

50 MOST IMPORTANT TOPICS-UPSC PRELIMS 2024

POLITY AND GOVERNANCE

PART 2



| 50 Important Topics - 2024 [2 PM] | |
|-----------------------------------|-------------------------|
| Scheduled Date | Subject |
| 01/04/24 | Economy |
| 02/04/24 | Science & Technology |
| 03/04/24 | Environment & D.M. |
| 04/04/24 | Science & Technology |
| 05/04/24 | Environment & D.M. |
| 06/04/24 | ----- |
| 07/04/24 | ----- |
| 08/04/24 | Economy |
| 09/04/24 | Science & Technology |
| 10/04/24 | Economy |
| 11/04/24 | English |
| 12/04/24 | International Relations |
| 13/04/24 | ----- |
| 14/04/24 | ----- |
| 15/04/24 | Geography |
| 16/04/24 | ----- |
| 17/04/24 | Geography |
| 18/04/24 | ----- |
| 19/04/24 | Polity & Governance |
| 20/04/24 | Polity & Governance |
| 21/04/24 | ----- |
| 22/04/24 | Maths |
| 23/04/24 | Geography |
| 24/04/24 | Reasoning |
| 25/04/24 | Polity & Governance |
| 26/04/24 | International Relations |
| 27/04/24 | Environment & D.M. |
| 28/04/24 | Social Schemes |
| 29/04/24 | History |
| 30/04/24 | History |



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CSAT ₹1,500

GS ₹3,500

CSAT + General Studies ₹4,000



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1500 TOPICS

11th April 2024 - 29th April 2024

Special Inclusions

- 6 FLTs (3 GS+ 3 CSAT)
- Value Additions Material
- Subject Specific MCQS



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Evolution of Basic Structure Doctrine

Shankari Prasad case (1951)

1. Article 31A and 31B was introduced which supports 9th Schedule, by this any act in this schedule can't be void .
2. The SC ruled that the power to amend the Constitution under Article 368 also included the power to amend fundamental rights and that the word "law" in Article 13 (8) includes only an ordinary law made in exercise of the legislative powers and does not include Constitutional amendment which is made in exercise of constituent power.
3. Therefore, a Constitutional amendment will be valid even if it abridges or takes any of the fundamental rights.


Kerala Education Bill case (1958)

1. Doctrine of Harmonious Construction: It says that you need to constitute the provision of the constitution in such a way that fundamental rights and DPSP go hand in hand so this was there to avoid the situation of conflict while enforcing DPSP and Fundamental rights.
2. The Court held that there is no inherent conflict between FRs and DPSPs and the courts while interpreting a law should attempt to give effect to both as far as possible i. e. should try to harmonize the two as far as possible.
3. The court further said that where two interpretations of the law are possible, and one interpretation validates the law while other interpretation makes the law unconstitutional and void, then the first interpretation which validates the law should be adopted.

Golaknath case (1967)


1. Six judges in an 11 judge bench of Supreme Court. The Court ruled that Parliament's power to amend Constitution is also legislative power under Article 245, so that even a constitution amendment was also a law within the purview of Article 13 (2).
2. The court ruled that the Parliament cannot take away or abridge any of the Fundamental Rights, which are 'sacrosanct' in nature and can't be amended for the implementation of DPSPs.

24th
Constitutional
Amendment Act
1971



1. New Clause (4) added to Article 13 to provide that provisions of Article 13 will not apply on any amendment made under Article 368.
2. Amended Article 368 to state that Parliament has power to amend any part of the Constitution.
3. Made it obligatory for President to give assent to a constitutional amendment bill.

25th
Constitutional
Amendment Act
1971



1. Word 'Compensation' replaced by 'amount' in Article 31 (2)
2. Introduced New Article 31 (C) : If any law is passed to give effect to Article 39(b) or (c) of DPSP, it cannot be challenged on the ground of violation of the rights guaranteed by Articles 14, 19 and 31.
3. No law containing a declaration for giving effect to such policy shall be questioned in any court on any ground that it does not give effect to such a policy.

Kesavananda
Bharati case
(1973)

1. After the Golaknath case, the Parliament sought to supersede it by amending Article 368 through 24th and 25th CAA (added Article 31 C).
2. It asserted that Article 368 is not 'law' within the definition of article 13 and CAA will not be open to question even if they affect the fundamental rights.
3. Decision by a full bench by 13 judges- upheld cl. 4 of article 13 added by 24th CAA that nothing in this article shall apply to any amendment made under Article 368. But second part of article 31 C was seen as violative of judicial review.
4. Further it overruled Golaknath judgment and accepted that Fundamental Rights can be amended by the Parliament.

- Parliament reacted to this judicially innovated doctrine of 'basic structure' by enacting the 42nd Amendment Act (1976). This Act amended Article 368 and declared that there is no limitation on the constituent power of Parliament and no amendment can be questioned in any court on any ground including that of the contravention of any of the Fundamental Rights.

