

UNIT 1

CHAPTER 1

PHILOSOPHY OF INDIAN CONSTITUTION

IDEOLOGICAL BASIS

According to A. V. Dicey, the British jurist and constitutional theorist, Rule of Law has three meanings

- ❖ No man can be punished except for a breach of law
- ❖ No man is above the law
- ❖ The general principles of the Constitution are the result of judicial decisions

The philosophy and ideals of the Indian Constitution are reflected in the Preamble to the Constitution of India. Our Constitution may be said to be an expansion and explanation of the Preamble. Supreme Court Chief Justice, Justice Subba Rao opined, “Preamble contains, in a nutshell, its ideals and its aspirations.” To understand the philosophy and ideals of the Indian Constitution, we must know the Preamble in the first place.

The Preamble

The Oxford Advanced Learner’s Dictionary defines the word “Preamble” as an introduction to a book or a written document. The Constitution of India starts with a Preamble. It is the most precious part of the Constitution. It is the soul of the Constitution. The Preamble of the Indian Constitution says:

“WE, THE PEOPLE OF INDIA
having solemnly resolved to constitute India into a
SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC
and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and opportunity;
and to promote among them all FRATERNITY assuring the dignity of the individual and the
unity and integrity of the nation;
IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY
ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

From the Preamble we can understand the philosophy and ideals of the Indian Constitution. The philosophy and ideals of the Indian Constitution are discussed as follows:

Popular Sovereignty

The Preamble begins with the words “We the people of India.....” and ends with the words “.....adopt, enact and give to ourselves this Constitution”. It indicates that ultimate sovereignty lies with the people of India who collectively constitute the supreme source of authority in the country. The Constitution is regarded as the supreme law of the state, but the supreme power of the state is vested upon the people of India.

India as a Sovereign state

The Preamble declares India as a sovereign state. It is free from any external control. No foreign power can interfere in the internal affairs of India. India can determine her foreign affairs according to her free will.

India as a Socialist state

The word 'Socialist' has been added in the Preamble by the 42nd Amendment in 1976. It means the Constitution of India has a great objective to secure social and economic equality and fair distribution of wealth among all sections of people in the country. By inserting the term 'socialist', it has not only brought a feeling of equal status among the people but also strengthened the philosophical foundation of the Indian Constitution. Some socialistic principles are also distinctly reflected in the Articles 39, 41, 42 and 43 which are incorporated in the Directive Principles of State Policy.

India as a Secular state

The word 'Secular' has been included in the Preamble by the 42nd Amendment in 1976. The characteristic of Indian secularism is that India does not recognize any religion as the official or state religion and treats all religions equally. Moreover, different communities in India have the right to practice their own faiths. Thus, secularism is one of the ideals of the Indian Constitution.

India as a Democratic state

The Preamble describes India as a democratic state. The prime philosophy and ideal of the Indian Constitution is to make India a democratic state. India is regarded as the largest democratic state in the World. According to Abraham Lincoln, "Democracy is by the people, for the people and of the people." The Constitution of India has established a parliamentary democracy in India marked by universal adult franchise, periodic election to choose the government, majority rule, rule of law, decentralization of power, rule of law, independence of the judiciary, etc.

India as a Republic

The Preamble declares India to be a republic. What it means is that the Head of the State in India, that is the President of India, is an elected head. He is not a hereditary ruler. The President of India who is the Chief Executive and nominal head of our country is indirectly elected by the people.

To ensure Justice

Justice implies that the Government will try to promote the welfare of all the sections of the people. The Preamble embraces three types of Justice- social, economic and political. To ensure Social Justice the Constitution has made special arrangements for the weaker sections of the society, abolished untouchability, provided free education up to a certain standard, etc. With a view to providing political justice, the Constitution has introduced the principle of universal adult franchise and has given an equal right to all adult citizens to be elected or appointed to public

services. Economic justice implies that the Constitution seeks to ensure economic security for the common people and to do away with unequal distribution of income and wealth.

To ensure Liberty

The other important philosophy and ideal of the Indian Constitution is to ensure liberty to its citizens for the all-round development of their personality. Accordingly, the Preamble provides for liberty of thought, expression, belief, faith and worship. The Constitution of India provides a number of Fundamental Rights to the citizens and also protects these rights.

To ensure Equality

Equality is the basis of a democratic state. Equality is necessary for the development of a society. Hence, the term 'equality' has been inserted in the Preamble to our Constitution. Equality has been guaranteed by the 'Rule of Law'. To establish equality, our Constitution has provided for the Right to Equality as a Fundamental Right. The Indian Constitution ensures equality before the eyes of law to all persons, citizens and non-citizens. The Constitution also prohibits discrimination on grounds of religion, race, caste, sex, place of birth or any of them.

To promote Fraternity among the people

The term fraternity has been incorporated in the Preamble as a means of assuring the dignity of the individual and the unity and integrity of the nation. The term 'dignity of the individual' means that the personality of the individual should be recognized, because, the recognition of the personality and the dignity of the individual is an essential condition to promote fraternity among the people. To promote fraternity and a feeling of brotherhood among the people, certain attempts have been made for the removal of social distinctions and inequalities based on caste, class, creed, language, religion, region, etc. Without unity among its citizens, a state could not be successful. The framers of the Indian Constitution were fully aware of the diversities prevailing in the country. Accordingly, the word integrity was added in the Preamble by the 42nd Amendment to emphasize the fundamental unity of the country against the divisive forces of regionalism, communalism and the like.

India as a Welfare state

India is committed to the ideal of a welfare state and must establish socio-economic justice. The Preamble lays the foundation of a welfare state in India. Acharya Kripalani says, "The Preamble contains the mystic principle of a welfare state." India is committed to democracy and respects individual liberty, providing to all her citizens, the equality of status and opportunity. The Directive Principles of State Policy involving social, economic, political and cultural goals are like instructions to the state. They aim at establishing a welfare state in India.

The Preamble to the Indian Constitution has a great significance. It is important to mention here that, in the 'Biruberi Case' (AIR 1960 SC 845) the Supreme Court held that the Preamble is not a part of the Constitution. But the famous 'Keshavananda Bharti – vs. - State of Kerala' (AIR 1973 SC 1461) has held that the Preamble is a part of the Constitution. It was also held in this case that; the Preamble could be amended by the Parliament under Article 368 but the 'Basic

Structure' of the Constitution could not be changed. Thus, the Preamble can be amended but our Parliament cannot amend the Constitution in a way that it damages or destroys the objectives specified in the Preamble.

SALIENT FEATURES OF THE INDIAN CONSTITUTION

The Constitution of a state is not only the fundamental law of the state, but it is also like a mirror of its social, political and economic systems. The Constitution of a State is different from the Constitution of another State. Each Constitution grows and develops within a particular environment. The Constitution of India is unique in many ways. Several special features of the Indian Constitution distinguish it from many other constitutions of the world. The salient features of the Indian Constitution of India described as follows:

Written Constitution

The Constitution of India is a written document. To draft the Indian Constitution, a Drafting Committee was constituted by the Constituent Assembly under the Chairmanship of Dr. B. R. Ambedkar. The Constituent Assembly was a representative body which is indirectly elected by the people. It consisted of 389 members out of whom 296 members were elected from British India and 93 members were the 'representatives of Native States'. The elections to the Constituent Assembly were held in 1946 and Dr. Rajendra Prasad was elected the President of the Constituent Assembly. The Drafting Committee prepared the draft of the Constitution. After long efforts, the new Constitution was finally adopted on November 26, 1949. Thus, the Indian Constitution came into force on January 26, 1950.

The Longest Constitution

The Indian Constitution is the longest, bulkiest and most detailed Constitution in the World. It contains 395 Articles (divided into 22 parts) and 8 Schedules at the time of its enforcement. At present, it has 444 Articles, divided into 24 parts and 12 Schedules. The Constitution of India contains a detailed list of Fundamental Rights, Directive Principles of State Policy, distribution of Powers between Centre and the States, Official Languages, Election and many other provisions over and above laying out the provisions regarding the executive, legislature and judiciary.

Partly rigid and partly flexible

The Constitution of India is neither too rigid nor too flexible. A flexible constitution is that in which its provisions may be amended or modified by ordinary legislative process, whereas, in the case of a rigid constitution, a special procedure is required to be followed for the amendment or revision of its provisions.

The Indian Constitution follows three methods for amendment. Firstly, some of the provisions can be amended by a simple majority of the Parliament. Secondly, some provisions may be amended by a special majority of the Parliament and thirdly, some other provisions which are federal in character may be amended only with a joint initiative of both the Parliament and the State legislature. The framers of the Indian Constitution adopted this system so that the Indian

Constitution can adopt itself to the changing circumstances while still retaining its basic characteristics. Because of all these provisions, the Indian Constitution is characterized by the mixture of flexibility and rigidity.

Supremacy of the Constitution

The Constitution of India is the supreme law of the country. All the three organs of the Government i.e.: The Executive, Legislature and Judiciary function under the Constitution of India and are controlled by it. They cannot violate the Constitution.

Mixture of Federal and Unitary features

The Constitution of India establishes India as a partly Federal and partly unitary government. The word 'Federalism' is not mentioned anywhere in the Constitution. It describes India as a 'Union of States'. Because of the peculiar features of the Indian Constitution, some experts describe it as a 'quasi-federal state'. Indian federalism is also known as 'co-operative federalism'. Some of the federal features included in the Indian Constitution are written constitution, supremacy of the constitution, division of powers and distribution of powers between the centre and the states, a strong judiciary, bicameral legislature etc. But, India cannot be called a true federation because some non-federal features or unitary features like- a strong centre, some rigid methods of amendment of the constitution, single citizenship, common All- India services, uniformity of judiciary, emergency provisions enjoyed by the President, appointment of Governors in the States, are distinctly noticed in the Constitution. Therefore, the Constitution of India is a mixture of federal and unitary features.

Parliamentary Government

The Constitution of India provides for a Parliamentary form of Government on the British model. In the Parliamentary form of Government, the Head of the State is nominal, whereas the Prime Minister who is the leader of the majority in the Parliament is the real executive. In India, the President only the nominal head of our country and the real and actual powers of the government are exercised by the Prime Minister.

Secularism

Secularism is another important feature of the Indian Constitution. The word has been included in the Preamble by the 42nd Amendment in 1976. India does not recognize any religion as the state or official religion and treats all religions equally. All the people of India are given the liberty of thought, expression, belief and worship and there is no discrimination on the grounds of religion, caste or community.

Provision of Fundamental Rights

The Fundamental Rights are contained in Part-III of the Constitution from Articles 12 to 35. The framers of the Constitution derived inspiration from the 'Bill of Rights' from the Constitution of the U.S.A. Fundamental Rights are justiciable in the sense that a person can approach the court in case of violation of his or her Fundamental Rights. The Supreme Court of India is the Guardian of the rights and liberties of the people. They are not absolute.

The Government can impose reasonable restrictions on them. The significance of the Fundamental Rights is that they protect the liberty and the freedom of the citizens against encroachment by the state. Originally, the Constitution provided for seven Fundamental Rights. But the Right to Property was abolished by the 44th Constitutional Amendment Act of 1978. At present, there are six Fundamental Rights.

Fundamental Duties

Fundamental Duties are incorporated in Article 51A of Part IVA of the Constitution by the 42nd Constitutional Amendment Act of 1976. The original Constitution did not contain the fundamental duties. The Fundamental Duties are very important. For the overall development of the country, these Duties must be performed by the citizens of India. These duties are not legally binding upon the citizens. Some of the duties include abiding by the Constitution, to defend the country and render national service, to develop the scientific temper, the safeguard public property, etc.

Directive Principles of State Policy

Another distinctive feature of the Indian Constitution is the Directive Principles of State Policy described in Part IV of our Constitution from Articles 36-51. These Directive Principles are fundamental in the governance of our Country and it is the duty of the state to apply these principles in making laws. These principles aim at securing social and economic freedoms by appropriate state action.

