



JAWAHARLAL COLLEGE OF ENGINEERING AND TECHNOLOGY

(Approved by AICTE, Affiliated to APJ Abdul Kalam Technological

University, Kerala)

DEPARTMENT OF COMPUTER SCIENCE AND ENGINEERING

(NBA Accredited)



COURSE MATERIAL

MCN202 CONSTITUTION OF INDIA

VISION OF THE INSTITUTION

Emerge as a centre of excellence for professional education to produce high quality engineers and entrepreneurs for the development of the region and the Nation.

MISSION OF THE INSTITUTION

- To become an ultimate destination for acquiring latest and advanced knowledge in the multidisciplinary domains.
- To provide high quality education in engineering and technology through innovative teaching-learning practices, research and consultancy, embedded with professional ethics.
- To promote intellectual curiosity and thirst for acquiring knowledge through outcome based education.
- To have partnership with industry and reputed institutions to enhance the employability skills of the

students and pedagogical pursuits.

- To leverage technologies to solve the real life societal problems through community services.

ABOUT THE DEPARTMENT

- Established in: 2008
- Courses offered: B.Tech in Computer Science and Engineering
- Affiliated to the A P J Abdul Kalam Technological University.

DEPARTMENT VISION

To produce competent professionals with research and innovative skills, by providing them with the most conducive environment for quality academic and research oriented undergraduate education along with moral values committed to build a vibrant nation.

DEPARTMENT MISSION

- Provide a learning environment to develop creativity and problem solving skills in a professional manner.
- Expose to latest technologies and tools used in the field of computer science.
- Provide a platform to explore the industries to understand the work culture and expectation of an organization.
- Enhance Industry Institute Interaction program to develop the entrepreneurship skills.
- Develop research interest among students which will impart a better life for the society and the nation.

PROGRAMME EDUCATIONAL OBJECTIVES

Graduates will be able to

- Provide high-quality knowledge in computer science and engineering required for a computer professional to identify and solve problems in various application domains.
- Persist with the ability in innovative ideas in computer support systems and transmit the knowledge and skills for research and advanced learning.
- Manifest the motivational capabilities, and turn on a social and economic commitment to community services.

PROGRAM OUTCOMES (POS)

Engineering Graduates will be able to:

1. **Engineering knowledge:** Apply the knowledge of mathematics, science, engineering fundamentals, and an engineering specialization to the solution of complex engineering problems.
2. **Problem analysis:** Identify, formulate, review research literature, and analyze complex engineering problems reaching substantiated conclusions using first principles of mathematics, natural sciences, and engineering sciences.
3. **Design/development of solutions:** Design solutions for complex engineering problems and design system components or processes that meet the specified needs with appropriate consideration for the public health and safety, and the cultural, societal, and environmental considerations.
4. **Conduct investigations of complex problems:** Use research-based knowledge and research methods including design of experiments, analysis and interpretation of data, and synthesis of the information to provide valid conclusions.
5. **Modern tool usage:** Create, select, and apply appropriate techniques, resources, and modern engineering and IT tools including prediction and modeling to complex engineering activities with an understanding of the limitations.
6. **The engineer and society:** Apply reasoning informed by the contextual knowledge to assess societal, health, safety, legal and cultural issues and the consequent responsibilities relevant to the professional engineering practice.
7. **Environment and sustainability:** Understand the impact of the professional engineering solutions in societal and environmental contexts, and demonstrate the knowledge of, and need for sustainable development.
8. **Ethics:** Apply ethical principles and commit to professional ethics and responsibilities and norms of the engineering practice.
9. **Individual and team work:** Function effectively as an individual, and as a member or leader in diverse teams, and in multidisciplinary settings.
10. **Communication:** Communicate effectively on complex engineering activities with the engineering community and with society at large, such as, being able to comprehend and write effective reports and design documentation, make effective presentations, and give and receive clear instructions.
11. **Project management and finance:** Demonstrate knowledge and understanding of the engineering and management principles and apply these to one's own work, as a member and leader in a team, to manage projects and in multidisciplinary environments.
12. **Life-long learning:** Recognize the need for, and have the preparation and ability to engage in independent and life-long learning in the broadest context of technological change.

PROGRAM SPECIFIC OUTCOMES (PSO)

The students will be able to

- Use fundamental knowledge of mathematics to solve problems using suitable analysis methods, data structure and algorithms.
- Interpret the basic concepts and methods of computer systems and technical specifications to provide accurate solutions.
- Apply theoretical and practical proficiency with a wide area of programming knowledge, design new ideas and innovations towards research.

COURSE OUTCOMES:

S.NO	DESCRIPTION
C215.1	Explain the background of the present constitution of India and features.
C215.2	Utilize the fundamental rights and duties.
C215.3	Understand the working of the union executive, parliament and judiciary
C215.4	Understand the working of the state executive, legislature and judiciary.
C215.5	Utilize the special provisions and statutory institutions
C215.6	Show national and patriotic spirit as responsible citizens of the country

CO-PO AND CO-PSO MAPPING

	PO1	PO2	PO3	PO4	PO5	PO6	PO7	PO8	PO9	PO10	PO11	PO12	PSO1	PSO2	PSO3
C215.1						2	2	2		2					
C215.2						3	3	3		3					
C215.3						3	2	3		3					
C215.4						3	2	3		3					
C215.5						3	2	3		3					
C215.6						3	3	3	2	3					
						3	3	3		3					

Reference Materials

SYLLABUS:

UNIT	DETAILS	HOURS
I	Definition of constitution, historical back ground, salient features of the constitution. Preamble of the constitution, union and its territory. Meaning of citizenship, types, termination of citizenship.	4
II	Definition of state, fundamental rights, general nature, classification, right to equality, right to freedom, right against exploitation Right to freedom of religion, cultural and educational rights, right to constitutional remedies. Protection in respect of conviction for offences. Directive principles of state policy, classification of directives, fundamental duties.	6
III	The Union executive, the President, the vice President, the council of ministers, the Prime minister, Attorney-General, functions. The parliament, composition, Rajya sabha, Lok sabha, qualification and disqualification of membership, functions of parliament. Union judiciary, the supreme court, jurisdiction, appeal by special leave.	5
IV	The State executive, the Governor, the council of ministers, the Chief minister, advocate general, union Territories. The State Legislature, composition, qualification and disqualification of membership, functions The state judiciary, the high court, jurisdiction, writs jurisdiction	5
V	Relations between the Union and the States, legislative relation, administrative relation, financial Relations, Inter State council, finance commission. 1 5.2 Emergency provision, freedom of trade commerce and inter course, comptroller and auditor general of India, public Services, public service commission, administrative Tribunals. 2 5.3 Official language, elections, special provisions relating to certain classes, amendment of the Constitution.	5
	TOTAL HOURS	25

MODULE 1

Definition of Constitution

A constitution is the basic design of the structure and powers of the government and the rights and duties of its citizens.

- There can be no nation without a constitution.
- Constitution need not to be written in nature

- Based on amendment nature, constitution has divided into 2 > Rigid and Flexible constitution.

