

CONSTITUTIONAL HISTORY

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

Source of the Constitution

- We, the people of India.
- The phrase “We the people of India” emphasizes that the constitution is made by and for the Indian people and not given to them by any outside power.
- It also emphasizes the concept of popular sovereignty as laid down by Rousseau: All the power emanates from the people and the political system will be accountable and responsible to the people.

Nature of Indian state

- Sovereign: India is internally and externally sovereign – externally free from the control of any foreign power and internally, it has a free government which is directly elected by the people and makes laws that govern the people. No external power can dictate the government of India.
- Socialist: “Socialism” as an economic philosophy where means of production and distribution are owned by the State. India adopted Mixed Economy, where apart from the state, there will be private production too. Socialism as a social philosophy stresses more on societal equality.

- Secular: Features of secularism as envisaged in the Preamble is to mean that the state will have no religion of its own and all persons will be equally entitled to the freedom of conscience and the right freely to profess, practice and propagate the religion of their choice. (S R Bommai and Others v Union of India, AIR 1994 SC 1918)
- Democratic: Indicates that the Constitution has established a form of Government which gets its authority from the will of the people. The rulers are elected by the people and are responsible to them.

- Republic: As opposed to a monarchy, in which the head of state is appointed on the hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years. The post of the President Of India is not hereditary. Every citizen of India is eligible to become the President of the country.

Objectives of Indian State

- Justice : Social, Economic and Political.
- Equality : of status and opportunity.
- Liberty : of thought, expression, belief, faith and worship
- Fraternity (=Brotherhood) : assuring the dignity of the individual and the unity and integrity of the nation.

Fundamental Rights (Articles 12-35)

- Enshrined in Part-III of Indian Constitution, Fundamental Rights are the basic human rights guaranteed by the Constitution of India. The six fundamental rights include Right to Equality, Right to freedom, Right against exploitation, Right to freedom of Religion, Cultural and Educational Rights and Right to constitutional Remedies.
- Fundamental Rights is one of the important topics in Indian polity subject in UPSC Syllabus. In this article, we will touch upon some of the most important points from this topic. We'll also discuss some of the previously asked questions centered around Fundamental Rights.
- Originally Right to property (Article 31) was also included in the Fundamental Rights. However, by the 44th Constitutional Amendment Act, 1978, it was deleted from the list of Fundamental Rights and made a legal right under Article 300A in Part XII of the constitution.

Fundamental Rights in India (Article 12-35)

- The development of Fundamental Rights in India is heavily inspired by United State's Bill of Rights.
- These rights are included in the constitution because they are considered essential for the development of the personality of every individual and to preserve human dignity.
- Fundamental Rights are included in Part-III of the Indian constitution which is also known as Magna Carta of Indian Constitution.
- These rights are called fundamental rights because they are justiciable in nature allowing persons to move the courts for their enforcement, if and when they are violated

Features of The Fundamental Rights

- FRs are protected and guaranteed by the constitution.
- FRs are NOT sacrosanct or absolute: in the sense that the parliament can curtail them or put reasonable restrictions for fixed period of time. However, the court has the power to review the reasonability of the restrictions.
- FRs are justiciable: The constitution allow the person to move directly to the Supreme Court for the reinforcement of his fundamental right as and when they are violated or restricted.
- Suspension of Fundamental Rights: All the Fundamental Rights are suspended during National Emergencies except the rights guaranteed under Article 20 and 21.
- Restriction of Fundamental Rights: The Fundamental Rights can be restricted during the military rule in any particular area.

Important Articles Related To Fundamental Rights

- **Article 12 : Defines The State**
- Article 12 of the Indian Constitution defines The State as:
 - The Government and Parliament of India,
 - The Government and legislatures of the states,
 - All local authorities and
 - Other authorities in India or under the control of the Government of India.

- Article 13 of the Indian Constitution states that:
- 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.
- 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.
- In this article, unless the context otherwise required, – (a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; (b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.
- Nothing in this article shall apply to any amendment of this Constitution made under article 368.

Classification of Fundamental Rights

1.Right to Equality	Article 14	Equality Before Law
	Article 15	Prohibition of Discrimination
	Article 16	Equality of Opportunity in Public Employment
	Article17	Abolition of Untouchability
	Article18	Abolition of Titles

2.Right to Freedom

Article 19

Protection of 6 Rights

- Right to freedom of speech and expression.
- Right to assemble peaceably and without arms.
- Right to form associations or unions or co-operative societies.
- Right to move freely throughout the territory of India.
- Right to reside and settle in any part of the territory of India.
- Right to practice any profession or to carry on any occupation, trade or business.