Minerva Mills case (1980)

1. It invalidated this provision as it excluded judicial review which is a 'basic feature' of the Constitution.
2. Parliament cannot, under article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic features.
3. Indian Constitution is founded on the bedrock of the harmony and balance between the Fundamental Rights and the Directive Principles.

Waman Rao case (1981)

1. Supreme Court clarified that it would apply to constitutional amendments enacted after April 24, 1973 (i.e., the date of the judgement in the Kesavananda Bharati case).

Basic Structure Doctrine:

- Supremacy of the Constitution
- Unity and sovereignty of India
- Democratic and republican form of government
- Federal character of the Constitution
- Secular character of the Constitution
- Separation of power
- Individual freedom
- Rule of law
- Judicial review
- Parliamentary system
- Rule of equality
- Harmony and balance between the Fundamental Rights and DPSP
- Free and fair elections
- Limited power of the parliament to amend the Constitution
- Power of the Supreme Court of India under Articles 32, 136, 142
- Power of the High Court under Articles 226 and 227
- Independence of Judiciary

Digital Personal Data Protection Act 2023

- In 2017, the Supreme Court recognised privacy as a fundamental right in the K.S. Puttaswamy vs. Union of India case
- Following this, the Justice Srikrishna Committee (established by the Ministry of Electronics and Information Technology (MeitY)) proposed the initial draft of the Personal Data Protection (PDP) Bill in 2018
- DPDP Act aims to regulate the processing of digital personal data while ensuring individuals' right to protect their data and the need to process it for lawful purposes

Digital Personal Data Protection Act 2023

- It protects digital personal data (that is, the data by which a person may be identified) by providing: obligations of Data Fiduciaries, rights and duties of Data Principals, Financial penalties for breach of rights, duties, and obligations
- Act shall apply to the processing of Personal Data in India, including both online and digitized offline data
- It will further extend to the processing of such data outside India relating to the offering of goods or services in India
- Personal Data may be processed only for the specified purpose and after obtaining the consent of the Data Principal (individual)

Digital Personal Data Protection Act 2023

- Obligations of Data Fiduciaries :

- (i) make reasonable efforts to ensure the accuracy and completeness of data,

- (ii) build reasonable security safeguards to prevent a data breach,

- (iii) inform the Data Protection Board of India and affected persons in the event of a breach, and

- (iv) erase personal data as soon as the purpose has been met and retention is not necessary for legal purposes (storage limitation).

In case of government entities, storage limitation and the right of the data principal to erasure will not apply.

Digital Personal Data Protection Act 2023

- **Rights and duties of data principal:**
- An individual, whose data is being processed (data principal), will have the right to:
 - (i) obtain information about processing,
 - (ii) seek correction and erasure of personal data,
 - (iii) nominate another person to exercise rights in the event of death or incapacity, and
 - (iv) grievance redressal.
- Data principals will have certain duties.
- Punishment for false complaints is also defined.

Digital Personal Data Protection Act 2023

- **Significant data fiduciaries:**

Certain data fiduciaries may be designated as significant data fiduciaries. Certain factors must be taken into regard such as:

- (i) volume and sensitivity of personal data processed,
- (ii) risks to the rights of data principals,
- (iii) security of the state, and
- (iv) public order.

- These entities will have certain additional obligations including:

- (i) appointing a data protection officer, and
- (ii) undertaking impact assessment and compliance audit.

Digital Personal Data Protection Act 2023

Exemptions:

- Rights of the data principal and obligations of data fiduciaries (except data security) will not apply in specified cases.
- These include:
 - (i) prevention and investigation of offences, and
 - (ii) enforcement of legal rights or claims.
- The central government may, by notification, exempt certain activities from the application of the act.
- These include:
 - (i) processing by government entities in the interest of the security of the state and public order, and
 - (ii) research, archiving, or statistical purposes.

Digital Personal Data Protection Act 2023

- For individuals with disabilities or below eighteen years of age, their consent will be provided by their parents or legal guardian
- It shall not apply to the Personal Data: (i) For any personal or domestic purpose or (ii) Is made or caused to be made publicly available by the Data Principal
- The Bill allows transfer of personal data outside India, except to countries restricted by the central government through notification
- **Data Protection Board of India:** Will be set up by the central government as a civil court with Original jurisdiction. Board members will be appointed for two years and will be eligible for re-appointment
- The Appeals against the decisions of the Board shall lie with the Telecommunications Dispute Settlement and Appellate Tribunal (TDSAT)
- Penalties: Rs 200 crore for non-fulfilment of obligations for children, Rs 250 crore for failure to take security

7th Constitutional Amendment Act 1956

1. Abolished the existing classification of states into four categories i.e., Part A, Part B, Part C and Part D states, and reorganised them into 14 states and 6 union territories.
2. Extended the jurisdiction of high courts to union territories.

7th Constitutional Amendment Act 1956

3. Provided for the establishment of a common high court for two or more states.
4. Provided for the appointment of additional and acting judges of the high court.(Article 224)

9th Constitutional Amendment Act 1960

1. Facilitated the cession of Indian territory of Berubari Union (located in West Bengal) to Pakistan as provided in the Indo-Pakistan Agreement (1958).