Historical Background of Indian Constitution

- As early as in Dec 1918, in the 33rd session of the Indian National Congress held in Delhi, a resolution was unanimously adopted demanding for free will and right for India.
- In 1928, Jawaharlal Nehru presented a draft for the constitution of India.
- It was in 1934 that the idea of a Constituent Assembly for India was put forward for the first time by M.N. Roy, a pioneer of communist movement in India.
- In 1942, Sir Stafford Cripps, a Member of the Cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after the World War II.
- The Cripps Proposals were rejected by the Muslim League, which wanted India to be divided into two autonomous states with two separate Constituent Assemblies.
- 9th Dec 1946, The constituent assembly meeting held to frame constitution under the temporary chairmanship of Dr. Sachidanand Sinha.
- Later, Dr. Rajendra Prasad elected as the permanent chairman of constituent assembly.
- After 15th AUG 1947, the constituent assembly became independent to take decisions as India got independence from British rule.
- Dr. B.R. Ambedkar was appointed as the chairman of the Drafting committee which submitted their draft report to constituent assembly on 1948.
- On 26th Nov, 1949 , the constitution of India was adopted and was signed by Dr.Rajendra Prasad – Chairman of constituent assembly.

- In 1950, final session of constituent assembly unanimously elected Dr. Rajendra Prasad as the first president of Independent India after which constitution of India became operational.
- ✓ 1. The constituent assembly ratified the India's membership of the Commonwealth in May 1949.
- ✓ 2. It adopted the national flag on July 22, 1947.
- ✓ 3. It adopted the national anthem on January 24, 1950. 4. It adopted the national song on January 24, 1950.
- ✓ 5. It elected Dr. Rajendra Prasad as the first President of India on January 24, 1950.
- In brief, it took constituent assembly 2 years, 11 months and 17 days to finalize the constitution of India.
- Originally (1949), the Constitution contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules

Salient Features of Indian Constitution

1. Longest Written Constitution

1. Longest of all the written Constitutions of the world
2. Presently (2019), it consists of a Preamble, about 470 Articles (divided into 25 Parts) and 12 Schedules
3. Written, like the American Constitution, or unwritten, like the British Constitution.

2. Sovereign. Democratic. Secular. Socialist & Republic

3. Parliamentary form of government

- ✓ The parliamentary system is based on the principle of co-operation and co-ordination between the legislative and executive organs (British Parliamentary System of Government)

4. Combination of Flexibility and Rigidity

- ✓ (Art 368) deals with amendment provision

5. Single Citizenship

- ✓ In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship

✓ **Bi – Cameral Union government**

✓ Upper House and Lower House

7. **Independent Federal Judiciary**

✓ Integrated as well as independent judicial system

✓ The Supreme Court stands at the top of the integrated judicial system in the country

8. **Fundamental Rights and Duties**

✓ Part III of the Indian Constitution guarantees six fundamental rights to all the citizens

✓ The Part IV-A of the Constitution specifies the eleven Fundamental Duties

✓ **Directive Principles of State Policy (DPSP)**

✓ The Directive Principles are meant for promoting the idea of social and economic democracy (Welfare state)

10. **Single Election Commission**

11. **State Languages**

1. **Emergency Provisions**

2. Emergency provisions to enable the President to meet any extraordinary situation effectively. (Art 352. 356. 360)

Preamble of the Constitution

- The constitution of India begins with a preamble which specifies the nature of the Indian state.
- Preamble is an introduction or preface to the constitution
- Acc to N.A. Palkhivala – “Preamble is an identity card of the constitution”
- Every constitution begins with a preamble
- It is the soul and key of every constitution
- Preamble defines the basic structure of constitution
- Preamble was adopted by constituent assembly on 26th Nov 1949. (Later amendments made)

- **Sovereign**: The word ‘sovereign’ implies that India is neither a dependency nor a dominion of any other nation, but an independent state
- **Socialist**: The Indian brand of socialism is a ‘democratic socialism’ and not a ‘communistic socialism’ (Mixed Economy)
- **Democratic**: The term ‘democratic’ is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy.
- **Republic**: Therefore, the term ‘republic’ in our Preamble indicates that India has an elected head called the president. He is elected indirectly for a fixed period of five years.
- **Justice**: The term ‘justice’ in the Preamble embraces three distinct forms– social, economic and political
- **Liberty**: The term ‘liberty’ means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.
- **Equality**: The term ‘equality’ means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.
- **Fraternity**: Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship.

Union and its Territory

- Articles 1 to 4 under Part-I of the Constitution deal with the Union and its territory.

- **Article 1** describes India, that is, Bharat as a ‘Union of States’
- The Constituent Assembly had to adopt a mix of both (‘India, that is, Bharat’)
- The country is an integral whole and divided into different states only for the convenience of administration
- According to **Article 1**, the territory of India can be classified into three categories:

1. Territories of the states

2. Union territories

3. Territories that may be acquired by the Government of India at any time.

- At present, there are 28 states and 9 union territories. The states are the members of the federal system and share a distribution of powers with the Centre.
- **Article 2** grants two powers to the Parliament: (a) the power to admit into the Union of India new states; and (b) the power to establish new states.
- **Article 3**, on the other hand, relates to the formation of or changes in the existing states of the Union of India. In other words, Article 3 deals with the internal re-adjustment of the territories of the constituent states of the Union of India
- **Article 3** authorizes the Parliament to: (a) form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state; (b) increase the area of any state; (c) diminish the area of any state; (d) alter the boundaries of any state; and (e) alter the name of any state

Moreover, the Constitution (**Article 4**) itself declares that laws made for admission or establishment of new states and formation of new states and alteration of areas, boundaries or names of existing states are not to be considered as amendments of the Constitution under Article 368. This means that such laws can be passed by a simple majority and by the ordinary legislative process.

Citizenship

- **Citizenship** is the status of a person recognized under the law of a country of belonging to thereof.
- Citizens are full members of the Indian State who enjoys all civil and political rights.
- The Constitution deals with the citizenship from Articles 5 to 11 under Part II

- **Single citizenship:** The citizens in India owe allegiance only to the Union. There is no separate state citizenship
- According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on January 26, 1950:

- (a) Persons domiciled in India
- (b) Persons migrated from Pakistan
- (c) Persons migrated to Pakistan but later returned
- (d) Persons of Indian origin residing outside India.

CITIZENSHIP ACT, 1955

- The Citizenship Act (1955) provides for acquisition and loss of citizenship after the commencement of the Constitution.

Acquisition of Citizenship (Types)

1. **Birth**
 - ✓ Citizenship by birth
2. **Descent : A person born outside India**
 - ✓ A person born outside India shall not be a citizen of India by descent, unless his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period
3. **Registration**
 - ✓ The Central Government may, on an application, register as a citizen of India any person
4. **Naturalisation**
 - ✓ The Central Government may, on an application, grant a certificate of naturalisation to any person
5. **Incorporation of territory**
 - ✓ If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India.

Loss of Citizenship

1. By Renunciation

Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship

2. By Termination

When an Indian citizen voluntarily acquires the citizenship of another country, his Indian citizenship automatically terminates.

3. By Deprivation

It is a compulsory termination of Indian citizenship by the Central government, if:

- (a) The citizen has obtained the citizenship by fraud:
- (b) The citizen has shown disloyalty to the Constitution of India:
- (c) The citizen has unlawfully traded or communicated with the enemy during a war;
- (d) The citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years; and
- (e) The citizen has been ordinarily resident out of India for seven years continuously.

MODULE – 2
Fundamental Rights & Duties,
Directive Principles of State Policy (DPSP)

DEFINITION OF STATE

- Article 12 has defined the term ‘State’. According to it, the State includes the following:
 1. Government and Parliament of India.
 2. Government and legislature of states.
 3. All local authorities, that is, municipalities, panchayats, district boards, improvement trusts, etc.
 4. All other authorities, that is, statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.