Article 20

Protection in Respect of Conviction for Offences

Article 21

Protection of Life and Personal Liberty

Article 21-A

Right to Education

Article 22

Protection Against Arrest and Detention

3.Right Against Exploitation	Article 23	Prohibition of Human Trafficking and Forced Labour
	Article 24	Prohibition of Child Labour
4.Right to Freedom of Religion	Article 25	Freedom of Conscience, Profession, Practice and Propagation
	Article 26	Freedom to Manage Religious Affairs
	Article 27	Freedom from Taxation for Promotion of a Religion
	Article 28	Freedom from Attending Religious Instruction

5.Educational and Cultural Rights	Article 29	Protection of Interests of Minorities
	Article 30	Right of Minorities to Establish and Administer Educational Institutions

<p>6.Right to Constitutional Remedies</p>	<p>Article 32</p>	<p>Right to remedies for the enforcement of the fundamental rights using five writs:</p> <ul style="list-style-type: none"> •Habeas Corpus - to direct the release of a person detained unlawfully. •Mandamus - to direct a public authority to do its duty. •Quo Warranto - to direct a person to vacate an office assumed wrongfully. •Prohibition - to prohibit a lower court from proceeding on a case. •Certiorari - power of the higher court to remove a proceeding from a lower court and bring it before itself.
	<p>Article 33</p>	<p>Empowers the Parliament to restrict or abrogate the fundamental rights of the ‘Members of the Armed Forces’, paramilitary forces, police forces, intelligence agencies and analogous forces</p>
	<p>Article 34</p>	<p>Provides for the restrictions on fundamental rights while martial law(military rule) is in force</p>
	<p>Article35</p>	<p>Empowers the Parliament to make laws on Fundamental Rights</p>

Amendments

- Changes to the fundamental rights require a constitutional amendment, which has to be passed by a special majority of both houses of Parliament.
- This means that an amendment requires the approval of two-thirds of the members present and voting.
- However, the number of members voting in support of the amendment shall not be less than the absolute majority of the total members of a house
- Fundamental rights not sacrosanct
- While deciding the Golaknath case in February 1967, the Supreme Court ruled that Parliament had no power to curtail the fundamental rights.
- The family of Henry and William Golak Nath held over 500 acres of farmland in Jalandhar, Punjab

THE FUNDAMENTAL DUTIES OF CITIZENS OF INDIA

- The fundamental duties of citizens were added to the constitution by the 42nd Amendment in 1976 under Article 51A part 4A, upon the recommendations of the Swaran Singh Committee.
- Initially while drafting the Constitution of India fundamental duties were not part of Constitution of India.
- The fundamental duties were inspired by constitution of USSR (now Russia).
- Originally ten in number, the fundamental duties were increased to eleven by the 86th Amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years.
- The other fundamental duties obligate all citizens to respect the national symbols of India, including the constitution, to cherish its heritage, preserve its composite culture and assist in its defense.

- They also obligate all Indians to promote the spirit of common brotherhood, protect the environment and public property, develop scientific temper, abjure violence, and strive towards excellence in all spheres of life.
- The violation of fundamental duties is not punishable offense unless it is backed by Legislative enactments like Prevention of Insults to National Honour Act, 1971, Forest Act, Environment Act, Pollution Act and others.
- Supreme court has ruled that these fundamental duties can also help the court to decide the constitutionality of a law passed by the legislature.
- There is reference to such duties in international instruments such as the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.

- The fundamental duties noted in the constitution are as follows:
- 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, wildlife 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 to fourteen years.
- The duty was included in the list of fundamental duties by 86th Amendment to the constitution of India in the year 2002.

Directive Principles of State Policy (DPSP)

- **Background:** The source of the concept of **Directive Principles of State Policy (DPSP)** is the Spanish Constitution from which it came in the Irish Constitution.
 - The concept of DPSP emerged from **Article 45 of the Irish Constitution.**
- **Constitutional Provisions: Part IV** of the Constitution of India (**Article 36–51**) contains the **Directive Principles of State Policy (DPSP).**
 - **Article 37** of the Indian Constitution States about the **application of the Directive Principles.**
 - These principles aim at ensuring **socio-economic justice** to the people and establishing India as a Welfare State.

