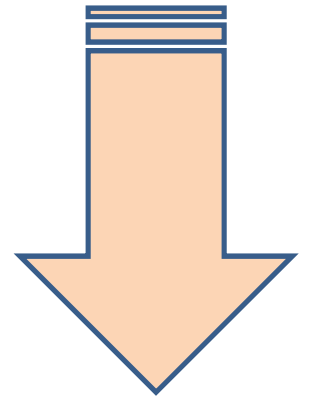


# **Indian Constitution**

## **MC03 – UNIT III**

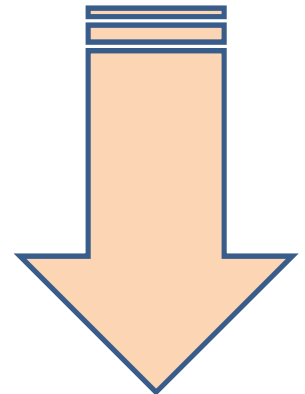
# UNIT-III



## UNIT – III

- Amendment of Constitutional powers and procedure
- The historical perspectives of the constitutional amendments in india
- **Emergency provisions:** National Emergency, President Rule, Financial Emergency,
- **Local self government** – Constitutional Scheme in India

## **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.
- The amendment procedure laid down for the amendment of India's Constitution is **neither flexible as Britain's nor as rigid as the USA's** but a synthesis of both.
- Under **Article 368** of the Indian Constitution, the Parliament can amend it and its procedures.
- Parliament cannot amend those provisions which form the Basic Structure of the Constitution.
- **Ex; The Constitution (99th Amendment) Act, 2014:** provided for a National Judicial Appointment Commission (NJAC), was struck down by the Supreme Court on the grounds that it violated the “independence of the judiciary”, which is a part of Basic Structure.

## 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

**1) 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.
- Sixth Schedule-administration of tribal areas.

## Types of Amendments in Indian Constitution

### 2) 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

### 3) 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

## 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.

## 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

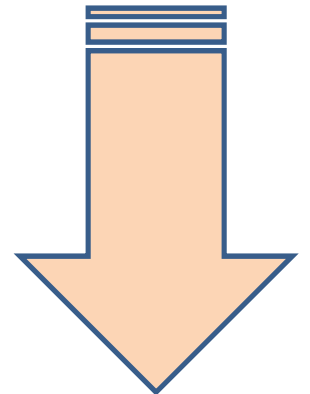
Amendments	Provisions
<b>1st Amendment Act of 1951</b>	It added the Ninth Schedule of the Constitution which includes a list of Central and State laws that cannot be challenged in courts.
<b>42nd Amendment Act of 1976</b>	<ul style="list-style-type: none"><li>– Three terms (i.e., socialist, secular,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

## **Important Amendments in Constitution**

<b>86th Amendment Act of 2002</b>	It added that the State shall provide free and compulsory education to all children aged six to fourteen years.
<b>97th Amendment Act of 2011</b>	This amendment gave constitutional status and protection to the cooperative societies.
<b>101st Amendment Act of 2016</b>	It introduced the Goods and Services Tax (GST), a comprehensive indirect tax reform aimed at simplifying the tax structure and promoting economic integration.
<b>102nd Amendment Act of 2018</b>	It gave Constitutional Status to National Commission for the Backward Classes.
<b>103rd Amendment Act of 2019</b>	It provides 10% reservation for Economically Weaker Sections (EWS).
<b>104th Amendment Act of 2020</b>	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.
<b>105th Amendment Act of 2021</b>	It revived the power of the State Governments to identify Socially and Educationally Backward Classes (SEBCs).
<b>106th Amendment Act of 2023</b>	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



# Historical Perspectives of the Constitutional Amendments in India



## List of Amendments – 42<sup>nd</sup> Amendment

- **42<sup>nd</sup> Amendment Act, 1976** is considered as one of the most remarkable amendments to the [Constitution of India, 1950 \(COI\)](#).
- This Amendment Act is often referred to as the **Mini-Constitution** as it made a large number of amendments to the COI. This Amendment Act amended
  - the [Preamble to the Constitution](#),
  - 40 Articles and the Seventh schedule, and
  - added 14 new articles and two new parts to the COI.

### Changes Made by the 42<sup>nd</sup> Amendment Act

#### 1. **Preamble to the COI** <https://www.drishtijudiciary.com/to-the-point/ttp-constitution-of-india/42nd-amendment-act-1976>

- This Amendment Act has made the following changes to the Preamble:
- Added the words **socialist and secular**.
- The words unity of the nation was changed to **unity and integrity of the nation**.

## 42<sup>nd</sup> Amendments

### 2. Directive Principles of State Policy (DPSP)

- **Articles 39A, 43A and 48A** were added to the Directive Principles of State Policy by this Amendment Act and changes were made to Article 39(f).
- **Article 39(f)**: That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- **Article 39A**: To promote equal justice and to provide free legal aid to the poor.
- **Article 43A**: To take steps to secure the participation of workers in the management of industries.
- **Article 48A**: To protect and improve the environment and to safeguard forests and wildlife.

### 3. Fundamental Duties

- **Part IV-A** was constituted which contained Fundamental Duties under **Article 51 of the COI**.
- Presently there are **11 fundamental duties** enlisted in the COI.

### 4. Seventh Schedule

- Education, Forests, Protection of wild animals and birds, Weights and Measures, and Administration of justice, constitution, and organization of all courts except the Supreme Court and the High Courts were all moved from the **State list to the Concurrent list**.

# 42<sup>nd</sup> Amendments

## 5. Parliament

- By the Amendment Act, the President was **obligated to follow** the cabinet's advice.
- **Article 257A** was added which allowed the Centre to deploy central forces in the state to deal with law-and-order conflicts.
- Quorum requirements in the Parliament and state legislatures **were abolished**.
- The Parliament was **given the authority** to decide on the rights and privileges of its members and committees regularly.
- The Lok Sabha and State legislative assemblies now had a **six-year term instead of five**.

## 6. Emergency

- As per the changes made in Article 352 of the COI by this Amendment Act, a proclamation of national emergency may be **applicable to the entire country or only a part of it**.
- This Amendment Act extended the one-time duration of the President's rule in a State from **six months to one year**.