Fundamental Rights

- The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35.
- Part III of the Constitution is rightly described as the Magna Carta of India.
- It contains a very long and comprehensive list of ‘justiciable’ Fundamental Rights.
- Inspired from the Constitution of USA (i.e., Bill of Rights).
- The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination.

Nature of Fundamental Rights

- The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination.
- They uphold the equality of all individuals.
- The dignity of the individual.
- The larger public interest.

- **Unity of the nation.**
- **Prevent the establishment of an authoritarian and despotic rule in the country.**
- **They are defended and guaranteed by the Supreme Court.**
- **They are ‘fundamental’ also in the sense that they are most essential for the all-round development of the individuals.**

They can be suspended during the operation of a National Emergency.

Classification of Fundamental Rights

- **Originally, the Constitution of India provided for seven Fundamental Rights,**
 - 1. Right to Equality (Articles 14–18)**
 - 2. Right to Freedom (Articles 19–22)**
 - 3. Right against Exploitation (Articles 23–24)**
 - 4. Right to Freedom of Religion (Articles 25–28)**
 - 5. Cultural and Educational Rights (Articles 29-30)**
 - 6. Right to Property (Article 31)**
 - 7. Right to Constitutional Remedies (Article 32)**
 - **However, the right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978.**
 - **It is made a legal right under Article 300-A in Part XII of the Constitution.**
 - **So at present, there are only six Fundamental Rights.**

Right to Equality (Articles 14–18)

It implies:

- 1. Equality before law and equal protection of laws (Article 14) : It means absence of any special privileges in favour of any person.**

2. **Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15)**
3. **Equality of opportunity in matters of public employment (Article 16): It means equality of opportunity for all citizens in matters of employment or appointment to any office under the State.**
4. **Abolition of untouchability and prohibition of its practice (Article 17).**
5. **Abolition of titles except military and academic (Article 18).**

Right to Freedom (Articles 19–22)

It implies:

1. **(Article 19) guarantees to all citizens the six rights:**
 - (i) **Right to freedom of speech and expression.**
 - (ii) **Right to assemble peaceably and without arms.**
 - (iii) **Right to form associations or unions or co-operative societies.**
 - (iv) **Right to move freely throughout the territory of India.**
 - (v) **Right to reside and settle in any part of the territory of India.**
 - (vi) **Right to practice any profession or to carry on any occupation, trade or business.**
- (vii) **2. Protection in respect of conviction for offences (Article 20).**
- (viii) **3. Protection of life and personal liberty (Article 21).**
- (ix) **4. Right to elementary education (Article 21A): It implies that state shall provide free and compulsory education to all children of the age of 6 - 14 years**
- (x) **5. Protection against arrest and detention in certain cases (Article 22).**

Right against Exploitation (Articles 23–24)

(a) Prohibition of traffic in human beings and forced labour (Article 23):

It prohibits traffic in human beings, forced labour. The 'traffic in human beings' include

- Selling and buying of men, women and children like goods;
- Immoral traffic in women and children, including prostitution;
- Devadasis and
- Slavery

(b) Prohibition of employment of children in factories, etc. (Article 24).

Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities like construction work or railway.

Right to freedom of religion (Article 25–28)

1. Freedom of conscience and free profession, practice and propagation of religion (Article 25): It implies the inner freedom of an individual to declare one's religious beliefs and faith openly and freely.
2. Freedom to manage religious affairs (Article 26).
3. Freedom from payment of taxes for promotion of any religion (Article 27). It means that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination.
4. Freedom for attending religious instruction or worship in certain educational institutions (Article 28)

Cultural and Educational Rights (Articles 29–30)

(a) Protection of language, script and culture of minorities (Article 29): Article 29 provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same.

(b) Right of minorities to establish and administer educational institutions (Article 30).

Right to constitutional remedies (Article 32)

- **Right to move the Supreme Court for the enforcement of fundamental rights including the writs (writs as extraordinary remedies to uphold the rights and liberties) of**
1. **Habeas corpus**: It is a Latin term which literally means ‘to have the body of’. It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it.
 2. **Mandamus** : It literally means ‘we command’. It is a command issued by the court to a public official asking him to perform his official duties that he/she has failed or refused to perform.
 3. **Prohibition** : Literally, it means ‘to forbid’. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction that it does not possess
 4. **Certiorari**: It means ‘to be certified’ or ‘to be informed’. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case.
 5. **Quo warranto** (Article 32): In the literal sense, it means ‘by what authority or warrant’. It is issued by the court to enquire into the legality of claim of a person to a public office.

Directive Principles of State Policy (DPSP)

- **The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51.**
- **The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution.**
- **Dr. B.R. Ambedkar described these principles as ‘novel features’ of the Indian Constitution.**

FEATURES OF THE DPSP

- **It denotes the ideals that the State should keep in mind while formulating policies and enacting laws.**
- **The Directive Principles resemble the ‘Instrument of Instructions’**

- **It promotes the concept of a ‘welfare state’ and not that of a ‘police state’**
- **They are not legally enforceable by the courts.**

CLASSIFICATION OF THE DPSP

3 broad categories

1. Socialistic Principles
2. Gandhian Principles
3. Liberal-intellectual Principles

Socialistic Principles

- These principles reflect the ideology of socialism.
- Aims at providing social and economic justice
- To promote the welfare of the people (Article 38)
- To promote equal justice and to provide free legal aid to the poor (Art 39)
- Equitable distribution of material resources of the community for the common good (Art 39)
- Prevention of concentration of wealth (Art 39)
- Equal pay for equal work for men and women (Art 39)
- To secure a living wage, a decent standard of life (Art 43)
- To secure the right to work, to education (Art 43)

Gandhian Principles

- These principles are based on Gandhian ideology.
- To organise village panchayats to function as units of self-government (Article 40)
- To promote Village and cottage industries (Art 43)
- To promote the educational and economic interests of SCs, STs, and other weaker sections of the society (Art 46)

- To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47)

Liberal-Intellectual Principles

- This principles represent the ideology of liberalism.
- Uniform Civil Code throughout the country (Article 44)
- To provide early childhood care and education for all children until they complete the age of six years (Article 45)
- To protect and improve the environment and to safeguard forests and wild life (Article 48 A)
- To protect monuments, places and objects of artistic or historic interest (Article 49)
- To promote international peace and security and maintain just and honourable relations between nations (Article 51)

NEW DPSP

- The 42nd Amendment Act of 1976 added four new Directive Principles to the original list.

They require the State:

1. To secure opportunities for healthy development of children (Article 39).
2. To promote equal justice and to provide free legal aid to the poor (Article 39 A).
3. To take steps to secure the participation of workers in the management of industries (Article 43 A).
4. To protect and improve the environment and to safeguard forests and wild life (Article 48 A).

Fundamental Duties

- The original constitution contained only the fundamental rights and not the fundamental duties.

- Later in 1976, the fundamental duties of citizens were added in the Constitution. In 2002, one more Fundamental Duty was added.
- The Fundamental Duties in the Indian Constitution are inspired by the Constitution of USSR.
- Swaran Singh Committee suggested the incorporation of eight Fundamental Duties in the Constitution, the 42nd Constitutional Amendment Act (1976) included ten Fundamental Duties.