Fundamental Rights Vs DPSP

- Unlike the Fundamental Rights (FRs), the **scope of DPSP is limitless** and it protects the rights of a citizen and work at a **macro level**.

.DPSP consists of all the **ideals which the State should follow** and keep in mind while formulating policies and enacting laws for the country.

- Directive Principles **are affirmative directions** on the other hand, Fundamental Rights are negative or prohibitive in nature because they put limitations on the State.
- The DPSP is **not enforceable by law**; it is non-justiciable.
- It is important to note that DPSP and **FRs** go hand in hand.
 - DPSP is **not subordinate to FRs**.

- **Classification of Principles:** The Directive Principles are classified on the basis of their ideological source and objectives. These are Directives based on:
 - **Socialist Principles**
 - **Gandhian Principles**
 - **Liberal and Intellectual Principles**

Directives based on Socialist Principles

- **Article 38:** The State shall strive to promote the welfare of the people by securing and protecting a social order by **ensuring social, economic and political justice** and by **minimising inequalities** in income, status, facilities and opportunities
- **Articles 39:** The State shall in particular, direct its policies towards securing:
 - Right to an **adequate means of livelihood** to all the citizens.
 - The **ownership and control of material resources** shall be organised in a manner to serve the common good.
 - The State shall **avoid concentration of wealth in a few hands.**
 - **Equal pay for equal work** for both men and women.
 - The protection of the strength and health of the workers.
 - Childhood and youth shall not be exploited.

- **Article 41:** To secure the **right to work, to education and to public assistance** in cases of unemployment, **old age, sickness and disability**.
- **Article 42:** The State shall make provisions for **securing just and humane conditions of work and for maternity relief**.
- **Article 43:** The State shall endeavour to **secure to all workers a living wage and a decent standard of life**.
 - **Article 43A:** The State shall take steps to secure the participation of workers in the management of industries.
- **Article 47:** To **raise the level of nutrition and the standard of living** of people and to improve public health.

Directives based on Gandhian Principles

- **Article 40:** The State shall take steps to **organise village panchayats** as units of Self Government
- **Article 43:** The State shall endeavour to **promote cottage industries** on an individual or cooperative basis in rural areas.
 - **Article 43B:** To promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.
- **Article 46:** The State shall **promote educational and economic interests of the weaker sections** of the people particularly that of the **Scheduled Castes (SCs), Scheduled Tribes (STs)** and **other weaker sections**.
- **Article 47:** The State shall take steps to **improve public health** and prohibit consumption of intoxicating drinks and drugs that are injurious to health.
- **Article 48:** To **prohibit the slaughter of cows, calves and other milch** and draught cattle and to improve their breeds.

- Directives based on Liberal-Intellectual Principles
- **Article 44:** The State shall endeavour to secure for the citizen a **Uniform Civil Code** through the territory of India.
- **Article 45:** To provide **early childhood care and education** for all children until they complete the **age of six years**.
- **Article 48:** To organise agriculture and animal husbandry on modern and scientific lines.
 - **Article 48A:** To protect and **improve the environment** and to safeguard the forests and wildlife of the country.
- **Article 49:** The State shall **protect every monument** or place of artistic or historic interest.

- **Article 50:** The State shall take steps to **separate judiciary from the executive** in the public services of the State.
- **Article 51:** It declares that to **establish international peace and security** the State shall endeavour to:
 - Maintain just and honourable relations with the nations.
 - Foster respect for international law and treaty obligations.
 - Encourage settlement of international disputes by arbitration.

Amendments in DPSP:

- **42nd Constitutional Amendment, 1976:** It introduced certain changes in the part-IV of the Constitution by adding new directives:
 - **Article 39A:** To provide **free legal aid** to the poor.
 - **Article 43A:** Participation of workers in management of Industries.K1M
 - **Article 48A:** To protect and improve the environment.
- **44th Constitutional Amendment, 1978:** It inserted Section-2 to Article 38 which declares that; “The State in particular shall strive to minimise economic inequalities in income and eliminate inequalities in status, facilities and opportunities not amongst individuals but also amongst groups”.
 - It also **eliminated the Right to Property** from the list of Fundamental Rights.
- **86th Amendment Act of 2002:** It changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A.

