

Swabnil Mishra v. UOI

↳ allowed live streaming of all cases of constitutional importance

# The Constitution of India

*as amended by*  
The Jammu and Kashmir Reorganisation Act, 2019  
(34 of 2019) (w.e.f. 31-10-2019)

**DIWAS KUMAR**

Advocate & Legal Consultants

Enrl. No. D/2081/2018

Office : Chamber No. 468A, Western Wing,  
Tis Hazari Courts, Delhi

Email : [adv.diwaskumar@gmail.com](mailto:adv.diwaskumar@gmail.com)  
8130878422

*along with*  
**SHORT NOTES**

Universal

 LexisNexis

# THE CONSTITUTION OF INDIA

## PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a <sup>1</sup>[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 <sup>2</sup>[unity and integrity of the Nation];

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

## COMMENTS

The objectives specified in the Preamble contain the basic structure of our Constitution, which cannot be amended in exercise of the power under article 368 of the Constitution. For the theory of "basic structure". See the following judgments of the Supreme Court; *Keshavananda Bharati v. State of Kerala*, AIR 1973 SC 1461, paragraphs 292, 437, 599, 682 and 1164; *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

## PART I

### THE UNION AND ITS TERRITORY

**1. Name and territory of the Union.**—(1) India, that is Bharat, shall be a Union of States.

<sup>3</sup>[(2) The States and the territories thereof shall be as specified in the First Schedule.]

(3) The territory of India shall comprise—

(a) The territories of the States;

<sup>4</sup>[(b) the Union territories specified in the First Schedule; and]

(c) such other territories as may be acquired.

**2. Admission or establishment of new States.**—Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

<sup>5</sup>[2A. Sikkim to be associated with the Union.—[Rep. by the Constitution (Thirty-sixth Amendment) Act, 1975, sec. 5(a) (w.e.f. 26-4-1975).]]

**3. Formation of new States and alteration of areas, boundaries or names of existing States.**—Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 2(a), for "SOVEREIGN DEMOCRATIC REPUBLIC" (w.e.f. 3-1-1977).
2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 2(b), for "unity of the Nation" (w.e.f. 3-1-1977).
3. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 2(1)(a), for clause (2) (w.e.f. 1-11-1956).
4. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 2(1)(b), for sub-clause (b) (w.e.f. 1-11-1956).
5. Article 2A was earlier inserted by the Constitution (Thirty-fifth Amendment) Act, 1974, sec. 2 (w.e.f. 1-3-1975).

- (b) increase the area of any State;
- (c) diminish the area of any State;
- (d) alter the boundaries of any State;
- (e) alter the name of any State:

<sup>1</sup>[Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States <sup>2</sup>[\*\*\*], the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.]

<sup>3</sup>[Explanation I.—In this article, in clauses (a) to (e), "State" includes a Union territory, but in the proviso, "State" does not include a Union territory.]

<sup>3</sup>[Explanation II.—The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory.]

**4. Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.**—(1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 312.

## PART II CITIZENSHIP

**5. Citizenship at the commencement of the Constitution.**—At the commencement of this Constitution every person who has his domicile in the territory of India and—

- (a) who was born in the territory of India; or
  - (b) either of whose parents was born in the territory of India; or
  - (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,
- shall be a citizen of India.

### COMMENTS

Domicile are of three kinds, *viz.*, domicile of origin, the domicile by operation of law and the domicile of choice. Domicile of origin is not necessarily the place of birth. The birth of a child at a place during temporary absence of the parents from their domicile will not make the place of birth as the domicile of the child. In domicile of choice one is abandoned and another domicile is acquired but for that, the acquisition of another domicile is not sufficient. Domicile of origin prevails until not only another domicile is acquired but it must manifest intention of abandoning the domicile of origin; *Sondur Gopal v. Sondur Rajini*, AIR 2013 SC 2678.

1. Subs. by the Constitution (Fifth Amendment) Act, 1955, sec. 2, for the proviso (w.e.f. 24-12-1955).
2. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).
3. Ins. by the Constitution (Eighteenth Amendment) Act, 1966, sec. 2 (w.e.f. 27-8-1966).

**6. Rights of citizenship of certain persons who have migrated to India from Pakistan.**—Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

- (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or  
(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

**7. Rights of citizenship of certain migrants to Pakistan.**—Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

**8. Rights of citizenship of certain persons of Indian origin residing outside India.**—Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

**9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens.**—No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

**10. Continuance of the rights of citizenship.**—Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

**11. Parliament to regulate the right of citizenship by law.**—Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

### PART III FUNDAMENTAL RIGHTS

#### General

**12. Definition.**—In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

f  
e  
e  
it  
n  
e  
n  
he  
on  
ne  
al  
ch  
as  
in  
ns  
he  
his  
the  
the  
less  
law  
The  
icile  
one  
ther  
le is  
Sopal  
w.e.f.  
ld by  
956).  
966).

## COMMENTS

Unaided private schools over which the Government has no administrative control are not "State" within the meaning of article 12; *Salimbla Sharma v. St. Paul's Senior Secondary School*, AIR 2011 SC 2926; JT 2011 (8) SC 611; 2011 (6) SLT 250; 2011 (5) SLR 427.

**13. Laws inconsistent with or in derogation of the fundamental rights.—**

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

[(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]

## COMMENTS

(i) Article 13(2) clearly prohibits the making of any law by the State which takes away or abridges rights, conferred by Part III of the Constitution. In the event of such a law being made the same shall be void to the extent of contravention; *State of Punjab v. Dalbir Singh*, 2012 AIR (SC) 1040; 2012 (3) SCC 346; 2012 (2) JT 300; 2012 (2) SCALE 126.

(ii) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine; *State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal*, AIR 2010 SC 1476.

*Right to Equality*

**14. Equality before law.—**The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

## COMMENTS

(i) Declaring a piece of legislation as arbitrary and thereby unconstitutional implies value judgment. It has no application under the Indian Constitution; *Rajbala v. State of Haryana*, AIR 2011 SC 37.

(ii) Concept of equality is a positive concept. Court can command the State to give equal treatment to similarly situated persons but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. Article 14 cannot be invoked for perpetuating irregularities or illegalities, *Usha Mehta v. Government of Andhra Pradesh*, 2012 (11) JT 154; 2012 (10) SCALE 468; 2012 (8) SLT 101.

(iii) The *vires* of any subordinate legislation can be challenged that it is arbitrary, unreasonable and offends article 14 of the Constitution; *Sudhir Kumar Consul v. Allahabad Bank*, (2011) 3 SCC 486; JT 2011 (2) SC 418; (2011) 2 SCALE 661.

(iv) Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf; *Bondu Ramaswamy v. Bangalore Development Authority*, (2010) 7 SCC 129; JT 2010 (6) SC 57; (2010) 5 SCALE 70.

(v) A person is treated unequally only if that person is treated worse than others, and those others (the comparison group) must be those who are "similarly situated" to the complainant; *Glanrock Estate (P) Ltd. v. State of Tamil Nadu*, (2010) 10 SCC 96; JT 2010 (9) SC 568; (2010) 9 SCALE 270.

**15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—**(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

1. Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, sec. 2 (w.e.f. 5-11-1971).

- (a) access to shops, public restaurants, hotels and places of public entertainment; or
- (b) the use of wells, tanks, bathing ghats, roads and means of public transport maintained wholly or partly out of State funds or dedicated wholly or partly to the service of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

<sup>1</sup>[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Tribes.]

<sup>2</sup>(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens, including Castes or the Scheduled Tribes in so far as such special provision relates to admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

<sup>3</sup>(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making—

- (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and
- (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

*Explanation.*—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.]

**COMMENTS** Ashok Kumar Mahtani v. U.O. 1

Article 15(4) is only an enabling provision and it is for the respective States either to enact a legislation or issue an executive instruction providing reservation. Article 15(4) is discretionary and no writ can be issued to effect reservation. Such special provision may be made not only by the Legislature but also by the executive; *Dr. Gulshan Prakash v. State of Haryana*, AIR 2010 SC 288.