LIST OF FUNDAMENTAL DUTIES

According to Article 51A, it shall be the duty of every citizen of India:

1. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
2. To cherish and follow the noble ideals that inspired the national struggle for freedom.
3. To uphold and protect the sovereignty, unity and integrity of India.
4. To defend the country and render national service when called upon to do so.
5. To promote harmony and the spirit of common brotherhood amongst all the people of India.
6. To value and preserve the rich heritage of the country's composite culture.
7. To protect and improve the natural environment including forests, lakes, rivers and wildlife.
8. To develop scientific temper, humanism and the spirit of inquiry and reform.
9. To safeguard public property and to abjure violence.
10. 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.

11. To provide opportunities for education to his child or ward between the age of 6 - 14 years. This duty was added by the 86th Constitutional Amendment Act, 2002.

Module – 3

The Union Executive, The Parliament & The Union Judiciary

The Union Executive

- Articles 52 to 78 in Part V of the Constitution deal with the Union executive.
- The Union executive consists of the President, the Vice President, the Prime Minister, the council of ministers and the Attorney General of India.

The President

- The President is the head of the Indian State.
- He is the first citizen of India and acts as the symbol of unity, integrity and solidarity of the nation.

ELECTION OF THE PRESIDENT

- The President is elected not directly by the people but by members of electoral college consisting of:
 1. The elected members of both the Houses of Parliament.
 2. The elected members of the legislative assemblies of the states.
 3. The elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry.
- Veto power: A bill passed by the Parliament can become an act only if it receives the assent of the President.

Qualifications for Election as President of India

A person to be eligible for election as President should fulfill the following qualifications:

1. He should be a citizen of India.
2. He should have completed 35 years of age.

3. He should be qualified for election as a member of the Lok Sabha.
4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

Note:

- ✓ First president of India: Dr. Rajendra Prasad. No person except Dr. Rajendra Prasad has occupied the office for two terms.
- ✓ Currently, we have Ram Nath Kovind as the 15th president of India.

Term of President's Office

- The President holds office for a term of five years
- He can resign from his office at any time by addressing the resignation letter to the Vice President.
- Further, he can also be removed from the office before completion of his term by the process of impeachment.

Impeachment of President

- The President can be removed from office by a process of impeachment.
- The impeachment charges can be initiated by either House of Parliament.
- These charges should be signed by one-fourth members of the House and a 14 days' notice should be given to the President.
- After the impeachment resolution is passed by a majority of two-thirds of the total membership of both Houses, then the President stands removed from his office from the date on which the resolution is so passed.

POWERS AND FUNCTIONS OF THE PRESIDENT

1. Executive powers: He appoints the prime minister and the other ministers, attorney general of India, the chief election commissioner, administers the union territories.

2. Legislative powers: He can summon the Parliament and dissolve the Lok Sabha and can hold Joint sessions of both houses. He nominates 12 members of the Rajya Sabha (Various fields) and nominate two members to the Lok Sabha from the Anglo-Indian Community

3. Financial powers: He constitutes a finance commission after every five years and make advances out of the contingency fund

4. Judicial powers: He appoints the Chief Justice and the judges of Supreme Court and high courts.

5. Diplomatic powers: He represents India in international forums and affairs and sends and receives diplomats like ambassadors, high commissioners, and so on.

6. Military powers: He is the supreme commander of the defense forces of India. In that capacity, he appoints the chiefs of the Army, the Navy and the Air Force.

7. Emergency powers: (a) National Emergency (Article 352); (b) President's Rule (Article 356 & 365); and (c) Financial Emergency (Article 360)

The Vice-President

- The Vice-President occupies the second highest office in the country.
- The Vice-President, like the president, is elected not directly by the people but by the method of indirect election. He is elected by the members of an electoral college consisting of the members of both Houses of Parliament.
- First Vice President of India : Dr. S. Radhakrishnan. Presently, Venkaiah Naidu is the Vice President of India.

Qualifications

To be eligible for election as Vice-President, a person should fulfill the following qualifications:

1. He should be a citizen of India.
2. He should have completed 35 years of age.
3. He should be qualified for election as a member of the Rajya Sabha.
4. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

Term of Office (Vice President)

- The Vice-President holds office for a term of five years.
- He can resign from his office at any time by addressing the resignation letter to the President.
- He can also be removed from the office before completion of his term. A formal impeachment is not required for his removal.
- He can be removed by a resolution passed at least 14 days' advance by a majority of all the members of the Rajya Sabha and agreed to by the Lok Sabha.

POWERS AND FUNCTIONS – VP

- He acts as the ex-officio Chairman of Rajya Sabha.
- He acts as President when a vacancy occurs in the office of the President due to his resignation, impeachment, death or otherwise.

The Prime Minister

- According to Indian constitution, president is the head of the State while Prime Minister is the head of the government.
- The President has to appoint the leader of the majority party in the Lok Sabha as the Prime Minister. (Article 75)
- Constitutionally, the Prime Minister may be a member of any of the two Houses of parliament.

POWERS AND FUNCTIONS OF THE PRIME MINISTER (Art 78)

In Relation to Council of Ministers

1. Head of the Union council of ministers
2. Recommends ministers to be appointed by the president
3. Allocates and reshuffles various portfolios
4. He guides, directs, controls, and coordinates the activities of all the ministers.

In Relation to the President

1. To communicate to the President all decisions of the council of ministers relating to the administration.
2. Advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners etc.,

In Relation to Parliament

- Prime Minister is the leader of the Lower House
- Summoning and dissolution of the Lok Sabha,

Other Powers & Functions

- Chairman of the NITI Ayog, National Integration Council, Interstate Council, National Water Resources Council and some other bodies.
- Chief spokesman of the Union government, leader of the party in power, crisis manager-in-chief during emergencies etc.,

Central Council of Ministers

- The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister.
- The council of ministers consists of three categories of ministers, namely,
 1. Cabinet ministers (Important ministries)
 2. Ministers of state (Independent charge of ministries)
 3. Deputy ministers

CONSTITUTIONAL STATUS OF COUNCIL OF MINISTERS (Role)

- Article 74 & 75 deals with the status of the council of ministers.
- Article 74 - Council of Ministers to aid and advise President
- Article 75: Total number of ministers, including the Prime Minister shall not exceed 15% of the total strength of the Lok Sabha.

Attorney General of India

- The Constitution (Article 76) has provided for the office of the Attorney General for India.
- He is the highest law officer in the country.
- The Attorney General (AG) is appointed by the president.
- He must be a citizen of India and he must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist.
- He holds office during the pleasure of the president.(No fixed term)

DUTIES AND FUNCTIONS OF AG

- To give advice to the Government of India upon legal matters.
- To perform duties of a legal character that are assigned to him by the president.
- To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
- He has the right to speak and to take part in the proceedings of both the Houses of Parliament.

The Parliament

- **The Parliament is the legislative organ of the Union government.**
- **Articles 79 to 122 in Part V of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers of the Parliament**

ORGANISATION/COMPOSITION OF PARLIAMENT

- Under the Constitution, the Parliament of India consists of three parts: the President, the Council of States(‘Rajya Sabha’) and the House of the People (‘Lok Sabha’)
- The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House).

- Though the President of India is not a member of either House of Parliament, he is an integral part of the Parliament. This is because a bill passed by both the Houses of Parliament cannot become law without the President's assent.