Independent and impartial Judiciary

A basic feature of the Indian Constitution is independence of the judiciary. The judiciary is separated from the other two organs i.e. executive and legislature. The tenure of the Judges of the Supreme Court and High Court is fixed and the judges cannot be removed by simple procedure. Independence of judiciary is very essential for the success of democracy.

Division of Powers between the Centre and the States

Another important feature of the Indian Constitution of India is the division of powers between the Central and State Government in terms of the Union List, the State List, and the Concurrent List. This important provision is incorporated in the Seventh Schedule of the Constitution.

Universal Adult Franchise

The Universal Adult Franchise is introduced by the Constitution and thus, all adult citizens above the age of 18 years, irrespective of their religion, caste, race, color and sex are entitled to participate in the election process.

Single Citizenship

To promote the feeling of unity and oneness among the people of India, the framers of the Indian Constitution provided for a single citizenship for its citizens. In the Federation like the United States of America single citizenship is a very important federal feature, unlike India.

Emergency Powers

The emergency powers are introduced in the Indian Constitution so that the whole nation can meet with any emergency situation the country may be faced with. The emergency powers are vested in the hands of the President of India. There are three kinds of Emergency powers. These are - National Emergency (Article-352), Emergency in a State (Article 356) and Financial Emergency (Article 360). The above are some the important salient features of the Indian Constitution which makes it one of the most unique and distinct constitutions in the world.

The National Emergency (Article-352) was declared three times respectively in 1962, 1971 and in 1975 in our country. Emergency in a State (Article 356) (commonly called President's Rule) has been imposed many times in different States of India. Financial Emergency (Article 360) has not been declared till now.

FUNDAMENTAL RIGHTS

Definition

Most of the Fundamental Rights granted to the citizens are available against the State and not against private parties. Article 12 gives the definition of state.

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.

Laws inconsistent with or in derogation of the fundamental rights.

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.

Article 13.1

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.

Article 13.2

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.

Article 13.3

In this article, unless the context otherwise requires,

Article 13.3(a)

“law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

Article 13.3(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.

Article 13.4

Nothing in this article shall apply to any amendment of this Constitution made under article 368.

Right to Equality – Equality before Law (Art. 14-18)

Article 14 states that

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Article 15 provides Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 15.1

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 15.2

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—

Article 15.2(a)

access to shops, public restaurants, hotels and places of public entertainment; or

Article 15.2(b)

the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

Article 15.3

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

Article 15.4

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 Castes and the Scheduled Tribes.

Article 15.5

Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes 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.

Article 16 provides Equality of opportunity in matters of public employment.

Article 16.1

There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

Article 16.2

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.

Article 16.3

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.

Article 16.4

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.

Article 16.4(a)

Nothing in this article shall prevent the State from making any provision for reservation 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.

Article 16.4(b)

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 percent reservation on total number of vacancies of that year.

Article 16.5

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.

Article 17 provides 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.

Article 18 provides Abolition of titles

Article 18.1

No title, not being a military or academic distinction, shall be conferred by the State.

Article 18.2

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

Article 18.3

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.

Article 18.4

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 (Art. 19 - 22)

Article 19 provides Protection of certain rights regarding freedom of speech, etc.

Article 19.1 All citizens shall have the right –

Article 19.1(a) to freedom of speech and expression;

Article 19.1(b) to assemble peaceably and without arms;

Article 19.1(c) to form associations or unions or co-operative societies;

Article 19.1(d) to move freely throughout the territory of India;

Article 19.1(e) to reside and settle in any part of the territory of India;

Article 19.1(f) to acquire, hold and dispose of property; and

Article 19.1(g) to practice any profession, or to carry on any occupation, trade or business.

Article 19.2

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 such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 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.

Article 19.3

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 the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

Article 19.4

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 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.

Article 19.5

Nothing in 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.

Article 19.6

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, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law 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.

Article 20 provides Protection in respect of conviction for offences.

Article 20.1 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.

Article 20.1 No person shall be convicted of any offence except for violation of a law in force at the time

Article 20.2 No person shall be prosecuted and punished for the same offence more than once.

Article 20.3 No person accused of any offence shall be compelled to be a witness against himself.

Article 21 provides Protection of life and personal liberty.

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21A provides Protection 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.

Article 22 provides Protection against arrest and detention in certain cases.

Article 22.1 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.

Article 22.2 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.

Article 22.3 Nothing in clauses (1) and (2) shall apply—

Article 22.3(a) to any person who for the time being is an enemy alien; or

Article 22.3(b) to any person who is arrested or detained under any law providing for preventive detention.

Article 22.4

No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless—

Article 22.4(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 authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7);
or

Article 22.4(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).

Article 22.5

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.

Article 22.6

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.

Article 22.7 Parliament may by law prescribe—

Article 22.7(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);

Article 22.7(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

Article 22.7(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).

Right against Exploitation (Art. 23 - 24)

Article 23 provides Prohibition of traffic in human beings and forced labour.

Article 23.1 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.

Article 23.2 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.

Article 24 provides 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 (Art. 25 - 28)

Article 25 provides freedom of conscience and free profession, practice and propagation of religion.

Article 25.1 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.

Article 25.2 Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

Article 25.2(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

Article 25.2(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.

Article 26 provides 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.

Article 27 provides 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.

Article 28 provides freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Article 28.1 No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

Article 28.2 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.

Article 28.2 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 (Art. 29 - 30)

Article 29 provides protection of interests of minorities.

Article 29.1 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.

Article 29.2 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.

Article 30 provides right of minorities to establish and administer educational institutions.

Article 30.1 All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Article 30.1(a) 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.

Article 30.2 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.

Saving of Certain Laws (Art. 31A – 31C)

Article 31 provided the Right to Property as fundamental right. It was omitted by 44th amendment in 1978. This amendment abolished right to property as fundamental right and has incorporated it merely as a constitutional right which will be regulated by ordinary law. Consequently, Article 31 has been deleted and the new chapter IV i.e. Right to Property, after Chapter III in Part XII of constitution has been inserted w.e.f. 20-6-1979.

Article 31A provides the saving of laws providing for acquisition of estates, etc.

Article 31A.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 license 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 license,

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 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

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 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.

Article 31A.2

In this article, -

- 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 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, subproprietor, under-proprietor, tenure-holder, *raiyat*, *under-raiyat* or other intermediary and any rights or privileges in respect of land revenue.

Article 31B provides 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 thereof 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 Part III, 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.

Article 31C provides 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 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 article 14 or article 19; 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:

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.

Right to Constitutional Remedies (Art. 32 - 35)

Article 32 provides Remedies for enforcement of rights conferred by this Part.

Article 32.1 The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

Article 32.2 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.

Article 32.3 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).

Article 32.4 The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Article 33 empowers the Parliament to modify the rights conferred by Part III 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 organization 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.

Article 34 provides 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.

Article 35 provides Legislation to give effect to the provisions of this Part.

- 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 (3) 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; 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.

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

Article 36 provides Definition of the State.

In this Part, unless the context otherwise requires, “the State” has the same meaning as in Part III.

Article 37 provides the Application of the principles contained in this Part.

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

Article 38 provides that State to secure a social order for the promotion of welfare of the people.

Article 38.1 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.

Article 38.2 The State shall, in particular, strive to minimize 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.

Article 39 provides 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;
- 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.

Article 39 A provides 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.

Article 40 provides 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.

Article 41 provides 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 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.

Article 42 provides 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.

Article 43 provides 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.

Article 43 A provides 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

Article 43 B provides provisions for Promotion of cooperative societies.

The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

Article 44 provides provisions of Uniform civil code for the citizens.

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

Article 45 provides 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.

Article 46 provides 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.

Article 47 provides the 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.

Article 48 provides the provisions for 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.

Article 48 A provides provisions for 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.

Article 49 provides provisions for 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, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

Article 50 provides provisions for Separation of judiciary from executive.

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

Article 51 provides provisions for 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 organized peoples with one another; and
- d. encourage settlement of international disputes by arbitration.

PART IV A

Fundamental Duties

Article 51A states that 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;
- 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.

UNIT 2

Federalism

“Federalism has been part of the public discourse in India for many decades, before and after independence in 1947, but it has gained greater importance since the 1990s when the country’s national polity saw the advent of the coalition era.”

Prior to the formation of the Constituent Assembly, the Cabinet Mission Plan emphasized on a Central Government with very limited powers to be confined to foreign affairs, defense, and communication. In contrast, the Muslim League and the Indian National Congress did not agree to this. Despite this, the first report of the Constituent Assembly envisaged a weak center upon the encouragement of Cripps and Cabinet Mission Plans.

It was the passing of India Independence Act and the subsequent partition of India which made the Constituent Assembly take up a more unitary version of federalism. Mahatma Gandhi also favored the decentralized structure and preferred a panchayat/village based federation. On the other hand, the then Prime Minister Jawaharlal Nehru and Dr. BR Ambedkar were in favor of a unitary system of governance while the Home Minister Sardar Vallabhai Patel also stood for the idea of federalism.

All is well that ends well, and finally a healthy compromise was reached which resulted in a balance of power between the Centre and the State, and India was thus described as ‘Unity of States’ and this unity being indestructible. The structure prescribed for Union as well as State governments with a single citizenship policy rather than dual citizenship.

In India, there are two governments in existence, the Union Government and the State Government. The two governments do not subordinate with each other rather cooperate with each other while working independently. Though the Indian constitution has the traits of being a federal constitution, in its strict sense, it is no.

The presence of features which are necessary for the existence of a federation is quite a unique aspect of Indian Constitution but on the other side, there are provisions which give more power to the Union Government vis-à-vis that of State governments. Henceforth, the Indian Constitutional structure is a quasi-federal structure and it was made like this in the 1935 Act.

This Act laid down the foundations of the federal form of government in India. It provided for the distribution of legislative powers between the Union and the provinces (the structure at that time). These provisions were laid down for promoting harmony and resolving differences between the provinces. The Act further maintained for a sense of cooperative relationships amongst the provinces. Getting into nuances of this Act, Sections 131, 132 and 133 laid down provisions for resolving the water related disputes. Basically, these provisions dealt with the problems relating to inter Province Rivers and river valleys.

On the other hand, **Section 135 of the 1935 Act** laid down provisions for the creation of councils to deal with the coordination between the various provinces of British India. The need for creating

a cooperative relationship between the provinces was felt even before independence. The Indian Constitution has incorporated the principles in a detailed form which were actually laid down under the 1935 Act.

A well designed, and more important, well-functioning system of federal governance, by virtue of its manifold benefits, plays a key role in promoting the stability and prosperity of nations as the heights attained in development by the leading federations of the world – USA, Canada, Australia, and Switzerland – demonstrate. On the other hand, unless carefully crafted, federal systems do not endure as evidenced by the disintegration of many of the federal formations that came into being in the last century, such as Soviet Russia, Yugoslavia, Czechoslovakia, Rhodesia, and Nyasaland (Watts, 1999).

As earlier stated, the Indian constitution though, claims to be decentralized and federal is somehow too centrist. The Centre functions in a way which does not allow the State's autonomy to function freely in a completely decentralized way. Now, the question arises "Was it intended to be made this way?" This could be highlighted as one of the reasons for India's diminutive growth when compared to China, where complete autonomy to provinces in running their economies has resulted in much higher growth rates.

What makes the Indian federation "Quasi-federal"?

No doubt, India has a political and constitutional structure where federal features are evident. There is sharing of power between the Centre and the States but the Constitution provides Central Government with supreme powers and concentrates administrative and financial powers completely in its hands. Seems there was some deficiency which made the constitutional framers incorporate features which worked against the federal principle.