## 7. Judiciary

- The High Courts' judicial review power was curtailed (reduced)
- Provided for the creation of the All-India Judicial Service.

## 42<sup>nd</sup> Amendments

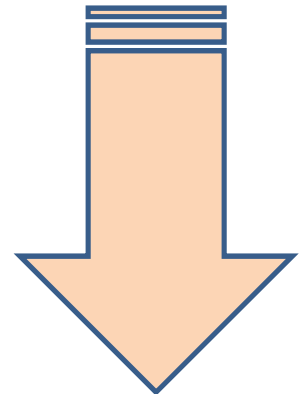
### 8. Part XIV-A of the COI

- **Articles 323A and 323B** were added dealt with the tribunals dealing with administrative matters and tribunals for other matters respectively.

### 9. Suspension of the Fundamental Rights

- This Amendment Act introduced the necessary clauses to the COI that allowed for the suspension of fundamental rights in times of need.
- Whenever an external emergency is imposed, Article 358 of the COI has the effect of **suspending the rights given by [Article 19](#)** of the COI without any special notice. It provides that Article 19 is suspended nationwide for the duration of the emergency and that emergency laws are given legal immunity.

**Emergency Provisions: National Emergency,  
President Rule, Financial Emergency**



## Emergency Provisions

- ✓ Emergency provisions of our constitution enable the federal govt. to acquire the strength of a unitary system whenever the urgent need of the situation so demand.
  - ✓ India is a federal country of “*its own kind*”. It acquires unitary features during an Emergency.
  - ✓ Due to this reason, Dr B.R Ambedkar called the Indian Federal system as *unique* because it becomes entirely unitary during an Emergency.
  - ✓ During an Emergency, as Constitutional machinery fails, the system converts itself into a unitary feature. The Emergency is a period of depression where all Fundamental Rights of a person is taken away except [article 20](#) and [21](#).
- 
- **Article 20:** Protection in respect of conviction for offences. Any person who, contrary to the law, willfully or negligently causes damage to another must compensate the latter.
  - **Article 21:** Protection of life and personal liberty. Any person who willfully causes loss or injury to another in a way that is contrary to morals, good customs, or public policy must compensate the latter for the loss or injury.

## Emergency Provisions

### Emergency:

- An emergency is a situation which arises due to the failure of the government machinery which causes or demands immediate action from the authority.
- According to the Black Law's Dictionary, "*Emergency is a situation which requires quick action and immediate notice as such a situation causes a threat to the life and property in the nation. It is a failure of the social system to deliver reasonable conditions of life*"
- A declaration of national emergency could include the entire country or only a portion of it. The President can use the 42nd Amendment Act of 1976 to confine the scope of a National Emergency to a certain area of the country.
- The Constitution originally listed "internal disturbance" as the third cause for declaring a national emergency.



## Emergency Provisions

### Types of Emergency:

- Part- XVIII of Indian Constitution deals with the Emergency provisions i.e. Articles 352 to 360. There are three types of Emergencies mentioned in the Constitution.
- The power of imposing all three types of Emergencies is vested upon the President of India.
- The concept of Emergency was borrowed from the Weimar Constitution of Germany.
- The three types are as follows –
- [Article 352](#) – National Emergency
- [Article 356](#) – President's Rule
- [Article 360](#) – Financial Emergency

### 1. National Emergency (Article 352):

Grounds for the proclamation(declaring) of National Emergency are as follows:

#### **1a. War**

When a country declares a formal war against India and there is a violent struggle using armed forces, the President of India may impose National emergency.

#### **1b. External Aggression**

When a country attacks another country without any formal declaration of war. It is a unilateral attack by any country towards India. In such circumstances, the President of India may impose a National emergency.

#### **1c. Armed Rebellion (Armed Resistance against Govt.)**

Emergency due to the armed rebellion may be imposed by the President of India when a group of people rebel against the present government which will lead to the destruction of lives and property.

## Emergency Provisions

### 2. Article 356 – State Emergency

#### Due to failure of constitution machinery in the State.

- Article 356 of the Constitution of India is based on Section 93 of the [Government of India Act, 1935](#).
- According to **Article 356, President's Rule** can be imposed on any state of India on the grounds of the failure of the constitutional machinery. This is of two types:
  1. If the President receives **a report from the state's Governor** or otherwise is convinced or satisfied that the state's situation is such that the state government cannot carry on the governance according to the provisions of the Constitution.
  2. **Article 365:** As per this Article, President's Rule can be imposed if any state fails to comply with all directions given by the Union on matters it is empowered to.
- In simple words, President's Rule is when the state government is suspended and the central government directly administers the state through the office of the governor (centrally appointed).
- It is also called 'State Emergency' or 'Constitutional Emergency'.

### 3. Financial Emergency (Article 360)

- Financial Emergency is imposed by the President when there arises any situation which causes a financial threat to India or any part of India.
- Grounds for the Proclamation of the Financial Emergency is that when a state arises in the Country which leads to a financial crisis in India, the President of India may impose emergency to tackle the situation.
- In this situation, the Central Authority may reduce the budget or cut the budget given to the State, salaries of the Government officials may be deducted.

## Emergency Provisions

### PREZ RULE DOWN THE YEARS

Of the 126 times the Centre has imposed President's Rule in states, 88 were under the Congress rule

PRIME MINISTER	(Term)	PRESIDENT'S RULE IMPOSED
Jawaharlal Nehru	August 1947-May 1964	8
Lal Bahadur Shastri	June 1964-January 1966	1
Indira Gandhi	January 1966-March 1977	35
Morarji Desai	March 1977-June 1979	16
Charan Singh	July 1979-January 1980	4
Indira Gandhi	January 1980-October 1984	15
Rajiv Gandhi	October 1984-December 1989	6
VP Singh	December 1989-November 1990	2
Chandrashekhar	November 1990-June 1991	5
PV Narasimha Rao	June 1991-May 1996	11
HD Deve Gowda	June 1996-April 1997	1
Atal Behari Vajpayee	March 1999-May 2004	5
Manmohan Singh	May 2004-May 2014	12
Narendra Modi	May 2014-present	5

## Emergency Provisions

### Financial Emergency (Article 360)

- Financial Emergency has never been imposed in India. However, in 1990, the possibility of financial emergency emerged but the situation was controlled by the Indian Government as in July 1991 the Reserve Bank of India pledged 46.91 tonnes of Gold with Bank of England and Union Bank of Switzerland to raise \$400 million.

