parliament:
  - Australia: Questions can be asked without notice, with strict alternation between Government and Opposition questions to ministers.
  - India: Questions usually require prior notice, and there is no strict alternation in question times.
- Upper House Membership:
  - Australia: Senators are elected through a proportional representation list system.
  - India: Rajya Sabha members are elected through a single transferable vote system by the elected members of state legislatures.

## Canada

### Similarities

### Constitutional Framework

- Federal Structure:
  - Canada: Federal structure with a unitary bias, meaning the central government holds significant power over the provinces.
  - India: Federal structure with a unitary bias as well, with the central government having significant authority over states.
- Residuary Powers:
  - Canada: The residuary powers are held by the central government, not the provinces.
  - India: The residuary powers are also vested in the central government, not the states.
- Appointment of Governors:
  - Canada: The central government appoints the governors of the provinces.
  - India: The central government appoints the governors of the states.

### Legislature & Executive

- Manner of Election:

- Canada: Members of Parliament are elected using the first-past-the-post system, similar to India.
- India: Also uses the first-past-the-post system for general elections.
- Lower House:
  - Canada: The House of Commons is more powerful than the Senate.
  - India: The Lok Sabha is more powerful than the Rajya Sabha.
- Responsible Government:
  - Canada: The Cabinet is collectively responsible to the House of Commons and must resign if it loses a vote of confidence, a fundamental principle of parliamentary democracy.
  - India: Similarly, the Cabinet is collectively responsible to the Lok Sabha and must resign if it loses a vote of confidence.

## Judiciary

- Advisory Jurisdiction:
  - Canada: The Supreme Court has advisory jurisdiction, where it can provide opinions on constitutional or legal matters at the request of the government.
  - India: The Supreme Court also has advisory jurisdiction under Article 143 of the Constitution, where it can give advisory opinions on matters referred by the President.
- Appointment of Judges:
  - Canada: Judges are appointed by the Governor General on the recommendation of the government.
  - India: Judges are appointed by the President on the recommendation of the Prime Minister and the collegium system.

## Differences

- Constitution: Canada operates under a combination of a written constitution and unwritten laws, whereas India relies solely on a written constitution.
- Political System: In Canada, the Queen is represented by a Governor General, while in India, the President serves as the head of state.

- Head of Government: The Governor General in Canada is appointed by the monarch on the advice of the Prime Minister for a five-year term, whereas the President of India is elected indirectly by an electoral college.
- Citizenship: Canada allows dual citizenship, while India adheres to single citizenship.

## Issue in News

*The French President formally accepted the resignation of the Prime Minister and asked him to continue running the caretaker government until the appointment of the next government.*

*Q. Compare the semi-presidential system of France with India's parliamentary system, focusing on their executive structure and the roles of the head of state and government.*

The semi-presidential system of France and the parliamentary system of India represent two distinct forms of governance, both with their own structures of executive power. While both systems maintain a close relationship between the executive and legislature, they differ significantly in how executive power is distributed and exercised.

## Structure of Executive Power

- France (Semi-Presidential System):
  - France operates under a dual executive system. The President is the head of state, directly elected for a 5-year term, and holds significant powers, especially in foreign affairs and defense. The Prime Minister, appointed by the President, is accountable to the National Assembly and handles domestic policy. The system allows for cohabitation, where the President and Prime Minister may belong to different political parties, leading to a potential division of powers.
- India (Parliamentary System):
  - In India, the Prime Minister is the head of government and holds substantial executive authority. The President, as the head of state, is largely a ceremonial figure, with real executive powers exercised by the Prime Minister and the

Council of Ministers. The Prime Minister is directly accountable to the Lok Sabha and can be removed through a vote of no confidence.

## Accountability and Relationship with the Legislature

- France:
  - The Prime Minister is responsible to the National Assembly, and can be removed through a vote of no confidence. However, the President is not directly accountable to the legislature, which provides them with significant autonomy, particularly in foreign policy and military decisions.
- India:
  - The Prime Minister is also accountable to the Parliament, and the government must maintain the confidence of the Lok Sabha to stay in power. The President's role is largely formal, and their decisions are made on the advice of the Prime Minister.

## Role of the President

- France:
  - The President holds substantial powers in foreign affairs, defense, and during times of crisis. They can dissolve the National Assembly and call for elections, but they share executive responsibilities with the Prime Minister in domestic matters.
- India:
  - The President in India is largely a ceremonial figure, with executive powers exercised on the advice of the Prime Minister. The President's role is formal and involves duties such as appointing the Prime Minister and declaring emergencies, but they cannot act independently.



# Elections

## General Elections (Lok Sabha)

- Process: Members are elected from a list of candidates contesting in their respective constituencies.
- Total Members: 545.
- Winners: Known as Members of Parliament (MPs).
- Term: 5 years, unless dissolved by the President or Council of Ministers.
- Voting System: Universal Adult Franchise.

## Upper House Elections (Rajya Sabha)

- Process: Members are elected by State Legislative Assembly members (MLAs), not directly by the public.
- Nominations: Up to 12 members can be nominated by the President for contributions in art, science, literature, or social service.
- Term: 6 years, with one-third of members retiring every two years.

## State Legislative Elections

- Process: Direct election from respective constituencies.
- Term: 5 years, unless dissolved by the Governor.
- Voting System: Universal Adult Franchise.
- Total Strength: Depends on the size and population of the state.

## By-Elections (Bypolls)

- Purpose: Held to replace a position or office that becomes vacant before the term ends.
- Reasons: Resignation, death, conviction, or if a candidate wins more than one seat.

## Election Commission of India (ECI)

- Nature: A federal body established by the Indian Constitution.
- Responsibilities: Oversees and administers all electoral processes in India.
- Key Functions:
  - Ensures free and fair elections without bias.
  - Monitors conduct of participants before, during, and after elections as per statutory laws.
  - Handles election-related disputes.
  - Possesses residuary powers under the Constitution to address situations not adequately covered by existing laws during elections.

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### Constitutional Provision:

Article 324 grants the ECI the power to supervise, direct, and control elections.

