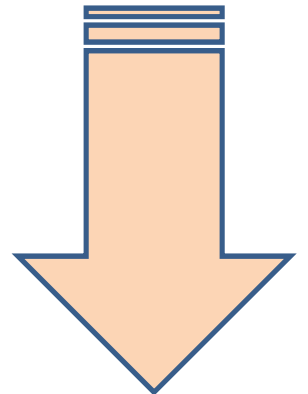


Indian Constitution

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UNIT-II



UNIT – II

- The Scheme of the fundamental duties and its legal status
- **The Directive principles of state policy** – its importance and implementation
- Federal Structure and distribution of legislative and financial powers between the union and the states.
- **Parliamentary form of Government of India** – The Constitution powers and status of the president of India.

UNIT – II

- **Scheme of Fundamental Duties:**

- Japan is other country apart from India who talks about Fundamental Duties.
- US, other countries does not mentioned in the constitution about Fundamental duties.
- Objective is to make responsible citizens.
- **P.V kane, Bharat Ratna in 1960s** was critical that our constitution ignored the indian tradition of duties and emphasized only on the **rights**.
- These duties perform an educative role.
- Based on the **Sardar Swaran Singh committee** formed in 1976 by Mrs.Indira Gandhi, as 42nd Ammendment , 10 Fundamental Duties are added in the Constitution.
- In 2002, as 86th Ammendment, 11th Fundamental Duty is added to the Constitution.

Fundamental Duties

- Constitution was formed on the 26th of November in 1949 by the Constituent Assembly and came into force on the 26th of January 1950.
- Fundamental Duties of the citizens of India mentioned in Article 51A of the Indian Constitution.
- By the 42nd Amendment of the Constitution, adopted in 1976, Fundamental Duties of the citizens have also been enumerated.
- Development of constitutional rights in India was inspired by historical documents such as England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.

UNIT – II

• Scheme of Fundamental Duties: Article 51A

- (a) to abide by the Constitution and respect its ideals and institutions, the [National Flag](#), and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity, and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism, and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.
- (k) to provide opportunities for education by the parent the guardian, to his child, or a ward between the age of 6-14 years as the case may be. (2002)

Fundamental Duties

- The Fundamental Duties of citizens were added to the [Constitution](#) by the 42nd Amendment in 1976, upon the recommendations of the [Swaran Singh Committee](#) that was constituted by the government earlier that year.
- Fundamental duties apply only to citizens and not to aliens.
- India borrowed the concept of Fundamental Duties from the USSR.
- The inclusion of Fundamental Duties brought our Constitution in line with Article 29 (1) of the Universal Declaration of Human Rights and with provisions in several modern Constitutions of other countries.
- Out of the ten clauses in Article 51A, six are positive duties and the other five are negative duties. Clauses (b), (d), (f), (h), (j), and (k) require the citizens to perform these Fundamental Duties actively.
- It is suggested that a few more Fundamental Duties, namely, the duty to vote in an election, the duty to pay taxes, and the duty to resist injustice may be added in due course to article 51A in Part IVA of the Constitution. (NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION: A Consultation Paper on EFFECTUATION OF FUNDAMENTAL DUTIES OF CITIZENS).

Fundamental Duties

some of the legal provisions already available regarding the enforcement of Fundamental Duties:

- To ensure that no disrespect is shown to the National Flag, the Constitution of India, and the National anthem, the Prevention of Insults to National Honour Act, of 1971 was enacted.
- The Emblems and Names (Prevention of Improper Use) Act 1950 was enacted soon after independence, *inter alia*, to prevent improper use of the National Flag and the National Anthem.
- Imputations and assertions that are prejudicial to national integration constitute a punishable offense under Section 153 B of the IPC.
- A Communal organization can be declared unlawful association under the provisions of the [Unlawful Activities \(Prevention\) Act 1967](#).
- Offenses related to religion are covered in Sections 295-298 of the IPC (Chapter XV).
- Provisions of the Protection of Civil Rights Act, 1955 (earlier the Untouchability (Offences) Act 1955).

Importance of Fundamental Duties

Fundamental Duties are an inviolable part of our fundamental rights. These duties must be carried out by the citizens of India since they are essential for the development of the country.

Here are importance of fundamental duties given below:

- It reminds the Citizens of their duty towards their societies, fellow citizens and for the country.
- It warns citizens against anti-national and anti-social activities that leads to violence or threat to the nation
- It inspires citizens and promote a sense of discipline and commitment among all.
- It helps the courts in examining ng the constitutional validity for law.

The fundamental duties are for citizens of India and not for the aliens. They can be divided into 2 categories.

One category is of duties that are backed by the **force of law**. Prevention of Insults to National Honour Act, 1971, Protection of Civil Rights Act (1955), Fundamental Rights guaranteed under Article 14 (Equality before Law), Article 19 (Protection of certain rights regarding freedom of speech), and Article 21 (Right to Life) and so on are the laws that are based on these duties. These duties should be carried out by the citizens of India since they are essential. Otherwise, laws are there if duties are disobeyed.

And the other one is which are not backed by the force of law and they are the duties with a **positive connotation**.

Fundamental Duties

Facts about Fundamental Duties

- The fundamental duties are divided into two categories:
- **Moral Duty:** cherishing noble ideals of freedom struggle.
- **Civic Duty:** Respecting the Constitution, National Flag as well as National Anthem.
- One category is of duties that are backed by the force of law. Prevention of Insults to National Honour Act, 1971, Protection of Civil Rights Act (1955)
- Fundamental Rights guaranteed under Article 14 (Equality before Law), Article 19 (Protection of certain rights regarding freedom of speech), and Article 21 (Right to Life) and so on are the laws that are based on these duties.
- There is no legal sanction against their violation.
- They are also nonjusticiable similar to the Directive Principles of State Policy in India.
- these duties are necessary for the development of the society and must be followed. The existence of force of law behind some duties clearly states their importance and hence we must take pride in them.
- Though all the fundamental duties of Indian citizens are not backed by the force of law, still they hold an important place as they help in the development of society. They are the moral and civic obligations of the citizens.

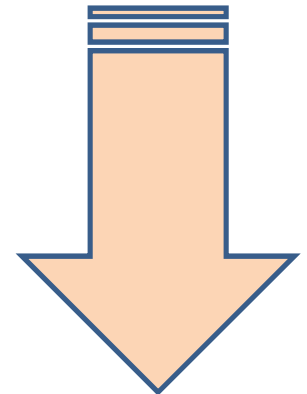
Fundamental Duties

Justice Verma Committee in 1998 on Fundamental Duties

The **following laws were identified by the committee** for the enforcement of some of the Fundamental Duties:

- **Prevention of Insults to National Honour Act, 1971:** Disrespecting the National flag, the Constitution of India, and the National Anthem is deemed unlawful under this act, ensuring the honour and respect for national symbols.
- **Protection of Civil Rights Act, 1955:** This act provides legal provisions and punishments for offences related to caste and religion, safeguarding civil rights and promoting equality.
- **Representation of the People Act, 1951:** Members of Parliament or state legislatures indulging in corrupt practices, such as seeking votes in the name of religion, can be held accountable under this act, ensuring ethical conduct in elections.
- **Wildlife (Protection) Act, 1972:** This act protects and regulates trade concerning rare and endangered animals, promoting conservation efforts and preserving biodiversity.
- **Forest (Conservation) Act, 1980:** Implemented to ensure the proper implementation of Article 51A(g), this act focuses on the conservation of forests, their resources, and sustainable environmental practices.

2.2 The Directive Principles of State Policy – its importance and implementation



2.2 The Directive Principles of State Policy – its importance and implementation

- These are some basic principles or instructions or guidelines for the government while formulating laws/policies of the country and in executing them.
- The concept behind the DPSP is to create a ‘Welfare State’.
- the motive behind the inclusion of DPSP is not establishing political democracy rather, it’s about establishing social and economic democracy in the state.
- The Directive Principles of State Policy (DPSP) has been taken from the **Irish constitution** and enumerated in Part IV of the Indian Constitution.
- DPSP acts as a guideline for the state and should be taken into consideration while coming up with some new policy or any law. But no one can compel the State to consider and follow all that which is mentioned in DPSP, as DPSP is not justiciable.
- Part 4 of the Indian Constitution consists of all the DPSP (Directive Principles of State Policy).
- It covers the Articles from 36 to 51.
- **Socialist Principles: Article 38,39, 39A,41,42,43,47**
- **Gandhian Principles: Article 40,43,43B,46,47,48**
- **Liberal – Intellectual Principles: 44,45,48,48A,49,50,51**

2.2 List of Directive Principles of State Policy Article 36 - 51

Sl. No.	Article	What it says?
1	36	Defines the “state”.
2	37	Part IV of the Indian Constitution shall not be enforceable in any court of law.
3	38	Social, Political and Economic Justice.
4	39	Principles of Policy.
5	39A	Free Legal aid.
6	40	Organization of Panchayats.
7	41	Welfare Government.
8	42	Securing just and humane work and maternity relief.
9	43	Fair wages and a decent standard of life.
10	43A	Workers’ participation in management.
11	43B	Promotion of Cooperatives.
12	44	Uniform Civil Code.

