

Prelims 10 Years' Analysis

POLITY PART 1



VISIONIAS
INSPIRING INNOVATION

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TOTAL	124

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Nature of Questions over the years.....

- Trends have varied
 - **Basic Polity to Governance & Public Administration**
 - **Governance to Traditional concepts**
- *Difficulty Level* - Easy to Moderate
- Basic, easy to eliminate and factual
- Application of Fundamentals

SOURCES



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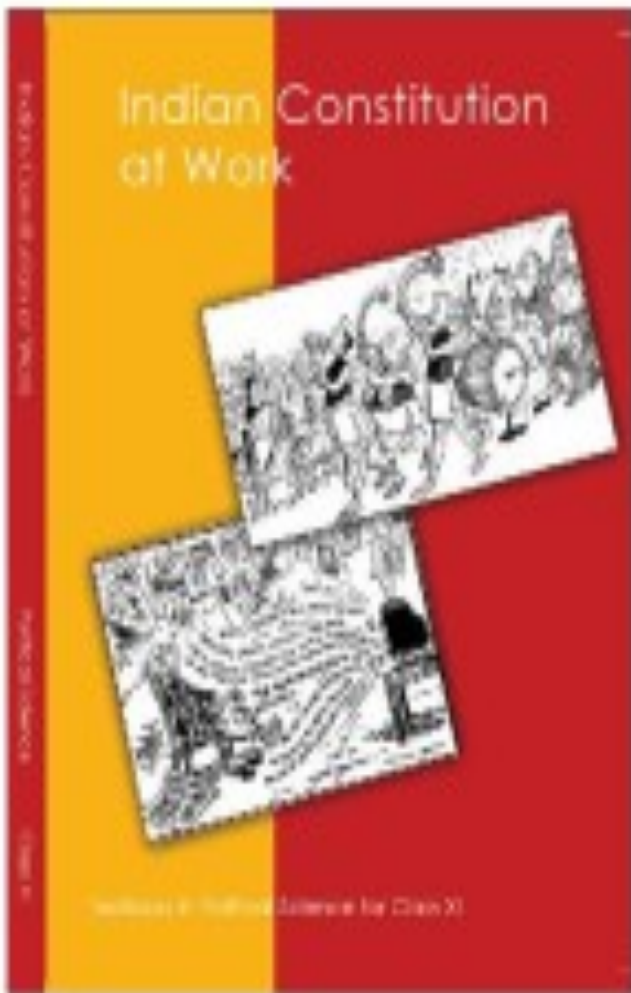


DEMOCRATIC POLITICS-I



WHY?

- Democracy in the Contemporary World
- What is Democracy? Why Democracy?
- Constitutional Design- Why? Making of the Constitution; Values of the Constitution
- Electoral Politics- Why ?; Our system of Elections; etc.
- Working of the Institutions- Executive, Legislature, Judiciary.
- Democratic Rights



CLASS XI NCERT

Very basic book yet important to read to clear the fundamentals in simple language.

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4TH
EDITION

REVISED & UPDATED

INDIAN POLITY

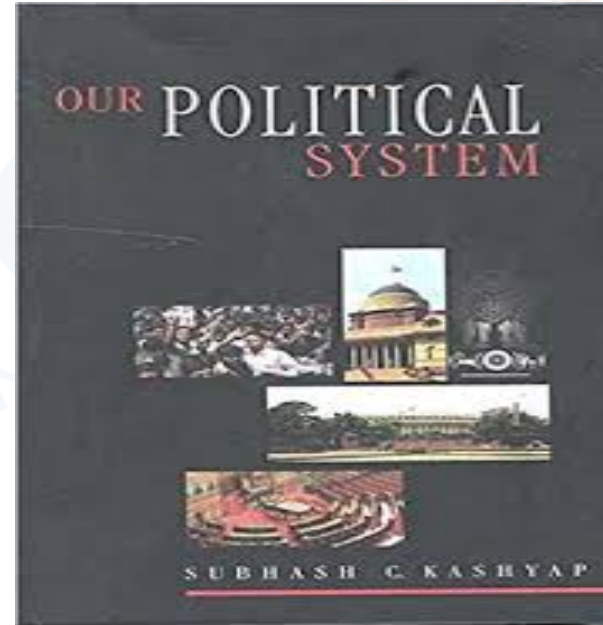
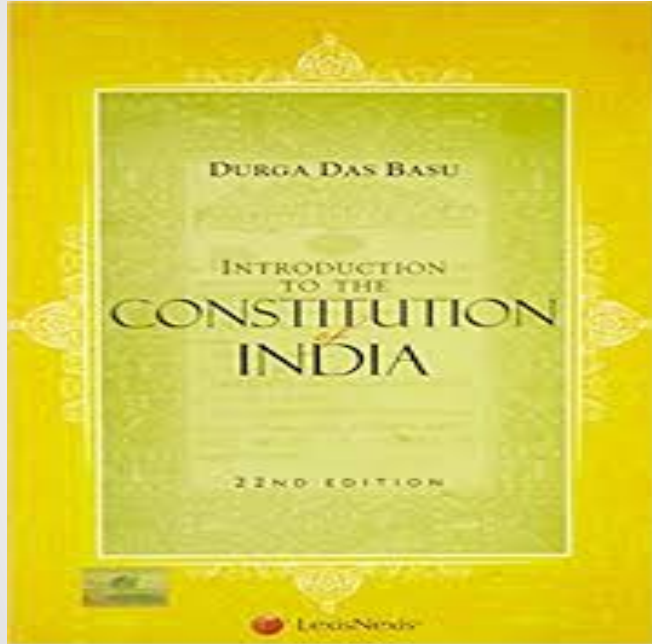
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Civil Services Examinations

M LAXMIKANTH

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Additional Sources



Websites

- PIB - [Press Information Bureau](#)
- Legalservicesindia.com
- Current Affairs magazine
- Newspapers, etc

Governance

- For Constitutional and Non-Constitutional Bodies – Laxmikanth Polity/Governance
- Ministries Official Websites – SPECIAL FOCUS on FAQs, schemes and initiatives
- For Fringe areas – cabinet secretariat; civil services, ARC 2 ,etc.

Salient Features of The Constitution

- 3 questions - Factual and Conceptual



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Q.1 Which one of the following Schedules of the Constitution of India contains provisions regarding anti-defection ?(2014)

- (a) Second Schedule
- (b) Fifth Schedule
- (c) Eighth Schedule
- (d) Tenth Schedule



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Table 3.3 Schedules of the Constitution at a Glance

First Schedule	1. Names of the States and their territorial jurisdiction.	1 and 4
	2. Names of the Union Territories and their extent.	
Second Schedule	Provisions relating to the emoluments, allowances, privileges and so on of:	59, 65, 75, 97, 125, 148, 158, 164, 186 & 221
	1. The President of India	
	2. The Governors of States	
	3. The Speaker and the Deputy Speaker of the Lok Sabha	
	4. The Chairman and the Deputy Chairman of the Rajya Sabha	
	5. The Speaker and the Deputy Speaker of the Legislative Assembly in the states	
	6. The Chairman and the Deputy Chairman of the Legislative Council in the states	
	7. The Judges of the Supreme Court	
	8. The Judges of the High Courts	
	9. The Comptroller and Auditor-General of India	

Third Schedule	Forms of Oaths or Affirmations for:	75, 84, 99, 124, 146, 173, 188 and 219
	1. The Union ministers	
	2. The candidates for election to the Parliament	
	3. The members of Parliament	
	4. The judges of the Supreme Court	
	5. The Comptroller and Auditor-General of India	
	6. The state ministers	
	7. The candidates for election to the state legislature	
	8. The members of the state legislature	
	9. The judges of the High Courts	
Fourth Schedule	Allocation of seats in the Rajya Sabha to the states and the union territories.	4 and 80
Fifth Schedule	Provisions relating to the administration and control of scheduled areas and scheduled tribes.	244

Sixth Schedule	Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.	244 and 275
Seventh Schedule	Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List). Presently, the Union List contains 100 subjects (originally 97), the state list contains 61 subjects (originally 66) and the concurrent list contains 52 subjects (originally 47).	246
Eighth Schedule	Languages recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages. They are: Assamese, Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Mathili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21 st Amendment Act of 1967; Konkani, Manipuri and Nepali were added by the 71 st Amendment Act of 1992; and Bodo, Dongri, Maithili and Santhali were added by the 92 nd Amendment Act of 2003.	344 and 351

Consider the following statements: (2018)

1. The Parliament of India can place a particular law in the Ninth Schedule of the Constitution of India.

2. The validity of a law placed in the Ninth Schedule cannot be examined by any court and no judgement can be made on it.

Which of the statements given above is/are correct?

(a) 1 only

(b) 2 only

(c) Both 1 and 2

(d) Neither 1 nor 2



Dalit groups had organised protests across the country on 2 April against the 'dilution' of the SC/ST Act through the Supreme Court's 20 March verdict.
Photo: PTI

Govt mulls putting SC/ST Act in Ninth Schedule of Constitution to insulate it from judicial scrutiny

2 min read . Updated: 13 May 2018, 09:26 PM IST

PTI

Through the ordinance, the government will reintroduce provisions of the SC/ST Act which it feels were diluted by the Supreme Court verdict in March this year

Ninth Schedule	Acts and Regulations (originally 13 but presently 282) ¹⁹ of the state legislatures dealing with land reforms and abolition of the zamindari system and of the Parliament dealing with other matters. This schedule was added by the 1 st Amendment (1951) to protect the laws included in it from judicial scrutiny on the ground of violation of fundamental rights. However, in 2007, the Supreme Court ruled that the laws included in this schedule after April 24, 1973, are now open to judicial review.	31-B
Tenth Schedule	Provisions relating to disqualification of the members of Parliament and State Legislatures on the ground of defection. This schedule was added by the 52 nd Amendment Act of 1985, also known as Anti-defection Law.	102 and 191
Eleventh Schedule	Specifies the powers, authority and responsibilities of Panchayats. It has 29 matters. This schedule was added by the 73 rd Amendment Act of 1992.	243-G
Twelfth Schedule	Specifies the powers, authority and responsibilities of Municipalities. It has 18 matters. This schedule was added by the 74 th Amendment Act of 1992.	243-W

- The Ninth Schedule was added to the Constitution by the first amendment in 1951 along with Article 31-B with a view to provide a “protective umbrella” to land reforms laws to save them from being challenged in courts on the ground of violation of fundamental rights. The SC upheld the validity of Article 31-B and Parliament’s power to place a particular law in the Ninth Schedule.
- **The Supreme Court has said that laws placed in the Ninth Schedule are open to judicial scrutiny and that such laws do not enjoy a blanket protection.** Laws placed in the Ninth Schedule after the Keshvananda Bharti Judgment on April 24, 1973, when it propounded the “basic structure” doctrine, were open to challenge.

Q. The Ninth Schedule was introduced in the Constitution of India during the prime ministership of (2019)

(a) **Jawaharlal Nehru**

(b) Lal Bahadur Shastri

(c) Indira Gandhi

(d) Morarji Desai



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SYSTEM OF GOVERNMENT & EMERGENCY PROVISIONS

- 11 Questions
- Mostly conceptual and tests basic understanding



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Q.1 The main advantage of the parliamentary form of governments is that (2017)

- (a) the executive and legislature work independently.
- (b) it provides continuity of policy and is more efficient.
- (c) the executive remains responsible to the legislature.
- (d) the head of the government cannot be changed without election.