Rajya Sabha (Upper House)

Composition of Rajya Sabha

- The maximum strength of the Rajya Sabha (Fourth Schedule of the Constitution) is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president.
1. **Representation of States:** The representatives of states in the Rajya Sabha are elected by the elected members of state legislative assemblies. The seats are allotted to the states in the Rajya Sabha on the basis of population.
 2. **Representation of Union Territories:** The representatives of each union territory in the Rajya Sabha are indirectly elected by members of an electoral college specially constituted for the purpose.
 3. **Nominated Members:** The president nominates 12 members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service.
- The tenure of upper house is 6 years.
 - The Rajya Sabha (first constituted in 1952) is a continuing and permanent body and not subject to dissolution.

Lok Sabha (Lower House)

Composition of Lok Sabha

- The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 members are to be the representatives of the states, 20 members are to be the representatives of the union territories and 2 members are to be nominated by the president from the AngloIndian community.
- Its normal term is five years from the date of its first meeting after the general elections

1. Representation of States: The representatives of states in the Lok Sabha are directly elected by the people from the territorial constituencies in the states. (Universal Adult Franchise)
2. Representation of Union Territories: The Constitution has empowered the Parliament to choose the representatives of the union territories in the Lok Sabha.
3. Nominated Members: The president can nominate two members from the Anglo-Indian community.

MEMBERSHIP OF PARLIAMENT (Rajya Sabha & Lok Sabha)

Qualifications

The Constitution lays down the following qualifications for a person to be chosen a member of the Parliament (MP)

- He must be a citizen of India.
- He must be not less than 30 years of age in the case of the Rajya Sabha and not less than 25 years of age in the case of the Lok Sabha.
- He must be a member of a scheduled caste or scheduled tribe in any state or union territory, if he wants to contest a seat reserved for them.

Disqualifications

Under the Constitution, a person shall be disqualified for being elected as a member of Parliament:

- If he is of unsound mind and stands so declared by a court.
- If he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state
- If he is so disqualified under any law made by Parliament.
- He must not have been found guilty of certain election offences or corrupt practices in the elections.
- He must not have been convicted for any offence resulting in imprisonment for two or more years.

Note: Facts

- There is a Speaker and a Deputy Speaker for the Lok Sabha and a Chairman and a Deputy Chairman for the Rajya Sabha.
 - The Speaker and Deputy Speaker is elected by the Lok Sabha from amongst its members
 - The presiding officer of the Rajya Sabha is known as the Chairman. The vice-president of India is the ex-officio Chairman of the Rajya Sabha
 - The Deputy Chairman is elected by the Rajya Sabha itself from amongst its members
- He must not have been dismissed from government service for corruption or disloyalty to the State etc.,

FUNCTIONS OF PARLIAMENT

1. Legislative Powers and Functions: The primary function of Parliament is to make laws for the governance of the country
2. Executive Powers and Functions: It also supervises the activities of the Executive with the help of its committees like committee on government assurance, committee on subordinate legislation, committee on petitions, etc.
3. Financial Powers and Functions: The enactment of the budget, Tax Matters etc.,
4. Constituent Powers and Functions: Amendment of the Constitution requires consent from parliament
5. Judicial Powers and Functions : Impeach the President, Removal of the Vice-President etc.,
6. Electoral Powers and Functions: Election of the President and Vice-president. The Lok Sabha elects its Speaker and Deputy Speaker, while the Rajya Sabha elects its Deputy Chairman.
7. Other powers and functions: Approves all the three types of emergencies, It can increase or decrease the area, alter the boundaries and change the names of states of the Indian Union etc.,

Union Judiciary

- The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the high courts below it.
- Under a high court (and below the state level), there is a hierarchy of subordinate courts, that is, district courts and other lower courts.

Supreme Court of India

- The Supreme Court of India was inaugurated on January 28, 1950.
- Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court.

COMPOSITION AND APPOINTMENT OF JUDGES

- At present, the Supreme Court consists of thirty-four judges (one chief justice and thirty three other judges).

Appointment of Judges

- The judges of the Supreme Court are appointed by the president. The chief justice is appointed by the president after consultation with such judges of the Supreme Court and high courts as he deems necessary.
- The other judges are appointed by president after consultation with the chief justice.

Qualifications of Judges

A person to be appointed as a judge of the Supreme Court should have the following qualifications:

1. He should be a citizen of India.
2. (a) He should have been a judge of a High Court for five years; or
(b) He should have been an advocate of a High Court for ten years; or
(c) He should be a distinguished jurist in the opinion of the president.

JURISDICTION AND POWERS OF SUPREME COURT

The jurisdiction and powers of the Supreme Court can be classified into the following:

1. **Original Jurisdiction**: The Supreme Court decides the disputes between different units of the Indian Federation
2. **Writ Jurisdiction**: The Supreme Court is empowered to issue writs including habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of the fundamental rights.
3. **Appellate Jurisdiction**: The Supreme Court is primarily a court of appeal and hears appeals against the judgments of the lower courts.
4. **Advisory Jurisdiction**: The Constitution (Article 143) authorizes the president to seek the opinion of the Supreme Court.
5. **A Court of Record**: The judgments, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony
6. **Power of Judicial Review**: It is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments
7. **Constitutional Interpretation**: The Supreme Court is the ultimate and final interpreter of the Constitution. It is the guardian of the Constitution and guarantor of the fundamental rights of the citizens.
8. **Other Powers**: It decides the disputes regarding the election of the president and the vice-president. It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. Its law is binding on all courts in India.

Appeal by Special Leave

- It is a special power of Supreme court.
- The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court martial).

This provision contains the four aspects as under:

- It is a discretionary power and hence, cannot be claimed as a matter of right.
- It can be granted in any judgement whether final or interlocutory.
- It may be related to any matter—constitutional, civil, criminal, income-tax, labour, revenue, advocates, etc.
- It can be granted against any court or tribunal and not necessarily against a high court (of course, except a military court).
- Thus, the scope of this provision is very wide and it vests the Supreme Court with a plenary jurisdiction to hear appeals.

MODULE – 4

The State Executive, The State Legislature, The State Judiciary

The State Executive

- The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state
- Part VI of the Constitution deals with the government in the states
- Articles 153 to 167 in Part VI of the Constitution deal with the state executive.
- There is no office of vice-governor (in the state) like that of Vice-President at the Centre.

The Governor

- The governor is the chief executive head of the state
- The governor also acts as an agent of the central government.
- Usually, there is a governor for each state, but the 7th Constitutional Amendment Act of 1956 facilitated the appointment of the same person as a governor for two or more states.

APPOINTMENT OF GOVERNOR

- **The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president.**
- **He is appointed by the president by warrant under his hand and seal.**

Qualifications for the appointment

1. He should be a citizen of India.
2. He should have completed the age of 35 years.

3. He should not be a member of either House of Parliament or a House of the state legislature.
4. He should not hold any other office of profit

TERM OF GOVERNOR'S OFFICE

- A governor holds office for a term of five years from the date on which he enters upon his office.
- The President may transfer a Governor appointed to one state to another state for the rest of the term.
- Further, a Governor whose term has expired may be reappointed in the same state or any other state.

Powers And Functions Of Governor

1. Executive powers: He appoints the chief minister and other ministers, advocate general of a state, state election commissioner, the chairman and members of the state public service commission, acts as the chancellor of universities in the state. He also appoints the vice chancellors of universities in the state.

2. Legislative powers: He can address the state legislature, He nominates one-sixth of the members of the state legislative council from amongst persons having special knowledge or practical experience in literature, science, art, cooperative movement and social service. He can nominate one member to the state legislature assembly from the Anglo-Indian Community.