### Emergency Provisions:

- [Article 352](#): Proclamation of Emergency.
- [Article 353](#): Effect of Proclamation of Emergency.
- [Article 354](#): Application of provisions relating to the distribution of revenues while a proclamation of emergency is in operation.
- [Article 355](#): Duty of the Union to protect States against external aggression and internal disturbance.
- [Article 356](#): Provisions in case of failure of constitutional machinery in State.
- [Article 357](#): Exercise of legislative powers under Proclamation issued under Article 356.
- [Article 358](#): Suspension of provisions of article 19 during Emergencies.
- [Article 359](#): Suspension of the enforcement of the rights conferred by Part III during emergencies.
- [Article 360](#): Provisions as to Financial Emergency.

## 1. Article 352 ( National Emergency)

- Emergency can be declared over the complete territory of India or any part thereof.
- The 42nd Amendment Act of 1976 enabled the president to limit the operation of a National Emergency to a specific part of India.
- **The President can declare an emergency only on the written advice of the cabinet.** This means that the emergency may only be proclaimed with the cabinet's approval and not only on the prime minister's recommendation.
- The Emergency lasted from 25th June, 1975 until its withdrawal on the 21st of March, 1977.
- the Emergency is often termed as the darkest period of Post-Independent Indian history.

## 1. Article 352 ( National Emergency)

### Procedure:

- Once President declares emergency, **within a month**, the declaration of Emergency must be ratified by both Houses of [Parliament](#). [The 44th Amendment Act of 1978 shortened the two-month time originally given to the Parliament for approval.]
- **Process of Ratification:**
  - Every proclamation made under article 352 should be laid before each house of parliament and must be approved by them with special majority, i.e., by a majority of the total membership of that house and by a majority of not less than 2/3rd of the members of that house present and voting.
- **Question arises on declaration:**
  - If parliament fails to approve such a proclamation, then it ceases to be in operation on the expiry of one month after the proclamation is made.
  - If parliament approves such a proclamation, then it will be in force for 6 months from the date on which it was approved by the parliament, unless revoked earlier.
- **In case [Lok Sabha](#) is not in session**
- If the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the [Rajya Sabha](#) has in the meantime approved it.

## 1. Article 352 ( National Emergency)

### Revocation:

- The Proclamation of emergency *may* be revoked by the President by another Proclamation at any time during its continuance. Such a Proclamation need not be approved by the Parliament.
- President *must* revoke if Lok Sabha passes a disapproval resolution by a simple majority. This was introduced by the 44th Amendment Act.

### **How the Lok Sabha disapproves the Emergency?**

- Lok Sabha has the power to disapprove the operation of a national emergency at any time, if 1/10th of members of Lok Sabha issue a notice with the intention of disapproving an emergency, to the President if the Lok Sabha is not in session.
- If there is no session, a special sitting of the LS shall be held within 14 days for the purpose of considering such a resolution.

# 1. Article 352 ( National Emergency)

## Effects of National Emergency

### Centre- State Relation:

- The most significant effect is that the federal form of the Constitution changes into unitary. The authority of the Centre increases and the Parliament assumes the power to make laws for the entire country or any part thereof, even in respect of subjects mentioned in the State List.
- The President of India can issue directions to the states as to the manner in which the executive power of the states is to be exercised. State governments are not dismissed, they continue to operate, but are brought under the effective control of the centre, which assumes the power to give instructions to the state government, which shall abide by such directions
- During the emergency period, the Lok Sabha can extend tenure by a period of 1 year at a time. But the same cannot be extended beyond 6 months after the proclamation ceases to operate. The tenure of State Assemblies can also be extended in the same manner.
- During emergency, the President is empowered to modify the provisions regarding distribution of revenues between the Union and the States.
- **Fundamental Rights:** The effect of National Emergency on fundamental Rights is mentioned in Article 358 and 359 of the Indian Constitution.



## Article 358

### Effects of National Emergency

Article 358: Clause (1) of Article 358 says that Article 19 will be suspended during a situation declared as National Emergency by the President.

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#### [Article 19:

Article 19(1)(a) Freedom of speech and expression

Article 19(1)(b) Freedom of assembly

Article 19(1)(c) Freedom of association

Article 19(1)(d) Freedom of movement

Article 19(1)(e) Freedom to residence and settlement

Article 19(1)(f) Right to Acquire, hold and dispose of Property (Repealed)

Article 19(1)(g) Freedom of profession, occupation, trade or business]

- 
- The state has the authority to enact any law or take any executive action that restricts or eliminates the six Fundamental Rights guaranteed by Article 19.
  - Any such law or executive action cannot be challenged on the basis that it violates the six Fundamental Rights guaranteed by Article 19.
  - However, the scope of Article 358 was limited in two ways by the 44th Amendment Act of 1978.
  - The six Fundamental Rights enshrined in Article 19 can be suspended only when the National Emergency is declared due to war or external aggression, rather than armed rebellion.
  - Only laws related to the Emergency are protected from being challenged, not other laws.
  - Furthermore, only executive action taken in accordance with such a law is protected.

## Article 359

### Effects of National Emergency

#### Article 359:

- Article 359 allows the president to suspend the right to petition any court for the enforcement of Fundamental Rights.
- This means that, under Article 359, the Fundamental Rights are not suspended in their entirety, but only their enforcement.
- The scope of Article 359 was limited in two ways by the 44th Amendment Act of 1978.
- The President cannot suspend the right to petition the Court for the enforcement of fundamental rights guaranteed by Articles 20–21. It means, even during an emergency, the right to protection from criminal prosecution (Article 20) and the right to life and personal liberty (Article 21) remain enforceable.
- Only laws related to the emergency are protected from challenge, not other laws, and only executive action taken under such a law is protected.