**16. Equality of opportunity in matters of public employment.**—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

1. Added by the Constitution (First Amendment) Act, 1951, sec. 2 (w.e.f. 18-6-1951).  
 2. Ins. by the Constitution (Ninety-third Amendment) Act, 2005, sec. 2 (w.e.f. 20-1-2006).  
 3. Ins. by the Constitution (One Hundred and Third Amendment) Act, 2019, sec. 2 (w.e.f. 14-1-2019, vide S.O. 292(E), dated 14th January, 2019).  
 4. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for certain words (w.e.f. 1-11-1956).

equality of opportunity  
 admission  
 reservation  
 Reason and  
 prohibits  
 discrimination  
 without reason  
 List of  
 Kerala  
 N.M.  
 Thomas

of  
 ve  
 ite  
 ty  
 or  
 12  
 ry,  
 had  
 als  
 alf;  
 57:  
 ers,  
 to  
 010  
 or  
 nds  
 irth  
 with  
 971).

LawShrine.in

whole state but not allowed  
 jaipur  
 of AISC

Catchup full Aquidate representation

*M. Nagaraj v. Union of India → This is an enabling provision*  
 1[(4A) Nothing in this article shall prevent the State from making any provision for reservation<sup>2</sup> [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

3[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

4[(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.]

#### COMMENT

It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of her fundamental right guaranteed under article 16. The guarantee of a fair consideration in matters of promotion under article 16 virtually flows from guarantee of equality under article 14 of the Constitution; *Union of India v. Hemraj Singh Chauhan*, AIR 2010 SC 1682.

17. **Abolition of untouchability.**—"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

18. **Abolition of titles.**—(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

#### Right to Freedom

19. **Protection of certain rights regarding freedom of speech, etc.**—(1) All citizens shall have the right—

1. Ins. by the Constitution (Seventy-seventh Amendment) Act, 1995, sec. 2 (w.e.f. 17-6-1995).
2. Subs. by the Constitution (Eighty-fifth Amendment) Act, 2001, sec. 2, for "in matters of promotion to any class" (w.r.e.f. 17-6-1995).
3. Ins. by the Constitution (Eighty-first Amendment) Act, 2000, sec. 2 (w.e.f. 9-6-2000).
4. Ins. by the Constitution (One Hundred and Third Amendment) Act, 2019, sec. 3 (w.e.f. 14-1-2019, vide S.O. 292(E), dated 14th January, 2019).

freedom  
to  
citizens  
of  
india

Indira Sawhney  
↳ Sec directed the government  
to constitute a permanent  
body in place of P.C.

Indira Sawhney  
V. Union  
of India  
↓  
There cannot  
be reserva-  
tion in  
Promotions

Article 19]

The Constitution of India

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions (or co-operative societies) <sup>↳ includes right to collective bargaining</sup>
- (d) to move freely throughout the territory of India
- (e) to reside and settle in any part of the territory <sup>↳ m number 3\*\*\*</sup>
- (g) to practise any profession, or to carry on any business.

W.Nagraj Rao  
↓  
Security of  
amendments  
Providing for  
Reservations.

4[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as it imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 5[the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.]

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of 6[the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause. — includes in

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of 6[the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in 7[sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, 8[nothing in the said sub-clause shall affect the operation of any existing law

1. Ins. by the Constitution (Seventy-seventh Amendment) Act, 2011, sec. 2 (w.e.f. 15-2-2012).
2. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 2(a)(i) (w.e.f. 20-6-1979).
3. Sub-clause (a) of clause (1) of the Constitution (Forty-fourth Amendment) Act, 1978, sec. 2(a)(ii).
4. Subs. by the Constitution (First Amendment) Act, 1951, sec. 3(a), for clause (2) (with retrospective effect).
5. Ins. by the Constitution (Fifth Amendment) Act, 1963, sec. 2(a) (w.e.f. 5-10-1963).
6. Ins. by the Constitution (Fifth Amendment) Act, 1963, sec. 2(b) (w.e.f. 5-10-1963).
7. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 2(b), for "sub-clauses (d), (e) and (f)".
8. Subs. by the Constitution (First Amendment) Act, 1951, sec. 3(b), for certain words (w.e.f. 18-6-1951).

Right to  
Information  
included in  
19(1)(a)  
↳ Freedom  
of expression  
is available  
to all citizens  
only.

6  
y  
y,  
le  
e,  
y  
ar  
or  
g  
th  
he  
r.]  
les  
us  
of  
lar  
ion  
lly  
in  
ent.  
ered  
16.  
lly  
in v.  
its  
sing  
law.  
emic  
office  
dent  
shall  
office  
) All  
(w.e.f.  
ters of  
f 14-1

in so far as it relates to, or prevent the State from making any law relating to,—

- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

#### COMMENTS

A company cannot maintain a petition under article 32 for enforcement of fundamental rights guaranteed under article 19. Company not being a citizen has no fundamental rights; *Shree Sidhali Steels Ltd. v. State of Uttar Pradesh*, AIR 2011 SC 1175: (2011) 3 SCC 193: (2011) 1 SCALE 676.

#### Freedom of speech – Restriction

Duty of media to provide correct information. It is the responsibility of the media to ensure that they are not providing the public with information that is factually wrong biased on simply unverified information. The right to freedom of speech is enshrined in article 19(1)(a) of the Constitution. However, this right is restricted by article 19(2) in the interest of the sovereignty and integrity of India, security of the State, Public order, decency and morality and also Contempt of Courts Act and defamation; *Sanjay Narayan, Editor-in-Chief Hindustan v. Hon. High Court of Allahabad*, JT 2011 (10) SC 74: (2011) 9 SCALE 532.

#### Scope

This *vires* of any subordinate legislation can be challenged on the ground that it is arbitrary, unreasonable and offends article 14 of the Constitution; *Sudhir Kumar Consul v. Allahabad Bank*, (2011) (3) SCC 486: JT 2011 (2) SC 418: 2011 (2) LLJ 199: 2011 (2) SLT 312.

*Protection against criminal liability.*  
 20. **Protection in respect of conviction for offences.** (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. *ex post facto laws.*

(2) No person shall be prosecuted and punished for the same offence more than once. *Double jeopardy.*

(3) No person accused of any offence shall be compelled to be a witness against himself. *Self incrimination (protection is against the statement made under compulsion).*

#### COMMENTS

*Person not accused*  
*deletion*  
 (i) Right against self-incrimination under article 20(3) does not exclude any voluntary statements made in exercise of free will and volition; *Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra*, 2012 AIR (SC) 3565: 2012 (9) SCC 1: 2012 (8) JT 4: 2012 (7) SCALE 553.

golden triangle of Indian Constitution

Mandya v. Union of India → 19/19 and 21 - closely related to each other

(ii) Protection under article 20(3) does not extend to any kind of evidence but only to self-incriminating statements relating to the charges brought against an accused. In order to bring the testimony of an accused within the prohibition of constitutional protection, it must be of such character that by itself it tends to incriminate the accused. For invoking the constitutional rights under article 20(3) a formal accusation against the person claiming the protection must exist; *Balasaheb v. State of Maharashtra*, AIR 2011 SC 304; (2011) 1 SCC 364; JT 2010 (13) SC 744; (2010) 13 SCALE 180.

(iii) It is trite law that the sentence imposed on the date of commission of the offence has to determine the sentence imposed on completion of trial. This proposition is clear even on a bare reading of article 20(1). Under article 20(1) what is prohibited is the conviction and sentence in criminal proceedings under *ex post facto* law; *Ravinder Singh v. State of Himachal Pradesh*, AIR 2010 SC 199.

**21. Protection of life and personal liberty.** <sup>Right to Privacy covered</sup> **No person shall be deprived of his life or personal liberty except according to procedure established by law.**

Jain vs. State of Karnataka → covered under this section  
20/21 → cannot be suspended during emergency

**COMMENTS**

(i) There is a need to continuously monitor the progress in the implementation of the constitutional mandate to make available to the elderly the right to live with dignity and to provide them with reasonable accommodation, medical facilities and geriatric care. While this may take some time, the only available solution is a continuing mandamus which is a well-recognized practice and procedure adopted by this Court in several cases to ensure that the rights of the people are respected, recognized and enforced and that social justice as postulated by the Preamble to the Constitution is given meaning and teeth; *Ashwani Kumar v. Union of India* [Writ Petition (C) No. 193 of 2016, decided on 18-12-2018 (Supreme Court)], AIR 2018 SC 668.

