INDIAN POLITY

- With case precedents

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1/1B, HAZRA ROAD, KOLKATA-700026
CALL @ 033-24756644 / +919903582403
IMPULSECS.COM

HISTORICAL BACKGROUND

Various features of the Indian Constitution & Polity have their roots in the British rule. There are certain events in the British rule that laid down the legal frame work for the organisation & functioning of govt. and administration in British India. These events have greatly influenced our constitution & polity . They are explained here in a chronological order :

THE COMPANY RULE (1773 – 1858)

➘ Regulating Act of 1773

1) Governor of Bengal designated as → Gov.-Gnrl. Of Bengal (created an executive council →(4) to assist him).
2) Governor's of Bombay & Madras presidencies subordinate to Gov. – Gnrl. of Bengal (*previously all 3 were independent*).
3) Establishment of Supreme Court of India at Calcutta (1774)
4) Prohibited servants of Company from engaging in any private trade / accepting presents, bribes from 'natives' .
5) Strengthened the control of British govt. over Company

↓*via*
Court of Directors (governing body of EIC)
↓*to report*
Revenue, Civil & Military affairs in India.

1) 1st step taken by the British Govt.
2) It recognized for the 1st time political 7 administrative function of EIC
3) It laid the foundation of centralized administration in India

➘ Pitt's India Act of 1784

- In a bid to rectify the defects of R.A., 1773 – British Parliament passed the Amending Act, 1781 also known as → **Act of Settlement**

1) *Distinguished b/w* *Commercial → functions of the EIC
*Political

2) Court of Directors ---------- Board of Control (new body created)
↓manage ↓ ↓manage
Commercial affairs ↓ Political affairs
↓
estd. a system of
double govt.

- Board of control also empowered it to supervise & direct all operation of the civil & military govt. of British possessions in India

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1) Company's territories in India – for the first time called the British possessions in India
2) British govt. was given supreme control over Company's affairs & its administration in India.

➘ Charter Act of 1813

1. Company took steps for the spread of Christian Missionaries in India.
   ↓
   (so as to promote English education)

➘ Charter Act of 1833

1. Gov. – Gnrl. Of Bengal (Last–Lord W.Bentinck– 1828–35) designated as **Gov.- Gnrl of India** (1st –Lord W.Bentinck– 1828–35)
   vested with
   *All civil & military powers
   *Exclusive legislative powers of the entire British India.
2. Ended the activities of the EIC as a commercial body.
   ↓became a
   purely administrative body
3. Provided that the company's territories in India were held by British Govt. 'in trust for this Majesty, his heirs & successors'.
4. Attempted to introduce Open Competition System for selection of civil servants.

   Stated that Indians shouldn't be debarred from holding any place, office & employment under the Company. (as EIC now was an administrative body)

   But later this provision was negated because of opposition from the Court of Directors.

1) Final step towards centralization in British India.
2) This act created for the 1st time a GOI having authorized over the entire territorial area possessed by the British in India .
3) Laws made under previous acts were called as 'Regulations' but laws made under this were called as 'ACTS'

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➘ Charter Act of 1853

1) Gov. –Gnrl.'s Council

functions

Legislative — separated — Executive
function function(4) *same as earlier*

↓**new body created**

Indian (Central) L.C. → 4 members appointed by → local (prov.) govt. of
(6) *Madras
*Bombay
*Bengal
*Agra

Functioned as mini-parliament adopting same procedures as the British Parliament

2) Introduced an Open Competition System of selection & recruitment of civil servants. ↓ *accordingly*

Macaulay Committee (the Committee on the ICS) –
appointed @ 1854

3) Extended the Company's route & allowed it to retain the possession of Indian territories on trust for the British Crown

↓

Didn't specify any particular period unlike previous Charters

↓

clear indication that the Company's rule could be terminated at any time the British Parliament liked.

1) Legislation for the 1st time was treated as a special function of the Govt.
2) Introduced , for the 1st time local representation in India (central) L.C.
3) Last series of Charter Acts passed b/w 1793 & 1853.

THE CROWN RULE (1858 – 1947)

➘ GOI ACT , 1858*[1]

1) India henceforth was to be governed by , and in the name of , Her Majesty.
2) Gov.-Gnrl. Of India → *designated as* → **Viceroy of India**

↓ ↓

(last – Lord Canning 1856-62) direct representative of the British crown in India.

3) Ended the system of double govt. by abolishing the BoC & CoD.

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4) Created a new office → Secretary of State for India

↓ *vested with*

estd. *an advisory body*

*Complete authority & control over Indian Administration

*Member of the British Cabinet. So responsible ultimately to the British Parliament.

15 member 'Council of India'
to assist the SoS for India

↓

SoS+ Council – a body corporate, capable of suing & being sued in India & in England.

1) Significant Act- as it was enacted in the wake of Revolt of 1857/1st war of Independence /Sepoy Mutiny
2) This act largely confined to the improvement of the administrative machinery by which Indian Govt. was to be supervised & controlled in England.
   Didn't attend the by-system of Govt. that prevailed in India.

✓ After the Great Revolt of 1857, the British Govt. felt necessity of seeking the cooperation of the Indians in the administration of their country.

✓ *In the pursuance of this policy of association , 3 Acts passed by British Parliament , which are as follows :-*

♦ Indian Councils Act of 1861

1) Viceroy should nominate some Indians as non-official members of his expanded council.

> 1862, Lord Canning →nominated 3 Indians to his L.C.

↓

Raja of Benaras
The Maharaja of Patiala
Sir Dinkar Rao

2) Initiated the process of decentralization

↓*restoring Legislative powers*

↓

Bombay & Madras Presidencies

↓

This policy of legislative devolution resulted in grant of *almost complete internal autonomy* to the province @ 1937.

3) Provided for establishment of new legislative councils for ---*Bengal , 1862
*NWFP , 1866
*Punjab , 1897

4) Empowered Viceroy → make rules & orders
↓
For more convenient transaction of business in the council.

5) Gave recognition to the **'Portfolio' system** →(introduced by Lord Canning, 1859)
   - Under this , a member of Viceroy's council was made in-charge of one or more departments → authorized to issue final orders on behalf of the council on matters of his dept.(s).

6) Empowered Viceroy to issue (**Ordinances**) w/o the concurrence of the LC during an emergency. ↓ life- 6 months

♦ Indian Councils Act of 1892

1) Number of additional (non-official) members in CLC & PLC's
↓
increased , but maintained official majority

2) Increased the power /functions of Legislative Councils
↓
Power of discussing Budget ←→ Addressing questions to the executive

3) Provided for nomination of some non-official members
↓

C.L.C. ← →	**P.L.C's**
↓	↓
by Viceroy	by Governor
↓*on recommendations of*	↓*on recommendations of*
PLC's +Bengal Chamber of Commerce	*District Boards *Municipalities *Trade association *Universities *Zamindars *Chambers

♦ Indian Councils Act of 1909

1) Considerably increased the size of the Legislative Council
↓

C.L.C. ← →	P.L.C.
↓	↓
*raised from 16 to 60 *Official majority retained	may have non – official majority

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2) Enlarged the deliberative functions of the Legislative Councils

↓*for e.g.,*

Members allowed to ask *supplementary questions
*move resolution on budget.

3) Provided (for the 1st time) association of Indians with the executive councils of the Viceroy & Governors

Satyendra Pd Sinha -- became first Indian to join the Viceroy's Executive Council
↓
appointed as a law member

4) Introduced the system of separate electorate / representation

↓ ↓

for*Presidency Corporation
*Chambers of Commerce
*Universities
*Zamindars

for Muslim Community
Communal representation started hence for the only for Muslims.
Legalised Communalism

Government of India Act, 1919*[1]

On 20th Aug,1917– Lord Montague's historic declaration in the House of Commons
↓
the demand for home rule could no longer be treated as seditious
↓

For the 1st time , British Govt. declared that its objective was the gradual introduction of responsible govt. in India.

1) Relaxed the central control over the provinces by demarcating & separating the central & provincial subjects. (However, structure of govt continued to be centralized & unitary)

↓*divided into 2 parts*

↓
↓

Transferred subject
↓*administered by*
↓
Governor with the aid of ministers responsible to the L.C.
↓

Reserved subject
↓*administered by*
↓
Governor + EC w/o being responsible to the L.C.
↓

↓----------↓

↓

This dual scheme was known as **'dyarchy'** (double rule)
(was an unsuccessful experiment).

2)*Introduced*→(**Direct Elections**)→But granted franchise to a limited no. of people on the basis of property tax or education.
↓
(**Bicameralism**)

Only in C.L.C ---------- Upper House (Council of States)
Lower House (Legislative Assembly)

3)Required→ 3 of 6 members of Viceroy's EC →were to be Indian.

4)Extended Communal representation for *Sikhs
*Indian Christians
*Anglo Indian
*Europeans

5)Created a new office ----------High Commissioner for India in London
↓
Transferred some of the functions of SoS for India to him.

6)Provided for establishment of a → CPSC
↓→ set up @ 1926
↓
recommendations of Lee Commission on Super Civil Services (1923 -24)

7)Separated Budget →→Central
↓
Provincial
↓
authorized Provincial Legislatures to enact their budgets

8)Provided for appointment of a Statutory Commission to inquire into & report on its working after 10yrs of its coming into force.

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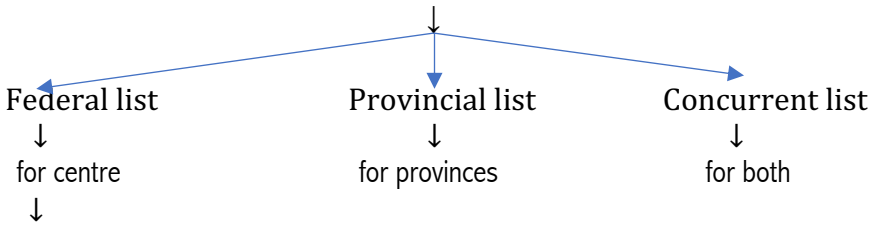
➘ Government of India Act, 1935

1) Provided for establishment of an <u>All-India Federation</u> →consisting of Provinces & Princely states.



> This act also provided for 'dyarchy' at the centre.

> Residuary Powers vested with the viceroy.

2) **<u>Abolished dyarchy</u>** <u>in the Provinces</u> & introduced <u>responsible govt's in the province</u>

→ Governor required to act in advice of ministers responsible to the provincial legislature (came into effect from 1937- 39)

3) <u>Introduced bicameralism</u> in 6 out of 11 <u>provinces (BAMBU B).</u>
(however many restrictions were placed on there)

4) Further extended Communal representation
- Depressed classes (Schedule Caste)
- Woman
- Labour (worker)

5) Secretary of State
↓ ↓provided with
↓ ↓
'Council of India' Abolished (estd. by GOI Act, 1858) — Team of advisor

6)<u>Extended franchise to 10%</u> of the <u>total population</u>

7)**<u>Estd. RBI</u>** to <u>control</u> the <u>currency & credit</u> of the country

8)Provided for establishment of →
- Federal PSC
- Provincial PSC
- Joint PSC

9) Provided for establishment of Federal Court – set up @ 1937

➔ Marked the 2nd milestone towards a completely responsible govt.in India
➔ Was a very lengthy & detailed document.

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➘ Indian Independence Act, 1947

1) Provided for the Partition of India and,

↓*creation of 2 independent dominions*

↓

↓

India Pakistan

↓ ↓

↓ ↓

↘↔↔↔↔↔↔↔↙

↓

With the right to secede from the British Commonwealth

2) Abolished the office of Viceroy

↓a gov.nr –gnrl for →→designated as→→→→ Gov-gnrl of India

↓each dominion *Provisional Govnr* ↓

↓ ↓

appointed to the British king on the advice of the dominion cabinet

↓

↓

as constitutional heads of states made to act on advice of respective CoM in all matters

His majesty's govt. in Britain was to have no responsibility w.r.t GOI or GOP.

↓

↓

↓ ↓

That is, it deprived British monarch of his right to veto bills or ask for reservation of certain bills for his approval.

↓

This right now resumed for Gov.-Gnrl → would have full power to assent to any bill in the name of his majesty.

3) Abolished the office of SoS for India.→→→ Hence discontinued in practice of appointment reservation of posts by the SoS for India (for civil servant)

↓

↓*transferred his function*

↓ ↓

↓ ↓

↓

SoS for Commonwealth Affairs

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4) Empowered the Constituent Assembly of the 2 dominions

↓*to frame & adopt*

●any constitutions for their respective nations

●any act of the British Parliament, including IIA itself

to repeal

to legislate

●for their respective territories till the new constitutions were drafted & enforced.

5) Provided for governance of each of the dominions and provinces by the GoI ,1935 –till new constitutions were framed. The dominions were however authorized to make modifications in the act.

6) Proclaimed lapse of British paramountcy over Indian princely states & treaty relations with tribal areas.

↓

Granted freedom to Indian Princely States either to join any one of the Dominions or to remain independent.

7) Also dropped the title of Emperor of India from the royal titles of the King of England.

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Interim Govt. (1946)	Portfolios	First Cabinet of Free India(1947)
J.L.Nehru	Vice-Prz of Exe Council Foreign affairs Commonwealth	J.L.Nehru(PM of India)
S.V.Patel	Home Info & Broadcasting	S.V.Patel
C.Rajagopalachari	Education & Arts	M.A Azad
John Mathai	Industry & Trade	Shyama Pd. Mukherjee
Sardar Baldev Singh	Defence	Sardar Baldev Singh
Jagjivan Ram	Labour	Jagjivan Ram
C.H. Bhabha	Constructing, Mining & Energy	V.N.Gadgil
Asaf Ali	Railway	John Mathai
Liaqat Ali Khan	Finance	R.K. Sanmukham Chetty
I.I. Chundrigarh	Commerce	C.N.Bhabha
Jogendranath Mandal	Law	B.R.Ambedkar
Rajendra Prasad	Food & Agriculture	Rajendra Prasad
Ghaznafar Ali Khan	Health	Rajkumari Amrit Kaur

*Ministers of Interim Govt. @ 1946 were the members of Viceroy's EC

*Viceroy continued to be the head of the council

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CONSTITUTION OF INDIA

PREAMBLE

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

JUSTICE, social, economic and political;

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

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

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

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

** *42nd Amd,1976*

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➔ **American Constitution**

➔**1st** to begin with a **Preamble**

The Preamble of Indian Constitution
is based on
↓
Objective Resolution
↓

drafted & moved by **J.L.Nehru**

Dec 13,1946

adopted by the Constituent Assembly **Jan 22, 1947**

- **42nd Amendment , 1976**

added

SOCIALIST, SECULAR, integrity

- **Berubari Union Case, 1960**

Supreme Court

Preamble **is not** a part of Constitution

- **Keshavnanda Bharti Case, 1973**

Supreme Court

Preamble **is** a part of Constitution

- **'Unity of the Nation'**

42nd Amendment, 1976

Unity & **integrity** of the Nation

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Essential ingredients of the Preamble :-

Reading through the Preamble, one can see the purposes that it serves, namely the declaration of -

1. **Sources of Constitution**
   'We the people of India . . . . .
   . . . . . this Constitution'

2. **Type of Govt.**
   Sovereign, Socialists, Secular, Democratic, Republic

3. **Objectives of Political System**

   They are 4 in numbers
   - Justice
   - Liberty
   - Equality
   - fraternity

4. **The date of its adoption & enactment**

   26^{th} day of November, 1949
   ↓
   This day is also known as
   ↓
   National Law Day

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Source	Features Borrowed
1. **G.O.I 1935**	Federal Scheme Office of Governor Judiciary Public Service Commission Emergency Provisions Administrative Details
2. **British Constitution**	Parliamentary Govt. Rule of Law Legislative Procedure Single Citizenship Cabinet System Writs Bicameralism
3. **U.S Constitution**	Fundamental Rights Independence of Judiciary Judicial Review Impeachment of the President Removal of S.C & H.C Judges Post of President
4. **Irish Constitution**	D P S P Method of Election of President
5. **Canadian Constitution**	Federation with a Strong Centre vesting of Residuary Powers in the Centre

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6. **Australian Constitution**	Concurrent List Joint sitting of the two Houses of the Parliament
7. Weimer Constitution of Germany	Suspension of the Fundamental Rights during Emergency
8. Soviet Constitution of (USSR, NOT Russia)	Fundamental Duties
9. **French Constitution**	Republic & the ideals of Liberty, Equality & Fraternity in the Preamble
10. **South Africa**	Procedure for amendment of the Constitution
11. **Japanese Constitution**	Procedure established by law

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Salient features of Constitution

BLUE PRINT

- ***Lengthiest Written Constitution***

  ↓

  Originally

  26th Nov, 1949

  The Constitution Contains

  - a Preamble
  - 395 Articles divided into 22 parts
    (Presently at about 450+ Articles → divided into 25 parts)
  - 8 Schedules (presently 12 Schedules)

Cause of Elephantine Size

a) Geographical factor,
e.g the vastness of the Country and its diversity

b) Historical factor,
e.g the influence of G.O.I Act 1935 which was bulky.

c) Single Constitution for both the Centre & the State except J&K

d) Dominance of legal luminaries in the Constituent Assembly

- ***Drawn from various Sources***

  - **Structural Part** – derived from G.O.I Act, 1935
  - **Philosophical Part** – Fundamental Rights & the DPSP from American & Irish Constitution respectively.
  - **Political Part** – the principle of Cabinet Govt , relations between the executive & legislature from British Constitution

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- ***Blend of Rigidity & Flexibility***

  American Constitution — British Constitution

- **Neither Rigid nor flexible but a synthesis of both**

  ↓

  ↓

  Provides for 2 types of amendments

Article 368
Total 30 members
i) 30x2/3=20(present &voting)
ii) 20x1/2=10 votes
10+1=11 votes

1) Some Provisions can be amended by a special majority of the Parliament
a) 2/3rd majority of the members of each house present & voting **+**
b) a majority (i.e more than 50%) of the total members of each house.

2) Some other provisions can be amended by a special majority of the Parliament
+
with the ratification of the half of the total states.

✦ **Some provisions with Simple majority don't come under Art 368**

- ***Federal system with Unitary Bias***

Federal system of Govt
→viz→
1) Two government
2) Division of Powers
3) Written Constitution
4) Supremacy of Constitution
5) Rigidity of Constitution
6) Independent Judiciary
7) Bicameralism

Unitary or Non-federal features
→viz→
1) A strong centre
2) Single Constitution
3) Single Citizenship

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4) Flexibility of Constitution
5) Integrated Judiciary
6) Appointment of State governor by the Centre
7) All-India Services
8) Emergency Provisions

•The term **Federation** *has nowhere been used*

Term **'Federation'** is nowhere been used, instead term **'Union of States'** is being used

Art 1 ----------'Union of States'

Signifies 1) Indian federation is not the result of an agreement by the States.

2) No state has the right to secede from the federation

K.C.Whare

'Federal in form but unitary in spirit'.....**"quasi –federal"**

- ***Parliamentary form of Government***

Based on the principle of cooperation & coordination b/w legislative & executive organ. (Westminster Model)

↑
↑→
↑

has opted for the British Parliamentary System of Govt

rather than American Presidential system of Govt.

↓

Based on the doctrine of separation of powers b/w the two organs

Features of Indian Parliamentary System

↓

a) Presence of nominal & real executive
b) Majority party rules
c) Collective responsibility of the executive to the legislature
d) Membership of the ministers in the legislature

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e) Leadership of the P.M. or C.M.
f) Dissolution of the Lower House (Lok Sabha)

Difference between British & Indian Parliamentary System

But in both cases ←←
P.M. is the 'de-facto' head
For India President is the
'de-jure' head.

1)Indian Parliament is not a sovereign body like the British Parliament.
2) India →elected head republic
British →hereditary head (monarchy)

- ***Synthesis of Parliamentary Sovereignty (British) and Judicial Supremacy (American)***

The scope of judicial review power of
Indian Supreme Court
because ↓ *is narrower than*
↑ ↓
↑ ↓
↑ ↓
↑ *what exists in U.S.A*

This is because American Constitution ↑
provides for ↑
'due process of law' →→→→→→→→

Indian –'procedure established by law'
(contained in Art -21)

Synthesis

Supreme Court, on the other hand, can declare the Parliamentary laws as unconstitutional
↓
through its power of Judicial Review.

The Parliament, can amend the major portion of the constitution through its constitutional power.

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- ***Integrated & Independent Judiciary***

Supreme Court stands at the top
↓
High Court at the State level
↓
Under a High Court, there is a hierarchy of subordinate courts, i.e. district courts & other lower courts.

- This single system of courts enforces both the central laws as well as the state laws,

unlike in USA, → where the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary.

The Supreme Court is
a federal court, the Guardian of the constitution,
the Guarantor of the Fundamental Rights of the Citizens.

- Security of the tenure of the judges
- Fixed service conditions for judges
- All the expenses of S.C from Consolidated Fund of India
- Prohibition on discussion on the conduct of judges in the legislatures
- Ban on practice after retirement
- Power to punish for contempt
- Separation of judiciary from executive

- ***Fundamental Rights*** (Justiciable)

Part III – 6 rights → i) Right to equality (Art 14-18)
ii) Right to freedom (Art 19-22)
iii) Right against exploitation (Art 23-24)
iv) Right to freedom of Religion (Art 25-28)
v) Cultural and Educational Right (Art 29-30)
vi) Right to Constitutional Remedies (Art 32)

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Protection in respect of conviction for offences *(Art 20)*
Protection of life & personal liberty *(Art 21)*

Cannot be suspended during Emergency

5 Writs

1. Habeas Corpus
2. Mandamus
3. Prohibition
4. Certiorari
5. Quo Warranto

- ***D P S P*** (Non Justiciable) (Art 36-51)

Part IV → 'novel feature' of Indian Constitution
- B.R.Ambedkar

Classified into 3 broad categories
↓ ↓ ↓
Socialistic *Gandhian* *Liberal-intellectual*

------To establish 'welfare state' in India

- ***Fundamental Duties*** ---------- **42nd Amendment, 1976**
(Non Justiciable) ↓
Swaran Singh Committee
↓
recommended

Part IV A

Article 51A

↘ Added during the operation of **internal emergency** (1975-77)

11th →→→ 86th Amendment Act ,2002
↓
Every citizen who is a parent or guardian, to offer opportunities for education to his child or, as the case may be , ward between the age of 6 and 14 yrs.