Reiterating some Central Government's powers, it has the power to reorganize the states through parliament; Governors appointed by the Centre can withhold assent to legislation passed by the state; Parliament can override the legislations passed by the states for the reasons of national interest; Governors have a role in the formation of state governments and the Centre is vested with the power to dismiss the state governments under **Article 356**; residuary powers are vested with the Centre and the major taxation powers lie with the Central authority. Fortunately, the reviewing power of judiciary of Centre-State relation exists like that in the federal structure. The bottom-line is that the Indian political system has federal features which are circumscribed with a built-in unitary core.

Former Chief Justice Beg, in *State of Rajasthan v UOI*, 1977 called the Constitution of India as 'amphibian'. He said that "...If then our Constitution creates a Central Government which is 'amphibian', in the sense that it can move either on the federal or on the unitary plane, according to the needs of the situation and circumstances of a case..."

Similarly in *S.R. Bommai v Union of India*, "pragmatic federalism" was used. Quoting Justice Ahmadi, "...It would thus seem that the Indian Constitution has, in it, not only features of

pragmatic federalism which, while distributing legislative powers and indicating the spheres of governmental powers of State and Central Governments, is overlaid by strong unitary features...”.

The phrase ‘semi-federal’ was used for India in *State of Haryana v. State of Punjab*, whereas in *Shamsher Singh v. State of Punjab*, the constitution was called ‘more unitary than federal.’

Another case on this issue is that of *State of West Bengal V. Union of India*. This case dealt with the issue of the exercise of sovereign powers by the Indian states. The Supreme Court, in this case, held that the Indian Constitution does not promote a principle of absolute federalism. The court further outlined four characteristics highlighting the fact that the Indian Constitution is not a “traditional federal Constitution”.

1. **Firstly**, being that there is no provision of separate Constitutions for each State as required in a federal state. The Constitution of India is the supreme document, which governs all the states.
2. **Secondly**, the Constitution can be altered only by the Union Parliament; whereas the States have no power to alter it.
3. **Thirdly**, in contradiction to a federal Constitution, the Indian Constitution renders supreme power upon the Courts to invalidate any action which violates the Constitution.
4. **Fourthly**, the distribution of powers facilitates local governance by the states and national policies by the Centre.

The Supreme Court further held that both the legislative and executive power of the States is subject to the respective supreme powers of the Union meaning that Centre is the ultimate authority for any issue. The political sovereignty is unevenly distributed between the Union and the States with greater weightage in favor of the Union. Another reason which militates against the theory of the supremacy of States is that there is no concept of dual citizenship in India. The learned judges finally concluded that the structure of India as provided by the Constitution is centralized, with the States occupying a secondary position vis-à-vis the Centre.

Conversely, Justice Subba Rao was of the view that under the scheme of the Indian Constitution, sovereign powers are distributed between the Union and the States according to their respective spheres. The legislative field of the union legislature is much wide-ranging than that of the State legislative assemblies; the laws passed by the Parliament should, therefore, have an upper hand over the State laws in case of any conflict. In a few cases of legislation where inter-State disputes are involved, the sanction of the President is made mandatory for the validity of those laws.

Further, every State has its judiciary with the State High Court at the apex. This particular thing in his opinion of the learned judge does not affect the federal principle. He while arguing this gave the parallel of Australia. In Australia, appeals against certain decisions of the High Courts of the Commonwealth of Australia lie with the Privy Council. Thus the Indian federation cannot be negated on this account. In financial matters, the Union has more resources at its disposal as compared to the states. Thus, the Union being in charge of the purse strings can always persuade the States to abide by its advice.

The powers vested in the union in case of national emergencies, internal disturbance or external aggression, financial crisis, and failure of the Constitutional machinery of the State are all extraordinary powers in the nature of safety valves to protect the country's future. The power granted to the Union to alter the boundaries of the States is also an extraordinary power to meet future contingencies. In their respective spheres, both executive and legislative, the States are supreme. In a nutshell, Justice Subba Rao argued that the Union has a bigger role to play when compared to states and therefore, the Union powers have to supersede the State's.

This minority view provided by Justice Subba Rao, in this case, had consistency with the federal scheme under the Indian Constitution. The Indian Constitution undoubtedly accepts the federal concept and distributes the sovereign powers between the coordinate Constitutional entities, namely, the Union and the States.

India, like Canada, constitutes an asymmetrical federation in the sense that some states have constitutionally guaranteed prerogatives setting them apart from the other states of the federation. However, in the case of India, rather unlike Canada, the affording of special status to a group or territorial entity never came easy. Article 370 expresses special provisions for the state of Jammu and Kashmir with respect to the rest of India as per its *instrument of accession*.

Also, there are special provisions for the states of Andhra Pradesh, Arunachal Pradesh, Assam, Goa, Mizoram, Manipur, Nagaland and Sikkim as per their accession or state-hood deals as laid down in Article 371A-I. President's rule is another important thing to be listed here where the Central Government (through its appointed Governor) takes control of the State's administration for certain months when no party can form a government in the state or in case there is a violent disturbance in the state. Also, **Article 3** articulates that the Parliament can change the name, area or boundary of a State without the consent of the State concerned. Thus the States in India do not enjoy the right to territorial Inviolability.

The Seventh Schedule of the Constitution indicates that distribution is one sided and is heavily in the favor of Centre. Union list contains the largest number of most important subjects. For example, almost all the tax subjects are in the Union list (except the Sales Tax). Another related provision is **Article 248** which states that any subject that does not belong to the Concurrent and State lists, belongs to the Residuary List and it belongs to Central Government.

Article 312 talks about provides for the creation of All India Services (who can function both as Central and State Services). The All India Services officers are recruited, trained and appointed by the Centre but they largely function under the State Government. It is they who largely control the administration of State. The State government cannot take disciplinary action against officers, except transfer. Any other action take removal from service or reduction in rank can only be controlled by the Central Government.

Article 356 lays down that during President Rule, the Parliament is authorized to legislate on one or more subjects of State list for the State's concerned. The law thus made under President Rule continues to be in force.

Provisions regarding Emergency are again of utmost importance. Article 352 talks about the proclamation of National Emergency. It says that when the national security of India or any part of its territory is threatened by war or external aggression or armed rebellion, the President can declare National Emergency. (44th Amendment Act) In case of national emergency the distribution of power is suspended and constitution functions as if it is a Unitary Constitution.

Another Emergency provision is **Article 360** and talks about Financial Emergency of Centre over the country. When the Financial Emergency is in force, the distribution of the financial resources between the Centre and State can be suspended by Centre and all the financial resources can be used by Centre to meet the emergency situation.

Digressing a bit from the general federalism is the concept of Cooperative federalism, which is another class of a federal structure. This concept originated in the Australian Constitution as there existed a felt need for a change from competitive to the cooperative relationship in the working of the federal constitution. This modern view of federation regards federation as a functional arrangement rather than a mere division of powers between Centre and State. Cooperative federalism suggests that the Centre and the States share a horizontal relationship and not the one in which one is over & above the other. There are three factors through which this trend is promoted, namely:

1. The exigencies of war when for national survival, national efforts take precedence over fine points of Centre-state division of powers;
2. Technological advances mean making of communication faster;
3. The emergence of the concept of the social welfare state in response to public demands for various social services involving huge outlays which the governments of the units could not meet by themselves out of their own resources.

This concept helps the federal structure, with its divided jurisdiction to act in harmony. This basically promotes cooperation by minimizing tension among the various constituent governments of the federal union to pool their resources in order to achieve the desired results. In India, there are some constitutional mechanisms as also some extra-constitutional mechanisms to foster the spirit of Cooperative Federalism. The constitution makers might have deliberately provided for such features in the constitution in order to ensure the smooth working of the government.

Anyhow, irrespective of India being quasi-federal in its functioning and the way it is structured, it still incorporates some of the features which are essential for a federal arrangement. To pen down some of these features;

Written Constitution

Any parliamentary constitution cannot be given the status of being a federal constitution because a written demarcation of the division of power is necessary for the smooth functioning of the Government. Providentially, India has a written constitution where the Central Government shares some of its powers with the respective State Governments.

Supremacy of the Constitution

This is another important point in the list of features which asserts that the constitution is legally binding on both the Central and State Governments. No State or even the Centre can change the provisions of the Constitution that are related to the power and status of the government to enjoy.

Rigidity of the Constitution

At third in the list features the concept of rigidity which allows no flexibility for a federal constitution. This is the substitute for the outcome of the supremacy of Constitution. Supremacy of Constitution brings the rigidity to it.

Division / Distribution of Powers

This is the last one to feature in this broad list of essential elements. Distribution of powers is the fundamental and the most essential characteristics of the federation. The powers of State are divided into federal as well as unit governments at national and local levels.

The Seventh Schedule in the India Constitution lays down 61 items which are attributed to the State list upon which State Governments can make a law, whereas there is a Union list containing 100 items upon which only Union Government can make a law. This makes clear that there is a structure made to fit the federal essence but the powers are divided in such a way that it ends up being a quasi-federal state.

It is unfortunately practically difficult to throw light upon each and every provision where distribution/division of powers is evident and makes clear that India does not meet the federal requirements. Nevertheless, an effort is made to impress upon every such element.

Bringing in the picture, the US Constitution, where the working of government is divided into two domains, namely the Federal and the State Governments. These governments are not subordinate to each other but are co-ordinated and independent within the scopes allotted to them. It is also argued that such a structure of independent co-ordinate authorities is what forms the gist of federal principle and India, because of the absence of this feature does not qualify to be a federal state.

The Indian Constitution per se is not a covenant, or a pact between the States; rather the States are the products of the Constitution and ultimately of Parliament. A renowned expert on federalism, Professor Ronald L Watts defends the Indian approach claiming that "In some cases, however, where territorial social diversity and fragmentation is strong, it has been considered desirable, as

in Canada and India initially, and in Spain, to give the federal government sufficiently strong, and even overriding, powers to resist possible tendencies to balkanization.”

Federalism has always remained a ‘work-in progress’ or as Iqbal Narain puts it ‘constantly in the making’ (Copland and Rickard, 1999). The federal structure needs to be altered and mended perpetually to cope up with the changing environment and emerging challenges.

Conclusion

The Indian government is quasi-federal in nature as it contains features of single citizenship, a single constitution, and flexibility of constitution which are not the features of a pure federal government which is only followed in the United States of America. Although the Indian government contains features of Federal government such as division of power, partly rigidity of constitution it does not consider as pure federal government but as quasi-federal government.

PART XI RELATIONS BETWEEN THE UNION AND THE STATES

CHAPTER I.—LEGISLATIVE RELATIONS

Distribution of Legislative Powers

Art. 245 provides the extent of laws made by Parliament and by the Legislatures of States.

Art. 245.1

Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

Art. 245.2

No law made by Parliament shall be deemed to be invalid on the ground that it would have extraterritorial operation.

Art. 246 provides the subject-matter of laws made by Parliament and by the Legislatures of States.

Art. 246.1

Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule, in this Constitution referred to as the “Union List”.

Art. 246.2

Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule, in this Constitution referred to as the “Concurrent List”.

Art. 246.3

Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule, in this Constitution referred to as the “State List”.

Art. 246.4

Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

Art. 247 provides the provision for power of Parliament to provide for the establishment of certain additional courts.

Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

Art. 248 provides the residuary powers of legislation.

Art. 248.1

Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

Art. 248.2

Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

Art. 249 provides the power of Parliament to legislate with respect to a matter in the State List in the national interest.

Art. 249.1

Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

Art. 249.2

A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein:

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

Art. 249.3

A law made by Parliament, which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

Art. 250 provides the power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.

Art. 250.1

Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

Art. 250.2

A law made by Parliament, which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

Art. 251 provides the provision for inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States.

Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

Art. 252 provides the power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

Art. 252.1

If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

Art. 252.2

Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

Art. 253 provides the provisions of Legislation for giving effect to international agreements.

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

Art. 254 provides the provisions for inconsistency between laws made by Parliament and laws made by the Legislatures of States.

Art. 254.1

If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

Art. 254.2

Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

Art. 255 provides the requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.