(ii) Article 21 in its expansive meaning encompasses various rights of elderly persons/senior citizens such as right to dignity, right to health, right to adequate pension and right to shelter. There is need to continuously monitor implementation of rights of elderly persons/senior citizens. Thus, a continuing mandamus is required to be issued in present case also as it is a well-recognized practice for enforcing social justice postulated by Preamble. Directions, thus, issued for enforcement of said rights and statutory rights under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and other welfare schemes; *Ashwani Kumar v. Union of India* [WRIT PETITION (C) No. 193 OF 2018, decided on 18-12-2018 (Supreme Court)].

(iii) Right to life and personal liberty includes Right to privacy as an integral part guaranteed under part III of the Constitution; *Justice K.S. Puttaswamy (Retd.) v. Union of India*, AIR 2017 SC 4161.

(iv) Timely delivery of justice is part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice; *Hussain v. Union of India*, AIR 2017 SC 1362.

(v) When the undertrial prisoners are detained in jail custody to an indefinite period, article 21 of the Constitution is violated; *Dipak Shubashchandra Mehta v. Central Bureau of Investigation*, 2012 AIR (SC) 949; 2012 (4) SCC 134; 2012 (2) JT 439; 2012 (2) SCALE 401.

People's Union for Civil Liberties v. Union of India → Telephone tapping is an invasion of right to privacy

(vi) Right to privacy is an integral part of life. This is a cherished constitutional value and it is important that human beings be allowed domains of freedom that are free from public scrutiny unless they act in an unlawful manner; *Ram Jethmalani v. Union of India*, (2011) 8 SCC 1; JT 2011 (7) SC 104; (2011) 6 SCALE 691.

(vii) Right to life is one of the basic human right and not even the State has the authority to violate that right; *Siddharam Satlingappa Mhetre v. State of Maharashtra*, JT 2011 (13) SC 247; (2010) 12 SCALE 691.

(viii) The woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under article 21. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproduction choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a 'compelling State interest' in protecting the life of the prospective child; *Suchita Srivastava v. Chandigarh Administration*, AIR 2010 SC 235.

(ix) Right to livelihood is an integral facet of the right to life; *Narendra Kumar v. State of Haryana*, JT (1994) 2 SC 94.

(x) A boy and a girl married on their own will. They were majors and the marriage was duly registered under the notified authority. The police officials have no role in their conjugal affairs and the law enforcing authorities have no right to interfere with their married life and, in fact, they are duty bound to prevent others who interfere in their married life; *Ashok Kumar Todi v. Kishwar Jahan*, AIR 2011 SC 1254; (2011) 3 SCC 758; JT 2011 (7) SC 50; (2011) 3 SCALE 94; 2011 Cr LJ 2317.

(xi) The word life in article 21 means a life of dignity and not just an animal life; *Budhadev Karmaskar v. State of West Bengal*, AIR 2011 SC 2636; (2011) (10) SCC 277; JT 2011 (8) SC 289; (2011) 8 SCALE 155.

(xii) Clause 4 of Bye-laws framed by Cine Costume, Make-up Artists and Hair Dressers Association, a registered Trade Union, restricting membership of association only to men (Make-up men, costume men and hair dressers) violates section 21 of the Trade Unions Act, 1926, for the Act has not made any distinction between men and women. Had it made a bold distinction it would have been indubitably unconstitutional. The Legislature, by way of amendment in section 21A of the 1926 Act, has only fixed the age. The clause, apart from violating the statutory command, also violates the constitutional mandate which postulates that there cannot be any discrimination on ground of sex. Such discrimination in the access of employment and to be considered for the employment unless some justifiable riders are attached to it, cannot withstand law scrutiny. When the access or entry is denied, article 21 which deals with livelihood is as offended. It also works against the fundamental human rights. Such kind of debarment or creates a concavity in her capacity to earn her livelihood; *Charu Khurana v. Union of India*, AIR 2015 SC 839.

**21A. Right to education.**—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.]

Unnikrishnan v. A.P.

COMMENTS

(i) In order to ensure compliance of article 21A of the Constitution, it is imperative that schools must have qualified teachers and basic infrastructure; *Environmental and Consumer Protect Foundation v. Delhi Administration*, 2012 (4) SCALE 243.

(ii) Right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education without any discrimination on the ground of their economic, social and cultural background; *State of Tamil Nadu v. K. Shyam Sunder*, AIR 2011 SC 3470: (2011) 8 SCC 737: JT 2011 (9) SC 166: (2011) 8 SCALE 474.

**22. Protection against arrest and detention in certain cases.**—(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

1. Ins. by the Constitution (Eighty-sixth Amendment) Act, 2002, sec. 2 (w.e.f. 1-4-2010).

2. On the enforcement of section 3 of the Constitution (Forty-fourth Amendment) Act, 1978, article 22 shall stand amended as directed in section 3 of that Act. (Ed.—So far no date has been notified for the enforcement of section 3).

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

- (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
- (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
- (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

#### COMMENT

The right under article 22(2) is available only against illegal detention by police. It is not available against custody in jail of a person pursuant to a judicial order as article 22(2) does not operate against the judicial order; *Sadhvi Pragya Singh Thakur v. State of Maharashtra*, JT 2011 (12) SC 56: (2011) 10 SCALE 771.

#### Right against Exploitation

**23. Prohibition of traffic in human beings and forced labour.**—(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. *M. Hebra v. Tamil Nadu* → Child labour

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. *Bandhua Mukti Morcha v. UOI* → Child labour

**24. Prohibition of employment of children in factories, etc.**—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

#### Right to Freedom of Religion

**25. Freedom of conscience and free profession, practice and propagation of religion.**—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

*Shastri Yagna Purishadaji v. Nudal Brudardas*

*Vasqua AIR 1966*

Other  
Fundamental  
rights

- (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

*Explanation I.*—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

*Explanation II.*—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

**26. Freedom to manage religious affairs.**—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

#### COMMENTS

#### Religious Rights

The object and purpose of enacting article 26 is to protect the rights conferred therein on a 'religious denomination' or a section thereof. However, the rights conferred under article 26 are subject to public order, morality and health and not subject to any other provision of Part III of the Constitution as the limitation has been prescribed by the law makers by virtue of article 25 of the Constitution; *Dr. Subramaniam Swamy v. State of Tamil Nadu*, AIR 2015 SC 460.

**27. Freedom as to payment of taxes for promotion of any particular religion.**—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

**28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.**—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

#### Cultural and Educational Rights

**29. Protection of interests of minorities.**—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

**30. Right of minorities to establish and administer educational institutions.**—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. *(established by them only)*

<sup>1</sup>(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.] *Benefit to minority institutes.*

1. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 4 (w.e.f. 20-6-1979).

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

#### COMMENTS

(i) Autonomy of a minority institution does not dispense with the requirement to act fairly and a transparent manner. It is liable to be tested in exercise of power of judicial review under Article 226 of the Constitution; *Mrs. Ivy C. Da. Conceicao v. State of Goa*, AIR 2017 SC 1834.

(ii) The rights conferred by article 30 of the Constitution to the minority are in two parts. The first part is the right to establish the institution of minority's choice and the second part relates to the right to administration of such institution. The word establishment herein means bringing into being of an institution and it must be by minority community. The administration means management of the affairs of the institution. Thus in order to claim minority/linguistic status for an institution in any State, the authorities must be satisfied *firstly* that the institution has been established by the persons who are minority in such State; and *secondly*, the right of administration of the said minority/linguistic institution is also vested in those persons who are minority in such State. The right conferred by article 30 cannot be interpreted as if irrespective of the persons who established the institution in the State for the benefit of persons who are minority, any person, be it non-minority in other place, can administer and run such institution; *Dayanand Anglo Vedic DAV College Trust and Management Society v. State of Maharashtra*, AIR 2013 SC 1420.

<sup>2</sup>[31. Compulsory acquisition of property.—[Rep. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 6 (w.e.f. 20-6-1979).]]

<sup>3</sup>[Saving of Certain Laws]

<sup>4</sup>[31A. Saving of laws providing for acquisition of estates, etc.—  
<sup>5</sup>[(1) Notwithstanding anything contained in article 13, no law providing for—  
 (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or  
 (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or  
 (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or  
 (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or  
 (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by <sup>6</sup>[article 14 or article 19]:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:]

<sup>7</sup>[Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a

1. The sub-heading "Right to Property" omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 5 (w.e.f. 20-6-1979).
2. Article 31 was earlier amended by the Constitution (Fourth Amendment) Act, 1955, sec. 2 (w.e.f. 27-4-1955) and by the Constitution (Twenty-fifth Amendment) Act, 1971, sec. 2 (w.e.f. 20-4-1972).
3. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 3 (w.e.f. 3-1-1977).
4. Ins. by the Constitution (First Amendment) Act, 1951, sec. 4 (with retrospective effect).
5. Subs. by the Constitution (Fourth Amendment) Act, 1955, sec. 3(a), for clause (1) (with retrospective effect).
6. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 7, for "article 14, article 19 or article 31" (w.e.f. 20-6-1979).
7. Ins. by the Constitution (Seventeenth Amendment) Act, 1964, sec. 2(i) (w.e.f. 20-6-1964).

person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.]