Table 12.1 Comparing **Parliamentary** and *Presidential Systems*

<i>Parliamentary System</i>	<i>Presidential System</i>
<i>Features:</i>	<i>Features:</i>
<ol style="list-style-type: none">1. Dual executive.2. Majority party rule3. Collective responsibility.4. Political homogeneity5. Double membership.6. Leadership of prime minister.7. Dissolution of Lower House.8. Fusion of powers.	<ol style="list-style-type: none">1. Single executive.2. President and legislators elected separately for a fixed term.3. Non-responsibility4. Political homogeneity may not exist.5. Single membership6. Domination of president.7. No dissolution of Lower House.8. Separation of powers.
<i>Merits:</i>	<i>Demerits:</i>
<ol style="list-style-type: none">1. Harmony between legislature and executive.2. Responsible government.3. Prevents despotism.4. Wide representation.	<ol style="list-style-type: none">1. Conflict between legislature and executive.2. Non-responsible government.3. May lead to autocracy.4. Narrow representation.
<i>Demerits:</i>	<i>Merits:</i>
<ol style="list-style-type: none">1. Unstable government.2. No continuity of policies.3. Against separation of powers4. Government by amateurs.	<ol style="list-style-type: none">1. Stable government.2. Definiteness in policies.3. Based on separation of powers.4. Government by experts

The Constitution of India provides for a parliamentary form of government, both at the Centre and in the states. Articles 74 and 75 deal with the parliamentary system at the Centre and Articles 163 and 164 in the states.

Modern democratic governments are classified into parliamentary and presidential on the basis of nature of relations between the executive and the legislative organs of the government. The parliamentary system of government is the one in which the executive is responsible to the legislature for its policies and acts. The presidential system of government, on the other hand, is one in which the executive is not responsible to the legislature for its policies and acts, and is constitutionally independent of the legislature in respect of its term of office.

The parliamentary government is also known as cabinet government or responsible government or Westminster model of government and is prevalent in Britain, Japan, Canada, India among others. The presidential government, on the other hand, is also known as non-responsible or non-parliamentary or fixed executive system of government and is prevalent in USA, Brazil, Russia, Sri Lanka among others.

Ivor Jennings called the parliamentary system as 'cabinet system' because the cabinet is the nucleus of power in a parliamentary system. The parliamentary government is also known as 'responsible government' as the cabinet (the real executive) is accountable to the Parliament and stays in office so long as it enjoys the latter's confidence. It is described as 'Westminster model of government' after the location of the British Parliament, where the parliamentary system originated.

Q. 2 Out of the following statements, choose the one that brings out the principle underlying the Cabinet form of Government(2017)

- (a) An arrangement for minimizing the criticism against the Government whose responsibilities are complex and hard to carry out the satisfaction of all.
- (b) A mechanism for speeding up the activities of the Government whose responsibilities are increasing day by day.
- (c) A mechanism of parliamentary democracy for ensuring collective responsibility of the Government to the people.
- (d) A device for strengthening the hands of the head of the Government whose hold over the people is in a state of decline.

Q.3 There is a Parliamentary System of Government in India because the (2015)

- (a) Lok Sabha is elected directly by the people
- (b) Parliament can amend the Constitution
- (c) Rajya Sabha cannot be dissolved
- (d) Council of Ministers is responsible to the Lok Sabha

Q.4 In the context of India, which of the following principles is/are, implied institutionally in the parliamentary government? (2013)

1. Members of the Cabinet are Members of the Parliament.
2. Ministers hold the office till they enjoy confidence in the Parliament.
3. Cabinet is headed by the Head of the State.

Select

- (a) 1 and 2 only
- (b) 3 only
- (c) 2 and 3 only
- (d) 1, 2 and 3

Q.5 Consider the following statements : A Constitutional Government is one which – (2014)

1. Places effective restrictions on individual liberty in the interest of State Authority.
2. Places effective restrictions on the Authority of the State in the interest of individual liberty.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

- **A Constitutional government** is that government, which is elected by public of the country through an election process
- Head of the State has limited powers i.e power and authorities provided by constitution, which will be limited.
- It has specific tenure or limit to rule and it is compulsory to be re-elect again for another term
- United States, Austria, Pakistan, Bangladesh, India, etc. are examples of constitutional government.
- **Non-constitutional** is a perfect type of monarchic, autocratic or dictatorial government.
- Ruler of the country has unlimited powers and authorities and he is not answerable to anyone.
- There is no ruling limit in case of non-constitutional government. It can remain in power as it wants.
- Brunei, Qatar, Swaziland and Vatican City are examples of non-constitutional government or absolute monarchical government.

Important Features of Constitutionalism

- **Entrenchment** - norms imposing limits upon government power must be in some way be entrenched, either by law or by way of constitutional convention.
- **Writtenness**



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Elements of Constitutionalism

- 1) government according to the constitution
- (2) separation of power;
- (3) sovereignty of the people and democratic government;
- (4) constitutional review;
- (5) independent judiciary;
- (6) limited government subject to a bill of individual rights;
- (7) controlling the police;
- (8) civilian control of the military; and
- (9) no state power, or very limited and strictly circumscribed state power, to suspend the operation of some parts of, or the entire, constitution.

Case Laws where principle of 'Constitutionalism' is legally recognized by Supreme Court

In **I.R. Coelho By LRs. vs. State of Tamil Nadu and Ors.** view taken by the Supreme Court - The principle of constitutionalism is now a legal principle which requires control over the exercise of Governmental power to ensure that it does not destroy the democratic principles upon which it is based. These democratic principles include the protection of fundamental rights. The principle of constitutionalism advocates a check and balance model of the separation of powers, it requires a diffusion of powers, necessitating different independent centers of decision making. The protection of fundamental constitutional rights through the common law is main feature of common law constitutionalism.

In **Rameshwar Prasad and Ors. Vs. Union of India (UOI) and Anr.** "The constitutionalism or constitutional system of Government abhors absolutism - it is premised on the Rule of Law in which subjective satisfaction is substituted by objectivity provided by the provisions of the Constitution itself." Constitutionalism is about limits and aspirations.

In **Minerva Mills Case** – “The Constitution is a precious heritage and, therefore, you cannot destroy its identity”

On one hand, our judiciary elicit such intellectual responses that “Faith in the judiciary is of prime importance. Ours is a free nation. Among such people respect for law and belief in its constitutional interpretation by courts require an extraordinary degree of tolerance and cooperation for the value of democracy and survival of constitutionalism” said in **Indra Sawhney and Ors. vs. Union of India (UOI) and Ors.**

Q.6 Democracy's superior virtue lies in the fact that it calls into activity (2017)

- (a) the intelligence and character of ordinary men and women.
- (b) the methods for strengthening executive leadership.
- (c) a superior individual with dynamism and vision.
- (d) a band on dedicated party workers.

Q. In the context of any country, which one of the following would be considered as part of its social capital? (2019)

- (a) The proportion of literates in the population
- (b) The stock of its buildings, other infrastructure and machines
- (c) The size of population in the working age group
- (d) The level of mutual trust and harmony in the society



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- Social capital is a sociological concept that refers to the intangible relational assets that emerge from social interactions. These assets are generated through give and take and activate the “norm of reciprocity,” creating social obligations that connect and bind people and groups. The more social capital is used, the greater the benefits.
- The concept of social capital is composed of three distinct but interrelated structural, emotional and behavioral components. They are, respectively, networks, trust and collaborative cultural norms.



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Q7. The Parliament of India acquires the power to legislate on any item in the State List in the national interest if a resolution to that effect is passed by the (2016)

- (a) Lok Sabha by a simple majority of its total membership
- (b) Lok Sabha by a majority of not less than two-thirds of its total membership
- (c) Rajya Sabha by a simple majority of its total membership
- (d) Rajya Sabha by a majority of not less than two-thirds of its members present and voting

Q.8 The Parliament can make any law for whole or any part of India for implementing International treaties(2013)

- (a) with the consent of all the States
- (b) with the consent of the majority of States
- (c) with the consent of the States concerned
- (d) without the consent of any State

Parliament's Power to Legislate on State List: Though under ordinary circumstances the Central Government does not possess power to legislate on subjects enumerated in the State List, but under certain special conditions the Union Parliament can make laws even on these subjects.

- **In the National Interest (Art.249) :** If the Rajya Sabha declares by a resolution supported by not less than 2/3 of its members present and voting, that it is necessary or expedient in the national interest that the Parliament should make laws with respect to any matter enumerated in the State List (Art.249). After such a resolution is passed, Parliament can make laws for the whole or any part of the territory of India. Such a resolution remains in force for a period of 1 year and can be further extended by one year by means of a subsequent resolution.
- **Under Proclamation of National Emergency (Art.250) :** Parliament can legislate on the subjects mentioned in the State List when the Proclamation of National Emergency is in operation. However, the laws made by the Parliament under this provision shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiry of the said period.



- **By Agreement between States (Art. 252) :** The Parliament can also legislate on a State subject if the legislatures of two or more states resolve that it is lawful of Parliament to make laws with respect to any matter enumerated in the State List relating to those State. Thereafter, any act passed by the Parliament shall apply to such states and to any other state which passes such a resolution. The Parliament also reserves the right to amend or repeal any such act.
- **To Implement Treaties (Art. 253) :** The Parliament can make law for the whole or any part of the territory of India for implementing any treaty, international agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Any law passed by the Parliament for this purpose cannot be invalidated on the ground that it relates to the subject mentioned in the State list.
- **Under Proclamation of President's Rule (Art.356) :** The President can also authorize the Parliament to exercise the powers of the State legislature during the Proclamation of President's Rule due to breakdown of constitutional machinery in a state. But all such laws passed by the Parliament cease to operate six months after the Proclamation of President's Rule comes to an end.



Q. 9 Which of the following are *not* necessarily the consequences of the proclamation of the President's rule in a State? 2017

1. Dissolution of the State Legislative Assembly
2. Removal of the Council of Ministers in the State
3. Dissolution of the local bodies

Select the correct answer using the code given below:

- (a) 1 and 2 only
- (b) 1 and 3 only
- (c) 2 and 3 only
- (d) 1, 2 and 3

<i>National Emergency (Article 352)</i>	<i>President's Rule (Article 356)</i>
1. It can be proclaimed only when the security of India or a part of it is threatened by war, external aggression or armed rebellion.	1. It can be proclaimed when the government of a state cannot be carried on in accordance with the provisions of the Constitution due to reasons which may not have any connection with war, external aggression or armed rebellion.
2. During its operation, the state executive and legislature continue to function and exercise the powers assigned to them under the Constitution. Its effect is that the Centre gets concurrent powers of administration and legislation in the state.	2. During its operation, the state executive is dismissed and the state legislature is either suspended or dissolved. The president administers the state through the governor and the Parliament makes laws for the state. In brief, the executive and legislative powers of the state are assumed by the Centre.
3. Under this, the Parliament can make laws on the subjects enumerated in the State List only by itself, that is, it cannot delegate the same to any other body or authority.	3. Under this, the Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him. So far, the practice has been for the president to make laws for the state in consultation with the members of Parliament from that state. Such laws are known as President's Acts.
4. There is no maximum period prescribed for its operation. It can be continued indefinitely with the approval of Parliament for every six months.	4. There is a maximum period prescribed for its operation, that is, three years. Thereafter, it must come to an end and the normal constitutional machinery must be restored in the state.
5. Under this, the relationship of the Centre with all the states undergoes a modification.	5. Under this, the relationship of only the state under emergency with the Centre undergoes a modification.