### Judicial Interpretation:

The Supreme Court in *Mohinder Singh Gill & Anr vs The Chief Election Commissioner and Others* (1977) ruled that Article 324 applies in areas not covered by existing legislation, emphasizing the Commission's scope of residual power.

## Electronic Voting Machines (EVMs)

- Introduction: First used in the 1997 election and became the sole voting method by 2004.

- Efficiency: Speeds up the counting process.
- Voter-Verified Paper Audit Trail (VVPAT): Introduced on 14 August 2014.
  - Function: Produces a ballot slip with the candidate's name, serial number, and image selected by the voter.
  - Usage: EVMs and VVPATs have been used in every assembly and general election in India since 2019.
- Post-2019 General Election: The ECI confirmed no mismatches between EVM and VVPAT results.
- Discrepancy Rule: If there's a discrepancy between VVPAT and EVM results, the printed paper slips count is considered final.

## Money and Muscle Power in Elections

- Campaign Spending: Expenses in most constituencies often exceed the legal limit, with legitimate and accounted costs being only a fraction of the actual expenditure.
- Corruption: High election costs contribute to widespread corruption.
- Violence and Coercion: Reports of violence, booth capturing, and voter intimidation are common across the country during elections.
- Illegal Practices: Candidates often use coercion, such as offering freebies, cheap food supplies, and electronic devices, in exchange for votes.
- Paid Misinformation: Fake news is circulated to deceive voters, undermining the concept of free and fair elections.
- Vote Buying: This practice often results in wealthy candidates displacing more capable politicians from positions like MP/MLA.

**Caste/Communal Incentives:** Offering benefits to certain caste or religious groups in exchange for votes, or winning support based on shared caste/religion, undermines democracy and equality.

**Misuse of Government Machinery:** The ruling party often misuses government resources during elections, leading to unfair advantages and misuse of public funds.

## Criminal Elements in Electoral Politics

- **Criminal Entry:** Anti-social elements and convicted criminals enter politics due to a strong nexus with certain politicians, exploiting loopholes in the system.
- **Financial Clout:** Criminals gain political positions because of their financial power.
- **Muscle Power:** Their wealth and influence make them attractive candidates for political parties seeking "winnable" contenders.
- **Party Support:** Political parties often field criminals in elections in exchange for funds, muscle power, and the promise of political patronage, protection, and immunity from legal cases.

## Why Does Criminalisation of Politics Persist?

- **Court Judgments and Laws:** Previous court rulings and laws have not been effectively enforced.
- **Criminal Justice System:** The system is unclear on the consequences of not adhering to recent orders.
- **Low Conviction Rates:** Due to flaws in the justice system, the conviction rate for politicians in criminal cases is very low, around 6%.

- Impact: As a result, politicians with criminal records often go unpunished and are not barred from contesting future elections.

## Way Forward

- Independent ECI Administration: Ensure the Election Commission of India operates independently, without relying on Central and State Government staff during elections. The ECI should also abandon its complacent attitude toward corrupt electoral practices.
- Non-Partisan Media: Media should play an unbiased role to ensure true transparency and democracy.
- Curbing Corruption: Provide funds to parties with accountable expenses and disqualify candidates involved in corruption.
- Voter Rights: Protect voter rights, ensuring free choice and voter secrecy.
- Voter Awareness: Educate voters on the value of their vote and their significant role in the country's governance.
- Capping Election Expenditure: Limit permissible expenses by parties to promote higher morals and reduce the misuse of money power.
- Transparency: Bring political parties under the Right to Information Act (2005) to ensure transparency.
- Judicial Reforms: Reform the justice system to effectively address the criminalization of politics.

## State Funding of Elections

State funding of elections refers to government provision of financial resources to political parties and candidates to cover their election-related expenses, with the aim of ensuring a level playing field, reducing the influence of money power, and promoting fair electoral practices.

## Need for State Funding

- **Reduction in Election Corruption:** Helps prevent the influence of black money and illegal funding in elections.
- **Promote Fair Competition:** Ensures smaller and regional parties can compete fairly against larger, wealthier parties.
- **Enhance Electoral Integrity:** Ensures that elections remain free, fair, and transparent.

## Models of State Funding

- **Direct State Funding:**
  - The government provides financial assistance directly to political parties or candidates.
  - Example: Providing money for campaign expenses like advertising, transportation, and other logistics.
- **Indirect State Funding:**
  - The government assists political parties by offering media access, free distribution of electoral materials, or other support, without direct monetary support.
  - Example: Free airtime on public broadcasters for campaigns.

## Key Benefits of State Funding

- **Ensures Electoral Integrity:** Reduces the need for parties to rely on private donations that may have conflicts of interest.
- **Promotes Democracy:** Encourages new and smaller political parties to participate, fostering a healthy, competitive democracy.
- **Reduces Financial Barriers:** Lowers the entry barriers for less affluent candidates and parties.

## Challenges and Concerns

- **Potential for Misuse:** There are concerns about how funds are allocated and whether they will be misused for political gain.
- **Burden on Taxpayers:** Public funding for elections can lead to increased fiscal pressure on taxpayers.
- **Lack of Transparency:** Without stringent mechanisms, tracking the use of funds could be difficult.

## Committee Recommendations on State Funding of Elections

- **K. K. Aziz Committee (1974):**
  - Recommended direct state funding for elections to reduce reliance on private donations and the influence of money in politics.
- **Indrajit Gupta Committee (1998):**
  - Suggested state funding for political parties to ensure equitable opportunities for all parties.
  - Proposed transparency measures and limits on campaign expenditure
- **Election Commission's Recommendation (1999):**
  - Suggested partial state funding for expenditure on electoral expenses, with strict monitoring mechanisms.
  - Recommended audit of party accounts and restrictions on large private donations.
- **Law Commission (1999):**
  - Emphasized state funding for political parties to minimize the use of illegal funds.
  - Proposed the creation of a public fund from which political parties could draw

## Current Status of State Funding in India

- **Limited State Funding:** While direct state funding has not been fully implemented in India, there are some provisions such as:

- Free broadcast time for candidates on national and state broadcasters.
- Subsidized paper for election pamphlets.
- State Funding in Practice: The focus remains on transparency in political donations and reducing dependence on private funds.
- State funding of elections is an important reform that aims to reduce corruption, promote fair competition, and enhance democratic practices in elections.
- While India has not fully implemented direct state funding, there have been recommendations from various committees that advocate for a more equitable and transparent electoral process. However, the challenges of misuse and financial burden remain key concerns to address.