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- ***Secular State***

  42nd Amendment,1976→ Secular was added in the Indian Constitution

- ***Universal Adult Franchise***

  Voting Age 21 to 18 (1989)

  61st Amendment, 1988

- ***Single Citizenship***

- ***Independent Bodies***
  - Election Commission
  - CAG
  - UPSC
  - State Public Service Commission

- ***Emergency Provision***
  - *National Emergency* – On the ground of war or external aggression or armed rebellion **(Art 352)**
  - *State Emergency* - (President's Rule)
    - **i)** Failure of Constitutional machinery in the states **(Art 356)**
    - **ii)** Failure to comply with the directions of the centre **(Art 365)**
  - *Financial Emergency* – **(Art 360)**

- ***Three- tier Govt***
  - **73rd Amendment, 1992** – Schedule 11-

    -Part IX – Art (243(A) – 243(0))
  - **74th Amendment, 1992**- Schedule 12 –

    -Part IX A – Art (243(P) – 243(ZG))

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Fundamental Rights

Part III

Art 14-30 Art 32

6 Rights

(justiciable)

↓ described as the

'Magna Carta' of Indian Constitution

derived inspiration from

Constitution of U.S.A.

(Bill of Rights)

⇒ **Right to Property** – was deleted – 44th Amendment, 1978

Now it is a **legal right**

Article 300A – Part XII

⇒ Protection in respect of conviction for offences (Art 20)

Protection of life & personal liberty (Art 21)

↓

Cannot be suspended during Emergency

⇒ Only be suspended during Emergency (*War or External Emergency*)(Art 19)

↓

not for armed rebellion

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Category	Consist of
1.Right to Equality (Art 14-18)	i)Equality before law & equal Protection of law.(Art 14) ii)Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth. (Art 15) iii)Equality of opportunity in matters of public employment. (Art 16) iv)Abolition of untouchability & prohibition of its practice. v)Abolition of titles except military & academic (Art 18)
2.Right to Freedom (Art 19-22)	i) Protection of 6 Rights regarding freedom of (Art19) 1.Speech & expression 2.Assembly 3.Association 4.Movement 5.Residence 6.Profession ii) Protection in respect of conviction for offences (Art 20) iii) Protection of life & personal liberty (Art 21) iv] Right to elementary education (Art 21A) v) Protection against arrest & detention in certain cases. (Art 22)
3.Right against Exploitation (Art 23-24)	i) Prohibition of Traffic in human being and forced labour (Art 23) ii)Prohibition of employment of children in factories etc. (Art 24)

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4.Right to freedom of Religion (Art 25-28)	i)Freedom of conscience & Free profession, practice & propagations of religion (Art 25) ii)Freedom to manage religious affairs (Art 26) iii)Freedom from payment of taxes for promotion of any religion (Art 27) iv)Freedom from attending religious instruction or worship in certain educational institutions (Art 28)
5.Cultural & Educational Rights(Art 29-30)	i) Protection of language, script & culture of minorities. (Art 29) ii)Right of minorities to establish & administer educational institution. (Art 30)
6.Right to Constitutional Remedies(Art 32)	Right to move to the Supreme Court for the enforcement of Fundamental Rights including the writs of 1) Habeas Corpus 2) Mandamus 3) Prohibition 4) Certiorari 5) Quo-Warranto

- The Fundamental Rights are meant for promoting the ideal of political democracy.
- They prevent the establishment of an authoritarian & despotic rule in the country.
- Protect the liberties & freedom of the people against the invasion by the state.
- They operate as limitations on tyranny of the executives & arbitrary laws of the legislatures.
- In short they *aim* at establishing *'a govt of laws and not of men'*.

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⇒ The **F.R** are named so because they are guaranteed & protected by the constitution, which is the Fundamental law of the land.

⇒ They are 'Fundamental' also in the sense that they are most essential for the all-round development (material ,intellectual moral & spiritual) of the individuals.

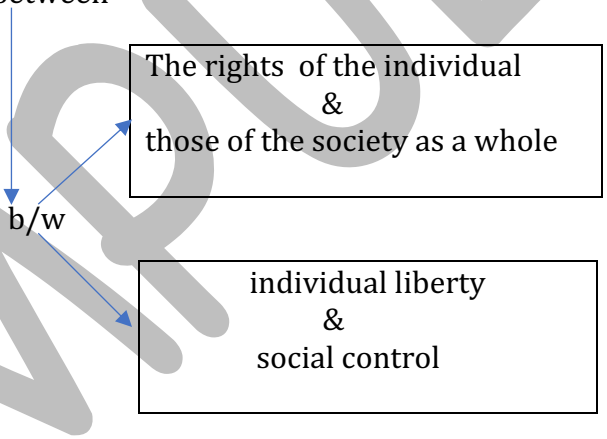
Features of Fundamental Rights :-

1.Some of them are available only to the citizens

> Others are available to all persons whether citizens, foreigners or *legal persons like corporation or companies.*

2.They are not absolute but qualified.

- The state can impose reasonable restrictions on them
- However, whether such restrictions are reasonable or not is to be decided by the courts.
- Strike a balance between



3.Most of them are available against the arbitrary action of the state, with a few excecptions like those against the state's action & against the action of private individuals.

↓
↓
↓

When the rights that are available against the state's action only are violated by private individuals, there are no constitutional remedies but only ordinary legal remedies.

IMPULSE

4.Some of them are -ve in character, i.e. place, limitation on the authority of the state, while others are +ve in nature, conferring certain privileges on the persons.

5.They are justiciable allowing persons to move the courts for their enforcement if & when they are violated.

6.They are defended & guaranteed by the Supreme court.

7.They are not sacrosanct or permanent

↓

↓

The parliament can curtail or repeal them but only by a constitutional amendment act, not by an ordinary act. Moreover this can be done w/o affecting the 'basic structure' of the constitution.

8.Can be suspended during the operation of a National Emergency except the rights guaranteed by Art 20 & 21.

↓

↓

Further Art 19 can be suspended only when emergency is declared on the grounds of war or external aggression (i.e. external emergency) & not on the ground of armed rebellion.

(i.e. internal emergency)

9.Their application to the members of armed forces, para-military forces, police forces, intelligence agencies & analogous services can be restricted or abrogated by the Parliament (Art -33)

10. Their application can be restricted while marital law is in force in any area.
Marital law means 'military rule' imposed under abnormal circumstances to restore order (Art 34)

↓

It is different from the imposition of national emergency.

11. Most of them are directly enforceable (self executory) while other few of them can be enforced on the basis of a law made for giving effect to them.

↓

↓

Such a law can be made only by the Parliament and not by any state legislatures, so that uniformity throughout the country is maintained (Art 35)

IMPULSE

Definition of State

- The term 'State' has been used in different provisions concerning the fundamental rights. **Art 12** has defined the term for the purposes of Part III.

- According to it, the state includes the following :-

  a) Govt & Parliament of India
  i.e. executive & legislative organs of Union Government.

  b) Govt & legislature of state
  i.e. executive & legislative organs of the state.

  c) All local authorities
  i.e. municipalities, panchayats, district boards, improvement trust etc.

  d) All other authorities
  i.e. statutory or non-statutory authorities like LIC, ONGC, SAIL etc.

- Thus, state has been defined in a wider sense so as to include all its agencies. It is the action of these agencies that can be challenged in the courts as violating the **F.R.**

- According to the **S.C ,** even a private body or one agency working as an instrument of the state falls within the meaning of 'state' under Art 12.

▪ Right to Equality (Art 14 -18)

⇒ Art 14 – Equality before law or equal protection of the laws.

- the F.R of every persons not to be denied "equality before law" or the "equal protection of the laws" within the territory of India.
  - protection provided is not limited to the citizens only but is applicable to all persons
  - embodies the principle contained in the universal declaration of Human Rights

- The two expressions "equality before the law"
  &
  "equal protection of the laws" → used in our Constitution,
  → in fact, embody the concepts of the rule of law & of equal justice.

IMPULSE

➘ "**equality before the law**"

↓

↓

No one is above law, that there is absolute supremacy of law as opposed in arbitrary power of Govt & that there is one system of law & courts for all.

➘ "**equal protection of laws"**

↓

↓

Enjoins the state to ensure that the laws that are made should provide equal protection to all w/o "any distinction" i.e. the law passed by the legislature & their implementation by the executive should lead to non-discriminatory & equal protection to all.

➘ Thus, the approach propounded by the **S.C** has widened the scope of application of Art 14.

↓

↓

It is clear that our arbitrary or unreasonable action – any act which is so arbitrary or unreasonable that no fair minded authority could ever have made it - would be 'per-se' discriminatory & violative of Art 14.

(intrinsically/clearly)

⇒ Article 15 -- Non-discrimination on grounds of **religion, race, caste, sex or place of birth.**

➘ Art 14 covers **all persons** & proclaims the **general principle** of equality before the law & equal protection of the laws.

➘ Art 15-18 **specify** same areas for **application** of the general principle **mostly** in regard to the **citizens of India**.

- **Art 15** says that no citizen shall be subjected to any disability, liability, restriction or condition or grounds only of religion, race, caste, sex or place of birth with regard to

a) access to shops, public restaurants – hotels & places of public entertainment; or
b) the use of wells, tanks, bathing ghats, road & places of public resort maintained whole or partially by state funds or dedicated to the use of the general public.

➔ This provision prohibits discrimination both by state & private individual while the former provision prohibits discrimination by the state.

IMPULSE

➘ *3 exceptions*

a)The state is permitted to make any special provisions for women & children. For example – reservation of seats for women in local bodies or provisions of free education for children.

b)The state is permitted to make any special provisions for the advancement of any socially & educationally backward classes of citizens or for the S.C & S.T.
For example – reservation of seats or fee concessions in public educational institutions.

c)The state is empowered to make any special provisions for the advancement of any socially &educationally backward classes of citizens or for the S.C or the S.Ts regarding their admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions.

✦ 93rd Amendment Act, 2005

↓

Centre enacted the Central Educational Institutions (Reservation in Admission Act, 2006)

↓

27% reservation in all central higher educational ←←←institutions including IITs, IIMs ←2008

↓

S.C directed 'creamy layer' → excluded

⇒ Art 16 -- Equality of opportunity in Public Employment

- Provided for equality of opportunity for all citizens in matters of employment or appointment to any office under the state.
- No citizen can be discriminated against or be ineligible for any employment or office under the state on grounds of only religion, race, caste, sex, descent, place of birth or residence.

➘ *3 exceptions*

1) Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority.

IMPULSE

2) The state can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services.

3) A law can provide that the incumbent of an office related to religious or denominated institutions or a member of its governing body should belong to the particular religion or denominator.

⇒ Art 17 -- Abolition of **untouchability**

- Abolishes 'untouchability' & forbids its practice in any form. The enforcement of any disability arriving out of untouchability shall be an offence.. punishable in accordance with law.
- The S.C held that the right under Art 17 is *available against private individuals* and it is the constitutional obligation of the state to take necessary action to ensure that this right is not violated.

⇒ Art 18 -- Abolition of **Titles**

➘ *4 provisions*

a)It prohibits the state from conferring any titles (except a military or academic distinction) on anybody whether a citizen or foreigner.

b) It prohibits a citizen of India from accepting any title from any foreign state.

c)A foreigner holding any office of profit or trust under the state can not accept any title from any foreign state w/o the consent of the President.

d) No citizen or foreigner holding any office of profit or trust under the state is to accept any present, emolument or office from or under any foreign state w/o the consent of the President.

➘ Hereditary titles of nobility like

Maharaja, RaiBahadur, Raisaheb, Dewanbahadur etc.

↓

↓

banned by Art 18

↓

↓

as there are against the principles of equal status for all.

IMPULSE

1996 > S.C
↓
Constitutional validity of National awards
↓
BharatRatna, Padmabibhusan, Padmabhusan and Padmashree

1954 – started Rajendra Prasad
1977– M.Desai (Janata Party discontinued)
1980 – I. Gandhi (revived)

↓
↓
These are not amount to 'titles'
↓
But should not be used as suffixes or prefixes to the names of awardees.

IMPULSE

- **Right to Freedom (Art 19- 22)**

⇒ Article 19

a) Right to freedom of speech & expression

b) Right to assemble peacefully without arms

c) Right to form association or unions

d) Right to move freely throughout the territory of India

e) Right to reside & settle in any part of territory of India

f) Right to practice any profession or to carry on any occupation trade or business

Originally contained 7 rights. But the right to acquire hold or dispose of property was disposed by the *44th Amendment, 1978*

↓
↓

These 6 rights are protected against only state actions & not private individuals.

Right to freedom of speech & expression includes

1. Freedom of press
2. Freedom of Commercial Advertisement
3. Right against tapping of telephonic conversation
4. Right against bandh called by political party/organisation
5. Right to know abt. Govt. activities

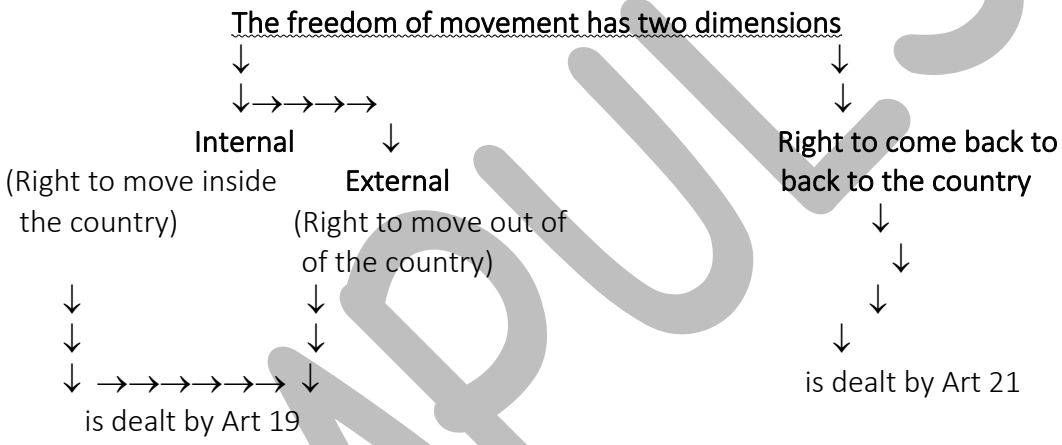
↓

Right to Information Act, 2005

6. Freedom of silence
7. Right to demonstrations or picketing but not right to strike

➘ Freedom of Association

- Right to form political association
- .....However the right to obtain recognition of the association is not a Fundamental Right.



⇒ Art 20 -- Protection in respect of conviction for offences

➘ Art 20 → grants protection against arbitrary & excessive punishment to an accused person , whether citizens or foreigners or legal persons like a company or a corporation.

♦ **It contains 3 provisions in that dimensions:-**

1. No ex-post-facto-law - No person shall be

i) convicted of any offence except for violation of a law in force & the time of the commission of the Act.

IMPULSE

ii) subjected to a penalty or than that prescribed by the law in force at the time of the commission of the Act.

[to be judged by the prevailing law]

2. No double jeopardy – No person shall be prosecuted and punished for the same offence more than once.

3. No self-incrimination – No person accused of any offence shall be compelled to be a witness against himself. e.g. taking of blood sample, DNA test etc.

➘ However this limitation is imposed only on **criminal laws** not on civil laws or tax laws.

➘ The protection against self-incrimination extends to both oral evidence & documentary evidence but it does not extend to

1) Compulsory production of material object.
2) Compulsion to give thumb impression, specimen signature, blood specimen.
3) Compulsory exhibition of the body

↓

Further it extends only to criminal proceedings and not to civil proceedings or proceedings which are not of criminal in nature.

⇒ Art 21-- Protection of life & personal liberty

Art 21 is not merely confined to animal existence or survival but it include within its ambit the right to live with human dignity & all those aspects of life which go to make a man's life meaningful, complete & worth living.

- Right to live with human dignity
- Right to decent environment including pollution free water & air & protection against hazardous industries
- Right to livelihood
- Right to privacy
- Right to shelter
- Right to health
- Right to free legal aid (govt. will do)
- Right against hand cuffing
- Right against inhuman treatment
- Right against bonded labour
- Right to emergency medical aid

IMPULSE

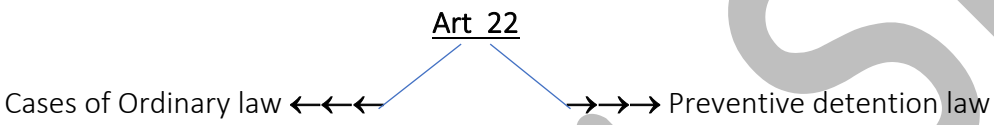
- Right to prisoners to have necessities of life
- Right to women to be treated with decency & dignity
- Right against public hanging
- Right to information -----[RTI Act,2005]
- Right to reputation

⇒ Art 21 – Right to elementary education

⇒ Art 22 -- Protection against arrest & detention in certain cases

➘ Art 22 has two parts

- the 1st deals with the cases of **ordinary law or punitive law**.
- 2nd deals with **preventive detention law**.



➘ *Factors of ordinary law :-*

1. Right to be informed on the grounds of arrest
2. Right to consult and be defended by a legal practitioner
3. Right to be produced before a magistrate within 24 hrs, *excluding the journey time.*
4. Right to be released after 24hrs unless the magistrate authorises further detention.

➔ ***These safeguards are not available to an alien or a person arrested or detained under a preventive detention law [P D Act]***

➔ P D Act ----------passed by the Parliament → from time to time

↓ Art 22

Nowhere in the world

> Preventive Detention Act - 1950
  - Expired in 1969
> Maintenance of Internal Security Act – (MISA) – 1971
  - Repealed in 1978
> National Security Act - (NSA) – 1980
> Terrorist and Disruptive Activities (prevention) Act - (TADA) – 1985
  - Repealed in 1995
> Prevention of Terrorism Act (POTA) – 2002
  - Repealed in 2004

IMPULSE

> Unlawful Activities Prevention Act (UAPA)
  - 3 months jail w/o trial.

▪ Right against exploitation [Art 23 – 24]

⇒ Art 23 :- Prohibition of traffic in human being & forced labour 'begar'

- It protects the individual not only against the state but *also against private persons.*
- The expression 'traffic in human beings' include

  1) selling & buying of men, women & children like goods.

  2) immoral traffic in woman & children including prostitution

  3)'devdasis'

  4) slavery

Immoral Traffic Prevention Act, 1956

⇒ Art 24 :- Prohibits the employment of children below the age of **14 years** in any factory, mine or the hazardous activities like construction work or railway.

↓

But it **does not prohibit** their employment in any **harmless or innocent work**.

▪ Right to freedom of Religion [Art 25-28]

1. Freedom of conscience
2. Right to profess
3. Right to practice
4. Right to propagate

⇒ Art 26 :-

1. Right to establish & maintain institutions for religious and charitable purposes.
2. Right to manage its own affairs in matters of religion.
3. Right to own & acquire movable & immovable property.
4. Right to administer such property in accordance with law.

IMPULSE

✦ Art 25 , guarantees Right of individuals

✦ Art 26 , guarantees Right of religious denominations or their sections.

is a sub-group within religion e.g. Shaivism, Shaktism, Vaishnavism etc

⇒ Art 27 :- **Freedom from taxation for promotion of a religion**

- This provision prohibits only levy of a tax & not a fee
  ↓
- This is because the purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion
  ↓

Thus a fee can be levied on pilgrims to provide them some special service or safety measures.

⇒ Art 28 :- **Freedom from attending religious instruction**

- Art 28 distinguishes b/w **four types** of **educational institutions**

Institutions wholly maintained by the state. → *Religious instruction completely prohibited.*
Institution administered by the state but established under any endowment or trust → *permitted.*
Institutions recognised by the state → *permitted on voluntary basis.*
Institutions receiving aid from the state → *permitted on voluntary basis.*

▪ Cultural & Educational Rights [Art 29-30]

⇒ Art 29 :- **Protection of interest of minorities**
Distinct language , script & culture

⇒ Art 30 :- **Right of minorities to establish & administer educational institutions.**

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

➘ *Minority educational institutions are of **3 types**.*

1. Institutions that seek recognition as well as aid from the state
2. Institutions that seek only recognition from state & not aid

IMPULSE

3. Institutions that neither seek recognition nor aid from the state
   > The Institutions of 1 & 2nd type are subjected to the regulatory power of the state .....
   > The Institution of 3rd type are free to administer their affairs.

▪ Right to Constitutional Remedies [Art 32]

Writs
↓
Art 32 ←←←←←← →→→→→→ Art 226
S.C H.C

Writs
1.Habeas Corpus
2.Mandamus
3.Prohibition
4.Certiorari
5. Quo-Warranto

♦ Dr. Ambedkar called Art 32 as the most important article of the Constitution.
'It is the very soul of the Constitution & the very heart of it '

♦ The **S.C** has ruled that Art 32 is a basic feature of the constitution.
♦ The President can suspend the right to move to any court for the enforcement of the **F.R** during a National Emergency Art 359
♦ The **S.C** has ruled that where relief through **H.C** is available under Article 226
↓
The aggrieved party should move to the High Court first.

♦ These writs are *borrowed from* English law where they are known as 'Prerogative Writs'.

IMPULSE

⇓ Writs Jurisdiction :-

1)The **S.C** can issue writs only for the enforcement of **F.R** whereas a **H.C** can issue writs not only for the enforcement of **F.R** but also for any other purposes.

(*an ordinary legal right*)

↓

Thus the writ jurisdiction of the **S.C** in this respect, is narrower than that of **H.C**.

2)The **S.C** can issue writs against a person or government throughout the territory of India.

↓

Whereas a **H.C** can issue writs against a person residing or against a govt/authority located within its territorial jurisdiction only;

↓

if the *cause of action* arises within its territorial jurisdiction.

↓

Thus the territorial jurisdiction of the **S.C** for the purpose of issuing writs is wider than that of **H.C**

3)A remedy under **Art 32** is in itself a **F.R** and hence, the **S.C** may not refuse to exercise its writ jurisdiction.

↓

On the other hand a remedy under Art 226 is discretionary & hence, a High Court may refuse to exercise its writ jurisdiction.

↓

The **S.C** is thus constituted as a defender & guarantor of the **F.R.**

IMPULSE

➘ Habeas Corpus :

↓

Latin term

↓

means

↓

"To have the body of"

- The writ is a bulwark of individual liberty against arbitrary detention.

↓

Can be issued against both public authorities and private individuals.

↓

is not issued where the

1.Detention is lawful
2.The proceedings is for contempt of a legislature or a court
3.Detention is by a competent court
4.Detention is outside the jurisdiction of the court.

➘ Mandamus:

'We command'

Issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform.

