

Executive and Legislature

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PROCEDURAL INNOVATIONS IN PARLIAMENT

Calling Attention

Under this procedure, with the permission of the Presiding Officer, a member calls the attention of a Minister to a matter of urgent public importance and the Minister concerned makes a statement thereon. Copies of the statement are simultaneously distributed to the members in the Chamber. Thereafter, members are entitled to seek clarifications on the statement. This device thus gives opportunities to members to express

their views and the Government to state its case.

Short Duration Discussion

This device enables a member to raise a discussion on matters of urgent public importance. There is no motion before the House when such a discussion is permitted nor is there any voting at the end of the discussion. No question of any censure of the Government is involved in it. Discussion is concluded with the reply of the concerned Minister.

Department-related Standing Committees

Government of India. These Committees are entrusted with the following functions :

- (a) to consider the Demands for Grants of the related Ministries/ Departments and report thereon. The report shall not suggest anything of the nature of cut motions;
- (b) to examine Bills, pertaining to the related Ministries/Departments referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon;
- (c) to consider the annual reports of the Ministries/Departments and report thereon; and
- (d) to consider national basic long term policy documents presented to the Houses, if referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon.

These Standing Committees are not to consider matters of day-to-day administration of the related Ministries/Departments.

President Elections

1. Only elected members of legislative assemblies of states allowed not legislative councils.
2. Additionally, only elected members of legislative assemblies of UTs of Delhi and Pondicherry allowed.
3. Only elected members of the parliament (and not nominated) take part.
4. Value of vote of 1 MLA = (Population of state as per 1971 census) / (Total number of elected MLAs * 1000). UP has highest vote value per MLA and Sikkhim has lowest.

Resignation

1. He submits resignation to vice president.

Impeachment

1. An impeachment is a quasi-judicial process. Any house may float the charge (with $\geq 25\%$ of the members of the house signing it and giving 14 days notice) before the other house. The other house then may investigate itself or may cause it to be investigated.

Finally it has to pass it with $\geq 2/3$ rd majority of the total strength of the house.

Vacancy in the office of the president

1. If the normal 5 year term is drawing to a close, the elections to new president must happen before the end. Even if somehow the new president is delayed the old one continues until the new one swears in.

Disputes related to the election of president or VP

1. SC's jurisdiction on such disputes shall be exclusive and final. Apart from such disputes, other matters related to the election may be regulated by a law made by parliament.
2. No such dispute can arise on grounds of vacancy of electoral college.
3. Acts done until the disqualification shall not be nullified.

Administrative Powers

Appointments made by president

1. CAG, CEC & other ECs, judges of SC and HCs.
2. Attorney-general.
3. Finance commission & UPSC.
4. Water supplies commission.
5. A special officer for linguistic minorities.
6. Lower bureaucracy only on advice of UPSC. If he fails to accept advice of UPSC then he has to explain the reasons in the parliament. Similarly the removal also is regulated.

Removals made by president

1. Attorney-general.
2. Chairman or member of UPSC or SPSC (on report of SC).
3. CAG, judge of SC or HCs, CEC or ECs (on address of parliament).

SC/ST Powers

Appointments made

1. A special officer for SC/ST.
2. A commission to report on administration of scheduled areas.
3. A commission to investigate into the condition of backward classes.
4. After every 10 years, he has to appoint a ST commission in the states.

Laying reports before the parliament

1. Report of the special officer for SC/ST.
2. Report of the commission on backward classes.

SC/ST schedules

1. He may amend the schedules of notified SC/STs in union or any state. If the state list is amended, he has to consult the governor of the state.

Direct administration

1. He has special powers in scheduled areas of Assam.
2. He can declare / modify the list of scheduled areas (5th schedule)
3. He may establish a tribal council in ST areas or scheduled areas.
4. All regulations made by the governor of state for the scheduled areas have to be submitted to the president and failing his assent shall not have any effect.
5. He may ask the governor to submit a report on the administration of scheduled areas and instruct him on administrative manners.

Military Powers

1. Art 53: Though the president can declare war or make peace, such an action can be regulated by the parliament. All treaties have to be ratified by the parliament.
2. Expenditure on military forces and their training can't be done without approval of parliament.

Legislative Powers

Veto Powers

1. Absolute veto: PEPSU (Appropriation) Bill, 1956 and Indian Post Office (Amendment) Bill, 1986.

2. Suspensive veto: Office of Profit (Amendment) Bill, 2006.
3. Pocket veto: Indian Post Office (Amendment) Bill, 1986, Salaries, Allowances and Pensions of MP (Amendment) Bill, 1991.
4. If the bill is an ordinary or financial bill, all 4 options (assent, reject, reconsideration and pocket) are available.
5. If the bill is a money bill, he can only accept or reject.
6. If the bill is a CA bill, he can only accept.

Discretionary Powers

1. A caretaker government is not supposed to take important policy decisions. President decides what constitutes a policy decision.
2. He can decide not to dissolve the HoP on advise of a minority government.
3. He can refer back an advise from an individual minister for the collective consideration of the CoM.
4. He can also refer back an advise of the CoM once with or without suggestions.
5. He can seek information from PM on any state matter.
6. He can warn / send a message to the CoM and the parliament.
7. He can call the session of parliament if the CoM doesn't advise him to do so within 6 months. He can also dissolve the HoP at the end of its term if the CoM doesn't advise him to do so.

Nominated members of CoS

1. Art 80: He can nominate 12 members in CoS on basis of Isas (literature, science, arts, social service).

Ordinance making powers (Art 123)

1. He can make ordinances only on matters where parliament is capable of passing laws in its legislative capacity (and not constituent capacity).
2. This power has to be exercised only on advice of CoM only when at least 1 of the houses of the parliament is not in session. For an ordinance, the president must be satisfied that conditions exist for immediate action. The misuse of this provision is checked by two provisions - (a) While laying down the ordinance before the parliament, he also has to explain the reasons necessitating such action. (b) The intention can't be mala fide and is subject to judicial review (*Cooper case*). By 42nd CA Act, 1976 it was provided that president's satisfaction shall be final and non-judicable. But by 44th CA Act, 1978 this provision was struck down and observations from *Cooper case* hold.
3. An ordinance has to be laid before the parliament and will cease to have effect 6 weeks from the date of commencement (of the house commencing later) or struck down earlier by the parliament.

Laying reports before parliament

He causes the following reports to be laid before the parliament:

1. Annual budget.
2. CAG report.
3. Finance commission report together with explanation of action taken.
4. UPSC report together with explanation of non-compliance.
5. Report of special officer for SC/ST.
6. Report of the commission on backward classes.
7. Report on the special officer for linguistic minorities.

Previous sanction to bills before parliament

1. A bill for the alteration of existing states / new state formation.
2. A money bill or any bill seeking expenditure from CFI even if it is not a money bill (Art 117). Annual financial statement and demand for grants have to be recommended by him.
3. A bill affecting taxation in which states are interested or affecting principles for distribution of revenues among the states (Art 274).
4. State bills imposing restriction on the freedom of trade (Art 304).

President on UTs

1. Not only does he administer UTs through an Administrator but in case of Andamans, Lakshadweep and Dadar & Nagar Haveli he has ultimate law making powers as well (can even overrule parliament).

President on state bills

1. Even a money bill of a state can be reserved in which case the president may declare assent or withhold assent (Art 200). In case of other bills, he can additionally refer it back to the legislature for reconsideration (Art 201).
2. On matters where a state bill requires prior presidential assent he can instruct the governor to promulgate an ordinance.

Pardoning power

Kehar Singh case guidelines by SC on presidential pardons

1. The convict has no right to seek oral hearing before the president.
2. President has to act on advice of CoM. Such an act is open to limited judicial review only when it is arbitrary, discriminatory or completely irrelevant to the case.
3. No further guidelines for the exercise of the power need to be laid down.

Delays in presidential pardons

1. Pardon is no more an act of grace but a constitutional duty which needs to be discharged only if doing so furthers public welfare. In the days of English King it was considered an act of grace by the king. However US Supreme Court held that it is no more an act of grace but a duty on executive which if granted amounts to the determination public welfare was better served by pardoning than by not pardoning.

Supreme Court's Views on delays in presidential pardons

1. Earlier the SC held that a delay by the executive by more than 2 years amounts to violation of Article 21 and in that case the death sentence must be quashed.
2. In another case the court decided that deciding on mercy petitions was a constitutional duty of the executive which must be speedily discharged.
3. In 1989, a constitutional bench while confirming the constitutional duty bound obligation on the executive and overruling the 2 year limit held that it should be decided in a reasonable time. The court also held that delay in the execution can take place due to two reasons: delay in pronouncement of the sentence and delay in deciding on the mercy petition. While the former is ok since it is to ensure a fair trial to the accused, the latter causes more harm and cannot be justified.
4. In 2009 the SC once again reminded the government of its constitutional obligation.

Different types of pardons

1. Pardon: It rescinds both the sentence and the conviction. It means that the accused is innocent. It can be conditional or unconditional. It can be granted before, during or after the trial.
2. Commutation: It substitutes a punishment with another of a lighter character. Examples, death --> rigorous imprisonment --> simple imprisonment --> fine.
3. Remission: It reduces the amount of the sentence without reducing its character.
4. Respite: Awarding a lesser sentence than one prescribed in view of a special fact like ill health or pregnancy.
5. Reprieve: It means a stay on the execution of a sentence pending the mercy petition.

Presidential powers (Art 72) vs Governor's powers (Art 161)

1. On a court martial case, only president can pardon.
2. On an offense involving central law (or concurrent law) or executive power of center only president can pardon. On an offense against state law or executive power of state only governor can pardon.
3. President can pardon death cases. Governor can only commute a death case involving state laws only.

Death Sentence

1. It is given only in rare cases where the murder was committed in a brutal, diabolical and dastardly manner.

Emergency Powers

1. Art 352: Emergency can be declared in any part (or whole) of India on grounds of war, external aggression or armed rebellion (44th CA Act, 1978 changed 'internal disturbance' to 'armed rebellion').
2. Art 356: If the governance of the state can't be carried according to the provisions of the ©.
3. Art 360: Financial emergency applicable in any part (or whole) of India.

Vice-President

Elections

1. The elected members of state LAs have no participation.

Removal

1. A formal impeachment is not required for his removal. Only a resolution originated in CoS (accepted by a simple majority) and passed by HoP (passed by a simple majority) may remove him.