*"Discuss the concept of state funding of elections in India. What are its benefits and challenges in promoting electoral integrity and fairness?"*

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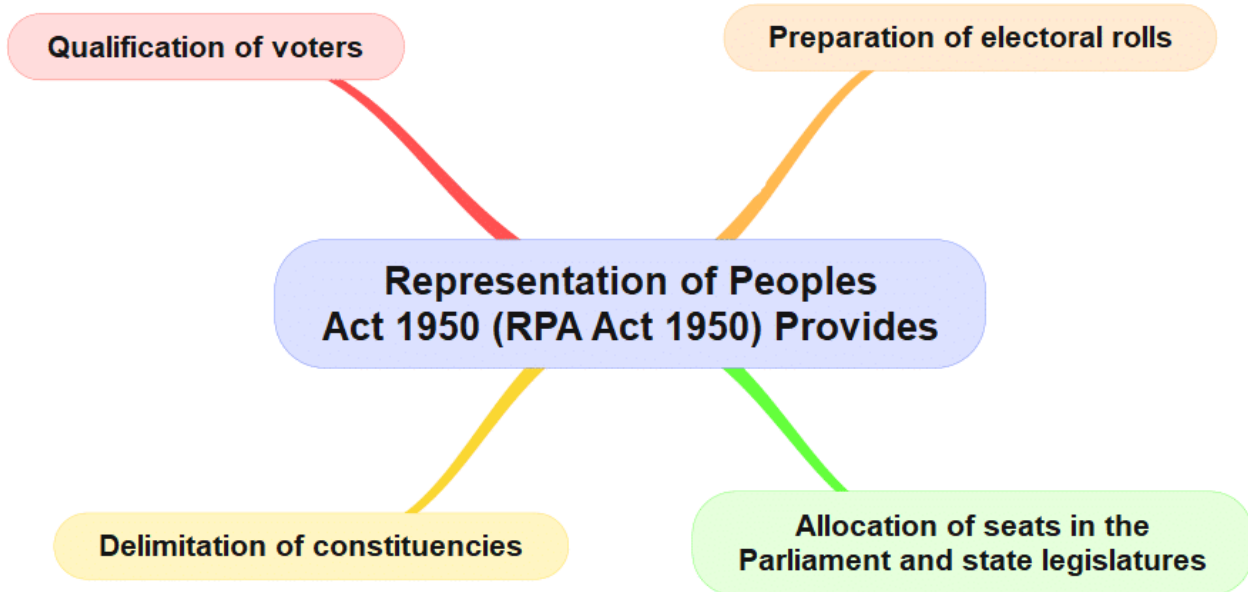
## Representation of People's Act

Articles 324 to 329 of Part XV of the Constitution deal with the electoral system in our country. The Constitution allows Parliament to make provisions in all matters relating to elections to the Parliament and State Legislatures. In the exercise of this power, the Parliament has enacted laws like the Representation of the People Act 1950 (RPA Act 1950), Representation of the People Act 1951 (RPA Act 1951) and the Delimitation Commission Act of 1952.

Article 327 of the Indian Constitution empowers the Parliament to make law with respect to all matters relating to elections to either House of Parliament or to the House or either House of the Legislature of a State. The Parliament has made the following laws under this article:

- Representation of the People Act of 1950.
- Representation of the People Act of 1951.
- Delimitation Commission Act of 1952.





## Qualification of Voters - Who is Qualified to Vote in India?

- A person is disqualified from being registered as a voter in India if they:
  - Are not a citizen of India.
  - Have been declared of unsound mind by a competent court.
  - Are disqualified from voting due to involvement in corrupt practices or other election-related offenses as per the law.
- \Additional disqualification provisions include:
  - A person cannot be registered in more than one constituency.
  - A person cannot be registered more than once in the same constituency.
- To qualify as a voter, the person must:
  - Be at least 18 years old on the qualifying date.
  - Ordinarily reside in the constituency where they seek registration.

## What is an Electoral Roll, and How is it Prepared?

An electoral roll is an official list of all eligible voters within a specific geographic area or constituency. It serves as a record to determine who can participate in an election or any other voting event. The preparation of the electoral roll is conducted under the supervision, direction, and control of the Election Commission for each constituency. For Parliamentary constituencies, the electoral roll is compiled from the electoral rolls of all the assembly constituencies within that Parliamentary constituency.

## What are the various electoral offices?

### Chief Electoral officer:

- There shall be a Chief electoral officer (CEO) for each state nominated or designated by the election commission of India in consultation with the state government.
- The major functions of the Chief electoral officer are:
  - To supervise the preparation, revision, and correction of all electoral rolls in the State.
  - Monitoring compliance with the Model Code of Conduct and submitting daily reports to the Election Commission.
  - The CEO is responsible for ensuring that all candidates and political parties comply with the rules and regulations governing the election.
  - It is his duty to review the law and order situation.
  - To seal the Electronic Voting Machines and election papers under his directions.

### District election officer:

- The Election Commission shall designate or nominate a district election officer who shall be an officer of Government.
- The Election Commission can also specify the area in respect of which each officer shall exercise jurisdiction.

- The primary function of the District election officer is to coordinate and supervise all work in the district or in the area within his jurisdiction in connection with the preparation and revision of the electoral rolls for all parliamentary, assembly, and council constituencies within the district.
- The district election officer shall also perform other functions as may be entrusted to him by the Election Commission and the Chief electoral officer.

