

Constitution of India

You should pay special attention to this section – not only because it is critical for the entrance examination, but also because this is information that every young citizen should have! This section starts off with a short description of how our Constitution was framed, and then moves on to an introduction of the various features of the Constitution in some detail.

The Indian Constitution is the largest ever written legal document in the world. It took exactly **2 years, 11 months and 17 days for the Constituent Assembly to complete the text of the Constitution** from the date of its first meeting, December 9, 1946 to its last meeting on November 26, 1949. Initially, it contained 395 **Articles** and **8 Schedules** and after fifty-six years it has 395 Articles (**444 workable Articles** comprising clauses and sub-clauses) and **12 Schedules**.

The Creation of Our Constitution

The **Cabinet Commission** (1946) comprised three Labour Party Cabinet members – Lord Pethick Lawrence, Sir Stafford Cripps and A.V. Alexander, who recommended the formation of an interim government and the creation of a constitution. The **interim government** was set-up under **Pandit Jawahar Lal Nehru**, and a **Constituent Assembly** was formed from amongst the elected members of the Legislative Assemblies. Each member was a representative of one million people (1 : 10,00,000). **Sir Sachchidananda Sinha**, the eldest, was the first chairman of the assembly. **Doctor Rajendra Prasad** was, however, elected permanent Chairman later. On August 29, 1947 the Assembly appointed a Drafting Committee under the Chairmanship of **Dr. B.R. Ambedkar**, and the Constitutional Advisor, **B.N. Rau**, created the draft Constitution. After three readings by the Constituent Assembly, the draft of the Constitution was finally approved, adopted and signed by **241 members** on **November 26, 1949**. Accordingly, **November 26** is observed as **Lahore Day**. The classes of citizenship, Parliament and elections were implemented at the time of adoption of the Constitution, whereas the rest of the clauses were made effective from **January 26, 1950**, the date of enforcement and commencement of the Constitution, and the day India became a republic, our **Republic Day**. This day was chosen because the resolution of ‘Purna Swaraj’, or complete independence, had been adopted at the Lahore Session of the Indian National Congress on **January 26, 1929**.

It is also important to note that the Constituent Assembly adopted the **National Flag** on July 22, 1947, whereas the **state emblem**, which shows three lions, a galloping horse, a bull and chakra in print (taken from the capital of Ashoka’s Sarnath pillar which has four lions carved, facing outwards, back to back), was adopted by the Government of India on January 26, 1950.

The words ‘**Satyameva Jayate**’ (“*Truth alone will prevail*”) have been adopted from the **Mundaka Upanishad**.

The **National Anthem** was adopted by the Constituent Assembly on January 24, 1950. It is actually the first stanza of the **Jana Gana Mana**, originally composed by **Rabindranath Tagore**, which actually contains five stanzas. The playing time for the National Anthem is fifty-two seconds, however, its shorter version can be completed in twenty seconds.

The **National Calendar** is based on the Shaka Era, starting with 1st Chaitra (equivalent to March 22nd in the Gregorian calendar), and was adopted by the Government of India on March 22, 1957.

The Sources of Our Constitution

The framers of the Indian Constitution referred to various provisions of the existing Constitutions of the world, weighed their merits, and applied them according to their suitability to our country. The major sources of the Constitution of India are as under:

1. **The Government of India Act, 1935**, the Centre / State List System, Federal Set-up, centre-state autonomies (federal set-up).
2. **The British Constitution**: Parliamentary Privileges, Unitary Citizenship, and the Rule of Law.
3. **The Australian Constitution**: Preamble, Concurrent List, Freedom of trade and commerce.

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4. **The American Constitution:** Fundamental Rights, Judicial Review, and Impeachment of the President.
5. **The Japanese Constitution:** The Procedure established by the Law.
6. **The South African Constitution:** The Amendment clauses.
7. **The Irish Constitution:** The Directive Principles, Nominations to Rajya Sabha (The Council of States).
8. **The Russian Constitution:** The Fundamental Duties.
9. **The Canadian Constitution:** The Federal structure.
10. **The German Constitution:** The Emergency Provisions.

The Preamble

The Preamble reflects the philosophy of our Constitution. Though it is not enforceable in a court, yet it serves its utility, as it reflects the objectives and interpretation of the Constitution. The notable characteristics of our Preamble are as under:

1. India is a **Sovereign, Socialist, Secular and Democratic Republic**. **Sovereign** means that India is an independent country, competent to decide its political destiny as it feels correct. The government works for the welfare of its people (a '**welfare state**'), and its economy is based on a **Socialistic Pattern**, where the Public (controlled by the Government) and Private (controlled by private individuals) Sectors are allowed to work together. **Secularism** signifies that the government has no religion of its own, but respects all religions equally, and that choice of religion does not disqualify its citizens on any basis. A **Democratic** set-up implies the selection of the government by the people, through universal adult franchise, where the will of the people is respected. Likewise, this element of democracy is not only restricted to politics, but also to the economy and society. Finally, it is a **Republic**, wherein the people select all the important heads of government, directly or indirectly, and these offices are not occupied on a hereditary basis.
2. The inspiration for the ideology of **Liberty, Equality and Fraternity** is drawn from the French Revolution (1789). The Preamble embodies the noble concepts of **Justice** in social, economic and political aspects, **Liberty** of thought, expression, belief, faith and worship, **Equality** of status and opportunity, and **Fraternity**, assuring dignity, unity and integrity to all citizens of this nation.
3. The Preamble also declares that the Constituent Assembly adopted and enacted the Constitution on November 26, 1949 in pursuance of the above objectives.

The Preamble to the Constitution has been amended once, by the 42nd Amendment to the Constitution (1976). The two changes that were made were: (a) the words 'Socialist' and 'Secular' were added to the sentence '...constitute India into a SOVEREIGN **SOCIALIST SECULAR** DEMOCRATIC REPUBLIC and to secure to all its citizens...', and (b) the words 'and integrity' were added in the sentence 'FRATERNITY assuring the dignity of the individual and the unity **and integrity** of the Nation.'

The reason why the word 'Socialist' was added was to give voice to the philosophy of 'socialism' in the Constitution, which aims at elimination of inequality in income and status and standard of life, which might also be used by the courts to lean more heavily in favour of nationalism and State ownership of industry.

The word Secular would mean that the State should have no religion of its own. It also meant that no political party should espouse a particular religion. Some authors are of the opinion that this was a redundant change, since the Fundamental Right to freedom of religion is guaranteed in the Constitution anyway.

The Union and The States

The Union is referred to as 'India, that is **Bharat**' and its members are currently **29 states** (with Andhra Pradesh re-organisation Act 2014 Andhra Pradesh has been bifurcated into Telangana and Seemandhra).

There are **7 union territories**, of which Delhi and Pondicherry has its own Legislative Assembly having its own Chief Minister – the rest of the Union Territories are governed by Administrators / Lt. Governors appointed by the President of India.

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In 1961, **Goa** was liberated from Portuguese control.

Sikkim first became an associate state, and later a regular state in 1975.

Under **Article 3** of the Constitution, the Parliament may, by law, form a new state by altering the boundaries of the existing state(s). It can also increase or decrease the area of states and can also change the name of a state through a simple majority.

It is important to know that *vide* the Government of India's notification dated January 15, 1976 an **Exclusive Economic Zone (EEZ)** of India in ocean waters has been created up to a distance of 200 nautical miles from the coastline.

Citizenship

Only Indian citizens can contest the posts of the President, Vice President, Governor of a State, Judge of the Supreme Court / High Court, Attorney-General, member of Parliament / Legislatures in the States. It may be noted that our Constitution has not intended any comprehensive law on citizenship. The detailed laws are framed by the Parliament in the **Citizenship Act, 1950** wherein citizenship can be acquired:

1. by birth,
2. by descent,
3. by registration
4. by naturalisation and
5. by incorporation of an external territory.

In the same act, citizenship can be lost

- (i) through renunciation (voluntary act),
- (ii) through termination (on acquiring of citizenship of another nation),
- (iii) through Deprivation (in case of fraud and disloyal cases).

The Constitution recognises **Single Citizenship** (Dual Citizenship is not yet recognised under the Constitution). **Domicile** is not defined in the Constitution but a permanent home can be inferred where a person resides with an intention to continue to do so for future periods. Persons born after the commencement of the Constitution are not covered under this principle (**Article 5**).

Based on the recommendations of the **Singhvi Committee**, the Government has considered the extension of Dual Citizenship to NRIs living in 16 countries.