↓

Also can be issued against any public body....

or corporation, an inferior court, a tribunal or govt for the same purpose

↓

Cannot be issued

1. against private individuals or body
2. to enforce departmental instructions that does not possess statutory force
3. when the duty is discretionary & not mandatory
4. to enforce contractual obligation
5. against the President of India & the state governor
6. against Chief Justice of H.C acting in judicial capacity.

IMPULSE

➘ Prohibition : ‘to forbid’

It is issued by a higher court to a *lower court or tribunal*
↓
to prevent the later from exceeding its jurisdiction or usurping a jurisdiction that it does not possess
↓
can be issued only against judicial & quasi-judicial authorities.
↓

not available against

- administrative authorities
- legislative bodies
- private individuals

➘ Certiorari : ‘to be certified’ or ‘to be informed’
↓
issued by a higher court *to a lower court or tribunal* either to transfer or case pending with the later to itself or to squash ‘the order of the later in a case.
↓ ↓
It is issued by a higher court on the grounds of excess jurisdiction or lack of jurisdiction or error of law.
↓
Thus, unlike prohibition which is only *preventive, certiorari is both preventive & curative.* ↓
↓

In 1991, the **S.C** ruled that the Certiorari can be issued even against administrative authorities affecting rights of individuals. ↓
↓
like prohibition , certiorari *is also not available against legislative body & private individuals or bodies.*

IMPULSE

➘ Quo – Warranto : 'by what authority / warrant'

is issued by the court to enquire the legality of claim of a person to a public office.

↓

Hence it prevents illegal usurpation of public office by a person.

↓

It *cannot be issued* in case of ministerial office or private office.

↓

Unlike the other 4 writs, this can be sought by any interested person & not necessarily aggrieved person.

⇒ Art 33 :- Armed forces & F.R

empowers the Parliament to restrict or abrogate the F.R of the members of armed forces, paramilitary forces, police force, intelligence agencies & analogous forces.

↓

The objective of this provision is to ensure the proper discharge of their duties & the maintenance of discipline among them.

⇒ Art 34 :- Martial law & F.R

Provides for the restrictions on F.R. while Martial law is in force in any area within the territory of India.

↓

The concept of Martial law has been borrowed in India from the English common law.

↓

However, the expression 'Martial law' has not been defined anywhere in the Constitution.

↓

It is different from the military law that is applicable to the armed force.

IMPULSE

Difference b/w Martial Law & National Emergency

Martial Law	National Emergency
1.It affects only F.R.	**1.**It affects not only F.R but also centre-state relations, distribution of revenues & legislative power b/w centre & state & may extend the tenure of the Parliament.
2.It suspends the govt & Ordinary law courts	**2.**It continues the govt & ordinary law courts.
3.It is imposed to restore the breakdown of law & order due to any reason	**3.**It can be imposed only on three grounds. - War - External aggression - Armed Rebellion
4.It is imposed in some specific area of the country	**4.**It is imposed either in the whole country or in any part of it.
5.It has no specific provisions in the in the Constitution. It is implicit.	**5.**Detailed provision in the Constitution. It is explicit.

IMPULSE

D P S P

↓

↓	↓	↓	↓
Irish Constitution	Art (36-51)	Non-justiciable	Novel features
↓	**Part IV**		of Indian Constitution
↓			- B. R. Ambedkar.
From Spain			

GOALS	POLICIES
• Welfare of the people, social, economic & political justice • Raising the standard of living • Equitable distribution of resources • Promotion of international peace [Art 51]	• Uniform Civil Code (Art 44) • Promotion of village panchayats (Art 40) • Promotion of cottage industries (Art 43) • Prohibition of consumption of alcoholic liquor (Art 47) • Prevention of slaughter of useful cattle (Art 48) **Gandhian Principle**

NON – JUSTICIABLE RIGHTS

- Adequate livelihood, equal pay for equal work (for men & women);
- Right against economic exploitation
- Right to work
- Right of children to free & compulsory education

➘ Directive Principles is conveyed

- The goals & objectives that we as a society should adopt.
- Certain rights that individual should enjoy apart from F.R
- Certain policies that the govt. should adopt.

➘ *Actually Directive Principles are mentioned in Art (38-51)*

- Art 36 deals with → the definition of 'State' while
- Art 37 deals with → the nature & significance of DPSP

IMPULSE

Fundamental Duties

42nd Amendment, 1976	Art 51A Part IVA	From USSR	Non-justiciable	11 in Number

1. To abide by the Constitution and respect its ideals & institutions, the National Flag and the National Anthem.
2. To cherish and follow the noble ideals that inspired the national struggle for freedom.
3. To uphold and protect sovereignty, unity & integrity of India.
4. To defend the country and render national service when called upon to do so.
5. To promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic & regional or sectional diversities and to renounce practices derogatory to the dignity of woman.
6. To value and preserve the rich heritage of the country's composite culture.
7. To protect and improve the natural environment including forests, lakes, rivers & wildlife and to have compassion for living creatures.
8. To develop scientific temper, humanism & the spirit of inquiry & reform.
9. To safeguard public property & abjure violence.
10. To strive towards excellence in all spheres of individual & collective ability so that the nation constantly rises to higher levels of endeavour & achievement.
11. To provide opportunities for education to his child or ward b/w the age of 6 & 14 years.

This duty was added by **86th Amendment, 2002**.

Not included

-casting votes
-paying taxes
-family planning

IMPULSE

Ingredients of the Basic Structure

1. Supremacy of a Constitution
2. Sovereign, Democratic & Republican nature of the Indian Polity
3. Secular character of the Constitution
4. Separation of powers b/w the legislature, executive & judiciary
5. Federal character of the Constitution
6. Unity & Integrity of the Nation
7. Welfare State (Socio-economic justice)
8. Judicial Review
9. Freedom & Dignity of the individual
10. Parliamentary system
11. Rule of law
12. Harmony & balance b/w Fundamental Rights & Directive Principles
13. Principle of Equality
14. Free & fair elections
15. Independence of Judiciary
16. Limited power of Parliament to amend the Constitution
17. Effective access to justice
18. Reasonableness.

IMPULSE

- **Article – 368**

Category – 1 → By simple majority of Parliament

1. Admission or establishment of new state.
2. Formation of new state, alteration of areas, boundaries or name of existing state.
3. Abolition or creation of legislative council in state.
4. 2nd Schedule – emoluments, allowances, privileges & so on of the President, the Governors, the Speakers, Judges etc.
5. Salaries & allowances of the members of the Parliament
6. Use of English language in Parliament
7. Conferment of more jurisdiction on the S.C
8. Use of official language
9. Citizenship – acquisition & termination
10. Delimitation of Constituencies
11. Union territories
12. 5th Schedule - Administrator of scheduled areas & scheduled tribes.
13. 6th Schedule - Administration of the tribal areas.

Category – 2 → By special majority of the Parliament

1. Fundamental rights
2. D P S P
3. All other provisions which are not covered by 1st & 3rd categories

Category – 3 → By special majority of Parliament & consent of States

1. Election of the President & its manner
2. Extend of the executive powers of the union & the state
3. Supreme Court & High Courts
4. Distribution of legislative powers b/w the Union & the States.
5. Representation of states in Parliament
6. Any of the list in the 7th schedule
7. Power of Parliament to amend the constitution & its procedure.

(Art 368 itself).

IMPULSE

▪ Parliamentary System

➘ **Article 74 & 75** deal with the Parliamentary System at the **centre**

↓

Art **163 & 164** in the **states**.

➘ The *Parliamentary System* of Govt is the one in which the executive is responsible to the legislature for its policies & act.

➘ The *Presidential System* of Govt is one in which the executive is not responsible to the legislatures for its policies or Act.

↓

is constitutionally independent of the legislature in respect of its term of office.

India → Westminster Model of Govt.

Features of Parliamentary Govt

1. Nominal & Real Executive :
   President → Nominal (de-jure executive)
   Prime Minister → real (de facto executive)
   - Art 74 provides for a council of ministers (CoM) headed by P.M to aid & advise the President in the exercise of its function.
2. Majority Party rule :
3. Collective Responsibility : The ministers are collectively responsible to the Parliament in general and to a Lok Sabha in particular → Art 75.
4. Political homogeneity :
5. Double Membership : The ministers are the members of both the legislatures & the executive.

   This means that a person cannot be a minister w/o being a member of the Parliament.

   ↓

   The Constitution stipulates that a minister who is not a member of the Parliament for a period of 6 consecutive months ceased to be a minister.

IMPULSE

6. Leadership of the P.M.
7. Dissolution of the Lower House :
8. Secrecy :

Comparing Parliamentary & Presidential System

	Parliamentary	Presidential
Features:		
1.	Dual,executive,nominal,real	Single executive
2.	Majority party rule	President & Legislature elected Separately for a Fixed term
3.	Collective Responsibility	Non-responsibility
4.	Political homogeneity	Political homogeneity may not exist
5.	Double/plural membership	Single membership
6.	Leadership of P.M.	Domination of President
7.	Dissolution of Lower House	No dissolution of lower House
8.	Fusion of Powers	Separation of Powers

	Merits	Demerits
1.	Harmony b/w legislature & executive	Conflict b/w legislature & executive
2.	Responsible Govt	Non-responsible Govt
3.	Prevents despotism	May lead to autocracy
4.	wide representation	Narrow representation

IMPULSE

Demerits	**Merits**
1.Unstable Govt	1.Stable Govt
2.No continuity of policies	2.Definiteness of policies
3.Against separation of powers	3.Based on separation of powers
4.Govt by amateurs	4.Govt by experts

Distinction b/w Indian & British Model

1. India has a Republican System in place of Br. monarchical system.
   So other words the head of the state in India (i.e President) is elected, while the head of the State in Britain (i.e. king/queen) enjoys a hereditary position.

2. Br. System based on the Doctrine of Sovereignty of Parliament, while the Parliament is not Supreme in India & enjoys limited & restricted powers due to a written Constitution, federal system, Judicial review & F.R.

3. In Britain, the P.M. should be a member of the lower House (House of Commons) of the Parliament. In India the P.M. may be a member of any of the two Houses of Parliament.

4. Usually the members of Parliament alone are appointed as ministers in Britain. In India a person who is not a member of Parliament can also be appointed as minister, but for a max. period of 6 months.

5. Britain has the system of legal responsibility of the minister while India has no such systems. Unlike in Britain, the minister in India are require to counter sign the official acts of the head of the state.

6. 'Shadow Cabinet' is an unique institution of the Br. Cabinet System . It is formed by the opposition party to balance the ruling cabinet & to prepare its members for future ministerial office . There is no such institution in India.

IMPULSE

▪ Federal System

Federal Govt	Unitary Govt
1.Dual Govt (i.e. national govt & Regional govt)	**1.**Single Govt(i.e. national govt which may create regional govt)
2.Written Constitution	**2.**Constitution may be written (France) may be unwritten(Britain)
3.Div. of powers b/w the national & regional govt	**3.**No div. of powers, all powers are vested in the National Govt
4.Supremacy of the Constitution	**4.**Constitution may be Supreme (Japan) or may not be Supreme (Britain)
5.Rigid Constitution	**5.**Constitution may be rigid(France) or flexible (Britain)
6.Independent Judiciary	**6.**Judiciary may be Independent or may not be Independent.
7.Bicameral Legislature	**7.**Bicameral (Br.) or unicameral (China)

> The Indian Federal System is based on the Canadian Model and not on the American Model.

↘ Federal Features of Constitution

1.Dual Polity
2.Written Constitution
3.Division of Powers

	Present	Originally
Union List	99	97
State List	61	66
Concurrent List	52	47

Both the centre & the States can make laws on the subjects of Concurrent List.

↓

But in case of a conflict

↓

The central law prevails

IMPULSE

↓

The residuary subject (i.e. which are not mentioned in any of the 3 lists) are given to the Centre.

4.Supremacy of the Constitution
5.Rigid Constitution
6.Independant Judiciary
7.Bicameralism

➘ Unitary Features of Constitution

1. Strong Centre – The residuary power have also been left with the Centre in India

   ↓

   While in US they are vested with States

2. States not indestructible
3. Single Constitution – except J & K
4. Flexibility of the Constitution – amendment 368
5. No equality of State Representation :- Membership varies from (1-31) on the basis of population.

American Senate (Upper House) has 100 members 2 from each state.

6. Emergency Provisions
7. Single citizenship
   - Single Citizenship – Canada
   - Double/Dual Citizenship – U.S.A, Switzerland, Australia
8. Integrated Judiciary
9. All India Services
10. Integrated Audit Machinery

- The CAG of India audits the accounts of not only Central Govt but also those of the states BUT his appointment and removal is done by President w/o consulting the States.
  Hence, the office restricts the financial autonomy of the states.

  ↓

  The American- Comptroller General, on the contrary, has account of the Federal only.

IMPULSE

11. Parliamentary authority over state lists :- The Parliament is empowered to legislate on any subject of the state list if Rajya Sabha passes a resolution to that effect in the National Interest.

12. Appointment of Governor :-

13. Integrated election machinery :- Election Commission conducts election for both Centre and States.

↓

But these bodies constituted by the President and the states have no say in this matter.

14. Veto over state bills :- The governor is empowered to reserve certain type of bills passed by the State Legislature for the consideration of the President.

IMPULSE

▪ Centre – State Relations

Legislative Relations :	Art 245-255	Part XI
Administrative Relations :	Art 256-263	
Financial Relations :	Art 268-293	Part XII

List	Now	Original
Union	99	97
State	61	66
Concurrent	52	47

➘ Important Subjects in the Lists

Union List :- Defence
Banking
Foreign Affairs
Currency
Atomic Energy

Insurance
Communication
Inter-state
Census
Audit

State List :- Public Order
Police
Public health & sanitation
Agriculture
Prisons
Local Govt.
Fisheries
Markets
Theatres
Gambling

Concurrent List :-Education
Forests
Weight & Measures
Protection of wild animals & birds
Administration of Justice
Organisation /Constitution of all courts except the Supreme Court / High Court.

IMPULSE

➔ In case of overlapping b/w the Union List & Concurrent List, → the former should prevail

➔ Conflict b/w Concurrent list & State list → the former should prevail

Schedules of the Constitution

Numbers	Subject Matter	Articles Covered (important ones)
First Schedule	1.Names of the State & their Territorial jurisdiction 2.Names of the UTs & their extend	Art 1-4
Second Schedule	Provisions relating to the Emoluments, allowances, privileges and so on of 1.The President of India 2.The Governor of State 3.The Speaker & the Deputy Speaker of (L.S) 4.The Chairman & the Deputy Chairman of (R.S) 5.The Speaker & the Deputy Speaker of the Legislative Assemblies in the States. 6.The Chairman & the Deputy Chairman of the Legislative Councils in the States 7.The Judges of the S.C 8.The Judges of the H.C 9.The CAG of India.	Art 59,65, 75,97,125, 148,158, 164,186,& 221
Third Schedule	Forms of Both & Affirmations for 1.The Union Ministers 2.The candidates for election to the Parliament 3.The members of the Parliament 4.The judges of the S.C. 5.The CAG of India 6.The State Ministers 7.The candidates for erection to State Legislature 8.The members of the State Legislature 9.The judge of the H.C.	Art75,84, 99,124, 146,173, 188, and 219
Fourth Schedule	Allocation of seats in the R.S to	Art 4 & 80

IMPULSE

the States & the U.T.

Fifth Schedule	Provisions relating to the administration and control of scheduled areas & scheduled tribes.	Art 244
Sixth Schedule	Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura, Mizoram.	Art 244 & 275
Seventh Schedule	Division of powers b/w the Union & the States in term of List I (Union List) List II (State List) List III (Concurrent List)	Art 246
Eighth Schedule	Languages recognised by the Constitution. →Originally, it has --14 languages but presently there are 22 languages. --Sindhi was added by 21st Amendment Act of 1967 --Bodo, Dongri, Maithili and Santhali were added by the 92nd Amendment Act 2003.	Art 344 and 351
Ninth Schedule	Acts of Regulation (originally 13 but presently 282) of the State Legislature dealing with the Land Reforms & Abolitions of Zamindari systems & of the Parliament relating with other matters. →This schedule was added by the 1st Amendment(1951) to protect the laws included in it forms judicial scrutiny on the ground of violation of F.R. However in 2007, the S.C ruled that the laws included in the schedule after April 24, 1993 are now open to Judicial Review.	Art 31 B

IMPULSE

Tenth Schedule	Provisions relating to disqualification of the members of Parliament and the State Legislatures on the ground of defection. This schedule was added by 52nd Amendment Act of 1985, also known as Anti-Defection Law.	Art 102 and 191
Eleventh Schedule	Specifies the powers, authority and responsibility of Panchayats. This schedule was added by the 73rd Amendment Act, 1992.	Art 243 G
Twelfth Schedule	Specifies the powers, authority and responsibility of Municipalities, this schedule was added by the 74th Amendment Act, 1992.	Art 243W

➘ Exclusive privileges of Parliament regarding State List

> ***When Rajya Sabha Passes the Resolution***

If the R.S declares that it is necessary in the National interest that Parliament should make laws on a matter in the State List, then the Parliament becomes competent to make laws on the matters; such a resolution must be supported by **2/3rd** of the members present & voting.

↓

The resolution remains in force for 1 year

↓

It can be renewed any number of times but not exceeding one year at a time.

↓

The laws cease to have effect on the expiration of 6 months after the resolution has ceased to be in force.

↓

These provisions does not restrict the power of a State Legislature to make laws on the same matter. But in case of inconsistency b/w a State Law & a Parliamentary Law, the later is to prevail.

Renew Possible

IMPULSE

> ***<u>During a National Emergency</u>***

The Parliament acquires the power to legislate w.r.t. matters in the State List while a proclamation of National Emergency is in operation.

↓
↓

The laws become inoperative on the expiration of 6 months after the Emergency has ceased to operate.

Renew NOT Possible

> ***<u>When States make a request</u>***

When the legislatures of two or more states pass resolution.....requesting the Parliament.....on matter in the State List.....

a law so enacted applies only to those states which have passed the resolution.

↓
↓

However any other state may adopt it afterwards by passing a resolution to that effect in its legislature

↓
↓

Such a law can be amended or replaced only by the Parliament not by the legislatures of the concerned state.

NO NEED for Renew

IMPULSE

➔ <u>N.B:-</u>

1. Wildlife Protection Act -1972
2. Transplantation of Human Organs Act – 1994

> ***To implement International agreement***

The Parliament can make laws on any matter in the State List for implementing International agreement or conventions.

> ***During President's rule***

When the President's rule is imposed in a state, the Parliament becomes empowered to make laws w.r.t. any matter in the State List in the relation to that state..... continues to be operative after the President's rule.

↓

But such a law can be repealed or altered or re-enacted by the State Legislature.

➘ **Art 365 :-** says that where any state has failed to comply with (or to give effect to) any directions given by the centre, it will be lawful for the President to hold that a situation has arisen in which the govt. of the state cannot be carried on in accordance with the provisions of the Constitutions.

↓
↓

It means that in such a situation the President's rule can be imposed in the state under Article 356.

✓ A single state cannot request the Parliament to make a law on the state subjects.

✓ The Parliament can provide for the adjudication of any dispute or complaint w.r.t. the use, distribution & control of water of any inter-state river & river valley.

✓ The President can establish under (**Art-263**) an **Inter-State Council** to investigate & discuss subject of common interests b/w C & S

↓
↓

Such a council was set up in 1990.

↓
↓

By the recommendation of Sarkaria Commission (1983)

➘ **Art 312 :- Parliament to create All India Services on the basis of R.S resolution to that effect.**

IMPULSE

✦ **PSC :-**

1. State PSC :- appointed by Governor of the State.
   removed only by the President.
2. Joint SPSC :- appointment & removal by President.
3. **UPSC** :- can serve the needs of a state on the request of the State Governor & with the approval of the President.

➘ **Maharashtra + Goa**

Punjab + Haryana

Assam + Nagaland +Mizoram + Arunachal P

Common High Court

[UTs with the along State]

✦ The State Election Commissioner → app. by Governor → *removed only by President.*

✦ Art 352 :- State government are brought under the concrete control of the centre , *though they are not suspended.*

✦ Art 360 :- President can give necessary directions including the reduction of salaries of persons serving in the State and the High Court Judges.

✦ Art 355 :- Impose two duty on the Centre

1. To protect every state against external aggression & internal disturbance.
2. To ensure that the govt. of every state is carried on in accordance with the provisions of the Constitution.

IMPULSE

Extra –Constitutional devices

↓

Non Constitutional advisory body

1. Planning Commission (Presently Niti Aayog)
2. National Development Council (NDC)
3. National Integration Council
4. Central Council for Health
5. Central Council for Local Govt & Urban Development
6. Zonal Council
7. North Eastern Council.
8. Central Council of Indian Medicine
9. Central Council of Homeopathy
10. Central Family Welfare Council
11. Transport Development Council
12. University Grants Commission (UGC) [Statutory body—1956]

- The Governor's conference presided over by the President.
- The Chief Minister's conference presided over by the P.M.
- The Chief Secretaries conference presided over by the Cabinet Secretary.

⇒ Allocation of Taxing Powers

Financial Relation → Art 268- 293

1. The Parliament – exclusive powers - Union List – 15 in number.
2. State Legislature – exclusive powers - State List - 20 in number.
3. Both the Parliament & State Legislature – Concurrent List – 3 in number.
4. The residuary power – Parliament

↓

-Gift Tax
-Wealth Tax
-Expenditure Tax

IMPULSE

➘ Income Tax

levied & collected by the Centre
↓
But its proceeds distributed b/w the Centre & the State

Art 265 → "No tax shall be levied or collected except *by the authority of law.*"

that means clearly authorised by the way of legislation.

the Income Tax Act, 1961 (ITA)

➘ Service Tax :- Art 268 (A)

↓

It is levied by the Centre → but collected & appropriated by → both the Centre & the State.

➘ GST :- 101st Amd. 2016

Art 246 A → Special provision for GST

Art 269 A → levy and collection of GST for Inter-State supply

Art 279 A → GST Council

- ✓ A State Legislature can impose tax on the sale & purchase of goods **other than newspaper.**
- ✓ A State Legislature can impose tax on the consumption or sell of electricity. But no tax can be imposed on the consumption or sell of electricity which is
  - i. consumed by the Centre or sold to the Centre.
  - ii. consumed in the construction, maintenance or operation of any railway by the centre or by, the concerned railway company or sold to the centre or the railway company for the same purpose.
- ✓ The manner of distribution of the **net-proceeds** of the taxes & duties is prescribed by the President on the recommendation of the Finance Commission.
  ↓ (Art 280)
  ↓
  Quasi – judicial body

IMPULSE

- **Art 280**

➘ Finance Commission :-

- Constituted by President → every 5th year or even *earlier*

1. The distribution of the net proceeds of taxes to be shared *b/w the Centre & the States.* & the allocation b/w the states , the respective share of such proceeds.