No Act of Parliament or of the Legislature of a State, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given –

- a) where the recommendation required was that of the Governor, either by the Governor or by the President;
- b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;
- c) where the recommendation or previous sanction required was that of the President, by the President.

CHAPTER II.

ADMINISTRATIVE RELATIONS

General

Art. 256 provides the obligation of States and the Union.

The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

Art. 257 provides the provisions of control of the Union over States in certain cases.

Art. 257.1

The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

Art. 257.2

The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

Art. 257.3

The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

Art. 257.4

Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

Art. 257 A provides the *Assistance to States by deployment of armed forces or other forces of the Union. Rep. by the Constitution (Fortyfourth Amendment) Act, 1978, s. 33 (w.e.f. 20-6-1979).*

Art. 258 provides the provisions for power of the Union to confer powers, etc., on States in certain cases.

Art. 258.1

Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

Art. 258.2

A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

Art. 258.3

Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

Art. 258 A provides the provisions for power of the States to entrust functions to the Union.

Notwithstanding anything in this Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.

Art. 259 provides the provisions for *Armed Forces in States in Part B of the First Schedule. Rep. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.*

Art. 260 provides the provisions for jurisdiction of the Union in relation to territories outside India.

The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

Art. 261 provides the provisions for public acts, records and judicial proceedings.

Art. 261.1

Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

Art. 261.2

The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

Art. 261.3

Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

Disputes relating to Waters

Art. 262 provides the provisions for adjudication of disputes relating to waters of inter-State rivers or river valleys.

Art. 262.1

Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

Art. 262.2

Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

Co-ordination between States

Art. 263 provides the provisions with respect to an inter- State Council.

If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of –

- a) inquiring into and advising upon disputes which may have arisen between States;
- b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

PART XII

FINANCE, PROPERTY, CONTRACTS AND SUITS

CHAPTER I.

FINANCE

General

Art. 264 provides interpretation.

In this Part, “Finance Commission” means a Finance Commission constituted under article 280.

Art. 265 provides that the taxes not to be imposed save by authority of law.

No tax shall be levied or collected except by authority of law.

Art. 266 provides the provisions for Consolidated Funds and public accounts of India and of the States.

Art. 266.1

Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled “the Consolidated Fund of India”, and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled “the Consolidated Fund of the State”.

Art. 266.2

All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

Art. 266.3

No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

Art. 267 provides the provisions of Contingency Fund.

Art. 267.1

Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled “the Contingency Fund of India” into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorization of such expenditure by Parliament by law under article 115 or article 116.

Art. 267.2

The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled “the Contingency Fund of the State” into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislature of the State by law under article 205 or article 206.

Distribution of Revenues between the Union and the States

Art. 268 provides the provisions regarding duties levied by the Union but collected and appropriated by the States.

Art. 268.1

Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected –

- a) in the case where such duties are leviable within any Union territory, by the Government of India, and
- b) in other cases, by the States within which such duties are respectively leviable.

Art. 268.2

The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

Art. 268 A provides the provisions regarding service tax levied by Union and collected and appropriated by the Union and the States.

Art. 268A.1

Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States in the manner provided in clause (2).

Art. 268A.2

The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be –

- a) collected by the Government of India and the States;
- b) appropriated by the Government of India and the States, in accordance with such principles of collection and appropriation as may be formulated by Parliament by law.

Art. 269 provides the provisions regarding taxes levied and collected by the Union but assigned to the States.

Art. 269.1

Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

Explanation. - For the purposes of this clause,

- a) the expression “taxes on the sale or purchase of goods” shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;
- b) the expression “taxes on the consignment of goods” shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

Art. 269.2

The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

Art. 269.3

Parliament may by law formulate principles for determining when a sale or purchase of, or consignment of, goods takes place in the course of inter-State trade or commerce.

Art. 270 provides the provisions regarding taxes levied and distributed between the Union and the States.

Art. 270.1

All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268 and 269, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

Art. 270.2

Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).

Art. 270.3

In this article, “prescribed” means, -

- i. until a Finance Commission has been constituted, prescribed by the President by order, and
- ii. after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.

Art. 271 provides the provisions regarding surcharge on certain duties and taxes for purposes of the Union.

Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

Art. 272 provides the provisions regarding *Taxes which are levied and collected by the Union and may be distributed between the Union and the States. Rep. by the Constitution (Eightieth Amendment) Act, 2000, s. 4.*

Art. 273 provides the provisions regarding grants in lieu of export duty on jute and jute products.

Art. 273.1

There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar, Odisha and West Bengal, in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States, such sums as may be prescribed.

Art. 273.2

The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as any export duty on jute or jute products continues to be levied by the Government of India or until the expiration of ten years from the commencement of this Constitution whichever is earlier.

Art. 273.3

In this article, the expression “prescribed” has the same meaning as in article 270.

Art. 274 provides the provisions for prior recommendation of President required to Bills affecting taxation in which States are interested.

Art. 274.1

No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression “agricultural income” as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

Art. 274.2

In this article, the expression “tax or duty in which States are interested” means –

- a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State; or
- b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State.

Art. 275 provides the provisions for grants from the Union to certain States.

Art. 275.1

Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to

meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to –

- a) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule; and
- b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

Art. 275.1(A)

On and from the formation of the autonomous State under article 244A, -

- i. any sums payable under clause (a) of the second proviso to clause (1) shall, if the autonomous State comprises all the tribal areas referred to therein, be paid to the autonomous State, and, if the autonomous State comprises only some of those tribal areas, be apportioned between the State of Assam and the autonomous State as the President may, by order, specify;
- ii. there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the autonomous State sums, capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous State with the approval of the Government of India for the purpose of raising the level of Administration of that State to that of the administration of the rest of the State of Assam.

Art. 275.2

Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament:

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission.

Art. 276 provides the provisions for taxes on professions, trades, callings and employments.

Art. 276.1

Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

Art. 276.2

The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two thousand and five hundred rupees per annum.

Art. 276.3

The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

Art. 277 provides the provisions of savings.

Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

Art. 278 provides the provisions of *agreement with States in Part B of the First Schedule with regard to certain financial matters. Rep. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.*

Art. 279 provides the provisions for calculation of “net proceeds”, etc.

Art. 279.1

In the foregoing provisions of this Chapter, “net proceeds” means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Comptroller and Auditor-General of India, whose certificate shall be final.

Art. 279.2

Subject as aforesaid, and to any other express provision of this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

Art. 280 provides the provisions for Finance Commission.

Art. 280.1

The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by

order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

Art. 280.2

Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

Art. 280.3

It shall be the duty of the Commission to make recommendations to the President as to –

- a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;
- b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India;
 - a. the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;
- c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;
- d) any other matter referred to the Commission by the President in the interests of sound finance.

Art. 280.4

The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

Art. 281 provides the provisions for recommendations of the Finance Commission.

The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

Miscellaneous Financial Provisions

Art. 282 provides the provisions for expenditure defrayable by the Union or a State out of its revenues.

The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

Art. 283 provides the provisions for custody, etc., of Consolidated Funds, Contingency Funds and moneys credited to the public accounts.

Art. 283.1

The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President.

Art. 283.2

The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of the State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated by rules made by the Governor of the State.

Art. 284 provides the provisions for custody of suitors' deposits and other moneys received by public servants and courts.

All moneys received by or deposited with –

- a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of the State, as the case may be, or
- b) any court within the territory of India to the credit of any cause, matter, account or persons, shall be paid into the public account of India or the public account of State, as the case may be.

Art. 285 provides the provisions for exemption of property of the Union from State taxation.

Art. 285.1

The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

Art. 285.2

Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

Art. 286 provides the provisions for restrictions as to imposition of tax on the sale or purchase of goods.

Art. 286.1

No law of a State shall impose, or authorize the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place –

- a) outside the State; or
- b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Art. 286.2

Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

Art. 286.3

Any law of a State shall, in so far as it imposes, or authorises the imposition of, -

- a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or
- b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

Art. 287 provides the provisions for exemption from taxes on electricity.

Art. 287.1

Save in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is –

- a) consumed by the Government of India, or sold to the Government of India for consumption by that Government; or
- b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway,

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

Art. 288 provides the provisions for exemption from taxation by States in respect of water or electricity in certain cases.

Art. 288.1

Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed

or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Explanation.—The expression “law of a State in force” in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Art. 288.2

The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order.

Art. 289 provides the provisions for exemption of property and income of a State from Union taxation.

Art. 289.1

The property and income of a State shall be exempt from Union taxation.

Art. 289.2

Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.

Art. 289.3

Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government.

Art. 290 provides the provisions of adjustment in respect of certain expenses and pensions.

Where under the provisions of this Constitution the expenses of any court or Commission, or the pension payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India or after such commencement in connection with the affairs of the Union or of a State, are charged on the Consolidated Fund of India or the Consolidated Fund of a State, then, if –

- a) in the case of a charge on the Consolidated Fund of India, the court or Commission serves any of the separate needs of a State, or the person has served wholly or in part in connection with the affairs of a State; or
- b) in the case of a charge on the Consolidated Fund of a State, the court or Commission serves any of the separate needs of the Union or another State, or the person has served wholly or in part in connection with the affairs of the Union or another State,

there shall be charged on and paid out of the Consolidated Fund of the State or, as the case may be, the Consolidated Fund of India or the Consolidated Fund of the other State, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

Art. 290A provides the provisions for annual payment to certain Devaswom Funds.

A sum of forty-six lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Kerala every year to the Travancore Devaswom Fund; and a sum of thirteen lakhs and fifty thousand rupees shall be charged on, and paid out of, the Consolidated Fund of the State of Tamil Nadu every year to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore-Cochin.

Art. 291 *Privy purse sums of Rulers.*] *Rep. by the Constitution (Twenty-sixth Amendment) Act, 1971, s. 2.*

CHAPTER II BORROWING

Art. 292 provides the provisions for borrowing by the Government of India.

The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

Art. 293 provides the provisions for borrowing by States.

Art. 293.1

Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

Art. 293.2

The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.

Art. 293.2

A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

Art. 293.4

A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

In India, before the formation of the federation the States were not sovereign entities. As such, there was no need for safeguards to protect States. On account of the exigencies of the situation, the Indian federation has acquired characteristics which are quite different from the American model.

Central State Relation - Legislative, Administrative and Financial

In India, before the formation of the federation the States were not 'sovereign' entities.

As such, there was no need for safeguards to protect 'States'. On account of the exigencies of the situation, the Indian federation has acquired characteristics which are quite different from the American model.

- i. The residuary powers under the Indian Constitution are assigned to the Union and not to the States. However, it may be noted that the Canadian Constitution does the same mode of distributing the powers cannot be considered as eroding the federal nature of the Constitution.
- ii. Though there is a division of powers between the Union and the States, the Indian Constitution provides the Union with power to exercise control over the legislation as well as the administration of the States. Legislation by a State can be disallowed by the President, when reserved by the Governor for his consideration. The Governor is appointed by the President of the Union and holds office "during his pleasure". Again these ideas are found in the Canadian Constitution though not in the Constitution of the U.S.A.
- iii. The Constitution of India lays down the Constitution of the Union as well as the States, and no State, except Jammu and Kashmir, has a right to determine its own (State) Constitution.
- iv. When considering the amendment of the Constitution we find that except in a few specific matters affecting the federal structure, the States need not even be consulted in the matter of amendment of the Constitution. The bulk of the Constitution can be amended by a Bill in the Union Parliament being passed by a special majority.
- v. In the case of the Indian Constitution, while the Union is indestructible, the States are not. It is possible for the Union Parliament to reorganise the States or to alter their boundaries by a simple majority in the ordinary process of legislation. The 'consent' of the State Legislature concerned is not required; the President has only to 'ascertain' the views of the Legislatures of the affected States. The ease with which the federal organisation may be reshaped by an ordinary legislation by the Union Parliament has been demonstrated by the enactment of the States Reorganisation Act, 1956. A large number of new States have, since, been formed.
- vi. Under the Indian Constitution, there is no equality of representation of the States in the Council of States. Hence, the federal safeguard against the interests of the lesser States

being overridden by the interests of the larger or more populated States is absent under our Constitution. Its federal nature is further affected by having a nominated element of twelve members against 238 representatives of the States and Union Territories.