#### Electoral registration officer:

- The Election Commission shall, in consultation with the Government of the State in which the constituency is situated, designate or nominate an Electoral registration officer.
- The electoral roll shall be prepared and revised by an electoral registration officer.

#### Returning officer:

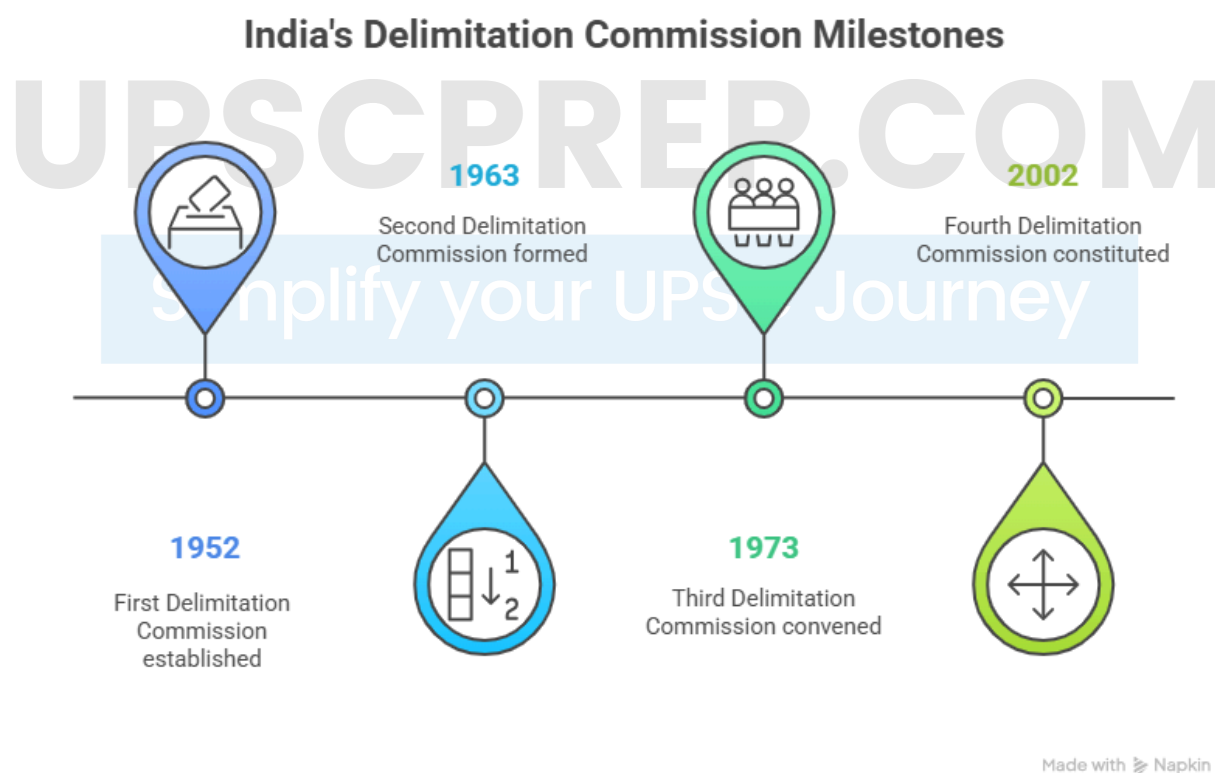
- A Returning Officer (RO) is an official who is responsible for conducting elections in a particular constituency.
- The major functions of the RO are receiving and scrutinizing nomination papers of candidates who are contesting in the election, ensuring that all the necessary documents and forms are filled out correctly by the candidates, etc.

## Delimitation of Constituencies

Delimitation in the context of Indian elections refers to the process of demarcating or redrawing the boundaries of territorial constituencies based on the latest census. This process ensures that each constituency has approximately the same population, thereby upholding the principle of "one person, one vote."

## Delimitation Commission

- The Delimitation Commission is a high-power body established to carry out this process in India. It is vested with the authority to demarcate the boundaries of constituencies for both the Lok Sabha (House of the People) and the State Legislative Assemblies. The decisions of the Delimitation Commission are legally binding and cannot be challenged in any court of law. The orders issued by the Commission come into effect on a date specified by the President of India.



## Function of the Delimitation Commission

The primary function of the Delimitation Commission is to redraw the boundaries of the various assembly and Lok Sabha constituencies based on the most recent census data. After the Commission completes its work, the Election Commission of India consolidates the delimitation orders into a single order known as the "Delimitation of Parliamentary and Assembly Constituencies Order."

## Constitutional Provisions

- Article 82: This article mandates that after each census, Parliament must readjust the allocation of seats in the Lok Sabha.
  - Article 170: This article requires that after each census, the allocation of seats in the Legislative Assemblies of each state must be readjusted by Parliament.
- These provisions ensure that the representation in the Lok Sabha and the State Legislative Assemblies is based on the most current population data, thereby maintaining a balance in representation.

## Representation of People's Act , 1951

Representation of People Act, 1951 is an act of Parliament of India that governs elections to the Houses of Parliament and the House or Houses of the State Legislature, as well as the qualifications and disqualifications for membership in those Houses, as well as the conduct of such elections and the resolution of doubts and disputes.

The Representation of People Act 1951 (RPA) provides for the following:

- Conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State.
- Details about the structure of administrative machinery for the conduct of elections.
- Qualifications and disqualifications for membership of those Houses.

- Corrupt practices and other offences at or in connection with such elections and the
- decision of doubts and disputes arising out of or in connection with such elections.
- It regulates how elections and by-elections are held.
- It lays out the method for resolving election-related concerns and controversies.

## Challenges:

- False Disclosures: Even after the provision of the declaration of assets and liabilities in the RPA act, candidates do not disclose all the assets and provide wrong and incomplete information regarding their assets, liabilities, and income and educational qualifications.
- The Bureaucratization of Politics: In spite of the inclusion of several provisions aimed at making the ECI as an independent body, it is still dependent on the Union for financial matters that paves the way for political parties to manage to get the officers in their favour through money and muscle power.
- Dual Responsibility of the ECI: The ECI does not have independent staff of its own so whenever elections take place, it has to depend upon staff of Central and State Governments hence the dual responsibility of the administrative staff, to the government for ordinary administration and to the ECI for electoral administration is not conducive to the impartial and efficient functioning of the Commission.
- Misuse of Government Machinery: The RPAs lack clear provisions and guidelines on the matters related to the misuse of official machinery that gives an unfair advantage to the ruling party at the time of elections and leads to the misuse of public funds for furthering the prospects of candidates of a particular party.