<i>National Emergency (Article 352)</i>	<i>President's Rule (Article 356)</i>
6. Every resolution of Parliament approving its proclamation or its continuance must be passed by a special majority.	6. Every resolution of Parliament approving its proclamation or its continuance can be passed only by a simple majority.
7. It affects fundamental rights of the citizens.	7. It has no effect on Fundamental Rights of the citizens.
8. Lok Sabha can pass a resolution for its revocation.	8. There is no such provision. It can be revoked by the President only on his own.

Q10. If the President of India exercises his power as provided under Article 356 of the Constitution of a particular State, then (2018)

(a) the Assembly of the State is automatically dissolved.

(b) the powers of the Legislature of that State shall be exercisable by or under the authority of the Parliament.

(c) Article 19 is suspended in that State.

(d) the President can make laws relating to that State.

The President acquires the following extraordinary powers when the President's Rule is imposed in a state:

1. He can **take up the functions of the state government and powers vested in the governor or any other executive authority in the state.**
2. He can declare that the **powers of the state legislature are to be exercised by the Parliament.**
3. He can take all other necessary steps including the **suspension of the constitutional provisions relating to any body or authority in the state.**

The state **governor, on behalf of the President, carries on the state administration with the help of the chief secretary of the state or the advisors appointed by the President.**

Further, the **President either suspends or dissolves the state legislative assembly.**

The Parliament passes the state legislative bills and the state budget.

Scope of Judicial Review

The 38th Amendment Act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which could not be challenged in any court on any ground. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.

In *Bommai* case (1994), the following propositions have been laid down by the Supreme Court on imposition of President's Rule in a state under Article 356:

1. The presidential proclamation imposing President's Rule is subject to judicial review.
2. The satisfaction of the President must be based on relevant material. The action of the president can be struck down by the court if it is based on irrelevant or extraneous grounds or if it was found to be malafide or perverse.
3. Burden lies on the Centre to prove that relevant material exist to justify the imposition of the

President's Rule.

4. The court cannot go into the correctness of the material or its adequacy but it can see whether it is relevant to the action.
5. If the court holds the presidential proclamation to be unconstitutional and invalid, it has power to restore the dismissed state government and revive the state legislative assembly if it was suspended or dissolved.

6. The state legislative assembly should be dissolved only after the Parliament has approved the presidential proclamation. Until such approval is given, the president can only suspend the assembly. In case the Parliament fails to approve the proclamation, the assembly would get reactivated.
7. Secularism is one of the 'basic features' of the Constitution. Hence, a state government pursuing anti-secular politics is liable to action under Article 356.
8. The question of the state government losing the confidence of the legislative assembly should be decided on the floor of the House and until that is done the ministry should not be unseated.
9. Where a new political party assumes power at the Centre, it will not have the authority to dismiss ministries formed by other parties in the states.
10. The power under Article 356 is an exceptional power and should be used only occasionally to meet the requirements of special situations.

PREAMBLE

- 3 Questions - factual AND conceptual



VISION INSIGHTS
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PREAMBLE

- What exactly is Preamble?
- Constituents/Components
- Key words in the Preamble
- Significance of Preamble
- Preamble Part of the Constitution- SC Judgments
- Amendability of Preamble

- The term *'preamble'* refers to the introduction or preface to the Constitution. It contains the summary or essence of the Constitution.
- The Preamble *is neither a source of power to legislature nor a prohibition upon the powers of legislature.*
- It *is non-justiciable*, that is, its provisions are not enforceable in courts of law.
- The Preamble embodies the *basic philosophy and fundamental values*—political, moral and religious —on which the Constitution is based.
- It contains the *grand and noble vision of the Constituent Assembly*, and reflects the dreams and aspirations of the founding fathers of the Constitution.

- **KEY WORDS IN THE PREAMBLE**

1. Sovereign implies that India is neither a dependency nor a dominion of any other nation, but an independent state. There is no authority above it, and it is free to conduct its own affairs (both internal and external).

2. Socialist in Indian context implies Democratic Socialism – mixed economy – coexistence of Public and Private sector unlike in Communist Socialism (nationalisation of all means of production and abolition of private property)

3. Secularism - positive concept of secularism ie, all religions in our country (irrespective of their strength) have the same status and support from the state.

4. **Democratic** - in India based on the doctrine of popular sovereignty, that is, possession of supreme power by the people. The term 'democratic' is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy.

5. **Republic** - the term 'republic' in our Preamble indicates that India has an elected head called the president. He is elected indirectly for a fixed period of five years.

6. **Justice** - The term 'justice' in the Preamble embraces three distinct forms—social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles.

7. **Liberty** - means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.

8. **Equality** means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination; secures to all citizens of India equality of status and opportunity; three dimensions of equality—civic, political and economic.

9. **Fraternity** means sense of brotherhood; the Preamble declares that fraternity has to assure two things—the dignity of the individual and the unity and integrity of the nation.

Q1. Which one of the following reflects the most appropriate relationship between law and liberty?
(2018)

- (a) If there are more laws, there is less liberty.
- (b) If there are no laws, there is no liberty.
- (c) If there is liberty, laws have to be made by the people.
- (d) If laws are changed too often, liberty is in danger

- Liberty FROM the Law
- Liberty BY the Law



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- There is debate between ‘Liberty from the law’ that implies that a feature inherent to law is that it constrains liberty. ‘
- Liberty by the law’ implies instead that liberty is secured through law; a feature inherent to law is that it protects, or at least is capable of protecting liberty as long as it satisfies certain conditions.



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- True liberty only comes as a result of established law, and the only established law that exists is the law established by the one and only Law-giver. But in reality, **it is the law that guarantees freedom and liberty to individuals.**
- **The Indian Constitution provides to its citizen Liberty through Article 21**, and a varied types of freedoms including speech and expression, movement, assembly, profession etc. via **Article 19**. The constitution of the **United States of America in a series of Amendments provided to its citizens freedom of press, speech, association, assemble etc.**
- Thus in **most constitutional democracies and monarchies, freedoms and liberties are guaranteed in the constitution.** The judiciary is the watchdog of these constitutions and applies the law to protect and liberty of the people. This liberty is a combination of positive and negative liberty; it not only lets the individual develop and fulfil their potential but also protects them from the interference of external agents.

Q.2 The mind of the makers of the Constitution of India is reflected in which of the following?
(2017)

- (a) The Preamble
- (b) The Fundamental Rights
- (c) The Directive Principles of State Policy
- (d) The Fundamental Duties

- **Berubari Union Case(1960) - Preamble is a key to the minds of the makers of the Indian Constitution** as it shows the general purposes behind the several provisions of the Constitution. However, **PREAMBLE IS NOT A PART OF THE Constitution.**
- **Keshvananda Bharti Case (1973): PREAMBLE IS A PART OF THE CONSTITUTION. It can be AMENDED.**
- **LIC of India Case (1995): PREAMBLE IS AN INTEGRAL PART OF THE CONSTITUTION**
- **Preamble was enacted after the rest of the Constitution was enacted** to show the conformity with the Constitution as adopted by the Constituent Assembly.
- **The Preamble has been amended only once so far, in 1976, by the 42nd Constitutional Amendment Act,** which has added **three new words—Socialist, Secular and Integrity—to the Preamble.**

TEXT OF THE PREAMBLE

The Preamble in its present form reads:

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

JUSTICE, Social, Economic and Political;

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

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

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

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”.

Q3. Which one of the following objectives is *not* embodied in the Preamble to the Constitution of India?(2017)

- (a) Liberty of thought
- (b) Economic liberty
- (c) Liberty of expression
- (d) Liberty of belief

Q. In the context of polity, which one of the following would you accept as the most appropriate definition of liberty? (2019)

- (a) Protection against the tyranny of political rulers
- (b) Absence of restraint
- (c) Opportunity to do whatever one likes
- (d) Opportunity to develop oneself fully



VISIONIAS
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7. Liberty

The term 'liberty' means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.

The Preamble secures to all citizens of India liberty of thought, expression, belief, faith and worship, through their Fundamental Rights, enforceable in court of law, in case of violation.

Liberty as elaborated in the Preamble is very essential for the successful functioning of the Indian democratic system. However, liberty does not mean 'license' to do what one likes, and has to be enjoyed within the limitations mentioned in the Constitution itself. In brief, the liberty conceived by the Preamble or fundamental rights is not absolute but qualified.

DPSPs

Type of Questions - 11

- Nature based - 3
- Provisions based - 5
- Applied kind - 2
- Amendment - 1

- Dr B R Ambedkar described these principles as **‘novel features’** of the **Indian Constitution**.
- The **Directive Principles** along with the **Fundamental Rights** contain the *philosophy of the Constitution and is the soul of the Constitution*.
- **Granville Austin** has described the *Directive Principles and the Fundamental Rights as the ‘Conscience of the Constitution’*
- ‘Directive Principles of State Policy’ denotes the **ideals that the State should keep in mind while formulating policies and enacting laws**.
- The Directive Principles resemble the **‘Instrument of Instructions’** enumerated in the **Government of India Act of 1935**

- They embody the concept of 'Welfare State'.
- They seek to establish economic and social democracy in the country.
- The Directive Principles are **non-justiciable in nature, that is, they are not legally enforceable by the courts for their violation.** Therefore, the government (Central, state and local) cannot be compelled to implement them.
- The Constitution (**Article 37**) itself says that these principles are **fundamental in the governance of the country** and it shall be the duty of the State to apply these principles in making laws.
- They help the courts in **examining and determining the constitutional validity of a law.** If a court finds that the law in question seeks to give effect to a Directive Principle, it may consider such law to be 'reasonable' in relation to Article 14 (equality before law) or Article 19 (six freedoms) and thus save such law from unconstitutionality.

DIRECTIVE PRINCIPLES

Goals

Welfare of the people; Social, economic and political justice;

Raising the standard of living; equitable distribution of resources;

Promotion of international peace

Policies

Uniform civil code;

Prohibition of consumption of alcoholic liquor;

Promotion of cottage industries;

Prevention of slaughter of useful cattle;

Promotion of village panchayats

Non-justiciable rights

Adequate livelihood;

Equal pay for equal work for men and women;

Right against economic exploitation;

Right to work;

Early childhood care and education to children below the age of six years

Q.1 Consider the following statements: (2017)

With reference to the Constitution of India, the Directive Principles of State Policy constitute limitations upon

1. legislative function
2. executive function.

Which of the above statements is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Q2. According to the Constitution of India, which of the following are fundamental for the governance of the country?
(2017)

- (a) Fundamental Rights
- (b) Fundamental Duties
- (c) Directive Principles of State Policy
- (d) Fundamental Rights and Fundamental Duties

Q.3 The “Instrument of Instructions” contained in the Government of India Act 1935 have been incorporated in the Constitution of India in the year 1950 as (2010)

- (a) Fundamental Rights
- (b) Directive Principles of State Policy
- (c) Extent of executive power of State
- (d) Conduct of business of the Government of India

Q.4 The ideal of 'Welfare State' in the Indian Constitution is enshrined in its (2015)

- (a) Preamble
- (b) Directive Principles of State Policy
- (c) Fundamental Rights
- (d) Seventh Schedule

Q. 5 In the Constitution of India, promotion of international peace and security is included in the (2014)

- (a) Preamble to the constitution
- (b) Directive Principles of State Policy
- (c) Fundamental Duties
- (d) Ninth Schedule

Q.6 'Economic Justice' as one of the objectives of the Indian Constitution has been provided in (2013)

- (a) the Preamble and the Fundamental Rights
- (b) the Preamble and the Directive Principles of State Policy
- (c) the Fundamental Rights and the Directive Rights and the Directive Principles of State Policy
- (d) None of the above

Q.7 Consider the following provisions under the Directive Principles of State Policy as enshrined in the Constitution of India (2012)

1. Securing for citizens of India a uniform civil code
2. Organizing village Panchayats
3. Promoting cottage industries in rural areas
4. Securing for all the workers reasonable leisure and cultural opportunities

Which of the above are the Gandhian Principles that are reflected in the Directive Principles of State Policy?