Council of Ministers

91st CA Act, 2003

1. Held that total number of ministers can't exceed 15% of total members in HoP.

Parliament

Composition of CoS

1. Representation of UTs: Art 80 says it may be done as prescribed by parliament which in turn prescribed that representatives of UTs may be elected by members of an electoral college of that UT by proportional representation with a single transferable vote.
2. Voting: Minimum number of votes required to elect a member: $(\text{Total number of elected MLAs} / (\text{Total number of seats} + 1)) + 1$.

Composition of HoP

1. ≤ 530 members from states + ≤ 20 members from UTs + ≤ 2 Anglo-Indian members.
2. There shall be no reservation for minority communities.
3. Members from UTs may be chosen as prescribed by parliament which prescribed a direct election.

Reasons of disqualification from voting

1. Non-residence, unsoundness of mind, crime, corrupt or illegal practice (as declared by court).

Reasons for disqualification from being MP

1. Office of profit. But parliament by law may specify which office of profit is exempted.
2. Unsound mind, undischarged insolvent, voluntarily acquired citizenship of another country.
3. On disputes over qualifications, president's decision in consultation with EC will be final. (Art 103)

Rules for Resolving Election Disputes

1. Representation of People Act, 1951 enjoins HCs to hold trials from day to day until their conclusion. It also declares that every petition should be tried as expeditiously as possible and efforts should be made to conclude the trial within 6 months.

Vacancy

1. If a member remains absent from all meetings of the house for ≥ 60 days without permission, then he is expelled.

Speaker

1. He submits his resignation to the deputy speaker and vice versa.
2. He can be removed by a resolution of HoP passed by effective majority. He can vote except in case of equality of votes. Such a resolution has to give 14 days notice.
3. The speaker has the final powers to interpret the rules of procedure of the house. His conduct in maintaining procedure of the house is not subject to jurisdiction of any court of law.

Privileges of the parliament

1. They were to be same as those enjoyed by House of Commons in £ @ the commencement of the © until parliament itself makes a law in this matter.
2. If there is any conflict between privileges of the parliament and FRs of a citizen, privileges of the parliament shall prevail.
3. A person can be reprimanded for saying / publishing anything derogatory to the dignity of a member in his capacity as member of the house as such an act impedes him from discharging his duties as a member.
4. An MP can't be arrested in a civil case within +/- 40 day window of a parliamentary session or a committee meeting to which he is a part of. It doesn't extend to criminal cases, contempt of court and preventive detention. He also can't be forced to give judicial service without the permission of the speaker / chairman.

Legislative proceduresOrdinary Bills

1. Introduction: A bill other than a money bill or financial bill may be introduced in any house (Art 107). A private member's bill has to give notice of his intention to introduce the bill and ask for the leave of the house. If the bill has been published in the official gazette before the introduction no leave of the house is needed. Otherwise after the introduction it may be published in the gazette.
2. After introduction: After the introduction a discussion may take place where only the principles and the general provisions of the bill may be discussed. Amendments and clause by clause discussion doesn't take place @ this stage. Following this the sponsor member may propose a motion that - (a) The bill be taken up for consideration. (b) The bill be referred to a select committee of the house. (c) The bill be referred to a joint parliamentary committee. (d) The bill be circulated for eliciting public opinion.
3. Select committee report: The committee considers the provisions of the bill in detail (but not the principles and the general provisions for they have already been debated in the house). Finally it submits a report in the house. Then a motion that the bill as returned by the committee be taken up for consideration is forwarded. If the motion is accepted, clause by clause discussion on the bill and further amendments take place.
4. Passage in the originating house: After the amendments, debates are over, the sponsor member may move a motion that the bill be put to vote. This is analogous to 3rd reading in House of Commons. If the bill is passed it goes to the other house for same

procedure.

5. Passage in the other house: If the other house rejects the bill or doesn't take any action for 6 months (from the reception of the bill) then the president may call for a joint sitting. (Art 108)

Money Bills (Art 110)

A bill is a money bill if it deals with provisions only among the following:

1. Taxes.
 2. Government borrowing.
 3. Custody of CFI or contingency fund of India.
 4. Appropriation of money out of CFI.
 5. Declaration of or amendment to any expenditure to be charged on CFI.
 6. Receipt of money in CFI or public account of India.
1. A bill shall not be a money bill only because it imposes fines, fees etc. or changes the tax structure of local bodies.
 2. A money bill needs presidential assent to be introduced and can be introduced only in HoP.

Budget Process

1. Annual financial statement: It is laid before both houses of parliament on the recommendation of the president. It shows separately - (a) the sums required by the © to be charged directly to CFI, and (b) sums required to meet other expenditure of the government from the CFI. When the budget is presented only a general discussion on the policies and principles may take place in both houses of the parliament. No motion or voting is allowed at this stage.
2. Items which are required by © to be directly charged upon CFI shall not be put to vote but can be discussed by any house. After this stage, role of CoS is over.
3. Demand for grants: Items which are required to meet other expenditure are grouped together in the form of demands of grants, receive presidential recommendation, submitted to the HoP and then put to debate and vote. Vote on account is a grant in advance for the estimated departmental expenditure for the year before complete complete sanction has been given to that expenditure.
4. Appropriation bill: No money can be withdrawn from CFI except by appropriation acts. Once demand for grants have been accepted by the vote of HoP, an appropriation bill is drafted consisting of all demand of grants and the money to be charged directly on CFI. This bill has to be passed or rejected by the HoP and no amendment varying any amount can be made.
5. Annual finance bill: The taxation proposals of the budget are put together in the form of an annual finance bill and put to vote.
6. Cut Motion: A disapproval of policy cut motion may be moved on demand for grants that the amount of demand be reduced to Re 1/- representing disapproval of the policy underlying the demand. An economy cut motion may be moved to reduce the amount of demand by a specified amount. A token cut motion is that the amount of the demand be reduced by Rs. 100/- in order to raise a certain grievance.

Expenditure Charged on CFI

1. Allowances to president, speaker, deputy speaker, deputy chairman of CoS, judges of HC and SC, CAG.
2. Debt charges of GoI debt.
3. Any sums required to satisfy any judgement of any court of India.

Financial Bills (Art 117)

1. Financial bills - first class: They involve one of the above 6 issues but are not confined solely to them. It has to receive presidential assent and can be introduced only in HoP. But CoS has the same power to amend it like any ordinary bill except that the amendment to the part involving taxation matters requires presidential recommendation. A joint sitting may resolve the deadlock.
2. Financial bills - second class: It is an ordinary bill which contains provisions of spending from CFI. It can be introduced in any house and is treated as an ordinary bill except that before it is taken up for consideration by either house it has to receive presidential recommendation. A joint sitting may resolve the deadlock.

Joint Sitzings (Art 108)

1. If the bill had been rejected by the other house or no action taken for 6 months, then the bill appearing before the joint sitting will be the original bill + other amendments as made necessary by the delay.
2. If the bill had been amended by the other house and some of such amendments not accepted by the first house then the bill presented before the joint sitting will be the amendments where both houses disagree + other amendments as made necessary by the delay.

Adjournment, prorogation and dissolution

1. While prorogation and dissolution are done by president, adjournment is done by the speaker.
2. When HoP is dissolved, bills which pending in CoS but not yet passed in HoP shall remain unharmed. Also joint sitting shall remain unaffected by the dissolution.

3. Prorogation doesn't affect bills pending (Art 107) and only affects notices, resolutions, motions etc.
4. Dissolution doesn't affect bills introduced in CoS and pending before CoS, bills passed by both HoP and CoS and waiting for presidential assent, bills for joint meeting.

Adjournment Motion and Point of Order

1. Adjournment Motion and Point of Order are extraordinary devices because they seek to interrupt the normal business of the House.
2. The former carries an element of censure against the CoM so it cannot be introduced in the CoS and is introduced only in the Lok Sabha. Point of Order is used in both the Houses and is usually raised by the members of the Opposition.

Censure Motion vs No-Confidence Motion

1. While a censure motion needs to state the reason for its adoption, in case of No-confidence motion there is no need to state the reason for its adoption.
2. A censure motion can be moved against a minister or a group of minister or entire council of ministers while No-confidence motion can be moved against entire council of ministers only.
3. If censure motion is passed in Lok Sabha, the council of minister need not resign from the office. While if No-confidence motion is passed, the council of ministers must resign from office

Other Financial Legislative Processes

- *Vote on Account* – for making any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the parliamentary procedure;
- *Vote of Credit* – for making a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement; and
- *Exceptional Grant* – for making provision for an exceptional grant that does not form part of the current service of any financial year.

Parliamentary Committees

Committee on Estimates

1. It is constituted annually by HoP and examines the annual financial statement. It reports to the house any efficiencies, reforms, alternative policies etc. which can be followed. It carries its examination throughout the year and submits its report to the speaker.

Committee on Public Accounts

1. It has 15 members from HoP and 7 from CoS and is constituted annually. It examines the CAG report and submits its report to the speaker.

Committee on Public Undertakings (COPU)

1. The Committee is empowered to examine the reports and accounts of the public undertakings; examine the reports of the CAG on the public undertakings; examine in context of government policy whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices; and exercise such other functions as allotted to it by the Speaker.
2. However, the Committee is excluded from examining the following:
 1. Matters of major Government policy as distinct from business of the public undertakings.
 2. Matters of day-to-day administration.
 3. Matters for the consideration of which another authority is established by law.
3. The membership of the Committee is limited to 22, with 15 members from the Lok Sabha and 7 from the Rajya Sabha. The Committee has an annual term.

Departmentally Related Standing Committees

1. They were formed to facilitate proper examination of different demands for grants leading to more meaningful discussions in Parliament.
2. Each of such Committees consist of not more than 31 members, 21 from Lok Sabha and 10 from Rajya Sabha. The term of office of these Committees is one year.
3. These Standing Committees have the following functions:
 1. To consider the Demands for Grants of the concerned Ministries/Departments and make a report on the same to the Houses. However the report shall not suggest anything of the nature of cut motions.
 2. To examine such Bills pertaining to the concerned Ministries/Departments as are referred to the Committee by the Chairman, Rajya Sabha or the Speaker and make report thereon.
 3. To consider annual reports of Ministries/Departments and make reports thereon.