## Way Forward:

- Restriction on Opinion Polls: By an amendment made to the RPA 1951, conducting and publishing results of exit polls have been prohibited.
  - There should be a similar prohibition or restriction on opinion polls also as several manipulated opinion polls could impact the voting pattern.

- False Declaration as Offense: The RPA, 1951 should be amended to include all the items related to the election disclosure in the affidavit and making false declarations in connection with the election to be an offence.
- Independent ECI: In order to curb the practice of bureaucratization of politics and to secure complete independence of the Election Commission, its expenditure should be charged on the Consolidated Fund of India.
- De-listing of Valid Electorates: Parliament must pass a law dealing with the serious problem of delisting of valid electors from electoral rolls because illiterate voters residing in far villages cannot watch over the publication of electorate lists. State Funding of Elections: To minimise the role of money in elections, provisions should be made for state funding of elections.

*Q. Examine the various disqualification provisions under the Representation of the People Act. To what extent have these provisions contributed to decriminalizing Indian politics?*

The Representation of the People Act, 1951 (RPA) forms the foundation of India's electoral system. Beyond outlining the overall framework for elections, it also lays down the criteria for the qualification and disqualification of candidates for both parliamentary and state legislative elections.

Key Disqualification Provisions under the Representation of the People Act:

- Conviction for an Offense: A person convicted of an offense resulting in a prison sentence of two years or more is automatically disqualified from holding any position under the RPA.
- Engagement in Illegal Activities: Violations of laws such as the Foreign Exchange (Regulation) Act, Prevention of Terrorism Act, Prevention of Corruption Act, and Dowry Prohibition Act can lead to disqualification.
- Office of Profit: If a person holds any office of profit under the government or its subsidiaries and fails to resign while contesting elections, they are disqualified.
- Corrupt Practices: A candidate convicted for corrupt practices such as bribery or election rigging is barred from contesting elections under the Act.

- Anti-social Offenses: Convictions for offenses involving social evils like caste-based violence, rape, or promoting untouchability lead to disqualification.
- Failure to Submit Election Expenses: According to Section 10A of the Act, failing to disclose election expenses within the prescribed time can result in disqualification.

### **Limited Impact of RPA in Decriminalizing Indian Politics:**

While the RPA plays an essential role in preventing criminals from entering the electoral process, its impact on decriminalizing politics in India has been limited:

- Low Conviction Rates: There is a significant gap between MPs/MLAs with pending trials and those actually convicted. For instance, in the Lily Thomas case, only 3 legislators were disqualified due to convictions. This highlights a need for legal reforms as the current conviction rates remain dismally low.
- Delays in Legal Proceedings: The prolonged judicial process undermines the effectiveness of the RPA. Delays allow accused individuals, especially influential politicians, to manipulate the system, distort evidence, and further prolong trials.
- Weak Deterrence: Despite the law, there is a lack of effective deterrence against criminals in politics. Political parties continue to nominate individuals with criminal backgrounds, with nearly half of the newly-elected Lok Sabha members facing criminal charges—an increase from previous years, according to the Association for Democratic Reforms.

### **Way Forward:**

- Expedited Trials: Trials involving sitting MPs or MLAs with charges against them should be fast-tracked. The Supreme Court should ensure that such cases are heard on a day-to-day basis and completed within a year.
- Amendment of Laws: The existing provision of disqualification upon conviction is ineffective in tackling criminalization due to delays and rare convictions. The law should be updated to provide a stronger deterrent and prevent subversion of justice.
- Fast-Track Courts: Establishing specialized fast-track courts to handle disqualification-related cases would help mitigate political influence and ensure quicker verdicts.



- Implementation of SC Guidelines: The Supreme Court's directive that convicted MPs/MLAs should be disqualified immediately, without a three-month window for appeal, should be enforced. This would ensure timely disqualification and prevent further manipulation of the legal process.

## Statutory, Regulatory and Various Quasi-Judicial Bodies.

### Constitutional Bodies

- Origin: Established by the Constitution
- Objective: Exercising autonomous authority over certain areas
- Examples: UPSC, ECI, CAG, NCSC, NCST, NCBC

### Statutory Bodies

- Origin: Established by an Act of Parliament
- Objective: Regulate or oversee specific sectors
- Examples: SEBI, NHRC, NCW, NCM

### Regulatory Bodies

- Origin: Independent in nature, formed by government action
- Objective: Regulate specific sectors or activities
- Examples: RBI, IRDAI, PFRDA, BSI, FSSAI

## Executive Bodies

- Origin: Non-constitutional, non-statutory, formed by government action
- Objective: Implement policies and coordinate various functions
- Examples: NITI Aayog, NDC, CBI

## Challenges with Non-Constitutional Bodies:

- Appointment Issues: Appointments made by government officials often result in these bodies functioning as extensions of the government, compromising their autonomy.
- Limited Functions: The scope of their functions can be restrictive. For instance, the NHRC cannot address issues that are older than one year.
- Advisory Role: Although they handle critical tasks related to ensuring a good quality of life, these bodies only have an advisory role, limiting their impact.
- Staffing Shortages: Many of these bodies suffer from being understaffed, which hampers their effectiveness.
- Funding Constraints: A lack of funds for infrastructure and investigative activities further restricts their capabilities.

## Possible Solutions:

- Broaden the Candidate Pool: Appointments should be made from a wider and more diverse pool of candidates to ensure independence and expertise.
- Limit Political Involvement: The involvement of political representatives in these agencies should be strictly limited to maintain their autonomy.
- Enhance Infrastructure: Improve infrastructural support by establishing more offices and making these bodies more accessible through Information and Communication Technology (ICT).
- Comprehensive Oversight: Ensure thorough investigation, review, and examination of all matters related to these bodies as outlined in the Constitution and relevant laws.