Citizenship (Amendment) Act, 2019

The Citizenship (Amendment) Act, 2019 was passed by the Parliament of India on 11 December 2019. It amended the Citizenship Act of 1955 by providing a path to Indian citizenship for Hindu, Sikh, Buddhist, Jain, Parsi, and Christian religious minorities fleeing persecution from Pakistan, Bangladesh and Afghanistan. Muslims were not given such eligibility.

Our Federal Structure

The presence of the government at a single level makes for a unitary constitution, whereas more than one level makes it a federation. In the Indian Constitution, the presence of the government is at three different levels, Centre, State and Local. In ordinary situations, each level enjoys its own autonomy but in cases of emergency, the Centre prevails. Therefore, truly speaking, India has a **Quasi-Federal** structure.

In order to avoid any confusion in the area and workings of the Centre and the States, the framers of the Constitution chalked out detailed guidelines, which are incorporated in **the Seventh Schedule to the Constitution** in the form of the **List System**. Some of the important provisions relating to the Centre and States are stated below:

Central List

- Defence
- CBI
- UNO
- War and peace

State List

- Law and Order
- Police and Prison
- Local Government
- Inland water

Concurrent List

- Criminal Law under IPC
- Criminal Procedure-CPC
- Preventive Detention
- Marriage and Divorce

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- Citizenship
- Extradition
- Railways
- Pilgrimages abroad
- Ports and Light houses
- Airways
- National Highways
- Patents
- Labour safety
- Opium
- Supreme Court
- Interstate migration
- Income Tax
- Customs
- Corporation Tax
- Currency and coinage
- RBI
- Foreign Loans
- Banking and Insurance
- Stock Markets
- Offences against Laws stated in this list.
- Burials and cremations
- Agriculture
- Cattle and Fisheries
- Pilgrimages in India
- Gas and Gas works
- Tax on entry
- Vehicle Tax
- Animal and Boat Tax
- Tolls
- Capitation Taxes
- Betting and Gambling
- Entertainment Tax
- Profession Tax
- Offences against Laws stated in this list.
- Contracts
- Partnerships and Agency
- Actionable wrongs
- Bankruptcy/Insolvency
- Civil Procedure
- Contempt of Court
- Forest
- Trade Unions
- Economics and Planning
- Legal Professions
- Factories/Boilers
- Jurisdiction/powers of
- All courts
(Except the Supreme Court)
- Education
- Mines

Three tiers of village panchayats have been introduced on the recommendations of the **Balwant Rai Mehta Committee**, 1956 (a) at the village level (b) at the block Level and (c) at the district level. Accordingly, the **Local Governments at rural panchayats** and **urban bodies** were added through the 73rd and 74th Constitutional amendments (1992). Their detailed powers and responsibilities are contained in **Articles 243 to 243ZC of the Constitution. Schedules XI and XII** to the Constitution have been included for Panchayats and Municipalities respectively. Up to one-third of the seats of Local governments have been reserved for women. **The duration of office is for 5 years.**

It is important to note that these provisions are not applicable to the states of Meghalaya, Mizoram, Nagaland and Delhi.

Nagore District in Rajasthan was the pioneer in introducing the Panchayati Raj system, which it did way back in 1957.

Fundamental Rights (FRs)

The Fundamental Rights ('FRs') are set out in **Part III** of our Constitution, and are the basic and natural rights of citizens. Some of these rights are also given to non-citizens living in the territory of India. These rights can be protected through the courts, and any law that violates the FRs can be declared null and void (**Article 13**). This also establishes the supremacy of the Constitution and the scope of judicial review. Under the "doctrine of severability", that portion of any law, which stands against the spirit of the FRs, can be struck down, and if such a portion is vital to the law and is not 'severable' from that law, the entire law can be struck down.

It is also important to note that the fundamental rights cannot be terminated or waived voluntarily by an individual. If a person wants to die, for example, it is not permitted, and is thus unlawful. Remember the case of Venketesh, the ailing muscular dystrophy patient who was on a life support system for a long time and wanted to donate his organs to others? The doctors refused to do so because such an act could only be performed when he was dead. Thus his mother requested the court to allow his son to die so that he may fulfil his wishes, but the court disallowed the plea.

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The FRs can be broadly divided into the following categories :

1. The Right to Equality

- (a) Equality and Equal Protection before law (**Article 14**).
- (b) No discrimination on the basis of religion, race, sex, or place of birth (**Article 15**).
- (c) Equal opportunities in case of employment (**Article 16**).
- (d) Social Equality-banning untouchability (**Article 17**).
- (e) Abolition of royal titles (**Article 18**).

The concepts of equality and equal protection under the law are applicable to all persons in similar circumstances, and those in different circumstances, unequally, (simply put, equals are treated as equals, and persons in unequal situations are treated unequally, e.g., reservation for castes that have been oppressed for centuries), but this cannot be done arbitrarily by the state. The concept is similar, for example, to the concept of differential treatment between a non-criminal and a criminal. It is important to note that the applicability of every law need not be the same, and that there can be distinctions, but such distinctions should be reasonable and should not be based on the classification of religion, race, sex, and place of birth. However, in some cases these categories can further be relaxed, as was done in the case of **Article 15**, which is affirmative to women. Also, any legislation, which gives power to the executive to select cases for special treatment, without indicating the policy for the same, or by arbitrary action or discretion, can be declared void.

It should be noted that the government has also taken some steps towards '**positive discrimination**' to benefit the SCs / STs and other underprivileged sections, through reserving jobs in certain sectors (the Supreme Court's decision in the 1993 case of **Indira Sawhney**, on the **Mandal Commission Report** issue). In fact, reservation for such purposes cannot exceed 50%, and if there is a single post, then reservation is not applicable to it, as that would amount to 100% reservation. There can be reservation within reservations, but the allotment of quota of seats (in courses) for candidates to be selected from various organisations / institutions / government departments (which are source of funding) is not covered under 'reservation'. Special provisions, measures and programmes are not considered to be provided in the case of women and children, and this exception is even extended to criminal laws (pregnant women, sexual harassment to women, children below 14 years etc).

Article 16 is the extension of **Article 14**. Thus, non-arbitrariness is a part of the concept of equality, such as, relaxation in the minimum marks / eligibility can be granted by the employer for SC/ST categories but such relaxation cannot be arbitrary; rather it should be consistent with the eligibility criteria.

One of the social evils carried from the ancient past to the current period is untouchability, wherein *sudras* were given the title of *nirvasit* (socially boycotted). Gandhiji called them the children of God, or *Harijans*. The Constitution bans untouchability.

Titles earned on the basis of merit, such as academic, military or state awards (National Awards, such as the *Bharat Ratna*, *Padma Vibhushan*, *Padma Bhushan*, *Padma Shree*), are permitted, but not hereditary titles.

2. Right to Freedom

Six core Freedoms

- (a) of Speech and Expression, (b) of free Assembly, (c) of Association, (d) of Movement, (e) of Settlement and (f) of Profession, occupation, trade and business (**Article 19(1)**), and (g) to hold, acquire, dispose property (this last freedom was omitted through the 44th amendment to the Constitution, in 1978).
- (b) Freedom against Ex-post Facto Laws, double jeopardy and protection against self-incrimination (**Article 20**).
- (c) Freedom of life and personal liberty (**Article 21**).
- (d) Freedom against arrest / detention in selected cases (**Article 22**).

The six core freedoms set out above are guaranteed only to citizens, and are not absolute. Some limitations are imposed in order to arrive at a balance between personal liberty and social control, as specified in **Articles 19(2) to 19(6)**. These freedoms are restricted in matters of (a) defamation, (b) contempt of court, (c) decency / morality, (d) security of the state, (e) friendly relations with foreign countries, (f) incitement of an offence, (g) maintenance of public order and (h) maintenance of the sovereignty and integrity of India. One instance of the restriction of a core freedom could be: a person suffering from some communicable disease can be banned from moving around freely on medical grounds.

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A ban on the slaughter of bulls below sixteen years of age can be considered reasonable, but a blanket ban on bull slaughter is unreasonable. The Government cannot reject any lower bid (in the case of tenders for Government projects) in favour of higher bids arbitrarily. If done so, proper reasons should be given.

It is important to note that the Press and Media, also referred as the Fourth Estate, (a term that derives from French political history, and which now means one of the pillars of democracy) in India enjoy their freedom under **Article 19(1)(a)** whereas, **editorial censorship** of the press can be evoked under **Article 19(2)** of the Constitution.