2. The principles which should govern the *grants-in-aid* to the States by the Centre (i.e. out of the Consolidated Fund of India).

↓
↓ **(**Contingency Fund of India **– Art 267)**
Art 266

3. The measure needed to augment the Consolidated Fund of State to supplement the resources of the *Panchayats* & the *Municipalities* in the State on the basis of the **recommendations** made by the **State Finance Commission**.

4. Any other matter referred to it by the President in the interest of *sound finance*.

> **Taxes Levied & collected & retained by the State:-**

1. Land Revenue
2. Taxes on Agricultural Income
3. Mineral Rights
4. Road Vehicles
5. Luxuries
6. Entertainments
7. Gambling
8. Excise duty on alcoholic liquors & narcotics
9. Electricity consumption on sell
10. Capitation Taxes
11. Tolls
12. Sales Tax other than newspaper
13. Fees on the matters – State list (except court fee).

IMPULSE

'Net Proceeds' → means

(the proceeds of a tax or a duty) – (the cost of collection)

↓

↓

The net proceeds of a tax or a duty in an area is to be ascertained & certified by the CAG.

↓

His certificate is final

↑

Can not move to Court

Centre – State Relations

1. **Sarkaria Commission :-** 1983……establishment of Inter-State Council (1990)

2. **Punchi Commission** :- 2007……The *Governor's* term of 5yrs in a state should not be disturbed *except for some extremely compelling reasons.*

Planning Commission [now defunct **]** → replaced by **NITI Aayog**

-estd March, 1950
-non-constitutional
-non-statutory body

- estd 1st Jan, 2015
- non-constitutional
- non statutory body

IMPULSE

✦ **Statutory Grants (Art 275)**

empowers the Parliament to make grants to the states which are in need of financial assistance & not to every states.

↓

↓

Also, different sums may be fixed for different states.

↓

These sums are charged on the Consolidated Fund of India every year.

↓

The statutory grants under Art 275 (both General & specific) are given to the States on the recommendation of Finance Commission.

✦ **Discretionary Grants (Art 282)**

Empowers both the Centre & the States to make any grants for any public purpose even it is non-willing their respective legislative competence.

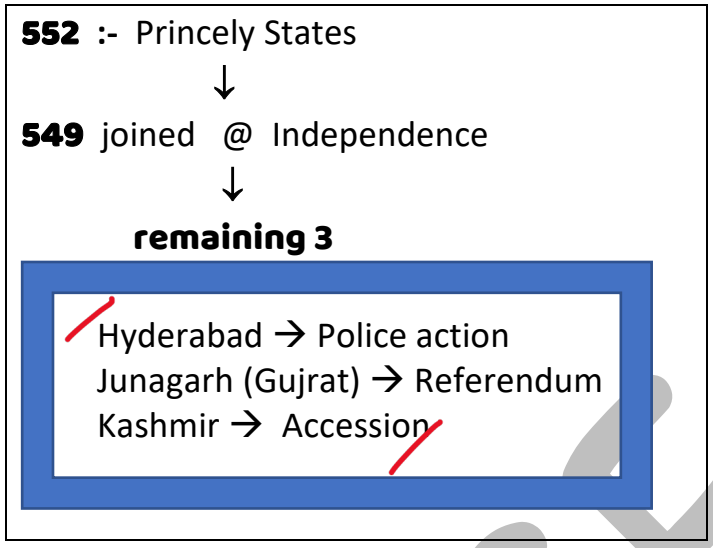
↓

Under this provision the Centre make grants to the States on the recommendation of the Planning Commission (an extra-constitutional non- statutory body)- presently NITI Aayog.

Ram Nandan Committee – 1993 – To identify the creamy layer among the OBC.

National Commission for Backward Classes - 1993

IMPULSE



- **Referendum** :- is a procedure whereby a proposed legislation is referred to the electorate for settlement by their direct votes.

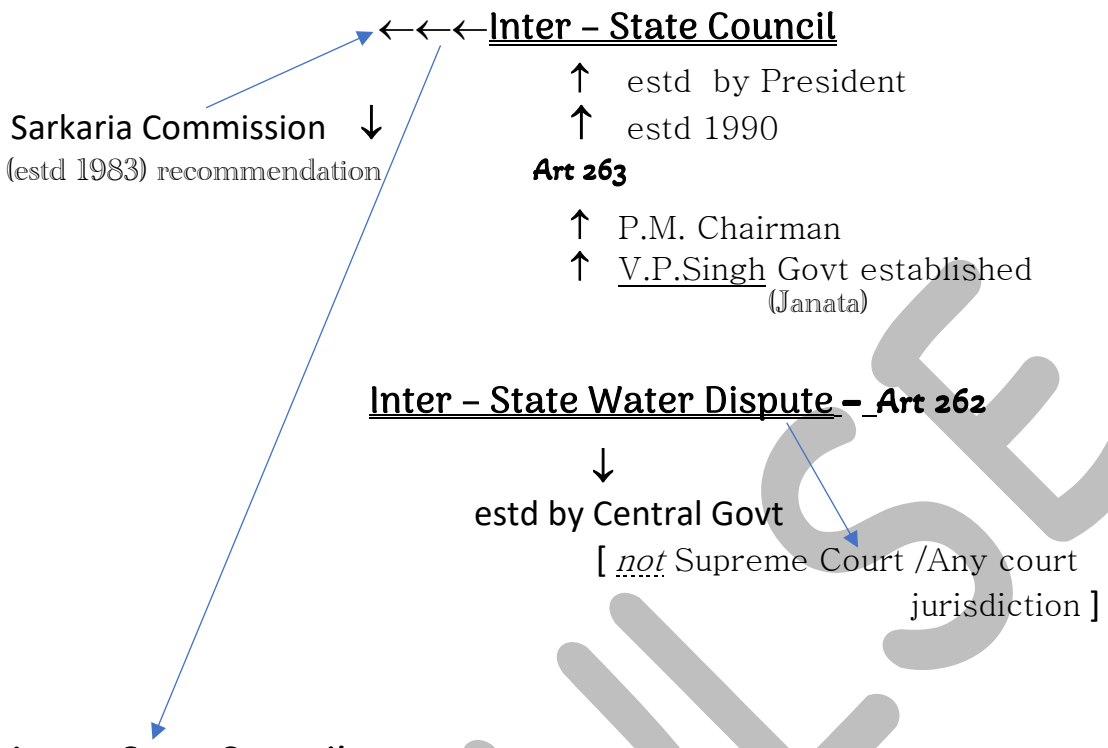
- **Plebiscite** :- is a method of obtaining the opinion of people on any issue of public importance. It is generally used to solve the territorial disputes.

- **Initiative** :- is a method by means of which the people can propose a bill to the legislature for enactment.

- **Recall** :- is a method by means of which the voters can remove a representative or an officer before the expiry of his terms, when he fails to discharge his duties properly.

IMPULSE

Inter – State Relations



Inter- State Council – Art 263

↓

is a recommendary body

↓

Duties

1. enquiring into and advising upon disputes which may arise b/w states.
2. Investigating & discussing subjects in which the States or the Centre & the States have common interests.
3. Making recommendation upon any such subject & particularly for the better condition of policy & action on it.

✦ Its function is advisory unlike that of the court which gives a binding decision.

Formation

1. P.M- Chairman
2. C.M of all States & U.Ts
3. Administrators of U.Ts where no C.M.
4. 6 Central Cabinet Ministers including the Home Minister to be nominated by the P.M.

IMPULSE

> **Zonal Council**

↓

Statutory (non-Constitutional body)

← ← ↓ → → 5 Councils

estd by the Act → States Reorganisation Act,1956

Formation

1. Home Minister of Central Government.
2. All the C.Ms of the respective zone.
3. Two other ministers from each state in the Zone
4. Administrator of each U.T in the Zone.

Persons associated with the Council w/o having right to vote

1. Persons nominated by Planning Commission
2. Chief Secretary of each respective State Govt.
3. Development Commissioner of each state in the Zone.

✦ ***Central Home Minister is the chairman of all the 5 Councils.***

	5 Zonal Councils	**Head Quarter**
1.	Northern Council	North Delhi
2.	Central Council	Allahabad
3.	Eastern Council	Kolkata
4.	Western Council	Mumbai
5.	Southern Council	Chennai

IMPULSE

Shah Commission

→ **Janata Govt**

↓

to investigate the circumstances that warranted

↓

the declaration of an emergency in 1975.

National Emergency (Art 352)	President's Rule (Art 356)
1. There is no max period prescribed for its operation. It can be continued indefinitely with the approval of Parliament for every 6 months.	**1**. Max. period prescribed for its operation is 3 years
2. Every resolution of Parliament approving its proclamation or its continuance must be passed by a special majority	**2**. By a simple majority
3. Affects F.R of citizens	**3.** No effect
4. Lok Sabha can pass a resolution for its revocation.	**4.** There is no such provision. It can be revoked by the President only on his own.

✦ For the 1st time – President's rule-- Punjab 1951

> Effects of the Financial Emergency

- The President may issue direction for the reduction of salaries & allowances of
  1. All or any class of person serving the Union
  2. The judges of the **S.C** & **H.C**

Art- 123 – Ordinance making power of President

Art -111 – President' s veto power

Art – 200- Governor's veto power

➔ **N.B :-**

W.B ----------4
Kerala---------9
U.P.----------9
Punjab---------8

→→→→President's rule

IMPULSE

Pardoning power of

President - **Art 72**

Governor – **Art 161**

- **President**

Pension 50% — 5 lakhs / month

Union Executive consist of

- President
- Vice President
- P.M
- Council of Ministers
- Attorney General of India

1. Dr. Rajendra Prasad	1952- vs K.T.Shah
2. Dr. Rajendra Prasad	1957
3. Dr. S. Radhakrishnan	1962
4. Dr. Zakir Hussain	1967
5. Fakir – ud – din Ali Ahmed	1974
6. N.Sanjeeva Reddy	1977 – unopposed

⇒ 1st CJI @ President – M. Hidyatullah

Indirect Election ←←← **Election of President** →→→ disputes @ S.C

↓

Electoral College

↓ ↓

Proportional representation by means of single transferrable votes & the voting is by secret ballot.

↓

1.The elected members of both the Houses of Parliament.

IMPULSE

2.The elected members of the Legislative Assemblies of the States.
3.The elected members of the Legislative Assemblies of the UTs of Puducherry & National Capital territories of Delhi.

↓

↓

Nominated members
do not participate in the election

↓

Voter
Indicate his preferences by making 1,2,3,4 etc against the name of the candidates.

> **Qualification**

- 35 years of age
- He should be qualified for election as a member of Lok Sabha

↓

Vice President @ R.S

- The nomination of a candidate for election to the office of President must be subscribed by **50** electors as proposers and **50** electors seconders
- Oath @ CJI

absence

Senior most judge of S.C

↓

Acting President @ same process

*He is **immune** from any **criminal proceedings** even in respect of his personal act.

↓

↓

CAN NOT BE IN PRISON

↓

However after giving ***2 months notice, civil proceedings*** can be instituted during his term of office.

IMPULSE

- ✓ 5 years – addressing the resignation letter to Vice President – eligible for re-election
- ✓ U.S.A President → not more than twice

> **Impeachment :-**

↓

- for 'violation of Constitution'

↓

- The impeachment charges can be initiated by the either House of Parliament.

↓

- Signed by 1/4th member of that House
  - Fourteen days notice should be given to the President.
  - After the impeachment bill is passed by 2/3rd members of that House , it is sent to other House
- The President has the right to appear & to be represented at such investigation.

↓

- The other House → 2/3rd members majority → President is removed.

↘ Same number of days for V.Prz
- But procedure is different

> **Voting during impeachment proceedings**

1. The nominated members of either House of the Parliament can participate
2. The elected members of the Legislative Assemblies of the State & UT of Puducherry & National Capital Territories of Delhi do not participate.

▪ Powers of President :-

> Executive Power

1. Appoints Attorney General of India & determines his remunerations.
2. Appoints CAG
3. Appoints a commission for S.C, S.T & OBCs.

IMPULSE

4. Appoint an inter-state council to promote Centre-State & inter-state cooperation.

> Legislative Powers

1. He can summon or prorogue the Parliament & dissolve the L.S.
   ↓
   He can also summon a joint sitting of both the Houses of the Parliament.
   ↓
   Presided by the Lok Sabha Speaker
2. Can address the Parliament @ the commencement for the 1st session after each general election and the 1st session of every year.
3. Can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both Speaker & Deputy Speaker fall vacant.
4. Nominates→ 2 members – Lok Sabha
   12 members – Rajya Sabha
5. He decides on questions as to disqualification of members of the Parliament in consultation with Election Commission.
6. Prior recommendation or permission – certain types of bills in Parliament. E.g.
   i) a bill involving expenditure from the consolidated fund of India (money bill)
   ii) A bill for the alteration of boundaries of states or creation of new state.
7. When a bill is sent to the President
   i)gives his assent to the bill , or
   ii)withhold his assent to the bill
   ← ←←← **iii)**return the bill (if it is not a money bill) for reconsideration of the Parliament
   ↓
   ↓
   ↓
   if the bill passed again → with/w/o amendment→ President has to give his assent.

8. A state legislature → bill → is reserved by Governor → for consideration of President can
   - continuation of i, ii, iii
   iv)**can** return the bill to the Governor

   It is ***not obligatory for the President to give his assent***
   ↓
   Even if the bill is again passed by the State Legislature & sent again to him for his consideration.

9. He can promulgate ordinances when the Parliament is not in session.
   ↓

IMPULSE

These ordinances must be approved by the Parliament within 6 weeks from its reassembly . He can also withdraw an ordinance at any time.

10. Lays report of the CAG, UPSC, Finance Commission & others before the Parliament.

> Financial Powers

1. Money bills can be introduced only with the prior recommendation of the President.
2. He causes to be laid before the Parliament the Annual Financial Statement (Union Budget).
3. No demand for grant can be met except on his recommendation.
4. He can make advance out of the Contingency Fund (Art 267) of India to meet any unforeseen expenditure.
5. Constitutes Finance Commission (Art 280)

> Judicial Powers

1. Appoints CJI & the judge of S.C & H.C
2. He can seek advice from S.C on any question of law or fact.

   However , the advice tendered by the S.C is not binding on the President
3. He can grant Pardon, reprieve, respite, remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence.
   i] In all cases where the punishment or sentence is by a court martial.
   ii] In all cases where the punishment or sentence is for an offence against an union law.
   iii] In all cases where the sentence is a sentence of death.

> Diplomatic Powers

International treaties & agreements are negotiated & concluded on behalf of the President.

↓

However, they are subjected to the approval of the Parliament.

> Military Powers

Supreme Commander @ Army, Navy, Air Force
He can declare war or conclude peace, subject to the approval of Parliament.

IMPULSE

> Emergency Powers

1. National Emergency (Art 352)
2. President's Rule (Art 356, 365)
3. Financial Emergency (Art 360)

Constitutional Validity

- **Constitutional**
- **non – Constitutional**
  - **Statutory** is founded by an Act of Parliament
  - **Non statutory** e.g. Planning Commission, NITI Aayog

←←← Veto Power of the President

↓

Article 111

1. He may give his assent to the bill
2. He may withhold his assent to the, bill
3. He may return the bill (if it is not a money bill)

again Parliament passed with/without amendment, he has to give his assent.

> **Veto Power**

1. **Absolute Veto** :- i.e. withholding of assent to the bill passed by the legislature.
2. **Qualified Veto** :- i.e. which can be overridden by the Legislature with a higher majority.
3. **Suspensive Veto** :- which can be overridden by the Legislature with an ordinary majority.
4. **Pocket Veto** :- i.e. taking no action on the bill passed by the Legislature.

U.S.A ------ 2. Qualified Veto

India ↔ 1. Absolute Veto, 3. Suspensive Veto, 4. Pocket Veto

Suspensive Veto :- When he ***returns*** a bill for the recommendation of the Parliament.

IMPULSE

✦ **Constitutional Amendment Bill** :- President CANNOT use "veto".

> **Pardoning Power of the President** (Art 72)

Governor→ Art 161

1. **Pardon** :- Removes both the sentence & the conviction.
   ↓
   completely absolves the convict from all sentences, punishment, & disqualification.

2. **Commutation** :- Substitution of one forms of punishment for a lighter *form*.

   Ex: from death sentence to rigorous imprisonment.

3. **Remission** :- Reducing the period of sentence w/o changing its *character*.

   Example :-from 2 years imprisonment to 1yrs imprisonment.

4. **Respite** :- Awarding a lesser sentence in place of one originally awarded , *due to some special fact*.

5. **Reprieve** :- A stay of the execution of a sentence (specially that of death) for a temporary period.

- Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

1. President can pardon sentences inflicted by court martial

   ↓ The Governor can't

   ↓ military court

2. Death sentence

   ↓ President can

   ↓ Governor can't

IMPULSE

So far the Indian Presidents died in the office
1.Dr.Zakir Hussain
2.Fakir-ud – din Ali Ahmed

'Veto' – *latin* word – means '**forbid**'

IMPULSE

Vice President

↓

He draws his regular salary in his capacity as the ex-office Chairman of the Rajya Sabha @4.00 lakhs/month

Election :- Electoral college (different from President)

1. It consists of both the elected & *nominated* members of the Parliament (President – elected members only)
2. Does not include members of the State Legislative Assemblies (President – elected members of State Legislative Assemblies)

> **Manner of Election**

Same
↓
Proportional representation single transferrable votes
↓
Secret ballot
↓
1, 2, 3, 4

> **Qualification**

- 35 years of age
- Should be qualified for election as a member of R.S.

↓

President (L.S)

- At least **20** electors as proposers and **20** electors as seconders. (**Prz. 50**)
- Oath by President

Resignation letter to President

➔ A formal impeachment is not required for his removal

↓

He can be removed by a resolution of the R.S passed by an absolute majority & agreed to by the L.S

↓

14 days advance notice (Prz also)

↓

Notably, no ground has been mentioned in the Constitution for his removal.

> **Election disputes**

↓

S.C verdict is final

↓

He can act as President

↓

Max period of 6 months

↓

Within which a new president has to be elected

↓

While acting as President, the Vice President does not perform the duties of the office of the Chairman of the Rajya Sabha.

➘ The American Vice-President

succeeds to the Presidency when it falls vacant

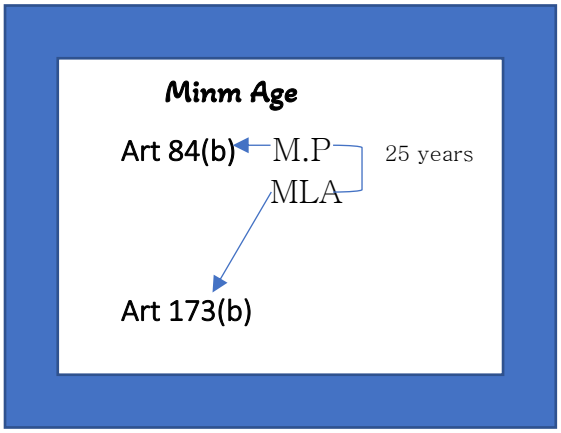
& *remains President for the unexpired term* of his predecessor.

IMPULSE

▪ Prime Minister – Rs 2,80,000/-

↓

Art 75



says only, the P.M shall be appointed by the President

↓

oathed by the President

↓

the resignation or death of an incumbent P.M automatically dissolves the Council of Ministers & thereby generates a vacuum.

> **To communicate to the President**

- All decisions of the Council of Ministers.
- He advises the President with regard to summoning & prorogating of the sessions of the Parliament.
- He can recommend dissolution of the L.S to the President at any time.
- He announces govt. policies on the floor of the House.
- He is the chairman of the NITI Aayog (Planning Commission), NDC, National Integration Council, National Water Resources Council.

> **Art 74 :** There shall be a Council of Minister with the P.M. at the head *to aid and advice* the President who shall, in the exercise of his functions, act in accordance with such advice.

> **Art 75 :**

a) The P.M shall be appointed by the President & other ministers shall be appointed by the President on the advice of the Prime Minister.

b) The ministers shall hold office during the pleasure of the President.

IMPULSE

c) The council of ministers shall be collectively responsible to the House of the People (Lok Sabha)

> **Art 78 :** Duty of the Prime Minister

** Chief Ministers who became P.M
↓
1.Moraji Desai
2.Charan Singh
3. V.P Singh
4. P.V Narsimha Rao
5.H.D Deve Gowda
6.Narendra Modi

Death :- J.L Nehru ----------] acting P.M
Lal Bahadur Shastri ----------] ↓
Gulzarilal Nanda
(seniority basis)

> **Centre Council of Ministers**

Art 74, 75

Total number of ministers including P.M shall not exceed **15%** of the total strength of the **L.S.**
↓
91st Amendment, 2003

> **Ministers are Oathed by President**

- When the **L.S** passes a no-confidence motion against the Council of Ministers all the ministers have to resign including those ministers who are from **R.S.**

President removes a minister only on the advice of the Prime Minister.

IMPULSE

▪ **Role of Cabinet** →→ 'Cabinet word' → no where mentioned in the Constitution

Art 352

"the council consisting of PM and other ministers of **cabinet rank** appointed under Art 75…"

inserted later

44th Amd, 1978

1. It is a highest decision making authority in our politico–administrative system.
2. It is the chief policy formulating body of the Central Govt.
3. It is the supreme executive authority of the Central Govt.
4. It is the chief-coordinator of Central Administrator.
5. It is an ordinary body to the President & its advice is binding on him.
6. It is the chief crisis manager & thus deals with all emergency situation.
7. It deals with all major legislative & financial matters.
8. It exercises control over higher appointments like constitutional authorities & senior Secretariat administrator.
9. It deals with all foreign policies & foreign affairs.