- Demand Accountability: Reports submitted to Parliament should include mechanisms to demand accountability from these bodies.
- Clear Roles and Adequate Funding: Define the roles clearly, eliminate vacancies, and allocate proper funds to ensure that these bodies can seamlessly integrate with government efforts to build a prosperous nation.

The **constitutionalization of a commission** refers to the process of granting a commission constitutional status, making it subject to the country's constitution. This process involves several steps:

- Raising the Demand: A commission, or stakeholders, may advocate for it to be constitutionalized to ensure its permanence, authority, and autonomy. This demand often comes from the public or interest groups who believe the commission requires constitutional protection.
- Parliamentary Action: Once the demand gains traction, a bill is introduced in either House of Parliament proposing the amendment of the constitution to grant the commission constitutional status.
- Amendment Process: Under Article 368 of the Indian Constitution, Parliament has the power to amend the constitution. This includes adding, varying, or repealing any of its provisions. The amendment process begins with the introduction of a bill specifically for this purpose.
- Legislative Approval: The bill must be passed in both Houses of Parliament by a prescribed majority. This majority is often a two-thirds majority of members present and voting, as well as more than 50% of the total membership of each House.
- Presidential Assent: After the bill is passed by Parliament, it is sent to the President for assent. Once the President signs the bill, it becomes a law, and the constitution is amended accordingly.

Example - National Commission for Scheduled Tribes (NCST): A concrete example of this process is the constitutionalization of the National Commission for Scheduled Tribes. Article 338 was amended, and a new Article 338A was inserted into the constitution through the Constitution (89th Amendment) Act, 2003, establishing the NCST.

This process ensures that the commission is entrenched in the constitution, providing it with a stronger legal foundation, greater independence, and a more robust framework to fulfil its mandate.

## Arguments in Favor of Constitutionalization of Bodies in India

- **Ensures Independence and Autonomy:** Constitutional bodies enjoy a higher degree of independence from political interference, as their powers, functions, and tenure are defined by the Constitution.
- **Enhanced Accountability:** By being enshrined in the Constitution, these bodies are subject to rigorous oversight mechanisms and can be held accountable for their actions. This ensures that they operate within the legal framework and uphold the rule of law.
- **Stability and Continuity:** Constitutionalization provides a stable and continuous framework for the functioning of these bodies. Their roles and responsibilities are not easily altered by ordinary legislation, ensuring consistency in governance.
- **Strengthens Democracy:** Constitutional bodies often play a critical role in safeguarding democratic processes, such as conducting free and fair elections, protecting fundamental rights, and ensuring the rule of law. Their constitutional status helps them fulfil these roles effectively.
- **Rigid Framework:** Constitutionalizing bodies can lead to rigidity, making it difficult to adapt to changing circumstances or evolving governance needs. Amending the Constitution to alter the functioning of these bodies can be a complex and time-consuming process.
- **Overburdening the Constitution:** The proliferation of constitutional bodies may lead to an overburdened Constitution with too many detailed provisions. This can complicate the constitutional framework and make governance less flexible.
- **Potential for Institutional Rigidity:** Constitutionalizing bodies can lead to institutional rigidity, where the body's functions and powers become inflexible and hard to reform. This rigidity might hinder the body's ability to adapt to new challenges or changing needs, impacting its effectiveness and responsiveness.

- Resource Intensive: Constitutional bodies require significant resources, including financial, administrative, and human resources. Elevating more bodies to constitutional status could strain public resources and lead to inefficiencies in governance.

## Regulatory Bodies in India

Regulatory bodies are independent agencies established by the government to set and enforce standards within specific sectors or activities. These agencies may operate independently or with limited oversight from the government.

### Functions:

- Establishing regulations and guidelines
- Conducting reviews and assessments
- Granting licenses
- Performing inspections
- Implementing corrective actions
- Enforcing compliance

## Major Regulatory Bodies in India and Their Functions

### National Bank for Agriculture and Rural Development (NABARD)

NABARD is a statutory body established in 1982 under the NABARD Act, 1981. It oversees Cooperative Banks and Regional Rural Banks (RRBs), helping them adopt sound banking practices and integrate into the Core Banking Solution (CBS) platform.

## Food Safety and Standards Authority of India (FSSAI)

FSSAI is an autonomous body created under the Food Safety and Standards Act, 2006, under the Ministry of Health & Family Welfare. Its primary functions include:

- Setting food safety standards and regulations
- Issuing licenses and certifications for food businesses
- Establishing guidelines for food business laboratories
- Advising the government on food safety policies
- Monitoring food contaminants and emerging risks
- Creating a nationwide information network for food safety

## Telecom Regulatory Authority of India (TRAI)

Established in 1997 by the Telecom Regulatory Authority of India Act, TRAI regulates telecom services, including tariff setting, service quality, and transparency. It also advises the government on policy and licensing matters.

## National Pharmaceuticals Pricing Authority (NPPA)

NPPA was created in 1997 as part of the Department of Pharmaceuticals. Its functions include:

- Enforcing the Drugs Price Control Orders (DPCO) of 1995/2013
- Conducting studies on drug pricing and availability
- Monitoring drug shortages and market shares
- Advising the government on revisions to drug policies

## Issues and Measures Related to Regulatory Bodies

### Issues Related to Regulatory Bodies:

- Populist Pressure: Political interference often undermines regulatory independence, such as government pressure on the Reserve Bank of India (RBI) to align with populist agendas.
- Inadequate Review Mechanisms: Parliamentary committees' reviews of regulatory bodies are not sufficiently robust, leading to gaps in accountability.
- Structural Weaknesses: Many regulatory bodies lack the necessary technical expertise due to vacant positions. For instance, the Central Pollution Control Board (CPCB) has approximately 20% of its posts unfilled.
- Overlapping Jurisdictions: Multiple regulatory bodies with overlapping responsibilities lead to confusion and inefficiency. Examples include:
  - Both the CPCB and National Green Tribunal (NGT) overseeing environmental matters.
  - Overlapping roles of the All India Council for Technical Education (AICTE) and the University Grants Commission (UGC) in regulating technical education