3. Financial powers: He sees that the Annual Financial Statement (state budget) is laid before the state legislature. He can make advances out of the Contingency Fund of the state to meet any unforeseen expenditure. He constitutes a finance commission after every five years

4. Judicial powers: He is consulted by the president while appointing the judges of the concerned state high court. He makes appointments, postings and promotions of the district judges in consultation with the state high court.

CHIEF MINISTER

- Chief Minister is the head of the state government.
- Article 164 says that the Chief Minister shall be appointed by the governor.
- The governor has to appoint the leader of the majority party in the state legislative assembly as the Chief Minister.
- But, when no party has a clear majority in the assembly, then the governor may exercise his personal discretion in the selection and appointment of the Chief Minister. In such a situation, the governor usually appoints the leader of the largest

party or coalition in the assembly as the Chief Minister and ask him to seek a vote of confidence in the House within a month.

APPOINTMENT OF CHIEF MINISTER

- A person who is not a member of the state legislature can be appointed as Chief Minister for six months
- According to the Constitution, the Chief Minister may be a member of any of the two Houses of a state legislature.

Term

- The term of the Chief Minister is not fixed and he holds office during the pleasure of the governor. However, this does not mean that the governor can dismiss him at any time.
- He cannot be dismissed by the governor as long as he enjoys the majority support in the legislative assembly.
- But, if he loses the confidence of the assembly, he must resign or the governor can dismiss him.

Powers And Functions Of Chief Minister

- In Relation to Council of Ministers
 - ✓ The governor appoints only those persons as ministers who are recommended by the Chief Minister.
 - ✓ He allocates and reshuffles the portfolios among ministers. He can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion.
 - ✓ He presides over the meetings of the council of ministers and influences its decisions.
 - ✓ He guides, directs, controls and coordinates the activities of all the ministers.
- In Relation to the Governor
 - ✓ He is the principal channel of communication between the governor and the council of ministers, to communicate to the Governor of the state all decisions of the council of ministers relating to the administration.
 - ✓ He advises the governor with regard to the appointment of important officials like advocate general, chairman and members of the state public service commission, state election commissioner, and so on.

Other Powers and Functions

- He is the chairman of the State Planning Board.

- He is a member of the Inter-State Council and the Governing Council of NITI Aayog, both headed by the prime minister.
- He is the chief spokesman of the state government.
- He is the crisis manager-in-chief at the political level during emergencies etc.,

STATE COUNCIL OF MINISTERS

- Article 163 deals with the status of the council of ministers while Article 164 deals with the appointment, tenure, responsibility, qualifications, oath and salaries and allowances of the ministers.
- Article 163: There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions.

Appointment Of Ministers

- 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.
- The total number of ministers, including the chief minister, in the council of ministers in a state shall not exceed 15 per cent of the total strength of the legislative assembly of that state.

ADVOCATE GENERAL OF THE STATE

- The Constitution (Article 165) has provided for the office of the advocate general for the states.
- He is the highest law officer in the state.

Appointment And Term

- The advocate general is appointed by the governor.
- He must be a person who is qualified to be appointed a judge of a high court. In other words, he must be a citizen of India and must have held a judicial office for ten years or been an advocate of a high court for ten years
- The term of office of the advocate general is not fixed by the Constitution.
- He holds office during the pleasure of the governor. This means that he may be removed by the governor at any time.

Duties And Functions

1. To give advice to the government of the state upon such legal matters which are referred to him by the governor.
2. To perform such other duties of a legal character that are assigned to him by the governor.

3. To discharge the functions conferred on him by the Constitution or any other law.
4. The advocate general is entitled to appear before any court of law within the state.

UNION TERRITORIES

- Under Article 1 of the Constitution, the territory of India comprises three categories of territories:
 - (a) Territories of the states;
 - (b) Union territories; and
 - (c) Territories that may be acquired by the Government of India at any time.
- At present, there are 28 States and 8 Union Territories and no acquired territories.
- The union territories, on the other hand, are those areas which are under the direct control and administration of the Central government. Hence, they are also known as 'centrally administered territories'
- Articles 239 to 241 in Part VIII of the Constitution deal with the union territories.
- Every union territory is administered by the President acting through an administrator appointed by him.
- An administrator of a union territory is an agent of the President and not head of state like a governor.
- The President can specify the designation of an administrator; it may be Lieutenant Governor or Chief Commissioner or Administrator.
- **There are 8 Union territories in India. The list for the same is given below:**
 1. Andaman and Nicobar Islands
 2. Dadra and Nagar Haveli and Daman and Diu
 3. Chandigarh
 4. Lakshadweep
 5. Puducherry
 6. Delhi
 7. Ladakh
 8. Jammu and Kashmir

STATE LEGISLATURE

Articles 168 to 212 in Part VI of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature.

Organisation Of State Legislature

There is no uniformity in the organisation of state legislatures.

Most of the states have an unicameral system, while others have a bicameral system.

In the states having bicameral system, the state legislature consists of the governor, the legislative council and the legislative assembly.

The legislative council (Vidhan Parishad) is the upper house (second chamber or house of elders), while the legislative assembly (Vidhan Sabha) is the lower house (first chamber or popular house).

COMPOSITION OF TWO HOUSES

Composition of Legislative Assembly

- The legislative assembly consists of representatives directly elected by the people on the basis of universal adult franchise.
- Its maximum strength is fixed at 500 and minimum strength at 60.
- The governor can nominate one member from the Anglo-Indian community
- The Constitution provided for the reservation of seats for scheduled castes and scheduled tribes in the assembly of each state on the basis of population ratios.

Composition of Legislative Council

- Unlike the members of the legislative assembly, the members of the legislative council are indirectly elected.
- The maximum strength of the council is fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 40.

Duration of Two Houses

- The legislative assembly is not a continuing chamber.
- Its normal term is five years from the date of its first meeting after the general elections
- The legislative council is a continuing chamber, that is, it is a permanent body and is not subject to dissolution.
- But, one-third of its members retire on the expiration of every second year. So, a member continues as such for six years.

MEMBERSHIP OF STATE LEGISLATURE

Qualifications:

- He must be a citizen of India.
- To bear true faith and allegiance to the Constitution of India
- To uphold the sovereignty and integrity of India

- He must be not less than 30 years of age in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly.
- A person to be elected to the legislative assembly must be an elector for an assembly constituency in the concerned state.
- He must be a member of a scheduled caste or scheduled tribe if he wants to contest a seat reserved for them.

Disqualifications:

- If he is of unsound mind and stands so declared by a court
- If he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state
- If he is so disqualified under any law made by Parliament.
- He must not have been found guilty of certain election offences or corrupt practices in the elections.
- He must not have been convicted for any offence resulting in imprisonment for two or more years.
- He must not have failed to lodge an account of his election expenses within the time.
- He must not have been dismissed from government service for corruption or disloyalty to the state.

Presiding Officers of State Legislature

- Each House of state legislature has its own presiding officer.
- There is a Speaker and a Deputy Speaker for the legislative assembly. The Speaker and Deputy Speaker are elected by the assembly itself from amongst its members.
- A Chairman and a Deputy Chairman for the legislative council.
- Chairman and Deputy Chairman are elected by the council itself from amongst its members.