> **Cabinet Committees**

1. They are extra – Constitutional
2. The non-cabinet ministers are not debarred from their membership.
3. Are of two types → Standing
   Ad hoc
4. Important Standing committees are

P.M Chairman *-Political Affairs Committee
-Economic Affairs Committee
-Appointmentees Committee

➔ **Home Minister –Chairman** - Parliamentary Affairs Committee

Among the above three the most powerful is the Political Affairs Committee → often is described as 'Super Cabinet'

IMPULSE

▪ Parliament

Lok Sabha – **552** (530+20+2)
↓→Anglo-Indian
(*at present*) – ***545*** (*530+13+2*)

Rajya Sabha – **250** (238+12)
(*at present*) – ***245*** (*229+4+12*)
↓→ only Delhi & Puducherry

Lok Sabha :- Allotment of seats for the states – 1971 level upto 2026 – territorial representation

Proportional Representation : - R.S , State Legislative Council, President, Vice - President
↓
↓
By a single transferrable vote

**Territorial Representation :- L.S

Representation of People Act, 1951
↓
L.S →→→ 25 years
R.S→→→ 30 years

NOT MENTIONED IN CONSTITUTION

- ✦ **Speaker can vote on the resolution of his removal….. Chairman cannot vote.**

> **Quorum :-** A quorum is the minimum number of members of a deliberative assembly, necessary to conduct the business of that group.

IMPULSE

> 1/10th of the strength **L.S** -------- 55 members
> **R.S**-------- 25 members

➔ **Official Language Act – 1963**

'Zero Hour'	'Calling Attention Motion'
↓	↓
not mentioned in the Rules of Procedure	mentioned in Rules of Procedure
	↓
	'Indian Innovation'

Money bill – Art 110

Financial bill (I) – Art 117 (1) recommendation by Prz in other respect same as ordinary bill

Financial bill (II) – Art 117 (3) recommendation by Prz is not necessary

Art -112 – (Annual Financial Statement)

(No use of the word Budget)

IMPULSE

****Acworth Committee**

- estd 1919
- report submitted – 1921
- implementation – 1925

↓

Railway Budget was separated from General Budget hereon

> **Parliamentary Committee_____**

↓ *(do further study from detailed note)*

↓ ↓

Standing Committee **Adhoc Committee**

Chairman ← [•Political Affairs Committee ↓

P.M ← ←[•Economic Affairs Committee ↓

↑←←←← [•Appointmentees Committee ↓

Chairman ←← •Parliamentary Affairs Committee ↓

Home Minister --- ----------

↓ ↓

enquiry committee eg- 2G

advisory committee eg – on a particular bill

↘ **Consultative Committee is formed by → Ministry of Parliamentary Affairs**

IMPULSE

Representation / Allocation of seats :-

Lok Sabha	Rajya Sabha
1.U.P	1.U.P
2.Maharashtra	2.Maharashtra
3.West Bengal	
4.Bihar	3.West Bengal,Bihar

➘ **Voting age** → 21 – 18 years

↓

61st Amendment Act, 1988

Implemented - **1989**

✦ **Parliament = President**

+

Council of States (R.S)

+

House of the People (L.S)

Out of 7 U.Ts only 2 (Delhi & Puducherry) have representation in R.S.

↓

The population of other 5 UTs are too small to have any representation in the R.S

✦ Originally (S.C) & (S.T) reservation was to be occurred for 10 years i.e. upto 1960

> Demerits of Proportional Representation

1. It is highly expensive
2. It does not give any scope for organising by-elections
3. It eliminates intimate contacts b/w voters and representatives.
4. It promotes minority thinking & group interests
5. It increases the significance of party system & decreases that of voters.

IMPULSE

> The R.S (First constituted in 1952) is a continuing chamber

↓

It is a permanent body & not subject to dissolution.

↓

1/3rd of its member retire every 2nd year

↓

re-election or re-nomination - possible

> **Duration of L.S.**

Normal term is 5 years from the date of its 1st meeting after general election.

The term or tenure of **L.S** can be extended during the period of National Emergency by a Law of Parliament for 1 year at a time, for any length of time.

↓

However, this extension cannot continue beyond a period of 6 months after the emergency has ceased to operate.

> **Disqualification on the ground of Defection**

Under the provisions of 10th schedule :-

1. If he voluntarily gives up the membership of the Political party by whose ticket he is elected to the House.
2. If he votes or abstains from voting in the House contrary to any direction given by his political party.
3. If any independently elected member joins any political party.
4. If any nominated member joins any political party after the expiry of 6 months.

IMPULSE

The question of disqualification under the 10th schedule is decided by the Chairman in the case of **R.S** & Speaker in the case of **L.S**

***(not by the President)**

↓

The decision of the Chairman/ the Speaker in this regard is subject to Judicial Review.

> Double Membership

1. If a person is elected to both the House of Parliament, he must intimate *within 10 days* in which House he desires to serve.

   ↓

   In absence of intimation, the **R.S** seat becomes vacant.

2. If a sitting member of one House is also elected to the other House, his seat in the 1st House becomes vacant.

3. If a person is elected to two seats in a House, he should exercise his option for one.

   ↓

   Otherwise both seats become vacant.

4. A person cannot be a member of both the House of the Parliament and the State Legislature at the same time.

   ↓

   If a person is so elected , his seat in Parliament becomes vacant if he does not resign his seat in the State Legislature *within 14 days.*

> Resignation

Lok Sabha_____to_____ Speaker

Rajya Sabha _____to_____Chairman

IMPULSE

➔ However, the Chairman / Speaker *may not accept* the resignation if he is satisfied that it is not voluntary or genuine.

> **Absence :** If he is absent from all its meetings *for a period of 60 days* w/o its permission.

↓

↓

In computing the period of 60 days → no account shall be taken of any period during which the House is prorogued or adjourned for more than 4 consecutive days.

➘ Every member of either House of Parliament- take oath – before the President or some person appointed by him for this purpose.

➘ The date of election of the Speaker is fixed by the ***President.***

Speaker

1. He resigns by writing to the Deputy Speaker
2. He can be removed by a resolution passed by a majority of all the members of the L.S

↓

Such a resolution can be moved only after giving **14 days advance notice**

↓

During that time he cannot preside at the sitting of the House, though he may be present.

↓

However, he can speak and take part in the proceedings of the House on such a time and vote in the 1st instance, though not in case of an equality of votes.

➔ It *should be noted* here that, whenever the L.S is dissolved,

↳ the Speaker does not vacate his office & continues till the newly elected L.S meets.

IMPULSE

G V Mavalankar

1st Speaker

Ananthasayanam Ayyangar

1st Deputy Speaker

Role, Power & Functions of Speaker :-

1. He does not vote in the 1st instance, but he can exercise a casting vote in the case of a tie.
2. He presides over a joint sitting of the two Houses of Parliament.
3. He can allow a secret sitting of the House at request of the leader of the House.
4. He decides whether a bill is money bill or not.
5. He decides the questions of disqualification of a member of the L.S , arising on the ground of defection under the provision of 10th Schedule.

   ↓

   The decision of the Speaker in this regard is subject to Judicial Review.

6. He acts as the ex-officio Chairman of the Indian Parliamentary Group of the Inter- Parliamentary Union / He also acts as the ex-officio Chairman of the Conference of the presiding officers of Legislative bodies in the Country.
7. He appoints the Chairman of all Parliamentary, Committees of the L.S & supervises the functioning.

   He himself is the Chairman of the
   - Business Advisory Committee
   - The Rules Committee
   - General Purpose Committee

8. He can be removed only by a resolution ..... this motion of removal can be considered & discussed only when it has the support of *atleast 50 members.*
9. Salary, & allowances @ Consolidated Fund of India (Art 266)
10. He is placed at **7th rank**, *along with the CJI* . This means, he has a high rank, than all Cabinet Ministers, except the P.M & Deputy P.M .

IMPULSE

Deputy Speaker of L.S

- The date of election of the Deputy Speaker is fixed the Speaker.
- Resigns by writing to the Speaker.
- He also presides over the joint sitting of both the Houses of the Parliament when the Speaker is absent.
- Deputy Speaker is not subordinate to the Speaker. He is responsible to the Parliament.
- Has one special privilege ,i.e whenever he is appointed as a member of a Parliamentary committee, he automatically becomes its Chairman.
- When the Speaker presides over the House , Deputy Speaker is like an other ordinary member of the House
- Since the 11th L.S there has been a ***consensus*** that the Speaker comes from the ruling party & the post of the Deputy Speaker goes to the main opposition party (1996)
- The Speaker & the Deputy Speaker while assuming their offices, do not make & subscribe to any separate Oath & Affirmation .

Panel of Chairperson of L.S

- Under the rules of L.S , the Speaker nominates from amongst the members → a panel of *not more than 10 Chairpersons.*
- Any of them can preside over the House in the absence of Speaker & Deputy Speaker.

Speaker Pro-Tem

- As provided by the constitution, the Speaker of the past L.S vacates his office immediately before the 1st meeting of the newly elected L.S.
- Therefore, the President appoints a member of the L.S as the Speaker Pro – Tem
- Usually, the senior most member is selected for this, the President himself administer oath to the Speaker Pro-Tem
- The Speaker Pro –Tem has all the powers of the Speaker/He presides over the 1st sitting of the newly elected L.S. / His main duty is to administer oath to the new members / He also enables the House to elect the new Speaker / when the new Speaker is elected by the House the office of the Speaker Pro-Tem ceases to exist.

IMPULSE

Chairman of Rajya Sabha

Vice- President of India – ex – officio

During any period when the Vice President acts as President or discharges the function of the President , he does not perform the duties of the office of the Chairman of Rajya Sabha.

⇒ Special privileges of Speaker against the Chairman

1. The Speaker decides whether a bill is a money bill or not & his decision on this question is final.
2. The Speaker presides over a joint sitting of two Houses of the Parliament.

- ✦ Chairman is not a member of the House. But like the Speaker, the Chairman also cannot vote in the 1st instance.
- ✦ Has casting vote powers.
- ✦ During removal proceedings he can't vote
- ✦ Salary @ Consolidated fund of India (Art 226)
- ✦ When he acts as the President, he is not entitled to any salary/ allowances payable to the Chairman of R.S

Deputy Chairman of R.S

- He resigns by writing to the chairman
- Deputy Chairman is not subordinate to the Chairman.
- He is directly responsible to the R.S

➔ ***Has casting vote powers.***

⇒ Panel of Vice-chairperson of (RS)

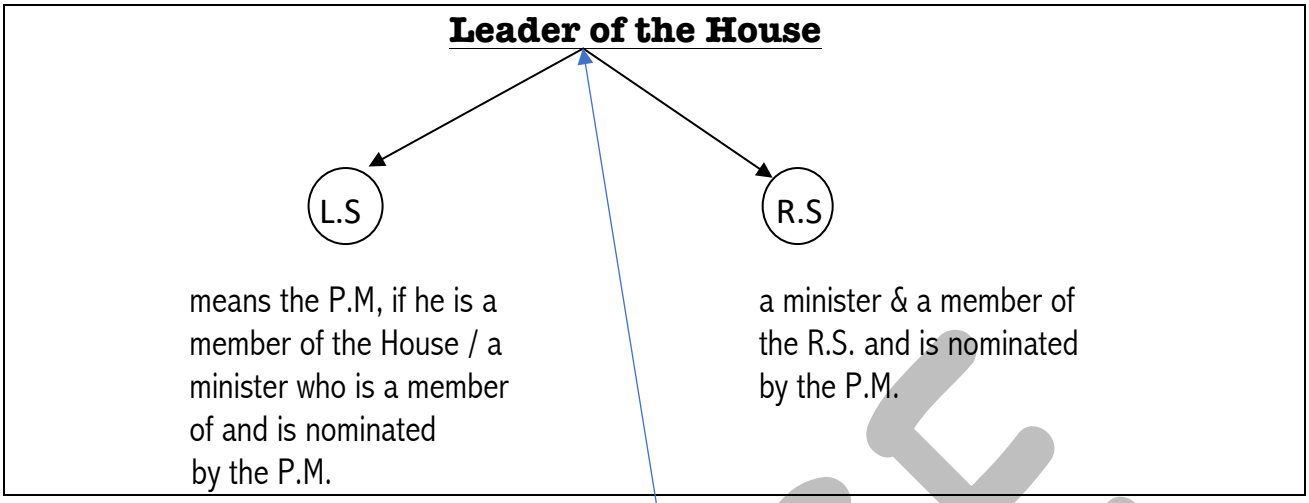
L.S	R.S
Chairperson	Deputy Chairperson

⇒ Secretariat of Parliament → independent body

Administrative head rank of Cabinet Scy.

- ✓ The Secretariat of each House is headed by a **Secretary General**
- ✓ He is a permanent officer and is appointed by the Presiding officer of the House.

IMPULSE



mentioned

Rules of House , Parliamentary Statue

Leader of the Opposition

Having not less than *1/10th seats of the total strength* of the House is recognised as the Leader of the Opposition in that House.

Equivalent to a Cabinet Minister

⇒ Whip

- ✓ Every political party whether ruling or opposition has its own whip in the Parliament.
- ✓ He is appointed by the political party to serve as an assistant floor leader.
- ✓ He is charged with the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favour of or against a particular issue . He regulates & monitors their behaviour in the Parliament. The members are supposed to follow the directives given by the whip.
- ✓ Otherwise disciplinary actions can be taken.

IMPULSE

⇒ Sessions of Parliament

➔ **Summoning** :- The President from time to time summons each House of Parliament to meet.

↓

That means ←←←← Parliament should meet at least twice a year.

But the maximum gap b/w two sessions of Parliament cannot be more than 6 months.

3 sessions in a year

1. Budget Session (February – May)
2. Monsoon Session (July – Sept)
3. Winter Session (Nov – Dec)

The period spanning b/w prorogation of a House & its reassembly in a new session is called ***recess.***

Speaker

➔ **Adjournment** : - A Morning sitting from 11am -- 1 pm and post-Lunch sitting from 2pm – 6pm.

↓

An adjournment suspends the work in a sitting for a *specified time*, which may be hours, days or weeks.

➔ **Adjournment Sine Die** :- means terminating a sitting of Parliament for an *indefinite period.*

↓

In otherwords, when the House is adjourned w/o naming a day for reassembly, it is called Adjournment Sine Die.

President

➔ **Prorogation** :- The presiding officer (Speaker/ Chairman) declares the House adjourns 'Sine Die' when the *business of a session is completed*.

↓

Within the next few days, the President issues a notice for Prorogation of the session.

↓

However the President can also Prorogue the House while in session.

IMPULSE

Adjournment	**Prorogation**
1.Only terminates a sitting & not a session	1.Not only terminates a sitting but also a Session
2.Done by the presiding officer.	2.Done by the President of India.

✦ **Dissolution** :- Only the L.S is subject to dissolution
..... not the R.S , it's the permanent House.

⇒ When the L.S dissolves

1. A bill pending in the L.S → *lapses* (whether originating in L.S or transmitted to it by R.S)
2. A bill passed by the **L.S** but pending in the R.S → *Lapses.*
3. A bill not passed by the two Houses due to disagreement and if the President has notified the holding of a joint sitting before the dissolution of L.S → *does not Lapse*
4. A bill pending in the **R.S** but not passed by the L.S → *does not Lapse* .
5. A bill passed by both Houses but pending for assent of the President – *does not Lapse.*
6. A bill passed by both Houses but returned by the President for reconsideration – *does not Lapse.*

IMPULSE

⇒ Language in Parliament

1955–Prz appointed Official Language Commission under the chairmanship of
↓
B.G Kher

The Constitution declared
Hindi + English
↓
However the Presiding officer can permit a member to address the House in his mother tongue.
↓
Though English was to be discontinued as a floor language after the expiration of 15years from the Commencement of the Constitution (i.e 1965) , the Official Language Act (1963) allowed English to be continued along with Hindi.

⇒ Rights of Ministers & Attorney General

- Both have the right to speak and take part in the proceedings of either House, any joint sitting of both the Houses and any committees of Parliament of which he is a member , w/o being entitled to vote.

1. A minister can participate in the proceedings of a House , of which he is not a member. In other words a minister belonging to the L.S can R.S participate in the proceedings of & vice versa.
2. A minister, who is not a member of either House, can participate in the proceedings of both the Houses w/o being a member of any House for max 6 months.

Lame -Duck Session

refers to the last session of the existing L.S after a new L.S has been elected
↓
Those members of the existing L.S who *could not get re-elected* to the new L.S are called Lame – Duck .

IMPULSE

⇒ Devices of Parliamentary Proceedings

> **Question Hour** :- (*formal procedure*) The 1st hour of every Parliamentary sitting is slotted for this.

> **Starred Question** :- (*) Requires an oral answer & hence supplementary questions can follow .

> **Unstarred Question** :- Requires a written answer & hence supplementary questions cannot follow.

> **Short notice Question** :- It is one that is asked by giving a notice of less than 10 days . It is answered orally.

> **Zero hour** :- (*Informal Procedure*) Indian innovation starts after Question hour & lasts until the agenda of the day…….To raise matters w/o any prior notice.

> **Closure Motion** :- It is a motion moved by a member to cut short the debate on a matter before the House. If the motion is approved by the House, debate is stopped forthwith & the matter is put to vote.

There are 4 kinds of Closure Motion

1. **Simple closure** :- matters having been sufficiently discussed, be now put to vote.
2. **Closure by compartments** :- In this case, the clauses of a bill or a lengthy resolution are grouped into parts before the commencement of the debate. The debate covers the part as a whole and the entire part is put to vote.
3. **Kangaroo closure** :- Only important clauses are taken up for debate & voting & the intervening clauses are skipped over & taken as part.
4. **Guillotine closure** :- It is one when the undiscussed clauses of a bill or a resolution are also put to vote along with the discussed one due to want of time (as the time allotted for the discussion is over).

IMPULSE

> **Privilege Motion**

It is concerned with the breach of Parliamentary privileges by a minister.

↓

It is moved by a member when he feels that a minister has committed a breach of privilege of the House ..... Its purpose is to censure the concerned minister.

> **Calling Attention Motion**

Introduced in the Parliament by a member to call the attention of a minister to a matter of urgent public importance & to seek an authoritative statement from him on that matter.

> **Adjournment Motion**

To draw attention of the House to a definite matter of urgent public importance & needs the support of *50 members* to be admitted.

↓

As it interrupts the normal business of the House it is regarded as the extraordinary device.

↓

It involves an element of censor against the govt & hence is not permitted to make use of this device in R.S.

↓

The discussion on an adjournment motion should last for not less than 2 hrs 30 mins.

↓

It should be restricted to a *specific matter of recent occurances* & should not be framed in general terms.

> **No – Confidence Motion**

The motion needs the support of 50 members to be admitted.

> **Motion of thanks** (British model):-The first session after each general election & the 1st session of every fiscal year is addressed by the President.

↓

At the end of the discussion, the motion is put to vote. The motion must be passed in the House. Otherwise it amounts to the *defeat of the Govt.*

> **No – day – yet Motion :-** is a motion that has been admitted by the Speaker but no date has been fixed for its discussion.

IMPULSE

> Point of Order

A member can raise a point of order when the proceedings of the House do not follow the normal rules of procedure.

↓

It is usually raised by an opposition member in order to control the govt.

↓

It suspends the proceedings before the House.

↓

No debate is allowed on a pt. of order.

3 days in a week ←←←←

Half an hour discussion

Meant for discussing a matter of *sufficient* public importance

↓

The speaker can allot 3 days in a week for such discussion

Short duration discussion

@ 2hrs / 2days in a week

Urgent Public Importance

↓

Speaker can allot 2 days in a week

> Resolutions

The members can move resolutions to draw the attention of the House or the govt to the matters of general public importance/interests.

All motions are not necessarily put to vote in the House ,whereas all the resolutions are requires to be voted upon.

IMPULSE

> **Youth Parliament :-**The Ministry of Parliamentary Affairs provides necessary training & encouragement to the states in introducing the scheme.

Public bill	Private bill
1.It is introduced in the Parliament by a minister	1. By any member of the Parliament other than a minister
2.It reflects the policies of the Govt (ruling party)	2.Reflects the stand of Opposition Party on public matter
3.It has the greater chance to be approved by the Parliament	3.It has lesser chance to be approved by the Parliament
Its rejection may lead to its resignation	4.Not applicable
5.Its introduction in the House requires 7 days notice	5.One month's notice
6.It is drafted by the concerned department in consultation with the law department.	6.Its drafting is the responsibility of the member concerned.

Ordinary Bill	Money Bill
1.it can be introduced either in L.S or in R.S	1.Only in L.S
2.Introduced either by a minister or a private member	2.Only by a minister
3.It introduced w/o the recommendation of the President	3.Only on the recommendation of the President

IMPULSE

4.Can be amended or rejected by the R.S	4.Cannot be amended or rejected by the R.S . The R.S should return the bill with or w/o recommendations, which may be accepted or rejected by the L.S
5.It can be detained by the R.S for a max. period of 6 months.	5.Can be detained by the R.S for a max. period of 14 days only
6.Does not require the certification of the Speaker when transmitted to the R.S . If it has originated in the L.S	6.Requires the certificate of the Speaker.
7.In case of a deadlock due to disagreement b/w the two houses, a joint sitting of both the Houses can be summoned by the President to resolve the deadlock.	7.No procedure of Joint Sitting
8.Its defeat in the L.S may lead to the resignation of the Govt (if it is introduced by a minister)	8.Govt resigns
9.Can be rejected, approved or returned for reconsideration by President.	9.Cannot be returned for reconsideration by the President.

IMPULSE

Article – 112 :- (Annual Financial Statement)

No use of the word Budget.

⇒ ***Financial Year*** **:-** Begins on 1st April and ends on 31st March of the following year.

The railway budget was separated from the general Budget

- Acwarth Committee
  ↓
  estd – 1919
- submitted report
  -1921
- implementation
  -1925

Stages in enactment of Budget

Presentation of Budget
↓
General discussion
↓
Scrutiny by Dept. Committees
↓
Voting on demands for grants
↓
Passing of appropriation bill
↓
Passing of finance bill

IMPULSE

Railway Budget

Lok Sabha
↓
Railway Minister
↓
3rd week of February

General Budget

Lok Sabha
↓
Finance Minister
↓
Last working day of February

IMPULSE

⇒ Voting on demands for grants

- The demands are presented Ministry wise . A demand becomes a grant after it has been duly voted.
  ↓
- Two points should be noted in this context

1. The voting of demands for grants is the exclusive privilege of the (L. S) i.e the (R.S) has no power of voting on the demands.
2. The voting is confined to the votable part of the Budget – the expenditure charged on the Consolidated Fund of India is not submitted to the vote (it can only be discussed)
   ↓
   During this stage, the members of Parliament can discuss the details of the Budget. They can also move motions to reduce any demand for grant. Such motions are called as **'Cut - motion'** which are **of 3 kinds**.