4. To consider policy documents presented to the Houses, if referred to the Committee by the Chairman, Rajya Sabha or the Speaker and make reports thereon.
4. However, these Committees shall not consider the matters of day to day administration of the concerned Ministries/Departments.
5. The general procedure relating to Demands for Grants to be followed by these Standing Committees is as follows:
 1. After the general discussion on the Budget in the two Houses is over, the Houses shall be adjourned for a fixed period.
 2. The Committees shall consider the Demands for Grants of the concerned Ministries during the aforesaid period.
 3. The Committees shall make their report within the period and shall not ask for more time.
 4. The Demands for Grants shall be considered by the House in the light of the reports of the Committees.
 5. There shall be a separate report on the Demands for Grants of each Ministry.

Public Funds

1. Consolidated Fund of India: All revenues received by Gol (less money from taxes assigned to the states), all loans raised by Gol, all money received from repayment of loans goes in CFI.
2. Public Account of India: All other public money received by or on behalf of Gol goes in PAI. e.g. court fines.
3. Contingency Fund of India: It is at disposal of the executive to meet unforeseen expenditure. Expenditure made from this account has to be ratified by the parliament later.

Emergency Provisions

Proclamation, continuation, discontinuation

1. President and cabinet provisions: (a) Art 352 emergency can be proclaimed even before the actual occurrence of any such disturbance. (b) It has to be conveyed in writing by the cabinet to the president.
2. Parliamentary provisions: (a) It has to be laid down in the parliament and has to be approved within one month of the proclamation by both the houses with a special majority. If the HoP is dissolved when the proclamation was issued then the proclamation may survive for one month after the reconstitution of the house provided it has been approved by the CoS within one month of the issue of proclamation. After the approval it will get a fresh lease of 6 months. (b) It can be continued only by a resolution passed by special majority in each of the houses after the expiry of 6 months. (c) It can be discontinued by a resolution passed by a simple majority in HoP. For the purpose of convening such a special sitting of HoP, $\leq 10\%$ of members of the house may give a notice to the speaker (when the house is in sitting) or the president (when the house is not in sitting). Such a sitting shall be convened within 14 days.
3. Judiciary provisions: Proclamation of emergency is subject to judicial review on ground of mala fides.

Fundamental Rights

1. As soon as emergency under Art 352 is proclaimed on any grounds, the right to move to the courts for enforcement of any right under Art 19 is suspended. (Art 359)
2. If the emergency under Art 352 is on grounds of war or external aggression only (and not internal armed rebellion), the freedoms under Art 19 shall be suspended or cease to exist. (Art 358)
3. So as soon as emergency is proclaimed (under external aggression or war) the state shall be freed from limitations imposed by Art 19. So citizens will have no protection against violation of Art 19 either during the emergency or after the emergency for excesses committed during emergency under external aggression or war. But if the emergency is under internal armed rebellion then after it is revoked citizens can move to the courts for cases of violation during the emergency. It reinstates as soon as emergency is revoked.
4. Art 358 comes into operation automatically to suspend Art 19 under external aggression or war. But Art 359 has to be explicitly invoked in the presidential order.
5. Art 358 also relates to suspension of other FRs (except Art 20 and 21) under war or external aggression. But the list of other FRs to be suspended should be present in the presidential order.
6. Art 20 and 21 can't be suspended under any case. And any person can move to a court at any time for enforcement of Art 20 and 21.
7. Neither Art 358 or 359 shall have any effect if the law used against the citizens to punish them doesn't refer to such provisions which are effective under the times of emergency.

Financial Provisions

1. Art 352 emergency: A presidential order may direct that for a period not extending beyond the financial year in which the current proclamation ceases to operate, all or any provisions regarding the distribution of taxes and the grants may be suspended. Any such order is subject to approval by the parliament. (Art 354)
2. Art 360 emergency: Union can direct the state to observe canons of financial austerity, reduce salaries and reserve for presidential consideration all money and financial bills.

Term of HoP

1. The normal term of HoP may be extended during an emergency (under Art 352) by an act passed by parliament itself. Such an extension can't be made for > 1 year at a time and in any case can't continue beyond 6 months from the day emergency ends. (Art 83)

State Administration

1. State legislatures or governments will not be suspended and retain all their powers. But the union parliament and executive gain concurrent power over all matters in the state list as well.
2. Any such law made by the parliament in its temporary acquired concurrent jurisdiction shall cease to have effect from 6 months after the revocation of the emergency.

Art 356*Proclamation*

1. Such a proclamation shall be for 2 months. It has to be approved by both houses of the parliament with simple majority within the 2 months. If the HoP is dissolved the proclamation has to be approved by HoP within 30 days of its reconstitution. In the meantime it has to be approved by the CoS.
2. The duration of the proclamation can be extended to maximum of 6 months at a time by passing resolutions in both houses of the parliament.
3. Maximum extension can be 3 years. But if the extension has to be > 1 year, then the election commission has to certify that it is not possible to conduct free and fair elections and emergency under Art 352 is under operation for any part of the state.
4. It is subject to judicial review.

State Administration

1. Parliament may delegate the legislative authority of the state to president or any other body or may even keep it to itself.
2. President can promulgate ordinances and authorize expenditure from the consolidated fund of state when the parliament is not in operation. Such ordinances and authorizations have to be ratified by the parliament later.

SR Bommai Case

1. The Proclamation under Article 356(1) is not immune from judicial review. The Supreme Court or the High Court can strike down the Proclamation if it is found to be mala fide or based on wholly irrelevant or extraneous grounds.
2. The power conferred by Article 356 upon the President is a conditioned power. It is not an absolute power. The existence of material - which may comprise of or include the report(s) of the Governor - is a pre-condition. The satisfaction must be formed on relevant material.
3. Though Art 74(2) prevents the CoM advise to the president from being challenged in court, there is no bar on the court scrutinizing the material based on which the president formed his satisfaction. Article 74(2) merely bars an enquiry into the question whether any, and if so, what advice was tendered by the Ministers to the President. It does not bar the Court from calling upon the Union Council of Ministers (Union of India) to disclose to the Court the material upon which the President had formed the requisite satisfaction. The material on the basis of which advice was tendered does not become part of the advice. Even if the material is looked into by or shown to the President, it does not partake the character of advice. The entire burden of proof that the material was relevant and there was no mala fide intention would be on CoM.
4. In such a situation, the Government has to go. There is no room for holding that the President can take over some of the functions and powers of the State Government while keeping the State Government in office. There cannot be two Governments in one sphere.
5. As far as possible, union must issue a warning to the erring state and give it sufficient time to recover.
6. Since the proclamation has to be approved by the parliament within 2 months, until such a ratification the legass shall not be dissolved.
7. Failure to provide good governance and failure of law and order amounts to breakdown of administrative machinery and not © machinery and hence is not a valid ground for invoking Art 356.

Justified Use of Art 356

1. State Government creating disunity or disaffection among the people to disintegrate the democratic social fabric.
2. Where a State Government fails to comply with the directions issued by the Union even after warnings.
3. Where the State Government fails to meet an extraordinary situation, e.g. an outbreak of unprecedented violence, great natural calamity, etc., which failure would amount to an abdication of its governmental power.
4. Danger to national integration or security of the State.

Improper Use of Article 356

1. A situation of maladministration. This power is not meant to be exercised for the purpose of securing good government.
2. Where in a situation of 'internal disturbance', not amounting to or verging on abdication of its governmental powers by the State Government, all possible measures to contain the situation by the Union in the discharge of its duty, under Article 355, have not been exhausted.
3. The President gives no prior warning or opportunity to the State Government to correct itself. Such a warning can be dispensed with only in cases of extreme urgency.

Art 352 vs Art 356

1. State legislature and executive: Continue under Art 352 but suspended under Art 356.
2. Delegation of legislative powers by the parliament: Under Art 352, parliament can't delegate the legislative power to any other body, but in Art 356 it can delegate such powers to president or any other body.
3. Maximum limit: 3 years under Art 356 but nothing under Art 352.

Governor

Executive Powers

1. He appoints SPSC members. But he can't remove them and their removal is only by the president on the report of SC on a reference made by the president.
2. He can't appoint judges of HC but has to be consulted by the president.
3. He can nominate 1 member of Anglo-Indian community.
4. He can nominate 1/6 members of LegCo for Isacs (literature, science, art, cooperatives, social service).
5. If a dispute arises over the qualification of any member for state legislature, his decision will be final and has to be based on the opinion of election commission.

Legislative Powers

1. Money bills, demands for grants, annual financial statement have to receive his sanction to be laid down in state legislature.

Veto Powers

1. He can't return a money bill for reconsideration of the assembly. But he can reserve a money bill for the consideration of the president. The president has to either agree or reject the bill (can't send it back for reconsideration).
2. In case of other bills, he can send it back to the assembly for reconsideration with a message. Or he may reserve it for presidential consideration and the president in addition to agreeing or rejecting may also refer it back to the legass for reconsideration. The president may also refer the bill for SC's advice.

Ordinance Powers

1. In a concurrent list, the governor's ordinance shall prevail if it has been made on president's instructions.
2. A president's instruction for promulgating an ordinance is needed when - (a) such a matter would have needed presidential assent after being passed by state legislature. (b) such a matter would have needed presidential sanction to be introduced as a bill in the state legislature. e.g. imposing restrictions on inter-state commerce under Art 304. (c) such a matter would have been reserved by the governor in his discretion for presidential consideration.

Discretionary Powers of the Governor

1. Article 163 reads: "163. Council of Ministers to Aid and Advise Governor.- (1) There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. (2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. (3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court."

Judicial Powers of the Governor

1. Under Article 192 of the Constitution the power to determine whether any member of the legislative assembly has become subject to any of the disqualifications has been conferred on the Governor and his decision is final.
2. The Governor, in consultation with the High Court, is also given the power to frame rules in relation to the recruitment of the subordinate judiciary as well appointing the members of the subordinate judiciary.

Special Powers (Art 371)

1. Governors of Maharashtra and Gujarat have to pay special attention to development of Vidharbha and Saurashtra.
2. Governor of Nagaland has special responsibility for law and order in the state.
3. Governor of Manipur has special responsibility to ensure proper functioning of committee of the legass comprising of members from the hill areas of the state.
4. Governor of Sikkhim has special responsibility for social and economic advancement of people of the state.

State Legislature

Abolition / Creation of LegCo (Art 168, 169)

1. The state legass has to pass such a resolution with a special majority. Then the parliament has to ratify the resolution by a simple majority. Such an act will not be deemed to be a CA Act.