All people living within India are protected against the operation of **ex-post facto criminal legislation**, i.e., laws that declare any activity or action as unlawful and punishable, with retrospective effect. This means that an individual cannot be punished for an action or activity committed in the past when there was no law prohibiting that action, which in current times is considered unlawful. Furthermore, a person cannot be subjected to a penalty greater than that which was in force at the time of commission of the act charged as an offence. (**Article 20(1)**)

Further, no person may be prosecuted and punished for the same offence more than once (the '**rule against Double Jeopardy**') (**Article 20(2)**) nor can a person accused of any offence be compelled to be a witness against himself. (**Article 20(3)**)

Freedom of life and liberty is one of the most vital features of the FRs, as this cannot be suspended even in the periods of emergency. This concept has been inspired by Great Britain's **Magna Carta** (1215 A.D), a charter of rights. This personal liberty is subject to the 'procedure established by law'. This expression is further extended, so that no person can be arrested / detained without substantial reason. The arrested / detained person must necessarily be informed of the reason for his confinement, he must be permitted to seek legal help, and must be produced before the nearest magistrate within twenty-four hours of his detention. In the case of '**Preventive Detention**', however, where arrest / detention is made for the security of the nation, for defence, for foreign affairs, for maintenance of essential services, etc., the detention can even be without trial, but the period of custody in such cases is limited to three months. Here, the accused is prevented from committing the proposed wrongs. It is different from '**Punitive Detention**', where the accused is prosecuted for the wrong that he has already committed.

It may also be noted that the term 'procedure established by law' used in **Article 21** gives the judiciary scope to crack down on all rules that are unreasonable, unfair and unjust, and therefore, invalid. This phrase, if read with **Articles 39(a)** and **22**, has a wide scope, with the inclusion of the implication of free legal aid to a poor prisoner, giving the prisoner a fair chance of leading a normal life. If jail authorities arbitrarily deny or deprive the detenu the opportunity to see / talk to / interview his relatives or lawyer, such an action would also be invalid. Due to this wide, positive interpretation, several other rights have been sheltered under the canopy of this Article: say for example, if a detained person is suffering from some disease and is not able to pay for his treatment, then the state should carry out his treatment, and that too, without delay. Likewise, issues linked with traffic control, pertaining to public safety, ban on smoking in public places, telephone tapping (except under special permission), water and pollution-free environment etc., are all protected from arbitrariness under the scope of the phrase 'procedure established by law'.

Recently, free and compulsory education to all children of the age group of six to fourteen years has also been added to the Constitution *vide* the **Constitution (86th Amendment) Act, 2002 (Article 21(A))**.

3. Right against Exploitation

- (a) Prohibition of traffic in human beings and forced labour (**Article 23**)
- (b) Prohibition of employment of children in hazardous employment (**Article 24**)

These two articles were created against the backdrop of massive poverty, unemployment, illiteracy and ignorance of the rural population, where *begar* and human trafficking still continues. The age-old social evil of *Devdasis* is also covered within the ambit of human trafficking. The Supreme Court has already issued detailed guidelines on the issue of child labour in the case of **Bandhua Mukti Morcha v. Union of India**, (AIR 1997 SC 2218). Children below the age of 14 years cannot be engaged to work in a factory, mine or at any hazardous places of employment. Directions were given to set up a child rehabilitation welfare fund for child labour, and any offending employer must pay Rs.2,000/- as a penalty into the fund. The apex court has also given directions related to the education, health, and nutrition of child labourers, and to check the spread of child prostitution under a PIL (Public Interest Litigation) (*Vishaljeet v. Union of India*, in 1990).

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4. Right to Freedom of Religion

- (a) Freedom of Conscience and free profession (**Article 25**)
- (b) Freedom to manage religious affairs (**Article 26**)
- (c) Freedom as to payment of taxes for promotion of any particular religion (**Article 27**)
- (d) Freedom as to attendance at religious instructions in certain educational institutions (**Article 28**) In order that they may satisfy their spiritual requirements as well as its outward expressions, all persons living in India are allowed to carry out their religious obligations, rituals and ceremonies in a peaceful and harmonious manner. It may be kept in mind that services by priests are secular, and thus come under the purview of state regulation (*Bhuri Nath v. State of J&K*, 1997).

Religion is a matter of faith, and the principles associated with religion are essential parts of it; nevertheless, in the case of disputes, the Courts are competent to examine them. If use of voice-amplifiers and loudspeakers, drum-beating etc, is a part of a religious practice, they are permissible, but only up to the extent where the rights of others are not adversely affected.

As the State is secular, it can neither force its people to pay taxes for the welfare of a particular religion, nor can it permit religious instructions in any educational institution, which is wholly funded through government funds.

Every religious group can establish, maintain and acquire property in the name of religion, subject to the interests of public order, morality and in accordance with the law. No one can be forced to pay any taxes, the proceeds of which are specifically appropriated towards the payment of expenses for the promotion or upkeep of any specific religion or religious purpose.

It is important to note that the right to freedom of religion is actually the foundation of secularism in India.

5. Cultural and Educational Rights

- (a) Right of Minorities to protect their language, script or culture (**Article 29**)
- (b) Right of Minorities to establish and maintain their educational institutions (**Article 30**)

The above provisions are an assurance to the section of citizens who are part of any minority, towards the preservation of their ethnic, linguistic or cultural heritage. As pointed out earlier in the section on the Right to Equality, religion cannot be considered a disqualification for any opportunity; therefore, a minority-run educational institution may reserve up to 50% of its seats for students from its community. If the government seeks to acquire such institutions, it would have to pay compensation to the concerned minority. **It is important to note** that such rights are not absolutely free, and state restrictions may be imposed if such institutes are not administered in the proper manner by the minority agency.

6. Right to Constitutional Remedies

Obviously, it is all very well to talk about the various rights that the Constitution affords us – however, we must have a means of enforcing them! This section discusses the writs of *habeas corpus*, *mandamus*, *prohibition*, *certiorari* and *quo-warranto* as remedies for the enforcement of the FRs stated in Part III of the Constitution.

The term ‘prerogative writs’ comes from English law, since these writs originated as a part of the King’s unquestionable authority of superintendence to ensure the observance of the rules of law by the King’s officers and tribunals.

Dr. B.R. Ambedkar called these writs the ‘*very soul of the Constitution*’. Through these ‘prerogative writs’, the judiciary can declare any arbitrary action or law of the Executive or of the Legislature null and void, if such action of law goes against the spirit of the FRs. These writs can be issued by the Supreme Court as well as by High Courts. The latter have wider powers in issuing of these writs. The Supreme Court has the power to issue these writs in order to enforce the FRs (**Article 32**), but the High Courts may issue these writs not only in order to enforce the FRs, but also in those cases where an ordinary legal right has been violated (**Article 226**).

Habeas corpus: It literally means, ‘to have a body’. By this writ, the court ensures the physical appearance of the detained person and enquires about the reason for his detention. If sufficient grounds for detention are not reported, the detenu can be set free. However, this writ cannot be issued in cases where the imprisoned person is arrested on proven guilt, or on the charge of contempt of court.

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Mandamus: It literally means 'we command'. It is issued against a person who, despite having legal rights, fails to perform his duties in the capacity of his holding a position of public office. The officers, government and subordinate / inferior courts refusing to perform their jurisdiction are covered under this writ. This writ, however, cannot be issued against the President, Governors of States, or against private, individual parties.

Prohibition: Here, the Supreme Court / High Courts issue writs to their subordinate/inferior courts to check or discontinue such proceedings as are not within their jurisdiction.

Prohibition commands 'rightful inactivity', whereas Mandamus commands 'rightful activity'.

Certiorari: It literally means 'to quash' a decision taken by a lower / subordinate / inferior court / tribunal in a matter in which it was not competent to give its verdict, and has thereby violated the limits of its jurisdiction. As *Prohibition is issued in the proceedings stage, Certiorari is issued at a verdict stage.* Both these writs can be issued to subordinate / inferior courts / tribunals.

Quo-warranto: This writ can be issued in those cases where the court wants to enquire about the legality or claim of an individual for holding a public office. If the same is found faulty, the person is ousted from the office. The prime objective of this writ is to safeguard public offices from unlawful claimants.

Finally, it may be noted that the FRs stated in Articles 15, 16, 19 and 30 are for citizens only and those stated in Articles 14, 20, 21, 23, 25, 27 and 28 are for both, citizens and non-citizens, living in India.

A short note on the Right to Property

There have been several amendments on this issue, viz, the 1st amendment (1951), the 4th amendment (1955), the 17th amendment (1964), the 25th amendment (1971), the 42nd amendment (1976) and the 44th amendment (1978). The effect of all these amendments on the Right to Property has been the reduction in status of this right from a FR to a **Constitutional Right**, covered under **Article 300(A)**; thus, **Article 19 (1)(f)** has accordingly been repealed. The basic objective behind the state acquiring personal properties shows its superiority over the individual's right, i.e. the **Doctrine of Eminence**. This was also necessary for the successful implementation of the Land Reforms. The **Ninth Schedule to the Constitution** has also been added for this purpose.