Complete disapproval ←

1) Policy cut Motion :- Represents the disapproval of the Policy. Underline the demand . It states that the amount of the demand be **reduced to Rs 1.**

2) Economy cut Motion :- It states that the amount of the demand be **reduced to a specified amount** (which may be either a lumpsum reduction in the demand or omission/ reduction of an item in the demand.)

3) Token cut Motion :- It ventilates a **specific grievance** i.e. within the sphere of responsibility of the GoI. It states that the amount of the demand be **reduced by Rs. 100.**

In total, 26 days *are allotted for the* voting of demands.

↓

On the last day → the Speaker puts all the remaining demands to vote & disposes them whether they have been discussed by the members or not. *This is known as 'Guillotine'*

➘ **Passing of Finance bill**

The Finance bill must be enacted (i.e passed by the Parliament & asserted by the President) within 75 days.

IMPULSE

Funds

1. Consolidated Fund of India - 266
2. Public Account of India - 266
3. Contingency Fund - 267

♦ Consolidated Fund of India - Art 266

- A fund to which all receipts are credited all payments are debited .

- In other words
    1. All revenues received by the GoI
    2. All loans raised by the Govt by the issue of Treasury bill, loans or ways & means of advances
    3. All money received by the Govt in repayment of loans forms the Consolidated Fund of India.

↓

- All the legally authorised payments on behalf of the GoI are made out of this fund.

↓

- No money out of this fund can be appropriated (issued or drawn) *except in accordance with a Parliamentary law.*

♦ Public Accounts of India

- *This includes*
    - Provident fund deposit
    - Judicial deposit
    - Savings bank deposit
    - Departmental deposit
    - Remittances and so on

↓

↓

This account is operated by executive action i.e the payments from this account can be made w/o Parliamentary appropriation.

↓

Such payments are *mostly in the nature of Banking transactions.*

♦ Contingency Fund of India - Art 267 (corpus @ Rs 500 crore)

- This fund is placed at the disposal of the President

↓

- He can make advances out of it to meet unforeseen expenditure, pending its authorisation by the Parliament

↓

- The fund is held
    - by the Finance Secretary (IAS) on behalf of the President…is operated by executive action.

IMPULSE

- The Constitution also ***empowers*** the **Parliament to make laws on the subjects Enumerated in the State List** (61) → (originally 66)

Under the following 5 abnormal circumstances

1. When (R.S) passes a resolution to that effect
2. When a proclamation of National Emergency is in operation
3. When two or more states make a joint request to the Parliament
4. When necessary to give effect to international agreement, treaties & conventions.
5. When President's rule is in operation in the State

- All the **ordinances** issued **by the President** (**during recess of Parliament**) *must be approved by the* **Parliament** *within* **6 weeks after its reassembly.** An ordinance becomes inoperative if it is not approved by the Parliament within the period.

- The Council of Ministers can be removed from office by the (L.S) by passing a 'no-confidence' motion.

- The (L.S) can also express lack of confidence in the govt in following steps /ways:-

    1. By not passing a 'motion of thanks' of the President's inaugural address.
    2. By rejecting a money bill
    3. By passing a 'censure motion' or 'adjournment motion'
    4. By defeating the govt on a vital issue
    5. By passing a 'Cut Motion'

- The budget is based on the principal of **annuality** i.e the Parliament grants money to the Govt for one financial year.

  ↓

  If the granted money is not spent by the end of the Financial year, then the balance expires & returns to the Consolidated Fund of India . This practise is known as the **'Rule of Lapse'**

  ↓

  However the observant of this rule leads to heavy rush of expenditure towards the closure of Financial year.

  → This is popularly known as '**March rush'**

- This state Legislature can pass a resolution requesting the Parliament for the creation or abolition of the Legislative Council in the states.

  ↓

  Based on the resolution the Parliament makes an act for amending the Constitution to that effect.

IMPULSE

✦ The **Parliament can amend** any provisions of the Constitution **except the 'Basic features' of the Constitution.**

↓

This is ruled by the S.C in the **Keshavananda Bharti vs State of Kerala case (1970-73)** & reaffirmed in the **Minerva Mills case (1980).**

"principle" of Basic Structure

"interpretation" of Basic Structure doctrine

⇒ Judicial Powers & Functions of Parliament

1. It can impeach the President for the violation of the Constitution.
2. It can remove the Vice President from his office.
3. It can recommend the removal of Judge including CJ of S.C & H.C, Chief Election Commissioner, CAG to the President.
4. It can punish its members *or outsiders* for the breach of its privilege or its contempt.

- ✓ It serves as the highest deliberative body of the country
- ✓ It discusses various issues of National & International significances.
- ✓ It approves all the three types of emergencies proclaimed by the President. (National, State, Financial)
- ✓ It can create or abolish the State legislative councils on the recommendation of the concerned State Legislative Assemblies.
- ✓ It can increases/decrease the area, alter the boundaries & change the names of the States of the Indian Union.
- ✓ It can regulate the organisation & jurisdiction of the S.C & H.C & can establish a common H.C for two or more states.

IMPULSE

⇒Rajya Sabha

Equal status with L.S

1. Introduction & passage of ordinary bills.
2. Introduction & passage of Constitution Amendment bill.
3. Introduction & passage of Financial bills involving expenditure from the Consolidated Fund of Indian.
4. Election & the removal of the Vice President……However, R.S alone can initiate the removal of the Vice President is removed by a resolution passed by the R.S by a special majority & agreed to by the L.S by a simple majority.

5. Election & impeachment of the President.
6. Making a recommendation to the President for the removal of the C.J and Judges of the S.C & High Courts, Chief Election Commissioner & CAG.
7. Approval of ordinances issued by the President.
8. Approval of Proclamation of all three types of emergencies by the President.
9. Selection of ministers including the P.M under the Constitution, the ministers including the P.M can be members of either House……However irrespective of their membership, they are responsible only to the L.S

10. Consideration of the reports of the Constitutional bodies like Finance Commission, UPSC, CAG etc
11. Enlargement of the Jurisdiction of S.C & the U.P.S.C

Unequal Status with (L.S)

1. A money bill can be introduced only in the L.S, not R.S
2. R.S cannot amend or reject a money bill. It should return the bill to the L.S within 14 days, either with recommendation or w/o…….. In both the cases the money bill is deemed to have been passed by the two Houses.
3. The final power to decide whether a particular bill is a money bill or not is vested with the Speaker of the L.S
4. Joint Sitting ⟶ Speaker (Presides)
   The L.S with greater number wins the battle in a joint sitting except when the combined strength of the ruling party in both the Houses is less than that of the opposition parties.
5. R.S can only discuss the Budget but cannot vote on the demands for the grants (which is the exclusive privilege of the L.S)
6. A resolution for the discontinuance of the National Emergency can be passed only by the L.S & not by the R.S
7. The R.S cannot remove the Council of Ministers by passing a no-confidence motion. This is because the Council of Ministers in collective responsible only to the L.S.

IMPULSE

Special powers of R.S , NOT enjoyed by L.S

1. It can authorise the President to make a law on a Subject, enumerated in the State List.
   (Art 249)

2. It can authorise the Parliament to create new All India Services common to both Centre & State
   (Art 312)

The R.S in our Constitutional System is not as weak as that of the 'House of Lords' in the Br. Constitutional System nor as strong as that of the 'Senate' in the American Constitutional System.

IMPULSE

President	Governor
With regard to Ordinary bill	
Every ordinary **bill**, after being passed by both the Houses of the **Parliament** either singly or at a joint sitting, is presented to the Prz for his assent	
He has **3** alternatives	He has **4** alternatives
1. He may give his assent to the bill, the bill then becomes an act.	1. do
2. He may withhold his assent to the bill, the bill then ends and does not become an act.	2. do
3. He may return the bill for reconsideration of the Houses. If the bill is passed by both the Houses again with or w/o amendment and presented to the the Prz for his assent, Prz must give his assent to the bill.	3. do Enjoys only a 'suspensive veto'

Thus the Prz enjoys a
'Suspensive Veto'

4. He may reserve the bill for the consideration of the Prz

President

When a **state bill** is reserved by the Governor for the consideration the Prz, the Prz has *three alternatives*

a)He may give his assent to the bill.
b)He may withhold his assent to the bill ,the bill then ends & does not becomes an Act.
c)He may return the bill for the reconsideration of the House/Houses of the state Legislature. When a bill is returned the Houses of the *State Legislature have to reconsider it within 6 months*. If the bill is passed by the House/Houses again with / w/o amendment and presented to the Prz for his assent, the *Prz is not bound to give his assent to the bill.*

He may give his assent to such a bill or withhold his assent.

Governor

When the Governor reserves a bill for consideration of the President, he will not have any further role in the enactment of the bill.
If the bill is returned by the Prz for reconsideration of the House/Houses and is passed again, the bill must be presented again for the presidential assent only. If the Prz gives his assent to the bill, It becomes an act.

This means that the assent of the Governor is no longer required.

IMPULSE

With regard to Money Bill

Every money bill after it is passed By the Parliament is presented to the Prz for his assent.

He has two alternatives
1.He may give his assent to the the bill, the bill then becomes an Act.

Every money bill after it is passed by the State Legislature is presented to the Governor for his assent.

He has three alternatives
1.do

2.He may withhold his assent to the bill, the bill then ends and does not become an act.

2.do

3.He may reserve the bill for the consideration of the Prz.

Thus the Prz can not return a money bill for the reconsideration of the Parliament. Normally, the Prz gives his assent to the money bill as it is introduced in the Parliament with his previous permission.

When the money bill is reserved by the Governor for consideration of the Prz, the Prz has two alternatives:-

a)He may give his assent to the bill the bill then becomes an act.
b)He may withhold his assent to the bill, the bill then ends and does not becomes an act.

Thus the Prz cannot return a money bill for reconsideration of the State Legislature (as in case of the Parliament).

Thus the Governor cannot return a money bill for the reconsideration of the State Legislature.

Normally the governor gives his assent to the money bill as it is introduced in the State Legislature with his previous permission.
When the governor reserves a money bill for the consideration of the Prz, he will not have any further role in the enactment of the bill.

If the Prz gives his consent to the Bill, it becomes an Act.
This means that the assent of the Governor is no longer required.

IMPULSE

Comparing Ordinance making power

1.He can promulgate an ordinance only when both the Houses or any one of →→→ the Houses are not in session. Because a law can be passed by both the Houses & not by one House alone.

1. do

2.He can withdraw an ordinance at any time. → → → →

2. do

3.His ordinance making power is not a discretionary power → → → → →	3. do
4.An ordinance issued by him should laid before the Houses of the Parliament when it reassembles.	4. Any ordinance issued by him should be laid before the Legislative Assembly or both the Houses of the State Legislature(in case of bicameral Legislature) when it reassembles.
5.An ordinance issued by him ceases to operate as the expiry of six weeks from the reassembly Parliament.	5.An ordinance issued by him ceases to operate on the expiry of six weeks from the reassembly of the of the State Legislature.
6.He needs no instruction for making the ordinance.	6.He cannot make an ordinance w/o the instruction from the Prz in three cases. a)If a bill containing the same provisions would have required the previous sanction of the Prz for its introduction in the State Legislature. b)If he would deemed it necessary to reserve a bill containing the same provisions for the consideration of the Prz. c)If an act of the state legislature containing the same provisions would have been invalid w/o receiving the Prz assent.

Comparing pardoning power of Prz & Governor

President	Governor
1.He can pardon, respite, remit, suspend or commute the punishment or sentence of any person convicted of any offence against a central law.	1.He can pardon, respite, remit, suspend or commute the punishment or sentence of any person convicted of any offence against a State Law.
2.He can pardon, respite ..... a death sentence. He is the only authority to pardon a death sentence.	2.He cannot pardon a death sentence even if a State Law prescribes for Death sentence, the power to grant pardon lies with the Prz and not the governor. But, the governor can

IMPULSE

	suspend, remit or commute a death sentence.
3.He can grant pardon..... .....in respect to punishment or Sentence by a court martial (military court).	3.He does not possess any such power.

Parliament	**State Legislature**
With regard to ordinary bill	
1.It passes through 1st reading , 2nd reading, 3rd reading in the originating House → → → →	1. do
2.A deadlock b/w the two Houses take place when the second House after receiving a bill passed by the 1st House, rejects the bill or proposes amendments that are not acceptable to the first House or does not pass the bill within six months.	2. A deadlock b/w the two Houses take place when the Legislative Council, after receiving a bill passed by the Legislative Assembly, rejects the bill or proposes amendments that are not acceptable to the legislative assembly or does not pass the bill within three months.
3.The Constitution provides for the mechanism of joint sitting of two Houses of the Parliament to resolve between them over the passage of the bill.	3.The Constitution does not provide for the mechanism of joint sitting of the two Houses of the State deadlock Legislature to resolve a deadlock b/w the them over the passage of them.
4. The L.S cannot override the R.S by passing the bill for the second time and vice – versa . A joint sitting is the only way to resolve a deadlock b/w the two Houses.	4.The legislative assembly can over ride the legislative council by passing the bill for the second time and not vice – versa. When a bill is passed by the assembly for the second time and transmitted to the Legislative Council, if the Legislative Council rejects the bill again, or propose amendments that are not acceptable to the legislative assembly or does not

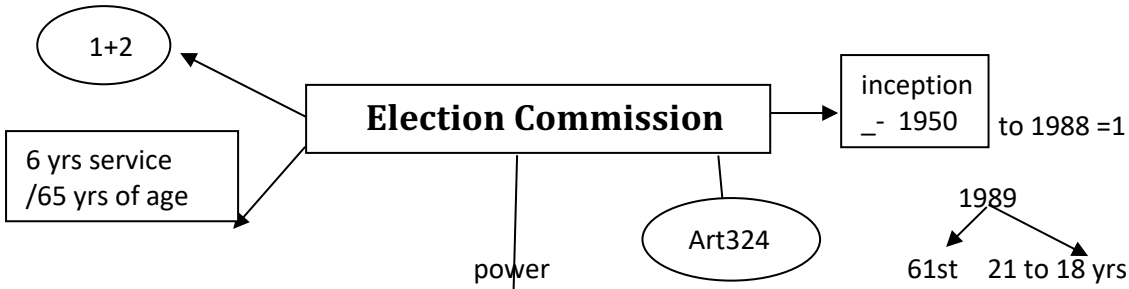
IMPULSE

			pass the bill within one month, then the bill is deemed to have been passed by both the Houses in the form in which it was passed by the Legislative Assembly for the second time.
5.The mechanism of Joint Sitting for resolving a deadlock applies to a bill whether originating in the L.S or the R.S . If a joint sitting is not summoned by the President, the bill ends and becomes dead.			5.The mechanism of passing the bill for the 2nd time to resolve a deadlock applies to a bill originating in the legislative assembly only. When a bill, which has originated in the Legislative Council, and sent to Legislative assembly , is rejected by latter , the bill ends and becomes dead.

With regard to money bill

1.It can be introduced only by a minister and not by a private member.	→	→	1. → do
2.The Constitution does not provide for the resolution of any deadlock b/w the two houses. This is because, the will of the Lok Sabha is made to prevail over that of Rajya Sabha if the latter does not agree to the bill passed by the former.			2.The Constitution does not provide for any resolution of any deadlock b/w the two Houses. This is because the will of the legislative assembly is made to prevail over that of the legislative council, if the latter does not agree to the bill passed by the former.

IMPULSE



power

- no specific qualification
- not specified the term
- not debarred from further appointment by the govt.
- salary = a judge of S.C @ 2,50,000/ month
- can be removed – CEC - like S.C judge manner
- can be removed - any other EC or regional commissioner
  -cannot be removed from office except on the recommendation of the CEC

permanent & constitutional body

appointed by Prz

for case of regional commsnr. – Prz. also -but after consultation with EC.

elections to Parliament
State Legislatures
office of Prz of India
" " V. Prz " "

- determine the territorial areas
- register all eligible voters
- date & schedule notification
- election symbols
- to determine the code of conduct to be observed by the parties & the candidates at the time of elections
- public awareness – through advt. on tv. , radio – regarding voting
- advise the Prz on matters relating to the disqualification of the members of Parliament
- advise the Govnr. disql. of the members of State Legislature
- cancel polls – rigging, booth capturing, violence & other irregularities
- request Prz. & Govnr - for requisitioning the staff necessary for conducting elections
- to ensure free & fair elections
- recognition of political parties, national or state parties
- advise the Prz. whether elections can be held in a state under Prz.'s rule in order to extend the period of emergency after one year.

Dept. of Personnel & Training

is the central personnel agency

↓

i.e. it is concerned with the classification of

↓

services, pay & services conditions, cadre management, training & so on.

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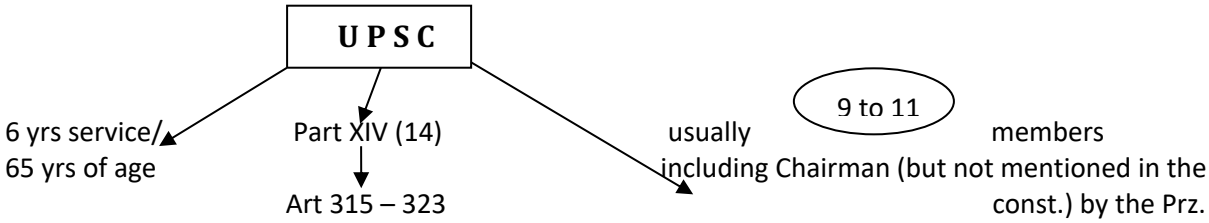

no qualification prescribed except ½ of the members of the Comm. should be @ 10 yrs service at GoI or any state govt.

resignation letter to Prz. -any time.

removed by the Prz. ----- but before that the Prz. has to refer the matter to the S.C for an enquiry – binding on the Prz.

salary , allowances & pensions -Consolidated Fund of India

no further employment – Chairman. chairman of UPSC & SPSC – members

no second term.

S P S C

6 yrs/ 62 yrs

Art 315 – 323

appointed by Govnr. but can be removed by Prz.

removal process same as UPSC

Consolidated Fund of State

J S P S C

6 yrs/ 62 yrs

not a constitutional but a statutory body (i.e. created by an Act of Parliament)

by Prz.

GoI Act , 1919 – Central Public Service Commission set up (1926)

GoI Act , 1935 – not only establishment of a Federal PSC but also Provincial Public Service Commission & Joint Public Service Commission

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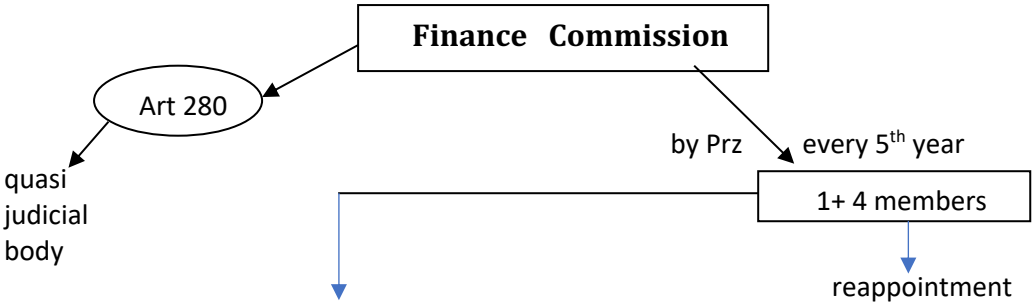


- Chairman – having experience in public affairs
- Members – i) judge of High Court or having qualification to be appointed
  ii) having specialised knowledge of finance & accounts of the govt.
  iii) having wide experience in financial matters & in administration
  iv) having special knowledge of economics

Functions :-

recommendations → only advisory in nature

1. The distribution of the *net proceeds* of taxes to be shared b/w the centre & the states, and the allocation b/w the states of the respective shares of such proceeds.
2. The principle that should govern the *grants – in – aid* to the states by the centre (i.e. , out of the Consolidated Fund of India)
3. The measures needed to augment the Consolidated Fund of a state to supplement the resources of the *panchayats & the municipalities* in the state on the basis of the recommendations made by the state finance commission.
4. Any other matter referred to it by the Prz. in the interests of sound finance.

1st – K.C.Neogy	–	1951
2nd – K. Santhanam	–	1956
12 – Dr. C. Rangarajan	–	2002
13 – Dr. Vijay Kalkar	–	2007
14th – Y.V. Reddy	--	2013
15th – Ajay Narayan Jha	--	2017

IMPULSE

statutory body (by an Act of Parliament)

- National Commission for Women – 1992
- National Commission for Minorities – 1993
- National Commission for Backward Classes – 1993
- National Commission for Human Rights – 1993
- National Commission for Protection of Child Rights – 2007

National Commission for SCs & STs

1978 – Govt. setup a non – statutory, multi – member Commission for SCs & STs

1987 – Govt. renamed it as the **National Commission for SCs & STs**

2003 – 89th amd. , 2003 → bifurcated the combined Nat. Comm. for SCs & STs.

2004 – emerges National Commission for SCs (Art 338)
National Commission for STs (Art 338 – A)

National Commission for SCs

- appointed by the Prz
- submits annual report to
- Art 338
- (1 + 1 + 3) = 5
  - Chairperson
  - V.C
  - members
- powers of a civil court

National Commission for STs

Art 338 – A

The Comm. is also required to discharge similar functions with regard to the OBCS & the Anglo – Indian Community as it does with respect to the SCs.

In other words, the Comm. has to investigate all matters relating to the constitutional & other legal safeguards for the OBCS & the Anglo – Indian Community & report to the Prz. upon their working.

IMPULSE

Special Officer for Linguistic Minorities

falls under the Mo Minority Affairs → Commissioner

H.q. UP

estd. – 1957

Art 350 – B

Regional office – 1. Belgaum (Karnataka)
2. Chennai (T.N)
3. Kolkata (W.B)
} Assistant Commissioner

COMPTROLLER & AUDITOR GENERAL of India (CAG)

2,50,000

Art 148

6 yrs service / 65 years of age

Dr. B.R. Ambedkar → the CAG shall be the most important officer under the Constitution of India.

guardians of the public purse & controls the entire financial system of the country at both the levels – the centre & the state.

- appointment & oath by Prz
- can be removed by the Prz on same grounds & in the same manner as a judge of the Supreme Court
- no reappointment
- salary equal to a judge of the S.C – Consolidated Fund of India.