Composition of LegCo

1. 1/3 members elected by legass from non MLAs.
2. 1/3 members elected by local self governing bodies.
3. 1/12 members elected by graduates of 3 years standing residing in the state.
4. 1/12 members elected by teachers of 3 years standing residing in the state.
5. 1/6 members nominated by the governor based on Isacs (literature, science, art, cooperatives, social service).
6. It is a permanent body and 1/3 of members retire after every 2 years.

LegAss

1. Strength: Strength of legass ≤ 500 and ≥ 60 . Only Mizoram and Goa may have 40 member legass.
2. Duration: In case of emergency, its term may be extended. Such an extension can be for up to 1 year at a time and ≤ 6 months after the lapse of proclamation of emergency.
3. Qualifications: A person has to be a voter in the state to be qualified.

Legislative Procedures

Money Bills

1. Same as parliament.

Other Bills

1. Legco may hold a bill for a maximum period of 3 months from the date of receipt in the first round. It may also move amendments to a bill passed by Legass. The amended bill goes back to legass. If the legass rejects the amendments and passes the bill for a second time then in whatever form it is passed, comes back to legco. Legco may hold it for a maximum period of 1 month. So total holding period is 4 months and legco has mere advisory powers. There is no provision of joint sitting.
2. If the bill originated in LegCo is rejected by the LegAss, that is the end of it. If LegAss moves amendments such amendments shall prevail.

Privileges - State legislatures vs parliament

1. While parliament by law may create additional privileges, legass can't create additional privileges for itself.
2. While courts have no jurisdiction over privileges of parliament, in states, courts can determine whether the legislature had such privileges or not. But once it holds that it has such a privilege, it can't interfere.
3. In case of breach of FRs by state legislature privilege, FRs will hold unlike the parliament case.

Jammu & Kashmir

Articles of © applying to J&K

1. Art 1: J&K is a part of the territory of India.
2. Art 370: It was to be of a temporary measure until the people of J&K ratify the accession. It says that the applicability of other articles of © would be determined by president in consultation with the state government. Art 370 can be terminated / amended by a presidential notification only on the recommendation of the state legislature.

Constitutional Order of 1950

1. Art 370 had said that the parliament would be competent to make laws on matters which had been agreed to in the instrument of accession until ratified by the constituent assembly of the state. This order specified defence, foreign affairs and communications as those subjects.

Delhi Agreement, 1952 / Constitutional Order of 1954

1. It extended the parliamentary competence over J&K to all matters in union list as against only the 3 specified in the CO, 1950. Such an understanding was reached in Delhi in 1952 and was ratified by constituent assembly of J&K in 1954 following which the CO, 1954 was notified.

J&K's special position vis a vis other states

1. Own state ©: It says the territory of state comprises of PoK also and this is immune from amendment. The state © can be amended by 2/3rd of total strength of each house. Territory, relationship with India (extent of executive and legislative power of centre as applicable to state, Indian © as applicable to state) cannot be amended. But an amendment seeking to impact the powers of governor or EC will have to be reserved for presidential consideration who shall not be bound.
2. Presidential orders: Any CA Act will be applicable to J&K only on presidential order.
3. State legislature: Legass consists of 100 members - 24 seats vacant for PoK. LegCo consists of 36 members. 11 out of 36 come from Jammu, 9 from Kashmir, 1 from Kargil, 1 from Ladakh and are elected by Legass. Remaining 14 are elected by different electorates.
4. Concurrent list: Only few matters in concurrent list lie with the parliament, rest with the state.
5. Residuary powers: They lie with the state.
6. Preventive detention: Only state can make a law on preventive detention.

7. Alteration of boundary, names: No such law can be made by the parliament without the consent of the state legislature.
8. International treaties: Parliamentary law enforcing such treaties shall not be applicable to the state.
9. Art 365: Union can't suspend the © of the state or government for failing to comply with the directives given under Art 365.
10. Art 356: It shall be applicable only if the breakdown has occurred as per state © and not union ©.
11. Governor's rule: Governor's rule can be proclaimed under the state ©.
12. Financial emergency: Can't be declared on the state.
13. FR & DPSP: DPSP are not applicable. Art 19 has some restrictions. Right to property is still enjoyed by the permanent residents of the state.

Points of similarities

1. Governor is appointed by the president in the usual way.
2. Judges of HC and SPSC are appointed in the usual way.
3. Art 249: It extends the jurisdiction of parliament on state list as well (on a resolution of CoS) for 1 year. This is applicable to J&K as well in national interest.
4. President's rule: It can be imposed upon the state.
5. Jurisdictions of SC, CAG, EC extend to J&K.

UTs

Delhi

1. The Delhi government has powers on all matters in state list except public order, police and land.

Parliament vs President

1. Parliament has exclusive legislative power over all matters (including state list) over a UT. But in A&N, Lakshadweep, D&D, D&N Haveli, Pondicherry the president's legislative powers override parliament.
2. But president's power to make regulations for such UTs shall remain suspended while the legislature of these UTs is in operation and has not been dissolved / suspended.

Panchayats (Part IX - Art 243)

Composition

1. Block level panchayat is only in states with population > 2 mm.
2. Reservations for SCs and STs will be in proportion of their population. > 50% reservation ok. ≥ 33% seats be reserved for women.
3. A state can make provisions by enacting state laws for similar reservations for the offices of chairpersons of gram panchayat and above levels. Reservations for other backward classes can be made at any level by state laws enacted by states.
4. All members who are qualified to be chosen for state legislature qualify for panchayats apart from age where 21 years old is ok for panchayat (25 years for MLA). Any dispute over qualification will be handled by an authority prescribed in state laws.

Powers

1. Their powers are as determined by states by enacting laws. 11th schedule (has 29 items) is merely recommendatory in nature.
2. A state may by law empower panchayats to levy taxes. It may also assign some taxes / give grants.

Additional PRI related bodies

1. State finance commission / Panchayat finance commission: Every 5 years a state finance commission will be appointed which reviews financial position of the panchayats and makes recommendations for - (a) distribution of taxes levied by states between state and panchayats. (b) state taxes to be assigned to panchayats. (c) grants to the panchayats from the consolidated fund of state. (d) allocation of resources among various panchayats at all levels. The commission's report together with action taken shall be laid down before the legislature.
2. Central Finance Commission: He will receive the recommendations of state finance commissions. Based on these recommendations, he will recommend the measures needed to augment the consolidated fund of a state to supplement the resources of PRIs in the state.
3. State election commissioner: He is appointed by the governor. He can be removed only like a judge of HC. He shall be bound by the state laws related to elections to PRIs. No court can interfere in matters of delimitation of constituencies, allotments of reserved seats etc.

Municipalities (Part IX - Art 243)

Scope

1. Industrial townships, SEZs, NIMZ etc. or other factors criteria by the governor are excluded.

Composition

1. Apart from direct election, states can by law provide for representation of people having special knowledge of municipal administration, MPs, MLAs, chairman of planning committee in the municipal committees.
2. A municipality having a population of > 3 lacs will have wards committees as well. Delimitation of such wards and composition of such committees shall be as provided by state laws.
3. Reservation pattern, qualifications, dispute resolutions similar to panchayats.

Dissolution

1. It can be dissolved only according to law and before dissolution a reasonable opportunity of being heard must be given to the municipality. No law can be amended to force a dissolution of a municipality.

Powers

1. As mandated in state laws. It can be planning, implementation of schemes, 12th schedule (recommendatory in nature and has 18 items).

Planning Committees (Part IX - Art 243)

1. In every state 2 committees shall be constituted - (a) District planning committee @ district level and (b) Metropolitan planning committee @ metropolitan area level.

Composition

1. In DPC, ≥ 80% of members will be elected by elected members of district level panchayat and elected members of municipal committees from amongst themselves. Their proportion would be in accordance to rural:urban population.
2. In MPC, ≥ 67% of members will be elected by elected members of municipalities and chairpersons of panchayats in the metropolitan area from amongst themselves. Their proportion will be in accordance to municipality:panchayat population.
3. Their chairman will be chosen in a manner as specified by state laws.

Powers

1. Their functions would be as provided by state laws + preparing and forwarding the district plan to the state government.

Schedules of ©

1. Schedule 1: Deals with names, boundaries of states.
2. Schedule 2: Deals with salaries, allowances and pensions of various © dignitaries.
3. Schedule 3: Deals with oaths of certain © dignitaries.
4. Schedule 4: Deals with distribution of CoS seats among different states.
5. Schedule 5: Deals with scheduled areas.
6. Schedule 6: Deals with tribal areas.
7. Schedule 7: Deals with the 3 lists.
8. Schedule 8: Deals with the languages of the country.
9. Schedule 9: Deals with the immune laws.
10. Schedule 11: Deals with powers to panchayats.
11. Schedule 12: Deals with powers to municipalities.

RPA

All doubts and disputes relating to the elections to the office of President and Vice-President are dealt with by the Supreme Court (Article 71), whereas the initial jurisdiction to deal with all doubts and disputes relating to the elections to Parliament and State Legislatures vests in the High Court of the State concerned, with a right of appeal to the Supreme Court (Article 329). The disputed matters relating to elections to municipalities, etc. are decided by the lower courts in accordance with the laws made by the respective State Governments.

Conduct of elections to Parliament and State Legislatures are governed by the provisions of two Acts, namely, Representation of the People Act 1950 and Representation of the People Act 1951.