Remember that there is a distinction between a **Fundamental Right** and a **Constitutional Right**. Since the Right to Property is no longer a FR, the Supreme Court can no longer issue any writ on this regard; the High Courts can, however, look into these matters on the same footing as any other ordinary suit. Since this is a legal right, in the event that the Government acquires any private property, it will have to do so in accordance with the law, and it will then have to pay compensation for the same.

A short note on the Right to Privacy

The **Supreme Court (SC)** ruled that privacy is a fundamental right because it is intrinsic to the right to life. "Right to Privacy is an integral part of Right to Life and Personal Liberty guaranteed in Article 21 of the Constitution", the SC's nine-judge bench ruled unanimously. It added that the right to privacy is intrinsic to the entire fundamental rights chapter of the Constitution.

Article 370 scrapped, Jammu and Kashmir loses its special status, divided into two UTs

- The Union Government scrapped Article 370 of the Constitution that grants special status to Jammu and Kashmir. The abrogation follows the Centre introducing the Jammu and Kashmir Reorganization Bill in Parliament and it was bifurcated to form two Union Territories -- Jammu and Kashmir and Ladakh.
- President Ram Nath Kovind has exercised his power under Clause 1 of Article 370. The presidential order has done away sections under Article 35A, which provides special privileges to "permanent residents" of the state while defining the term "permanent residents".
- Under Article 370 there is a provision that the President may by public notification declare that this article shall cease to be operative from such date as he may specify.
- Article 370 laid down that except for matters related to defence, foreign affairs, communications and issues specified in the Instrument of Accession of Jammu and Kashmir, Parliament needs the state government's ratification for all other laws. So far, residents of the state lived under a separate set of laws, including those related to citizenship, ownership of property and fundamental rights. Jammu and Kashmir will now be governed by the laws applicable to other Indian citizens.

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Jammu and Kashmir Reorganisation Act, 2019

The **Jammu and Kashmir Reorganisation Act, 2019** is an act of the Parliament of India. It contains provisions to reconstitute the Indian-administered state of Jammu and Kashmir, a part of the larger region of Kashmir, which has been the subject of dispute among India, Pakistan, and China since 1947, into two Indian-administered union territories, one to be called Jammu and Kashmir, and the other Ladakh, on 31 October 2019. A bill for the act was introduced by the Minister of Home Affairs, Amit Shah, in the Rajya Sabha, on 5 August 2019. The bill was passed in Rajya Sabha the same day and was passed by the Lok Sabha on 6 August 2019. It received the President's assent on 9 August 2019. The introduction of the bill was preceded by a presidential order under Article 370 of the Indian constitution that revoked Jammu and Kashmir's special status. **Girish Chandra Murmu** is the first lieutenant governor of the Union territory of Jammu and Kashmir. **Radha Krishna Mathur** (born 25 November 1953) is a retired 1977 batch IAS officer of Tripura cadre is the first Lieutenant Governor of the union territory of Ladakh.

Directive Principles (DPSP)

The **Directive Principles of State Policy (DPSP)**, as the name suggests, are guidelines to the Government in order that it may better carry out its duty of governance. It is expected that the Government should strive to achieve them, and thus become a 'welfare state'. It may be noted that a huge amount of effort and resources are required to fulfil these objectives, and since the government has a shortage of funds, these are not expected to be put in force immediately: it is expected that these will be taken up and implemented by the Government in the course of time. Therefore, the non-implementation of any DPSP cannot be challenged in the Courts.

DPSP are categorised into ideologies, policy orientation and certain rights of the citizens, which cannot be challenged in the courts. The ambit of the DPs runs from **Article 36 to Article 51** in **Part IV** of our Constitution.

Some of the noted principles are stated as under:

(A) DPSP as ideologies for the Government:

1. Securing a social order through social, economic and political justice along with minimising inequalities: **Articles 38(1) and (2)**.
2. Striving towards an equitable distribution of material resources: **Article 38(b) and (c)**.
3. Securing decent living standards and social and cultural opportunities to all: **Article 43**.
4. Working towards better health of the masses through improved nutrition: **Article 47**.
5. Promoting international peace and amity: **Article 51**.

(B) DPSP as policy orientation for the Government:

1. Development of Village Panchayats towards self-government: **Article 40**.
2. Development of cottage industries: **Article 43**.
3. Securing a uniform civil code: **Article 44**.
4. Providing free and compulsory primary education: **Article 45**.
5. Protecting the weaker sections against exploitation: **Article 46**.
6. Working towards the modernisation of agriculture and animal husbandry: **Article 48**.
7. Protecting and maintaining historical sites / monuments: **Article 49**.
8. Separating the Judiciary from the Executive: **Article 50**.

(C) DPs as non-justiciable rights (to citizens):

1. Provision of equal means of livelihood, equal pay for equal work and the right against economic exploitation: **Articles 39 (a), (d), (e) and (f)**.
2. Providing equal opportunities for justice and free legal aid: **Article 39(A)**.
3. Right to work and government assistance in unemployment, illness and old age: **Article 41**.
4. Provision of maternity leave: **Article 42**.
5. Participation of workers in management: **Article 43**.
6. Providing free and compulsory education to children: **Article 45**.

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Apart from Part IV, there are some more directives stated in our Constitution, such as- instruction in mother tongue to children at their primary level of education (**Article 350 A**), promotion of Hindi (**Article 351**) and considerations in appointments in case of SC/ST candidates (**Article 335**).

Fundamental Duties

On the basis of the recommendations of the **Swarn Singh Committee**, ten Fundamental Duties have been added to the Constitution in **Article 51-A (Part IV-A)** of the Constitution) through the 42nd Amendment to the Constitution (1976). These are not enforceable in the courts unless and until specific laws in this regard are violated (remember the recent controversy regarding the use of the national flag by sportspersons on their equipment?)

These duties are:

1. To abide by the Constitution and respect the National flag and the National Anthem;
2. To cherish and follow the noble ideas which inspired our national struggle for freedom;
3. To uphold and protect the sovereignty and the integrity of India;
4. To defend the country and render national service when called upon to do so;
5. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
6. To value and preserve the rich heritage of our composite culture;
7. To protect and improve the natural environment including forests and rivers;
8. To develop the scientific temper, humanism and the spirit of inquiry and reform;
9. To safeguard public property and abjure violence; and
10. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

Emergency Provisions

These provisions are contained in **Part XV** of the Constitution. It is generally assumed that due to the distribution of powers and responsibilities, a Federal form of government is a weak government. However, this may not be completely correct in the case of India, because the Union is vested with wider and mightier powers, both economically and politically, compared to those of the States. Emergency provisions are powerful examples of this, as the President can proclaim the implementation of these provisions for the entire nation, or even for a part thereof. Needless to say, the President is a part of the Union Executive. During periods of declaration of Emergency, our federal set-up is converted into a unitary system, and all rules and regulations are issued by the Parliament (which is the Union legislature). **Other than the FRs stated in Articles 20 and 21, all the other FRs remain suspended during the period of the Emergency.**

The duration of the Emergency Proclamation is initially for a period of **two months**, and if the Parliament fails to extend the term of the Emergency within that period, the period is extended automatically for **one month**, but if the Parliament extends the period of the Emergency within that period, it can do so for another period of **six months**, and for another period of **six months** thereafter. The Election Commission has to certify the difficulty in holding general elections in the event that the period of Emergency is sought to be extended beyond a period of one year on the grounds of a Constitutional breakdown. This can be done for a maximum period of **three years**.

There are three types of Emergencies recognised by the Constitution. They are as under:

1. In those cases where the security of India is threatened by reasons of a war or external aggression or internal armed rebellion (**Article 352**). This may also be termed a '**National Emergency**'. The President can impose such emergencies even before the actual crisis has broken. The duration of the first of such proclamations was from October 26, 1962 to January 10, 1968 in view of the Chinese aggression against the territory of the nation.
2. In those cases where the Constitutional machinery has failed in the States (**Article 356**). It is the duty of the Union to see to the smooth functioning of the Constitutional machinery, as laid down in **Article 355**; this Article, therefore can be used as a sort of a 'Yellow card', as a warning to the erratic State. Based upon the report of the Governor of the State concerned or otherwise, the President can impose such an emergency. The concerned State's Legislature is suspended, and executive authority is vested in the President (except for those powers

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that are vested in the High Courts). That is why such a situation is also called '**President's rule in the State**'. The duration of the first of such proclamations was from June 20, 1951 to April 17, 1952 in Punjab.

Here's an interesting fact: Which State do you think has had President's rule imposed on it the maximum number of times? Bihar? Wrong! The answer is Uttar Pradesh and Kerala (nine times each until 2001), followed by Punjab (8 times).