(2) In this article,—

- <sup>1</sup>(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—
- (i) any *jagir*, *inam* or *muafi* or other similar grant and in the States of <sup>2</sup>[Tamil Nadu] and Kerala, any *janmam* right;
  - (ii) any land held under *ryotwari* settlement;
  - (iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]
- (b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, <sup>3</sup>[*raiyat*, under-*raiyat*] or other intermediary and any rights or privileges in respect of land revenue.]

<sup>4</sup>[31B. Validation of certain Acts and Regulations.—Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions hereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.]

<sup>5</sup>[31C. Saving of laws giving effect to certain directive principles.—Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing <sup>6</sup>[all or any of the principles laid down in Part IV] shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by <sup>7</sup>[article 14 or article 19] <sup>8</sup>[and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy]:

1. Subs. by the Constitution (Seventeenth Amendment) Act, 1964, sec. 2(ii), for sub-clause (a) (with retrospective effect). Earlier clause (a) was amended by the Constitution (Fourth Amendment) Act, 1955, sec. 3(b)(i) (with retrospective effect) and by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).
2. Subs. by the Madras State (Alteration of Name) Act, 1968 (53 of 1968), sec. 4, for "Madras" (w.e.f. 14-1-1969).
3. Ins. by the Constitution (Fourth Amendment) Act, 1955, sec. 3(b)(ii) (with retrospective effect).
4. Ins. by the Constitution (First Amendment) Act, 1951, sec. 5 (w.e.f. 18-6-1951).
5. Ins. by the Constitution (Twenty-fifth Amendment) Act, 1971, sec. 3 (w.e.f. 20-4-1972).
6. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 4, for "the principles specified in clause (b) or clause (c) of article 39" (w.e.f. 3-1-1977). Section 4 has been declared invalid by the Supreme Court in *Minerva Mills Ltd. v. Union of India*, (1980) 2 SCC 591.
7. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 8, for "article 14, article 19 or article 31" (w.e.f. 20-6-1979).
8. In *Keshavananda Bharati v. The State of Kerala*, 1973 Supp SCR 1: (1973) 4 SCC 225: AIR 1973 SC 1461, the Supreme Court held the provision in italics to be invalid.

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.]

<sup>1</sup>[31D. Saving of laws in respect of anti-national activities.—[Rep. by the Constitution (Forty-third Amendment) Act, 1977, section 2 (w.e.f. 13-4-1978).]]

#### Right to Constitutional Remedies

**32. Remedies for enforcement of rights conferred by this Part.**—(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

#### COMMENTS

(i) *Habeas corpus* cannot be used for mere enforcement of order passed by foreign court; *Nithya Anand Raghavan v. State of NCT of Delhi*, AIR 2017 SC 3137.

(ii) Article 32 which has been described as the "heart and soul" of the Constitution guarantees the right to move the Supreme Court for the enforcement of all or any of the fundamental rights conferred by Part III of the Constitution. This article is, therefore, itself a fundamental right; *Assam Sanmilita Mahasangha v. Union of India*, AIR 2015 SC 783.

(iii) A company cannot maintain a petition under article 32 for enforcement of fundamental rights guaranteed under article 19. Company not being a citizen has no fundamental rights; *Shree Sushil Steels Ltd. v. State of Uttar Pradesh*, AIR 2011 SC 1175; (2011) 3 SCC 193; (2011) 1 SCALE 676.

(iv) Citizens are entitled to appropriate relief under the provisions of Article 32, provided it is shown to the satisfaction of the court that the Fundamental Rights of petitioner have been violated; *Poonam v. Sumit Tanwar*, AIR 2010 SC 1384; (2010) 4 SCC 460; JT 2010 (1) SC 259.

(v) Except for a writ of *quo warranto*, PIL is not maintainable in service matters. For issuance of writ of *quo warranto* the High Court has to satisfy that the appointment is contrary to the statutory rules. Suitability or otherwise of a candidate for appointment to a post in Government service is the function of the appointing authority and not of the court unless the appointment is contrary to statutory provisions/rules; *Hari Bansh Lal v. Sahodar Prasad Mahto*, AIR 2010 SC 3515.

(vi) The remedies evolved by way of writ jurisdiction are of an extraordinary nature. They cannot be granted as a matter of due course to provide redressal in situations where statutory remedies are available; *Kunga Nima Lepcha v. State of Sikkim*, AIR 2010 SC 1671.

(vii) Judicial review under articles 32 and 226 is a basic feature of the Constitution beyond the pale of amendability; *Kihota v. Zachilhu*, AIR 1993 SC 412.

#### Writ of *quo warranto*

Before a citizen can claim a writ of *quo warranto* he must satisfy the court *inter alia* that the office in question is a public office and it is held by a person without legal authority and that leads to the enquiry as to whether the appointment of the said person has been in accordance with law or not; *Centre for PIL v. Union of India*, AIR 2011 SC 1267; (2011) 4 SCC 1; JT 2011 (2) SC 613; (2011) 3 SCALE 148.

#### Public Interest Litigation

A petition which lacks *bona fides* and is intended to settle business rivalry or is aimed at taking over a company or augmenting the business of another interested company at the cost of closing business of office units in the garb of Public Interest Litigation would be nothing but abuse of the process of law; *Kalyaneshwari v. Union of India*, (2011) 3 SCC 287; JT 2011 (2) SC 38; (2011) 1 SCALE 651. *S.P. Gupta v. Union of India*

1. Article 31D was earlier inserted by the Constitution (Forty-second Amendment) Act, 1976, sec. 5 (w.e.f. 3-1-1977).

<sup>1</sup>[32A. Constitutional validity of State laws not to be considered in proceedings under article 32.—[Rep. by the Constitution (Forty-third Amendment) Act, 1977, sec. 3 (w.e.f. 13-4-1978).]]

<sup>2</sup>[33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.—Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

- (a) the members of the Armed Forces; or
- (b) the members of the Forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
- (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.]

34. Restriction on rights conferred by this Part while martial law is in force in any area.—Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

35. Legislation to give effect to the provisions of this Part.—Notwithstanding anything in this Constitution,—

- (a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—
  - (i) with respect to any of the matters which under clause (3) of article 16, clause (5) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and
  - (ii) for prescribing punishment for those acts which are declared to be offences under this Part,

*enjoins Parliament to make law for a punishment to be inflicted under Part III*

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

- (b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation.—In this article, the expression "law in force" has the same meaning as in article 372.

*borrowed from Ireland*

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

36. Definition.—In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III.

37. Application of the principles contained in this Part.—The provisions contained in this Part shall not be enforceable by any court, but the principles

1. Article 32A was earlier inserted by the Constitution (Forty-second Amendment) Act, 1976, sec. 6 (w.e.f. 1-2-1977).
2. Subs. by the Constitution (Fiftieth Amendment) Act, 1984, sec. 2, for article 33 (w.e.f. 11-9-1984).

*Binding force — Public opinion*

*aiming at welfare*

*enforcement depends upon the resources available with the government*

therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

#### COMMENTS

(i) Directive Principles have been regarded as soul of the Constitution as India is a welfare State. They provide for guidance to interpretation of fundamental rights of citizen as also statutory rights; *Charu Khurana v. Union of India*, AIR 2015 SC 839.

(ii) Directive Principles of the State policy lay down the fundamental principles for the governance of the country, and through these principles, the State is directed to secure that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, AIR 2011 SC 3430: (2011) 9 SCC 1: JT 2011 (9) SC 65: (2011) 8 SCALE 583.

#### 38. State to secure a social order for the promotion of welfare of the people.—

<sup>1</sup>[(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

<sup>2</sup>[(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]

#### 39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

<sup>3</sup>[(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]

<sup>4</sup>39A. Equal justice and free legal aid.—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.]