2.2 List of Directive Principles of State Policy Article 36 - 51

- | Sl. No. | Article | What it says? |
|---------|---------|--|
| 13 | 45 | Infant and Child Care. |
| 14 | 46 | Protection of SCs, STs and other weaker sections from exploitation. |
| 15 | 47 | Nutrition, Standard of living and public health. |
| 16 | 48 | Scientific agriculture and animal husbandry. |
| 17 | 48A | Environment and Wildlife Protection. |
| 18 | 49 | Protection of monuments and places and objects which have national importance. |
| 19 | 50 | Judiciary should be separate from the Executive. |
| 20 | 51 | The state shall promote international peace and security. |

2.2 The Directive Principles of State Policy – its importance and implementation

DPSP – Socialistic Principles	
<p>Definition: They are the principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to:</p>	
Article 38	Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities
Article 39	<p>Secure citizens:</p> <ul style="list-style-type: none"> • Right to adequate means of livelihood for all citizens • Equitable distribution of material resources of the community for the common good • Prevention of concentration of wealth and means of production • Equal pay for equal work for men and women • Preservation of the health and strength of workers and children against forcible abuse • Opportunities for the healthy development of children
Article 39A	Promote equal justice and free legal aid to the poor
Article 41	<p>In cases of unemployment, old age, sickness and disablement, secure citizens:</p> <ul style="list-style-type: none"> • Right to work • Right to education • Right to public assistance
Article 43	Secure a living wage, a decent standard of living and social and cultural opportunities for all workers
Article 43A	Take steps to secure the participation of workers in the management of industries
Article 47	Raise the level of nutrition and the standard of living of people and to improve public health

2.2 The Directive Principles of State Policy – its importance and implementation

DPSP – Gandhian Principles	
Definition: These principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement. Under various articles, they direct the state to:	
Article 40	Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government
Article 43	Promote cottage industries on an individual or co-operation basis in rural areas
Article 43B	Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies
Article 46	Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation
Article 47	Prohibit the consumption of intoxicating drinks and drugs which are injurious to health
Article 48	Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds

2.2 The Directive Principles of State Policy – its importance and implementation

DPSP – Liberal-Intellectual Principles	
Definition: These principles reflect the ideology of liberalism. Under various articles, they direct the state to:	
Article 44	Secure for all citizens a uniform civil code throughout the country
Article 45	Provide early childhood care and education for all children until they complete the age of six years. (Note: 86th Amendment Act of 2002 changed the subject matter of this article and made elementary education a fundamental right under Article 21 A.)
Article 48	Organise agriculture and animal husbandry on modern and scientific lines
Article 49	Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance
Article 50	Separate the judiciary from the executive in the public services of the State
Article 51	<ul style="list-style-type: none">• Promote international peace and security and maintain just and honourable relations between nations• Foster respect for international law and treaty obligations• Encourage settlement of international disputes by arbitration

2.2 The Directive Principles of State Policy – its importance and implementation

[42nd Amendment Act](#), 1976 added four new Directive Principles in the list:

S.N o	Article	New DPSPs
1	Article 39	To secure opportunities for the healthy development of children
2	Article 39A	To promote equal justice and to provide free legal aid to the poor
3	Article 43A	To take steps to secure the participation of workers in the management of industries
4	Article 48A	To protect and improve the environment and to safeguard forests and wildlife

2.2 The Directive Principles of State Policy – its importance and implementation

Features:

- DPSP are not enforceable in a court of law.
- They were made non-justifiable considering that the State may not have enough resources to implement all of them or it may even come up with some better and progressive laws.
- It consists of all the ideals which the State should follow and keep in mind while formulating policies and enacting laws for the country.
- The DPSPs are like a collection of instructions and directions, which were issued under the Government of India Act, 1935, to the Governors of the colonies of India.
- It constitutes a very comprehensive economic, social and political guidelines or principles and tips for a modern democratic State that aimed towards inculcating the ideals of justice, liberty, equality and fraternity as given in the preamble. The Preamble consists of all the objectives that needs to be achieved through the Constitution.
- Adding DPSP was all about creating a “welfare state” which works for the individuals of the country which was absent during the colonial era.

2.2 The Directive Principles of State Policy – its importance and implementation

- **Article 36:**

Article 36 contains the definition of **State**.

- Unless the context otherwise requires, the definition of “the State” is the same as it is given in Part III which covers Fundamental Rights.
- The definition given in Article 12 shall apply in this part as well which says that the State includes:
 - The Government of India
 - The Parliament of India
 - The Government of each of the States
 - The Legislature of each of the States
 - All the authorities whether local or any other which are the part of Indian territory or under the control of the government.

2.2 The Directive Principles of State Policy – its importance and implementation

- **Article 37:**
- [Article 37](#) mentions the two important characteristics of DPSP, and they are:
 - It is not enforceable in any court of Law.
 - And they are very basic and essential for the governance of the country.
- The provisions mentioned in this part shall not be enforceable in any court and the principles laid down in this part are fundamental for the governance of the country.
- The State must make laws according to it because the ultimate aim of the State is the welfare of its citizens.

2.2 The Directive Principles of State Policy – its importance and implementation

- **Socialist principles:**

- Its ultimate aim is to provide social and economic justice to all its citizens so that the state can fulfil the criteria required for a welfare state.
- The articles in DPSP which follows the socialist principles are – Article 38, Article 39, Article 39 A, Article 41, Article 42, Article 43, Article 43 A and Article 47.

Article 38:

- [Article 38](#) talks about **Social, Political and Economic Justice**.
- It directs that the State should secure a social order which provides social, political and economic justice to all its citizens.
- [Article 38\(2\)](#) says that state shall reduce the inequalities faced by the people on the grounds like income, status, facilities, opportunities, etc.

2.2 The Directive Principles of State Policy – its importance and implementation

- **Article 39:**

- [Article 39](#) mentions all the **Principles of policy** which must be followed by the State.
- The State shall make its policies towards securing the following objectives—
- All the men, women and citizens should have the right to an adequate means of livelihood
- The ownership and control of the people over any material resources under the community should be distributed as it is for the common good of the public;
- The functioning of the economic system should be such that the concentration of wealth and the means of production don't result in a loss common to all or which causes detriment to the citizens;
- There shall be no gender discrimination, both men and women should get equal pay for equal work.
- The health and strength possessed by any worker, men and women, and the tender age of children should not be abused and the citizens should not be forced to enter and indulge into any occupation or profession which is not suitable for their age or strength, not even out of any financial necessity or economic backwardness
- Children must be given enough opportunities and facilities so that they develop in a healthy manner and in such conditions where their freedom and dignity, including the fact that their childhood and youth remain protected, against any form of exploitation and against any sort of moral and material abandonment.

2.2 The Directive Principles of State Policy – its importance and implementation

- **Article 39A:**

- [Article 39A](#) talks about **Free Legal aid**.
- It says that the State shall promote justice with the aim of administering Justice on the basis of equal opportunity, and shall provide free legal aid through any suitable legislation or schemes which State may think fit ,or, in any other way, so that it could ensure that the opportunities for securing justice are not denied to any citizen because of economic backwardness or any other kind of disabilities.

Article 41

- talks about **Welfare Government**.
- It says that state shall make some effective provisions for securing the right to work, etc. and in cases of unemployment, old age, disablement or any other cases acting in its economic capacity & development it shall provide public assistance. This article is employed as a tenet for numerous social sector schemes like social assistance program, right to food security, old-age pension scheme, MGNREGA, etc.

2.2 The Directive Principles of State Policy – its importance and implementation

- **Article 42:**

- [Article 42](#) talks about **Securing just and humane work and maternity relief**.
- It says that state shall create some provisions so that the citizens get easy, just and humane conditions for working. It shall also provide maternity relief for the women.

-

- [Article 43](#)

- talks about **Fair wages and a decent standard of life**.
- It says that the state can endeavor to secure by appropriate legislation or economic organization to all the workers employed in agricultural, industrial or otherwise, work, a living wage, conditions of work, ensuring a decent standard of life and enjoyment of leisure and social-cultural opportunities and promote cottage industries on an individual or cooperative basis in rural and remote areas of the country.

2.2 The Directive Principles of State Policy – its importance and implementation

- **Article 37:**

- [Article 47](#) talks about **Nutrition, Standard of living and public health**.
- It says that the State shall look into the matter of raising the level of nutrition and the standard of living of its people and it is the duty of the State to keep a check on the improvement of public health.
- The State shall also endeavor to prohibit the consumption of intoxicating drinks and drugs which are injurious for health, except for medicinal purposes.
- There are many social development programmes such as National Health Mission, Mid Day Meal Scheme, etc. which target the marginalized sections of the society i.e. women, children, weaker sections etc. are inspired by this DPSP.

Gandhian Principles

- These principles reflect the programme of reconstruction ideology propagated by Gandhi throughout the national movement. In order to fulfil his dreams, some of his concepts have been included in the form of DPSP.
- They direct the State through these articles – Article 40, Article 43, Article 43 B, Article 46, Article 47 and Article 48.

2.2 The Directive Principles of State Policy – its importance and implementation

- **Article 40:**

- [Article 40](#) deals with the **Organization of Panchayats**.
- It says that the state shall organize Panchayat system and should grant them such powers which would be necessary for the functioning as units of the self-government system.
- The 73rd and 74th amendments of the constitution which are related to Panchayati Raj and Municipal Corporations respectively, later ended up as the constitutionally backed framework for the principle mentioned in Part IV.
- [Article 43](#) talks about **Fair wages and a decent standard of life**.
- It says that the state can endeavor to secure, by appropriate legislation or economic organization, to all the workers employed in agricultural, industrial or otherwise, work, a living wage, conditions of work, a decent standard of life and enjoyment of leisure & social-cultural opportunities and promote cottage industries on an individual or cooperative basis in rural and remote areas of the country.
- [Article 43B](#) deals with the **promotion of cooperatives**.
- It was inserted by the 97th amendment act in 2011. It says that state shall endeavor to promote the management of the co-operative societies to help the people who are engaged in the same.

2.2 The Directive Principles of State Policy – its importance and implementation

- **Article 46:**

- [Article 46](#) deals with the **Protection of SCs, STs, weaker sections from exploitation.**
- The State shall promote with special care including the educational and economic interests of the weaker sections of the society i.e. the SCs and the STs and shall make provisions to protect them from all forms of exploitation which includes social injustice.
- [Article 47](#) talks about **Nutrition, Standard of living and public health.**
- It says that the State shall look into the matter of raising the level of nutrition and the standard of living of its people and it is the duty of the State to keep a check on the improvement of public health. The State shall endeavor to prohibit the consumption of intoxicating drinks and drugs which are injurious to health except for medicinal purposes.
- There are many social development programmes such as National Health Mission, Mid Day Meal Scheme, etc. which target the marginalized sections of the society i.e women, children, weaker sections etc. are inspired by this DPSP.