Art 76 – Attorney General of India

Duties & Powers

1. **audits the accounts -**
   - Consolidated Fund of India
   - Consolidated Fund of each state
   - Consolidated Fund of each UT having a Legislative Assembly
2. **audits the accounts -**
   - Contingency Fund of India
   - Contingency Fund of each state
   - Public Account of India
   - Public Account of each state
3. **audits -**
   a) all bodies & authorities substantially financed from the central or state revenues
   b) Govt. companies
   c) other corporations & bodies; when so required by related laws.
4. audits *local bodies* when requested by Prz or Govnr.

IMPULSE

5. advises the Prz with regard to prescription of the form in which the accounts of the Centre & the states shall be kept (Art 150)

6. submits the audit reports of Prz (Art 151)
submits the audit reports to Govnr.(Art 151)

7. ascertains & certifies the '*net proceeds'* of any tax or duty (*Art 279*). His certificate is final.

8. acts as a guide, friend & philosopher of the Public Accounts Committee of the Parliament.

➘ The CAG submits 3 audit reports to the Prz.

i) audit reports on appropriation accounts
ii) audit reports on finance accounts
iii) audit report on public understandings

Prz. lays these reports before both the Houses of Parliament

After this, the PAC examines them & reports its findings to the Parliament.

✓ The CAG is an agent of the Parliament & conducts audit of expenditure on behalf of the Parliament.

Therefore , he is responsible only to the Parliament.

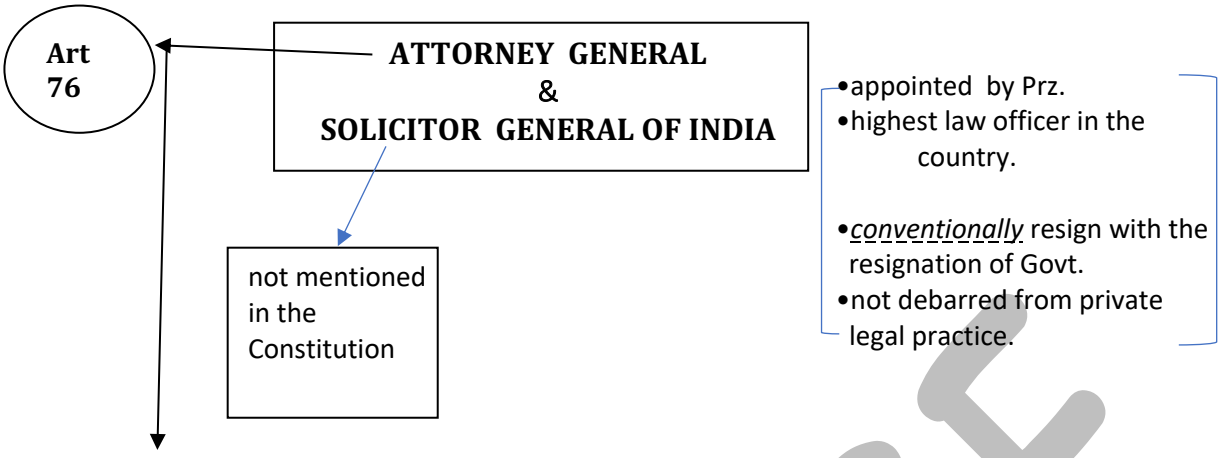
✓ the CAG has no control over the issue of money from the consolidated fund & many departments are authorised to draw money by issuing cheques w/o specific authority from the CAG.

CAG is concerned only at the audit stage when the expenditure has already taken place.

In this respect, the CAG of India differs totally from the CAG of Britain who has powers of both Comptroller as well as Auditor General.

✦ The Indian Audit & Accounts Dept. was created during the British Rule @ 1753

IMPULSE



•Qualification

to be appointed as a judge of SC
- judge of same HC for 5 years
- an advocate of same HC for 10 yrs
- eminent jurist in the opinion of the Prz

• term of office , procedure & grounds of his removal

not mentioned in the constitution

remuneration

fixed by the Prz

Duties & Functions

1. advice → GoI → upon such legal matters → are referred to AG by Prz.
2. to appear on behalf of the Govt. of India
   in all cases @ S.C @ GoI is concerned
3. to appear (when required by the GoI)
   in any cases @ H.C @ GoI is concerned.

Rights & Limitations

- has the right of audience in all courts in the territory of India.
- has the right to speak + take part @ proceedings of both the Houses of Parliament or their joint sitting or any committee of the Parliament of which he may be named a member
  but
  w/o a right to vote

IMPULSE

- he should not hold or advise a brief against the GoI.
- he should not defend accused persons in criminal prosecuting w/o the permission of the GoI.
- he should not accept appointment as a director in any company or corporation w/o the permission of the GoI.

✓ *To assist the AG*, there are Solicitor General of India
Addl. " " " " } not mentioned @ Art 76

✓ The AG is not a member of the Central Cabinet.

There is a separate law minister in the Central Cabinet to look after legal matters at the govt. level.

Art 165 ← **ADVOCATE GENERAL OF THE STATE** → appointed by Governor
Highest law officer in the State

Qualification

to be appointed as a judge of H.C.
- have held a judicial office for 10 yrs
- been advocate of a H.C

CAG - Art 148 →
advises Prz.....
centre & state account – **Art 150**
shall be kept

submits report to Prz
submits report to Governor } **Art 151**

AG – Art 76

Advocate General of the State → Art 165

IMPULSE

Non – Constitutional Bodies

- Planning Commission
- National Development Council
- National Human Rights Commission
- State Human Rights Commission
- Central Vigilance Commission
- Central Information Commission
- State Information Commission
- Lokpal & Lokayuktas
- NITI Aayog

IMPULSE

Planning Commission

on the recommendation of the advisory Planning Board constituted in 1946, under the chairmanship of K.C.Neogi

March 1950

neither a constitutional body nor a statutory body

an advisory body & has no executive responsibility

P.M – Chairman (ex-officio)

Deputy Chairman – 'de facto' executive head (i.e. full time functional head)

appointed by the Central cabinet – for a fixed tenure

-rank of a cabinet minister – though not a member of cabinet , is invited to attend all its meeting (w/o a right to vote)

- Finance Minister & Planning Minister — ex – officio members of the commission
- P.C has 4 – 7 full time expert members @ rank of a minister of state
- P.C has a member – secretary @ usually a senior member of IAS
- The State Govts. are not represented in the P.c

so , its wholly a centre – constituted body

⇒ *critics* → 'Super Cabinet' , 'Economic Cabinet' , 'parallel Govt.' , 'Fifth wheel of the coach'

National Institution for Transforming India (NITI AAYOG)

formed via a resolution of the Union Cabinet @ Jan 1, 2015

replacement of Planning Commission (1950)

premier policy " Think – Tank" of the GoI, providing both directional and policy inputs

- designing strategic & long term policies & programmes for the GoI
- also provides relevant technical advice to the Centre & States

Overall Objective :- fostering Cooperative Federalism in consonance of National Interest.

Org. Framework

PM (Chairperson)

Members :-

- V.Chairperson - appointed by PM
- *Full time members* – Full time specialists With international exposure
- *Part time members* – Max. of **2** from leading Universities, research org. & other relevant institutions in an **ex-officio** capacity

Part time members will be on a rotational basis

- Ex-officio members – max of **4** members of the Union Council of ministers - nominated by PM
- Chief Executive Officer – Appointed by PM for a fixed tenure, In the rank of **Secretary** to the GoI

by PM

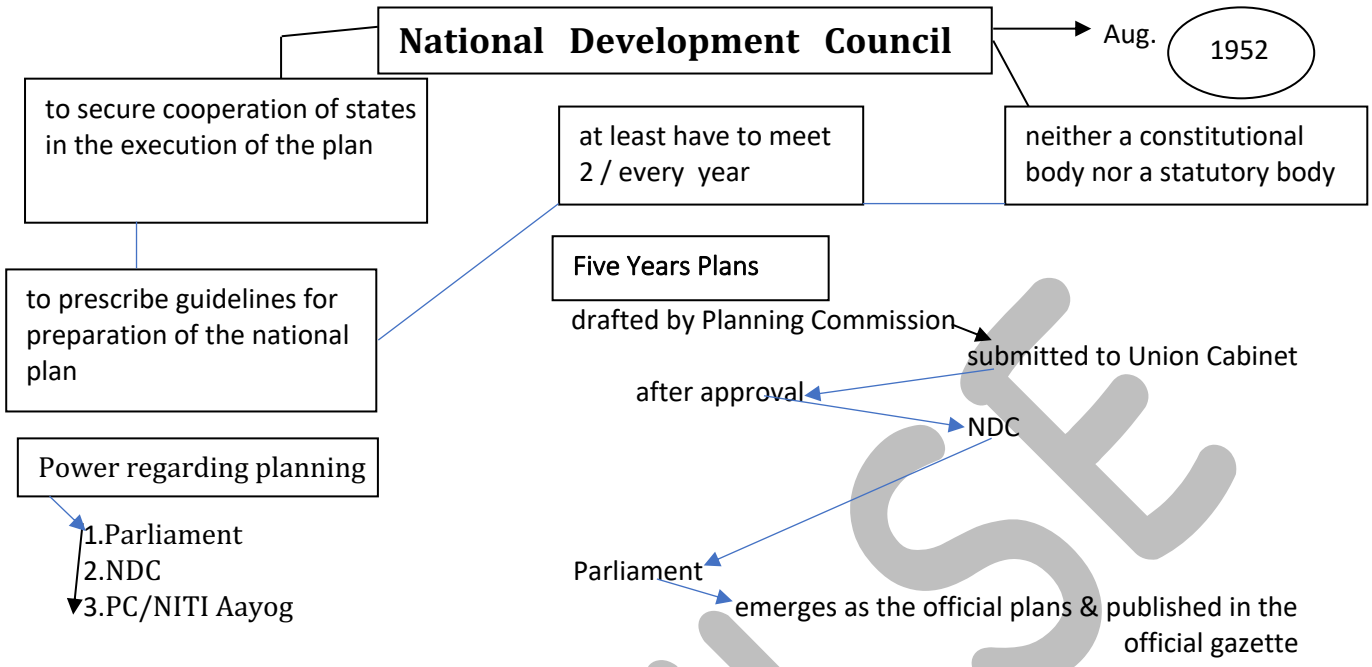
- Secretariat – as deemed necessary

IMPULSE

Aims & Objectives

- 7 pillars of effective governance:-
  - 1) Pro –people
  - 2) Pro –activity
  - 3) Participation
  - 4) Empowering
  - 5) Inclusion of all
  - 6) Equality
  - 7) Transparency
- Better utilization of demographic dividend *through* education , skill development , elimination of gender bias & employment
- Elimination of Poverty → Life of dignity & self – respect
- Redressal of inequalities *based on* gender bias, caste & economic disparities
- Integrate village institutionally → into the developed process
- Policy support to more than 50 million small businesses → which are a major source of employment creation
- Safeguarding of our environmental & ecological assets.

IMPULSE



Composition

1. PM (Chairman)
2. All Union cabinet minister (since 1967)
3. Chief Ministers of all states
4. CMS / administrators of all UTs
5. Members of the Planning Commission

⇒ The secretary of the P.C acts as the scy. of the NDC

⇒ NDC works as a bridge & link b/w Central Govt. , State Govts. & Planning Comm especially in the field of planning.

IMPULSE

National Human Rights Commission

1993

Statutory body appointed by Prz

5 yrs / 70 yrs of age which is earlier

Composition → 1 Chairman + 4 members + 4 ex – officio members

- retired CJI
- • serving /rtd. judge of SC
  • serving /rtd. C.J of HC
  •2 persons having knowledge or practical experience with respect to human rights
- •Chairman of N.C for Minorities
  •Chairman of N.C for SCs
  •Chairman of N.C for STs
  •Chairman of N.C for Women

Appointment → by Prz

6 members panel →

- • P.M as head
- • Speaker of LS
- •Dy. Chairman of RS
- •Leaders of the Opposition @both houses
- •Central Home Minister

- ✓ has all the powers of a civil court & its proceedings have a judicial character
- ✓ functions are recommendatory in nature
- ✓ with respect to human rights, not applicable to armed forces.

State Human Rights Commission

5 yrs / 70 yrs

appointed by the Governor

removed by Prz

Panel

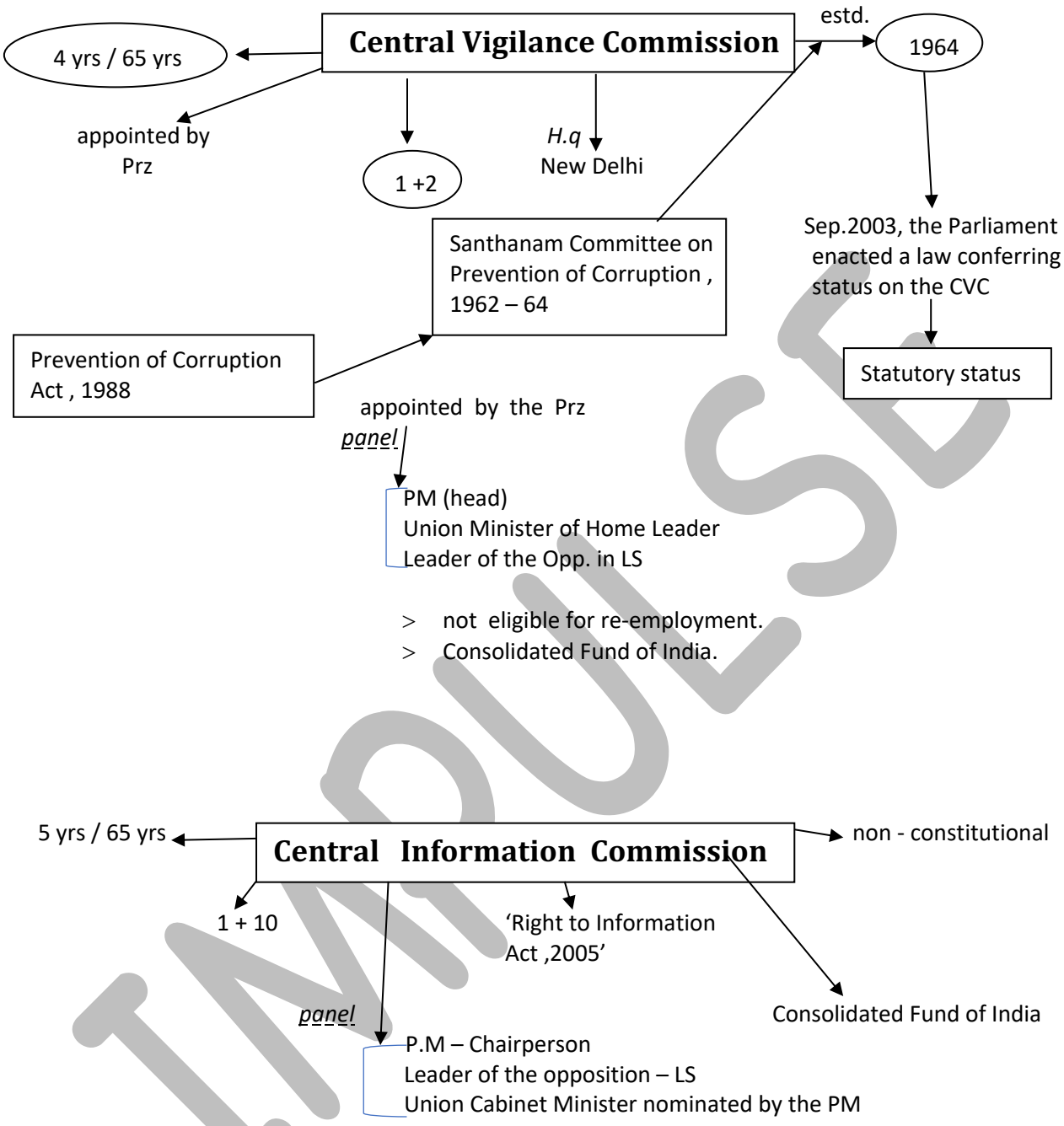
CM (head)
Speaker of legislative Assembly
State Home Minister
Leader of the opposition
Chairman of the Council
leader of the Opp. in the Council

1 Chairman + 2 members

retired C.J of a High Court

1. serving rtd. judge of HC
   or
   Dist. Judge in the State with a minimum 7 yrs experience as D.J
2. a person having knowledge or practical experience with respect of human rights

IMPULSE



State Information Commission

IMPULSE

Lokpal & Lokayuktas

Sweden @ 1809 → Scandinavian institution of Ombudsman

first established in **Maharashtra** – 1974
Odisha had passed the Act first, 1970

Official Language

Art343 – 351

Hindi in Devnagari script

Now Hindi + English

1950 – 65 , English would continue to be used for all the official purposes of the Union for which it was being used before 1950

amended & amended

1955 – the Prz. appointed an Official Language Commission under the chairmanship of *B.G.Kher.*

Official Language Act 1963.

Tribunals

Administrative Tribunals – Art 323A

Central Administrative Tribunals (CAT)

appointed by Prz

principal bench – *Delhi* + 17 regular benches

Art 323 A

1985

5 yrs service | - 65 yrs for Chairman & VC
- 62 yrs for members

- ✓ However, the members of the defence forces , officers & servants of the S.C & the secretarial staff of the Parliament are not covered by it.
- ✓ is guided by the principle of natural justice.
- ✓ CAT shall lie before the division bench of the concerned HC
- ✓ members mainly from judicial background + admn.

State Adm. Tribunals (SAT) → 1985

Joint Adm. Tribunals (JAT)

IMPULSE

CJI – 2.80 lac/month ← **SUPREME COURT** → Part V - Art (124 – 127)

Others – 2.50 lac /month

→ 31 judges including CJI org. 8 (CJI+7)
Presently 34 (2019)

i.e → Integrated judicial system
Or
Unified judiciary & one system of fundamental law & justice

S.C
↓
H.C
↓
District Courts

USA
↓
Double system of courts

→ Federal Judiciary
→ State Judiciary

Federal laws are enforced by

State laws are enforced by

- The Supreme Court of India was inaugurated Jan 28, 1950

- It succeeded the Federal Court of India, → established under GoI Act, 1935.

↘ Appointment

- by the ***Prz.***
- CJI → by the Prz after consultation with such judges of S.C + HC as he deems necessary.

Senior most judge of S.C

- Other Judges → by the Prz ,, ,, ,, ,, + CJI ,, ,, ,,

The consultation with CJI is obligatory in this case.

IMPULSE

Qualification of Judges

1. Citizen of India
2. a) should have been a [Judge 5 years] of a [H.C] (or H.Cs in succession) for

   b) ,, ,, ,, ,, ,,) ,, [advocate 10 years] ,, ,, ,, ,,

   c) should be a distinguished jurist in the opinion of the Prz.

Tenure

1. 65 years
2. Can resign by writing to the Prz.
3. Prz. can remove on the recommendation of the Parliament.

Removal of Judges

only on 2 grounds → *proved misbehaviour*; *incapacity*

1. Removal motion – signed by – 100 members @ L.S / 50 ,, @ R.S → is to be given to the Speaker / Chairman
2. Speaker/Chairman may admit or may refuse to admit the motion
3. If admitted - Spkr. / Chrmn. *constitute* 3 members Committee — to investigate into charges
   - 1. CJI/Judge of S.C
   - 2. CJ of a H.C
   - 3. a distinguished jurist
4. If the charge is proved — the house can take up the consideration of the motion
5. Each House - [Special majority] → passed
6. is presented to the Prz.
7. Prz. passes an order removing the judge.

IMPULSE

Acting Chief Justice

Prz. can appoint

1. Vacant
2. Temporarily absent
3. Unable to perform his duties.

Ad hoc Judge

CJI appoints

A judge of H.C as an ad hoc judge of the SC for a temporary period

Can only do so after consultation with the CJ of the concerned HC & the previous consent of the Prz.

Should be qualified for appointment as a judge of the SC.

enjoys the benefit @ SC judge

Retired Judges

CJI appoints

at any time the CJI can request a retired judge of the S.C or a retired judge of a H.C (should be qualified as a judge of S.C) to act as a judge of the S.C for a temporary period

He can do so only with the previous consent of the Prz.
& also of the person to be so appointed.

Seat of the S.C

the Constitution declares Delhi as the seat of the S.C

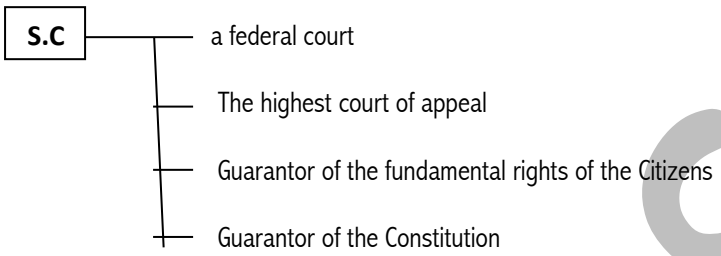
But, it also authorises the CJI to appoint other place or places as seat of the S.C

He can take decision in the regard only with the approval of the Prz.

IMPULSE

- The Constitutional cases or references made by the Prz. under Art 143 → are decided by a Bench → consisting of atleast five judges.

- All other cases are usually decided by a Bench — consisting of not less than 3 judges .



➘ Fixed service conditions

Salaries , allowances , privileges , leave & pension of the judges of the S.C are determined from time to time by the Parliament.

They cannot be changed to their disadvantage after their appointment except during financial emergency .

✓ Expenses charged on Consolidated Fund of India (Art 266)
[Thus they are non-votable by the Parliament
(though they can be discussed by it)]

✓ Ban on practice after retirement within the territory of India.

✓ Power to punish for its contempt

IMPULSE

➘ Freedom to appoint its staff

CJI appoints

- w/o any interference from the executive.
- He can also prescribe their conditions of service.

The Inter – State Water Disputes Act of 1956

has excluded the original jurisdiction of the S.C in disputes b/w sates with respect to the use, distribution or control of the water of inter - state river or river valley.

➘ Jurisdiction & powers of S.C

1. Original Jurisdiction — *any dispute b/w*
- a. the Centre & one or more states
- b. ,, ,, ,, ,, ,, ,, on one side & one or more States on the other
- c. b/w two or more states

Exception
- a) dispute arising out of any pre-Constitution treaty, agreement, ...
- b) Inter –state water disputes
- c) matters referred to the Finance Commission
- d) ordinary dispute of Commercial nature b/w the Centre & the State.