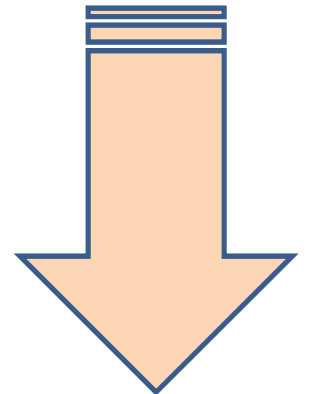
### National Emergency declared so far in India

- It has been declared in our country **three times** so far. For the **first time, an emergency was declared on 26 October 1962 after China attacked our borders in the North East**. This National Emergency lasted till 10 January 1968, long after the hostilities ceased.
- For the **second time, it was declared on 3 December 1971** in the wake of the second India-Pakistan War and was lifted on 21 March 1977 on the basis of external aggression.
- **Third National Emergency (called internal emergency) was imposed on 25 June 1975**. This emergency was declared on the grounds of ‘internal disturbances’.

## 1. Article 356( President's Rule)

- Article 356, also known as the imposition of President's Rule in states.
- Article 356 of the Constitution of India is based on Section 93 of the [Government of India Act, 1935](#).
- According to **Article 356, President's Rule** can be imposed on any state of India on the grounds of the failure of the constitutional machinery. This is of two types:
  - If the President receives a report from the state's [Governor](#) or otherwise is convinced or satisfied that the state's situation is such that the state government cannot carry on the governance according to the provisions of the Constitution.
  - Article 365: As per this Article, President's Rule can be imposed if any state fails to comply with all directions given by the Union on matters it is empowered to.
- In simple words, President's Rule is when the state government is suspended and the central government directly administers the state through the office of the governor (centrally appointed).
- It is also called 'State Emergency' or 'Constitutional Emergency'.

**President Rule**



## 1. Article 356( President's Rule)

### President's Rule:

- Parliamentary approval is necessary for the imposition of the President's Rule on any state. The proclamation of President's Rule should be approved in both Houses of Parliament **within two months of its issue**. The approval is through a **simple majority**.
- The President's Rule is initially for a period of six months. Later, it can be extended for a period of three years with parliamentary approval, every six months.
- The [44th Amendment to the Constitution](#) (1978) brought in some constraints on the imposition of the President's Rule beyond a period of one year. It says that President's Rule cannot be extended beyond one year unless:
  - There is a national emergency in India.
  - The Election Commission of India certifies that it is necessary to continue the President's Rule in the state because of difficulties in conducting assembly elections to the state.

## Emergency Provisions – President's Rule (Article 356)

- **What happens after President's Rule is imposed?**
- The governor carries on with the administration of the state on behalf of the President. He or she takes the help of the state's Chief Secretary and other advisors/administrators whom he or she can appoint.
- The President has the power to declare that the state legislature's powers would be exercised by the Parliament.
- The state legislative assembly would be either suspended or dissolved by the President.
- When the Parliament is not in session, the President can promulgate ordinances with respect to the state's administration.
- **When is President's Rule imposed?**
- It has been seen that the President's Rule has been imposed when any one of the following circumstances have occurred:
- The state legislature is not able to elect a leader as the Chief Minister for a time prescribed by the state's governor.
- Breakdown of a coalition in the state government, that leads to the CM having minority support in the legislature, and the CM is unable to prove his majority within the time prescribed by the governor.
- A no-confidence vote in the legislative assembly leading to a loss of majority.
- Postponement of elections owing to unavoidable reasons such as a natural disaster, epidemic or war.
- Article 365 **(Effect of failure to comply with, or to give effect to, directions given by the Union.)**

## **Emergency Provisions – Presidents Rule**

### **Revocation of President's Rule**

- President's Rule can be revoked anytime after such a proclamation has been made by a subsequent proclamation by the President. A proclamation of revocation does not require approval by the Parliament.
- This occurs when the leader of a political party produces letters indicating majority support for him in the assembly and stakes his claim to form the state government.

## Emergency Provisions – Presidents rule (Article 356)

### Misuse of Article 356

Article 356 gave the Central government wide powers to stamp its authority on the state governments. Although it was meant only as a means to preserve the integrity and unity of the country, it had been used intentionally to remove state governments who were ruled by political opponents of the centre.

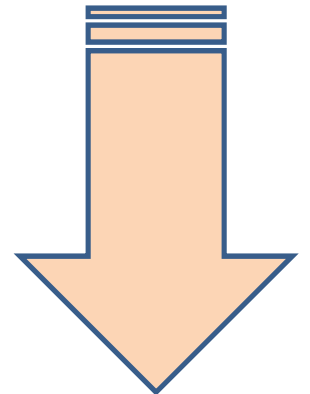
- It was used for the first time **in 1951 in Punjab**.
- **Between 1966 and 1977**, Indira Gandhi's government used it about 39 times against various states.
- In the S.R. Bommai case (1994), the Supreme Court of India put forth strict guidelines for the imposition of Article 356.
- The proclamation (of President's Rule) is subject to judicial review on grounds of malafide intention.
- The imposition of Article 356 should be justified by the centre.
- The court has the power to revive the suspended or dissolved state government if the grounds for the imposition is found to be invalid and unconstitutional.
- The state assembly cannot be dissolved before parliamentary approval for the imposition of Article 356 and the President can only suspend the assembly.
- **Serious allegations of corruption against the state ministry** and **financial instability** are not grounds for the imposition of Article 356.



## **Emergency Provisions – Presidents Rule (Article 356)**

- Any action by the state government that leads to the security of secularism (which is a basic feature of the Constitution) cannot be grounds for the use of Article 356.
- Article 356 cannot be used to sort out any intraparty issues in the ruling party.
- If the Ministry of the state resigns or is dismissed or loses the majority, then the governor cannot advise the President to impose this article until enough steps are taken by the governor for the formation of an alternative government.
- The power under Article 356 is to be used only in case of unexpected crisis. It is an exceptional power.