40. Organisation of village panchayats.—The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

41. Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make

1. Article 38 renumbered as clause (1) thereof by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 9 (w.e.f. 20-6-1979).

2. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 9 (w.e.f. 20-6-1979).

3. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 7, for clause (f) (w.e.f. 3-1-1977).

4. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 8 (w.e.f. 3-1-1977).

effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

**42. Provision for just and humane conditions of work and maternity relief.**—The State shall make provision for securing just and humane conditions of work and for maternity relief. → Provision of maternity relief

**43. Living wage, etc., for workers.**—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

**[43A. Participation of workers in management of industries.**—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.]

**[43B. Promotion of co-operative societies.**—The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.]

**44. Uniform civil code for the citizens.**—The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

COMMENTS

Uniform law for all persons may be desirable. But its enactment in one go may be counter-productive to the unity of the nation; *Pannalal Bansal Patil v. State of Andhra Pradesh*, AIR 1996 SC 1023.

**[45. Provision for early childhood care and education to children below the age of six years.**—The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.]

**46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.**—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

**47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.**—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

COMMENTS

Article 47 of the Constitution is one of the Directive Principles of State Policy which is fundamental in the governance of the country and the State has the power to completely prohibit the manufacture, sale, possession, distribution and consumption of liquor as a beverage because it is inherently dangerous to the human health. Consequently, it is the privilege of the State and it is for the State to decide whether it should part with that privilege, which depends upon the liquor policy of the State. State has, therefore, the exclusive right or privilege in respect of portable liquor. A citizen has, therefore, no fundamental right to trade or business in liquor as a beverage and the activities, which are *res extra commercium*, cannot be carried on by any citizen and the State can prohibit completely trade or business in portable liquor and the State can also create a monopoly in itself for the trade or business of liquor. State can also impose restrictions

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 9 (w.e.f. 3-1-1977).
2. Ins. by the Constitution (Ninety-seventh Amendment) Act, 2011, sec. 3 (w.e.f. 15-2-2012).
3. Subs. by the Constitution (Eighty-sixth Amendment) Act, 2002, sec. 3, for article 45 (w.e.f. 1-4-2010).

and limitations on the trade or business in liquor as a beverage, which restrictions are in nature different from those imposed on trade or business in legitimate activities and goods and articles which are *res commercium*; *State of Kerala v. Kandath Distilleries*, AIR 2013 SC 1812.

**48. Organisation of agriculture and animal husbandry.**—The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle.

**48A. Protection and improvement of environment and safeguarding of forests and wild life.**—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.]

**49. Protection of monuments and places and objects of national importance.**—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, <sup>1</sup>[declared by or under law made by Parliament] to be of national importance, from spoilation, disfigurement, destruction, removal, disposal or export, as the case may be.

**50. Separation of judiciary from executive.**—The State shall take steps to separate the judiciary from the executive in the public services of the State.

**51. Promotion of international peace and security.**—The State shall endeavour to—

- (a) promote international peace and security;
- (b) maintain just and honourable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

### PART IVA FUNDAMENTAL DUTIES

**51A. Fundamental duties.**—It shall be the duty of every citizen of India—

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 10 (w.e.f. 3-1-1977).

2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 27, for "declared by Parliament by law" (w.e.f. 1-11-1956).

3. Part IVA (containing article 51A) ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 11 (w.e.f. 3-1-1977).

- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.]
- (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.]

(1) Fundamental duties

#### COMMENTS

Provisions as to fundamental duties cannot be enforced by writs. They can be promoted only by constitutional methods. But they can be used for interpreting ambiguous statutes; See *Mumbai Kamgar Sabha v. Abdulbhai*, AIR 1976 SC 1455; *Surya v. Union of India*, AIR 1982 Raj 1.

### PART V THE UNION

#### CHAPTER I THE EXECUTIVE

##### *The President and Vice-President*

~~52.~~ **The President of India.**—There shall be a President of India.

~~53.~~ **Executive power of the Union.**—(1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall—

- (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or
- (b) prevent Parliament from conferring by law functions on authorities other than the President.

~~54.~~ **Election of President.**—The President shall be elected by the members of an electoral college consisting of—

- (a) the elected members of both Houses of Parliament; and
- (b) the elected members of the Legislative Assemblies of the States.

<sup>2</sup>[*Explanation.*—In this article and in article 55, "State" includes the National Capital Territory of Delhi and the Union Territory of \*Pondicherry.]

~~55.~~ **Manner of election of President.**—(1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity among the States *inter se* as well as parity between the States as a whole and the Union, the number of votes

1. Added by the Constitution (Eighty-sixth Amendment) Act, 2002, sec. 4 (w.e.f. 1-4-2010).
2. Ins. by the Constitution (Seventieth Amendment) Act, 1992, sec. 2 (w.e.f. 1-6-1995).
- \* Now Puducherry, *vide* the Pondicherry (Alteration of Name) Act, 2006 (44 of 2006), sec. 3 (w.e.f. 1-10-2006).

which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:—

- (a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
- (b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;
- (c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

<sup>1</sup>[Explanation.—In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this *Explanation* to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year <sup>2</sup>[2026] have been published, be construed as a reference to the 1971 census.]

**56. Term of office of President.**—(1) The President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

- (a) the President may, by writing under his hand addressed to the Vice-President, resign his office;
- (b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;
- (c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People.

**57. Eligibility for re-election.**—A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 12, for the *Explanation* (w.e.f. 3-1-1977).
2. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, sec. 2, for "2000" (w.e.f. 21-2-2002).

Like Article  
fortification  
Communicate  
to be  
Speaker of the  
house of the  
People

58  
for ele

**Qualifications for election as President.**—(1) No person shall be eligible for election as President unless he—

- (a) is a citizen of India,
- (b) has completed the age of thirty-five years, and (minimum age)
- (c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit or other authority subject to the control of any Government or the Government of any State or Union or the Government by [\*\*\*] of any State he is the Governor or for any State.

**59. Conditions of President's office.**—(1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

**60. Oath or affirmation of the President.**—Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the seniormost Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say—

"I, A.B., do swear in the name of God \_\_\_\_\_ that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

**61. Procedure for impeachment of the President.**—(1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless—

- (a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed

1. The words "or Rajpramukh or Uparajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).

by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

**62. Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy.**—(1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

**63. The Vice-President of India.**—There shall be a Vice-President of India.

**64. The Vice-President to be ex-officio Chairman of the Council of States.**—The Vice-President shall be ex-officio Chairman of the Council of States and shall not hold any other office of profit.

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

**65. The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President.**—(1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President, have all the powers and immunities of the President and be entitled to such emoluments, allowances and

Rajya  
Sabha  
Presided  
by  
Vice  
President  
(non  
member)

In the absence of President | Vice President

privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

**66. Election of Vice-President.**—(1) The Vice-President shall be elected by the <sup>1</sup>[members of an electoral college consisting of the members of both Houses of Parliament] in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he—

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years; and
- (c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

*Explanation.*—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor <sup>2</sup>[\*\*\*] of any State or is a Minister either for the Union or for any State.

**67. Term of office of Vice-President.**—The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

- (a) a Vice-President may, by writing under his hand addressed to the President, resign his office;
- (b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;
- (c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

**68. Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.**—(1) An election

1. Subs. by the Constitution (Eleventh Amendment) Act, 1961, sec. 2, for "members of both Houses of Parliament assembled at a joint meeting" (w.e.f. 19-12-1961).  
2. The words "or Rajpramukh or Uparajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).

to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

**69. Oath or affirmation by the Vice-President.**—Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say—

“I, A.B., do swear in the name of God that I will bear true faith, and solemnly affirm allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.”

**70. Discharge of President's functions in other contingencies.**—Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

**71. Matters relating to, or connected with, the election of a President or Vice-President.**—(1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.]

**72. Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.**—(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

- (a) in all cases where the punishment or sentence is by a Court Martial;
- (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
- (c) in all cases where the sentence is a sentence of death.

1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 10, for article 71 (w.e.f. 20-6-1979). Earlier article 71 was amended by the Constitution (Eleventh Amendment) Act, 1961, sec. 3 (w.e.f. 19-12-1961) and was substituted by the Constitution (Thirty-ninth Amendment) Act, 1975, sec. 2 (w.e.f. 10-8-1975).

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor <sup>1</sup>[\*\*\*] of a State under any law for the time being in force.