- (a) 1, 2 and 4 only
- (b) 2 and 3 only
- (c) 1, 3 and 4 only
- (d) 1, 2, 3 and 4

Socialistic Principles

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state. They direct the state:

1. To promote the welfare of the people by securing a social order permeated by justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities⁴ (Article 38).
2. To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for the common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children⁵ (Article 39).
3. To promote equal justice and to provide free legal aid to the poor⁶ (Article 39 A).
4. To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (Article 41).
5. To make provision for just and humane conditions for work and maternity relief (Article 42).
6. To secure a living wage⁷, a decent standard of life and social and cultural opportunities for all workers (Article 43).
7. To take steps to secure the participation of workers in the management of industries⁸ (Article 43 A).
8. To raise the level of nutrition and the standard of living of people and to improve public

Gandhian Principles

These principles are based on Gandhian ideology. They represent the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfil the dreams of Gandhi, some of his ideas were included as Directive Principles. They require the State:

1. To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (Article 40).
 2. To promote cottage industries on an individual or co-operation basis in rural areas (Article 43).
 3. To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies^{8a} (Article 43B).
 4. To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation (Article 46).
 5. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47).
 6. To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (Article 48).
-

Liberal–Intellectual Principles

The principles included in this category represent the ideology of liberalism. They direct the state:

1. To secure for all citizens a uniform civil code throughout the country (Article 44).
2. To provide early childhood care and education for all children until they complete the age of six years⁹ (Article 45).
3. To organise agriculture and animal husbandry on modern and scientific lines (Article 48).
4. To protect and improve the environment and to safeguard forests and wild life¹⁰ (Article 48 A).
5. To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance (Article 49).
6. To separate the judiciary from the executive in the public services of the State (Article 50).
7. To promote international peace and security and maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration (Article 51).

Q. 9 Which principle among the following was added to the Directive Principles of State Policy by the 42nd Amendment to the Constitution? (2017)

- (a) Equal pay for equal work for both men and women
- (b) Participation of workers in the management of industries
- (c) Right to work, education and public assistance
- (d) Securing living wage and human conditions of work to workers

NEW DIRECTIVE PRINCIPLES

The 42nd Amendment Act of 1976 added four new Directive Principles to the original list. They require the State:

1. To secure opportunities for healthy development of children (Article 39).
2. To promote equal justice and to provide free legal aid to the poor (Article 39 A).

3. To take steps to secure the participation of workers in the management of industries (Article 43 A).
4. To protect and improve the environment and to safeguard forests and wild life (Article 48 A).

The 44th Amendment Act of 1978 added one more Directive Principle, which requires the State to minimise inequalities in income, status, facilities and opportunities (Article 38).

Again, the 86th Amendment Act of 2002 changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.

The 97th Amendment Act of 2011 added a new Directive Principle relating to co-operative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).

Q.10 Which of the following provisions of the Constitution of India have a bearing on Education?

1. Directive Principles of State Policy
2. Rural and Urban Local Bodies
3. Fifth Schedule
4. Sixth Schedule
5. Seventh Schedule

Select the correct answer using the codes given below :

- (a) 1 and 2 only
- (b) 3, 4 and 5 only
- (c) 1, 2 and 5 only
- (d) 1, 2, 3, 4 and 5

- To provide early childhood care and education for all children until they complete the age of six years⁹ (Article 45).
- Fifth Schedule – It is aimed towards making the State responsible towards the promotion of educational and economic interests of Tribals
- Sixth schedule - deals with the constitution, powers and functions of District Councils and Regional Councils in these autonomous districts. These councils also have the powers to set up and administer their system of justice and maintain administrative and welfare services in respect of land, revenue, forests, education, public health etc.

DIRECTIVES OUTSIDE PART IV

Apart from the Directives included in Part IV, there are some other Directives contained in other Parts of the Constitution. They are:

1. *Claims of SCs and STs to Services:* The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of

efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or a State (Article 335 in Part XVI).

2. *Instruction in mother tongue:* It shall be the endeavour of every state and every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups (Article 350-A in Part XVII).

3. *Development of the Hindi Language:* It shall be the duty of the Union to promote the spread of the Hindi language and to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India (Article 351 in Part XVII).

The above Directives are also non-justiciable in nature. However, they are also given equal importance and attention by the judiciary on the ground that all parts of the constitution must be read together.

FUNDAMENTAL DUTIES

- Only 5 questions have been asked
- Mostly nature and provisions based

Q.1 In the context of India, which one of the following is the correct relationship between Rights and Duties? (2017)

- (a) Rights are correlative with Duties.
- (b) Rights are personal and hence independent of society and Duties.
- (c) Rights, not Duties, are important for the advancement of the personality of the citizen.
- (d) Duties, not Rights, are important for the stability of the State.

Fundamental Duties

Though the rights and duties of the citizens are correlative and inseparable, the original constitution contained only the fundamental rights and not the fundamental duties. In other words, the framers of the Constitution did not feel it necessary to incorporate the fundamental duties of the citizens in the Constitution. However, they incorporated the duties of the State in the Constitution in the form of Directive Principles of State Polity. Later in 1976, the fundamental duties of citizens were added in the Constitution. In 2002, one more Fundamental Duty was added.

The Fundamental Duties in the Indian Constitution are inspired by the Constitution of erstwhile USSR. *Notably, none of the Constitutions of major democratic countries like USA, Canada, France*

Q. 2 Which of the following statements is/are true of the Fundamental Duties of an Indian citizen?(2017)

1. A legislative process has been provided to enforce these duties.
2. They are correlative to legal duties.

Select the correct answer using the code given below:

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Q.3 To uphold and protect the Sovereignty, Unity and Integrity of India" is a provision made in the(2015)

- (a) Preamble of the Constitution
- (b) Directive Principles of State Policy
- (c) Fundamental Rights
- (d) Fundamental Duties



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Q.4 Which of the following is/are among the Fundamental Duties of citizens laid down in the Indian Constitution?(2012)

- 1.To preserve the rich heritage of our composite culture
- 2.To protect the weaker sections from social injustice
- 3.To develop the scientific temper and spirit of inquiry
- 4.To strive towards excellence in all spheres of individual and collective activity

Select the correct answer using the codes given below :

- (a)1 and 2 only
- (b)2 only
- (c)1, 3 and 4 only
- (d)1, 2, 3 and 4

Q. 5 Under the constitution of India, which one of the following is *not* a fundamental duty?(2011)

- (a) To vote in public elections
- (b) To develop the scientific temper
- (c) To safeguard public property
- (d) To abide by the Constitution and respect its ideals



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FEATURES OF THE FUNDAMENTAL DUTIES

Following points can be noted with regard to the characteristics of the Fundamental Duties:

1. Some of them are moral duties while others are civic duties. For instance, cherishing noble ideals of freedom struggle is a moral precept and respecting the Constitution, National Flag and National Anthem is a civic duty.
2. They refer to such values which have been a part of the Indian tradition, mythology, religions and practices. In other words, they essentially contain just a codification of tasks integral to the Indian way of life.
3. Unlike some of the Fundamental Rights which extend to all persons whether citizens or foreigners¹, the Fundamental Duties are confined to citizens only and do not extend to foreigners.
4. Like the Directive Principles, the fundamental duties are also non-justiciable. The Constitution does not provide for their direct enforcement by the courts. Moreover, there is not legal sanction against their violation. However, the Parliament is free to enforce them by suitable legislation.

They help the courts in examining and determining the constitutional validity of a law. In

1992, the Supreme Court ruled that in determining the constitutionality of any law, if a court finds that the law in question seeks to give effect to a fundamental duty, it may consider such law to be 'reasonable' in relation to Article 14 (equality before law) or Article 19 (six freedoms) and thus save such law from unconstitutionality.

They are enforceable by law. Hence, the Parliament can provide for the imposition of appropriate penalty or punishment for failure to fulfil any of them.

- In 1976, the Govt. set up the Sardar Swaran Singh Committee to make recommendations about fundamental duties.
- Government at Centre accepted these recommendations and enacted the 42nd Constitutional Amendment Act in 1976.
- This amendment added a new part, namely, Part IVA to the Constitution.
- This new part consists of only one Article, that is, Article 51A which for the first time specified a code of ten fundamental duties of the citizens.

LIST OF FUNDAMENTAL DUTIES

According to Article 51 A, it shall be the duty of every citizen of India:

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals that inspired the national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of the country's composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;
- (h) to develop scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and
- (k) to provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

FUNDAMENTAL RIGHTS

- 10 questions have been asked - Mostly conceptual and current



VISION
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Part III of the Constitution is rightly described as the *Magna Carta* of India.¹ It contains a very long and comprehensive list of 'justiciable' Fundamental Rights. In fact, the Fundamental Rights in our Constitution are more elaborate than those found in the Constitution of any other country in the world, including the USA.

The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination. They uphold the equality of all individuals, the dignity of the individual, the larger public interest and unity of the nation.

The Fundamental Rights are meant for promoting the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country, and protect the liberties and freedoms of the people against the invasion by the State. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. In short, they aim at establishing 'a government of laws and not of men'.

The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. They are 'fundamental' also in the sense that they are most essential for the all-round development (material, intellectual, moral and spiritual) of the

FEATURES OF FUNDAMENTAL RIGHTS



The Fundamental Rights guaranteed by the Constitution are characterised by the following:

1. Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
2. They are not absolute but qualified. The state can impose reasonable restrictions on them. However, whether such restrictions are reasonable or not is to be decided by the courts. Thus, they strike a balance between the rights of the individual and those of the society as a whole, between individual liberty and social control.
3. Most of them are available against the arbitrary action of the State, with a few exceptions like those against the State's action and against the action of private individuals. When the rights that are available against the State's action only are violated by the private individuals, there are no constitutional remedies but only ordinary legal remedies.
4. Some of them are negative in character, that is, place limitations on the authority of the State, while others are positive in nature, conferring certain privileges on the persons.
5. They are justiciable, allowing persons to move the courts for their



enforcement, if and when they are violated.

6. They are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgement of the high courts.
7. They are not sacrosanct or permanent. The Parliament can curtail or repeal them but only by a constitutional amendment act and not by an ordinary act. Moreover, this can be done without affecting the 'basic structure' of the Constitution. (The amendability of fundamental rights is explained in detail in [Chapter 11](#)).
8. They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. Further, the six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression (i.e., external emergency) and not on the ground of armed rebellion (i.e., internal emergency). (The suspension of fundamental rights during a national Emergency is explained in detail in [Chapter 16](#)).