**Financial Emergency**



## Article 360 (Financial emergency)

- Article 360 (Financial Emergency) is a circumstance in which a country's financial stability or credit is threatened. This could be due to internal or external factors such as **a sharp drop in the value of the currency, a significant growth in public debt, or a significant external shock**. In such a case, the government may be forced to take emergency steps in order to stabilize the economy. Article 360 of the Indian Constitution allows the government to declare a financial emergency.
- **President imposes financial emergency**
- **provisions:**
  - (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.
  - (2) A Proclamation issued under clause (1)
    - (a) may be revoked or varied by a subsequent Proclamation;
    - (b) shall be laid before each House of Parliament;
    - (c) shall **cease to operate at the expiration of two months** unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall **cease to operate at the expiration of thirty days from the date on which the House of the People first sits** after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

## Article 360 (Financial emergency)

- (3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union **shall extend to the giving of directions to any State** to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.
- (4) Notwithstanding anything in this Constitution
- (a) any such direction may include—
- (i) a provision requiring the **reduction of salaries and allowances** of all or any class of persons serving in connection with the affairs of a State;
  - (ii) a provision requiring all **Money Bills or other Bills** to which the provisions of article 207 apply **to be reserved for the consideration of the President** after they are passed by the Legislature of the State;
- b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.
- After the proclamation becomes effective, the President has the authority to direct the Union government to withhold funds from the Consolidated Fund of India. He/she can also lower the President's, Vice-President's, and other officials' salaries and allowances. The declaration of financial emergency will expire after two months unless it has been ratified by resolutions of both Houses of Parliament before then. The President has the authority to withdraw the declaration of financial emergency at any time.

## Article 360 (Financial emergency)

### Financial Emergency - Grounds Of Declaration:

- **Article 360** empowers the president to proclaim a **Financial Emergency**.
- **Grounds of Proclamation:** if the President is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.
- Under such a situation, the executive and legislative powers will go to the centre.
- Like the other two types of emergencies, it has also [to be approved by the Parliament](#).
- **38th Amendment act of 1975:** The Amendment Act made that the proclamation of financial emergency cannot be questioned in the court of law.
- **44th Amendment act of 1978:** The amendment Act deleted the provision inserted by the 38th Amendment Act of 1975, which suggests that the president's satisfaction is not immune from judicial review. Now the Financial emergency is under **Judicial review**.

## Emergency Article 360 (Financial emergency)

### Parliamentary Approval and Duration of Financial Emergency

- A proclamation declaring a financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue.
- However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
- Financial Emergency can operate as long as the situation demands and may be revoked by a subsequent proclamation.
- The proclamation once approved by the Parliament with simple majority continues indefinitely till it is revoked. This means
- There is no maximum period
- There is no repeated parliamentary approval
- A resolution approving the proclamation of financial emergency can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that house present and voting.

**Revocation:** The Financial Emergency is revoked by the President at any time by a subsequent proclamation

## Article 360 (Financial emergency)

### Consequences:

- The proclamation of Financial Emergency may have the following consequences:
- The Union Government may give direction to any of the States regarding financial matters.
- The President may ask the States to **reduce the salaries and allowances of all or any** class of persons in government service.
- The President may ask the States to reserve all the **money bills** for the consideration of the Parliament after they have been passed by the State Legislature.
- The President may also give directions for the **reduction of salaries and allowances** of the Central Government employees including the Judges of the Supreme Court and the High Courts.
  
- There is **no maximum period** prescribed for its operation.
- **Repeated parliamentary approval is not required** for its constitution

## Financial emergency

### Effects of Financial Emergency:

- **Limits on withdrawals from bank accounts:** During a financial emergency, withdrawals from bank accounts may be restricted to ensure that banks have enough liquidity to meet their obligations.
- **Higher borrowing costs:** In the event of a financial crisis, investors may become more cautious and demand higher interest rates to compensate for the increased risk. This may result in higher borrowing prices for businesses and consumers.
- **Reduced economic activity:** A financial crisis might cause people to become more cautious and less inclined to take chances, resulting in a decline in economic activity. This has the potential to harm businesses and the economy as a whole.
- **More unemployment:** When the economy slows, businesses may be forced to lay off workers. This might lead to a rise in unemployment, which can have serious consequences for both individuals and the economy.
- **Increase in government debt:** Governments may need to borrow more money to sustain the economy. This can lead to an increase in government debt, which can have long-term economic consequences.



## Article 360 (Financial emergency)

### Criticism against Financial Emergency:

- Financial emergencies can have a significant impact on a country's economic stability because they limit the government's ability to borrow and spend, resulting in budget deficits or a lack of resources.
- Financial emergencies can also raise borrowing costs and make it difficult for citizens to get loans and credit.
- A financial crisis can cause the value of the local currency to fall, foreign trade to fall, and unemployment to rise.
- Financial emergencies can also lead to a reduction in public services, such as education and healthcare because the government is unable to provide funds for them.
- If people grow desperate and have limited access to resources, financial emergencies can lead to an upsurge in crime.
- A financial emergency can also cause social unrest when citizens are unable to meet their basic demands.
- A financial crisis can also reduce investment and capital flows since investors are wary of investing in a country with financial instability.
- A financial crisis can also reduce foreign direct investment since investors are hesitant to invest in a country with weak economic fundamentals.
-

## **Article 360 (Financial emergency)**

### **Significance of Financial Emergency:**

- Declaring a financial emergency is a serious scenario with far-reaching consequences for the economy. It allows the Union administration to seize control of the states' budgets and enforce its own fiscal policies.
- It also grants the government the authority to limit certain citizen rights, such as freedom of movement and the right to property.
- It may also result in limits on the withdrawal and transfer of money from bank accounts.
- Financial emergencies contribute to the restoration of financial stability and economic growth by causing required reforms in the financial system.
- It also contributes to addressing the root causes of economic suffering, such as mismanagement, overspending, and insufficient income.

## Article 360 (Financial emergency)

### Case Studies:

#### The Indian Economic Crisis of 1991:

- The crisis of 1991, was the serious financial crisis in the history of India. The Indian economy was in a state of flux. The 1980s saw significant and increasing fiscal imbalances, which contributed to the economic crisis. The federal government's and states: combined cumulative fiscal deficits increased dramatically.

India's foreign exchange reserves had depleted to the point that it could only fund three weeks worth of imports, because of this, the Indian rupee was devaluated sharply. The exchange rate of India was severely adjusted in the mid-1991.

But even in such a tough situation which took India to the brink of bankruptcy, financial Emergency was not declared. While this situation posed a classic cause for calling a financial emergency, it was averted by restructuring and devaluing the rupee.