1. Representation of the **People Act 1950** deals mainly with the matters relating to the preparation and revision of electoral rolls.
 1. The provisions of this Act have been supplemented by detailed rules, Registration of Electors Rules 1960, made by the

- Central Government, in consultation with the Election Commission, under Section 28 of that Act and these rules deal with all the aspects of preparation of electoral rolls, their periodic revision and updating, inclusion of eligible names, exclusion of ineligible names, correction of particulars, etc.
2. These rules also provide for the issue of electoral identity cards to registered electors bearing their photographs at the State cost.
 3. These rules also empower the Election Commission to prepare the photo electoral rolls containing photographs of electors, in addition to their other particulars.
2. All matters relating to the actual conduct of elections are governed by the provisions of the Representation of the People Act 1951 which have been supplemented by the Conduct of Elections Rules 1961 framed by the Central Government, in consultation with the Election Commission, under Section 169 of that Act.
1. This Act and the rules make detailed provisions for all stages of the conduct of elections like the issue of writ notification calling the election, filing of nominations, scrutiny of nominations, withdrawal of candidatures, taking of poll, counting of votes and constitution of the Houses on the basis of the results so declared.
 2. The superintendence, directions and control of elections vested by the Constitution in the Election Commission empowers the Commission even to make special orders and directions to deal with the situations for which the laws enacted by the Parliament make no provision or insufficient provision.
 3. The classic example of filling such vacuum area is the promulgation of the Election Symbols (Reservation and Allotment) Order 1968 which governs the matters relating to recognition of political parties at the National and State level, reservation of election symbols for them, resolution of disputes between splinter groups of such recognised parties, and allotment of symbols to all candidates at elections, etc.
 4. Another such vacuum area where the Election Commission exercises its inherent powers under Article 324 of the Constitution is the **enforcement of the Model Code of Conduct** for guidance of political parties and candidates.
 5. The Model Code is a unique document evolved by the political parties themselves to govern their conduct during elections so as to ensure that a level playing field for all political parties is maintained during elections and, in particular, to curb the misuse of official power and official machinery by the ruling party(ies) to further the electoral prospects of their candidates.
 6. All post election matters to resolve **doubts and disputes** arising out of or in connection with the elections are also dealt with in accordance with the provisions of the Representation of the People Act 1951.
 7. Under this Act, all such doubts and disputes can be raised before the High Court of the State concerned, but only after the election is over and not when the election process is still on.
3. The above mentioned Representation of the People Acts 1950 and 1951 and the Registration of Electors Rules 1960 and Conduct of Elections Rules 1961 form complete code on all matters relating to elections to both Houses of Parliament and State Legislatures. Any person aggrieved by any of the decisions of the Election Commission or the authorities functioning under it has to find a remedy in accordance with the provisions of these Acts and Rules.

These Acts and Rules enable the Election Commission to issue directions and instructions to deal with various aspects of the preparation/revision of electoral rolls and the conduct of elections and lead all such matters of detail to be dealt with by the Commission. Pursuant thereto, the Commission has issued a plethora of directions and instructions which have been consolidated by the Commission in various compendia and the handbooks for the Electoral Registration Officers, Returning Officers, Presiding Officers, candidates, polling agents and counting agents.

Fundamental Rights, Fundamental Duties & DPSP

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Basic Facts about ©

Types of Majority

1. Absolute majority: This means > 50% of total strength of the house (without subtracting vacancies).
2. Functional majority: This is the simple majority. Censure motions, resolutions passed by HoP for discontinuation of a national emergency need simple majority.
3. Effective majority: This means > 50% of (total strength of the house - vacancies). This is needed in the removal of speaker, deputy speaker, vice-chairman etc.

Special majority

1. 2/3 members present and voting (no minima requirement). Art 249: CoS can pass a resolution authorizing the parliament to legislate on a state subject for ≤ 1 year. Art 312: CoS can pass a resolution authorizing the parliament to create a new all India service.
2. 2/3 members present and voting + absolute majority. Art 368, removal of a judge of SC / HC / CAG / CEC, approval for continuing national emergency (in both houses), Art 169: in state assembly seeking to create / abolish vidhan parishad.
3. 2/3 of total strength of the house. Impeachment of president.

© Amendment*Consent of 50% of states needed*

1. On a matter of distribution of executive or legislative powers between center and states.
2. On a matter involving SC and HC.
3. On a matter involving any list in 7th schedule.
4. Representation of states in parliament.
5. Election of president.
6. Art 368 itself.

Is any part of © unamendable?

1. Until *Golak Nath* case, SC held that no part was unamendable. The word 'law' in Art 13 referred to ordinary laws made by parliament in its legislative capacity and not © amendment acts made under its constituent capacity.
2. In *Golak Nath* case, SC held that © amending power was a legislative power conferred upon the parliament by Art 245. So a CA act is also a law under Art 13. This means that FRs can't be amended by parliament as they have been given a transcendental position under the ©.
3. After *Golak Nath* the parliament sought to supersede it via 24th CA Act, 1971 by putting in Art 368 that a CA act under Art 368 will not be a 'law' wrt Art 13.
4. Validity of 24th CA Act was challenged in *Kesavananda* case where it was held valid. But the doctrine of basic features was propounded.

42nd CA Act, 1976

1. Judicial review of ordinary laws: For the first time a distinction was made between union laws and state laws for challenging their validity on grounds of unconstitutionality. It was provided that a HC can't pass judgement on a central law and SC can't pass judgement on a state law unless a central law had also been questioned in the same proceedings.
2. Judicial review of CA acts: It was provided that a CA act will be completely immune from judicial review whether on substantive or procedural grounds. The procedural provision was absurd.
3. It introduced fundamental duties.
4. It devalued FRs by expanding the scope of Art 31C to include any law to implement any of the directive.

Other © Rights

1. Art 300A: Right to property.
2. Art 301: Right to interstate trade and commerce.
3. Art 326: Right to adult franchise.

Who are citizens?

Citizenship Act, 1955 lays down following types of citizenship:

1. By birth: If one is born in India and ≥ 1 parent is Indian.
2. By descent: If either of one's parents had Indian citizenship @ time of birth. The birth has to be registered in embassy of India. Descent citizenship is as of right.
3. By registration: (a) PIO: (1 + 8/7). (b) Persons married to Indian citizens: (1 + 8/7). (c) Minor children of Indian parents who became Indian citizens after the birth. (d) OCI: Of ≥ 5 year standing with 1 year residence in India.
4. By naturalization: One can apply for citizenship if (1 + 12).
5. By incorporation of a territory: If India acquires some new territory then those people will be given a choice.

Overseas Citizens of India*Who can become*

1. PIOs except those living in Pakistan and Bangladesh can apply.

Benefits

1. Can travel to India without visa, will get a travel document similar to passport.
2. Educational institutions benefits.
3. Property and investment in India will get domestic treatment.

Limitations

1. Can't hold a © office / vote / contest any election.
2. Doesn't get equality in treatment under Art 16 for public offices.

Status of FRsStatus vis a vis US

1. Restrictions: Indian © itself puts the restrictions on the fundamental rights. In India the power to restrict fundamental rights has been expressly conferred upon the legislature by the ©, judiciary has only a judicial review. US rights were absolute and it was only later that judiciary evolved the power of restraining them.
2. Amendments: Indian legislature has time and again amended the fundamental rights. Earlier SC held the view that no part of the ©, including the FRs and Art 368 itself are unamendable. But in the *Golakhnath* case, it held that fundamental rights can't be amended since they have been given a transcendental position in the © and the term "law" in Art 13 includes © amendment acts. Then by 25th CA Act, 1971 parliament amended FRs. It held that no law in schedule 9 shall be subject to judicial review if it seeks to implement a directive principle. In the *Keshavananda* case, SC held that FRs can be amended but the amendment is subject to judicial review on grounds of violating basic features of the ©. Since judicial review was a basic feature of the ©, the parts of 25th CA Act which gave blanket immunity from judicial review were struck down (thus Art 31A and 31C survived while 31B had to go). In 42nd CA Act, 1976 Parliament amended Art 368 to say that any CA act can't be challenged in a court and parliament's power to amend © is unlimited. In the *Minerva Mills* case, the court struck down these provisions. In 1978, Janta government removed right to property altogether.
3. Fundamental duties: They are to be read together with FRs and in any case of violation of FRs, SC may refuse to correct it if the aggrieved person shows a blatant violation of FDs.
4. Exhaustive list: FRs in part 3 of © are exhaustive in nature. Same can't be said of US Bill of Rights.

Suspension of FRs during proclamation of emergency

1. As soon as emergency is proclaimed the state shall be freed from limitations imposed by Art 19. So citizens will have no protection against violation of Art 19 either during the emergency or after the emergency for excesses committed during emergency. It reinstates as soon as emergency is revoked.
2. For other FRs (except Art 20 and 21), a presidential order is needed to suspend them.
3. Art 20 and 21 can't be suspended under any case.

Nature of FRs

1. Right against untouchability (Art 17), Right against exploitation (Art 23), Right to move freely throughout India (Art 19(1)(d)) are also available against private individuals.

Judicial Review

Principles of JR

1. If there are more than one conflicting interpretations of the law, one of which is in consonance with ©, court will give effect to that reading.
2. JR is applicable only after the law comes into force and is ordinarily not suo moto.

Evolution of JR

1. By 25th CA Act, 1971 parliament amended Art 31B to include that no law in schedule 9 shall be subject to judicial review if it seeks to implement a directive principle. Since judicial review was a basic feature of the ©, the parts of 25th CA Act which gave blanket immunity from judicial review were struck down (thus Art 31A and 31C survived while 31B had to go).
2. In 42nd CA Act, 1976 Parliament amended Art 368 to say that any CA act can't be challenged in a court and parliament's power to amend © is unlimited. In the *Minerva Mills* case, the court struck down these provisions.

Fundamental Rights

Art 14: Equality before law and equal protection of law

Equality before law (exceptions)

1. President / governor in discharging their constitutional duties.
2. President / governor can't see criminal case while they are in office.
3. President / governor have to be given 2 month notice before launching a civil case which seeks compensation from them.

Equal protection of laws

1. People in equal circumstances be treated equally and unequal circumstances be treated unequally.
2. The classification for this has to stand the test of reasonableness which includes stuff like proportionate, scientific and rational classification (i.e. people in the group satisfy the property and not in the group don't satisfy), directly linked to the objective.

Art 15: No discrimination

15 (1) State shall not discriminate on basis of rrsb (race, religion, sex, color, place of birth).

15 (2) No private discrimination as well on basis of rrsb.

15(3) State can make special provisions for women and children.

15(4) State can make special provisions for socially & educationally backward classes.

15(5) Reservations in educational institutions including private whether aided or unaided (except minority unaided).

1. It is available only to the citizens and not to non-citizens.
2. All reservations to women are justified on the basis of Art 15(3).

3. Art 15(4) was the 1st CA Act, 1951.
4. Art 15(5) was the 93rd CA Act, 2005.

Art 16: No discrimination on basis of rrsceb in public employment

- 16(1) Equality of opportunity in public employment.
 16(2) No discrimination on basis of rrsceb or any of these.
 16(3) Residence is a valid ground of discrimination in certain categories of public employment.
 16(4) Reservation in favor of backward classes.
 16(4)(a) Reservation in promotions ok.
 16(4)(b) Carry forward rule valid even if it violates 50% principle.

1. It is available only to the citizens and not to non-citizens.
2. State vacancies can't be filled in arbitrary manner. One implication is that contract workers can't be regularized.
3. Art 16(4)(b) came by 81 CA Act, 2000.