2.2 The Directive Principles of State Policy – its importance and implementation

- **Article 48:**

- [Article 48](#) talks about **Scientific agriculture and animal husbandry**.
- It says that the State shall try hard to organize agriculture and animal husbandry using modern methods and scientific techniques which make people more advanced and helps in earning their livelihood easily and State shall take some progressive steps for preserving and improving the existing breeds and prohibiting the slaughter of cows and other cattle.

Liberal-intellectual Principles

- These principles follow the 'Liberalism' ideology.
- The articles which follow this approach in DPSP are – Article 44, Article 45, Article 48, Article 48 A, Article 49, Article 50 and Article 51.

2.2 The Directive Principles of State Policy – its importance and implementation

- **Article 44:**

- Article 44 talks about the **Uniform Civil Code**.
- There should be a provision for the citizens to secure a **Uniform Civil Code** throughout the territory of India in order to simplify things and reduce ambiguity in the laws which makes it more complex than it actually is.

- [Article 45](#)

- contains the **Provision for free and compulsory education for the children** in the country.
- The State shall make laws to provide free and compulsory education for the children until they are 14 years old within a period of 10 years from the date of commencement of this provision in the Constitution.
- This provision was incorporated by the virtue of the 86th Amendment, 2002 in the Constitution of India.

2.2 The Directive Principles of State Policy – its importance and implementation

• Article 48:

- talks about **Organisation of agriculture and animal husbandry.**
- The State shall endeavour to organise agriculture and animal husbandry using modern and scientific technology which is prevalent in the present times and also take steps for preserving and improving the existing breeds and prohibiting the slaughter of cows and other cattle in the country for the development of agricultural related practices.

Article 48A:

- talks about the **Environment and Wildlife Protection.**
- The State shall endeavour to protect and improve the environment and surroundings. And to safeguard the forests and wildlife of the country to make the environment sustainable.

Article 49

- talks about **Protection of monuments and places and objects of national importance.**
- It shall be the duty of the State to protect every monument or place or any object of historic or artistic interest which has some national importance, from any form of disfigurement, destruction, etc.

Article 50

- talks about **Separation of Judiciary from the Executive.**
- There should be a line between the judiciary and the executive body of the Government in the public services of the State as it makes it easier if both do not interfere in each other's work and function independently.

2.2 The Directive Principles of State Policy – its importance and implementation

- Article 51:
- talks about **Promotion of international peace and security**.
- The State shall try hard to achieve to —
 - Promote international peace and security;
 - maintain friendly and honourable relations between nations;
 - foster respect for international law and treaty obligations in the dealings of one person with another for maintaining harmony between the nations and
 - encourage settlement of international disputes by the method of arbitration.

2.2 The Directive Principles of State Policy – its importance and implementation

Amendments:

Four Directive Principles which were added by the 42nd amendment are as follows:

42nd Amendment:

- [Article 39](#) – To secure opportunities for healthy development of children.
- [Article 39A](#) – It says that the State shall promote justice with the aim of administering it on the basis of equal opportunity, and shall provide free legal aid through any suitable legislation or the schemes which State may think fit or in any other way so that State can ensure that opportunities for securing justice are not denied to any citizen because of any economic or other disabilities.
- [Article 43A](#) – The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations.
- [Article 48A](#) – The State shall endeavour to protect and improve the environment and surroundings and to safeguard the forests and wildlife of the country to make its environment liveable.

44th Amendment:

- The 44th Amendment Act of 1978 added [Article 38\(2\)](#) in the DPSP.
- **Article 38(2)** says that the state shall work to minimize the inequalities in income, and endeavour to eliminate inequalities in status, opportunities etc. not only amongst individuals but also amongst all the groups of people residing in different areas or engaged in different fields.

2.2 The Directive Principles of State Policy – its importance and implementation

Amendments:

86th Amendment:

- The 86th Amendment changed the subject of [Article 45](#) in the DPSP and brought it within the ambit of the fundamental rights mentioned in Part III as [Article 21-A](#) has been made for the children between the age group of 6-14 years of age. The same article was previously a directive principle which says that the State should take care of the children who are below 6 years of age.

97th Amendment:

- The 97th Amendment act of 2011 inserted [Article 43-B](#) in the list of DPSP. It says that the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of the co-operative societies.

2.2 The Directive Principles of State Policy – its importance

- **Socio-economic Rights-** DPSPs supplement the Fundamental Rights by providing social and economic rights.
- **Reducing Inequalities-** DPSPs persuade the state to tax the rich and use the money for the welfare of the poor people.
- **Human Rights-** DPSPs direct the government to provide human working conditions and decent standard of living to every citizen.
- **Women Empowerment-** DPSPs persuade the state to provide equal wages for equal jobs, work towards women education and eliminate social evils that are derogatory to the dignity of women.

2.2 The Directive Principles of State Policy implementation

There are some acts and policies from 1950 onwards which had been implemented to give effect to these Directive Principles. They are as follows:

- The Minimum Wages Act (1948)
- [Child Labour Prohibition and Regulation Act \(1986\)](#)
- [The Maternity Benefit Act \(1961\)](#)
- [Equal Remuneration Act \(1976\)](#)
- Handloom Board, Handicrafts Board, Coir Board, Silk Board, etc. have been set up for the development of cottage industries in the country.
- Integrated Rural Development Programme (1978)
- Jawahar Rozgar Yojana (1989)
- Swarnajayanti Gram Swarozgar Yojana (1999)
- Sampoorna Gram Rozgar Yojana (2001)
- Mahatma Gandhi National Rural Employment Guarantee Programmes (2006)
- The National Forest Policy (1988)
- Article 21-A was inserted by the 86th amendment, making free education for children below the age of 14 compulsory.
- [Prevention of Atrocities Act](#) safeguarding the interests of SCs and STs.
- Several Land Reform Acts.

2.2 The Directive Principles of State Policy implementation

- **The Minimum Wages Act (1948)** → An Act to provide for fixing minimum rates of wages in certain employments. WHEREAS it is expedient to provide for fixing minimum rates of wages in certain employments;
- [Child Labour Prohibition and Regulation Act \(1986\)](#) → The Child Labour (Prohibition and Regulation) Act of 1986 designates a child as a person who has not completed their 14th year of age. It aims to regulate the hours and the working conditions of child workers and to prohibit child workers from being employed in hazardous industries.
- [The Maternity Benefit Act \(1961\)](#) → An Act to regulate the employment of women in certain establishment for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.
- [Equal Remuneration Act \(1976\)](#) → An Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.
- [Handloom Board, Handicrafts Board, Coir Board, Silk Board, etc. have been set up for the development of cottage industries in the country.](#) →
- **Integrated Rural Development Programme (1978)** → The objective of this program is to make poor rural people generate an additional source of income to help them cross the poverty line.
 - ex: Training of Rural Youth for Self-Employment ,

2.2 The Directive Principles of State Policy implementation

Jawahar Rozgar Yojana (1989): Objective was to provide 90-100 days of employment per person, targeting those below the poverty line.

- Implemented across rural India through Panchayati Raj institutions.
- Expenditure shared between central and state governments in 80:20 ratio.
- Expanded in 1993-94 through increased budget allocation.

Swarnajayanti Gram Swarozgar Yojana (1999): Central Government has launched (in 1999) Swarnajayanti Gram Swarozgar Yojana (SGSY) to provide sustainable income to rural and urban poor through establishment of SHG (Self Help Groups)

- **Sampoorna Gram Rozgar Yojana (2001):** The Government of India launched the Sampoorna Grameen Rozgar Yojana (SGRY) on 25 September 2001 by merging the ongoing schemes of the Employment Assurance Scheme (EAS) and the Jawahar Gram Samridhi Yojna (JGSY).
- The SGRY was launched to provide food and profitable employment to the rural poor. Under the SGRY scheme, the government gives wages and food grains to individuals Below the Poverty Line (BPL).
- At present, the SGRY scheme has been merged with the National Rural Employment Guarantee Act (NREGA) since February 2006, now renamed the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).

2.2 The Directive Principles of State Policy implementation

Mahatma Gandhi National Rural Employment Guarantee Programmes (2006):

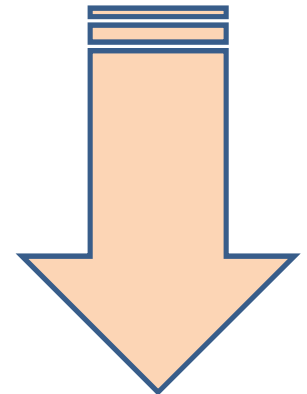
The National Rural Employment Guarantee Programme is a demand-driven wage employment programme in India. It provides at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work

The National Forest Policy (1988)

National Forest Policy, 1988 governs India's forests, i.e., this policy's objectives are related to the protection, conservation, and development of forests.

It envisages that 33% of the country's geographical area should be under forest or tree cover. However, The main objective of the National Forest Policy is to ensure environmental stability and the preservation of ecological balance, including atmospheric equilibrium, which are essential for the survival of all life forms

**2.3 Federal Structure &
Distribution of Legislative and Financial Powers
between the Union and the States.**



2.3 Federal Structure

- Federalism is a system of government in which powers have been divided between the centre and its constituent parts such as states or provinces.
- It is an institutional mechanism to accommodate two sets of politics, one at the central or national level and the second at the regional or provincial level.

Features of the Federal System of India

- Dual government polity
- Division of powers between various levels
- Rigidity of constitution
- Independence judiciary
- Bicameralism
- All federations might not have all the above features. Some of them may be incorporated depending on what type of federation it is.

2.3 Federal Structure

Subjects of Federal System:

- ✓ The Constitution clearly sets limits for the subjects which are under the exclusive domain and which are under the exclusive of States.
- ✓ Constitution describes three lists:
 1. Union List (Subjects dealt only by Central Govt.)
 2. State List (Subjects dealt normally by State Govt.)
 3. Concurrent List (both Central and State govt.s have the power to legislate these subjects)

Subjects of Union List are: Defense, Atomic Energy, Foreign Affairs, War and Peace, Banking, Railways, Post and Telegraph, Airways, Ports, Foreign Trade, Currency.