Powers and Functions of The State Legislature

- Law Making Function: The State Legislature is empowered to make laws on State List and Concurrent List
- Financial Powers: The State Legislature keeps control over the finances of the State.

The State Judiciary

- In the Indian single integrated judicial system, the high court operates below the Supreme Court but above the subordinate courts.
- The judiciary in a state consists of a high court and a hierarchy of subordinate courts.
- The high court occupies the top position in the judicial administration of a state.
- Articles 214 to 231 in Part VI of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the high courts.

High Court

- The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory.
- The Constitution does not specify the strength of a high court and leaves it to the discretion of the president.

Appointment of Judges

- The judges of a high court are appointed by the President.
- The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned.

Qualifications of Judges

1. He should be a citizen of India.
2. He should have held a judicial office in the territory of India for ten years; or (b) He should have been an advocate of a high court (or high courts in succession) for ten years.

JURISDICTION AND POWERS OF HIGH COURT

- **Original Jurisdiction:** It means the power of a high court to hear disputes in the first instance, not by way of appeal
- **Writ Jurisdiction:** Article 226 of the Constitution empowers a high court to issue writs including habeas corpus, mandamus, certiorari, prohibition and quo warranto for the enforcement of the fundamental rights of the citizens and for any other purpose.
- The high court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction.
- **Appellate Jurisdiction:** A high court is primarily a court of appeal. It hears appeals against the judgments of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters.

- **Supervisory Jurisdiction:** A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals).
- **Control over Subordinate Courts:** A high court has an administrative control and other powers over the subordinate courts
- **A Court of Record:** The judgments, proceedings and acts of the high courts are recorded for perpetual memory and testimony.
- **Power of Judicial Review:** Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments.

MODULE – 5

Relations between the Union and the States (Centre-State Relations)

The Constitution of India divides all powers (Legislative, Executive and Financial) between the Centre and the states.

The Centre-state relations can be studied under three heads:

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

LEGISLATIVE RELATIONS

- Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the states.
- There are four aspects in the Centre-states legislative relations:
 1. Territorial extent of Central and state legislation;
 2. Distribution of legislative subjects;
 3. Parliamentary legislation in the state field;
 4. Centre's control over state legislation.

Distribution of Legislative Subjects

The Constitution provides for a three-fold distribution of legislative subjects between the Centre and the states:

1. List-I (the Union List)
2. List-II (the State List)
3. List-III (the Concurrent List)

4. The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List. (Defence, banking, foreign affairs, currency etc.,)
5. The state legislature has “in normal circumstances” exclusive powers to make laws with respect to any of the matters enumerated in the State List. (Public order, police, public health and sanitation, agriculture, etc.,)
6. Both, the Parliament and state legislature can make laws with respect to any of the matters enumerated in the Concurrent List. (Civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare etc.,)

Parliamentary Legislation in the State Field

The Constitution empowers the Parliament to make laws on any matter enumerated in the State List under the following five extraordinary circumstances:

1. When Rajya Sabha Passes a Resolution : If the Rajya Sabha declares that it is necessary in the national interest that Parliament should make laws with respect to goods and services tax or a matter in the State List
2. During a National Emergency: The Parliament acquires the power to legislate with respect to goods and services tax or matters in the State List, while a proclamation of national emergency is in operation.
3. When States Make a Request: When the legislatures of two or more states pass resolutions requesting the Parliament to enact laws on a matter in the State List.
4. To Implement International Agreements :The Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or conventions.
5. During President’s Rule: When the President’s rule is imposed in a state, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state.

Territorial Extent of Central and State Legislation

- The Parliament can make laws for the whole or any part of the territory of India.
- A state legislature can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable outside the state.
- The Parliament alone can make ‘extraterritorial legislation’. Thus, the laws of the Parliament are also applicable to the Indian citizens and their property in any part of the world.

Centre’s Control Over State Legislation

- The governor can reserve certain types of bills passed by the state legislature for the consideration of the President.
- Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the president. (For example, the bills imposing restrictions on the freedom of trade and commerce).
- The Centre can direct the states to reserve money bills and other financial bills passed by the state legislature for the President’s consideration during a financial emergency.

ADMINISTRATIVE RELATIONS

Articles 256 to 263 in Part XI of the Constitution deal with the administrative relations between the Centre and the states.

Distribution of Executive Powers

The executive power of the Centre extends to the whole of India:

- (i) To the matters on which the Parliament has exclusive power of legislation (i.e., the subjects enumerated in the Union List);
- (ii) To the exercise of rights, authority and jurisdiction conferred on it by any treaty or agreement.

Obligation of States and the Centre

- (a) The state has to ensure compliance with the laws made by the Parliament and any existing law which apply in the state
- (b) The state should not impede or prejudice the exercise of executive power of the Centre in the state

Centre's Directions to the States

The construction and maintenance of means of communication, protection of the railways within the state, protection of the railways within the state etc.

FINANCIAL RELATIONS

Articles 268 to 293 in Part XII of the Constitution deal with Centre state financial relations.

Allocation of Taxing Powers

The Parliament has exclusive power to levy taxes on subjects enumerated in the Union List and state legislature has exclusive power to levy taxes on subjects enumerated in the State List. There are no tax entries in the Concurrent List.

Distribution of Tax Revenue

- Taxes Levied by the Centre but Collected and Appropriated by the States (Article 268) E.g. Stamp duties
- Taxes Levied and Collected by the Centre but Assigned to the States (Article 269)
- Levy and Collection of Goods and Services Tax in Course of Inter-State Trade or Commerce (Article 269-A) (E.g. GST)
- Taxes Levied and Collected by the Centre but Distributed between the Centre and the States (Article 270)
- Taxes Levied and Collected and Retained by the States . E.g. Agricultural income, taxes on lands and buildings etc.,

Grants-in-Aid to the States

There are two types of grants-in-aid: Statutory grants and Discretionary grants.

Statutory Grants

Article 275 empowers the Parliament to make grants to the states which are in need of financial assistance and not to every state

Discretionary Grants

Article 282 empowers both the Centre and the states to make any grants for any public purpose, even if it is not within their respective legislative competence.

Finance Commission

- Article 280 provides for a Finance Commission to be constituted by President of India.
- The Finance Commission consists of a chairman and four other members.
- The commission submits its report to the president. He lays it before both the Houses of Parliament along with an explanatory memorandum as to the action taken on its recommendations.

FUNCTIONS

1. The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states of the respective shares of such proceeds.
2. The principles that should govern the grants-in-aid to the states by the Centre.
3. The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the state finance commission.
4. Any other matter referred to it by the president in the interests of sound finance.

INTER-STATE COUNCIL

- Article 263 contemplates the establishment of an Inter-State Council for the effect coordination between the states and between Centre and states.
- Thus, the President can establish such a council.

- The Sarkaria Commission on Centre-State Relations (1983–88) made a strong case for the establishment of a permanent Inter-State Council under Article 263 of the Constitution.

Functions

- Enquiring into and advising upon disputes which may arise between states.
- Investigating and discussing subjects in which the states or the Centre and the states have a common interest.
- Making recommendations upon any such subject, and particularly for the better co-ordination of policy and action on it.

Emergency Provisions

- The Emergency provisions are contained from Articles 352 to 360.
- These provisions enable the Central government to meet any abnormal situation effectively and to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution.
- During an Emergency, the Central government becomes all powerful and the states go into the total control of the Centre.