- 
10. Their application to the members of armed forces, para-military forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 33).
 11. Their application can be restricted while martial law is in force in any area. Martial law means 'military rule' imposed under abnormal circumstances to restore order (Article 34). It is different from the imposition of national emergency.
 12. Most of them are directly enforceable (self-executory) while a few of them can be enforced on the basis of a law made for giving effect to them. Such a law can be made only by the Parliament and not by state legislatures so that uniformity throughout the country is maintained (Article 35).
- 

Which of the following is the best description of Fundamental Rights?

- a) All the rights an individual should have.
- b) All the rights given to citizens by law.
- c) The rights given and protected by the Constitution.
- d) The rights given by the Constitution that cannot ever be restricted.



VISIUM
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Q1. Which of the following are regarded as the main features of the "Rule of Law"? (2018)

1. Limitation of Powers
2. Equality before law
3. People's responsibility to the Government
4. Liberty and civil rights

Select the correct answer using the code given below:

- (a) 1 and 3 only
- (b) 2 and 4 only
- (c) **1, 2 and 4 only**
- (d) 1, 2, 3 and 4

Equality Before Law (British)	Equal Protection of Laws (American)
Absence of any special privileges in favour of any person	Equality of treatment under equal circumstances
Equal subjection of all persons to ordinary law of land by ordinary law courts	Similar application of same laws to all persons who are similarly situated.
No person above the law.	Like should be treated alike without any discrimination



Rule of Law The concept of 'equality before law' is an element of the concept of 'Rule of Law', propounded by A.V. Dicey, the British jurist. His concept has the following three elements or aspects:

- (i) **Absence of arbitrary power**, that is, no man can be punished except for a breach of law.
- (ii) **Equality before the law**, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts³.
- (iii) **The primacy of the rights of the individual**, that is, the constitution is the result of the rights of the individual as defined and enforced by the courts of law rather than the constitution being the source of the individual rights.

The first and the second elements are applicable to the Indian System and not the third one. In the Indian System, the constitution is the source of the individual rights.

The Supreme Court held that the 'Rule of Law' as embodied in Article 14 is a 'basic feature' of the constitution. Hence, it cannot be destroyed even by an amendment.

Q.2 Which one of the following statements is correct?
(2017)

- (a) Rights are claims of the State against the citizens.
- (b) Rights are privileges which are incorporated in the Constitution of a State.
- (c) Rights are claims of the citizens against the State.
- (d) Rights are privileges of a few citizens against the many.

Q.3 One of the implications of equality in society is the absence of (2017)

- (a) Privileges
- (b) Restraints
- (c) Competition
- (d) Ideology



VISIONARIAS
INSPIRING INNOVATION

Q4 Which of the following are envisaged by the Right against Exploitation in the Constitution of India? (2017)

1. Prohibition of traffic in human beings and forced labour
 2. Abolition of untouchability
 3. Protection of the interests of minorities
 4. Prohibition of employment of children in factories and mines
- Select the correct answer using the code given below:

- (a) 1, 2 and 4 only
- (b) 2, 3 and 4 only
- (c) 1 and 4 only
- (d) 1, 2, 3 and 4

Right to Equality

- √ Equality before law
 - equal protection of laws
- √ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
 - equal access to shops, hotels, wells, tanks, bathing ghats, roads etc.
- √ Equality of opportunity in public employment
- √ Abolition of Untouchability
- √ Abolition of titles

Right to Freedom

- √ Protection of Right to
 - freedom of speech and expression;
 - assemble peacefully;
 - form associations/unions;
 - move freely throughout the territory of India;
 - reside and settle in any part of India;
 - practise any profession, or to carry on any occupation, trade or business.
- √ Protection in respect of conviction for offences
- √ Right to life and personal liberty
- √ Right to education
- √ Protection against arrest and detention in certain cases

Right against Exploitation

- √ Prohibition of traffic in human beings and forced labour
- √ Prohibition of employment of children in hazardous jobs

Right to Freedom of Religion

- √ Freedom of conscience and free profession, practice and propagation of religion
- √ Freedom to manage religious affairs
- √ Freedom to pay taxes for promotion of any particular religion
- √ Freedom to attend religious instruction or worship in certain educational institutions

Cultural and Educational Rights

- √ Protection of language, culture of minorities
- √ Right of minorities to establish educational institutions

Right to Constitutional Remedies

- √ Right to move the courts to issue directions/orders/writs for enforcement of rights

Table 7.2 Fundamental Rights (FR) of Foreigners

<i>FR available only to citizens and not to foreigners</i>
1. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
2. Equality of opportunity in matters of public employment (Article 16).
3. Protection of six rights regarding freedom of : (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19).
4. Protection of language, script and culture of minorities (Article 29).
5. Right of minorities to establish and administer educational institutions (Article 30).

*FR available to both citizens and foreigners
(except enemy aliens)*

1. Equality before law and equal protection of laws (Article 14).
2. Protection in respect of conviction for offences (Article 20).
3. Protection of life and personal liberty (Article 21).
4. Right to elementary education (Article 21A).
5. Protection against arrest and detention in certain cases (Article 22).
6. Prohibition of traffic in human beings and forced labour (Article 23).
7. Prohibition of employment of children in factories etc., (Article 24).
8. Freedom of conscience and free profession, practice and propagation of religion (Article 25).

9. Freedom to manage religious affairs (Article 26).
10. Freedom from payment of taxes for promotion of any religion (Article 27).
11. Freedom from attending religious instruction or worship in certain educational institutions (Article 28).

Q.5 Right to vote and to be elected in India is a (2017)

- (a) Fundamental Right
- (b) Natural Right
- (c) Constitutional Right
- (d) Legal Right



VISIONIA
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INNOVATION

Q.6 In India, if a religious sect/community is given the status of a national minority, what special advantages it is entitled to? (2011)

1. It can establish and administer exclusive educational institutions.
2. The President of India automatically nominates a representative of the community to Lok Sabha.
3. It can derive benefits from the Prime Minister's 15-Point Programme.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 and 3 only
- (c) 1 and 3 only
- (d) 1, 2 and 3

CULTURAL AND EDUCATIONAL RIGHTS

1. Protection of Interests of Minorities

Article 29 provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same. Further, no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, or language.

The first provision protects the right of a group while the second provision guarantees the right of a citizen as an individual irrespective of the community to which he belongs.

Article 29 grants protection to both religious minorities as well as linguistic minorities. However, the Supreme Court held that the scope of this article is not necessarily restricted to minorities only, as it is commonly assumed to be. This is because of the use of words 'section of citizens' in the Article that include minorities as well as majority.

The Supreme Court also held that the right to conserve the language includes the right to agitate for the protection of the language. Hence, the political speeches or promises made for the conservation of the language of a section of the citizens does not amount to corrupt practice under the Representation of the People Act, 1951.

2. Right of Minorities to Establish and Administer Educational Institutions

Article 30 grants the following rights to minorities, whether religious or linguistic:

- (a) All minorities shall have the right to establish and administer educational institutions of their choice.
- (b) The compensation amount fixed by the State for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to them. This provision was added by the 44th Amendment Act of 1978 to protect the right of minorities in this regard. The Act deleted the right to property as a Fundamental Right (Article 31).
- (c) In granting aid, the State shall not discriminate against any educational institution managed by a minority.

Thus, the protection under Article 30 is confined only to minorities (religious or linguistic) and does not extend to any section of citizens (as under Article 29). However, the term 'minority' has not been defined anywhere in the Constitution.

The right under Article 30 also includes the right of a minority to impart education to its children in its own language.

- The Prime Minister's New 15 point Programme for minorities is a programme launched by Indian government in 2006 for welfare of religious minorities in furtherance of reports by committees such as the Sachar Committee Report.
- It covers various schemes/ initiatives of different Ministries / Departments implemented throughout the country.

These 15 points are as follows;

1. Equitable availability of the Integrated Child Development Services (ICDS)
2. Improving access to School Education
3. Greater resources for teaching Urdu
4. Modernizing Madarsa Education

5. Scholarships for meritorious students from minority communities.
6. Improving educational infrastructure through the Maulana Azad Education Foundation.
7. Self-Employment and Wage Employment for the poor
8. Upgradation of skill through technical training
9. Enhanced credit support for economic activities
10. Recruitment to State and Central Services
11. Equitable share in rural housing scheme
12. Improvement in condition of slums inhabited by minority communities.
13. Prevention of communal incidents
14. Prosecution for communal offenses
15. Rehabilitation of victims of communal riots.

- In 1993, the Central Government notified five communities, viz., Muslims, Christians, Sikhs, Buddhists, and Zoroastrians (Parsis) as religious minorities at the national level.
- In January 2014, the Jain community was added to this list.



VISIONIAS
INSPIRING INNOVATION

Q. 7 Consider the following(2011)

1. Right to education.
2. Right to equal access to public service.
3. Right to food.

Which of the above is/are Human Right/Human Rights under “Universal Declaration of Human Rights”?

- (a) 1 only
- (b) 1 and 2 only
- (c) 3 only
- (d) 1, 2 and 3

- The Universal Declaration of Human Rights was adopted by the UN General Assembly in 1948.
- This declaration represents the first international expression of human rights to which all human beings are entitled.
- It is described as the “International Magna Carta”.
- The declaration consists of 30 articles.
- Some of them are Right to life, liberty and security, Right to judicial remedy, **Right to a fair trial** and public hearing, **Right to seek asylum**, **Right to privacy** and reputation, Right to a nationality, **Right to adequate standard of living for health and well-being including food, clothing, housing, medical care, social services and security**, Right to marriage and family protection, Everyone has the **right to education**. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.**Right to participate in government and equal access to public service**, Right to social security etc.

Q8. Right to Privacy is protected as an intrinsic part of Right to Life and Personal Liberty.

Which of the following in the Constitution of India correctly and appropriately imply the above statement?(2018)

- (a) Article 14 and the provisions under the 42nd Amendment to the Constitution
- (b) Article 17 and the Directive Principles of State Policy in Part IV
- (c) Article 21 and the freedoms guaranteed in Part III
- (d) Article 24 and the provisions under the 44th Amendment to the Constitution

MORE-IN

Right to Privacy

The judgment will have a crucial bearing on the government's Aadhaar scheme that collects personal details, biometrics to identify beneficiaries for accessing social benefits and government welfare

scheme.

A nine-judge Constitution Bench of the Supreme Court on August 24 **ruled that right to privacy** is “intrinsic to life and liberty” and is inherently protected under the various fundamental freedoms enshrined under Part III of the Indian Constitution.

Q8. Which Article of the Constitution safeguards one's right to marry the person of one's choice?(2019)

- (a) Article 19
- (b) Article 21
- (c) Article 25
- (d) Article 29



VISION INNOVATIONS
INSPIRING INNOVATIONS

- **The right to marry a person of one's choice is integral to Article 21** (right to life and liberty) of the Constitution", the Supreme Court and set aside a 2017 order of the Kerala High Court which annulled the marriage of Kerala Muslim convert girl Hadiya and Shefin Jahan.