Centre State Relations

The Constitution of India provides a dual polity with a clear division of powers between the Union and the States, each being supreme within the sphere allotted to it. The Indian federation is not the result of an agreement between independent units, and the units of Indian federation cannot leave the federation.

Thus the constitution contains elaborate provisions to regulate the various dimensions of the relations between the centre and the states.

The relations between centre and state are divided as:

1. Legislative relations
2. Administrative relations
3. Financial relations

Centre State Legislative Relations

Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the State.

Extent of laws made by Parliament and by the Legislatures of States.

The Parliament can make laws for the whole or any part of the territory of India. Territory of India includes the states, UTs and any other area for the time being included in the territory of India. Whereas, the state legislature can make laws for whole or any part of state. The Parliament can alone make 'extra territorial legislation' thus the laws of the Parliament are applicable to the Indian citizens and their property in any part of the world.

Subject-matter of laws made by Parliament and by the Legislatures of States

The Constitution divides legislative authority between the Union and the States in three lists- the Union List, the State List and the Concurrent List. The Union list consists of 99 items. The Union Parliament has exclusive authority to frame laws on subjects enumerated in the list. These include foreign affairs, defence, armed forces, communications, posts and telegraph, foreign trade etc. The State list consists of 61 subjects on which ordinarily the States alone can make laws. These include public order, police, administration of justice, prison, local governments, agriculture etc.

The Concurrent list comprises of 52 items including criminal and civil procedure, marriage and divorce, economic and special planning trade unions, electricity, newspapers, books, education, population control and family planning etc. Both the Parliament and the State legislatures can make laws on subjects given in the Concurrent list, but the Centre has a prior and supreme claim to legislate on current subjects. In case of conflict between the law of the State and Union law on a subject in the Concurrent list, the law of the Parliament prevails.

Residuary powers of legislation

The constitution also vests the residuary powers (subjects not enumerated in any of the three Lists) with the Union Parliament. The residuary powers have been granted to the Union contrary to the convention in other federations of the world, where the residuary powers are given to the States. However, in case of any conflict, whether a particular matter falls under the residuary power or not is to be decided by the court.

Parliament's Power to Legislate on State List

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

a) In the National Interest (Art.249)

If the Rajya Sabha declares by a resolution supported by not less than 2/3 of its members present and voting, that it is necessary or expedient in the national interest that the Parliament should make laws with respect to any matter enumerated in the State List (Art.249). After such a resolution is passed, Parliament can make laws for the whole or any part of the territory of India. Such a resolution remains in force for a period of 1 year and can be further extended by one year by means of a subsequent resolution.

b) Under Proclamation of National Emergency (Art.250)

Parliament can legislate on the subjects mentioned in the State List when the Proclamation of National Emergency is in operation. However, the laws made by the Parliament under this provision shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiry of the said period.

c) By Agreement between States (Art. 252)

The Parliament can also legislate on a State subject if the legislatures of two or more states resolve that it is lawful of Parliament to make laws with respect to any matter enumerated in the State List relating to those State. Thereafter, any act passed by the Parliament shall apply to such states and to any other state which passes such a resolution. The Parliament also reserves the right to amend or repeal any such act.

d) To Implement Treaties (Art. 253)

The Parliament can make law for the whole or any part of the territory of India for implementing any treaty, international agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Any law passed by the Parliament for this purpose cannot be invalidated on the ground that it relates to the subject mentioned in the State list.

e) Under Proclamation of President's Rule (Art.356)

The President can also authorize the Parliament to exercise the powers of the State legislature during the Proclamation of President's Rule due to breakdown of constitutional machinery in a state. But all such laws passed by the Parliament cease to operate six months after the Proclamation of President's Rule comes to an end.

Center's control over State Legislation

The Constitution empowers the centre to exercise control over the state's legislature in following ways:

1. The governor can reserve certain types of bills passed by the state legislature for the consideration of the President. The President enjoys absolute veto over them.
2. Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the President as imposing restrictions on freedom of trade and commerce.
3. The President can direct the states to reserve money bills and other financial bills passed by the state legislature for his consideration during a financial emergency.

Centre State Administrative Relations

The administrative jurisdiction of the Union and the State Governments extends to the subjects in the Union list and State list respectively. The Constitution thus defines the clauses that deal with the administrative relations between Centre and States.

Centre State Relations During Normal Ties

1. Executive Powers of State be exercised in compliance with Union Laws: Article 256 lays down that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose.
2. Executive Powers of State not to interfere with Executive Power of Union: Article 257 of the Constitution provides that the executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to giving of such directions to a state as may appear to the Government of India to be necessary for that purpose. In short, the Union Government can issue directions to the state Government even with regard to the subjects enumerated in the state list.
3. Maintain means of communication of National or Military importance: The Union Government can give directions to the state with regard to construction and maintenance of the means of communication declared to be of national or military importance.
4. Protection of the Railways: Union can issue State Governments necessary directions regarding the measures to be taken for the protection of the railways within the jurisdiction of the State. It may be noted that the expenses incurred by the State Governments for the discharge of these functions have to be reimbursed by the Union Government.

5. To ensure welfare of Scheduled Tribes in the States: Union can direct the State Governments to ensure execution of schemes essential for the welfare of the Scheduled Tribes in the States.
6. To secure instruction in the mother-tongue at the primary stage of education: Union can direct the State Governments to secure the provision of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups.
7. To ensure development of the Hindi language: Union can direct the State Governments to ensure the development of the Hindi language.
8. To ensure government of a State is carried on in accordance with the provision of the Constitution: Union can direct the State Governments to ensure that the government of a State is carried on in accordance with the provision of the Constitution. If any State failed to comply with any directions given by the Union in exercise of its executive power, then President may hold that, a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Thus he may proclaim President's Rule in that State.
9. Delegation of Union's function to State: The President of India can entrust to the officers of the State certain functions of the Union Government. However, before doing so the President has to take the consent of the state Government. But the Parliament can enact law authorizing the Central Government to delegate its function to the State Governments or its officers irrespective of the consent of such State Government. On the other hand, a State may confer administrative functions upon the Union, with the consent of the Union only.
10. Appointment of High Dignitaries: Union has major say in appointment and removal of Governor and appointment of Judges of High Court and Members of State Public Service Commission.
11. All India Services: The presence of the All India Services - the Indian Administrative Services, Indian police Services - further accords a predominant position to the Union Government. The members of these services are recruited and appointment by the Union Public Service Commission. The members of these services are posted on key posts in the states, but remain loyal to the Union Government.
12. Union to adjudicate Inter-State River Water Dispute: The Parliament has been vested with power to adjudicate any dispute or complaint with respect to the use, distribution or control of the waters of, or in any inter-state river or river-valley. In this regard, the Parliament also reserves the right to exclude such disputes from the jurisdiction of the Supreme Court or other Courts.

Centre State Relations During Emergencies

1. Under President's Rule: The State Governments cannot ignore the directions of the Union Government, otherwise the President can take the action against the Government of the State stating that the administration cannot be carried on the accordance with the provisions of the Constitution and thus can impose President's rule on the State. In such

an eventuality the President shall assume to himself all or any of the functions of the state Government.

2. Under Proclamation of National Emergency: During a Proclamation of National Emergency, the power of the Union to give directions extends to the giving of directions as to the manner in which the executive power of the State is to be exercised relating to any matter.
3. Under Proclamation of Financial Emergency: During a Proclamation of Financial Emergency, Union can direct the State Governments to observe certain canons of financial propriety and to reduce the salaries and allowances of all or any class of person serving in connection with the affairs of the Union including the Judges of the Supreme Court and High Courts. Union also requires all Money Bills or Financial Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.

It is thus, evident that in the administrative sphere the States cannot act in complete isolation and have to work under the directions and in cooperation with the Center.

Centre State Financial Relations

Indian Constitution has made elaborate provisions, relating to the distribution of the taxes as well as non-tax revenues and the power of borrowing, supplemented by provisions for grants-in-aid by the Union to the States.

Article 268 to 293 deals with the provisions of financial relations between Centre and States.

The Constitution divides the taxing powers between the Centre and the states as follows:

The Parliament has exclusive power to levy taxes on subjects enumerated in the Union List, the state legislature has exclusive power to levy taxes on subjects enumerated in the State List, both can levy taxes on the subjects enumerated in Concurrent List whereas residuary power of taxation lies with Parliament only.

Distribution of the tax-revenue

1. Duties Levied by the Union but Collected and Appropriated by the States: Stamp duties on bills of Exchange, etc., and Excise duties on medical and toilet preparations containing alcohol. These taxes don't form the part of the Consolidated Fund of India, but are assigned to that state only.
2. Service Tax are Levied by the Centre but Collected and Appropriated by the Centre and the States.
3. Taxes Levied as Well as Collected by the Union, but Assigned to the States: These include taxes on the sale and purchase of goods in the course of inter-state trade or commerce or the taxes on the consignment of goods in the course of inter-state trade or commerce.
4. Taxes Levied and Collected by the Union and Distributed between Union and the States: Certain taxes shall be levied as well as collected by the Union, but their proceeds shall be divided between the Union and the States in a certain proportion, in order to effect an equitable division of the financial resources. This category includes all taxes referred in

Union List except the duties and taxes referred to in Article 268, 268-A and 269; surcharge on taxes and duties mentioned in Article 271 or any Cess levied for specific purposes.

5. Surcharge on certain duties and taxes for purposes of the Union: Parliament may at any time increase any of the duties or taxes referred in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part the Consolidated Fund of India.

Grants-in-Aid

Besides sharing of taxes between the Center and the States, the Constitution provides for Grants-in-aid to the States from the Central resources.

There are two types of grants:-

1. **Statutory Grants:** These grants are given by the Parliament out of the Consolidated Fund of India to such States which are in need of assistance. Different States may be granted different sums. Specific grants are also given to promote the welfare of scheduled tribes in a state or to raise the level of administration of the Scheduled areas therein (Art.275).
2. **Discretionary Grants:** Center provides certain grants to the states on the recommendations of the Planning Commission which are at the discretion of the Union Government. These are given to help the state financially to fulfill plan targets (Art.282).

Effects of Emergency on Center-State Financial Relations:-

1. During National Emergency: The President by order can direct that all provisions regarding division of taxes between Union and States and grants-in-aids remain suspended. However, such suspension shall not go beyond the expiration of the financial year in which the Proclamation ceases to operate.
2. During Financial Emergency: Union can give directions to the States:-
 - a. To observe such canons of financial propriety as specified in the direction.
 - b. To reduce the salaries and allowances of all people serving in connection with the affairs of the State, including High Courts judges.
 - c. To reserve for the consideration of the President all money and financial Bills, after they are passed by the Legislature of the State.

Finance Commission

Although the Constitution has made an effort to allocate every possible source of revenue either to the Union or the States, but this allocation is quite broad based. For the purpose of allocation of certain sources of revenue, between the Union and the State Governments, the Constitution provides for the establishment of a Finance Commission under Article 280. According to the Constitution, the President of India is authorized to set up a Finance Commission every five years to make recommendation regarding distribution of financial resources between the Union and the States.

Constitution

Finance Commission is to be constituted by the President every 5 years. The Chairman must

be a person having ‘experience in public affairs’. Other four members must be appointed from amongst the following: -

1. A High Court Judge or one qualified to be appointed as High Court Judge;
2. A person having knowledge of the finances and accounts of the Government;
3. A person having work experience in financial matters and administration;
4. A person having special knowledge of economics.

Functions

The Finance Commission recommends to the President as to:-

1. The distribution between the Union and the States of the net proceeds of taxes to be divided between them and the allocation between the States of respective shares of such proceeds;
2. The principles which should govern the grants-in-aid of the revenue of the States out of the Consolidated Fund of India;
3. The measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats and Municipalities in the State;
4. Any other matter referred to the Commission by the President in the interest of sound finance.