#### COMMENTS

(i) While examining challenge to the decision taken by the President under article 72 of the Constitution on mercy petition, the Courts power of judicial review is very limited. The Court can neither sit in appeal nor exercise the power of review, but can interfere if it is found that the decision has been taken without application of mind to the relevant factors or the same is founded on extraneous or irrelevant considerations or is vitiated due to *mala fide* or patent arbitrariness; *Devender Pal Singh Bhullar v. State of N.C.T. of Delhi*, AIR 2013 SC 1975.

(ii) The power of the sovereign to grant remission is within its exclusive domain and it is for this reason that our Constitution makers went on to incorporate the provisions of article 72 and article 161 of the Constitution. This responsibility was cast upon the Executive through a constitutional mandate to ensure that some public purpose may require fulfilment by grant of remission in appropriate cases. This power was never intended to be used or utilized by the Executive as an unbridled power of reprieve. Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way wipe out the conviction. It is a power which the sovereign exercises against its own judicial mandate; *State of Haryana v. Jagdish*, AIR 2010 SC 1690.

**73. Extent of executive power of the Union.**—(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

- (a) to the matters with respect to which Parliament has power to make laws; and
- (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State <sup>2</sup>[\*\*\*] to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

#### Council of Ministers

**74. Council of Ministers to aid and advise President.**—<sup>3</sup>[(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:]

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).
2. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).
3. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 13, for clause (1) (w.e.f. 3-1-1977).

<sup>1</sup>[Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.]

<sup>2</sup>(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

**75. Other provisions as to Ministers.**—(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

<sup>2</sup>(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of members of the House of the People.]

<sup>2</sup>(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.]

(2) The Ministers shall hold office during the pleasure of the President.

<sup>3</sup>(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

#### The Attorney-General for India

**76. Attorney-General for India.**—(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India. *can be invited to give his opinion to Parliament*

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

<sup>3</sup>(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

1. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 11 (w.e.f. 20-6-1979).
2. Ins. by the Constitution (Ninety-first Amendment) Act, 2003, sec. 2 (w.e.f. 1-1-2004).

Cannot be removed from office

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

*Conduct of Government Business*

**77. Conduct of business of the Government of India.**—(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules<sup>1</sup> to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

<sup>2</sup>[\*\*\*]

**78. Duties of Prime Minister as respects the furnishing of information to the President, etc.**—It shall be the duty of the Prime Minister—

- (a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;
- (b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- (c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

CHAPTER II  
PARLIAMENT

*General*

**79. Constitution of Parliament.**—There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

**80. Composition of the Council of States.**—(1) <sup>3</sup>[<sup>4</sup>[\*\*\*] The Council of States] shall consist of—

1. See Notification No. S.O. 2297, dated the 3rd November, 1958, Gazette of India, Extra., 1958, Pt. II, Sec. 3(ii), p. 1315, as amended from time-to-time.
2. Clause (4) omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 12 (w.e.f. 20-6-1979). Earlier clause (4) was inserted by the Constitution (Forty-second Amendment) Act, 1976, sec. 14 (w.e.f. 3-1-1977).
3. The words and figure "Subject to the provisions of paragraph 4 of the Tenth Schedule, the Council of States" subs. by the Constitution (Thirty-fifth Amendment) Act, 1974, sec. 3, for "The Council of States" (w.e.f. 1-3-1975).
4. The words "Subject to the provisions of paragraph 4 of the Tenth Schedule," omitted by the Constitution (Thirty-sixth Amendment) Act, 1975, sec. 5(b) (w.e.f. 26-4-1975).

- (a) ~~twelve members to be nominated by the President in accordance with the provisions of clause (3); and~~
- (b) ~~not more than two hundred and thirty-eight representatives of the States<sup>1</sup> [and of the Union territories].~~ (238) elected members

(2) The allocation of seats in the Council of States to be filled by representatives of the States<sup>2</sup> [and of the Union territories] shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art and social service.

(4) The representatives of each State<sup>3</sup> [\*\*\*] in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(5) The representatives of the<sup>4</sup> [Union Territories] in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

**[81. Composition of the House of the People.**—(1) <sup>6</sup>[Subject to the provisions of article 331 <sup>7</sup>[\*\*\*],] the House of the People shall consist of—

- (a) not more than <sup>8</sup>[five hundred and thirty members] chosen by direct election from territorial constituencies in the States, and
- (b) not more than <sup>9</sup>[twenty members] to represent the Union territories, chosen in such manner as Parliament may by law provide.

1. Added by the Constitution (Seventh Amendment) Act, 1956, sec. 3(1)(a) (w.e.f. 1-11-1956).

2. Added by the Constitution (Seventh Amendment) Act, 1956, sec. 3(1)(b) (w.e.f. 1-11-1956).

3. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 3(1)(c) (w.e.f. 1-11-1956).

4. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 3(1)(d), for "States specified in Part C of the First Schedule" (w.e.f. 1-11-1956).

5. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 4, for article 81 (w.e.f. 1-11-1956). Earlier article 81 was amended by the Constitution (Second Amendment) Act, 1952, sec. 2 (w.e.f. 1-5-1953).

6. The words "Subject to the provisions of article 331 and paragraph 4 of the Tenth Schedule" were subs. by the Constitution (Thirty-fifth Amendment) Act, 1974, sec. 4, for "Subject to the provisions of article 331" (w.e.f. 1-3-1975).

7. The words and figure "and paragraph 4 of the Tenth Schedule" omitted by the Constitution (Thirty-sixth Amendment) Act, 1975, sec. 5(c) (w.e.f. 26-4-1975).

8. Subs. by the Goa, Daman and Diu Reorganisation Act, 1987 (18 of 1987), sec. 63, for "five hundred and twenty-five members" (w.e.f. 30-5-1987). Earlier the words "five hundred and twenty-five members" were substituted by the Constitution (Thirty-first Amendment) Act, 1973, sec. 2(a)(i), for the words "five hundred members" (w.e.f. 17-10-1973).

9. Subs. by the Constitution (Thirty-first Amendment) Act, 1973, sec. 2(a)(ii), for "twenty-five members" (w.e.f. 17-10-1973). Earlier the words "twenty-five members" were substituted by the Constitution (Fourteenth Amendment) Act, 1962, sec. 2, for the words "twenty members" (w.e.f. 28-12-1962).

(2) For the purposes of sub-clause (a) of clause (1)—

- (a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and
- (b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and number of seats allotted to it is, so far as practicable, the same throughout the State:

<sup>1</sup>[Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions.]

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

<sup>2</sup>[Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year <sup>3</sup>[2026] have been published, <sup>4</sup>[be construed,—

- (i) for the purposes of sub-clause (a) of clause (2) and the proviso to that clause, as a reference to the 1971 census; and
- (ii) for the purposes of sub-clause (b) of clause (2) as a reference to the <sup>5</sup>[2001] census.]]

<sup>6</sup>[82. Readjustment after each census. — Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House:]

<sup>7</sup>Provided further that such readjustment shall take effect from such date as President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:

1. Ins. by the Constitution (Thirty-first Amendment) Act, 1973, sec. 2(b) (w.e.f. 17-10-1973).
2. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 15 (w.e.f. 3-1-1977).
3. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, sec. 3(i), for "2000" (w.e.f. 21-2-2002).
4. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, sec. 3(ii), for "be construed as a reference to the 1971 census" (w.e.f. 21-2-2002).
5. Subs. by the Constitution (Eighty-seventh Amendment) Act, 2003, sec. 2, for '1991' (w.e.f. 22-6-2003).
6. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 4, for article 82 (w.e.f. 1-11-1956).
7. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 16 (w.e.f. 3-1-1977).

Provided also that until the relevant figures for the first census taken after the year <sup>1</sup>[2026] have been published, it shall not be necessary to <sup>2</sup>[readjust—

- (i) the allocation of seats in the House of the People to the States as readjusted on the basis of the 1971 census; and
- (ii) the division of each State into territorial constituencies as may be readjusted on the basis of the <sup>3</sup>[2001] census,

under this article.]