Amendments

- Important amendments need to be focused like 42nd, 44th, 91st, 92nd, etc.
- Questions either directly on the changes done by the amendments or conceptual.
- 2 questions so far

Q1. Consider the following statements: (2013)

1. An amendment to the Constitution of India can be initiated by an introduction of a bill in the Lok Sabha only.
2. If such an amendment seeks to make changes in the federal character of the Constitution, the amendment also requires to be ratified by the legislature of all the States of India.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

About Art. 368 in Part XX

- Parliament may, in exercise of its constituent power, amend by way of **addition, variation or repeal** any provision of the Constitution **which does not form part of the 'basic structure'** (**Keshvananda Bharti Case**)
- **Introduction of Bill-**
 - ✓ Either house of Parl. But **NOT in State Legislatures**
 - ✓ Either by a **minister or by a private member**
 - ✓ Does **NOT** require prior permission of the President
- **Passage of the Bill-**
 - ✓ in each House by a **special majority**, that is, a majority (that is, **more than 50 per cent**) of the **total membership** of the House and a **majority of two-thirds of the members of the House present and voting.**
 - ✓ 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.**
 - ✓ Each House must pass the bill separately.
 - ✓ **NO JOINT SITTING** in case of a disagreement between the two Houses,

- When it goes to the President

- ✓ The President **must give** his assent to the bill.
- ✓ He can **neither withhold his assent** to the bill **nor return the bill for reconsideration of the Parliament**

- Types of Majorities

- ✓ **Simple Majority** - majority of more than 50% of the members **present and voting**.
- ✓ **Absolute majority** - It refers to a **majority of more than 50% of the total membership of the house**.
- ✓ **Effective Majority** - means more than 50% of the **effective strength of the house** (excluding vacant seats)

Cases where the effective majority is used:

1. Removal of Vice-president in RS – Article 67(b).
2. Removal of Speaker and Deputy Speaker of Lok Sabha and State Legislative Assembly.



VISIONIAS
INSPIRING INNOVATION

Special Majorities – generally $2/3^{\text{rd}}$ p+v in the house or $2/3^{\text{rd}}$ of the total strength

Under **Art 249 & 312** - The resolution must be passed by Rajya Sabha supported by not less than $2/3$ of the **members present and voting**.

Under **Art.61** - A resolution under this is passed by not less than $2/3^{\text{rd}}$ of the total strength of the House, **including the number of vacancies**.

Under **Art. 368** - Absolute + Special Majority - majority of $2/3^{\text{rd}}$ **members present and voting supported by more than 50% of the total strength of the house**.

Art 368 (with state ratification) - $2/3^{\text{rd}}$ **members present and voting supported by more than 50% of the state legislatures by a simple majority**.

By SIMPLE MAJORITY

- **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 English language in Parliament.
- **Number of 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**

- **By Special Majority of Parliament and Consent of States**
 - ✓ 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).
- **By Special Majority of Parliament**
 - ✓ Fundamental Rights
 - ✓ Directive Principles of State Policy; and
 - ✓ All other provisions which are not covered by the first and third categories.

Consider the following statements: 2019

1. The 44th Amendment to the Constitution of India introduced an Article placing the election of the Prime Minister beyond judicial review.
2. The Supreme Court of India struck down the 99th Amendment to the Constitution of India as being violative of the independence of judiciary.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

- **The Parliament passed the Thirty-ninth amendment to the Constitution** which removed the authority of the Supreme Court to adjudicate petitions regarding elections of the President, Vice President, Prime Minister and Speaker of the Lok Sabha. Instead, a body constituted by Parliament would be vested with the power to resolve such election disputes. Amendments were also made to the Representation of Peoples Acts of 1951 and 1974 and placed in the Ninth Schedule along with the Election Laws Amendment Act, 1975 in order to save the Prime Minister from embarrassment if the apex court delivered an unfavourable verdict.

- The National Judicial Appointments Commission (NJAC) was a body tasked with appointing judges to the higher judiciary in India.
- Article 124 of the Constitution was amended through the 99th Amendment to reflect the change in the system of appointments from the collegium system, in which a body of judges would be consulted by the President to appoint the judges, with the judiciary's opinion being final.
- Petitions were filed before the Supreme Court to strike down the 99th Amendment as being unconstitutional. **The Court reasoned that the 99th Amendment was unconstitutional. In arriving at this conclusion, the Court evaluated the theory of separation of powers and held that the interference of the executive in the appointment of judges to the higher judiciary was a violation of the theory.**

JUDICIARY

- 10 QUESTIONS so far
- Mix of conceptual, factual and fundamental



Q1. In India, Judicial Review implies (2017)

- (a) the power of the Judiciary to pronounce upon the constitutionality of laws and executive orders.
- (b) the power of the Judiciary to question the wisdom of the laws enacted by the Legislatures.
- (c) the power of the Judiciary to review all the legislative enactments before they are assented to by the President.
- (d) the power of the Judiciary to review its own judgements given earlier in similar or different cases.

- Judicial review is the **power of judiciary to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments.**
- On examination, if they are **found to be violative of the Constitution (ultra-vires)**, they can be declared as illegal, unconstitutional and invalid (null and void).
- Consequently, they cannot be enforced by the government.
- **The constitutional validity of a legislative enactment or an executive order can be challenged in a high court or supreme court on the following three grounds: (a) it infringes the fundamental rights (Part III), (b) it is outside the competence of the authority which has framed it, and (c) it is repugnant to the constitutional provisions.**

Q2. Who/Which of the following is the custodian of the Constitution of India? (2015)

- (a) The President of India
- (b) The Prime Minister of India
- (c) The Lok Sabha Secretariat
- (d) The Supreme Court of India



INSPIRING INNOVATION

VISIONIAS

- The Supreme Court has original, appellate and advisory jurisdiction.
- Its **exclusive original jurisdiction** extends to any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if and insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends.
- In addition, Article 32 of the Constitution gives an **extensive original jurisdiction** to the Supreme Court in regard to enforcement of Fundamental Rights
- The Supreme Court has been **conferred with power to direct transfer of any civil or criminal case from one State High Court to another State High Court or from a Court subordinate to another State High Court.**
- The Supreme Court, if satisfied that cases involving the same or substantially the same questions of law are pending before it and one or more High Courts or before two or more High Courts and that such questions are substantial questions of general importance, may withdraw a case or cases pending before the High Court or High Courts and **dispose of all such cases itself.**
- **Under the Arbitration and Conciliation Act, 1996, International Commercial Arbitration can also be initiated in the Supreme Court.**

- The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court concerned **under Article 132(1), 133(1) or 134** of the Constitution in respect of any judgement, decree or final order of a High Court in **both civil and criminal** cases, involving substantial questions of law as to the interpretation of the Constitution.
- Appeals also lie to the Supreme Court in **civil matters** if the High Court concerned certifies:
 - (a) that the case involves a **substantial question of law of general importance**, and
 - (b) that, in **the opinion of the High Court**, the said question needs to be decided by the **Supreme Court**.
- In criminal cases, an appeal lies to the Supreme Court if the High Court
 - (a) has **on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or for a period of not less than 10 years**, or
 - (b) has **withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused and sentenced him to death or to imprisonment for life or for a period of not less than 10 years**, or
 - (c) **certified that the case is a fit one for appeal to the Supreme Court. Parliament is authorised to confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final order or sentence in a criminal proceeding of a High Court.**
- The Supreme Court has also a very wide appellate jurisdiction over all Courts and Tribunals in India in as much as it may, in its discretion, **grant special leave to appeal under Article 136 of the Constitution from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India.**

- As a **Court of Record**, the Supreme Court has two powers:
 - (a) The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court. They are recognised as legal precedents and legal references.
 - (b) It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to `2,000 or with both.
- In 1991, the **Supreme Court has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country. Contempt of court may be civil or criminal.**
- **Civil contempt means wilful disobedience to any judgement, order, writ or other process of a court or wilful breach of an undertaking given to a court.**
- **Criminal contempt means the publication of any matter or doing an act which—(i) scandalises or lowers the authority of a court; or (ii) prejudices or interferes with the due course of a judicial proceeding; or (iii) interferes or obstructs the administration of justice in any other manner. However, innocent publication and distribution of some matter, fair and accurate report of judicial proceedings, fair and reasonable criticism of judicial acts and comment on the administrative side of the judiciary do not amount to contempt of court.**

Besides the above, the Supreme Court has numerous other powers:

- (a) It decides the disputes regarding the election of the president and the vice-president. In this regard, it has the original, exclusive and final authority.
- (b) It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. If it finds them guilty of misbehaviour, it can recommend to the president for their removal. The advice tendered by

the Supreme Court in this regard is binding on the President.

- (c) It has power to review its own judgement or order. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare. In brief, the Supreme Court is a self-correcting agency. For example, in the *Kesavananda Bharati* case (1973), the Supreme Court departed from its previous judgement in the *Golak Nath* case (1967).
- (d) It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court.
- (e) Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the Supreme Court.
- (f) It is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the Constitution and the verbiage used in the Constitution.

Q3. The power to increase the number of judges in the Supreme Court of India is vested in (2014)

- (a) The President of India
- (b) the Parliament
- (c) The Chief Justice of India
- (d) the Law Commission



INSPIRING INNOVATION

VISIONIAS

Q4. The power of the Supreme Court of India to decide disputes between the Centre and the States falls under its (2014)

- (a) advisory jurisdiction
- (b) appellate jurisdiction
- (c) original jurisdiction
- (d) writ jurisdiction



VISIONIAS
INSPIRING INNOVATION

Q5. Which of the following are included in the original jurisdiction of the Supreme Court?
(2012)

1. A dispute between the Government of India and one or more States
2. A dispute regarding elections to either House of the Parliament or that of Legislature of a State
3. A dispute between the Government of India and a Union Territory
4. A dispute between two or more States

Select the correct answer using the codes given below :

- (a) 1 and 2
- (b) 2 and 3
- (c) 1 and 4
- (d) 3 and 4

Q6. With reference to National Legal Services Authority consider the following statements: (2013)

1. Its objective is to provide free and competent legal services to the weaker section of the society on the basis of equal opportunity.
2. It issues guidelines for the State Legal Services Authorities to implement the legal programmes and schemes throughout the country.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

- National Legal Services Authority of India (NALSA) was formed on 5 December 1995 under the authority of the Legal Services Authorities Act 1987. **Its purpose is to provide free legal services to eligible candidates** (defined in Sec. 12 of the Act), and to organize Lok Adalats for speedy resolution of cases.

Eligible persons include

1. Women and children
2. Members of SC/ST
3. Industrial workmen
4. Victim of mass disaster, violence
5. Disabled persons
6. Person in custody
7. Persons whose annual income does not exceed Rs one lakh.

- The Principal objectives of the NALSA are:
 1. To provide free and competent legal services to the weaker sections of the society.
 2. To organize Lok Adalats to for amicable settlements of disputes.
 3. Spread legal literacy and awareness.
 4. Undertaking social justice litigations
- The Chief Justice of India is patron-in-chief of NALSA while second seniormost judge of Supreme Court of India is the Executive-Chairman.



- In every State, **State Legal Services Authority** has been constituted to give effect to the policies and directions of the NALSA and to give free legal services to the people and conduct Lok Adalats in the State.
- In every **District**, **District Legal Services Authority** has been constituted to implement **Legal Services Programmes** in the District.
- The **District Legal Services Authority** is situated in the **District Courts Complex** in every District and chaired by the **District Judge** of the respective district..

Q7. What is the provision to safeguard the autonomy of the Supreme Court of India? (2012)

1. While appointing the Supreme Court Judges, the President of India has to consult the Chief Justice of India.

2. The Supreme Court Judges can be removed by the Chief Justice of India only.

3. The salaries of the Judges are charged on the Consolidated Fund of India to which the legislature does not have to vote.

4. All appointments of officers and staffs of the Supreme Court of India are made by the Government only after consulting the Chief Justice of India.

Which of the statements given above is/are correct?