Conclusion:

In India, the Centre-States relations constitute the core elements of the federalism. The Central Government and State Government cooperate for the well-being and safety of the citizens of India. The work together in the field of environmental protection, terror control, family control and socio-economic planning.

The Indian constitution aim at reconciling the national unity while giving the power to maintain state to the State governments. It is true that the union has been assigned larger powers than the state governments, but this is a question of degree and not quality, since all the essential features of a federation are present in the Indian constitution. It is often defined to be quasi-federal in nature. Thus, it can be safely said that Indian Constitution is primarily federal in nature even though it has unique features that enable it to assume unitary features upon the time of need. Federal but its spirit is unitary.

UNIT 3

PART V

THE UNION

CHAPTER II - PARLIAMENT

Parliament of India consists of three organs –

- The President
- The Council of States (The Rajya Sabha)
- The House of People (The Lok Sabha)

Though, President is not a member of either house of Parliament yet, like the British Crown, he is an integral part of the Parliament and perform certain functions relating to its proceedings.

The President of America is not an integral part of the Legislature. In India, the President summons the two Houses of Parliament, dissolves the House of People and gives assent of Bills.

Though the Indian Constitution provides for the parliamentary form of Government but unlike Britain, the Parliament is not supreme under the Indian Constitution. In India, the Constitution is supreme.

In England, laws passed by the Parliament cannot be declared unconditional while the Indian Constitution expressly vests this power in the Courts. The Indian Parliament is the creature of the Constitution and derives all its powers from the Constitution. It is not a sovereign body.

Art. 79 provides the provision for 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.

Art. 80 provides the provision for Composition of the Council of States.

Art. 80.1

The Council of States shall consist of –

- 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 and of the Union territories.

Art. 80.2

The allocation of seats in the Council of States to be filled by representatives of the States and of the Union territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

Art. 80.3

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.

Art. 80.4

The representatives of each State 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.

Art. 80.5

The representatives of the Union territories in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

Art. 81 provides the provision for Composition of the House of the People.

Art. 81.1

Subject to the provisions of article 331, the House of the People shall consist of –

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

Art. 81.2

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 the number of seats allotted to it is, so far as practicable, the same throughout the State:

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 million.

Art. 81.3

In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published:

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 2026 have been published, 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 2001 census.

Art. 82 provides the provision for 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:

Provided further that such readjustment shall take effect from such date as the 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:

Provided also that until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to 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 2001 census, under this article.

Art. 83 provides the provision for Duration of Houses of Parliament.

Art. 83.1

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.

Art. 83.2

The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of 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.

Art. 84 provides the provisions regarding the Qualification for membership of Parliament.

A person shall not be qualified to be chosen to fill a seat in Parliament unless he –

- 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.

Art. 85 provides the provisions for the Sessions of Parliament, prorogation and dissolution.

Art. 85.1

The President shall, from time to time, summon each House of Parliament to meet at such time and 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.

Art. 85.2

The President may from time to time –

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

Art. 86 provides the provisions regarding Right of President to address and send messages to Houses.

Art. 86.1

The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

Art. 86.2

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 dispatch consider any matter required by the message to be taken into consideration.

Art. 87 provides the provisions for Special address by the President.

Art. 87.1

At the commencement of 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.

Art. 87.2

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.

Art. 88 provides the provisions regarding the 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

Art. 89 provides the provisions for the Chairman and Deputy Chairman of the Council of States.

Art. 89.1

The Vice-President of India shall be *ex officio* Chairman of the Council of States.

Art. 89.2

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.

Art. 90 provides the provisions regarding 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:

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.

Art. 91 provides the provisions regarding the Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

Art. 91.1

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.

Art. 91.2

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.

Art. 92 provides that the Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.

Art. 92.1

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.

Art. 92.2

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.

Art. 93 provides the provisions for 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.

Art. 94 provides the provisions for the 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.

Art. 95 provides the power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.

Art. 95.1

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.

Art. 95.2

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.

Art. 96 provides that the Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

Art. 96.1

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.

Art. 96.2

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.

Art. 97 provides the provisions for 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.

Art. 98 provides the provisions for Secretariat of Parliament.

Art. 98.1

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.

Art. 98.2

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

Art. 98.3

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.

Art. 99 provides the provisions for 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.

Art. 100 provides the provisions for voting in Houses, power of Houses to act notwithstanding vacancies and quorum.

Art. 100.1

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.

Art. 100.2

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.

Art. 100.3

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.

Art. 100.4

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

Art. 101 provides the provisions for vacation of seats.

Art. 101.1

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.

Art. 101.2

No person shall be a member both of Parliament and of a House of the Legislature of a State, and if a person is chosen a member both of Parliament and of a House of the Legislature of a State, then, at the expiration of such period as may be specified in rules 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.

Art. 101.3

If a member of either House of Parliament –

- a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 102, or
- 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:

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.

Art. 101.4

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.

Art. 102 provides the provisions regarding disqualifications for membership.

Art. 102.1

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 acknowledgment of allegiance or adherence to a foreign State;
- e) if he is so disqualified by or under any law made by Parliament.

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.

Art. 102.2

A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

Art. 103 provides the provisions for the decision on questions as to disqualifications of members.

Art. 103.1

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.

Art. 103.2

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.

Art. 104 provides the provisions for the 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

Art. 105 provides the powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.

Art. 105.1

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.

Art. 105.2

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.

Art. 105.3

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.

Art. 105.4

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.

Art. 106 provides the 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

Art. 107 provides the provisions as to introduction and passing of Bills.

Art. 107.1

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.

Art. 107.2

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

Art. 107.3

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

Art. 107.4

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.

Art. 107.5

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.

Art. 108 provides the provisions for joint sitting of both Houses in certain cases.

Art. 108.1

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 elapsed 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.

Art. 108.2

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.

Art. 108.3

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.

Art. 108.4

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.

Art. 108.5

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.

Art. 109 provides the provisions for special procedure in respect of Money Bills.

Art. 109.1

A Money Bill shall not be introduced in the Council of States.

Art. 109.2

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.

Art. 109.3

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.

Art. 109.4

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.

Art. 109.5

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.

Art. 110 provides the definition of “Money Bills”.

Art. 110.1

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
- g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

Art. 110.2

A Bill shall not be deemed to be a Money Bill 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.

Art. 110.3

If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

Art. 110.4

There shall be endorsed on every Money Bill when it is transmitted to 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.

Art. 111 provides the 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

Art. 112 provides the annual financial statement.

Art. 112.1

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”.

Art. 112.2

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.

Art. 112.3

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;
- 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 1[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.

Art. 113 provides the procedure in Parliament with respect to estimates.

Art. 113.1

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.

Art. 113.2

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 therein.

Art. 113.3

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

Art. 114 provides the provision for Appropriation Bills.

Art. 114.1

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.

Art. 114.2

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 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.

Art. 114.3

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.

Art. 115 provides the provision for supplementary, additional or excess grants.

Art. 115.1

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.

Art. 115.2

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 a 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.

Art. 116 provides the provision of Votes on account, votes of credit and exceptional grants.

Art. 116.1

Notwithstanding anything in the foregoing provisions of this Chapter, the House of 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.

Art. 116.2

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 authorization of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.

Art. 117 provides the Special provisions as to financial Bills.

Art. 117.1

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.

Art. 117.2

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.

Art. 117.3

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

Art. 118 provides the Rules of procedure.

Art. 118.1

Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

Art. 118.2

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.

Art. 118.3

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.

Art. 118.4

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.

Art. 119 provides the 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 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.

Art. 120 provides the provision of language to be used in Parliament.

Art. 120.1

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.

Art. 120.2

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.

Art. 121 provides the provisions regarding 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.

Art. 122 provides the provision for Courts not to inquire into proceedings of Parliament.

Art. 122.1

The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

Art. 122.2

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. THE STATE LEGISLATURE *General*

Art. 168 provides the provision of Constitution of Legislatures in States.

Art. 168.1

For every State there shall be a Legislature which shall consist of the Governor, and –

- a) in the States of Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Karnataka, Tamil Nadu, Telangana 11 and Uttar Pradesh, two Houses;
- b) in other States, one House.

Art. 168.2

Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

Art. 169 provides the provisions for abolition or creation of Legislative Councils in States.

Art. 169.1

Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

Art. 169.2

Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

Art. 169.3

No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Art. 170 provides the provisions for composition of the Legislative Assemblies.

Art. 170.1

Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

Art. 170.2

For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

Explanation. - In this clause, 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 2026 have been published, be construed as a reference to the 2001 census.

Art. 170.3

Upon the completion of each census, the total number of seats in the Legislative Assembly of each State 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 Legislative Assembly until the dissolution of the then existing Assembly:

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

Provided also that until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust –

- i. the total number of seats in the Legislative Assembly of each State as readjusted on the basis of the 1971 census; and
- ii. the division of such State into territorial constituencies as may be readjusted on the basis of the 2001 census, under this clause.

Art. 171 provides the provisions for composition of the Legislative Councils.

Art. 171.1

The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

Art. 171.2

Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

Art. 171.3

Of the total number of members of the Legislative Council of a State –

- a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;
- b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;
- c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;
- d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;
- e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

Art. 171.4

The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

Art. 171.5

The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely: - Literature, science, art, co-operative movement and social service.

Art. 172 provides the provisions for duration of State Legislatures.

Art. 172.1

Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly:

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.

Art. 172.2

The Legislative Council of a State 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.

Art. 173 provides the qualifications for membership of the State Legislature.

A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he –

- 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 Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and
- c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Art. 174 provides the provisions sessions of the State Legislature, prorogation and dissolution.

Art. 174.1

The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and 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.

Art. 174.2

The Governor may from time to time –

- a) prorogue the House or either House;
- b) dissolve the Legislative Assembly.

Art. 175 provides the Right of Governor to address and send messages to the House or Houses.

Art. 175.1

The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

Art. 175.2

The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient dispatch consider any matter required by the message to be taken into consideration.

Art. 176 provides the provision for Special address by the Governor.

Art. 176.1

At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

Art. 176.2

Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address.

Art. 177 provides the Rights of Ministers and Advocate-General as respects the Houses.

Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Officers of the State Legislature

Art. 178 provides the provision for the Speaker and Deputy Speaker of the Legislative Assembly.

Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

Art. 179 provides the provision for Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.

A member holding office as Speaker or Deputy Speaker of an Assembly –

- a) shall vacate his office if he ceases to be a member of the Assembly;
- 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 Assembly passed by a majority of all the then members of the Assembly:

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 Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

Art. 180 provides the power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.

Art. 180.1

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 Assembly as the Governor may appoint for the purpose.

Art. 180.2

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

Art. 181 provides that The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

Art. 181.1

At any sitting of the Legislative Assembly, 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 180 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.

Art. 181.2

The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in article 189, 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.

Art. 182 provides the provision of the Chairman and Deputy Chairman of Legislative Council. The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

Art. 183 provides the vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.

A member holding office as Chairman or Deputy Chairman of a Legislative Council –

- 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, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, 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:

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.

Art. 184 provides the power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

Art. 184.1

While the office of Chairman is vacant, 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 as the Governor may appoint for the purpose.

Art. 184.2

During the absence of the Chairman from any sitting of the Council 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.

Art. 185 provides that the Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.

Art. 185.1

At any sitting of the Legislative Council, while any resolution for the removal of the Chairman 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 184 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.

Art. 185.2

The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Council while any resolution for his removal from office is under consideration in the Council and shall, notwithstanding anything in article 189, 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.

Art. 186 provides the provision for salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.

There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly, and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by the Legislature of the State by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Art. 187 provides the provision of Secretariat of State Legislature.

Art. 187.1

The House or each House of the Legislature of a State shall have a separate secretarial staff:

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.

Art. 187.2

The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State.