## Suggested Measures to Reform Regulatory Bodies:

The 2nd Administrative Reforms Commission (ARC) has suggested several reforms:

### 12th Report of the 2nd ARC:

- Review and eliminate outdated laws and procedures to streamline regulatory compliance.
- Strengthen internal oversight of regulatory agencies, with periodic independent reviews.
- Encourage self-regulation in sectors like taxation and public health to reduce enforcement burdens.
- Simplify regulatory procedures, use technology to enhance transparency, and minimize discretion, thereby reducing corruption

### 13th Report of the 2nd ARC:

- Ministries should develop clear 'Management Statements' defining the roles and objectives of each regulator.
- Ensure consistency in the terms of appointment, tenure, and removal of regulatory authorities to maintain independence.

- Strengthen parliamentary oversight to enhance accountability and transparency.
- Involve citizens and professional organizations in regulatory activities to verify compliance and share the enforcement burden.

## Quasi-Judicial Bodies

Quasi-judicial bodies are non-judicial entities that have the authority to interpret and apply the law. These bodies, such as arbitration panels or tribunals, operate with powers and procedures similar to those of a court or judge.

For instance, the Election Commission of India is a quasi-judicial body but does not function as a court of law in its core operations.

### Features:

- **Dispute Resolution:** Quasi-judicial bodies have the authority to resolve disputes and impose penalties. Parties involved in conflicts can approach these bodies for justice, which helps them avoid the complexities of the formal judicial system.
- **Limited Adjudicating Powers:** Their jurisdiction is usually confined to specific areas such as finance, employment laws, public standards, or regulatory issues. For example, the Company Law Appellate Tribunal deals with matters related to corporate governance.
- **Predetermined Rules:** Decisions made by quasi-judicial bodies are based on established rules and frameworks of law, which guide their actions.
- **Punishing Authority:** These bodies can impose penalties for violations within their jurisdiction. For instance, Consumer Courts in India resolve disputes related to consumers and can penalize companies engaging in illegal activities.
- **Judicial Review:** The rulings of quasi-judicial bodies can be appealed in a court of law, where the judiciary's decision takes precedence.
- **Expert Leadership:** Unlike traditional courts led by judges, quasi-judicial bodies are typically headed by experts in specific fields like law, finance, or economics.



### Powers:

- **Conduct Hearings:** They can conduct hearings to gather evidence and hear testimony from relevant parties.
- **Factual Determination:** Based on the evidence presented during hearings, quasi-judicial bodies can make factual determinations.
- **Applying the Law:** These bodies apply the law to the facts they have determined and make decisions on the legal rights, duties, or privileges of the parties involved.
- **Issue Orders or Decisions:** Quasi-judicial bodies can issue legally binding orders, such as requiring parties to pay damages or comply with certain conditions.
- **Enforcing Decisions:** They have the authority to enforce their decisions by imposing fines or other penalties for non-compliance.

### Major Quasi-Judicial Bodies in India

- **Income Tax Appellate Tribunal (ITAT):** This body adjudicates appeals against the orders of income tax authorities. The income tax department can also appeal against any decision made by the Commissioner of Income-tax (Appeals) before the ITAT.
- **Telecom Disputes Settlement & Appellate Tribunal (TDSAT):** TDSAT resolves disputes in the telecom sector involving licensors, licensees, and consumers. Its jurisdiction was expanded in 2004 to include broadcasting issues, and in 2017, it was given authority over airport tariffs and cyber issues.
- **Central Information Commission (CIC):** CIC is the final appellate body for complaints and appeals against decisions made by public authorities under the Right to Information Act, 2005.

- **Lok Adalat:** A forum for resolving disputes amicably through alternative dispute resolution methods.
- **Finance Commission:** A quasi-judicial body that makes recommendations regarding the distribution of financial resources between the central and state governments.
- **National Consumer Disputes Redressal Commission (NCDRC):** This body resolves consumer disputes at the national level.
- **National Green Tribunal (NGT):** NGT hears cases related to environmental protection and the conservation of natural resources.
- **Railway Claims Tribunal:** This tribunal resolves disputes related to the claims made by passengers or others regarding rail accidents, loss, or damage of goods.

## Problems Associated with Quasi-Judicial Bodies

- **Limited Jurisdiction and Expertise:** Quasi-judicial bodies often have specialized or narrow jurisdictions, which can lead to limitations in their scope and effectiveness. They may lack the broader legal expertise or authority needed to address complex, multi-faceted issues, leading to incomplete or inconsistent decisions.
- **Inadequate Enforcement Power:** While quasi-judicial bodies can issue decisions and impose penalties, they may lack the full enforcement mechanisms available to courts. This can result in challenges in ensuring compliance, especially when parties are unwilling to follow the orders.
- **Overlapping Jurisdictions:** Many quasi-judicial bodies have overlapping or conflicting jurisdictions, which can lead to confusion, inefficiency, and delays in resolving cases. For example, multiple bodies might have a say in similar types of cases, causing a lack of clarity in the legal process.
- **Limited Appeal Options:** Though decisions made by quasi-judicial bodies can generally be appealed in courts, the appeal process can be lengthy, complex, and resource-intensive. This often deters individuals from challenging decisions, which can undermine the body's accountability.
- **Lack of Consistency and Transparency:** Quasi-judicial bodies sometimes operate with limited transparency, which can result in inconsistent rulings. The absence of a

well-established public record of their decisions or reasoning may lead to doubts about fairness, accountability, and predictability in their processes.