(a) 1 and 3 only

(b) 3 and 4 only

(c) 4 only

(d) 1, 2, 3 and 4

2019 PRELIMS

With reference to the Constitution of India, prohibition or limitations or provisions contained in ordinary laws cannot act as prohibitions or limitations on the constitutional powers under Article 142. It could mean which one of the following?

- (a) The decisions taken by the Election Commission of India while discharging its duties cannot be challenged in any court of law.
- (b) The Supreme Court of India is not constrained in the exercise of its powers by laws made by the Parliament.
- (c) In the event of grave financial crisis in the country, the President of India can declare Financial Emergency without the counsel from the Cabinet.
- (d) State Legislatures cannot make laws on certain matters without the concurrence of Union Legislature.

- Article 142 states that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.
- Any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by Parliament.
- Until a provision in that behalf is made, then it would be enforced in such a manner as the President may by order prescribe.
- One of the important instances of application by the Supreme Court of Article 142 was in the Union Carbide case — relating to the victims of the Bhopal gas tragedy. In this judgment, the Supreme Court, while awarding compensation of \$470 million to the victims, went to the extent of saying that **to do complete justice, it could even override the laws made by Parliament by holding that, “prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142.”** By this statement the Supreme Court of India placed itself above the laws made by Parliament or the legislatures of the States. Hence the **Supreme Court of India is not constrained in the exercise of its powers by laws made by the Parliament.**
- **Some important cases where Supreme Court invoked article 142 are:**
 1. Appointment of Lokayukta in Uttar Pradesh.
 2. Setting up R.M. Lodha Committee to oversee the functioning of the Medical Council of India (MCI).
 3. Transfer the trial of accused in Babri Masjid demolition case.
 4. Ban on sale of alcohol within 500 meters of state and national highways.
 5. Witness Protection Scheme, 2018

2019 PRELIMS

Consider the following statements:

1. The motion to impeach a Judge of the Supreme Court of Indian cannot be rejected by the Speaker of the Lok Sabha as per the Judges (Inquiry) Act, 1968.
2. The Constitution of India defines and gives details of what constitutes 'incapacity and proved misbehaviour' of the Judges of the Supreme Court of India.
3. The details of the process of impeachment of the Judges of the Supreme Court of India are given in the Judges (Inquiry) Act, 1968.
4. If the motion for the impeachment of a Judge is taken up for voting, the law requires the motion to be backed by each House of the Parliament and supported by a majority of total membership of that House and by not less than two-thirds of total members of that House present and voting

Which of the statements given above is/are correct?

- (a) 1 and 2
- (b) 3 only
- (c) 3 and 4 only
- (d) 1, 3 and 4

- A judge may be removed from office through a motion adopted by Parliament on grounds of 'proven misbehaviour or incapacity'. **While the Constitution does not use the word 'impeachment'**, it is colloquially used to refer to the proceedings under Article 124 (for the removal of a Supreme Court judge) and Article 218 (for the removal of a High Court judge).
- **The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment.**
- Impeachment procedure:
 - A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
 - The Speaker/Chairman may admit the motion or refuse to admit it.
 - If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
 - The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist
 - If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.
 - After the motion is passed by each House of Parliament by a special majority, an address is presented to the president for removal of the judge.
 - Finally, the president passes an order removing the judge.

Constitutional/Non-Constitutional Bodies

- 6 questions so far
- Easy to moderate difficulty level
- Basic and fundamental questions



VISIONIA
INSPIRING INNOVATION

APPOINTMENT

Constitutional Bodies-

CAG, Nat. Comm. for SCs, For STs, Special Officer for Linguistic Minorities; Attorney General for India, Election Commission, UPSC, Finance Commission

Non-Constitutional Bodies- NHRC, CIC, CVC

REMOVAL

Constitutional Bodies-

CAG, Nat. Comm for SCs, for STs, Special Officer for Linguistic Minorities; Attorney General Election Commission, UPSC, SPSC, Finance Commission

Non –Constitutional Bodies-
NHRC, SHRC, CIC, CVC

PRESIDENT

PARLIAMENT

Oaths of members, apptt of Pro Tem Speaker, Introduction of Money Bill, demand for grant, etc....

JUDICIARY

Appointment and Removal of Judges; apptt of Acting Chief Justice; change of seat of Supreme Court(other than Delhi, needs approval of Prez)

Q1. Consider the following statements: (2017)

1. The Election Commission of India is a five-member body.
2. Union Ministry of Home Affairs decides the election schedule for the conduct of both general elections and bye-elections.
3. Election Commission resolves the disputes relating to splits/mergers of recognized political parties.

Which of the statements given above is/are correct?

- (a) 1 and 2 only
- (b) 2 only
- (c) 2 and 3 only
- (d) 3 only

In details, these powers and functions are:

1. To determine the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.⁴
2. To prepare and periodically revise electoral rolls and to register all eligible voters.
3. To notify the dates and schedules of elections and to scrutinise nomination papers.
4. To grant recognition to political parties and allot election symbols to them.
5. To act as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.
6. To appoint officers for inquiring into disputes relating to electoral arrangements.
7. To determine the code of conduct to be observed by the parties and the candidates at the time of elections.
8. To prepare a roster for publicity of the policies of the political parties on radio and TV in times of elections.

9. To advise the president on matters relating to the disqualifications of the members of Parliament.
10. To advise the governor on matters relating to the disqualifications of the members of state legislature.
11. To cancel polls in the event of rigging, booth capturing, violence and other irregularities.
12. To request the president or the governor for requisitioning the staff necessary for conducting elections.
13. To supervise the machinery of elections throughout the country to ensure free and fair elections.
14. To advise the president whether elections can be held in a state under president's rule in order to extend the period of emergency after one year.
15. To register political parties for the purpose of elections and grant them the status of national or state parties on the basis of their poll performance³.

Splits and mergers and anti-defection law

Splits, mergers and alliances have frequently disrupted the compositions of political parties. This has led to a number of disputes over which section of a divided party gets to keep the party symbol, and how to classify the resulting parties in terms of national and state parties. The Election Commission has to resolve these disputes, although its decisions can be challenged in the courts.




Split and merger under anti-defection law

According to the Tenth Schedule, it requires at least two-third members of a legislature party to form a new political group, or 'merge' with another political party without getting disqualified under the anti-defection law.

Paragraph 3 of the Tenth Schedule originally recognised a 'split' if at least one-third members of the legislature party decided to form or join another political party.

However, this provision was done away with by the 91st amendment to the Constitution in 2003. The amendment, which came into force in January 2004, does not recognise a 'split' in a legislature party.

Instead, it recognises a 'merger' that requires at least two-third members of a legislature party to join another political formation or form a new one without inviting the wrath of the anti-defection law.



COMPOSITION

Article 324 of the Constitution has made the following provisions with regard to the composition of election commission:

1. The Election Commission shall consist of the chief election commissioner and such number of other election commissioners, if any, as the president may from time to time fix.
2. The appointment of the chief election commissioner and other election commissioners shall be made by the president.
3. When any other election commissioner is so appointed, the chief election commissioner shall act as the chairman of the election commission.
4. The president may also appoint after consultation with the election commission such regional commissioners as he may consider necessary to assist the election commission.
5. The conditions of service and tenure of office of the election commissioners and the regional commissioners shall be determined by the president.

Commission was reverted to the earlier position. Again in October 1993, the president appointed two more election commissioners. Since then and till today, the Election Commission has been functioning as a multi-member body consisting of three election commissioners.

The chief election commissioner and the two other election commissioners have equal powers and receive equal salary, allowances and other perquisites, which are similar to those of a judge of the Supreme Court.³ In case of difference of opinion amongst the Chief Election Commissioner and/or two other election commissioners, the matter is decided by the Commission by majority.

They hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. They can resign at any time or can also be removed before the expiry of their term.

Q.2 Which of the following bodies does not/do not find mention in the Constitution?(2013)

1. National Development Council
2. Planning Commission
3. Zonal Councils

Select the correct answer using the codes given below:

- (a) 1 and 2 only
- (b) 2 only
- (c) 1 and 3 only
- (d) 1, 2 and 3

The National Development Council (NDC) was established in August 1952 by an executive resolution of the Government of India on the recommendation of the First Five Year Plan (draft outline). Like the erstwhile Planning Commission. It is neither a constitutional body nor a statutory body.²¹

Composition

The NDC is composed of the following members.

1. The Prime Minister of India (as its chairman/head).
2. All Union Cabinet Ministers (since 1967).²²
3. The Chief Ministers of all the states.
4. The Chief Ministers/administrators of all union territories.
5. Members of the Planning Commission (now NITI Aayog).

The secretary of the Planning Commission (now NITI Aayog) acts as the secretary to the NDC. It (NDC) is also provided with administrative and other assistance for its work by the Planning Commission (now NITI Aayog).

Q.3 Who among the following constitute the National Development Council? **2013**

1. The Prime Minister
2. The Chairman, Finance Commission
3. Ministers of the Union Cabinet
4. Chief Ministers of the States

Select the correct answer using the codes given below.

- (a) 1, 2 and 3 only
- (b) 1, 3 and 4 only
- (c) 2 and 4 only
- (d) 1, 2, 3 and 4

Objectives

The NDC was established with the following objectives.

1. To secure cooperation of states in the execution of the Plan.
2. To strengthen and mobilise the efforts and resources of the nation in support of the Plan.
3. To promote common economic policies in all vital spheres.
4. To ensure balanced and rapid development of all parts of the country.

Functions

To realise the above objectives, the NDC is assigned with the following functions:

1. To prescribe guidelines for preparation of the national Plan.
2. To consider the national Plan as prepared by the Planning Commission (now NITI Aayog).
3. To make an assessment of the resources required for implementing the

- Plan and to suggest measures for augmenting them.
4. To consider important questions of social and economic policy affecting national development.
 5. To review the working of the national Plan from time to time.
 6. To recommend measures for achievement of the aims and targets set out in the national Plan.

The Draft Five-Year Plan prepared by the Planning Commission (now NITI Aayog) is first submitted to the Union Cabinet. After its approval, it is placed before the NDC, for its acceptance. Then, the Plan is presented to the Parliament. With its approval, it emerges as the official Plan and published in the official gazette.

Therefore, the NDC is the highest body, below the Parliament, responsible for policy matters with regard to planning for social and economic development. However, it is listed as an advisory body to the Planning Commission (now NITI Aayog) and its recommendations are not binding. It makes its recommendations to the Central and state governments and should meet at least twice every year.

COMPOSITION OF ZONAL COUNCILS

In the light of the vision of Pandit Nehru, five Zonal Councils were set up vide Part-III of the States Re-organisation Act, 1956. The present composition of each of these Zonal Councils is as under:

- The Northern Zonal Council, comprising the States of Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, National Capital Territory of Delhi and Union Territory of Chandigarh;
- The Central Zonal Council, comprising the States of Chhattisgarh, Uttarakhand, Uttar Pradesh and Madhya Pradesh;
- The Eastern Zonal Council, comprising the States of Bihar, Jharkhand, Orissa, Sikkim and West Bengal;
- The Western Zonal Council, comprising the States of Goa, Gujarat, Maharashtra and the Union Territories of Daman & Diu and Dadra & Nagar Haveli;
- The Southern Zonal Council, comprising the States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territory of Puducherry.