**83. Duration of Houses of Parliament.**—(1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for <sup>4</sup>[five years] from the date appointed for its first meeting and no longer and the expiration of the said period of <sup>4</sup>[five years] shall operate as a dissolution of the House:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

**84. Qualification for membership of Parliament.**—A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

<sup>5</sup>(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

**85. Sessions of Parliament, prorogation and dissolution.**—(1) The President shall from time to time summon each House of Parliament to meet at such time and

1. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, sec. 4(i), for "2000" (w.e.f. 21-2-2002).
2. Subs. by the Constitution (Eighty-fourth Amendment) Act, 2001, sec. 4(ii), for certain words (w.e.f. 21-2-2002).
3. Subs. by the Constitution (Eighty-seventh Amendment) Act, 2003, sec. 3, for '1991' (w.e.f. 22-6-2003).
4. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 13, for "six years" (w.e.f. 20-6-1979). Earlier the words "six years" were substituted by the Constitution (Forty-second Amendment) Act, 1976, sec. 17(i), for the words "five years" (w.e.f. 3-1-1977).
5. Subs. by the Constitution (Sixteenth Amendment) Act, 1963, sec. 3, for clause (a) (w.e.f. 5-10-1963).
6. Subs. by the Constitution (First Amendment) Act, 1951, sec. 6, for article 85 (w.e.f. 18-6-1951).

place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time—

- (a) prorogue the Houses or either House;
- (b) dissolve the House of the People.]

**86. Right of President to address and send messages to Houses.**—(1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

**87. Special address by the President.**—(1) At the commencement of <sup>1</sup>[the first session after each general election to the House of the People and at the commencement of the first session of each year] the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address <sup>2</sup>[\*\*\*].

**88. Rights of Ministers and Attorney-General as respects Houses.**—Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament, of which he may be named a member, but shall not by virtue of this article be entitled to vote.

*Officers of Parliament*

**89. The Chairman and Deputy Chairman of the Council of States.**—(1) The Vice-President of India shall be *ex-officio* Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof and, so often as the office of Deputy Chairman becomes vacant, the Council shall choose another member to be Deputy Chairman thereof.

**90. Vacation and resignation of, and removal from, the office of Deputy Chairman.**—A member holding office as Deputy Chairman of the Council of States—

- (a) shall vacate his office if he ceases to be a member of the Council;
- (b) may at any time, by writing under his hand addressed to the Chairman, resign his office; and
- (c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

1. Subs. by the Constitution (First Amendment) Act, 1951, sec. 7(1), for "every session" (w.e.f. 18-6-1951).

2. The words "and for the precedence of such discussion over other business of the House" omitted by the Constitution (First Amendment) Act, 1951, sec. 7(2) (w.e.f. 18-6-1951).

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

**91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.**—(1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

**92. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.**—(1) At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or, as the case may be, the Deputy Chairman, is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Council of States while any resolution for the removal of the Vice-President from his office is under consideration in the Council, but, notwithstanding anything in article 100 shall not be entitled to vote at all on such resolution or on any other matter during such proceedings.

**93. The Speaker and Deputy Speaker of the House of the People.**—The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

**94. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.**—A member holding office as Speaker or Deputy Speaker of the House of the People—

- (a) shall vacate his office if he ceases to be a member of the House of the People;
- (b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and
- (c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

**95. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.**—(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

**96. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.**—(1) At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 95 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker, or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

**97. Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.**—There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

**98. Secretariat of Parliament.**—(1) Each House of Parliament shall have a separate secretarial staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

*Conduct of Business*

**99. Oath or affirmation by members.**—Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

**100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.**—(1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.

The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House.

(4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

*Disqualifications of Members*

**101. Vacation of seats.**—(1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of a House of the Legislature of a State<sup>1</sup> [\*\*\*], and if a person is chosen a member both of Parliament and of a House of the Legislature of<sup>2</sup> [a State], then, at the expiration of such period as may be specified in rules<sup>3</sup> made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament—

(a) becomes subject to any of the disqualifications mentioned in<sup>4</sup> [clause (1) or clause (2) of article 102], or

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for "such a State" (w.e.f. 1-11-1956).
3. See the Prohibition of Simultaneous Membership Rules, 1950, published with the Ministry of Law Notification No. F. 46/50-C, dated the 26th January, 1950, Gazette of India, Extraordinary, p. 678.
4. Subs. by the Constitution (Fifty-second Amendment) Act, 1985, sec. 2 for "clause (1) of article 102" (w.e.f. 1-3-1985).

<sup>1</sup>[(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be,]

his seat shall thereupon become vacant:

<sup>2</sup>[Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.]

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

**102. Disqualifications for membership.**—(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

- (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
- (b) if he is of unsound mind and stands so declared by a competent court;
- (c) if he is an undischarged insolvent;
- (d) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
- (e) if he is so disqualified by or under any law made by Parliament.

<sup>3</sup>[*Explanation.*—For the purposes of this clause] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

<sup>4</sup>(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.]

<sup>5</sup>**103. Decision on questions as to disqualifications of members.**—(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final. *with election Commission*

1. Subs. by the Constitution (Thirty-third Amendment) Act, 1974, sec. 2(1), for sub-clause (b) (w.e.f. 19-5-1974).
2. Ins. by the Constitution (Thirty-third Amendment) Act, 1974, sec. 2(2) (w.e.f. 19-5-1974).
3. Subs. by the Constitution (Fifty-second Amendment) Act, 1985, sec. 3(a), for "(2) For the purposes of this article" (w.e.f. 1-3-1985).
4. Ins. by the Constitution (Fifty-second Amendment) Act, 1985, sec. 3(b) (w.e.f. 1-3-1985).
5. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 14, for article 103 (w.e.f. 20-6-1979). Earlier article 103 was substituted by the Constitution (Forty-second Amendment) Act, 1976, sec. 20 (w.e.f. 3-1-1977).

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.]

**104. Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified.**—If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 99, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

*Powers, Privileges and Immunities of Parliament and its Members*

**105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.**—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978].

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

**106. Salaries and allowances of members.**—Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India.

*Legislative Procedure*

**107. Provisions as to introduction and passing of Bills.**—(1) Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by

1. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 15, for certain words (w.e.f. 20-6-1979).

both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall, subject to the provisions of article 108, lapse on a dissolution of the House of the People.

**108. Joint sitting of both Houses in certain cases.**—(1) If after a Bill has been passed by one House and transmitted to the other House—

- (a) the Bill is rejected by the other House; or
- (b) the Houses have finally disagreed as to the amendments to be made in the Bill; or
- (c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it,

the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days.

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

- (a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;
- (b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed,

and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.

**109. Special procedure in respect of Money Bills.**—(1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

**110. Definition of "Money Bills".**—(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;
- (d) the appropriation of moneys out of the Consolidated Fund of India;
- (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
- (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or

Money  
bills

110, 199

(g) any matter incidental to any of the matters specified in clause (f).

(2) A Bill shall not be deemed to be a Money Bill by reason only of the imposition of fines or other pecuniary penalties, or for the payment of fees for licences or fees for services rendered, or if it provides for the imposition, abolition, remission, alteration or extension of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is introduced in the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

**111. Assent to Bills.**—When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

#### *Procedure in Financial Matters*

**112. Annual financial statement.**—(1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India; and
- (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India—

- (a) the emoluments and allowances of the President and other expenditure relating to his office;
- (b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;

Finance  
bill and  
Appropriation  
bill

Is presented  
to the par-

liament  
along with  
budget

ises (a)

rovides  
and or  
that it  
ny tax

cision

to the  
nt for  
eople

- (c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (d) (i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court,
- (ii) the pensions payable to or in respect of Judges of the Federal Court,
- (iii) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction in relation to any area included in <sup>1</sup>[a Governor's Province of the Dominion of India];
- (e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India;
- (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
- (g) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

**113. Procedure in Parliament with respect to estimates.**—(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified herein.

(3) No demand for a grant shall be made except on the recommendation of the President.

**114. Appropriation Bills.**—(1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—

- (a) the grants so made by the House of the People; and
- (b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for certain words (w.e.f. 1-11-1956).

charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.

**115. Supplementary, additional or excess grants.**—(1) The President shall—

- (a) If the amount authorised by any law made in accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or
- (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.

(2) The provisions of articles 112, 113 and 114 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.

**116. Votes on account, votes of credit and exceptional grants.**—

(1) Notwithstanding anything in the foregoing provisions of this Chapter, the House or the People shall have power—

- (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 113 for the voting of such grant and the passing of the law in accordance with the provisions of article 114 in relation to that expenditure;
- (b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;
- (c) to make an exceptional grant which forms no part of the current service of any financial year,

and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.

(2) The provisions of articles 113 and 114 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause

as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.