After its decision in the case of *S.R. Bommai v. Union of India*, (1994) the Supreme Court has held the view that the courts possess the power of judicial review enabling them to look into the substantial grounds / relevancy / *mala fide* intentions behind such proclamations of a state of Emergency.

3. In those cases where the financial ability / credit worthiness of the nation is threatened (**Article 360**). In such cases, the President can declare a reduction (partially or wholly) in the salaries and allowances of the Government employees, including the judges of the Supreme Court and the High Courts. Thus far, this sort of an Emergency has not been evoked in India.

Amendment Procedures

Article 368 sets out the procedure for the amendment of the Constitution, but a differentiation has been made in it depending upon the nature of provisions to be amended.

- (a) For amendments of a general nature, the bill seeking amendment has to be passed in each house of Parliament by a **simple majority** (more than 50%) of the total membership of the concerned house, and by a majority of not less than two-thirds of the members of that house present and voting.
- (b) Where a bill seeks amendment in the federal set up, viz President's election, powers of the Union and the States, the 7th Schedule's List System, number of Rajya Sabha members, or the powers or composition of the Supreme Court or the high Courts, **Article 368** itself requires a **special majority**, and a ratification by at least one-half of the States.
- (c) There are some **basic features** in our Constitution which cannot be altered, such as the objectives of the Preamble, federalism, secularism, unity and integrity of the nation, socio-economic justice, balance between Fundamental Rights and Directive Principles, Supreme Court and judicial review, etc.

This last exception to the scope of amendments to the Constitution is known as the '**Basic Structure**' doctrine, and was laid down in the historic case of *Kesavananda Bharti v. Union of India* in 1973. This case is famous for having the largest bench strength till date: thirteen judges of the Supreme Court were called upon to decide whether the Government could carry out any changes to the Constitution it wished, and by a narrow majority of seven judges to six, the Supreme Court held that some parts of the Constitution formed its 'Basic Structure', and that these could not be touched! The fact that the unity and integrity of our nation is placed on such a high pedestal, and is so well protected, therefore, would not have been possible if only one judge on that Bench had decided in a different manner!

After the 24th amendment to the Constitution in 1971, it has now become obligatory for the President to give his assent to an ordinary bill (governed by **Article 111**) for amendment in the Constitution that has been passed by Parliament. A joint session of both Houses of Parliament (**Article 108**) for the purposes of making an amendment to the Constitution is not permissible. Parliament may amend any part of the Constitution, but any amendment causing drastic changes to the basic features of the Constitution can be termed as null and void by the Courts.

The **42nd Amendment** to the Constitution, 1976 is often referred as the '**Mini Constitution**' as it practically revised large chunks of the original Constitution. It introduced changes in the Preamble, included Fundamental Duties, and amended fifty-two Articles, as well as the Seventh Schedule. It reduced the scope of judicial review to a great extent, and the ideologies of the Directive Principles were heavily loaded against the Fundamental Rights by expanding the scope of **Article 31** on the lines of the **Doctrine of Eminence** (Do you remember the meaning of this doctrine? If not, go back to the section on the Right of Property, and refresh your memory!) Subsequently, the **43rd and 44th Amendments**, made in 1977, repealed many provisions added through the 42nd Amendment.

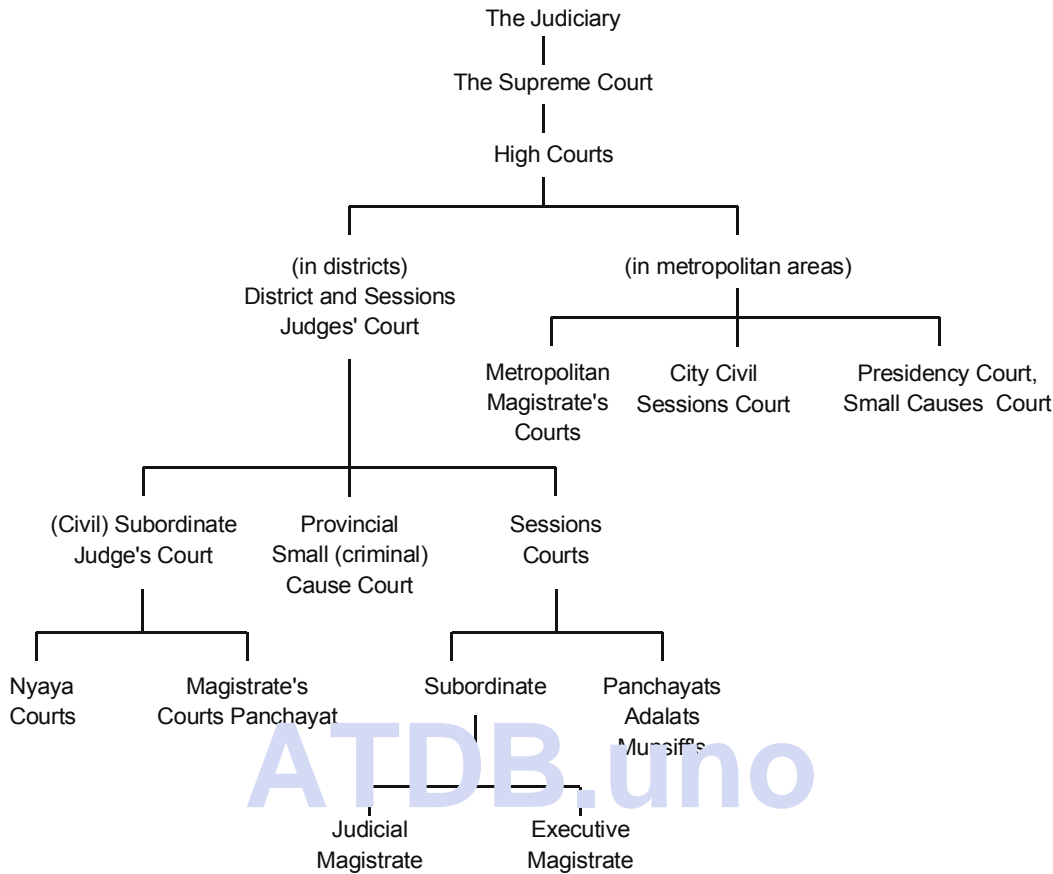
The Judicial System Under the Constitution

Part V of the Constitution fleshes out the theory, and the professed ideal of the framers of the Constitution, of the division of power between the three branches of government, the Executive, the Legislature, and the Judiciary. This Part, therefore, sets out the structure, powers, and functioning of the three branches of government. The Supreme Court is described as the apex institution in the Indian judicial system. **Despite the federal set-up of the government, our judiciary is single and integrated.**

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There is uniformity in the designation of officials engaged in civil and criminal sides. *Nyaya Pachayats / Panchayat Courts / Gram Katchery / Panchayat Adalats* function at the grassroots level. The following is a broad sketch of our judicial structure:



The Supreme Court

The provision for a Supreme Court is made in Article 124, wherein the total number of judges is set out at **33, including the Chief Justice of India (i.e., 33 + 1)**. Parliament is competent to make laws pertaining to the Constitution, organisation, powers and jurisdiction of the Supreme Court. It is a **Federal Court**, vested with original and exclusive jurisdiction to deal with disputes between the Union and the State(s), or between the States (**Article 131**). It may be noted that the parties involved here must be the units of the Federation, i.e., the Union or the State(s). It also acts as the final **Appellate Tribunal** to hear those civil cases where the High Court concerned certifies the involvement of a substantial issue of law of general importance and the decision of Supreme Court is needed (**Article 133**). As regards criminal cases, an appeal will lie with the Supreme Court as a matter of right—especially in cases of the awarding of a death sentence by the lower court (**Article 134**). The Supreme Court may in its discretion grant **special leave to appeal (Article 136)** against any judgment, decree determination, sentence or order in any cause or matter passed or made by any court or tribunal (except a military court or tribunal) in India. **Article 136** marks the widest expression in appeals. Under its **Advisory Jurisdiction**, the Supreme Court also gives its opinions on issues of public importance sought by the President of India. The Supreme Court, however, can also decline to express its opinions if it considers them superfluous or unnecessary (**Article 143**). Finally, the Supreme Court can also issue writs to cure any ills against the FRs (**Article 32**).