The North Eastern States i.e. (i) Assam (ii) Arunachal Pradesh (iii) Manipur (iv) Tripura (v) Mizoram (vi) Meghalaya and (vii) Nagaland are not included in the Zonal Councils and their special problems are looked after by the North Eastern Council, set up under the North Eastern Council Act, 1972. The State of Sikkim has also been included in the North Eastern Council vide North Eastern Council (Amendment) Act, 2002 notified on 23rd December 2002. Consequently, action for exclusion of Sikkim as member of Eastern Zonal Council has been initiated by Ministry of Home Affairs.

COMMITTEES OF ZONAL COUNCILS

Each Zonal Council has set up a Standing Committee consisting of Chief Secretaries of the member States of their respective Zonal Councils. These Standing Committees meet from time to time to resolve the issues or to do necessary ground work for further meetings of the Zonal Councils. Senior Officers of the Planning Commission and other Central Ministries are also associated with the meetings depending upon necessity. :

ORGANISATIONAL STRUCTURE OF ZONAL COUNCILS

- Chairman - The Union Home Minister is the Chairman of each of these Councils.
- Vice Chairman - The Chief Ministers of the States included in each zone act as Vice-Chairman of the Zonal Council for that zone by rotation, each holding office for a period of one year at a time.
- Members- Chief Minister and two other Ministers as nominated by the Governor from each of the States and two members from Union Territories included in the zone.
- Advisers- One person nominated by the Planning Commission for each of the Zonal Councils, Chief Secretaries and another officer/Development Commissioner nominated by each of the States included in the Zone

Union Ministers are also invited to participate in the meetings of Zonal Councils depending upon necessity.



INS



The main objectives of setting up of Zonal Councils are as under :

- Bringing out national integration;
- Arresting the growth of acute State consciousness, regionalism, linguism and particularistic tendencies;
- Enabling the Centre and the States to co-operate and exchange ideas and experiences;
- Establishing a climate of co-operation amongst the States for successful and speedy execution of development projects.

FUNCTIONS OF THE COUNCILS

Each Zonal Council is an advisory body and may discuss any matter in which some or all of the States represented in that Council, or the Union and one or more of the States represented in that Council, have a common interest and advise the Central Government and the Government of each State concerned as to the action to be taken on any such matter.

In particular, a Zonal Council may discuss, and make recommendations with regard to:

- any matter of common interest in the field of economic and social planning;
- any matter concerning border disputes, linguistic minorities or inter-State transport;
- any matter connected with or arising out of, the re-organization of the States under the States Reorganisation Act.



NITI AAYOG

ESTABLISHMENT

On the 13th of August, 2014, the Modi Government scrapped the 65-year-old Planning Commission and announced that it would be replaced by a new body. Accordingly, on January 1, 2015, the NITI Aayog (National Institution for Transforming India) was established as the successor to the planning commission.

However, it must be noted here that the NITI Aayog, like that of the Planning Commission, was also created by an executive resolution¹ of the Government of India (i.e., Union Cabinet). Hence, it is also neither a constitutional body nor a statutory body. In other words, it is a non-constitutional or extra-constitutional body (i.e., not created by the Constitution) and a non-statutory body (not created by an Act of the Parliament).

Government of India. This will be built on the foundations of:⁵

1. An empowered role of States as equal partners in national development; operationalising the principle of Cooperative Federalism.
2. A knowledge hub of internal as well as external resources; serving as a repository of good governance best practices, and a Think Tank offering domain knowledge as well as strategic expertise to all levels of government.
3. A collaborative platform facilitating implementation; by monitoring progress, plugging gaps and bringing together the various ministries at the Centre and in States, in the joint pursuit of developmental goals.

The composition of the NITI Aayog is as follows:

- (a) Chairperson: The Prime Minister of India
- (b) Governing Council: It comprises the Chief Ministers of all the States, Chief Ministers of Union Territories with Legislatures (i.e., Delhi and Puducherry) and Lt. Governors of other Union Territories.
- (c) Regional Councils: These are formed to address specific issues and contingencies impacting more than one state or a region. These are formed for a specified tenure. These are convened by the Prime Minister and comprises of the Chief Ministers of States and Lt. Governors of Union Territories in the region. These are chaired by the Chairperson of the NITI Aayog or his nominee.
- (d) Special Invitees: Experts, specialists and practitioners with relevant domain knowledge as special invitees nominated by the Prime Minister.
- (e) Full-time Organisational Framework: It comprises, in addition to the Prime Minister as the Chairperson:
 - (i) Vice-Chairperson: He is appointed by the Prime Minister. He enjoys the rank of a Cabinet Minister.
 - (ii) Members: Full-time. They enjoy the rank of a Minister of State.
 - (iii) Part-time Members: Maximum of 2, from leading universities, research organisations and other relevant institutions in an ex-officio capacity. Part-time members would be on a rotation.
 - (iv) Ex-Officio Members: Maximum of 4 members of the Union Council of Ministers to be nominated by the Prime Minister.
 - (v) Chief Executive Officer: He is appointed by the Prime Minister for a fixed tenure, in the rank of Secretary to the Government of India.
 - (vi) Secretariat: As deemed necessary.

INDEPENDENCE

Article 324 of the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Election Commission:

1. The chief election commissioner is provided with the security of tenure. He cannot be removed from his office except in same manner and on the same grounds as a judge of the Supreme Court. In other words, he can be removed by the president on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehaviour or incapacity. Thus, he does not hold his office till the pleasure of the president, though he is appointed by him.
2. The service conditions of the chief election commissioner cannot be varied to his disadvantage after his appointment.
3. Any other election commissioner or a regional commissioner cannot be removed from office except on the recommendation of the chief election commissioner.

Though the constitution has sought to safeguard and ensure the independence and impartiality of the Election Commission, some flaws can be noted, viz.,

1. The Constitution has not prescribed the qualifications (legal, educational, administrative or judicial) of the members of the Election Commission.
2. The Constitution has not specified the term of the members of the Election Commission.
3. The Constitution has not debarred the retiring election commissioners from any further appointment by the government.

Q4. Consider the following statements: 2013

Attorney General of India can

1. take part in the proceedings of the Lok Sabha
2. be a member of a committee of the Lok Sabha
3. speak in the Lok Sabha
4. vote in the Lok Sabha

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 and 4
- (c) 1, 2 and 3
- (d) 1 and 3 only

APPOINTMENT AND TERM

The Attorney General (AG) is appointed by the president. He must be a person who is qualified to be appointed a judge of the Supreme Court. In other words, he must be a citizen of India and he must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist, in the opinion of the president.

The term of office of the AG is not fixed by the Constitution. Further, the Constitution does not contain the procedure and grounds for his removal. He holds office during the pleasure of the president. This means that he may be removed by the president at any time. He may also quit his office by submitting his resignation to the president. Conventionally, he resigns when the government (council of ministers) resigns or is replaced, as he is appointed on its advice.

The remuneration of the AG is not fixed by the Constitution. He receives such remuneration as the president may determine.

DUTIES AND FUNCTIONS

As the chief law officer of the Government of India, the duties of the AG include the following:

1. To give advice to the Government of India upon such legal matters, which are referred to him by the president.
2. To perform such other duties of a legal character that are assigned to him by the president.
3. To discharge the functions conferred on him by the Constitution or any other law.

The president has assigned the following duties to the AG²:

1. To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
2. To represent the Government of India in any reference made by the president to the Supreme Court under Article 143 of the Constitution.
3. To appear (when required by the Government of India) in any high court in any case in which the Government of India is concerned.

RIGHTS AND LIMITATIONS

In the performance of his official duties, the Attorney General has the right of audience in all courts in the territory of India. Further, he has the right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting and any committee of the Parliament of which he may be named a member, but without a right to vote. He enjoys all the privileges and immunities that are available to a member of Parliament.

Following limitations are placed on the Attorney General in order to avoid any complication and conflict of duty:

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

However, the Attorney General is not a full-time counsel for the Government. He does not fall in the category of government servants. Further, he is not debarred from private legal practice.

Q5. In India, other than ensuring that public funds are used efficiently and for intended purpose, what is the importance of the office of the Comptroller and Auditor General (CAG)? **2012**

- 1.CAG exercises exchequer control on behalf of the Parliament when the President of India declares national emergency/financial emergency.
- 2.CAG reports on the execution of projects or programmes by the ministries are discussed by the Public Accounts Committee.
- 3.Information from CAG reports can be used by investigating agencies to press charges against those who have violated the law while managing public finances.
- 4.While dealing with the audit and accounting of government companies, CAG has certain judicial powers for prosecuting those who violate the law.

Which of the statements given above is/are correct?

- (a) 1, 3 and 4 only
- (b) 2 only
- (c) 2 and 3 only
- (d) 1, 2, 3 and 4

CAG

- He is the head of the Indian Audit and Accounts Department.
- He is appointed by the President of India by a warrant under his hand and seal.
- He holds office for a period of six years or upto the age of 65 years, whichever is earlier.
- He can resign any time from his office by addressing the resignation letter to the president.
- He can also be removed by the president on same grounds and in the same manner as a judge of the Supreme Court

INDEPENDENCE

The Constitution has made the following provisions to safeguard and ensure the independence of CAG:

1. He is provided with the security of tenure. He can be removed by the president only in accordance with the procedure mentioned in the Constitution. Thus, he does not hold his office till the pleasure of the president, though he is appointed by him.
2. He is not eligible for further office, either under the Government of India or of any state, after he ceases to hold his office.
3. His salary and other service conditions are determined by the Parliament. His salary is equal to that of a judge of the Supreme Court³.
4. Neither his salary nor his rights in respect of leave of absence, pension or age of retirement can be altered to his disadvantage after his appointment.
5. The conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the CAG are prescribed by the president after consultation with the CAG.
6. The administrative expenses of the office of the CAG, including all salaries, allowances and pensions of persons serving in that office are charged upon the Consolidated Fund of India. Thus, they are not subject to the vote of Parliament.

Q6. With reference to the Finance Commission of India, which of the following statements is correct? (2011)

- (a) It encourages the inflow of foreign capital for infrastructure development
- (b) It facilitates the proper distribution of finances among the Public Sector Undertakings
- (c) It ensures transparency in financial administration
- (d) None of the statements (a), (b) and (c) given above is correct in this context



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Article 280 of the Constitution of India provides for a Finance Commission as a quasi judicial body. It is constituted by the president of India every fifth year or at such earlier time as he considers necessary.

COMPOSITION

The Finance Commission consists of a chairman and four other members to be appointed by the president. They hold office for such period as specified by the president in his order. They are eligible for reappointment.


The Constitution authorises the Parliament to determine the qualifications of members of the commission and the manner in which they should be selected. Accordingly, the Parliament has specified the qualifications of the chairman and members of the commission¹. The chairman should be a person having experience in public affairs and the four other members should be selected from amongst the following:

1. A judge of high court or one qualified to be appointed as one.
2. A person who has specialised knowledge of finance and accounts of the government.
3. A person who has wide experience in financial matters and in administration.
4. A person who has special knowledge of economics.

FUNCTIONS

The Finance Commission is required to make recommendations to the president of India on the following matters:


1. The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states of the respective shares of such proceeds.
2. The principles that should govern the grants-in-aid to the states by the Centre (i.e., out of the consolidated fund of India).
3. The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the state finance commission².
4. Any other matter referred to it by the president in the interests of sound finance.



The commission submits its report to the president. He lays it before both the Houses of Parliament along with an explanatory memorandum as to the action taken on its recommendations.

ADVISORY ROLE

It must be clarified here that the recommendations made by the Finance Commission are only of advisory nature and hence, not binding on the government. It is up to the Union government to implement its recommendations on granting money to the states.



THANKS !



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