- Implementation of DPSP: Associated Acts and Amendments
- **Land Reforms:** Almost all the states have passed **land reform** laws to bring changes in the agrarian society and to improve the conditions of the rural masses. These measures include:
 - **Abolition of intermediaries** like zamindars, jagirdars, inamdars, etc
 - **Tenancy reforms** like security of tenure, fair rents, etc
 - Imposition of ceilings on land holdings
 - **Distribution of surplus land** among the landless labourers
 - **Cooperative farming**

- **Labour Reforms:** The following acts were enacted to protect the interests of the Labour section of the society.
 - The Minimum Wages Act (1948), **Code on Wages, 2020**
 - The **Contract Labour Regulation and Abolition Act (1970)**
 - The **Child Labour Prohibition and Regulation Act (1986)**
 - Renamed as the **Child and Adolescent Labour Prohibition and Regulation Act, 1986** in 2016.
 - The **Bonded Labour System Abolition Act (1976)**
 - The **Mines and Minerals (Development and Regulation) Act, 1957**
 - The **Maternity Benefit Act (1961)** and the Equal Remuneration Act (1976) have been made to protect the interests of women workers.

- **Panchayati Raj System:** Through **73rd Constitutional Amendment Act, 1992**, government fulfilled constitutional obligation stated in Article 40.
 - Three tier '**Panchayati Raj System**' was introduced at the Village, Block and District level in almost all parts of the country.
- **Cottage Industries:** To promote cottage industries as per **Article 43**, the government has established several Boards such as Village Industries Board, **Khadi and Village Industries Commission**, **All India Handicraft Board**, **Silk Board**, Coir Board, etc., which provide essential help to cottage industries in finance and marketing.
- **Education:** Government has implemented provisions related to free and compulsory education as provided in **Article 45**.
 - Introduced by the **86th Constitutional Amendment** and subsequently passed the **Rights to Education Act 2009**, Elementary Education has been accepted as Fundamental Right of each child between the 6 to 14 years of age.

- **Rural Area Development:** Programmes such as the Community Development Programme (1952), **Integrated Rural Development Programme** (1978-79) and **Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA-2006)** were launched to raise the standard of living particularly in rural areas, as stated in the **Article 47** of the Constitution.
- **Health:** Central Government sponsored schemes like **Pradhan Mantri Gram Swasthya Yojana (PMGSY)** and **National Rural Health Mission (NRHM)** are being implemented to fulfill the social sector responsibility of the Indian State.
- **Environment:** The **Wildlife (Protection) Act, 1972**, the **Forest (Conservation) Act, 1980** and the **Environment (Protection) Act, 1986** have been enacted to safeguard the wildlife and the forests respectively.
The **Water and Air Pollution Control Acts** have provided for the establishment of the **Central Pollution Control Board**.
- **Heritage Preservation:** The **Ancient and Historical Monument and Archaeological Sites and Remains Act (1958)** has been enacted to protect the monuments, places and objects of national importance.

The President of India (Articles 52-62)

- **Part V of the Constitution (The Union) under Chapter I (The Executive) lists out the qualification, election and impeachment of the President of India.**
- The **President of India** is the head of state of the Republic of India. The President is the formal head of the executive, legislature and judiciary of India and is also the commander-in-chief of the Indian Armed Forces.
- Although Article 53 of the Constitution of India states that the President can exercise his or her powers directly or by subordinate authority, with few exceptions, all of the executive authority vested in the President are, in practice, exercised by the Council of Ministers (CoM).

- **Part V The Union**
- **Chapter I The Executive**
- **ARTICLE 52 : THE PRESIDENT OF INDIA**
- There shall be a President of India.
- **ARTICLE 53 : EXECUTIVE POWER OF THE UNION**
- (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
- (2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.
- (3) Nothing in this article shall –
 - (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or
 - (b) prevent Parliament from conferring by law functions on authorities other than the President.

- **ARTICLE 54 : ELECTION OF PRESIDENT**

- The President shall be elected by the members of an electoral college consisting of –
 - (a) the elected members of both Houses of Parliament; and
 - (b) the elected members of the Legislative Assemblies of the States. Explanation: In this article and in article 55, “State” includes the National Capital Territory of Delhi and the Union territory of Pondicherry.

- **ARTICLE 55 : MANNER OF ELECTION OF PRESIDENT**

- (1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.
- (2) For the purpose of securing such uniformity among the States inter se as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the legislative Assembly of each state is entitled to cast at such election shall be determined in the following manner; –
 - (a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
 - (b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause

- (a) shall be further increased by one;
- (c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses
- (a) and
- (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

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

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

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.