**117. Special provisions as to financial Bills.**—(1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

*Procedure Generally*

**118. Rules of procedure.**—(1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure <sup>1</sup>[\*\*\*] and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People, or in his absence such person as may be determined by rules of procedure made under clause (3), shall preside.

**119. Regulation by law of procedure in Parliament in relation to financial business.**—Parliament may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, each

1. The words "(including the quorum to constitute a meeting of the House)" omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 45. Earlier the words "(including the quorum to constitute a meeting of the House)" were inserted by the Constitution (Forty-second Amendment) Act, 1976, sec. 22 which had not been brought into force till then.

House of Parliament in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of India, and, if and so far as any provision of any law so made is inconsistent with any rule made by a House of Parliament under clause (1) of article 118 or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.

**120. Language to be used in Parliament.**—(1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in Parliament shall be transacted in Hindi or in English:

Provided that the Chairman of the Council of States or Speaker of the House of the People, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother-tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

**121. Restriction on discussion in Parliament.**—No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

**122. Courts not to inquire into proceedings of Parliament.**—(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

### CHAPTER III

#### LEGISLATIVE POWERS OF THE PRESIDENT

**123. Power of President to promulgate Ordinances during recess of Parliament.**—(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

- (a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and
- (b) may be withdrawn at any time by the President.

*Explanation.*—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

[\*\*\*]

1. Clause (4) omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 16 (w.e.f. 20-6-1979). Earlier clause (4) was inserted by the Constitution (Thirty-eighth Amendment) Act, 1975, sec. 2 (retrospectively).

CHAPTER IV  
THE UNION JUDICIARY

**124. Establishment and constitution of Supreme Court.**—(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven<sup>1</sup> other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal <sup>2</sup>[on the recommendation of the National Judicial Appointments Commission referred to in article 124A] and shall hold office until he attains the age of sixty-five years:

<sup>3</sup>[\*\*\*]  
<sup>4</sup>[Provided that]—

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4).

<sup>5</sup>(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.]

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

*Explanation I.*—In this clause “High Court” means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

*Explanation II.*—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district Judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

1. Now “thirty-three”, *vide* the Supreme Court (Number of Judges) Amendment Act, 2019 (37 of 2019). Earlier it was “thirty”, *vide* the Supreme Court (Number of Judges) Amendment Act, 2008 (11 of 2009). Earlier to that it was “twenty-five”, *vide* the Supreme Court (Number of Judges) Amendment Act, 1986 (22 of 1986).
- \*2. Subs. by the Constitution (Ninety-ninth Amendment) Act, 2014, sec. 2(a), for “after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose” (w.e.f. 13-4-2015, *vide* S.O. 999(E), dated 13th April, 2015).
- \*3. First proviso omitted by the Constitution (Ninety-ninth Amendment) Act, 2014, sec. 2(b) (w.e.f. 13-4-2015, *vide* S.O. 999(E), dated 13th April, 2015). First proviso, before omission, stood as under: “Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted.”
- \*4. Subs. by the Constitution (Ninety-ninth Amendment) Act, 2014, sec. 2(c), for “Provided further that” (w.e.f. 13-4-2015, *vide* S.O. 999(E), dated 13th April, 2015).
5. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, sec. 2 (w.e.f. 5-10-1963).  
\* The Supreme Court in *Advocates-on-Record Association v. Union of India*, (decided on 16-10-2015) held the Constitution (Ninety-ninth Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014 (40 of 2014) as void and restored the collegium system for appointment of judges to the higher judiciary.

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

<sup>1</sup>[124A. **National Judicial Appointments Commission.**—(1) There shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely:—

- (a) the Chief Justice of India, Chairperson, *ex officio*;
- (b) two other senior Judges of the Supreme Court next to the Chief Justice of India—Members, *ex officio*;
- (c) the Union Minister in charge of Law and Justice—Member, *ex officio*;
- (d) two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in the House of the People—Members:

Provided that one of the eminent person shall be nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women:

Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for renomination.

(2) No act or proceedings of the National Judicial Appointments Commission shall be questioned or be invalidated merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.]

<sup>1</sup>[124B. **Functions of Commission.**—It shall be the duty of the National Judicial Appointments Commission to—

- (a) recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts;
- (b) recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court; and
- (c) ensure that the person recommended is of ability and integrity.]

<sup>1</sup>[124C. **Power of Parliament to make law.**—Parliament may, by law, regulate the procedure for the appointment of Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and empower the Commission to lay down by regulations the procedure for the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary by it.]

**125. Salaries, etc., of Judges.**—<sup>2</sup>(1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.]

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be

\*1. Ins. by the Constitution (Ninety-ninth Amendment) Act, 2014, sec. 3 (w.e.f. 13-4-2015, vide S.O. 999(E), dated 13th April, 2015).

2. Subs. by the Constitution (Fifty-fourth Amendment) Act, 1986, sec. 2, for clause (1) (w.r.e.f. 1-4-1986).

\* The Supreme Court in *Advocates-on-Record Association v. Union of India*, (decided on 16-10-2015) held the Constitution (Ninety-ninth Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014 (40 of 2014) as void and restored the collegium system for appointment of judges to the higher judiciary.

determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

**126. Appointment of acting Chief Justice.**—When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

**127. Appointment of *ad hoc* Judges.**—(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, <sup>1</sup>[the National Judicial Appointments Commission on a reference made to it by the Chief Justice of India, may with the previous consent of the President] and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an *ad hoc* Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

**128. Attendance of retired Judges at sittings of the Supreme Court.**—Notwithstanding anything in this Chapter, <sup>2</sup>[the National Judicial Appointments Commission] may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court <sup>3</sup>[or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court] to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

**129. Supreme Court to be a court of record.**—The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

**130. Seat of Supreme Court.**—The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

**131. Original jurisdiction of the Supreme Court.**—Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

\*1. Subs. by the Constitution (Ninety-ninth Amendment) Act, 2014, sec. 4, for "the Chief Justice of India may, with the previous consent of the President" (w.e.f. 13-4-2015, vide S.O. 999(E), dated 13th April, 2015).

\*2. Subs. by the Constitution (Ninety-ninth Amendment) Act, 2014, sec. 5, for "the Chief Justice of India" (w.e.f. 13-4-2015, vide S.O. 999(E), dated 13th April, 2015).

\*3. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, sec. 3 (w.e.f. 5-10-1963).

\*4. The Supreme Court in *Advocates-on-Record Association v. Union of India*, (decided on 16-10-2015) held the Constitution (Ninety-ninth Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014 (40 of 2014) as void and restored the collegium system for appointment of judges to the higher judiciary.

- (a) between the Government of India and one or more States; or
  - (b) between the Government of India and any State or States on one side and one or more other States on the other; or
  - (c) between two or more States,
- if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

<sup>1</sup>[Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.]

<sup>2</sup>[131A. Exclusive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central Laws.—[Rep. by the Constitution (Forty-third Amendment) Act, 1977, sec. 4 (w.e.f. 13-4-1978).]]

**132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.**—(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, <sup>3</sup>[if the High Court certifies under article 134A] that the case involves a substantial question of law as to the interpretation of this Constitution.

<sup>4</sup>[\*\*\*]  
(3) Where such a certificate is given, <sup>5</sup>[\*\*\*] any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided <sup>6</sup>[\*\*\*].

*Explanation.*—For the purposes of this article, the expression “final order” includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

**133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.**—<sup>7</sup>(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India <sup>8</sup>[if the High Court certifies under article 134A—]

- (a) that the case involves a substantial question of law of general importance; and
- (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.]

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 5, for the proviso (w.e.f. 1-11-1956).
2. Article 131A was earlier inserted by the Constitution (Forty-second Amendment) Act, 1976, sec. 23 (w.e.f. 1-2-1977).
3. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 17(a), for “if the High Court certifies” (w.e.f. 1-8-1979).
4. Clause (2) omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 17(b) (w.e.f. 1-8-1979).
5. The words “or such leave is granted, ” omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 17(c) (w.e.f. 1-8-1979).
6. The words “and, with the leave of the Supreme Court, on any other ground” omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 17(c) (w.e.f. 1-8-1979).
7. Subs. by the Constitution (Thirtieth Amendment) Act, 1972, sec. 2, for clause (1) (w.e.f. 27-2-1973).
8. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 18, for “if the High Court certifies—” (w.e.f. 1-8-1979).