2. Writ ,, (Art 32) [H.C – Art 226]
- a) habeas corpus
- b) mandamus
- c) prohibition
- d) quo warranto
- e) certiorari

3. Appellate ,,
- a) Appeals in constitutional matters
- b) ,, ,, civil ,,
- c) ,, ,, criminal ,,
- d ,, by Special Leave

4. Advisory ,,

5.A Court of Record

6. Power of Judicial Review

7. Other Powers

IMPULSE

1.

> with regard to the exclusive original jurisdiction of the S.C,
two points should be noted.

1. the dispute must involve a question (whether of law or fact) on which the existence or extent of a legal right depends.

↘

Thus the questions of political nature are excluded from it.

2. any suit brought before the S.C by a private citizen against the Centre or a state can not be entertained under this .

2.

> not only S.C but also the H.C have

> the writ jurisdiction of the H.C is wider than that of the S.C

bcz

The S.C can issue writs only for the enforcement of the fundamental Rights & not for other purposes
but
the H.C for other purposes also

3.

a) Appeals in constitutional matters
b) ,, ,, civil ,,
c) ,, ,, criminal ,,
d) ,, by special leave.

a) in the const. cases , an appeal can be made to the S.C against the judgement of a H.C

↘

if the H.C certifies that the case involves a substantial question of law that requires the interpretation of the const.

↘

based on the certificate the party in the case can appeal.....

b) in civil cases, an appeal lies to the S.C from any judgement of H.C if the H.C certifies-

i) that the case involves a substantial question of law of general importance ; and
ii) that the qstn. needs to be decided by the S.C

* **no monetary limit question** .....

c) The S.C hears appeals against the judgement in a criminal proceeding of a H.C if the H.C
i) has on appeal reversed an order of acquittal of an accused person & sentenced him to death; or
ii) has taken before itself any case from any subordinate court & convicted the accused person & sentenced him to death; or
iii) certifies that case is a fit one for appeal to S.C.

IMPULSE

- In the first two cases, an appeal lies to the S.C as a matter of right (i.e., w/o any certificate of the H.C). But if the H.C has reversed the order of conviction & has ordered the acquittal of the accused, there is no right to appeal to the S.C.

In 1970, the Parliament had enlarged the Cr. Appellate Jurisdiction of the S.C

Accordingly, an appeal lies to the S.C from judgement of a H.C if the H.C:

i) has an appeal, reversed an order of acquittal of an accused person & sentenced him to imprisonment for life or for ten years

ii) has taken before itself any case from any subordinate court & convicted the accused person & sentenced him to imprisonment for life or for ten years .

d) The S.C is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal & court martial).

This provision contains the four aspects as under:

i) It is a discretionary power & hence , can't be claimed as a matter of right.

Imp
In court-martial

ii) It can be granted in any judgement whether final or interlocutory.

iii) it can be granted against any court or tribunal & not necessarily against a H.C (of course, except a military court).

- SC, HC- no role
- Only President plays role

iv) It can be granted against any court or tribunal and not necessarily against a H.C (of course, except a military court).

4. **Art 143** authorises the Prz. to seek the opinion of the S.C in the 2 categories of matters:

a) On any question of law or fact of public importance which has arisen or which is likely to arise.

b) On any dispute arising out of any pre- constitution treaty, agreement, covenant, engagement, sanad or other similar instruments

may give advice or not

not binding on the **Prz.**

must have to give advice

IMPULSE

5. As a Court of Record, the S.C has 2 powers:

a) The judgements, proceedings & acts of the S.C are recorded for perpetual memory & testimony. / These records are admitted to be of evidentiary value & cannot be questioned when produced before any court. / They are recognised as legal precedents & legal references.

b) It has power to punish for contempt of court, either with simple imprisonment for a term upto 6 months or with fine upto Rs. 2,000 or with both . / In 1991, the S.C has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts & tribunals functioning in the entire country.

> Contempt of court may be civil or criminal :-

- Civil contempt means wilful disobedience to any judgement , order, writ or other process of a court or wilful breach of an undertaking given to a court .
- Criminal contempt means the publication of any matter on doing an act which-

  i) Scandalises or lowers the authority of court ; or

  ii) Prejudices or interferes with the due course of a judicial proceeding ; or

  iii) interferes or obstructs the administration of justice in any other manner.

6. Judicial Review is the power of the S.C to examine the constitutionality of legislative enactments & executive orders of both the Central & State govt.s.

→ On examination, if they are found to be violative of the Constitution (ultra – vires) , they can be declared as illegal, unconstitutional & invalid (null & void) by the S.C.

→ The constitutional validity of a legislative enactment or an executive order can be challenged in the S.C on the following *3 grounds* :

a) it infringes the Fundamental Rights (Part III)
b) it is outside the competence of the authority which has framed it , and
c) it is repugnant to the constitutional provisions.

'procedure established by law'

IMPULSE

7. i) It decides the disputes regarding the election of the Prz. & the V.Prz.

In this regard , it has the original , exclusive & final authority.

ii) it enquires into the conduct & behaviour of the chairman & members of the UPSC on a reference made by the Prz.

If it finds them guilty of misbehaviour, it can recommend to the Prz. for their removal.

The advice tendered by the S.C in this regard is binding on the Prz.

iii) It has power to review its own judgement or order.

Thus, it is not bound by its previous decision & can depart from it in the interest of justice or community welfare.

In brief, the S.C is a self-correcting agency.

iv) it is authorised to withdraw the cases pending before the high courts & dispose them by itself.

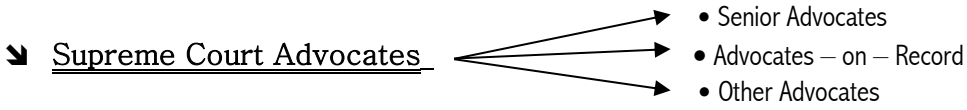
It can also transfer a case or appeal pending before one high court to another high court.

v) Its law is binding on all courts in India. / Its decree or order is enforceable through out the country. / All authorities (civil & judicial) in the country should act in aid of the S.C.

vi) It is the ultimate interpreter of the Constitution

vii) It has power of judicial superintendence & control over all the courts & tribunals functioning in the entire territory of the country.

IMPULSE



1. **Senior Advocates :**

The Court can designate any Advocate, with his consent , as Senior Advocate, if in its opinion by virtue of his ability, standing at the Bar or special knowledge or experience in law the said Advocate is deserving of such distinction.

A senior Advocate is not entitled to appear w/o an Advocate – on – Record in the S.C.

or

w/o a junior in any court or tribunal in India.

2. **Advocates – on – Record :**

Only these advocates are entitled

to file any matter or document bfr the S.C

They can also file an appearance or act for a party in the S.C.

3. **Other Advocates :**

They can appear & argue any matter on behalf of a party in the S.C.

but

are not entitled to file any document or matter before a court.

IMPULSE

	Indian S.C.	American S.C.
1.	Original jurisdiction is confined to federal cases.	Original jurisdiction is not only confined to federal cases but also cases relating to naval forces, maritime activities , ambassadors, etc.
2.	appellate jurisdiction covers constitutional , civil & criminal cases.	appellate jurisdiction is confined to constitutional cases only.
3.	has advisory jurisdiction	has no advisory jurisdiction
4.	scope of judicial review is limited	……..is very wide
5.	defends rights of the citizen according the to the 'procedure established by law'	……."due process of law"
6.	Its jurisdiction & powers can be enlarged by Parliament	Its jurisdiction and powers are limited to that conferred by the Constitution.
7.	It has power of judicial superintendence & control over state high courts due to integrated judicial system.	It has no such power due to double (or separated) judicial system.

IMPULSE

HIGH COURT

- 1862 – Cal, Bombay ,Madras
- 1866 – Allahabad
- 1966 – Delhi

Part VI – Art – 214 – 231

24 = 21 + 3

(2013)

22. Meghalaya
23. Manipur
24. Tripura

C.J – 2.50 lac/ month
others – 2.25 lac/ month

is the highest court of appeal in the state

	Seat
1. Bombay – Maharashtra , Goa , Dadra & Nagar Haveli , Daman & Diu	Mumbai (Benches at Nagpur, Panaji, Aurangabad)
2. Calcutta – W.B, Andaman & Nicobar Island	Kol (Circuit Bench at Port Blair)
3. Guwahati – Assam , Nagaland ,Mizoram, Ar.P	Guwahati
4. Kerala – Kerala , Lakshadweep	Ernakulam
5. Punjab & - Punjab, Haryana, Chandigarh Haryana	Chandigarh

Appointment

- by the Prz
- Chief Justice – by the Prz. after consultation with CJI + Govnr. of the state concerned
- Other Judges – by the Prz. after consultation with CJI + Chief Justice of the concerned H.C. + Govnr. of the state concerned

in case of a common H.C → *by the Prz. after consultation with the govnr.s of all states concerned*

IMPULSE

➘ Qualification of Judges

1.Citizen of India

2. a) should have been a judge for 10 years in the territory of India

b) should have been an advocate for 10 years of a HC (or H.C s in succession)

➘ Tenure

1.62 years

2.Can resign by writing to the Prz

3.Prz.can remove on the recommendation of the Parliament.

➘ Removal of Judges

as per S.C procedure → briefed in pg. no 135

➘ Acting Chief Justice

Prz. can appoint

1.
2.
3.

→ briefed in pg. no 124

➘ Additional & Acting Judges

The Prz. can appoint duly qualified persons as additional judges of H.C

for a temporary period *not exceeding 2 years* when

1. there is a temporary increase in the business of the H.C ; or
2. there are arrears of work in the H.C.

✓ Expenses charged on Consolidated Fund of the **State**

……

✓ It should be noted here that the pension of a H.C judge is charged on the Consolidated Fund of **India** & not the state.

✓ Ban on practice after retirement *except the S.C & the other H.C s*

✓ The C.J of a H.C can appoint officers & servants w/o any interference from the executive. // He can also prescribe their conditions of service.

IMPULSE

Indian Penal Code , 1860
Criminal Procedure Code ,1973

✓ S.C & H.C judges' – regarding discharge of duties – *no discussion* in
Parliament Art 121 — State legislature Art 211

➘ Jurisdiction & powers of H.C

1. Original Jurisdiction •
a)Matters of admirality, will, marriage, divorce, company laws & contempt of court.

2.Writ Jurisdiction •
(Art 226)
b)Disputes relating to the election of members of Parliament & state legislatures.
c)Regarding revenue matter or an act ordered or done in revenue collection.
d)Enforcement of fundamental rights of citizens.

In 1997, the S.C ruled that the tribunals are subject to the writ jurisdiction of the H.Cs

Consequently, it is not possible for an aggrieved person to approach the S.C. directly against the decisions of the tribunals, w/o first going to the H.Cs.

Civil Matters

3.Appellate Jurisdiction •

Criminal Matters

4.Supervisory Jurisdiction
e)Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file

5.Control over subordinate courts

a death sentence (popularly known as capital punishment) awarded by a Sessions Court should be confirmed by the H.C before it can be executed.

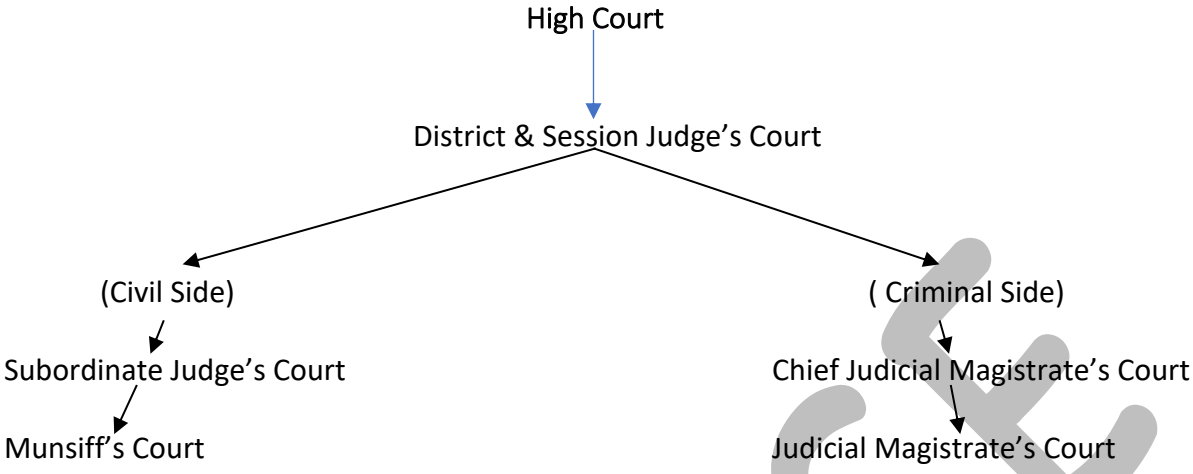
6.A court of record •
f)The 4 H.C (i.e. Calcutta, Bombay, Madras & Delhi) have original civil jurisdiction in cases of higher value.

7.Power of Judicial Review •

Judicial review is the power of a H.C to examine the constitutionality of legislative enactments & executive orders of both the Centre & State govts.

IMPULSE

SUBORDINATE COURTS



➘ Appointment of District Judges

by the govnr. of the state in consultation with the H.C.

> Qualification

i) should not already be in the service of the Central or the State Govt.

ii) should have been an advocate or a pleader for (7 years)

iii) should be recommended by the H.C for appointment.

⇒ The *control* over district courts & other subordinate courts including the posting , promotion & leave of persons belonging to the judicial service of a state & holding

any post inferior to the post of district judge is vested in the H.C.

⇒ The (D.J) is the highest judicial authority in the district.

He possesses original & appellate jurisdiction in both civil + criminal matters.

In other words , the (D.J) is also the Session Judge

when he deals with civil & criminal cases is called

District Judge / Session Judge

appeals against his orders & judgements lie to the H.C

capital punishment passed by him is subject to confirmation by the H.C whether there is an appeal or not.

IMPULSE

⇒ CJM decides criminal cases which are punishable with imprisonment for a term upto 7 years

⇒ In some states, Panchayat Courts try petty civil & criminal cases.
They are variously known as
- Nyaya Panchayat
- Gram Kutchery
- Adalati Panchayat
- Panchayat Adalat & so on.

⇒ Delhi , Bombay, Calcutta & Madras *were formerly called* Presidency Towns

IMPULSE

3.50 lakh/ month ← **GOVERNOR** → also acts as an agent of the Central govt.

appointed by the Prz.

The State executive consists of (Part VI – Art 153 – 163)
1) Govnr.
2) C.M
3) Council of Ministers
4) Advocate General of the State

- ✓ He is entitled to such emoluments, allowances & privileges as may be determined by Parliament.
- ✓ When the same person is appointed as the govnr. of two or more states, the emoluments & allowances payable to him are shared by the states in such proportion as determined by the Prz.
- ✓ 5 years tenure
- ✓ Possesses executive, legislative, financial, judicial powers more or less analogous to the Prz. However , he has no diplomatic , military or emergency powers like the Prz.
- ✓ is oathed by C.J of H.C …….. in his absence the senior most…….

Executive Powers

- All executive actions of the govt. of a state are formally taken in his name.
- appoints C.M & other ministers. / there should be a Tribal welfare Minister in the states of Bihar , M.P & Odisha appointed by him.
- appoints advocate general of a state.
- appoints state election commissioner.

  but only can be removed by the Prz.
  in like manner & on the like grounds as a judge of a H.C.

- appoints member & chairman of PSC ----------only be removed by Prz
- He can recommend the imposition of constitutional emergency in a state to the Prz.

  During the period of Prz's rule in a state, the govnr. enjoys executive powers as an agent of Prz.

- acts as the chancellor of universities in the state …….appoints V.Cs.

IMPULSE

➘ Legislative powers

- can address the state legislature at the commencement of the first session after each general election & first session of each year.
- He nominates **1/6 th** *of the members* of the state legislative **councils** from amongst persons having special knowledge or practical experience in literature science, art, cooperative movement & social service.
- He can nominate **1 member** to the state legislative **assembly** from the Anglo – Indian community.

- He can promulgate ordinances when the state legislature is not in session.
  - These ordinances must be approved by the state legislature within 6 weeks from its reassembly.
  - also can withdraw ordinances anytime
  - This is the most imp. legislative power of the govnr.

- He lays the reports of the State Finance Comm., PSC, CAG relating to the accounts of the state before the state legislature

➘ Financial Powers

- Money bill -------- state legislature . . . . . .only with his prior recommendation.
- no demand for grant ----------except on his recommendation
- can use Contingency Fund of the State
- constitutes – state finance comm. – after every 5 yrs – to review the financial position of the panchayats & the municipalities.

➘ Judicial Powers

- can grant pardons , reprives, respites & remissions of punishment or suspend, remit & commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.
- is consulted by the Prz. while appointing the judges of the concerned state high court.
- makes appointments, postings & promotions of the district judges in consultation with the state H.C.
- can also appoint persons to the judicial service of the state (other than district judges) in consultation with the state H.C & PSC.

IMPULSE

CHIEF MINISTER

Art 164 – is appointed by the Govnr.

Art 163 – a council of ministers with C. M----- to aid & advise the govnr.

Art 167 → to communicate to the govnr. of the state all decisions of the council of ministers relating to the administration of the affairs of the state & proposals for legislation.

- salary & allowances are determined by the state legislature
- presides over the meetings of the council of ministers & influences its decisions.
- advises the govnr. with regard to the appointment of important officials like advocate general , chairman & members of state PSC , state election commissioner, & so on.
- is the chairman of the State Planning Commission
- member of the Inter – state Council, NDC → is headed by PM.

State Council of Ministers

The term 'ministry' or 'ministries' is used only in the centre & not in the states.

In other words the state govt.s is divided into departments and not ministries.

→ not exceed 15% of the total strength

but minm. 12 ministers including CM.

IMPULSE

Composition of Council

minm. 30 years of age

legislative assembly 25 yrs of age

indirectly elected
max . strength 1/3rd of the total strength of the assembly & minm. 40 members

though the Constitution has fixed , *actual* strength of a Council is fixed by Parliament

Manner of Election

5/6th indirectly elected

1. 1/3rd are elected by local bodies . eg – municipalities , district boards etc.
2. 1/12th are elected by graduates of 3 years standing & residing within the state.
3. 1/12th are elected by teachers of 3 yrs standing in the state, not lower standard of Secondary School.
4. 1/3rd are elected by legislative assemblies
5. the remainder are nominated by govnr.
   … special knowledge or practical experience of lit., science , art , cooperative movt. & social service

1/6th nominated by govnr.

- 1/3rd retires every second year
- permanent body

➔ 87 the Amd. , 2003

delimination of constituencies on the basis of 2001 census.

➔ J & K → legislative assembly → 6 yrs. tenure

IMPULSE

COMMITTEES OF PARLIAMENT

Parliamentary Commtt.
(appointed by Spkr/Chrmn)

Consultative Commtt.
(Constituted by Mo Parliament Affairs)

Standing Commtt.
(ministers are not eligible)

Ad Hoc Commtt.
- Inquiry Commtt –Bofors , 2G
- Advisory ,, - on a particular bill

Public Accounts Committee

- set up 1921 (Govt. Act 1919)
- 22 members (15 L.S + 7 R.S)
- No minister includes
- since 1967 – the opposition member Chairman
- check the report of CAG.
  (except those public undertakings which are allotted to the commtt. on public undertakings)
- is assisted by **CAG** → submits 3 audit reports to Prz, namely,
  - i) audit report on appropriation accounts
  - ii) ,, ,, ,, finance ,,
  - iii) ,, ,, ,, public undertakings

Estimates Committee

- set up 1921
- 30 members
- only L.S
- Chairman from ruling party
- no minister

IMPULSE

Committee on Public Undertakings

- 1964 (Krishna Menon Commtt.)
- 22 (15 L.S + 7 R.S)
- Chairman from L.S
- no minister.

Departmental Standing Committee

Total 24 commtt.s

each commtt. @ 31 members (21 LS + 10 RS)

works under 16 LS + 8 RS

Business Advisory Committee

LS

15 members
- Spkr is the Chairman

RS

11 members
- Chairman is the Chairman

Committee on Welfare of SCs & STS

30 members (20 LS + 10 RS)

Joint Committee on Salaries & Allowances of Members

15 (10 LS + 5 RS)

Ethics Committee

RS - 1997
LS - 2000

is engaged in maintaining discipline & decorum in Parliament.

IMPULSE

Committee on Empowerment of Women

- 1997
- 30 (20 LS + 10 RS)

✓ Parliamentary privileges do not extend to the Prz. who is also an integral part of the Parliament.

✓ **a member cannot be arrested**

during the session of Parliament

&

40 days before the beginning

40 days after the end of a session

this privilege is available *only in* Civil cases & **not in criminal cases or preventive detention cases**

No. of Seats

RS	**LS**
1) UP	1) UP
2) Maharashtra	2) Maharashtra
3) AP	3) WB - AP → 42
4) WB – Bihar	4)Bihar
16	

IMPULSE

Ordinary Bills

has to pass through the following 5 stages in the Parliament before it finds a place on the Statue Book :

1. **First Reading** - *No discussion* on the bill takes place at this stage

   ↓

   the bill is published in the Gazette of India

   ↓

   If a bill is published in the Gazette before its introduction, leave of the House to introduce the bill is not necessary .

2. **Second Reading** - a) *Stage of General Discussion*
   - i) It may take the bill into Consideration immediately or on some other fixed date ;
   - ii) It may refer the till to a select committee of the House;

     ↓

     A Select Commtt. consists of members of the House where the bill has originated
   - iii) It may refer the bill to joint committee of the two Houses;
   - iv) It may circulate the bill to elicit public opinion .

   b) Committee Stage
   c) Consideration ,,

3. **Third Reading** - the debate is confined to the acceptance or rejection of the bill as a whole

   &

   no amendments are allowed
   as the general principles underlying the bill have already been scrutinised during the stage of second reading.

   ↓

   If the majority of members present & voting accept the bill, the bill is regarded as passed by the House.

   ↓

   The bill authenticated by the presiding officer of the House & transmitted to the second House for consideration & approval.

IMPULSE

4. Bill in the Second House

a) It may pass the bill as sent by the first use (i.e. w/o amd.);
b) It may pass the bill with amd. & return it to the first house for reconsideration ;
c) It may reject the bill altogether ;
d) It may not take any action & thus keep the bill pending for 6 months

Joint sitting
↓
if passed

5. Assent of the Prz.

a) May give assent

The bill becomes an act
& is placed on the Statue Book

b) May withhold his assent

it ends & does not become an act
@
'Suspensive Veto'

c) May return the bill for reconsideration of the Houses

if it is passed by both the Houses with/without any amd., the Prz. must have to give assent.

IMPULSE