Before the crisis of 1991, during the Prime Minister Chandra Shekhar's tenure, a condition requiring the declaration of financial emergency did arise in 1990 to 1991, but again it was prevented by selling off India's gold reserves.

## Article 360 (Financial emergency)

### Case Studies:

#### COVID-19 Crisis:

- During the lockdown in March 2020, the Center for Accountability and Systemic Change (CASC) filed a writ petition in the form of Public Interest Litigation, requesting that a financial emergency be declared as a result of the Covid-19 outbreak. However, the plea was rejected on the grounds that though courts have special authority, the law of separation of powers mandates that the president determine the viability of a financial emergency.

The President has the authority to declare the financial emergency, the Supreme Court can only review such declaration.

- The petition stated that: covid-19 is the country's most serious emergency since independence, and it must be handled in accordance with constitutional laws by a joint command between the Union and state governments. It would help in the recovery of the economy after the lockdown is over.

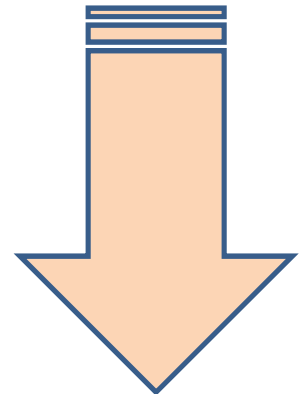
But even the **most serious emergency of the country** did not lead to declaration of Financial Emergency.

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## Comparison of Emergencies – Article 352, 356 & 360

Emergency Type	National Emergency	President's Rule	Financial Emergency
Article	Article <b>352</b>	Article <b>356 &amp; 365</b>	Article <b>360</b>
Grounds of Declaration	External Aggression or Armed Rebellion	Failure of Constitutional Machinery	Threat to Financial stability or Credit of India
Parliamentary Approval	Must be Approved by Both the houses of the Parliament		
Time Duration for Approval	Must be approved by both the houses <b>within one month</b>	Must be approved by both the houses <b>within two months</b>	Must be approved by both the houses <b>within two months</b>
Majority required	Special Majority	Simple Majority	Simple Majority
Duration of Emergency	Continues for 6 months Can be extended to an <b>Indefinite period</b> with Parliament approval every 6 months	Continues for 6 months Can be extended to a <b>maximum period of 3 years</b> with Parliament approval every 6 months	Continues indefinitely until revoked. <b>No maximum limit</b> was prescribed. No repeated approval is required.
Revocation	By Resolution of the House or President Order.	By Resolution of the House or President Order.	By Resolution of the House or President Order.

## **Municipalities – Urban Local Government**



## **74<sup>th</sup> Amendment Act – Urban Local Government**

- The system of Municipalities or Urban Local Governments was constitutionalised through the **74<sup>th</sup> Constitutional Amendment Act of 1992**.
- The provisions in this amendment are included in **Part IXA** which came into force on June 1, 1993.
- It Consists of provisions from **Articles 243P to 243ZG** .
- the act also added a new **twelfth Schedule** to the Constitution **which consists of 18 functional items of municipalities**.

### **Evolution of Urban Bodies:**

- The institutions of urban local government originated and developed in modern India during the period of British rule. The major events in this context are as follows:
- In 1687-88, the first municipal corporation in India was set up at Madras.
- In 1726, the municipal corporations were set up in Bombay and Calcutta.
- Lord Mayo's Resolution of 1870 on financial decentralisation visualised the development of local self-government institutions.
- Lord Ripon's Resolution of 1882 has been told as the 'Magna Carta' of local self-government. He is called the father of the local-self government in India.
- The Royal Commission on decentralisation was appointed in 1907, and it submitted its report in 1909. Its chairman was Hobhouse.
- Under the dyarchical scheme introduced in Provinces by the Government of India Act, 1919, local self-government became a transferred subject under the charge of a responsible Indian minister.
- In 1924, the Cantonments Act was passed by the Central legislature.
- Under the provincial autonomy scheme introduced by the Government of India Act, 1935, local self-government was declared a provincial subject.

## 74<sup>th</sup> Amendment Act – Urban Local Government

### 74<sup>th</sup> Constitutional Amendment:

- The 74th Amendment Act of 1992 provides a basic framework of decentralisation of powers and authorities to the Municipal bodies at different levels.
- However, responsibility for giving it a practical shape rests with the States.
- The term '**Urban Local Government**' in India signifies the governance of an urban area by the people through their elected representatives.
- The jurisdiction of an urban local government is limited to a specific urban area, which is demarcated for this purpose by the state government.
  
- The 74th Amendment Act has added a new **Part IX-A** to the Constitution of India.
- This part is entitled as '**The Municipalities**' and consists of provisions from Articles **243-P to 243-ZG**.
- Additionally, the act also added a new **Twelfth Schedule** to the Constitution. This schedule contains 18 functional items of municipalities.
- The Act has brought Municipalities under the purview of the justiciable part of the Constitution.
- In other words, state governments are under constitutional obligation to adopt the new system of municipalities in accordance with the provisions of the act [Article 243 Q].
- The act aims at to give new life, energy and strengthening the urban governments so that they function effectively as units of local government.



## 74<sup>th</sup> Amendment Act – Urban Local Government

### Historical Background:

- In 1989, the Rajiv Gandhi government introduced the 65th Constitutional Amendment Bill (Nagarpalika bill) in the Lok Sabha. The bill aimed at strengthening and revamping the municipal bodies by conferring constitutional status on them.
- Although the bill was passed in the Lok Sabha, it was defeated in the Rajya Sabha in October 1989 and, hence, lapsed.
- The National Front Government under V P Singh introduced the revised Nagarpalika Bill in the Lok Sabha again in September 1990. However, the bill was not passed and finally lapsed due to the dissolution of the Lok Sabha.
- P V Narasimha Rao's Government also introduced the modified Municipalities Bill in the Lok Sabha in September 1991. It finally emerged as the 74th Constitutional Amendment Act of 1992 and came into force on 1 June 1993.