State List:

Agriculture, Police, Prison, Local Government, Public health, Land, Liquor, Trade and Commerce, Animal Husbandry, and APPSC (State Public Commission)

Concurrent List:

- ✓ Subjects are: Education, Transfer of Property, Forests, Trade Unions, Adoption and Succession.etc...

2.3 Federal Structure

Federalism in India:

- India is a federal system but with more tilt towards a unitary system of government. It is sometimes considered a quasi-federal system as it has features of both a federal and a unitary system.
- Article 1 of the Indian Constitution states, 'India, that is Bharat, shall be a **union of states**'. The word federation is not mentioned in the constitution.
- Elements of federalism were introduced into modern India by the [Government of India Act of 1919](#) which separated powers between the centre and the provincial legislatures.

2.3 Federal Structure

- **Federal Features of the Indian Union**
- Governments at two levels – centre and states
- Division of powers between the centre and states – there are three lists given in the [Seventh Schedule of the Constitution](#) which gives the subjects each level has jurisdiction in:
 - Union List
 - State List
 - Concurrent List
- Supremacy of the constitution – the [basic structure of the constitution](#) is indestructible as laid out by the judiciary. The constitution is the supreme law in India.
- Independent judiciary – the constitution provides for an independent and integrated judiciary. The lower and district courts are at the bottom levels, the high courts are at the state levels and at the topmost position is the [Supreme Court of India](#). All courts are subordinate to the Supreme Court.

2.3 Federal Structure

- **Unitary Features of the Indian Union**
- **The flexibility of the Constitution** – the Constitution is a blend of flexibility and rigidity. Certain provisions of the Constitution can be easily amended. In case the amendments seek to change aspects of federalism in India, the provision to bring about such amendments is not easy. (Read about [types of majorities in Indian Parliament](#) using which amendments or certain other provisions are introduced.)
- **More power vests with the Centre** – the constitution guarantees more powers with the Union List. On the Concurrent List subjects, the parliament can make laws that can override the laws made by a state legislature on some matters. The parliament can also make laws regarding certain subjects in the State List.
- **Unequal representation of states in the [Rajya Sabha](#)** – the representation of the states in the upper house is based on the states' populations. For example, Uttar Pradesh has 31 seats and Goa, 1 in the Rajya Sabha. In an ideal federal system, all the states should have equal representation.
- **The executive is a part of the legislature** – in India, the executive in both the centre and the states is a part of the legislature. This goes against the principle of division of powers between the different organs of the government.

2.3 Federal Structure

- **Lok Sabha is more powerful than the Rajya Sabha** – in our system, the [Lok Sabha](#) is more powerful than the upper house and unequal powers to two houses is against the principle of federalism.
- **Emergency powers** – the centre is provided with emergency powers. When an emergency is imposed, the centre has increased control over states. This undermines the autonomy of the states. (You may also read about [President's rule – Article 356](#) in the linked article.)
- **Integrated judiciary** – the judiciary in India is integrated. There is no separate judiciary at the centre and the state levels. (Gain more information about [Indian Judiciary](#) from the notes mentioned in the linked article.)
- **Single citizenship** – in India, only single [citizenship](#) is available to citizens. They cannot be citizens of the state as well. This helps in increasing the feeling of nationality as it forges unity amidst regional and cultural differences. It also augments fundamental rights such as the freedom of movement and residence in any part of the nation.
- **Governor's appointment** – the [governor](#) of a state acts as the centre's representative in the state. The state government does not appoint the governor, the centre does.
- **New states formation** – the parliament has the power to alter the territory of a state by increasing or reducing the area of the state. It can also change the name of a state.
- **All India Services** – through the All India Services such as the IAS, IPS, etc. the centre interferes in the executive powers of the states. These services also offer uniformity in administration throughout the nation.

2.3 Federal Structure

- **Integrated election machinery** – the [Election Commission of India](#) is responsible for conducting free and fair elections at both the centre and the state levels in India. The members of the EC is appointed by the president.
- **Veto over states bills** – The governor of a state can reserve certain kinds of bills for the president's consideration. The president enjoys absolute veto on these bills. He can even reject the bill at the second instance that is when the bill is sent after reconsideration by the state legislature. This provision is a departure from the principles of federalism. (Read in detail about [veto power](#) in the linked article.)
- **Integrated audit machinery** – the president of the country appoints the [CAG](#) who audits accounts of both the centre and the states.
- **Power to remove key officials** – the state government or state legislature does not have the authority to remove certain key government officials even at the state level like the election commissioner of a state, judges of the [high courts](#), or the chairman of the state public service commissions.

Distribution of Legislative, Administrative, Financial Powers between the Union and the States.

- Legislation refers to the process of framing and executing laws by government officials. Legislation helps execute an action when the area faces unusual trouble or chaos.
 - It aids in organising and protecting the people in an orderly manner.
 - The Constitution of India has distributed legislative powers between the Union and the States to facilitate governing processes.
- **The relations between the Union and the States are based on the division of power between the governing parties.** These relations are classified into three types:
- **Legislative relations: Articles 245 to 255 of the Constitution**
 - Administrative relations: Articles 256 to 263 of the Constitution
 - **Financial relations: Articles 268 to 280 of the Constitution**

Distribution of Legislative Powers between the Union and the States.

- The distribution of legislative powers between the Union and the States falls under the Government of India Act, 1935 which was also followed in Constitution of India.
- The legislative relations distribute the power of law making and governing between the Union and the States.
- The rules and regulations were drafted under Part XI of the Indian Constitution and are dealt with in Articles **245 to 255**.
- **Articles 78 and 86 discuss the legislative powers of the President.**

Article 245

- The Parliament can make laws for the whole or any part of the country.
- A State legislature can make laws for the whole or any part of the State.
- The law of Parliament is never invalid even when the effect pertains to outside the country.

Article 246

- It talks about the Parliamentary laws and the laws proposed by the State.

Article 247

- The Parliament can establish additional courts to better manage the country's laws.

Distribution of Legislative Powers between the Union and the States.

Article 248

- The Parliament can pass laws on any item not listed in the State or Concurrent List.

Article 249

- In a matter of national interest with a two-thirds majority, the Parliament has absolute power to legislate over the items on the State list.

Article 250

- In emergencies, the Parliament has absolute power to legislate over the State.

Article 251

- Even under the conditions of Articles 249 and 250, the State shall legislate as usual but remain inactive in Parliamentary legislative matters alone.
- The State legislation remains inactive until the Parliamentary order is completed.

Article 252

- The Parliamentary law can be nullified only by the passing of another law by the Parliament itself.
- State legislation has no power over this.

Distribution of Legislative Powers between the Union and the States.

Article 253

- The Parliament has the power to make a decision regarding any international treaty or agreement for the whole or any part of the country.

Article 254

- It talks about the inconsistency of State and Parliamentary legislation.

Article 255

- It talks about the previously passed laws and recommendations.

Distribution of Legislative Powers between the Union and the States.

The legislative powers between the Union and the States are divided into three lists – Union List, State List, and Concurrent List:

Union List

- The Union List has 97 items.
- The Parliament has supreme power over the items on this list.
- It falls under the Seventh Schedule of the Constitution of India.
- The Union List deals with nationally important subjects like defence, banking, foreign affairs, railways, atomic energy, etc.

State List

- The State List contains 61 items.
- The State Legislature has supreme power over the items on this list.
- It falls under the Seventh Schedule of the Constitution of India.
- The State List deals with the production, transport, manufacture, and sale of intoxicating liquors; public health; agricultural education and research; state public services, etc.

Concurrent List

- The Concurrent List contains 52 items.
- Both the Union and the States have power over the items on this list.
- It falls under the Seventh Schedule of the Constitution of India.
- The Concurrent List deals with criminal law and procedure, forests and their flora and fauna, industrial disputes, population control, etc.

Distribution of Legislative Powers between the Union and the States.

The legislative powers between the Union and the States are divided into three lists – Union List, State List, and Concurrent List:

Union List are: Defense, Atomic Energy, Foreign Affairs, War and Peace, Banking, Railways, Post and Telegraph, Airways, Ports, Foreign Trade, Currency.

State List:

Agriculture, Police, Prison, Local Government, Public health, Land, Liquor, Trade and Commerce, Animal Husbandry, and APPSC (State Public Commission)

Concurrent List:

- ✓ Subjects are: Education, Transfer of Property, Forests, Trade Unions, Adoption and Succession.etc...

Distribution of Financial Powers between the Union and the States.

- Financial relations between the Centre and states are given in articles **268 to 280** of the Constitution of India.
- Financial relations between the union and the states are derived from the Government of India Act, of 1935.
- The areas of taxation have been clearly fixed boundaries between the centre and states. The states have little power in taxation and are heavily dependent on the centre, for financial resources.
- The chief source of finance of the states is the **grants-in-aid** from the Centre.
- The central-state financial relationship has undergone substantial changes after the passage of the 101st amendment which introduced the **Goods and Services Tax (GST)** in India.

Article 268

- Article 268 deals with **stamp duty (a kind of tax paid** on any transaction based on exchange of documents or execution of instruments). imposed by the Union but collected and distributed by the States.
- These taxes are not included in the **Consolidation Fund of India** and are allocated to the state in which they are imposed , so they do not contribute to the Indian Consolidation Fund.
- With the **88th amendment to the Constitution**, a new provision **268 A** was included in this article, which included the tax on services in its ambit, but it was again excluded by the 101st Amendment to the Constitution with the introduction of GST.

Distribution of Financial Powers between the Union and the States.

Article 269

- Taxes on the sale or purchase of Goods in the course of inter-state trade.
- Taxes on the consignment of goods in the course of inter-state trade or commerce.
- They are assigned to the concerned states. Therefore net proceeds of these taxes do not form a part of the consolidated fund of India.