Exceptions

1. Offices connected to religious institution may be filled by person of that religion only.
2. Initially courts held that efficiency of administration can't be compromised in favor of reservations. But 82nd CA Act, 2000 empowered the state to lower the cutoff marks or relax the standards of evaluation.

Indira Sawhney Case (Mandal Commission Case) Art 16(4)

1. Court gave the doctrines of 50% limit, creamy layer, validity of caste as a measure of backwardness (social and educational), adequate representation, administrative efficiency. Reservation on economic basis is un©.
2. Court also held that reservation can be made only @ entry level and can't be made in promotions. This feature was struck down by 77th CA Act, 1995 and Art 16(4)(a) was introduced legalizing reservations in promotions.
3. Court also held that such a reservation will be subject to judicial review.

Art 17: Abolition of untouchability

1. To enforce this Untouchability Offenses Act, 1955 was passed. Later it was changed to SC/ST Atrocities (Prevention) Act, 1989. (stupid act)

Art 18 Abolition of titles

18(2) Indian citizens can accept awards, but not titles from any other state.

1. State can give academic and military titles. (Bharat Ratna given for excellence in arts - art, literature, public service, science)
2. The ban works only against the state, not private institutions.

Art 19: The six freedoms

1(a) Freedom of speech and expression

1. Subject to sovereignty and territorial integrity of India, public order, defamation, contempt of court, morality or decency, security of state, friendly relations with foreign states, incitement to an offense.

1(b) Freedom of assembling peacefully and without arms

1. Subject to sovereignty and territorial integrity of India, public order.

1(c) Freedom of forming associations and unions

1. Subject to sovereignty and territorial integrity of India, public order.

1(d) Freedom to move freely throughout the territory of India

1. Subject to public interest and rights of STs.

1(e) Freedom to reside and settle in any part of the country

1. Subject to public interest and rights of STs.

1(g) Freedom to practice any profession / occupation.

1. Subject to public interest, public sector, fulfillment of technical qualifications.

Such limitations decided by the state should be 'reasonable' and it is here in defining reasonable that judicial review comes into picture. There can be no general definition of reasonableness, it has to be determined on a case by case basis. The reasonability test is not restricted to legislation alone but also applies to the procedure of implementing the legislation.

Art 20: It prohibits retrospective criminal legislation, double jeopardy, compulsion to give self-incriminating evidence*Limitations*

1. Such evidence should be in nature of communication and can't include medical tests, search etc. But narco-analysis, brain mapping and polygraph tests conducted against the consent of the subject are un© and void because of violation of Art 20(3) and Art 21 (right to privacy).
2. The immunity doesn't give relief from any proceedings other than criminal proceedings.
3. A formal accusation must be made before a person can claim such immunity.

Art 21: No person shall be deprived of his life or liberty except according to the procedure established by law*Evolution*

1. Until the 1978 *Maneka* case, court held that this article gives immunity only from the arbitrary action of the executive. But if a legislature passes a law as per the procedure and competence then however unjust a court can't interfere. Indian constitution by using the words 'procedure established by law' had given preference to £ system over the \$ system of 'due process' of law.
2. In the 1971 *Gopalan* case, the minority of the court held a different view that a law could be challenged before the court on grounds of being unfair, unjust or unreasonable. In the *Maneka* case, this view became the majority. Now the test of reasonableness is imported to determine the validity of a law depriving a person of his life or liberty.
3. Since then the court has read many other rights within this right including RTE (*Mohini Jain vs State of Karnataka Case, 1992*).

Euthanasia - Aruna Shanbugh Case

1. Passive euthanasia may be allowed on a case by case basis notwithstanding Sec 309 of IPC (suicide) provided it is permitted by a HC and consent is given by the relatives / caregivers and a team of expert doctors.
2. Active euthanasia will continue to be a criminal act.

Sting Operation Guidelines

1. It can be conducted only for a public purpose and there is no other means by which the truth can be brought in the public domain.
2. The senior editorial board of the channel / newspaper must take responsibility and should be the one to authorize it.
3. The sting operation should not damage the privacy of the individual.

Art 22: No person shall be detained without being informed of the grounds of such arrest. No person shall be denied the right to consult and be defended by a lawyer of his choice. Every person detained shall be produced before a magistrate within 24 hours of the arrest.*Preventive Detention*

(a) Safeguards

1. A person can be detained under preventive detention only for up to 3 months. After that his case has to be produced before an Advisory Board which shall decide if the detention is justified.
2. The person has to be informed of the grounds of his detention as soon as may be, by the detaining authority except when it is against public interest.
3. The person must have earliest opportunity to make his case against detention.

(b) Position of preventive detention in ©

1. Preventive detention was a concept prevailing earlier. Our © merely continued it but at the same time introduced © safeguards upon it.
2. The provisions regarding preventive detention in © are not self executory in nature but a law has to be made to give effect to them.
3. Union's power over preventive detention is limited to matters concerning national defence, foreign affairs or security. In all other matters the power is held by states. So it would be difficult for any union government to impose its will on states.

Art 23: Ban on human trafficking and begar

1. But it doesn't ban state from imposing compulsory service for public purposes and in imposing such services the state shall not discriminate on bases of rcc (race, religion, class, caste).

Art 24: No child ≤ 14 years shall be employed in factory / mine / any other hazardous employment*Child Labor (Prohibition & Regulation) Act, 1986*

1. It declared 14 industries as hazardous like mining, chemical, slate, firecrackers, matchstick. In other industries, child employment was regulated by work of hours, minimum wages, responsibility of the employer towards health and education of children etc.

Child Labor (Prohibition & Regulation) (Amendment) Act, 2009

1. Unorganized sector was brought under the hazardous industries like domestic help, hotels etc.

Art 25: Freedom of conscience and freedom to profess, practice and propagate a religion

Limitations

1. Public order, morality and health. Example, infanticide can't be justified.
2. Regulations made by state on any secular activity which may be associated with a religious practice.
3. Untouchability.

Art 26: Every religious group can establish and manage its own institutions including religious institutions and charitable trusts

1. They can own and acquire any property and administer it according to law. Such institutions can be managed by the groups in religious matters subject to public order, morality and health.

Art 27: State shall not use public funds for the promotion and maintenance of a particular religion

1. State is prohibited from patronizing any one religion. But it can patronize all the religions without any discrimination.

Art 28: Religious education in schools

1. No religious education can be given in schools maintained entirely by government aid.
2. Religious education can be given in schools receiving partial or no aid (but recognized schools) from government but it can't be forced upon all students.
3. Schools established under religious endowment or by a charitable trust can impart religious education and also make it mandatory even if they are aided by state.

Art 29: Any group having a distinct culture, language or script has a right to conserve it

Art 30: Minority communities shall have a right to establish and administer institutions of its own choice and the state in the matters of grants shall not discriminate against such institutes purely on this basis

1. An institution retains its minority character so long as it - (a) enables such minority to conserve its culture. (b) gives a good education to the children of its minority.
2. Benefits of minority status are: (a) Right to property is a FR for them. (b) Reservation policies of the government can't extend to MEIs. (c) It can reserve up to 50% seats for students of its own community.

Art 31: Right to property

Evolution

1. Initially right to property was a FR subject only to - (a) reasonable restrictions to serve emergencies of public welfare. (b) reasonable restrictions to serve welfare of STs. No person could be deprived of his property except according to law and such an acquisition could be made only - (a) for public purpose and (b) paying compensation.
2. The court held the word 'compensation' to mean full compensation which necessitated 4th CA Act, 1955 which clearly specified that the adequacy of such compensation shall not be challengeable before court. But court continued to maintain an adverse position.
3. By 25th CA Act, 1971 the word 'compensation' was replaced by the word 'amount'. But in Keshavananda case the court again held that such an amount can't be illusory and must be determined by a principle which is relevant to the acquisition.
4. By successive amendments changes were introduced in Art 31 A-D to exclude the obligation of paying compensation. (a) Art 31A was amended to state that a law made for land acquisition or temporary takeover shall be valid even if it abridges Art 14 and 19. (b) Art 31B provides for blanket immunity to enactments placed in Schedule 9. (c) Art 31C provides for immunity for any laws made to implement DPSP in Art 39B & 39C even if they contravene Art 14 and 19. When SC in the Keshavananda case gave the doctrine of basic features and judicial review as one among them, 42 CA Act, 1976 sought to give a blanket immunity to all laws passed to implement any DPSP. But in *Minerva Mills* case, SC struck it down. (d) Art 31D has been repealed by 43rd CA Act, 1977.
5. 44th CA Act, 1978 took out the right to property altogether from Part 3 of © and placed it under Art 300A.

Exceptions

1. If the property belongs to a minority educational institution.
2. If the property is personally cultivated and doesn't exceed the statutory ceiling.

In both cases above, full compensation shall be paid.

Art 32 Constitutional remedies

1. SC can't refuse relief under Art 32 once the infringement of a FR has been established on the grounds that the other disputed facts of the case have to be investigated.
2. Mandamus is against administrative and judicial both while prohibition and certiorari are against judicial only (except if natural

justice is violated as a result of administrative action).

3. Prohibition is @ an earlier stage while certiorari is used to quash an order.

Habeas Corpus

1. Locus standi is not applicable.
2. If all the material facts related to the accused' arrest are made available to the court, his physical presence is not needed.

Prohibition & Certiorari

1. Locus standi is applicable.

Quo Warranto & Mandamus

1. Locus standi is not applicable.

Directive Principles of State Policy

Important CA Acts

1. 42nd CA Act, 1976: (a) To bring about equal justice to all, state shall provide free legal aid to the poor. (b) To bring about economic justice, state shall strive to increase worker participation in the management.
2. 44th CA Act, 1978: To bring socialism, it introduced Art 38 in DPSP saying the state shall strive to minimize ≠ in income, status, opportunities and to ensure wages for different categories of work become equality.
3. 86th CA Act, 2002: State shall strive to provide free and compulsory education for all between 6 to 14 years of age.