High Court

Each State can have its own High Court (**Article 214**). The Bombay, Madras and Calcutta High Courts were established in the Presidency towns in 1862, under Charters of the ruling British Government and are the oldest, whereas the Ranchi High Court (Jharkand), the Bilaspur High Court (Chhatisgarh) and the Nainital High Court (Uttanchal) were created in 2000, and are the youngest. **At present, there are 25 High Courts and 17 additional benches functioning in the territory of India.** Parliament can also establish a 'common' High Court for two or more states (**Article 231**). The jurisdiction of a High Court prevails over the state(s) or Union Territories concerned, such as Bombay High Court's

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extended territorial jurisdiction over Maharashtra, Dadra and Nagar Haveli, Goa, and Daman and Diu, and that of Calcutta High Court's over West Bengal, and Andaman and Nicobar Islands. The High Courts can issue writs (**Article 226**). The High Court has to judicially and administratively superintend the tribunals working within its jurisdiction (**Article 227**). The High Courts too accept *Public Interest Litigation (PIL)* (**Article 226**).

Appointment and Removal of the Supreme Court / High Court Judges

The President of India appoints the judges of the Supreme Court on the advice of his Council of Ministers. The President consults with the judges of the Supreme Court and the High Courts when appointing the Chief Justice of India (the **CJI**). In 1993, a nine-judge bench of the Supreme Court prescribed that the senior-most judge should be appointed as the CJI. While appointing the other judges of the Supreme Court, the concurrence of the CJI is required in addition to the above criterion (**Article 124 (1)**).

A judge of the Supreme Court should be (1) an Indian citizen (2) either a distinguished jurist or should have worked as a High Court judge for 5 years, or should have been an Advocate of a High Court for a minimum of 10 years (**Article 124(3)**). His tenure would be till his obtaining the age of 65 years or his own resignation or his removal by the President on proven misbehaviour / incompetence, through impeachment, or through death. In 1991-93, such an impeachment motion was brought against the Supreme Court Judge R. Ramaswamy, but was unsuccessful. **As on December 2019, the new salary of the Chief Justice of India is Rs 2.8 lakh per month, up from the present Rs one lakh. Similarly, judges of the Supreme Court and chief justices of high courts will draw a monthly salary of Rs 2.50 lakh, up from the current Rs 90,000.**

Similarly, judges of the Supreme Court and chief justices of high courts will draw a monthly salary of Rs 2.50 lakh, up from the current Rs 90,000. Earlier, a Supreme Court judge used to get Rs 1 lakh per month while the judges of high courts used to get Rs 80,000 per month. The salary hike, which is in line with the recommendations of the 7th Pay Commission for officers of all-India services, came into force retrospectively from January 1, 2016.

The Chief Justice of a High Court is appointed by the President of India in consultation with the Chief Justice of India, the Chief Justice of the State concerned, and the Governor of the State concerned.

A judge of a High Court should (1) be an Indian citizen (2) have worked for 5 years as an advocate of a High Court (**Article 217 (2)**) or have held a judicial office in India for a minimum period of 10 years. His tenure would be until he attains the age of 62 years or his own resignation or his removal by the President of India in the same manner as applicable to a judge of the Supreme Court.

Judges of the Supreme Court, the High Courts, and all other persons appointed to any official post in the Government, are said to hold office '**at the pleasure of the President**'.

It is important to note that Justice Hiralal J. Kania was the first Chief Justice of India, and Justice P. Sathashivam is the current Chief Justice of India.

Justice Fatima Bibi was the first woman judge of the Supreme Court. Currently, there are 31 judges of the Supreme Court.

The first woman Chief Justice of a High Court was Justice Leela Seth, of the Himachal Pradesh High Court.

The National Judicial Academy, an academy registered under the Societies Registration Act, 1860, was established in 1993 in Bhopal.

The nineteenth Law Commission was chaired by **Mr. Justice P. V. Reddi**, (2009-2012).

Justice A.P. Shah, former Chief Justice, Delhi High Court is the **Chairman of the Twentieth Law Commission of India**.

21st Law Commission

Former Supreme Court judge Balbir Singh Chauhan was appointed Chairman of the 21st Law Commission, Justice Chauhan (66) is currently heading the Cauvery River Water Disputes Tribunal. A judge of the Supreme Court from May 2009 to July 2014, he also served as the Chief Justice of Odisha High Court from July 2008 to May 2009. One of the key issues pending before the law panel is a call on amending the Indian Penal Code amid allegations of abuse and arbitrary use of the law. The Law Ministry had urged the Commission to study the usage of the provisions of Section 124A (Sedition) of the IPC. The Commission is reconstituted every three years and is usually headed by a retired Supreme Court judge or former Chief Justice of a high court. The panel will have to look at the issue of revamp of the criminal justice system and recommend a bail law to ensure uniformity in the procedure of granting the relief. The term of 21st Law Commission ended in August 2018 and the 22nd Law Commission is yet to be constituted.

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22nd Law Commission

The Supreme Court agreed to hear a plea seeking direction to the Centre to declare Law Commission a "statutory body" and appoint the panel's chairperson and members within a month.

A bench of Chief Justice Bobde and Justices AS Bopanna and V Ramasubramanian issued notice to the Centre on the plea of BJP leader and lawyer Ashwini Upadhyay, who made the ministries of Home Affairs and Law and Justice as well as the Law Commission of India as parties.

The plea said the cause of action arose on August 31, 2018 and is still continuing when the tenure of the 21st Law Commission ended but the Centre has neither extended the tenure of its Chairperson and Members nor notified the 22nd Law Commission.

"Although, on February 19, 2020, Centre approved constitution of Twenty-second Law Commission but it has not appointed the Chairperson and Members till date," Upadhyay said in the petition filed through advocate Ashwani Kumar Dubey.

The President

The President is the first citizen of India, and heads the Union. He is an integral part of the Parliament along with the Lok Sabha and the Rajya Sabha (Parliament = President + LS +RS). In order to be **elected** as the President of India, a person must:

- (a) Be an Indian citizen;
- (b) Have completed 35 years of age;
- (c) Be qualified for election as a member of the Lok Sabha; and
- (d) Must not hold any office of profit under the Government of India / State Government/ Local Government (**Article 58**).

The President is indirectly elected by the people of India, in accordance with the system of proportional representation through the **single transferable voting system**, by an electoral college comprising of (a) elected members of the Lok Sabha and the Rajya Sabha, and (b) elected members of the Legislative Assemblies of the States and those from Delhi and Pondicherry (UT). The duration of his office is for a term of 5 years. He may seek re-election.

The President **can be removed** from office if he (a) dies, (b) resigns, (c) is removed through the process of impeachment, or (d) on the expiry of his tenure. In case of the death of the President, the Vice-President will assume the position until a new President is elected. In the case of completion of his tenure, the President can continue in office until such time as the new President takes charge. In case of his inability to exercise his duties on grounds of illness, or during his visits abroad, etc., the Vice-President discharges the functions of his office.

The Constitution has vested **wide powers** in the President, such as:

1. **Administrative Powers:** He can appoint the Prime Minister, the other Union Ministers, the Attorney General, the Comptroller and Auditor General, the Judges of the Supreme Court and the High Courts, the Governors of the States, the members of the Finance Commission, the members of the Union Public Service Commission and joint commissions for two or more States, the Chief Election Commissioner and the Election Commissioners, officers for official languages and linguistic minorities, and for the welfare of the Scheduled Castes / Schedules Tribes.
2. **Legislative Powers:** He exercises these powers on ministerial advice. He can summon, prorogue and dissolve the Lok Sabha and joint parliamentary sessions. He can nominate 2 Anglo-Indians to the Lok Sabha and 12 persons to the Rajya Sabha.
3. **Judicial Powers:** He has powers to grant pardons, reprieves, respite, suspensions, remissions or commutations in respect of sentences of courts martial, punishment for an offence against the law or in even in cases of death sentence. Pardoning powers of the President are set out in **Article 72 of the Constitution**.
4. **Military Powers:** He is the supreme commander of our Armed Forces, but these functions are to be carried out according to the law. He can declare war or peace, with the consultation of Council of Minister.
5. **Diplomatic Powers:** He represents India internationally as the Head of State. He can appoint Indian representatives in foreign countries and receives foreign diplomatic representatives.
6. **Other Powers:** He has a mixture of absolute, suspensive and pocket vetoes.