Art. 187.3

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

Conduct of Business

Art. 188 provides the provision of oath or affirmation by members.

Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, 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.

Art. 189 provides the provision of voting in Houses, power of Houses to act notwithstanding vacancies and quorum.

Art. 189.1

Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by a majority of votes of the members present and voting,

other than the Speaker or Chairman, or person acting as such.

The Speaker or Chairman, 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.

Art. 189.2

A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State 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.

Art. 189.3

Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

Art. 189.4

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

Disqualifications of Members

Art. 190 provides the provision of vacation of seats.

Art. 190.1

No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State 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.

Art. 190.2

No person shall be a member of the Legislatures of two or more States specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.

Art. 190.3

If a member of a House of the Legislature of a State –

- a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 191; or
- b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be,

his seat shall thereupon become vacant:

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 Speaker or the Chairman,

as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.

Art. 190.4

If for a period of sixty days a member of a House of the Legislature of a State 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.

Art. 191 provides the provision for disqualifications for membership.

Art. 191.1

A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State –

- a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State 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 acknowledgment of allegiance or adherence to a foreign State;
- e) if he is so disqualified by or under any law made by Parliament.

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 specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

Art. 191.2

A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

Art. 192 provides the decision on questions as to disqualifications of members.

Art. 192.1

If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

Art. 192.2

Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

Art. 193 provides the provisions of penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified.

If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, 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 or the Legislature of the State, 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 State.

Powers, Privileges and Immunities of State Legislatures and their Members

Art. 194 provides the powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.

Art. 194.1

Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

Art. 194.2

No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

Art. 194.3

In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature 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 26 of the Constitution (Forty-fourth Amendment) Act, 1978.

Art. 194.4

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 the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

Art. 195 provides the provisions of salaries and allowances of members.

Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined, by the Legislature of the State by law and, until provision in that respect is so made, salaries and 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 Legislative Assembly of the corresponding Province.

Legislative Procedure

Art. 196 provides provisions as to introduction and passing of Bills.

Art. 196.1

Subject to the provisions of articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

Art. 196.2

Subject to the provisions of articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

Art. 196.3

A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

Art. 196.4

A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

Art. 196.5

A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

Art. 197 provides the restriction on powers of Legislative Council as to Bills other than Money Bills.

Art. 197.1

If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council –

- a) the Bill is rejected by the Council; or
- b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or
- c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

Art. 197.2

If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council –

- a) the Bill is rejected by the Council; or
- b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or
- c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree;

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

Art. 197.3

Nothing in this article shall apply to a Money Bill.

Art. 198 provides the special procedure in respect of Money Bills.

Art. 198.1

A Money Bill shall not be introduced in a Legislative Council.

Art. 198.2

After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

Art. 198.3

If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

Art. 198.4

If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

Art. 198.5

If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly 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 Legislative Assembly.

Art. 199 provides the definition of “Money Bills”.

Art. 199.1

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 State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;
- c) the custody of the Consolidated Fund or the Contingency Fund of the State, 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 the State;
- e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;
- f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or
- g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

Art. 199.2

A Bill shall not be deemed to be a Money Bill 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.

Art. 199.3

If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

Art. 199.4

There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under article 198, and when it is presented to the Governor for assent under article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

Art. 200 provides the Assent to Bills.

When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses 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 House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

Art. 201 provides the provision of Bills reserved for consideration.

When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.

Procedure in Financial Matters

Art. 202 provides the Annual financial statement.

Art. 202.1

The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the “annual financial statement”.

Art. 202.2

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 the State; and
- b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State;

and shall distinguish expenditure on revenue account from other expenditure.

Art. 202.3

The following expenditure shall be expenditure charged on the Consolidated Fund of each State

- a) the emoluments and allowances of the Governor and other expenditure relating to his office;
- b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;
- c) debt charges for which the State 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) expenditure in respect of the salaries and allowances of Judges of any High Court;
- e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
- f) any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged.

Art. 203 provides the Procedure in Legislature with respect to estimates.

Art. 203.1

So much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of any of those estimates.

Art. 203.2

So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly 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 therein.

Art. 203.3

No demand for a grant shall be made except on the recommendation of the Governor.

Art. 204 provides the Appropriation Bills.

Art. 204.1

As soon as may be after the grants under article 203 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet –

- a) the grants so made by the Assembly; and
- b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.

Art. 204.2

No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State 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 charged on the Consolidated Fund of

the State, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

Art. 204.3

Subject to the provisions of articles 205 and 206, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article.

Art. 205 provides the provision for Supplementary, additional or excess grants.

Art. 205.1

The Governor shall –

- a) if the amount authorised by any law made in accordance with the provisions of article 204 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 the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.

Art. 205.2

The provisions of articles 202, 203 and 204 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 the State 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 a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant.

Art. 206 provides the provision of votes on account, votes of credit and exceptional grants.

Art. 206.1

Notwithstanding anything in the foregoing provisions of this Chapter, the Legislative Assembly of a State 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 203 for the voting of such grant and the passing of the law in accordance with the provisions of article 204 in relation to that expenditure;
- b) to make a grant for meeting an unexpected demand upon the resources of the State 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 the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

Art. 206.2

The provisions of articles 203 and 204 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 the State to meet such expenditure.

Art. 207 provides the special provisions as to financial Bills.

Art. 207.1

A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council:

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.

Art. 207.2

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.

Art. 207.3

A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill.

Procedure Generally

Art. 208 provides the rules of procedure.

Art. 208.1

A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

Art. 208.2

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 for the

corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

Art. 208.3

In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses.

Art. 209 provides the regulation by law of procedure in the Legislature of the State in relation to financial business.

The Legislature of a State may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State under clause (1) of article 208 or with any rule or standing order having effect in relation to the Legislature of the State under clause (2) of that article, such provision shall prevail.

Art. 210 provides the language to be used in the Legislature.

Art. 210.1

Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English:

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mothertongue.

Art. 210.2

Unless the Legislature of the State 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:

Provided that in relation to the Legislatures of the States of Himachal Pradesh, Manipur, Meghalaya and Tripura this clause shall have effect as if for the words “fifteen years” occurring therein, the words “twenty-five years” were substituted:

Provided further that in relation to the Legislatures of the States of Arunachal Pradesh, Goa and Mizoram, this clause shall have effect as if for the words “fifteen years” occurring therein, the words “forty years” were substituted.

Art. 211 provides the restriction on discussion in the Legislature.

No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

Art. 212 provides that Courts not to inquire into proceedings of the Legislature.

Art. 212.1

The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

Art. 212.2

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

CHAPTER IV LEGISLATIVE POWER OF THE GOVERNOR

Art. 213 provides the power of Governor to promulgate Ordinances during recess of Legislature.

Art. 213.1

If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor 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:

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if –

- a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or
- b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or
- c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

Art. 213.2

An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance –

- a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by

the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and

b) may be withdrawn at any time by the Governor.

Explanation.—Where the Houses of the Legislature of a State having a Legislative Council 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.

Art. 213.3

If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.

UNIT 4

PART V

THE UNION

CHAPTER I.—THE EXECUTIVE

Constitution of India establishes a Parliamentary form of Government as distinguished from the American Presidential type of Government. The main characteristic of the Parliamentary form of government is that the head of the State is the constitutional head and the real executive powers are vested in Council of Ministers. The Prime Minister is the head of the Council of Ministers. The Council of Ministers is responsible to the House of the people. Though the executive power is vested in the President but he exercises this power with the aid and advice of the Council of Ministers. The members of the Council of Ministers are elected by the people and they are members of the Legislature.

Art. 52

There shall be a President of India. He is the head of the State.

Art. 53 Executive power of the Union

Art. 53.1 states that 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.

Art. 53.2 states that 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.

Art. 53.3 provides that 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.

Art. 54 provides the provisions

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.

Art. 55 defines the manner of election of President.

Art. 55.1

As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

Art. 55.2

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 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 -

Art. 55.2(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;

Art. 55.2(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;

Art. 55.2(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.

Art. 55.3

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.

Art. 56 provides the provisions about the term of Term of office of President.

Art. 56.1

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.

Art. 56.2

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

Art. 57 provides Eligibility for reelection.

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.

Art. 58 provides Qualifications for election as President.

Art. 58.1

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
- c) is qualified for election as a member of the House of the People.

Art. 58.2

A person shall not be eligible for election as 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.

Art. 59 provides Conditions of President's office.

Art. 59.1

The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be 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.

Art. 59.2

The President shall not hold any other office of profit.

Art. 59.3

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.

Art. 59.4

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

Art. 60 provides Oath or affirmation by 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 senior-most 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 solemnly affirm 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”.

Art. 61 provides Procedure for impeachment of the President.

Art. 61.1

When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

Art. 61.2

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 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.

Art. 61.3

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.

Art. 61.4

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.

Art. 62 provides the Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy.

Art. 62.1

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.

Art. 62.2

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.

Art. 63 provides the concept of the Vice-President of India.

There shall be a Vice-President of India.

Art. 64 provides 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.

Art. 65 provides the provisions for the Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President.

Art. 65.1

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.

Art. 65.2

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.

Art. 65.3

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 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.

Art. 66 provides the provisions for the Election of Vice-President.

Art. 66.1

The Vice-President shall be elected by the 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.

Art. 66.2

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.

Art. 66.3

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.

Art. 66.4

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.

Art. 67 provides the 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.

Art. 68 provides the 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.

Art. 68.1

An election 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.

Art. 68.2

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.

Art. 69 provides the provisions for 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 solemnly affirm that I will bear true faith and 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.”.

Art. 70 provides the provisions for 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.

Art. 71 defines the Matters relating to, or connected with, the election of a President or Vice-President.

Art. 71.1

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.

Art. 71.2

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.

Art. 71.3

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.

Art. 71.4

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.

Art. 72 defines the Powers of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

Art. 72.1

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.

Art. 72.2

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.

Art. 72.3

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 of a State under any law for the time being in force.

Art. 73 defines the Extent of executive power of the Union.

Art. 73.1

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 to matters with respect to which the Legislature of the State has also power to make laws.

Art. 73.2

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.

CHAPTER III.

LEGISLATIVE POWERS OF THE PRESIDENT

Art. 123 defines the Power of President to promulgate Ordinances during recess of Parliament.

Art. 123.1

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.

Art. 123.2

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.

Art. 123.3

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.

Council of Ministers

Art. 74 provides the provisions of the Council of Ministers to aid and advise President.

Art. 74.1

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:

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.

Art. 74.2

The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

Art. 75 provides the other provisions as to Ministers.

Art. 75.1

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.

Art. 75.1(A) 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.

Art. 75.1(B) 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.

Art. 75.2

The Ministers shall hold office during the pleasure of the President.

Art. 75.3

The Council of Ministers shall be collectively responsible to the House of the People.

Art. 75.4

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.

Art. 75.5

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.

Art. 75.6

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

Art. 76 provides the provisions for Attorney-General for India.

Art. 76.1

The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

Art. 76.2

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.

Art. 76.3

In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

Art. 76.4

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

Art. 77 provides Conduct of business of the Government of India.

Art. 77.1

All executive action of the Government of India shall be expressed to be taken in the name of the President.

Art. 77.2

Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules¹ 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.

Art. 77.3

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.

Art. 78 provides 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.

PART VI
THE STATES
CHAPTER I. - GENERAL

Art. 152 provides definition of State.

In this Part, unless the context otherwise requires, the expression “State” means a state specified in PART A of the Constitution of the India and it does not include the State of Jammu and Kashmir.

CHAPTER II. - THE EXECUTIVE

The Governor

Art. 153 provides the provision of Governors of States.

There shall be a Governor for each State; provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.

Art. 154 provides the provisions for Executive power of State.

Art. 154.1

The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

Art. 154.2

Nothing in this article shall –

- a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or
- b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Art. 155 provides the provisions for appointment of Governor.

The Governor of a State shall be appointed by the President by warrant under his hand and seal.