- **ARTICLE 56 : TERM OF OFFICE OF PRESIDENT**

- (1) The President shall hold office for a term of five years from the date on which he enters upon his office:
Provided that –
- (a) the President may, by writing under his hand addressed to the Vice-President, resign his office;
- (b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61.
- (c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.
- (2) Any resignation addressed to the Vice-President under clause
- (a) of the proviso to clause
- (1) shall forthwith be communicated by him to the Speaker of the House of the People.

- **ARTICLE 57 : ELIGIBILITY FOR RE-ELECTION**

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

- **ARTICLE 58 : QUALIFICATIONS FOR ELECTION AS PRESIDENT**

- (1) No person shall be eligible for election as President unless he –
 - (a) is a citizen of India;
 - (b) has completed the age of thirty-five years, and
 - (c) is qualified for election as a member of the House of the People.
- (2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation: For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

- **ARTICLE 59 : CONDITIONS OF PRESIDENT'S OFFICE**

- (1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if 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.
- (2) The President shall not hold any other office of profit.
- (3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.
- (4) The emoluments and allowances of the President shall not be diminished during his term of office.

- **ARTICLE 60 : 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 function 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.”

- **ARTICLE 61 : PROCEDURE FOR IMPEACHMENT OF THE PRESIDENT**
- (1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.
- (2) No such charge shall be preferred unless –
 - (a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and
 - (b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.
- (3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.
- (4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

- **ARTICLE 62 : TIME OF HOLDING ELECTION TO FILL VACANCY IN THE OFFICE OF PRESIDENT AND THE TERM OF OFFICE OR PERSON ELECTED TO FILL CASUAL VACANCY**
- (1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.
- (2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

- Salary of Indian President is Rs.5 lakh. Until 2017, the President used to get Rs 1.50 lakh per month. In Budget 2018, it was increased to Rs 5 lakh per month.
- In addition to the salary, the President receives many other allowances and free facilities which include free medical, housing, and treatment facilities (whole life).
- The Government of India spends around Rs.2.25 crore rupees annually on other expenses like President's housing, staff, food and hosting of guests.
- Indian President's salary is $7000\$ * 12 = 84,000\$$, which is much lower when compared to US President's salary of 4,00,000\$.
- The president of the United States of America is also indirectly elected by the people through the Electoral College, but to a four-year term. He is one of only two nationally elected federal officers, the other being the Vice President of the United States. (In total, there are 538 electors, corresponding to the 435 members of the House of Representatives, 100 senators, and the three additional electors from the District of Columbia.)

- Under The Presidential and Vice-Presidential Elections Act, 1952, a candidate, to be nominated for the office of president of India needs 50 electors as proposers and 50 electors as seconders for his or her name to appear on the ballot.
- The general principle in Indian Presidential election is that the total number of votes cast by Members of Parliament equals the total number of votes cast by State Legislators.
- There are a total of 776 voters in both the Houses of Parliament. The Electoral College also consisted of 4120 MLAs in the states.
- The formula to determine the value of the vote of an MLA = Population of the state \div (No. of M.L.A.s in the state X 1000).
- The formula to determine the value of the vote of an MP = Total value votes assigned to all the M.L.A.s \div Total number of MPs.

- Each MP had a vote value of 708 in the Presidential Election 2012.
- Legislators from larger states cast more votes than those from smaller states.
- If a state has few legislators, then each legislator has more votes; if a state has many legislators, then each legislator has fewer votes.
- JFYI: The President of India moves around in a custom built heavily armoured Mercedes Benz S600 Pullman Guard (which costs around Rs. 12 Crore).
- Nominated members cannot vote in the Presidential election. But they can participate in President's impeachment.
- PS: Nominated members can participate in Vice-President's election and removal.
- MLAs are involved in the Presidential election, but they have no role in President's impeachment. President's impeachment resolution requires a special majority of both houses of the parliament to pass.

Powers of Indian President

- Legislative
- Executive or Appointment powers
- Judicial powers
- Financial powers
- Diplomatic powers
- Military powers
- Pardoning Powers
- Emergency powers
- There are articles outside Chapter 1 of Part V related with powers of President of India like Article 72 and Articles 352-360.