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List of Indian Presidents

S.No	Name	Period
1	Dr. Rajendra Prasad	January 30, 1950 to May 13, 1962
2	Sarvepalli Radhakrishnan	May 13, 1962 to May 13, 1967
3	Zakir Hussain	May 13, 1967 to May 3, 1969
4	Varahagiri Venkata Giri	May 3, 1969 to July 20, 1969
5	Muhammad Hidayatullah	July 20, 1969 to August 24, 1969
6	Varahagiri Venkata Giri	August 24, 1969 to August 24, 1974
7	Fakhruddin Ali Ahmed	August 24, 1974 to February 11, 1977
8	Basappa Danappa Jatti	February 11, 1977 to July 25, 1977
9	Neelam Sanjiva Reddy	July 25, 1977 to July 25, 1982
10	Giani Zail Singh	July 25, 1982 to July 25, 1987
11	Ramaswamy Venkataraman	July 25, 1987 to July 25, 1992
12	Shankar Dayal Sharma	July 25, 1992 to July 25, 1997
13	Kocheril Raman Narayanan	July 25, 1997 to July 25, 2002
14	A. P. J. Abdul Kalam	July 25, 2002 to July 25, 2007
15	Smt. Pratibha Devisingh Patil	July 25, 2007 to July 25, 2012
16	Shri Pranab Mukherjee	July 25, 2012 to July 25, 2017
17	Shri Ram Nath Kovind	July 25, 2017 to till date

Vice President

The Vice President acts as the *ex officio* Chairman of the Rajya Sabha. The following are a few basic facts about the Vice President that you should keep in mind:

1. He is elected by the elected members of the Lok Sabha and the Rajya Sabha only.
2. He is elected through the same system as applied to the President.
3. Requisite qualifications for appointment as Vice President are the same as apply to the office of the President, except for his qualification for election to the Rajya Sabha.
4. The term of office of the Vice President is for 5 years or less. He is eligible for re-election.
5. The Vice President can be removed either by resignation addressed to the President or may be removed by resolution of the Rajya Sabha passed by a majority, and agreed to by the Lok Sabha.
6. If the post of President is vacant, the Vice President carries out all his functions and then receives the salary of the President. For that period he is not the *ex officio* Chairman of the Rajya Sabha.
7. The Supreme Court is competent to deal with disputes over the election of the President and Vice President.

List of Indian Vice Presidents

Dr Sarvepalli Radhakrishnan	1952-1962
Dr Zakir Hussain	1962-1967
Varahagiri Venkata Giri	1967-1969
Gopal Swarup Pathak	1969-1974
B. D. Jatti	1974-1979
Mohammed Hidayatullah	1979-1984
R. Venkataraman	1984-1987
Dr Shankar Dayal Sharma	1987-1992
K. R. Narayanan	1992-1997
Krishna Kant	1997 -2002
Bhairon Singh Shekhawat	2002-2007
M. H. Ansari	2007-2012
M. H. Ansari	2012-2017
Muppavarapu Venkaiah Naidu	2017-till date

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The Council of Ministers

Though “no specific number” has been specified for the council of ministers, they can be appointed as per need. While the President selects the Prime Minister, the council of ministers is appointed on the advice of the Prime Minister. Further, there is no specified classification of this council into Cabinet, State, and Deputy Ministers. Their salary is determined by the Parliament. It is ultimately the Cabinet Ministers who shape government policies. Ministers can be either from the Lok Sabha or the Rajya Sabha. Even a person who is not a Member of Parliament can be a minister, provided he becomes a member of either of the Houses within a period of six months from the date of his appointment. The council of ministers has “**collective responsibility**” towards the Lok Sabha, meaning thereby that they are deemed to be unanimous in supporting the government policies and also personally and morally responsible for the success and failure for any such policy.

Union Cabinet of India

The cabinet of ministers of the Government of India led by the Prime Minister of India is referred to as the Union Cabinet in India. The Prime Minister has the right to decide who he wants to include in his cabinet of ministers and what portfolio is assigned to them. The Union Cabinet is the most powerful executive body in India. The Union Cabinet has ministers of 3 types: 1) Cabinet Ministers 2) State Ministers 3) Deputy Ministers.

The Prime Minister

The Prime Minister is the head of the government in India. He should convey all decisions of the council to the President. He advises the President as regards the appointments of other ministers. The real executive power lies with the Prime Minister. The Prime Minister also acts as a chairman for non-constitutional bodies like the Niti Aayog and the National Development Council (NDC)

S.No.	Name	Period	Period To	Political party
1	Jawahar Lal Nehru	15-Aug-47	27-May-64	Indian National Congress
2	Gulzarilal Nanda	27-May-64	9-June-1964	Indian National Congress
3	Lal Bahadur Shastri	9-Jun-64	11-Jan-66	Indian National Congress
4	Gulzarilal Nanda	11-Jan-66	24-January-1966 *	Indian National Congress
5	Indira Gandhi	24-Jan-66	24-Mar-77	Indian National Congress
6	Morarji Desai	24-Mar-77	28-Jul-79	Janata Party
7	Charan Singh	28-Jul-79	14-Jan-80	Janata Party
8	Indira Gandhi	14-Jan-80	31-Oct-84	Indian National Congress
9	Rajiv Gandhi	31-Oct-84	2-Dec-89	Indian National Congress (Indira)
10	Vishwanath Pratap Singh	2-Dec-89	10-Nov-90	Janata Dal
11	Chandra Shekhar	10-Nov-90	21-Jun-91	Samajwadi Janata Party
12	P. V. Narasimha Rao	21-Jun-91	16-May-96	Indian National Congress
13	Atal Bihari Vajpayee	16-May-96	1-Jun-96	Bharatiya Janata Party
14	H. D. Deve Gowda	1-Jun-96	21-Apr-97	Janata Dal
15	Inder Kumar Gujral	21-Apr-97	19-Mar-98	Janata Dal
16	Atal Bihari Vajpayee	19-Mar-98	22-May-04	Bharatiya Janata Party
17	Dr. Manmohan Singh	22-May-04	26-May-14	Indian National Congress
18	Narendra Damodardas Modi	26-May-14	Incumbent	Bharatiya Janata Party

It is important to note that Gulzari Lal Nanda was the acting Prime Minister on two occasions, the first from May 27, 1964 to June 9, 1964 and secondly, from January 11, 1966 to January 24, 1966 upon the deaths of Jawaharlal Nehru and Lal Bahadur Shastri, the then Prime Ministers, respectively.

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The Union Legislature

In India, the Union legislature, known as, the Parliament, consists of the President, the Lok Sabha, and the Rajya Sabha. The Constitution has adopted a "Parliamentary system" of government, which necessarily implies harmony between the legislature and the executive. The function of the Parliament is to provide a cabinet, to make laws, and to suggest and allow ways and means for expenditure and revenue and many more.

Though the President is a part of the legislature, he does not sit in the Parliament except for the purpose of delivering his opening address. The composition of the Lok Sabha and the Rajya Sabha is as under:-

1. House of the People (Lok Sabha)

- **Presided over by a Speaker**

- He certifies a bill as a Money Bill (**Article 110**). He also presides over the joint Sessions.

Strength: The maximum membership of the House allotted by the Constitution of India is 552 (Initially, in 1950, it was 500). Currently, the house has 543 seats which are made up by the election of up to 543 elected members and at a maximum. Between 1952 and 2020, 2 additional members of the Anglo-Indian community were also nominated by the President of India on the advice of Government of India, which was abolished in January 2020 by the 104th Constitutional Amendment Act, 2019. The Lok Sabha has a seating capacity of 550.

Term: Normally for **5** years, but can be dissolved earlier also and can be extended during Emergency.

Election: Directly elected by the people, through universal adult franchise (the voting age has been reduced from 21 to 18 years by the **61st Amendment to the Constitution in 1989**.)

Qualification: For membership

- (a) He / She must be a citizen of India.
- (b) He / She must be not less than 25 years of age.

Additional qualifications:

- (a) He/She should not hold any office of profit under the government.
- (b) He / She should not be of unsound mind.
- (c) He / She should not be declared insolvent.
- (d) He / She should not be disqualified under any law.

2. Council of the States (Rajya Sabha)

- Presided over by a chairman (Vice President acts as ex-officio chairman). RS cannot be dissolved.

Strength: not more than **250** members of which-

- (a) Not more than **238** States and Union Territories representatives.
- (b) **12** nominated by the president.

Term: **6** years. It is not subject to dissolution. One-third of its members retire every second year.

Election: By the elected Members of the State Legislatures.

Qualification: for membership-

- (a) He / She must be a citizen of India.
- (b) He / She must be not less than 30 years of age.

Additional qualifications: (Same as Lok Sabha)

The State Executive

Part VI of the Constitution deals with the executive, which is uniform for all State governments.

The Governor (Article 155)

The Governor is the head of the State executive. He has discretionary powers as well as special responsibilities, especially in the affairs of the North-Eastern States. A Governor can look after the affairs of two or more States. A Governor is appointed by the President for a period of 5 years, and can be re-appointed. The Governor has the following powers-

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- (a) **Executive powers:** He appoints the council of ministers, the Advocate General, and the members of the State Public Service Commission, and the High Court Judges can be appointed on his suggestion; he also nominates one Anglo-Indian member to the State Legislature. The Governor also has veto powers.
- (b) **Legislative powers:** Like the President, the Governor addresses, sends messages, summons, prorogues and dissolves the State legislature.
- (c) **Judicial Powers:** He has the power to grant pardons, reprieves, respites or remission of punishment or to suspend, remit or commute punishments for an offence against the law, other than in cases of courts martial and death sentences (**Article 161**).