The Constitution stipulates three types of emergencies

- An emergency due to war, external aggression or armed rebellion (Article 352). This is popularly known as ‘National Emergency’. However, the Constitution employs the expression ‘proclamation of emergency’ to denote an emergency of this type.
- An Emergency due to the failure of the constitutional machinery in the states (Article 356). This is popularly known as ‘President’s Rule’. It is also known by two other names—‘State Emergency’ or ‘constitutional Emergency’. However, the Constitution does not use the word ‘emergency’ for this situation.
- Financial Emergency due to a threat to the financial stability or credit of India (Article 360).

Freedom of Trade Commerce and Inter course

- India had borrowed this provision from Section 92 of the Australian Constitution, it also made sure to include the provision that the free flow of goods is allowed not only between different States but also within a State as well.
- Article 301 of the Indian Constitution provides that the trade, commerce and intercourse in the country should be free throughout the country.
- This provision ensures removing the imposition of any restrictions which may be put up, it ensures the free flow of goods throughout the country.

COMPTROLLER AND AUDITOR GENERAL OF INDIA (CAG)

- The Constitution of India (Article 148) provides for an independent office of the Comptroller and Auditor General of India (CAG).
- He is the head of the Indian Audit and Accounts Department.
- His duty is to uphold the Constitution of India and laws of Parliament in the field of financial administration.

Appointment And Term

- The CAG is appointed by the president of India.
- He holds office for a period of six years or upto the age of 65 years, whichever is earlier.

DUTIES AND POWERS

- He audits the accounts related to all expenditure from the Consolidated Fund of India.
- He audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by any department of the Central Government and state governments.
- He audits the receipts and expenditure of the Centre and each state.
- He audits the receipts and expenditure of All bodies and authorities substantially financed from the Central or state revenues.

- He audits the accounts of any other authority when requested by the President or Governor.
- He acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament.

Public Services

The public services (civil services or government services) in India are classified into three categories–

1. All-India services
2. Central services
3. State services

All-India Services

All-India services are those services which are common to both Central and state governments. The members of these services occupy top positions (or key posts) under both the Centre and the states and serve them by turns.

At present, there are three all-India services.

1. Indian Administrative Service (IAS)
2. Indian Police Service (IPS)
3. Indian Forest Service (IFS)

Central Services

- The personnel of Central services work under the exclusive jurisdiction of the Central government. They hold specialised (functional and technical) positions in various departments of the Central government.
- Services are classified into group A, group B, group C and group D

State Services

- The personnel of state services work under the exclusive jurisdiction of the state government. They hold different positions (general, functional and technical) in the departments of the state government.

Union Public Service Commission

- The Union Public Service Commission (UPSC) is the central recruiting agency in India.
- Articles 315 to 323 in Constitution contain elaborate provisions regarding the composition, appointment and removal of members along with the independence, powers and functions of the UPSC.
- The UPSC consists of a chairman and other members appointed by the president of India. Usually, the Commission consists of nine to eleven members including the chairman.
- The chairman and members of the Commission hold office for a term of six years or until they attain the age of 65 years, whichever is earlier.

FUNCTIONS

- It conducts examinations for appointments to the all-India services, Central services and public services of the centrally administered territories.
- It serves all or any of the needs of a state on the request of the state governor and with the approval of the president of India.
- All matters relating to methods of recruitment to civil service and for civil posts
- Any other matter related to personnel management.

ADMINISTRATIVE TRIBUNALS

- Article 323 A empowers the Parliament to provide for the establishment of administrative tribunals for the adjudication of disputes relating to recruitment and conditions of service of persons appointed to public services of the Centre, the states, local bodies, public corporations and other public authorities.
- The 1985 act authorises the Central government to establish one Central administrative tribunal and the state administrative tribunals.

Central Administrative Tribunal (CAT)

- The Central Administrative Tribunal (CAT) was set up in 1985 with the principal bench at Delhi and additional benches in different states.
- At present, it has 17 regular benches, 15 of which operate at the principal seats of high courts and the remaining two at Jaipur and Lucknow.
- The CAT is a multi-member body consisting of a chairman and members.
- The CAT exercises original jurisdiction in relation to recruitment and all service matters of public servants covered by it.

State Administrative Tribunals

- The Administrative Tribunals Act of 1985 empowers the Central government to establish the State Administrative Tribunals (SATs) on specific request of the concerned state governments.
- SATs exercise original jurisdiction in relation to recruitment and all service matters of state government employees.
- The chairman and members of the SATs are appointed by the president after consultation with the governor of the state concerned.
- There is also an provision for setting up of joint administrative tribunal (JAT) for two or more states.

Official Language

Articles 343 to 351 of the Indian Constitution deals with the official language.

The provision of official language are divided into four heads

1. Language of the Union
2. Regional languages
3. Language of the judiciary
4. Texts of laws and Special directives

LANGUAGE OF THE UNION

- Hindi written in Devanagari script is to be the official language of the Union along with English.

REGIONAL LANGUAGES

- The legislature of a state may adopt any one or more of the languages in use in the state or Hindi as the official language of that state.
- Kerala – Malayalam

LANGUAGE OF THE JUDICIARY AND TEXTS OF LAWS

- English language can only be used for all proceedings in the Supreme Court and in every high court.
- The governor of a state, with the previous consent of the president, can authorise the use of Hindi or any other official language of the state, in the proceedings in the high court of the state.
- State legislature can prescribe the use of any language (other than English) with respect to bills, acts, ordinances, orders, rules, regulations or bye-laws, but a translation of the same in the English language is to be published.

Elections

- Articles 324 to 329 of the Indian Constitution explains the electoral system in our country.
- The Constitution (Article 324) provides for an independent Election Commission in order to ensure free and fair elections in the country.
- Election commission consists of a chief election commissioner and two election commissioners.
- There is to be only one general electoral roll for every territorial constituency for election to the Parliament and the state legislatures.
- No person is to be ineligible for inclusion in the electoral roll on grounds only of religion, race, caste, sex or any of them.
- Every person who is a citizen of India and who is 18 years of age, is entitled to vote at the election.
- Parliament may make provision with respect to all matters relating to elections to the Parliament and the state legislatures including the

preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing their due constitution.

- Elections for the Lok Sabha and every state Legislative Assembly have to take place every five years, unless called earlier.
- An Electronic Voting Machine (EVM) is a simple electronic device used to record votes.

Special Provisions Relating to Certain Classes

- In order to realize the objectives of equality and justice as laid down in the Preamble, the Constitution makes special provisions for the scheduled castes (SCs), the scheduled tribes (STs), the backward classes (BCs) and the Anglo-Indians.
- These special provisions are contained from Articles 330 to 342A of the Constitution.

Special Provisions are related to the following:

- 1. Reservation in Legislatures
- 2. Special Representation in Legislatures
- 3. Reservation in Services and Posts
- 4. Educational Grants
- 5. Appointment of National Commissions
- 6. Appointment of Commissions of Investigation

Amendment of the Constitution

Article 368 of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure.

The Constitution can be amended in three ways:

1. Amendment by simple majority of the Parliament
2. Amendment by special majority of the Parliament
3. Amendment by special majority of the Parliament and the ratification of half of the state legislatures.

PROCEDURE FOR AMENDMENT

- An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament and not in the state legislatures.
- The bill must be passed in each House by a special majority.
- After duly passed by both the Houses of Parliament and ratified by the state legislatures (where necessary)
- The president must give his assent to the bill.
- After the president's assent, the bill becomes an Act.