Executive Functions

- 1. Head of the Union: The President is at the head of the Union Executive. Consequently, all executive powers are exercised in his name. The executive power of the Union to be exercised by the President is extended to the matters with respect to which Parliament has power to make laws and to conclude treaty and agreement.
- 2. Appointments: As head of the executive, the President appoints the Governors of States, the Judges of the Supreme Court and the High Courts, the Auditor General of India and many other high officials, such as the members of Finance Commission, Election commission, Union Public commission etc.

- 3. Appointment of the Prime Minister and other Ministers: The President also appoints the Prime Minister and with his advice the other Ministers of the Union Council of Ministers. But here too, as in all other appointments, the President can seldom use his discretion. He is, ordinarily, duty-bound to summon the leader of the political party which secures an absolute majority in the Lok Sabha to become the Prime Minister and form the Ministry.
- He does enjoy some discretionary powers in the matter only under exceptional circumstances. When no single political party wins a clear absolute majority and, as a result, no Council of Ministers can be formed without a coalition of parties the President can exercise his discretion judiciously in appointing the Prime Minister. Such situations developed in the past.
- India has entered into an age of coalition politics. And it may so happen that no single party will be able to secure an absolute majority, and the President may be required to exercise his discretionary power for some time to come, in appointing Prime Minister.

- 4. Can ask to prove Majority in Lok Sabha: Union Council of Ministers normally remains in office for five years, unless dissolved earlier for any reason. The President must be satisfied that the Council of Ministers enjoys the confidence of the majority of the Lok Sabha. In case of any doubt he can ask the Council of Ministers to prove its majority in the Lok Sabha, as the Prime Minister Sri H.D. Deve Gowda was asked by the President after the official withdrawal of support by the Congress Party from Ministry. The President can also dissolve the Union Council of Ministers in accordance with Article 75(2) of the constitution, if he finds that the Ministry does not enjoy the support of the majorities in the Lok Sabha.
- 5. Supreme Commander: As head of State, the President is the supreme Commander of the Armed Forces of India and is entitled to declare war or conclude a treaty.

Legislative Powers and Functions

- 1. President is a part of Parliament: The Union Legislature or Parliament consists of the President and two Houses of Parliament. The President is, therefore, an integral part of Union Legislature. He shall summon from time to time, either separately or jointly, the Houses of Parliament. The President can prorogue the Houses or either House of Parliament and, if necessary, can dissolve the lower Chamber of Parliament, the Lok Sabha. For example, the President dissolved the twelfth Lok Sabha in early 1999 when the confidence motion in favour of the Vajpayee government was lost in the Lok Sabha.
- 2. Summons and Addresses Parliament: The President may address either or both House of Parliament. In such address, at the first session after general election to the Lok Sabha and at beginning of a joint session of Parliament each year, he may place the reasons for summoning it. Apart from addressing Parliament, the President may also, in case of necessities, send messages to either House, or to both Houses [Article 86(2)]. Normally, the President does not send such a message, unless however, he has a serious disagreement with the Council of Ministers.

- 3. Nomination: The President nominates a number of members in both Houses. The chief purpose of the nomination is to ensure adequate representation in Parliament of all sections of population which many not always be achieved through elections.
- 4. Power in respect of Bills: The President has certain functions in respect of passing of a Bill. A bill passed by both the Houses of Parliament requires his assent in order to become an Act. He may give his assent to a bill or can withhold assent when a bill, after getting approved in both the Houses, is placed before the President. But, if Parliament, acting on President's refusal to assent to a bill, passes it again with or without amendment, for the second time and presents it to the President for his approval, the President shall not withhold his assent there from under Article 111. In other words, it becomes obligatory upon him to give his assent. In certain cases, prior sanction of the President is required for initiating any legislation. For instance, bill for formation of a new State or altering the boundaries of the existing State or States is to be placed before Parliament with prior approval of the President. Money bill is another example where obtaining of such approval of the President is a constitutional necessity.
- 5. Bill passed by a State Legislature: A bill passed by a State Legislature may also be reserved for the consideration of the President by the Governor of that State. The President enjoys this right in relation to a bill passed by a State Legislature only in such cases where those are referred to him by the Government of a State under Article 200.