Article 269 A

- The 101st Constitutional Amendment introduced a new provision 269A, which introduced a number of significant changes.

Article 269A (1) mainly deals with the following aspects:

- Taxation and collection of tax on goods and services (GST).
- This is applicable in the case of Inter-state trade or commerce.
- The collected taxes will be distributed between the states and the Union.
- Parliament has the power to pass legislation on the distribution of taxes levied in accordance with this article, in accordance with the recommendations of the GST Council.
- Goods and Services Tax (GST) on supplies in interstate trade or commerce levied and collected by the Center; however, the net proceeds is divided between the Center and the states, as in manner provided by parliament in accordance with the recommendations of the GST Council.
- Parliament is also empowered to develop guidelines for where and when the supply of goods or services, or both, takes place in the course of interstate trade or commerce.

Distribution of Financial Powers between the Union and the States.

- **Article 270**
- Taxes are collected and levied by the Center but the net proceeds are allocated between the Center and the states (Article 270) on the recommendation of the Finance Commission.
- **This category includes all taxes and levies mentioned in the List of the Union, with the exception of the following:**
- Duties and taxes are referred to in Articles 268, 269 and 269 A.
- Surcharges on taxes and duties referred to in Article 271.
- Any levies received for specific purposes.
- The 101st Amendment added two new sub-clauses, Section 270 (1A) and 270 (1B) under this Article. The tax allocated between the Center and the state was revised after the introduction of the GST.
- **Article 271**
- Parliament has the right to levy the surcharges on taxes and duties referred to in Articles 269 and 270.
- The proceeds of such surcharges go to the Centre exclusively ie. states have no share in these surcharges.
- Surcharge can not be imposed on GST.

Distribution of Financial Powers between the Union and the States.

Distribution Of Non-tax Revenues

- **The Centre** – receipts from Posts & telegraphs, Banking Railways, Broadcasting, Coinage & currency etc..
- **The States** – receipts from Irrigation, Forests, Fisheries, State PSE, Escheat & lapse

How States Get Grant-in-aids From The Centre?

- In addition to the distribution of taxes between the Center and the states, there are several provisions in the Constitution that regulate the scope for Grants-in-aid.
- In accordance with Article 275 and 282, Parliament may provide grants-in-aid from the **Consolidation Fund** of India to states which are in the need of financial assistance.
- Constitution also provide for specific grants for promoting the welfare of the Scheduled tribes. Eg. special grant for Assam.

Other Grants

- Grants for a temporary period
- Grants provided in lieu of **export duties** on jute & jute products to the states of Assam, Bihar, W. Bengal & Orissa.
- Charged on Consolidated Fund
- Recommended by Finance Commission (FC).

Distribution of Financial Powers between the Union and the States.

Statutory Grants

- Statutory grant is provided in **Article 275** of the Indian Constitution.
- Parliament provides these grants to specific states that need assistance.
- This article sets different grants for different states.
- Amount transferred from India Consolidated Fund.
- There are two conditions for granting aid to the states for any development plan approved by the Indian government for the benefit of the Scheduled areas and Scheduled tribes, with a particular focus on Assam.
- Any parliamentary regulation relating to Grants-in-aid as specified is subject to prior recommendation by the Finance Committee.

Discretionary Grants

- In accordance with **Article 282**, the Center may, at its discretion, provide assistance to certain states for public purposes.
- These Grants are optional, not compulsory in nature.
- The Center previously issued these grants on the recommendation of a planning commission.
- Moreover, during the period of the planning commission, the general discretionary grants were even higher than the statutory grants.

Distribution of Financial Powers between the Union and the States.

Finance Commission - Article 280

- The Finance Committee, established in 1951 in accordance with Article 280 of the Constitution.
- It mainly determines how net proceeds of taxes is distributed between the Center and the States.
- In addition, the Commission also determines the principles for grants-in-aids to states.
- Article 280 regulates the Finance Commission, a **quasi-judicial body** (established by the President).

FC Recommends To The President

- Allocation, Respective shares and Distribution of net tax proceeds among Centre and State.
- Principles that will guide Grants in Aid by the Center to the states.
- Measures necessary to increase the Consolidation Fund
- Any other issues proposed by the President

Distribution of Financial Powers between the Union and the States.

GST Regime - 101st Amendment to the Constitution

- Goods and Services Tax (GST) is an indirect tax introduced in India on July 1, 2017, and applied throughout India, replacing the tiered taxes levied by the central government and the state.
- It was passed as the Constitution (One Hundred and First Amendment) Act, 2016, following the passage of the 122nd Constitutional Amendment Bill.
- According to the GST, goods and services are taxed at the following rates: 0%, 5%, 12%, 18% and 28%.
- GST is classified as CGST(Central GST), SGST(State GST), or IGST(Integrated GST) depending on whether the transaction is for intrastate or interstate delivery.
- GST replaced the following central taxes: Service Tax, Duties on excise, Central Excise duties, Cess and Surcharges, Additional duties on Excise duties, Additional duties on customs, etc.,,
- GST also replaced the following state taxes:
Entry tax, Purchase tax, Luxury tax, State VAT, Central Sales Tax, Entertainment Tax, Taxes on Advertisement Tax, State Cess and Surcharges, Taxes on Gambiling and Lottery.

Distribution of Financial Powers between the Union and the States.

GST Regime - 101st Amendment to the Constitution

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Distribution of Financial Powers between the Union and the States.

GST Regime - 101st Amendment to the Constitution

- **Central Goods and Services Tax (CGST)**
- CGST is a tax imposed on Intra-state supplies of goods and services and is governed by the CGST Act. Along with this SGST/UTGST will also be levied on the same transaction and shall be governed by the SGST/UTGST Act.
- It implies that in the case of Intra-state supplies of goods and services both CGST and SGST are combined which are collected simultaneously; where CGST goes to the centre and SGST goes to the state.
- The proportion of SGST and CGST is equal.
- However, it must be noted that any tax levied on Intra-State supplies of goods and/or services by the centre and state shall not exceed 14% each.

- **State Goods and Services Tax (SGST)**
- The SGST is a tax levied by the state on the Intra State supplies of goods and/or services by the State Government.
- It is governed by the SGST Act.
- As already mentioned above it is levied and collected simultaneously with the CGST.
- In the case of Union territories, it is called UGST and governed by the UGST Act.

Distribution of Financial Powers between the Union and the States.

- **Integrated Goods and Services Tax (IGST)**
- IGST or Integrated Goods and Services Tax is a tax levied on all Inter-State supplies of goods and/or services.
- It is governed by the IGST Act.
- IGST applies on any supply of goods and/or services in case of both import into India and export from India. Though the exports will be zero-rated.
- Tax obtained under IGST is shared between centre and states as per [Article 269A](#).

Distribution of Financial Powers between the Union and the States.

Protection Of Interest Of The States

- To protect the interests of states in financial matters, the Constitution provides that the following bills may be submitted to parliament only on the recommendation of the president:
- A bill to introduce or replace any tax or duty in which the states are interested;
- A Bill to amend the meaning of the term “farm income” as defined for the purposes of the enactment relating to Indian Income Tax;
- A bill affecting the principle by which money is distributed or can be distributed among states; and
- A bill for the surcharge of any taxes or duty specified for the purposes of the Center.

Distribution of Financial Powers between the Union and the States.

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Distribution of Financial Powers between the Union and the States.

Effects Of Emergencies

During National Emergency

- The President in National Emergency can order the suspension of all grants received by states from the Union.
- This suspension is, however, temporary and cannot exceed the period of the fiscal year in which the emergency declaration expires.

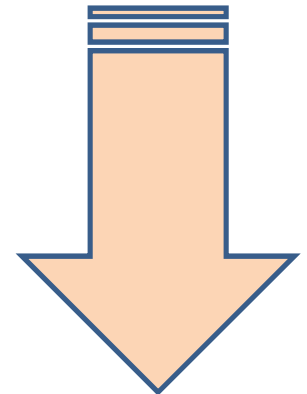
During Financial Emergency

- The financial relations of the centre-state change significantly in the event of a financial emergency under Article 360.
- In such cases, the Center becomes very powerful and exercises great control over states, forcing them to comply with certain rules regarding financial property and providing other important guarantees.

The Central government can issue the following directives to the state

- Comply with special provisions on financial assets;
- Reduce salaries and allowances for all class of persons serving in the state, including high court judges.
- To reserve all money bills and other financial bills for consideration by the President.

**2.4 Parliamentary form of Government of India –
The Constitution powers and status of the President of India**



2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

- ✓ Parliamentary form of Government is one in which the executive becomes a part of the legislature that frames laws and policies and also implements them
- **There are three main branches of the Parliamentary system of Government:**
 1. The Legislative.
 2. The Executive.
 3. The Judiciary.
- The Legislative is the law-making body of the government. It frames laws and policies that are required to run a country smoothly.
- The Executive body of the government implements the laws and regulations framed by the legislative body.
- The Judiciary ensures justice to the citizens of India based on the framed laws of the country's Constitution.
- ✓ The functions of these organs, their jurisdiction, limitations, and interrelationship are decided by the Constitution.
- The Parliamentary system of Government has president as its head. However, these positions are formal. The Prime Minister who stands out to be the head of the government acts as the real head. Thus, all the executive powers are entrusted to the Prime Minister.
- The Parliamentary system of India follows a Bicameral legislature. (lok sabha, rajya sabha)

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

- ✓ The Parliament mainly consists of the President and the two houses of the Parliament-The Lok Sabha (House of the people) and the Rajya Sabha (Council of states).
- ✓ An electoral college comprising the elected members of both the Lok Sabha and the Rajya Sabha, the Legislative Assemblies of the states and union territories generally elect the President for a consecutive term of five years unless there is any allegation against him by the Parliament.
- The Prime Minister is then appointed by the President and also appoints the other members on the advice of the Prime Minister. The other such official members are particularly-
 - The Judges of the Supreme and the High Court.
 - The Comptroller and Auditor-General of India.
 - The Attorney-General of India.
 - The Chairman and members of the Union Public Service Commission and the Finance Commission.
 - The Chief and other election Commissioners.