DPSP vs FR

1. DPSP are also rights just like FRs are rights. No distinction can be made between the two. DPSP were made non-justiciable solely because their implementation depends on the capability of the State. Merely because the Directive Principles are non-justiciable by the judicial process does not mean that they are of subordinate importance.
2. FRs are no doubt important for political democracy, but there can be no real democracy without social and economic justice.
3. Current position is DPSP and FRs have to be read harmoniously by the court instead of giving any general preference to DPSP.
4. Until the re Kerala Educational Bill, 1958 case, SC held that DPSP are inferior to FRs and no law implementing DPSP but violating FR shall be constitutional. But in this case it gave the doctrine of harmonious reading i.e. FR and DPSP complement each other and there is no inherent conflict between them. So as far as possible a harmonious reading of both should be carried out and if 2 interpretations of a law are possible where one is harmonious and other conflicting, the harmonious one should be given effect. But if eventually there is a conflict, FR shall prevail.
5. Then came the 25th CA Act, 1971 which introduced Art 31C saying - (a) if there is any law enacted to give effect to DPSP Art 39 (b) and (c) and in the process violates Art 14, 19 and 31, then it shall be valid. (b) Any law declaring that it is to give effect to Art 39 (b) & (c) can't be questioned in a court.
6. SC in the Keshavananda case upheld the first part but struck down the second.
7. Then came 42nd CA Act 1976 which amended Art 31C to say that if state gives effect to any DPSP by enacting a law and such a law violated Art 14, 19 or 31 then it shall be valid. In Minerva Mills case, this was struck down as it disturbed the balance between Part 3 and 4 of the © which was a basic feature.

Directives contained in other parts of ©

1. Art 350A says state should make arrangement for providing instruction in mother tongue to linguistic minorities @ primary stage.
2. Art 351 enjoins the union to spread the use of Hindi.
3. Art 335 says claims of SC STs shall be taken into consideration consistently with maintenance of efficiency.

Art 355 and 365

1. Art 355 says "It shall be duty of union to ensure that state governments are carried out in accordance with provisions of this ©". DPSP are a part of the ©. Art 37 says "it is duty of government to apply these principles in making laws".
2. This means central government can coerce the state governments to pass laws implementing the DPSP.

Judiciary

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Supreme Court Composition

1. Its sanctioned strength is CJI + 30 other judges. Currently there is CJI + 25 judges.

2. Temporary appointments: CJI after getting consent of president may appoint a retired SC judge as a temporary judge. A judge of HC may be appointed as an ad hoc judge for a temporary period on lack of quorum of permanent judges.
3. Qualifications: He should be a distinguished jurist or a judge in HC for ≥ 5 years or an advocate in HC for ≥ 10 years. His retirement age is 65 years.
4. Impeachment: Needs special majority in each house. Grounds can be 'proven misbehavior' or 'incapacity'. The motion must be moved by ≥ 100 members of HoP or ≥ 50 members of CoS. Then it is investigated by a committee of 3 appointed by the presiding officer of the house (1 CJ of HC and 1 distinguished jurist and 1 SC judge as its head). If the committee finds the judge guilty then the motion together with committee's report is taken up by the house. So far only Justice Ramaswamy (1993) and Soumitra Sen (2011) have seen impeachment proceedings.

Appointment of Judges

1. The CJI is the sole authority to initiate the process of the appointment of judges to SC. President appoints the judge on advice of CJI. CJI's opinion represents the collective opinion of the judiciary.
2. CJI forms a collegium of CJI + 4 other senior most judges of SC (+ successor to CJI if not already in the 4). The views of each member of the collegium are obtained in writing and presented to president.
3. Views of senior most judge of the SC hailing from the HC where the person recommended comes from (if not already a member of the collegium) also have to be obtained in the writing and presented to president.
4. The substance of the views of any other persons consulted by CJI should also be presented to president in writing.
5. CJI has got a veto power but if 2 or more judges of the collegium disagree CJI's recommendation shall not be binding.
6. If the government rejects the recommendation, it must place all material and facts before the collegium. The collegium considers all the facts and if it unanimously reiterates the recommendation it has to be accepted. Such facts may be presented to the person recommended and his defence be heard.
7. Merit is given predominance followed by seniority and representation of HC in the SC.

Criticism of Collegium System

1. It lacks transparency and is arbitrary.
2. The judges are often busy and are not able to give full time in selecting candidates.
3. The collegium is an ad hoc body and functions like one.

Judicial Standards and Accountability Bill, 2010

1. It seeks to provide comprehensive enquiry into allegations of corruption against higher judiciary. Currently there is no such system except for a resolution passed by the SC and HC.
2. Declaration of assets: Makes it mandatory within 30 days of assuming office and thereafter annually. Failure to do so shall construe a misbehavior.
3. National judicial oversight committee (NJOC): All public complaints can be filed against it. It has a former CJI appointed by the president (who is the head) + 1 sitting judge of SC (nominated by CJI) + 1 sitting CJ of HC (nominated by CJI) + Attorney General + an eminent citizen (nominated by president). CJI can nominate even if the complaint is against him!
4. Scrutiny panel: After preliminary investigations, the NJOC forwards the complaint to a scrutiny panel (again comprising of judges of SC if the complaint is against a SC judge or HC if the complaint is against a HC judge). It will have powers of a civil court and after investigation will submit its report to NJOC.
5. Investigating committee: NJOC after receiving report of scrutiny panel will submit it to investigating committee where once again the matter will be investigated. It will submit its report back to NJOC.
6. Finally NJOC will pass a verdict. Only if the matter is serious the NJOC will ask the judge to resign.

Original Jurisdiction

1. Art 131: Original and exclusive jurisdiction over federal disputes except - (a) Matters referred to the finance commission. (Art 280) (b) Interstate water disputes already referred to a statutory tribunal (Art 262). According to this provision only the National Water Tribunal is envisaged.
2. Disputes over elections to president and VP.

Writ Jurisdiction

1. It is original jurisdiction but not exclusive.

Appellate Jurisdiction

1. Interpretation of ©: In a civil case or a criminal case when a HC certifies that the case involves interpretation of the ©.
2. Civil cases: When a HC certifies that a substantial question of law is involved which should be decided by the SC.
3. Criminal cases: An appeal lies as of right (a) When the HC has reversed an acquittal by a lower court and sentenced to death. (b) When the HC has withdrawn for trial before itself any case from a subordinate court and sentenced to death. Additionally an appeal may lie in the SC if the HC certifies that the matter involves a substantial question of law or matter of great public importance or essential principles of justice.
4. Suo moto: SC can hear appeals from ay court / tribunal in the land suo moto except military tribunals (Art 136). But this is an extraordinary case only.

Advisory Jurisdiction (Art 143)

1. SC's advices are not binding on government but its observations made in such cases are still binding on the lower judiciary.
2. Disputes regarding pre-© treaties can't come to SC as a part of its normal jurisdiction. They can be referred to by the government in its advisory jurisdiction.

Division benches vs © benches

1. Any case involving interpretation of © shall be heard by a full © bench comprising of ≥ 5 judges.
2. Other cases can be decided by a division bench of 2 judges.

Court of Record

1. Only SC and HC (and not a subordinate court) are courts of record. It means its judicial records are admissible as evidence in all courts of the country (also enjoyed by subordinate courts) and it has power to punish for contempt of itself (not enjoyed by subordinate courts). Contempt of court is meant to protect the justice but not the judges. But its use has become debatable due to inconsistencies in its applications, intolerance of judiciary against public criticism and because it is against the principles of natural justice.
2. Civil contempt vs criminal contempt: Civil contempt is willful disobedience of any order / direction of the court. Criminal contempt is an act which lowers the authority of the court or tends to interfere with its procedure and delivery of justice.

High CourtsComposition

1. Retirement age is 62 years.
2. Qualification: (a) ≥ 10 years of judicial office, or (b) ≥ 10 years of advocate in HC.

Appointment of Judges

1. The CJI and CJ of HC concerned share the authority for the initiation of the process of appointment / transfer of HC judge. The views of collegium take precedence.
2. The collegium constitutes CJI + 2 senior most SC judges hailing from HC in question. CJI has a veto. The collegium takes into account the opinion of the CJ of the HC concerned (which would be entitled to greatest weight), views of other judges of HC and SC (who are conversant with the affairs of the HC) as deemed necessary + views of SC judges who had served in the HC concerned.
3. If the president doesn't accept the recommendations he has to give back reasons. If collegium reiterates such a recommendation has to be accepted.

Transfer of Judges

1. The collegium consists of CJI + 4 senior most puisne judges of SC. They must obtain views of CJ of the 2 HCs concerned and SC judges who are in a position to provide material information in the matter. Rest all same.
2. If CJ of HC is to be transferred, then views of CJs need not be taken.

Original Jurisdiction

1. Criminal cases: CrPC took away all original criminal jurisdiction of HCs.
2. Civil cases: Original jurisdiction remains only in cases of high value.

Appellate Jurisdiction

Civil Cases

1. First appeal: Appeal from district judge or subordinate judge (in cases of high value).
2. Second appeal: Lies only on questions of law and procedure and not on fact.

Criminal Cases

1. An appeal from sessions judge / judicial magistrate / metropolitan magistrate where the sentence is > 7 years or certain specific matters.

Suo Moto (Art 227)

1. For any tribunal / court lying within its territory (except military tribunals), HC can take suo moto leave.

Lower Judiciary

1. Panchayat courts are the lowest courts having both civil as well as criminal jurisdictions (only for petty cases in some states). Their nomenclature in different states is Nyaya Panchayat, Panchayat Adalat, Gram Kutchery.

2. Above them are Munsif courts and above them are subordinate judges (who have unlimited jurisdiction over civil suits irrespective of amount involved and hear first appeals from Munsifs).
3. Highest court in district is district judge (in both civil and criminal matters and has unlimited original jurisdiction). In civil matters he hears appeals from subordinate judges and munsifs.
4. Criminal cases are tried directly by judicial magistrates (or metropolitan magistrates in metropolitan areas) since the enactment of CrPC (except in J&K and Nagaland).

Special Tribunals

Relations with HC and SC

1. Art 227 empowers HC to take suo moto action against all tribunals (except military tribunals) in its own territory.
 2. Art 136 empowers SC to take suo moto action against all tribunals (except military tribunals).
 3. Art 32 and Art 226 empower SC and HC to issue writ petitions against any tribunal (except military tribunals).
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Federal Structure

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Legislative Powers

Territorial Extent

1. Parliament possesses extra-territorial jurisdiction i.e. its laws govern Indians even outside the territory of India. State legislatures on the other hand have power only within the territory of the state.

Limitations

1. A&N, Lakshadweep, Dadar and Nagar Haveli: Presidential orders have precedence over parliamentary acts.
2. Scheduled areas: Acts of parliament may be nullified / modified in their application to scheduled areas on the notification of the governor.
3. Tribal areas: In matters not involving the jurisdiction of tribal councils, the president may notify that an act of parliament has no effect / effective with modifications.