Art. 156 provides the provisions regarding the Term of office of Governor.

Art. 156.1

The Governor shall hold office during the pleasure of the President.

Art. 156.2

The Governor may, by writing under his hand addressed to the President, resign his office.

Art. 156.3

Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office; provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Art. 157 provides the provisions for qualifications for appointment as Governor.

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

Art. 158 provides the Conditions of Governor's office.

Art. 158.1

The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

Art. 158.2

The Governor shall not hold any other office of profit.

Art. 158.3

The Governor 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.

Art. 158.3(A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine.

Art. 158.4

The emoluments and allowances of the Governor shall not be diminished during his term of office.

Art. 159 provides the provisions for Oath or affirmation by the Governor.

Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say –

“I, A.B., do swear in the name of God solemnly affirm that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of (*name of the State*) 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.....(*name of the State*).”

Art. 160 provides the procedures for Discharge of the functions of the Governor in certain contingencies.

The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

Art. 161 provides the Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

The Governor of a State 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 against any law relating to a matter to which the executive power of the State extends.

Art. 162 provides the Extent of executive power of State.

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws; provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Council of Ministers

Art. 163 provides the provisions of Council of Ministers to aid and advise Governor.

Art. 163.1

There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

Art. 163.2

If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

Art. 163.3

The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Art. 164 provides the other provisions as ministers.

Art. 164.1

The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor; provided that in the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

Art. 164.1.A The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State;

provided that the number of Ministers, including the Chief Minister in a State shall not be less than twelve;

provided further that where the total number of Ministers including the Chief Minister in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.

Art. 164.1.B A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council 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 the Legislative Assembly of a State or either House of the

Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

Art. 164.2

The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

Art. 164.3

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

Art. 164.4

A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

Art. 164.5

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

The Advocate-General for the State

Art. 165 provides the provisions for Advocate-General for the State.

Art. 165.1

The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

Art. 165.2

It shall be the duty of the Advocate-General to give advice to the Government of the State 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 Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

Art. 165.3

The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

Conduct of Government Business

Art. 166 provides the Conduct of Business of the Government of a State.

Art. 166.1

All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

Art. 166.2

Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, 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 Governor.

Art. 166.3

The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

Art. 167 provides the Duties of Chief Minister as respects the furnishing of information to Governor, etc.

It shall be the duty of the Chief Minister of each State –

- a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;
- b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and
- c) if the Governor 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 IV.

THE UNION JUDICIARY

Art. 124 provides the provisions for Establishment and constitution of Supreme Court.

Art. 124.1

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 other Judges.

Art. 124.2

Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal 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; 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).

Art. 124.2A

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.

Art. 124.3

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.

Art. 124.4

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 that 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.

Art. 124.5

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).

Art. 124.6

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.

Art. 124.7

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.

Art. 124A provides the provisions for National Judicial Appointments Commission.

Art. 124A.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 Caste, 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 re-nomination.

Art. 124A.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.

Art. 124B provides the 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 Justice and other Judges of High Courts from one High Court to any other High Court; and ensure that the person recommended is of ability and integrity.

Art. 124C provides the 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.

Art. 125 provides the provisions for Salaries, etc., of Judges.

Art. 125.1

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.

Art. 125.2

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 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.

Art. 126 provides the provisions for 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.

Art. 127 provides the provisions for Appointment of *ad hoc* Judges.

Art. 127.1

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, 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.

Art. 127.2

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.

Art. 128 provides the provisions Attendance of retired Judges at sittings of the Supreme Court.

Notwithstanding anything in this Chapter, 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 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.

Art. 129 provides the provisions for 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.

Art. 130 provides the provisions for 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.

Art. 131 provides the provisions about 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 –

- 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;

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.

Art. 131A provides the provisions of 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, s. 4 (w.e.f. 13-4-1978).

Art. 132 provides the provisions of Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.

Art. 132.1

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, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

Art. 132.2 OMITTED

Art. 132.3

Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

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.

Art. 133 provides the provisions of Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.

Art. 133.1

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 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.

Art. 133.2

Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

Art. 133.3

Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

Art. 134 provides the provisions of Appellate jurisdiction of Supreme Court in regard to criminal matters.

Art. 134.1

An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court –

- a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
- b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
- c) certifies under article 134A, that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

Art. 134.2

Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

Art. 134A provides the provisions of Certificate for appeal to the Supreme Court.

Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134, -

- a) may, if it deems fit so to do, on its own motion; and
- b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence,

determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.

Art. 135 provides the provisions for Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.

Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

Art. 136 provides the provisions for Special leave to appeal by the Supreme Court.

Art. 136.1

Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

Art. 136.2

Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

Art. 137 provides the provisions for Review of judgments or orders by the Supreme Court.

Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

Art. 138 provides the provisions for Enlargement of the jurisdiction of the Supreme Court.

Art. 138.1

The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

Art. 138.2

The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

Art. 139 provides the provisions for Conferment on the Supreme Court of powers to issue certain writs.

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

Art. 139A provides the provisions for Transfer of certain cases.

Art. 139A.1

Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself;

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

Art. 139A.2

The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

Art. 140 provides the provisions for Ancillary powers of Supreme Court.

Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

Art. 141 provides that Law declared by Supreme Court to be binding on all courts.

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Art. 142 provides the provisions for Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.

Art. 142.1

The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

Art. 142.2

Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the

purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Art. 143 provides the provisions for the Power of President to consult Supreme Court.

Art. 143.1

If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

Art. 143.2

The President may, notwithstanding anything in the provisions to article 131, refer a dispute of the kind mentioned in the said provision to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

Art. 144 provides the provisions for Civil and judicial authorities to act in aid of the Supreme Court.

All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

Art. 144A provides the *Special provisions as to disposal of questions relating to constitutional validity of laws. Rep. by the Constitution (Forty-third Amendment) Act, 1977, s. 5 (w.e.f. 13-4-1978).*

Art. 145 provides the provisions for Rules of Court, etc.

Art. 145.1

Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including –

- a) rules as to the persons practising before the Court;
- b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;
- c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III; and rules as to the proceedings in the Court under article 139A;
- d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;
- e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;
- f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;
- g) rules as to the granting of bail;
- h) rules as to stay of proceedings;

- i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;
- j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

Art. 145.2

Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

Art. 145.3

The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

Art. 145.4

No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

Art. 145.5

No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

Art. 146 provides the provisions for Officers and servants and the expenses of the Supreme Court.

Art. 146.1

Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of

India or such other Judge or officer of the Court as he may direct:

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

Art. 146.2

Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorized by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

Art. 146.3

The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

Art. 147 provides the Interpretation.

In this Chapter and in Chapter V of Part VI, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

CHAPTER V THE HIGH COURTS IN THE STATES

Art. 214 provides the provisions for High Courts for States.

There shall be a High Court for each State.

Art. 215 provides that High Courts to be courts of record.

Every High 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.

Art. 216 provides the provisions for Constitution of High Courts.

Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

Art. 217 provides the provisions for Appointment and conditions of the office of a Judge of a High Court.

Art. 217.1

Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Appointments Commission referred to in article 124A, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional

or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixtytwo years:

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 by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;
- c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

Art. 217.2

A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and-

- a) has for at least ten years held a judicial office in the territory of India; or
- b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession;

Explanation. - For the purposes of this clause -

- i. in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate;

- ii. in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

Art. 217.3

If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.

Art. 218 provides the Application of certain provisions relating to Supreme Court to High Courts.

The provisions of clauses (4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

Art. 219 provides the provision for Oath or affirmation by Judges of High Courts.

Every person appointed to be a Judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor of the State, 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.

Art. 220 provides the provisions for Restriction on practice after being a permanent Judge.

No person who, after the commencement of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.

Explanation. –

In this article, the expression “High Court” does not include a High Court for a State specified in Part B of the First Schedule as it existed before the commencement of the Constitution (Seventh Amendment) Act, 1956.

Art. 221 provides the provisions regarding Salaries, etc., of Judges.

Art. 221.1

There shall be paid to the Judges of each High 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.

Art. 221.2

Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:

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

Art. 222 provides the provisions regarding Transfer of a Judge from one High Court to another.

Art. 222.1

The President may, on the recommendation of the National Judicial Appointment Commission referred to in article 124A, transfer a Judge from one High Court to any other High Court.

Art. 222.2

When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.

Art. 223 provides the provisions for Appointment of acting Chief Justice.

When the office of Chief Justice of a High Court is vacant or when any such 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.

Art. 224 provides the provisions for Appointment of additional and acting Judges.

Art. 224.1

If by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may, in consultation with the National Judicial Appointments Commission, appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.

Art. 224.2

When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may, in consultation with the National Judicial Appointments Commission, appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.

Art. 224.3

If No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty-two years.

Art. 224A provides the provisions for Appointment of retired Judges at sittings of High Courts. Notwithstanding anything in this Chapter, the National Judicial Appointments Commission on a reference made to it by the Chief Justice of a High Court for any State, may with the previous consent of the President request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, 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 High 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 High Court unless he consents so to do.

Art. 225 provides the provisions relating to Jurisdiction of existing High Courts.

Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power

to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution;

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

Art. 226 provides the provisions related to Power of High Courts to issue certain writs.

Art. 226.1

Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

Art. 226.2

The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

Art. 226.3

Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without –

- a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
- b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

Art. 226.4

The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

Art. 226A

Constitutional validity of Central laws not to be considered in proceedings under article 226. Rep. by the Constitution (Forty-third Amendment) Act, 1977, s. 8 (w.e.f. 13-4-1978).

Art. 227 provides the provisions related to Power of superintendence over all courts by the High Court.

Art. 227.1

Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

Art. 227.2

Without prejudice to the generality of the foregoing provision, the High Court may –

- a) call for returns from such courts;
- b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
- c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

Art. 227.3

The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

Art. 227.4

Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

Art. 228 provides the provisions related to Transfer of certain cases to High Court.

If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may –

- a) either dispose of the case itself, or
- b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

Art. 228A provides the special provisions related to *disposal of questions relating to constitutional validity of State laws. Rep. by the Constitution (Forty-third Amendment) Act, 1977, s. 10 (w.e.f. 13-4-1978).*

Art. 229 provides the provisions related to Officers and servants and the expenses of High Courts.

Art. 229.1

Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct;

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

Art. 229.2

Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose;

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

Art. 229.3

The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

Art. 230 provides the provisions related to Extension of jurisdiction of High Courts to Union territories.

Art. 230.1

Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.

Art. 230.2

Where the High Court of a State exercises jurisdiction in relation to a Union territory, -

- a) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction; and
- b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President.

Art. 231 provides the provisions related to Establishment of a common High Court for two or more States.

Art. 231.1

Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

Art. 231.1

In relation to any such High Court, -

- a) Omitted by the Constitution (Ninety-ninth Amendment) Act, 2014, s. 10 (w.e.f. 13-4-2015). {“the reference in article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction;”.}
- b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts, be construed as a reference to the Governor of the State in which the subordinate courts are situate; and
- c) the references in articles 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat;

Provided that if such principal seat is in a Union territory, the references in articles 219 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India.

CHAPTER V

COMPTROLLER AND AUDITOR-GENERAL OF INDIA

Art. 148 provides the provisions for Comptroller and Auditor-General of India.

Art. 148.1

There shall be a Comptroller and Auditor- General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

Art. 148.2

Every person appointed to be the Comptroller and Auditor-General of India 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.

Art. 148.3

The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule:

Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

Art. 148.4

The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

Art. 148.5

Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

Art. 148.6

The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of the persons serving in that office, shall be charged upon the Consolidated Fund of India.

Art. 149 provides the Duties and powers of the Comptroller and Auditor- General.

The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

Art. 150 provides the Form of accounts of the Union and of the States.

The accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the Comptroller and Auditor-General of India, prescribe.

Art. 151 provides the provisions Audit reports.

Art. 151.1

The reports of the Comptroller and Auditor- General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

Art. 151.2

The reports of the Comptroller and Auditor- General of India relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.