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Historical Background of the Parliamentary Form of Government in India:

Adoption in Constitution:

- Parliamentary Form of government in India was **adopted from Britain**.
- The choice of a parliamentary form of government for India was a result of a thorough debates .
- **(CAD):**
- The Constituent Assembly witnessed debates on various models, including
 - the Presidential,
 - Indian orthodoxy,
 - Swarajist, and
 - arliamentary systems.
- The parliamentary model won the argument by emphasising the need for a decisive authority representing the citizens and ensuring accountability of the executive to the elected House.

Opinions of Members of Constitutional Assembly Debate (CAD):

- “The Parliamentary government has a sort of link between the Executive, the Legislative and the Judiciary”.
- “Parliamentary system is suitable to this country and for very good reasons that system seems to be better adapted to conditions in India than Presidential executive”.

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Parliamentary Form of Government:

- The Parliamentary form of government under the Constitution of India, 1950 is an important aspect of the country's political structure, drawing inspiration from the British model while adapting to the unique needs and diversity of the Indian population.

Article 74 and 75 of the Constitution:

- Enshrined in Part V of the Constitution, Articles 74 and 75 outline the provisions for the President, the Council of Ministers, and the Parliament, collectively shaping the parliamentary system in India.
- At the heart of the Indian Parliamentary System is the President, who serves as the ceremonial head of state.
- While the President has certain powers and duties prescribed by the Constitution from Article 52 to 62 of the Constitution, real executive authority rests with the Council of Ministers headed by the Prime Minister.

American Presidential System:

- Unlike the American presidential system, where the head of state is also the head of government, in the Indian parliamentary the head of state and head of government are usually two separate positions.

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Prime Minister:

- The Prime Minister is appointed by the President, who, in practice, selects the leader of the majority party in the Lok Sabha (the lower house of Parliament).
- This ensures that the executive reflects the will of the people as expressed through their elected representatives.

Lok Sabha and Rajya Sabha:

- The real power lies in the Lok Sabha, where Members of Parliament (MPs) are directly elected by the people.
- The Lok Sabha, along with the Rajya Sabha (the upper house), forms the Parliament of India.
- The Lok Sabha is the primary legislative body responsible for the formation and sustenance of the government.
- The party or coalition with a majority in the Lok Sabha is invited to form the government, and its leader becomes the Prime Minister.

Collective Responsibility:

- A distinctive feature of the Indian Parliamentary System is the principle of collective responsibility.
- The Council of Ministers is collectively responsible to the Lok Sabha, and it must enjoy the confidence of the majority of its members.
- If the government loses a vote of confidence, it is expected to resign, leading to the formation of a new government or fresh elections.

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Powers of different constitutional authorities:

ELECTION COMMISSION:

- Appointing officers to make sure that any disputes related to the electoral arrangement are heard and sorted.
- The Election Commission can cancel polls in any cases of irregularities like rigging booth capturing violence.
- It determines the areas of the electoral constituencies throughout the country. **Delemitation Commission Act** of parliament is the basis for dividing these territorial areas.
- Allotting election symbols and granting recognitions to political parties is also one of the major powers of the Election Commission.
- It scrutinises nomination papers and prepares the dates and schedule of the election
- **Delimitation** is the process of fixing limits or boundaries of territorial constituencies in a country to represent changes in population.
- **The Delimitation Commission** is appointed by the President of India and works in collaboration with the Election Commission of India. It is appointed for the purpose of drawing up the boundaries of constituencies all over the country.
- **Delimitation Commission Members:**
 - A retired judge of the Supreme Court
 - The Chief Election Commissioner
 - State Election Commissioners (of the respective states)

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

FINANCE COMMISSION:

- The Finance Commission is a constitutional body for the purpose of allocation of certain revenue resources between the Union and the State Governments.
- It was established under **Article 280** of the Indian Constitution by the Indian President.
- It was created to define the financial relations between the Centre and the states. It was formed in 1951.

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

FINANCE COMMISSION: (5 years term)

Article 280 of the Indian Constitution

- President after two years of the commencement of the Indian Constitution and thereafter every 5 years, has to constitute a Finance Commission of India.
- It shall be the duty of the Commission to make recommendations to the President in relation to:
 - the distribution between the Union and the States of the net proceeds of taxes which are to be, or maybe, divided between them and the allocation between the States of the respective shares of such proceeds;
 - the principles which should govern the grants in aid of the revenues of the States out of the Consolidated Fund of India;
 - any other matter referred to the Commission by the President in the interests of sound finance.
 - The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them

Article 281 of the Indian Constitution

- It is related to the recommendations of the Finance Commission:
 - The President has to lay the recommendation made by the Finance Commission and its explanatory memorandum before each House of Parliament

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Union Public Service Commission:

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Union Public Service Commission:

- The Union Public Service Commission (UPSC) is the central recruiting agency in India.
- It is an independent constitutional body in the sense that it has been directly created by the Constitution.
- Articles 315 to 323 in Part XIV of the Constitution contain elaborate provisions regarding the composition, appointment and removal of members along with the independence, powers and functions of the UPSC

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Functions:

- (a) It conducts examinations for appointments to the all-India services, Central services and public services of the centrally administered territories.
- (b) It assists the states (if requested by two or more states to do so) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
- (c) It serves all or any of the needs of a state on the request of the state governor and with the approval of the president of India.
- (d) It is consulted on the following matters related to personnel management:
 - (i) All matters relating to methods of recruitment to civil service and for civil posts.
 - (ii) The principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another.
 - (iii) The suitability of candidates for appointments to civil service and posts; for promotions and transfers from one service to another; and appointments by transfer or deputation. The concerned departments make recommendations for promotion and request the UPSC to ratify them.

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Functions:

- (iv) All disciplinary matters affecting a person serving under the Government of India in a civil capacity including memorials petitions relating to such matters. These include:
 - Censure (Severe disapproval)
 - Withholding of increments
 - Withholding of promotions
 - Recovery of pecuniary loss
 - Reduction to lower service or rank (Demotion)
 - Compulsory retirement
 - Removal from service
 - Dismissal from service
- (v) Any claim for reimbursement of legal expenses incurred by civil servant in defending legal proceedings instituted against him in respect of acts done in the execution of his official duties
- (vi) Any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India and any question as to the amount of any such award.
- (vii) Matters of temporary appointments for period exceeding one year and on regularisation of appointments.
- (viii) Matters related to grant of extension of service and re-employment of certain retired civil servants.

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Limitations of UPSC:

The following matters are kept outside the functional jurisdiction of the UPSC. In other words, the UPSC is not consulted on the following matters:

- (a) While making reservations of appointments or posts in favour of any backward class of citizens.
- (b) While taking into consideration the claims of scheduled castes and scheduled tribes in making appointments to services and posts.
- (c) With regard to the selections for chairmanship or membership of commissions or tribunals, posts of the highest diplomatic nature and a bulk of group C and group D services.
- (d) With regard to the selection for temporary or officiating appointment to a post if the person appointed is not likely to hold the post for more than a year.

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

State Public Service Commission:

Functions:

- Recruitment and selection process to the state civil service and civil posts.
- Promotions as well as transfers of the officers from one service to another
- Disciplinary matters... Read more at: <https://www.studyiq.com/articles/state-public-service-commission/>

Roles:

- A “watchdog of the merit system” for the state is described as the SPSC in the Constitution.
- It is in charge of hiring state employees and, if consulted, offers guidance to the government on issues involving promotion and disciplinary action.
- In addition to having a limited role, SPSC only offers recommendations that are advisory in nature and are not legally enforceable by the government.
- Such a suggestion must be approved or disapproved by the state administration.
- The only safeguard is the state legislature’s authority to hold the government accountable if it deviates from the Commission’s recommendations.
- Additionally, the government has the power to pass legislation that restricts the SPSC’s advisory duties.... Read more at: <https://www.studyiq.com/articles/state-public-service-commission/>

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Limitations of SPSC:

- The governor has the power to declare some positions, products, and subjects to be outside the purview of the SPSC.
- The SPSC is not required to be consulted by the governor when making decisions about public services and employment, according to the Constitution.
- None of the following matters are discussed with the SPSC as, when positions are held exclusively for members of an underprivileged group and considering the claims of scheduled castes and scheduled tribes when appointing people to services and positions....

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

STATE PUBLIC SERVICE COMMISSION

- After the commission members of the commission and the chairman have been appointed, their conditions of service cannot be varied. Hence they enjoy the security of tenure.
- The Consolidated Fund of the state takes charge of the entire expenses of the SPSC.
- The main function of the SPSC includes the conduction of all examinations for the appointment to the services of the state
- The SPSC also looks into any claim for reimbursement of legal expenses borne by a Civil Servant.

ATTORNEY GENERAL OF INDIA

- Under article 76 of the constitution, the president takes the advice of the AG on legal matters.
- The AG has the right to be present in any courts in the territory of India.
- The main power of an AG is that all the immunity and privileges available to a member of parliament are granted to the AG.
- The highest law officer in the country is the AG.

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

ADVOCATE GENERAL OF THE STATE

- Under article 165, the Advocate General is the highest law officer in the state.
- Although he does not enjoy the right to vote, the main power of the advocate general includes the right to speak and take part in the proceedings of both the houses of the state legislature.

• INTER-STATE COUNCIL

- The President establishes the Inter-State Council under article 263, and the main function includes the coordination between centre and States and among different states.
- The President also does the definition of the organisation's duties.
- The end decision of the Inter-State Council is advisory and is not binding.

• GOODS AND SERVICES TAX COUNCIL

- Formed under article 279 A, the main power of the GST Council is to make recommendations to state and Central governments regarding GST.
- The goods and services and tax council is expected to uphold the principle of cooperative federalism.
- The GST council is a federal body since it has representations from both states and the centre.