The Council of Ministers (Article 163) and the Chief Minister

The Governor appoints the council of ministers in each State on the advice of the Chief Minister. The ministers are jointly and severally responsible to the legislature.

Though there is no prescribed qualification provided for the appointment of a Chief Minister, he should be qualified for election to the legislative assembly. His appointment is to be made by the Governor (**Article 164(A)**).

It is important to note that Smt. Sucheta Kriplani and Smt. Sarojini Naidu were the country’s first woman Chief Minister and Governor, respectively. They were appointed in Uttar Pradesh.

The 97th Amendment to the Constitution has now laid down the rule that the council of ministers is to be restricted to 15% of the sanctioned strength of the state legislature assembly.

Important Articles in Indian Constitution and their areas of concern

S.No.	Articles	Area of concern
1	Article 3	Citizenship
2	Article 21	Right to life
3	Article 32	Right to constitutional remedies
4	Article 44	Uniform civil code
5	Article 51A	Fundamental duties
6	Article 61	Impeachment of president
7	Article 110	Definition of money bill
8	Article 123	Ordinance making powers of president
9	Article 324	Establishment of election commission of India
10	Article 300A	Right to property
11	Article 280	Finance commission
12	Article 352	National emergency
13	Article 356	Emergency in states
14	Article 360	Financial emergency
15	Article 368	Amendment of Constitution

List of Schedules in the Constitution of India and their areas of function.

- Schedule** **Area of function**
- First** All the States and Union Territories of India
- Second** Salaries and allowances of the President, Governor, Chief Justice, Judges of High Court and Supreme Court and CAG
- Third** Prescriptions regarding forms of affirmations and oaths for the new entrants to the public offices
- Fouth** Allocation of seats in Rajya Sabha to each Union Territory and State
- Fifth** Provisions to the control of administration of scheduled areas

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Sixth	Administrative provisions for tribal areas in Meghalaya, Mizoram and Assam
Seventh	Three lists of subjects and powers to be looked after by the State and the Union, i.e. : (1) Union list, containing the subjects of national importance, railway, defence, income tax, etc. (2) State list contains locally important subjects. (3) Concurrent list contains subjects under the authority of the Parliament and the State Legislature
Eighth	Deals with 18 (now 22) officially recognized regional languages by the Constitution.
Ninth	Contains acts and regulations dealing with abolition of zamindari system and land reforms of the State Legislatures. The provisions of this schedule cannot be challenged in Supreme Court.
Tenth	Contains provisions for the disqualification of members on the grounds of defection.
Eleventh	Deals with implementation of schemes needed for social justice and economic development at the rural levels.
Twelfth	Deals with municipal committees and their categorizations.



Note:

Originally, there were eight schedules. Later, four more schedules were added to it, taking the total tally of schedules to twelve.

Here is a quick look at the most important Amendments to the Constitution so far. You should know this list well, since a few questions are often from this area!

1st Amendment (1951): Schedule IX added, in order to save land reforms laws from judicial review. A nine-judge bench of the Supreme Court has now been asked to lay down the guidelines for the inclusion of any law in this Schedule. This has been caused due to the efforts on the parts of some States to include their reservation policy implementation laws in the Schedule.

42nd Amendment (1976): This amendment was also called the "Mini Constitution", as it is the largest amendment ever. Some of the changes it introduced are:

- The Preamble was amended to include the words 'Secular', 'Socialist' and 'integrity'.
- 'Fundamental Duties' added in Article 51A.
- The new Directive Principles in Articles 39A, 43A and 48A were added.

44th Amendment (1978): The Right to Property (Article 31) was abolished from the chapter of Fundamental Rights, and included under Article 300A, to remain a constitutional right.

61st Amendment (1989): Voting Age reduced from 21 to 18 years.

73rd and 74th Amendments (1992): Provisions relating to Panchayats and Municipalities revived, and Schedules XI and XII added.

84th Amendment (2000): Three new states, Chhattishgarh, Uttaranchal and Jharkhand created.

86th Amendment (2002): The Right to Education was made a Fundamental Right under the new Article 21A. A new Fundamental Duty was added under Article 51A(k), relating to a Parent's fundamental duty to ensure that his child is not prevented from enjoying free and compulsory education up to the age of Fourteen. Article 45 of the Directive Principles was also amended, and it now provides that early childhood care (up to the age of Six) shall be the responsibility of the state.

91st Amendment (2003): Anti-defection law, i.e. disqualification of a Member of Parliament or a Legislative Assembly on the ground of defection. The strength of the Council of Ministers in the Union Government, as well as in any State Government, is now restricted to not more than 15% of total membership.

92nd Amendment (2003): VIII Schedule amended to include four new languages, i.e., Bodo, Dogri, Maithili and Santhali.

93rd Amendment (2005): Article 15 amended to include a new clause empowering the Government to make laws to provide reservations to the socially and educationally backward classes in all educational institutions, including private institutions, but not in minority educational institutions.

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94th Amendment Act (2006): Freed Bihar from the obligation of having a tribal welfare minister and extended the same provision to Jharkhand and Chattisgarh. This provision will now be applicable to the newly formed states and Madhya Pradesh and Odisha, where it has already been in force (Article 164(1)).

96th Amendment Act (2011): Substituted "Odia" for "Oriya" (Schedule 8)

97th Amendment Act (2012): Amended article 19 and Part IX B. Added words "or cooperative societies" after the word "or unious" in article 19(1)(c) and inserted article 43B and added Part IX B.

98th Amendment Act (2013): Inserted article 371J in the constitutional and empowered Governor of Karnataka to take steps to develop Hyderabad-Karnataka Region.

100th Amendment Act (2015): Land Boundary Agreement (LBA) Treaty between India and Bangladesh.

101 Amendment Act (2017): This amendment act introduced a national Goods and Services Tax in India from 1st July 2017.

102 Amendment Act (2018): The One Hundred and Second Amendment of the Constitution of India, officially known as the Constitution (One Hundred and Second Amendment) Act, 2018, granted constitutional status to the National Commission for Backward Classes (NCBC).

103 Amendment Act (2019): The One Hundred and Third Amendment of the Constitution of India, officially known as the Constitution (One Hundred and Third Amendment) Act, 2019, introduces 10% reservation for Economically Weaker Sections (EWS) of society for admission to Central Government-run educational institutions and private educationally institutions (except for minority educational institutions), and for employment in Central Government jobs.

104 Amendment Act (2019): To extend the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Seventy years to Eighty years and remove reserved seats for Anglo Indian community. It amended the article 334 of the Indian Constitution

Parts of Constitution

Part-I (Article 1 – 4)

- Deals with territory of India formation of new States, alterations, names of existing states.

Part – II (Art. 5 – 11)

- Deals with various rights of citizenship.

Part-III (Art. 12 – 35)

- Deals with fundamental rights of Indian citizens.
- [Art. 31- dealing with the right to property was deleted by 44th amendment]

Part – IV (Art. 36 – 51)

- Deals with Directive Principles of State Policy.

Part – IV-A (Art. 51A)

- Added by 42nd amendment in 1976. Contains the duties of the citizens.

Part – V (Art. 52 – 151)

- Deals with govt. at the Union Level. (Duties & function of PM, Ministers, President, Attorney General, Parliament - Lok Sabha & Rajya Sabha, Comptroller & Auditor General).

Part – VI (Art. 152 – 237)

- Deals with govt. at State Level.
- [Art-152 exempts J&K from the category of ordinary states].
- [Duties & functions of Chief Minister & his ministers, Governor, State legislature, High Court, Advocate General of the State].

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Part – VII (Art. 238)

- Deals with States, was replaced in 1956 by the 7th amendment.

Part – VIII (Art. 239 – 241)

- Deals with Union Territories.

Part – IX

- Consists of 2 parts:
 1. Added by 73rd amendment in 1992. Contains a new schedule 'SCHEDULE ELEVEN'. It contains 29 subjects related to Panchayati Raj. (They have been given administrative powers).
 2. Added by 74th amendment in 1992. Contains a new schedule 'SCHEDULE TWELVE'. It contains 18 subjects related to Municipalities. (They have been given administrative powers).

Part – X (Art. 244, 244A)

- Deals with Scheduled & Tribal Areas.

Part – XI (Art. 245-263)

- Deals with relations between the Union and States.

Part – XII (Art. 264-300A)

- Consists of articles on finance, property , contracts and suits.

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