### **Way Forward for Quasi-Judicial Bodies**

- **Clearer Jurisdiction and Mandates:** To avoid confusion and inefficiency, there should be a clearer demarcation of responsibilities and authority between quasi-judicial bodies. Defining precise roles and reducing overlap in jurisdictions can streamline decision-making and improve effectiveness.
- **Strengthening Enforcement Mechanisms:** Quasi-judicial bodies should be provided with stronger enforcement powers, such as the ability to directly execute their orders, impose penalties, or seek assistance from law enforcement agencies. This would ensure greater compliance and accountability.
- **Improved Transparency and Accountability:** To enhance public trust, quasi-judicial bodies should adopt transparent processes. This includes publishing clear reasoning for decisions, maintaining public records of rulings, and ensuring consistent application of laws and regulations.
- **Expedited and Accessible Appeal Processes:** Simplifying and speeding up the appeal process would make it easier for affected parties to seek justice. Establishing time-bound procedures for appeals and making them more accessible could improve the overall efficiency of the system.
- **Capacity Building and Expert Recruitment:** To ensure more informed decision-making, quasi-judicial bodies should focus on recruiting and retaining experts in the relevant fields (such as law, finance, environmental science). Regular training and capacity-building programs for members can help them stay updated with evolving legal and industry standards.

## What are Formal and Informal Associations?

- Formal associations refer to groups or organizations with a defined structure, set of rules, and formal membership procedures. Examples of formal associations include political parties, trade unions, and professional organizations.
- Informal associations refer to groups or organizations that do not have a formal structure or set of rules. They may be loosely organized and have a more fluid membership. Examples of informal associations include community groups, grassroots movements, and social networks.

<b>Formal Assoc</b>	<b>Informal Assoc</b>
Have a defined structure and set of rules.	Do not have a formal structure or set of rules.
Have formal membership procedures.	Have a more fluid membership.
Have a defined leadership	May or may not have a defined leadership
Have a constitution, by-laws, and financial regulations	May not have any constitution, by-laws, or financial regulations
Have regular meetings and activities	Meetings and activities may be informal and irregular

Formal Associations	Informal Associations
Political parties: Indian National Congress, Bharatiya Janata Party, Communist Party of India, etc.	Community groups: <b>Self-help groups</b> , farmers groups, student groups, etc.
Trade unions: Indian National Trade Union Congress (INTUC), All India Trade Union Congress (AITUC), Centre of Indian Trade Unions (CITU), etc.	Grassroots movements: Narmada Bachao Andolan, Chipko movement, Bhoodan movement, etc.
Professional organizations: Indian Medical Association, Bar Council of India, etc.	Activist groups: Anti-corruption groups, anti-war groups, civil rights groups, etc.
Industry associations: Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce & Industry (FICCI), Associated Chambers of Commerce and Industry of India (ASSOCHAM), etc.	Interest groups: Environmental groups, human rights groups, animal welfare groups, etc.
Non-profit organizations: Indian Red Cross Society, Greenpeace India, Oxfam India, etc.	Self-help groups: Support groups for specific issues, such as addiction, mental health, etc.
Religious organizations: Rashtriya Swayamsevak Sangh (RSS), Vishwa Hindu Parishad (VHP), Jamaat-e- Islami Hind, etc.	Advocacy groups: <b>Women's</b> rights groups, <b>minority</b> rights groups, <b>LGBTQ+</b> rights groups, etc.

What are the different types of Formal and Informal Associations in India?

## What is the importance of Formal and Informal Associations in a Democracy?

Formal and Informal Associations play an important role in strengthening democracy. Some of the important functions performed by these associations are:

- **Political Representation:** Formal associations, such as political parties, trade unions, and professional organizations, provide representation and advocacy for specific interests and groups.
- **Influence Public Policy:** They tend to have more resources and organizational capacity to influence public policy and decision-making.
- **Collective Action:** They can also serve as a mechanism for collective action and decision-making.
- **Political Education:** They can also serve as a means for individuals to participate in civic life and political activism.
- **Address grassroot issues:** These associations, such as community groups and grassroots movements, can provide a platform for citizens to come together and address local issues and concerns.
- **Builds Social capital:** These associations can also help to build social capital and foster a sense of community among citizens.
- **Check on formal associations:** Informal associations can also serve as a check on formal associations by keeping them accountable to the public and raising awareness of neglected issues and perspectives.

Thus both formal and informal associations have the potential to promote citizen participation, representation, and advocacy in the political process and contribute to the overall health of a democratic society.

## What are the limitations of Formal and Informal Associations?

Some of the limitations of formal and informal associations are

- Bureaucratic hurdles: Formal associations may be constrained by their bureaucratic structures and rules, which can limit the participation and representation of members.
- Vested Interests: They may also be influenced by the interests of their leaders or powerful members rather than the needs of the broader membership.
- Vulnerable to External Influences: They may be more vulnerable to external influences, such as government repression or co-optation by more powerful actors.
- Lack of clear goals: Sometimes, these associations may also lack a clear agenda, strategy, and clear goals
  - Lack of resources: Informal associations may be limited by a lack of resources, organizational capacity, and decision-making structures.
  - Lack of leadership: Informal associations sometimes lack clear leadership, structure, and resources.
- Hence, both formal and informal associations have their own strengths and weaknesses, and the effectiveness of an association depends on the context, goals, and actors involved.

## What steps can be taken to improve the functioning of the Formal and Informal Associations in India?

- Increasing collaboration and networking: Formal and informal associations can work together to achieve common goals and share resources.
- They can also form partnerships with other organizations, such as businesses and government agencies, to increase their impact.
  - Advocating for policy change: Associations can use their collective voice to advocate for policy changes that align with their goals and mission.
- This could include lobbying for laws and regulations that promote social, economic, or environmental sustainability.
- Building capacity: These associations can work to build the capacity of their members and leaders to better achieve their goals.

- This could include training, mentoring, and providing resources such as funding and expertise.
- Emphasizing technology: Formal and informal associations can leverage technology to reach more people and make their activities more efficient.
  - This could include using social media to promote their message, using online platforms to connect with volunteers and donors, or using data analytics to track their progress.
- Focusing on transparency and accountability: Formal and informal associations can increase transparency and accountability by providing clear and timely information about their activities and finances to members, donors, and other stakeholders.

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