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Powers and Functions of President:

Executive Functions:

- **Head of the Union:** The President is at the head of the Union Executive. Consequently, all executive powers are exercised in his name. The executive power of the Union to be exercised by the President is extended to the matters with respect to which Parliament has power to make laws and to conclude treaty and agreement.
- **Appointments:** As head of the executive, the President appoints the Governors of States, the Judges of the Supreme Court and the High Courts, the Auditor General of India and many other high officials, such as the members of Finance Commission, Election commission, Union Public commission etc

Appointment of the Prime Minister and other Ministers: The President also appoints the Prime Minister and with his advice the other Ministers of the Union Council of Ministers.

Can ask to prove Majority in Lok Sabha: Union Council of Ministers normally remains in office for five years, unless dissolved earlier for any reason. The President must be satisfied that the Council of Ministers enjoys the confidence of the majority of the Lok Sabha.

Supreme Commander: As head of State, the President is the supreme Commander of the Armed Forces of India and is entitled to declare war or conclude a treaty.

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Legislative Powers and Functions:

- President is a part of Parliament: The Union Legislature or Parliament consists of the President and two Houses of Parliament. The President is, therefore, an integral part of Union Legislature

Summons and Addresses Parliament: The President may address either or both House of Parliament. In such address, at the first session after general election to the Lok Sabha and at beginning of a joint session of Parliament each year,

Nomination: The President nominates a number of members in both Houses. The chief purpose of the nomination is to ensure adequate representation in Parliament of all sections of population which may not always be achieved through elections.

Power in respect of Bills: The President has certain functions in respect of passing of a Bill. A bill passed by both the Houses of Parliament requires his assent in order to become an Act. He may give his assent to a bill or can withhold assent when a bill, after getting approved in both the Houses, is placed before the President.

Bill passed by a State Legislature: A bill passed by a State Legislature may also be reserved for the consideration of the President by the Governor of that State. The President enjoys this right in relation to a bill passed by a State Legislature only in such cases where those are referred to him by the Government of a State under Article 200.

2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

Financial Powers and Functions:

- The President of India also exercises financial powers. No money bill can be introduced in Parliament without the recommendations of the President. According to the Constitution of India, the Annual Financial Statement is placed by the President before both the Houses of Parliament. This statement shows the estimates of revenue and expenditure of the central Government for the next year

Emergency Powers of the President

1. The constitution of India empowers the President to proclaim three kinds of Emergencies:
National Emergency (Art. 352);
2. 2. Emergency for failure of Constitutional Machinery in a State (Art. 356);
3. 3. Financial Emergency (Art. 360)

Diplomatic powers:

- All international treaties and agreements are negotiated and concluded on behalf of the President. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign).

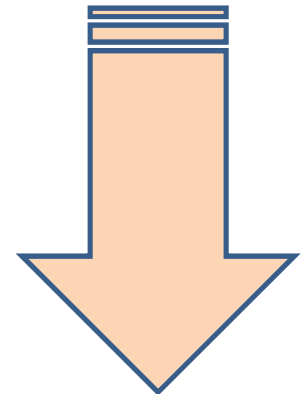
2.4 Parliamentary form of Government of India – The Constitution powers and status of the President of India

- **Military powers:** The President is the Supreme Commander of the Indian Armed Forces. The President can declare war or conclude peace,[20] on the advice of the Union Council of Ministers headed by the Prime Minister. All important treaties and contracts are made in the President's name.[25] He also appoints the chiefs of the service branches of the armed forces.

Pardoning Powers / Judicial Powers:

- The President of India grants, pardons, reprieves or remissions of punishment to any person who has been convicted by a Court of Law. As mentioned in Article 72 of the Indian Constitution, the President is empowered with the powers to grant pardons in the following situations:
 - Punishment is for an offence against Union Law
 - Punishment is by a Military Court
 - Sentence is that of death

2.4 President, Vice President, The Council of Ministers, Attorney General of India, Comptroller and Auditor –General of India



President, Vice President

Vice President

Vice-President has the second-highest office in the country.

Article 63 of the Indian Constitution mentions the post of Vice-President.

How the Vice President is elected in India?

- There is no direct election for the Vice-President of India however, he/she is indirectly elected by an Electoral College.
- The election process is quite similar to that of the [President](#) of India but the electoral college that elects President is different from the electoral college responsible for the election of Vice-President of India.
- In electoral college for Vice President, both elected and nominated members of both the Houses of Parliament(**nominated members: 2 lok sabha & 12 rajyasabha**) take part. In presidential elections, nominated members are not a part of the electoral college.
- For Vice President's elections, states have no role to play unlike in President's elections where state legislative assemblies' elected members are a part of the electoral college.
- The following members are qualified as vice president
 - Sitting President of India,
 - Sitting Vice President of India
 - [Governor](#) of State
 - MPs/MLAs
- Term is 5 years

Vice President

Is Vice President also impeached as President of India?

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

Powers and Functions of Vice President

- The functions of Vice-President are two-fold:
- He acts as the **ex-officio Chairman of Rajya Sabha**. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American vice-president, who also acts as the Chairman of the Senate – the Upper House of the American legislature.
- He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, death or otherwise. He can act as President only for a maximum period of six months, within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.
- The election of a person as Vice-President cannot be challenged on the ground that the electoral college was incomplete (i.e., existence of any vacancy among the members of the electoral college).
- If the election of a person as Vice-President is declared void by the Supreme Court, acts done by him before the date of such declaration of the Supreme Court are not invalidated (i.e., they continue to remain in force).

Vice President of India [Article 63 to Article 71]

Article 63	There shall be a Vice President of India
Article 64	The Vice-President shall be ex-officio Chairman of the Council of States and shall not hold any other office of profit
Article 65	The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President
Article 66	The Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament. The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State.
Article 67	The Vice-President shall hold office for a term of five years from the date of his appointment.
Article 68	An election to fill a vacancy created because of the completion of the term of office of Vice-President shall be completed before the expiry of the term. The election to fill a vacancy created because of the death, resignation or removal of Vice-President shall be held as soon as possible.
Article 69	Every Vice-President shall make an Oath or Affirmation on entering upon his office before the President, or some person appointed in that behalf by him
Article 70	Discharge of President's functions in other contingencies
Article 71	Matters relating to, or connected with, the election of a president or vice-president

Council of Ministers

- Two articles – Article 74 and Article 75 of the Indian Constitution deal with the Council of Ministers. Where article 74 mentions that the council will be headed by the Prime Minister of India and will aid and advise the President, article 75 mentions the following things:
- They are appointed by the President on the advice of Prime Minister
- They along with the Prime Minister of India form 15% of the total strength of the lower house i.e. Lok Sabha. (The number cannot exceed 15%)
- 91st Amendment Act provided for the disqualification of the minister when he stands disqualified as a member of Parliament
- A Minister ceased to exist as one if he is not a member of either house of Parliament for six consecutive months.
- Parliament decides the salary and allowances of the council of ministers.
- Art. 75(3) where it is stated that the Council of Ministers shall be collectively responsible to the Lok Sabha. In other words, this provision means that a Ministry which loses confidence in the Lok Sabha is obliged to resign. The loss of confidence is expressed by rejecting a Money Bill or Finance Bill or any other important policy measure or by passing a motion of no-confidence or rejecting a motion expressing confidence in the Ministry. When a Ministry loses the confidence of the Lok Sabha the whole of the Ministry has to resign including those Ministers who are from the Rajya Sabha.

Council of Ministers

Types of Ministers

- The Indian Constitution does not categorize ministers into ranks, however, in practice seen in India, ministers are of four types:
- **Cabinet Ministers**—He is present and he participates in every meeting of the Cabinet.
- **Minister of State with independent charge**—He is a Minister of State who does not work under a Cabinet Minister. When any matter concerning his Department is on the agenda of the Cabinet, he is invited to attend the meeting.
- **Minister of State**—He is a Minister who does not have independent charge of any Department and works under a Cabinet Minister. The work to such Minister is allotted by his Cabinet Minister.
- **Deputy Minister**—He is a Minister who works under a Cabinet Minister or a Minister of State with independent charge. His work is allotted by the Minister under whom he is working.

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Prime Minister

- The Prime Minister of India is the head of the government and country.
- He is appointed by the President of India after the political party wins a general election and nominates a candidate for the post. The leader of that political party is hence appointed as the Prime Minister of India.

Functions:

- **The leader of the Country:** The Prime Minister of India is the Chief Head of the Government of India.
- **Portfolio allocation:** The Prime Minister has the authority to assign respective portfolios to the Ministers.
- **Chairman of the Cabinet:** The Prime Minister is the chairman of the cabinet and conducts the meetings of the Cabinet. He can impose his decision if there is a crucial opinion difference and conflict among the members.
- **Official Representative of the country:** The Prime minister represents the country for high-level international meetings and he is the ambassador of the country.
- **The link between the President and the Cabinet:** The Prime Minister acts as the link and bond between the President and cabinet. He communicates and transmits all decisions of the Cabinet to the President which is related to the administration of the affairs of the Union and proposals for legislation.

Prime Minister

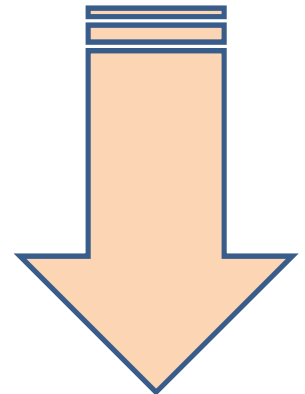
Functions contd..

- **Head:** The Prime Minister is the head of many organisation and programs like Nuclear Command Authority, NITI Aayog, Appointments Committee of the Cabinet, Department of Atomic Energy, Department of Space and Ministry of Personnel, Public Grievances and Pensions.
- **Chief Advisor:** He also plays the role of chief advisor to the President
- The prime minister is the leader of the party in majority in the popular house of the legislature
- He has the power of selecting the other ministers and also advising the crown to dismiss any of them individually, or require any of them to resign.
- The allocation of business amongst the Ministers is a function of the PM. He can also transfer a Minister from one Dept to Other
- He is the chairman of the Cabinet, summons its meetings and presides over them.
- While the resignation of other Ministers merely creates a vacancy, the resignation or death of the PM dissolves the Cabinet.
- The PM stands between the Government and the Cabinet.
- He is in-charge of co-ordinating the policy of the Govt and has a right of supervision over all the Depts.