### Significance:

- Towns and cities contribute substantially to the economic development of the country.
- These urban centres also play an important support role in the development of the rural hinterland.
- To keep this economic transformation in line with needs and realities at the grass-root level, it is necessary that the people and their representatives are fully involved in the planning and implementation of the programmes at the local level.
- If democracy in Parliament and State Legislatures is to remain strong and stable, its roots must reach towns and villages and the cities where the people live.

## 74<sup>th</sup> Amendment Act – Urban Local Government

### Features of 74th Amendment Act, 1992

The main provisions introduced by the above Act were as follows:-

#### 1. Constitution of Municipalities (243Q Article)

- The Act provides for the constitution of 3 types of municipalities, depending upon the size and area in every state.
- **Nagar Panchayat** (for an area in transition from rural to the urban area);
- **Municipal Council** for the smaller urban area; and
- **Municipal Corporation** for a larger urban area.

#### 2. Composition of Municipalities (243R Article)

- The seats shall be filled by **direct elections**. For this purpose, each municipal area shall be divided into territorial constituencies to be known as **wards**.
- The state legislature may provide the manner of election of the **chairperson of a municipality**.
- It may also provide for the representation of the following persons in a municipality.
- **Persons** having special knowledge and experience in **municipal administration** without the right to vote in the meetings of the municipality.
- **The members of the Lok Sabha and the state legislative assembly representing constituencies** that comprise wholly or partly the municipal area.
- **The members of the Rajya Sabha and the State Legislative Council** registered as electors within the municipal area.
- **The chairpersons** of committees (other than ward committees).

## 74<sup>th</sup> Amendment Act – Urban Local Government

### 3. Constitution of Wards Committees (243S Article)

- This provides for the constitution of Ward Committees in all municipalities with a population of **3 lakhs or more**.

### 4. Reservation of seats to SC, ST and Women (243T article)

**A. SCs and STs:** As in part IX reservations of Seats are to be made in favour Scheduled Castes and Scheduled Tribes in every Municipality. All reservation in favour of Scheduled Castes and Tribes Shall come to an end with the expiry of the period Specified in Art. 334.

**B. Women:** Out of the total number of seats to be filled by direct elections at least 1/3rd would be reserved for women. This includes the quota for Women belonging to Scheduled Castes and Tribes. The 112th Constitutional Amendment Bill, 2009 Seeks to increase the percentage reservation for Women, for the posts of members and Chairpersons, from 33% to 50%.

**C. Chairpersons:** It has been left to the State legislature to prescribe by law the manner of reservation of the offices of the Chairpersons of Municipalities.

**D. Backward Classes:** It is permissible for a State Legislatures to make provisions for reservation of Seats or offices of Chairpersons of Municipalities.

### 5. Duration of Municipalities (243Q article)

- The municipality has a fixed term of **5 years** from the date appointed for its first meeting.
- Elections to constitute a municipality are required to be completed before the expiration of the duration of the municipality.
- If the municipality is dissolved before the expiry of 5 years, the elections for constituting a new municipality are required to be completed within a period of **6 months from the date of its dissolution**.

## 74<sup>th</sup> Amendment Act – Urban Local Government

### 6. Powers and Functions of the Municipalities (243W)

- All municipalities would be empowered with such powers and responsibilities as may be necessary to enable them to function as effective institutions of self-government.
- The State Legislature may, by law, specify what powers and responsibilities would be given to the municipalities in respect of preparation of plans for economic development and social justice and for implementation of schemes as may be entrusted to them.
- An illustrative list of functions that may be entrusted to the municipalities has been incorporated as the Twelfth Schedule of the Constitution. This Schedule Contains 18 items, e.g., Urban Planning, Regulation of Land Use, Roads and Bridges, Water Supply, Public Health, Fire Services Urban Forestry, Slums etc.

### 7. Finances of Municipalities

- It has been left to the Legislature of a State to specify by law matters relating to imposition of **taxes**. Such law may specify:
- **Taxes, duties, fees, etc.** which could be **imposed and collected by the Municipalities**, as per the procedure to be laid down in the State law.
- Taxes, duties, fees, etc. which would be imposed and **collected by the State Government and a share passed on to the Municipalities.**
- **Grant-in-aid** that would be given to the Municipalities from the State.
- Constitution of funds for crediting and withdrawal of money by the Municipality.

## 74<sup>th</sup> Amendment Act – Urban Local Government

### 8. State Finance Commission (243Y article)

- The Finance Commission Constituted under Article 243-I shall also review the financial position of the Municipalities and make recommendations as to:-
  1. the distribution between the State and the Municipalities of the net proceeds of taxes, duties, tolls and fees leviable by the State Which may be divided between them and how allocation of Shares amongst Various levels of Municipalities.
  2. The taxes, duties, tolls and fees may be assigned to the Municipalities.
  3. Grant-in-aid to the Municipalities
  4. The measures needed to improve the financial position of the Municipalities
  5. Any other matter that may be referred to it by the Governor.
- Article 243Z provides for the audit of accounts of Municipalities.

### 9. Elections to Municipalities (243ZA article)

- The State Election Commission appointed under Art 243K shall have the power of Superintendence, direction and Control of
  - (i) the preparation of electoral rolls for, and
  - (ii) the Conduct of all elections to the Municipalities. State Legislatures have been vested with necessary power to regulate by law all matters relating to elections to Municipalities.

### 10. Audit and Accounts

- The maintenance of the accounts of the municipalities and other audits shall be done in accordance with the provisions in the State law. **The State Legislatures will be free to make appropriate provisions in this regard**, depending upon the local needs and institutional framework available for this purpose.

## 74<sup>th</sup> Amendment Act – Urban Local Government

### 11. Committee for District Planning (243ZD article)

- Every state shall constitute, at the district level, a **district planning committee** to consolidate the plans prepared by panchayats and municipalities in the district, and to prepare a draft development plan for the district as a whole.
- Planning and allocation of resources at the district level for the Panchayati Raj institutions are normally to be done by the **Zila Parishad**.

### 12. Metropolitan Planning Committees (243E article)

- Every metropolitan area shall have a metropolitan planning committee to prepare a draft development plan.

### 13. Continuance of Existing Laws and Municipalities

- All the state laws relating to municipalities shall continue to be in force until the expiry of one year from the commencement of this act.
- In other words, the states have to adopt the new system of municipalities based on this act within the maximum period of one year from 1 June 1993, which is the date of commencement of this act.
- However, all municipalities existing immediately before the commencement of this act shall continue till the expiry of their term, unless dissolved by the state legislature sooner.