Power to Promulgate Ordinances

- Except when both Houses of Parliament are in session, the President may promulgate such Ordinances as the circumstances appear to him to require (Article 123).
- Such an ordinance can have the same force and effect of an Act of Parliament. Such an ordinance shall cease to operate unless passed by both Houses of Parliament within the stipulated period.
- A.K. Roy vs. Union of India (1982) illustrates the proposition that the satisfaction of the President must be as to the existence of a situation which makes it necessary for the President to promulgate such an Ordinance.
- The more controversial and debatable legislative power of the President has always been the Ordinance Making Power. Usually the power to make the laws rests with the Parliament.
- However, special power on the President empowering him to promulgate ordinances when the Parliament is not in session and the circumstances are such which require immediate action.

- An ordinance cannot be promulgated when both the houses of parliament are in session. However, it may be passed when only one house is in session, the reason being that a law cannot be passed by only one house and thus it cannot meet a situation calling for immediate legislation.
- This power granted to the President in the Indian Constitution is unique and no such power has been conferred upon the executive in Britain or the USA.
- In justification of the inception of the Ordinance Making power in the Constitution, Dr Ambedkar said that there might be a situation of emergency when the Houses of the parliament are not in session.
- It is important that this situation should be dealt with and it seems to me that the only solution is to confer upon the President the power to promulgate the law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because the legislature is not in session.

Financial Powers and Functions

- The President of India also exercises financial powers.
- No money bill can be introduced in Parliament without the recommendations of the President.
- According to the Constitution of India, the Annual Financial Statement is placed by the President before both the Houses of Parliament.
- This statement shows the estimates of revenue and expenditure of the central Government for the next year.
- It may be pointed out that the proposal for taxation and expenditure cannot be made without the approval of the President. . No proposal for spending money or raising revenues for purposes of government can be introduced in Parliament without previous permission of the President.

Emergency Powers of the President

- 1. The constitution of India empowers the President to proclaim three kinds of Emergencies: National Emergency (Art. 352);
- 2. Emergency for failure of Constitutional Machinery in a State (Art. 356);
- 3. Financial Emergency (Art. 360)
- 1 National Emergency The President of India may issue a Proclamation of National Emergency when the security of India or any part thereof is threatened by war, armed rebellion or external aggression.
- Such a Proclamation of Emergency may remain in force for an indefinite period. During a Proclamation of National Emergency, the executive power of the States is to be exercised in accordance with the directions given by the Central Government. Parliament has the power to make laws on the subjects enumerated in the State List.
- The right to freedom of speech and expression, freedom to form association, freedom to practice and profession, etc., embodied in Article 19 shall remain suspended.

- 2. Failure of State Constitutional Machinery In Case of failure of Constitutional machinery in a State, the President of India is authorized to make a Proclamation to that effect. The maximum duration of this type of emergency is three (3) years. During such an emergency, the President may assume to himself the executive powers of the State. The powers of the legislatures of the State are to be exercised by the Union Parliament.
- 3. Financial Emergency The President may also issue a Proclamation of Financial if he is satisfied that the financial stability of India is threatened.
- This type of emergency may continue to remain in force for an indefinite period.
- The Central Government may give directions to the States for canons of financial propriety. All money-bills passed by the State Legislatures are to be reserved for the consideration of the President.
- The President of India grants, pardons, reprieves or remissions of punishment to any person who has been convicted by a Court of Law.

Diplomatic powers

- All international treaties and agreements are negotiated and concluded on behalf of the President. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet (especially the Foreign).
- Also, such treaties are subject to the approval of the Parliament. The President represents India in international forums and affairs where such a function is chiefly ceremonial.
- The President may also send and receive diplomats, i.e. the officers from the Indian Foreign Service.
- The President is the first citizen of the country.
- Military powers The President is the Supreme Commander of the Indian Armed Forces.
- The President can declare war or conclude peace, on the advice of the Union Council of Ministers headed by the Prime Minister. All important treaties and contracts are made in the President's name.
- He also appoints the chiefs of the service branches of the armed forces.

Pardoning Powers / Judicial Powers

- The President of India grants, pardons, reprieves or remissions of punishment to any person who has been convicted by a Court of Law. As mentioned in Article 72 of the Indian Constitution, the President is empowered with the powers to grant pardons in the following situations:
 - Punishment is for an offence against Union Law
 - Punishment is by a Military Court
 - Sentence is that of death
- The decisions involving pardoning and other rights by the President are independent of the opinion of the Prime Minister or the Lok Sabha majority.
- In most cases, however, the President exercises his executive powers on the advice of the Prime Minister and the cabinet.