Attorney General of India

- The **Attorney General of India** is the primary lawyer of the Central government and is their legal representative in the Supreme Court of India.
- **Article 76** of the Indian Constitution (Part V) concisely describes the post of an Attorney General of India and its powers, functions, and duties, among other things.
- He/She is the primary legal representative of the Union Government. He/She is responsible for representing the Government in the **Supreme Court of India**
- Appointed by the president of India
- He must have the same qualification same as that of th Judge of SC.
- He is not a whole-time counsel for the Govt. nor a govt. servant
- Receives remuneration decided by the President.

Amendment of Constitutional Powers & Procedure



Amendment of Constitutional Powers

- The Constitution of India, as the supreme law of the land, should be responsive to changing needs and situations. The provision for amendment of the Constitution of India under **Article 368 in Part XX** accommodates this requirement.
- The **Amendment of the Constitution** refers to the process of making changes such as the **addition, variation, or repeal of any provision** of the Constitution in accordance with the procedure laid down for the purpose.

Procedure for Amendment to the Indian Constitution:

Amendment of Constitutional Powers

Procedure for Amendment to the Indian Constitution:

- A bill for the amendment of the Constitution can be introduced **only in either house of the Parliament**, not in the State Legislatures.
- The bill can be introduced **either by a minister or by a private member** and does not require prior permission of the President.
- The bill must be passed in **each House by a Special Majority**, that is, a majority (more than 50 percent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
- **Each House must pass the bill separately.** In case of a disagreement between the two Houses, there is **no provision for holding a joint sitting** of the two Houses for deliberation and passage of the bill.
- If the bill seeks **to amend the federal provisions** of the Constitution, it must also be ratified by the **legislatures of half of the states** by a **Simple Majority**, that is, a majority of the members of the House present and voting.
- After duly passed by both Houses of Parliament and ratified by the State Legislatures, where necessary, the bill is presented to the President for his/her assent.
- The **President must give his acceptance to the bill.** He can neither withhold his assent to the bill nor return the bill for reconsideration by the Parliament.
- After the President's assent (approval), the **bill becomes an Act** (i.e. a **Constitutional Amendment Act**), and the Constitution stands amended as per the changes made by the Act.

Types of Amendments in Indian Constitution

- **Article 368 of Indian Constitution** provides for two types of amendments:
 - By a **Special Majority of Parliament** (50% of the total membership of the House + 2/3rd of the members present and voting),
 - By a Special Majority of Parliament plus ratification of 1/2 of the states by a Simple Majority,
- One other type of amendment can be done by a **Simple Majority of Parliament**.
 - However, these amendments are **not deemed to be amendments** for the purpose of **Article 368**.
- Therefore, the Constitution can be amended in three ways:
 - Amendment by a **simple majority** of the Parliament,
 - Amendment by a **special majority** of the Parliament, and
 - Amendment by a **special majority of the Parliament and the ratification of half of the State Legislatures**.

Types of Amendments in Indian Constitution

By Simple Majority of Parliament: A number of provisions in the Constitution can be amended by a simple majority of the two houses of Parliament outside the scope of Article 368. (>50% of members present and vote of the houses)

These provisions include:

- Admission or establishment of new states.
- Formation of new states and alteration of areas, boundaries or names of existing states.
- Abolition or creation of legislative councils in states.
- Second Schedule-emoluments,
- Allowances, privileges and so on of the [president](#), the governors, the Speakers, judges, etc.
- Quorum in Parliament.
- Salaries and allowances of the members of Parliament.
- Rules of procedure in Parliament.
- Privileges of the Parliament, its members and its committees.
- Use of the English language in Parliament.
- Number of puisne judges in the [Supreme Court](#).
- Conferment of more jurisdiction on the Supreme Court.
- [Citizenship](#)-acquisition and termination.
- Elections to Parliament and state legislatures.
- Delimitation of constituencies.
- Union territories
- Fifth Schedule-administration of scheduled areas and scheduled tribes.

Types of Amendments in Indian Constitution

By Special Majority of the Parliament:

- The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.
- The special majority is required only for voting at the third reading stage of the bill but by way of abundant caution.
- The provisions which can be amended by this way include
 - (i) Fundamental Rights;
 - (ii) [Directive Principles of State Policy](#); and
 - (iii) All other provisions which are not covered by the first and third categories.

Types of Amendments in Indian Constitution

By Special Majority of Parliament and Consent of States:

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

Ex: The following provisions can be amended in this way:

- Election of the President and its manner.
- Extent of the executive power of the Union and the states.
- Supreme Court and high courts.
- Distribution of legislative powers between the Union and the states.
- Any of the lists in the Seventh Schedule.
- Representation of states in Parliament.
- Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

Scope of Amendability

- ✓ The present position is that the Parliament under Article 368 can amend any part of the Constitution including the [Fundamental Rights](#) but without affecting the 'basic structure' of the Constitution.
- ✓ However, the Supreme Court is yet to define or clarify as to what constitutes the 'basic structure' of the Constitution.

From the various judgements, of the Supreme Court, the following have emerged as '[basic features](#)' of the Constitution:

1. Supremacy of the Constitution
2. Welfare state (socio-economic justice).
3. Principle of equality
4. Sovereign, democratic and republican nature of the Indian polity.
5. [Judicial review](#)
6. Free and fair elections
7. The secular character of the Constitution.
8. Freedom and dignity of the individual
9. Independence of Judiciary
10. Separation of powers between the legislature, the executive and the judiciary.
11. Parliamentary system

Scope of Amendability

contd..

- Limited power of Parliament to amend the Constitution
- Federal character of the Constitution
- Rule of law
- Effective access to justice
- Unity and integrity of the nation
- Harmony and balance between Fundamental Rights and Directive Principles
- Reasonableness

Significance of the Constitutional Amendment

- The provision for amendment of the Indian Constitution carries multifarious significance as listed below:
- **Adaptability in Governance:** The Constitution lays down **fundamental principles of governance**. A diverse and constantly evolving country like India cannot be governed by a set of fixed rules. The amendment of the constitution enables to bring changes in governance as per needs and situations.
- **Accommodating New Rights:** With rising awareness, various sections of society are **becoming assertive of their rights**. For example, of late, the LGBT community has been demanding their rights. The amendment enables providing for such rights.
- **Evolution of New Rights:** New interpretations of the Constitution led to the **evolution of new rights**. For example, a new interpretation of the Right to Life and Personal Liberty gave rise to the Right to Privacy. The amendment enables accommodating such rights.
- **Addressing Emerging Issues:** It enables addressing new **emerging trends like bans, vigilantism, etc.**
- **Bringing Social Reform:** It enables the **eradication of outdated socio-cultural practices** to usher in modernity.

Criticism of the Amendment Procedure

The procedure for amendment of the Indian constitution has been criticized on the following grounds:

- There is **no provision for a special body** for amending the Constitution such as the **Constitutional Convention or Constitutional Assembly**. The constituent power is vested in the Legislative Body itself i.e. the Parliament and the State Legislatures (in a few cases).
- There is **no provision for a special process for amending the Constitution**. Except for the requirement of Special Majority, the process of amendment is similar to that of a legislative process.
- The **power to initiate an amendment lies only with the Parliament**. The states have no such powers (except for passing a resolution to create or abolish state legislative councils).
- A major part of the Constitution **can be amended by the Parliament alone**. Only in a few cases, the consent of the state legislatures is required, and that too, only half of them.
- **Lack of provision for holding a joint sitting** of both Houses of Parliament for a **constitutional amendment bill**, sometimes, leads to the situation of a deadlock.
- The provisions relating to the amendment procedure, **being too sketchy**, leave a wide scope for **creating disputes and taking the matters to the judiciary**.

Important Amendments in Constitution

Amendments	Provisions
1st Amendment Act of 1951	It added the Ninth Schedule of the Constitution which includes a list of Central and State laws that cannot be challenged in courts.
42nd Amendment Act of 1976	<ul style="list-style-type: none">– Three terms (i.e., socialist, secular, and integrity) were added in the Preamble.– It added Fundamental Duties (new Part IVA) in the Constitution.
44th Amendment Act of 1978	<ul style="list-style-type: none">– It replaced the term ‘internal disturbance’ with ‘armed rebellion’ which was related to National Emergency (Article 352).– It deleted the Right to Property from the Fundamental Rights and made it a legal right.
61st Amendment Act of 1988	It lowered the voting age from 21 years to 18 years.
73rd Amendment Act of 1992	It introduced the provisions related to Panchayati Raj Institutions, aiming to decentralize power to the grassroots level.
74th Amendment Act of 1992	It introduced the provisions related to Urban Local Bodies, empowering Municipalities and Municipal Corporations.

Important Amendments in Constitution

86th Amendment Act of 2002	It added that the State shall provide free and compulsory education to all children aged six to fourteen years.
97th Amendment Act of 2011	This amendment gave constitutional status and protection to the cooperative societies.
101st Amendment Act of 2016	It introduced the Goods and Services Tax (GST), a comprehensive indirect tax reform aimed at simplifying the tax structure and promoting economic integration.
102nd Amendment Act of 2018	It gave Constitutional Status to National Commission for the Backward Classes.
103rd Amendment Act of 2019	It provides 10% reservation for Economically Weaker Sections (EWS).
104th Amendment Act of 2020	It provides for the reservation of seats in the Lok Sabha and State Legislative Assemblies for members of Scheduled Castes and Scheduled Tribes till 25th January 2030.
105th Amendment Act of 2021	It revived the power of the State Governments to identify Socially and Educationally Backward Classes (SEBCs).
106th Amendment Act of 2023	It reserves one-third of all seats for women in Lok Sabha, State Legislative Assemblies, and the Legislative Assembly of the National Capital Territory of Delhi, including those reserved for SCs and STs