### 14. Bar to Interference by Courts in Electoral Matters

- The act bars the interference by courts in the electoral matters of municipalities.
- It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court.
- It further lays down that no election to any municipality is to be questioned except by an election petition presented to such authority and in such a manner as provided by the state legislature.

## **74<sup>th</sup> Amendment Act – Urban Local Government**

### **Types of Urban Governments:**

- The following eight types of urban local bodies are created in India for the administration of urban areas:
- Municipal corporation
- Municipality
- Notified Area Committee
- Town Area Committee
- Cantonment Board
- Township
- Port Trust
- Special Purpose Agency

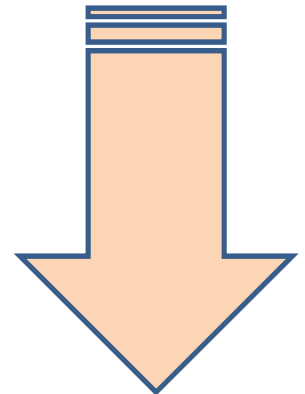
### **Municipal Personnel**

- There are three types of municipal personnel systems in India. The personnel working in the urban governments may belong to any one or all three types. These are:
- Separate Personnel System
- Unified Personnel Syst
- Integrated Personnel System

### **Municipal Revenue**

- There are five sources of income of the urban local bodies. These are as follows:
- Tax Revenue
- Non-Tax Revenue
- Grants
- Devolution & Loans

**Municipal Corporation– Urban Local Government**





## 74<sup>th</sup> Amendment Act – Urban Local Government

- A **municipal corporation** is a [local government](#) in India that administers urban areas with a population of more than one million.
- The growing population and urbanization in various cities of India were in need of a local governing body that can work for providing necessary community services like health care, educational institution, housing, transport etc. by collecting property tax and fixed grant from the State Government.
- Municipal corporations are referred to by different names in different states (due to regional language variations), all of which are translated to "municipal corporation" in English. These names include *Nagar Nigam* (in [Delhi](#), [Uttar Pradesh](#), [Uttarakhand](#), [Bihar](#), [Jharkhand](#), [Rajasthan](#), and [Haryana](#)), *Nagara Nigama* (in [Punjab](#)), *Mahanagar Palika* (in [Goa](#) and [Maharashtra](#)), *Mahanagara Palike* (in [Karnataka](#)), *Mahanagar Seva Sadan* (in [Gujarat](#)), *Pouro Nigom* (in [Assam](#)), *Pouro Nigam* (in [West Bengal](#)), *Pur Porishod* (in [Tripura](#)), *Nagar Palika Nigam* (in [Madhya Pradesh](#)), *Nagara Palaka Samstha* (in [Andhra Pradesh](#) and [Telangana](#)), *Nagara Sabha* (in [Kerala](#)) and *Maanagaraatchi* (in [Tamil Nadu](#)).
- The [Vadodara Municipal Corporation](#) of the city of [Vadodara](#) in [Gujarat](#) is typically called by the name "Vadodara Mahanagar Seva Sadan" and the [Greater Bengaluru Municipal Corporation](#) of the city of [Bengaluru](#) in [Karnataka](#) is typically called "Bruhat Bengaluru Mahanagara Palike". The detailed structure of these urban bodies varies from state to state, as per the laws passed by the state legislatures, but the basic structure and function is almost the same.
- The area administered by a municipal corporation is known as a **municipal area**. Each municipal area is divided into territorial constituencies known as wards. A municipal corporation is made up of a wards committee. Each ward has one seat in the wards committee. Members are elected to the wards committee on the basis of adult franchise for a term of five years. These members are known as councillors or corporators. The number of wards in a municipal area is determined by the population of the city. Some seats are reserved for [scheduled castes](#), [scheduled tribes](#), [backward classes](#) and women.

## 74<sup>th</sup> Amendment Act – Urban Local Government

### Administration

- The **Mayor** is the head of the municipal corporation, but in most [states and territories of India](#) the role is largely ceremonial as executive powers are vested in the [Municipal Commissioner](#). The office of the Mayor combines a functional role of chairing the Corporation meeting as well as ceremonial role associated with being the First Citizen of the city. As per the amended Municipal Corporation Act of 1888, a Deputy Mayor is appointed by the Mayor. The tenure of the Mayor and Deputy Mayor is five years. However, in seven states; [Bihar](#), [Chhattisgarh](#), [Jharkhand](#), [Madhya Pradesh](#), [Odisha](#), [Uttar Pradesh](#) and [Uttarakhand](#); Mayors are directly elected by the people and thus hold the executive powers of the municipal corporations.
- Executive officers monitor the implementation of all the programs related to planning and development of the corporation with the coordination of mayor and councilors.

## 74<sup>th</sup> Amendment Act – Urban Local Government

### Functions:

- The Twelfth Schedule of the Constitution lists the subjects that municipal corporations are responsible for. Corporations may be entrusted to perform functions and implement schemes including those in relation to the matters listed in the Twelfth Schedule.
- Urban planning including town planning.
- Regulation of land-use and construction of buildings.
- Planning for economic and social development.
- Water supply for domestic, industrial and commercial purposes.
- Public health, sanitation conservancy and solid waste management.
- Fire services.
- Urban forestry, protection of the environment and promotion of ecological aspects.
- Safeguarding the interests of weaker sections of society, including the handicapped and mentally disabled
- Slum improvement and up gradation.
- Urban poverty alleviation.
- Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- Promotion of cultural, educational and aesthetic aspects.
- Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
- Cattle pounds; prevention of cruelty to animals.
- Vital statistics including registration of births and deaths.
- Public amenities including street lighting, parking lots, bus stops and public conveniences.
- Regulation of slaughter houses and tanneries<sup>[1]</sup>

## 74<sup>th</sup> Amendment Act – Urban Local Government

### Sources of revenue

- Water supply bills
- Property taxes
- Rents from municipal corporation-owned markets, houses, plazas, etc.
- Taxes from commercial vehicles registered in the city
- Grants provided by the respective state governments.