Concurrent List

1. In case of a clash, state law prevails if it receives presidential assent. However if the parliament subsequently legislate, parliamentary law shall prevail. (Art 254)

Expansion of Parliament's Legislative Powers

1. In national interest (Art 249): If a resolution is passed by CoS by 2/3rd of members present and voting then for 1 year from the date of such resolution. A law such made shall cease to have effect after 6 months from the expiry of the 1 year period from such resolution. Such a resolution can be renewed for 1 year at a time.
2. Emergency: Parliament can make a law on any subject. But such a law, if made on state list, shall cease to have effect after 6 months from revocation of emergency.
3. Agreement between states: If the legislatures of two or more states resolve that parliament should legislate on any subject for them, its ok.
4. To implement international treaties (Art 253)

Other ways of central control over state legislature

1. Art 31(A): If a state legislature takes away private property in violation of Art 14 and Art 19, it has to receive presidential consent.
2. Art 31(B): If a state law has to come in 9th schedule, it must be accepted by the parliament because placing anything in a schedule amounts to © amendment and only parliament has the power to do so.
3. Art 31(C): Acts implementing DPSP but violating Art 14 and Art 19 have to get presidential assent.
4. Art 288: State legislature can tax electricity generated, transmitted and sold by an authority established under the © but has to get presidential assent.

Dispute Resolution Mechanism

1. If a law made by an entity deals substantially with the matter in its own domain and only incidentally encroaches upon the domain of other then such a law shall not be held invalid.

Executive Powers

Distribution

1. In matters of state list: State has executive power.
2. In matters of union list: Union has executive power.
3. In matters of any treaty: Union has executive power.
4. In matters of concurrent list: The executive power ordinarily lies with the states except when - (a) Parliament by law specifically vests such power in the union. (b) © itself vests such powers in the union.
5. Consent (Art 258): (a) Art 258(1): With consent of state government the president may without any legislative sanction entrust any executive function of the union to the state. (b) Art 258 (2): Irrespective of the consent of the state concerned, the parliament may delegate an executive function of the union to the state. (c) Art 258(A): With the consent of the union, the governor may entrust the executive function of the state to the union.

Power of Union to give directions to States

1. Art 256: In normal times, union can direct the state to ensure compliance with union laws.
2. Art 257: In normal times, union can give directions to ensure executive power of the state doesn't interfere with the executive power of the union. Also for proper functioning of railways, military, communications etc.
3. Art 262: Parliament can setup a tribunal to resolve interstate water disputes. But the terms of reference of such a tribunal and the question of final authority on accepting or rejecting its award are all decided by center.
4. Art 339: In normal times, union can give directions to states for drawing and executing schemes of ST welfare.
5. Art 350: In normal times, union can give directions to states for ensuring delivery of education in mother tongue @ primary stage for linguistic minorities.
6. Art 351: In normal times, union can give directions to ensure development of Hindi language.
7. Art 355: In normal times, union can give directions to ensure governance of the state is carried on in accordance with the provisions of ©.
8. Art 365: If the state fails to comply with any directions given by the union in the exercise of its executive powers then the president may hold it to be a breach of © provisions and impose Art 356.

Financial Powers

Tax Distribution

1. Only union: Customs, corporate tax, capital gains tax, wealth tax, surcharge and cesses.
2. Only states: Land revenue, income tax on agriculture, tax on mineral rights, land tax, tolls, sales tax, profession tax (ceiling of Rs. 2,500), stamp duties except on documents in union list.
3. Levied by union but collected and kept by states: Stamp duties on bills of exchange, excise duties on medicinal and toilet preparations containing alcohol.
4. Levied and collected by union but assigned to states where they were collected: Tax on stock exchanges, succession tax, terminal tax @ railway stations and ports, freight tax, tax on sales of newspapers, tax on inter state trade.

Finance Commission

Composition

1. It has a chairman (having experience in public affairs) + a HC judge (or one qualified to be so) + a person having knowledge of finance and accounts of government + a person with experience in financial and administrative matters + an economist.

Functions

1. To recommend distribution of taxes between centre and states.
2. To recommend principles which govern grants in aids.
3. To recommend measures to augment consolidated fund of states for supplementing the resources of PRIs.
4. To recommend on any other matter as asked by president.

Emergency Provisions

1. Art 352 emergency: A presidential order may direct that for a period not extending beyond the financial year in which the current proclamation ceases to operate, all or any provisions regarding the distribution of taxes and the grants may be suspended. (Art 354)
2. Art 360 emergency: Union can direct the state to observe canons of financial austerity, reduce salaries and reserve for presidential consideration all money and financial bills.

Borrowing Powers of States

1. They can't borrow outside India.
2. Their borrowing power may be limited by state legislature.
3. If any union loan or guarantee is outstanding then the state can't borrow without union consent. (Art 293)

Mutual Immunity from Taxation

1. Union property: Except as per law made by parliament, union property shall be immune from any state tax.
2. State property: All state properties are immune from property taxes levied by union (not customs or excise duties). Except as

per law made by parliament, state income from any commercial activity shall be immune from union income tax. Parliament may by law exempt any income of state from any tax.

Cooperative Federalism

Concept

1. It recognizes that distribution of power between center and states is not an end in itself but just a means of public welfare. So both must behave harmoniously instead of conflict.

National Integration Council

1. It is an extra-© body created to deal with welfare measures for the minorities. It comprises of union ministers, CMs, representatives from political parties, labor, women, media representatives as well.

Zonal Councils

1. They are extra-© but statutory bodies (introduced along with Sate Reorganization Act, 1956). It consists of CMs and 2 other ministers from the states and the administrators of UTs in the zone. Union home minister is the common chairman of all zonal councils.

Judicial appointments

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Judicial appointments

- As long as the process of judicial appointments remains opaque, selection of judges on considerations other than merit will continue
- Too many vacancies in the High courts in India
 - As of June 2013, there were 276 vacancies out of a total sanctioned strength of 904 permanent and additional judges in all the High Courts of India. With almost a third of the vacancies to be filled,
- Canvassing for other criteria rather than meritocracy
 - most States are witnessing major canvassing on caste, community, political and other considerations for appointment as judges.
 - As allegations and counter-allegations over the appointment of favourites fly thick and fast, the debate over the process of judicial appointments is once again heating up.

Collegium experiment (Who appoints, How appointed, and also from whom they should be appointed)

1. The government proposes to come up with a Bill for the appointment of judges to the higher judiciary replacing the current collegium system.
 1. The political executive is of the view that the collegium system hasn't worked well; hence a **Judicial Appointment Commission**, in which the executive will have a say in the appointment of judges, is necessary to achieve the objective of appointing the best people as judges in a transparent fashion.
 2. There is growing evidence that the current system of judicial appointments has resulted in incompetent, inefficient, ethically compromised individuals being appointed as judges.
 3. Protests over judicial appointments have been seen in Punjab and Haryana High Court, Madras High court over judicial appointments
2. **Another issue**----->>>>>>> Today the greatest concern is the secrecy shrouding the appointments
 1. The **real issue is not who appoints judges but how they are appointed**. Irrespective of whether it is the executive, the judiciary or a Judicial Commission that appoints judges, as long as the process is opaque and appointments are made on personal considerations, we will have variations of the same problem of favouritism, nepotism and appointments on criteria other than merit and capability.
3. Another issue- While "who" should appoint judges can be debated endlessly, the need is to broaden the debate on the appointment of judges by focusing on other relevant issues **like having jurists as judges of the Supreme Court**. There has never been much debate on this issue.
 1. Article 124 (3) of the Constitution, broadly, provides for three categories of persons who are "eligible" to be appointed to the Supreme Court — a High Court judge with five years experience; an advocate in the High Court with 10 years experience; a "distinguished jurist."
 2. A "distinguished jurist" refers to academic lawyers or law professors: people who have challenged and expanded the existing frontiers of legal knowledge through cutting edge research and teaching.
 3. This requires a certain ability to theorise and conceptualise. Law professors are academically trained to theorise and

conceptualise. Industrious law professors improve upon this training, through years of painstaking research and teaching in their specialised domains, often employing empirical and interdisciplinary tools. These well developed and nuanced theorising and conceptualising abilities have the potential of raising the bar of legal reasoning up by several notches.

4. Regrettably, 63 long years after the Constitution was adopted, both the judiciary and the executive have consistently ignored this clear constitutional mandate. In the history of the Indian Republic, never ever has a "distinguished jurist," i.e. a law professor, been appointed as a judge of the Supreme Court, although India has produced some outstanding law professors worthy of the "distinguished jurist" tag. In last 63 years, all appointments to the Court have been made from the first "eligible" category i.e. High Court judges, barring four instances, where practising lawyers (the second category) were directly appointed as Supreme Court judges

Reforms

- The crucial need, therefore, is to evolve objective criteria to assess a candidate and make appointments on the basis of assessments against such stated criteria.
- We may usefully refer to the system adopted by the Judicial Appointments Commission in the United Kingdom to assess candidates.

Other reforms

1. Only some cases can be put for repeal in higher courts
2. Time allotted for oral argument (30 minutes in USA)
3. Conduct legal audit- why cases took so long
4. Repeal archaic laws

UK

The JAC assesses candidates against five merit criteria:

- 1. Intellectual capacity: Nominated candidates ought to demonstrate (a) a high level of expertise in chosen areas or profession with the (b) ability to quickly absorb and analyse information. They should have (c) appropriate knowledge of the law and its underlying principles or the ability to acquire this knowledge where necessary.
- 2. Personal qualities: ranging from (a) integrity and independence of mind, (b) sound judgment, (c) decisiveness, (d) objectivity, (e) ability and willingness to learn and develop professionally and (f) ability to work constructively with others.
- 3. An ability to understand and deal fairly: This includes (a) the ability to treat everyone with respect and sensitivity whatever their background and (b) willingness to listen with patience and courtesy.
- 4. Authority and communication skills: The nominated person is expected to have (a) the ability to explain the procedure and any decisions reached clearly and succinctly to all those involved with the further (b) ability to inspire respect and confidence and (c) maintain authority when challenged.
- 5. Efficiency: The ability to work at speed and under pressure and the ability to organise time effectively and produce clear reasoned judgments expeditiously.

US

- The 'public' senate hearings for appointments of judges to superior courts in the U.S. are another example of transparency. We may not find the U.S. system implementable as it is; but nothing prevents us from incorporating the key principles of transparency, accountability and citizen participation underlying the U.S. system for selection of judges.
-