9th Constitutional Amendment Act 1960

1. Facilitated the cession of Indian territory of Berubari Union (located in West Bengal) to Pakistan as provided in the Indo-Pakistan Agreement (1958).

19th Constitutional Amendment Act 1966

1. Abolished the system of Election Tribunals and vested the power to hear election petitions in the High Courts.

24th Constitutional Amendment Act 1971

1. New Clause (4) added to Article 13 to provide that provisions of Article 13 will not apply on any amendment made under Article 368.
2. Amended Article 368 to state that Parliament has power to amend any part of the Constitution.
3. Made it obligatory for President to give assent to a constitutional amendment bill.

25th Constitutional Amendment Act 1971

1. Word 'Compensation' replaced by 'amount' in Article 31 (2)
2. Introduced New Article 31 (C) : If any law is passed to give effect to Article 39(b) or (c) of DPSP, it cannot be challenged on the ground of violation of the rights guaranteed by Articles 14, 19 and 31.

38th Constitutional Amendment Act 1975

- Made the declaration of emergency by the president non-justiciable.(Article 352,356,360)
- Made the promulgation of ordinances by the president, governors and administrators of union territories non-justiciable.(Article 123,213,239B)
- Empowered the president to declare different proclamations of national emergency on different grounds simultaneously.(Article 352)

42nd Amendment Act 1976

- Added three new words (i.e., socialist, secular and integrity) in the Preamble.
- Scope of Article 31C was expanded to all Directive Principles of State Policy
- Inserted Article 31D that provided for saving of laws in respect of anti-national activities and the formation of anti-national associations. “Anti-national activity” from being challenged under Article 14,19,31.

42nd Amendment Act 1976

- Inserted Article 32 A - provided that the Supreme Court will have no jurisdiction to decide the constitutional validity of a State law in any writ proceedings under article 32 unless the validity of a Central law is also in issue in such proceedings.

42nd Amendment Act 1976

New Directives Under part IV

1. Article 39 f children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.
2. Article 39A -Equal Justice and Free legal Aid
3. Article 43 A – Participation of workers in management of industries
4. Article 48 A – Protection of environment and forest and wildlife

42nd Amendment Act 1976

- Inserted Part IV A – Article 51A – 10 Fundamental Duties
- Article 74(1) – Explicitly state that President shall act on the aid and advise of C.O.M
- Freezing the allocation of seats in Lok Sabha and Rajya Sabha as per 1971 census till 2000.
- Duration of Lok Sabha and Assembly changed from 5 years to 6 years.

42nd Amendment Act 1976

- Provision related to Quorum removed from Article 100 and Article 189.
- New Article 131 A - Supreme Court with exclusive jurisdiction as regards determination of the constitutional validity of Central laws.
- Article 144A - Minimum size of bench in such a hearing is 7 and $\frac{2}{3}$ rd judges must agree on constitutional invalidity.

42nd Amendment Act 1976

- High Court power to issue writs under Article 226 restricted.
- Minimum size of bench in such a hearing is 5 and 2/3rd judges must agree on constitutional invalidity.
- Article 311 – No second opportunity to civil servant to make representation at awarding stage.
- Article 312 – Creation of All India Judicial Service by a parliamentary law

42nd Amendment Act 1976

- Article 323A and 323 B- Tribunals
- Article 352 –Emergency can be declared in whole as well as part of country.
- Article 356 – Emergency can be renewed for one year at a time
- Article 368 – No Constitutional Amendment shall be called in question in any court on any ground

42nd Amendment Act 1976

- 5 entries shifted from state list to concurrent list
 1. Administration of justice, constitution and organisation of all Courts except the Supreme Court and the High Courts.
 2. Education
 3. Weights and measures except establishment of standards
 4. Forests
 5. Protection of wild animals and birds

43rd Constitutional Amendment Act

1. Restored the jurisdiction of the Supreme Court and the high courts in respect of judicial review and issue of writs.
2. Deprived the Parliament of its special powers to make laws to deal with anti-national activities.

44th Constitutional Amendment Act

- Right to property removed from fundamental rights (Article 19 and 31) and moved it to Article 300A.
- New DPSP (Article 38)

“State shall strive to minimise inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities”

- Restored jurisdiction of Supreme Court to enquire into disputes regarding President/Vice President/PM/Lok Sabha speaker elections.

44th Constitutional Amendment Act

- Empowered the President to send back once the advice of cabinet for reconsideration.
- Terms of Lok Sabha and Legislative assembly were restored to 5 years.(83,172)
- Omitted the reference to British House of Commons in parliamentary privileges(105 and 194)
- Distinguished jurists not eligible for appointment as High Court Judges
- Writ jurisdiction of High Courts restored(Art 226)
- Deleted the provision making satisfaction of President and Governor final in issuing ordinances.

44th Constitutional Amendment Act

Restored power of superintendence of High Courts over tribunals.

44th Constitutional Amendment Act

Changes to Emergency : (National Emergency)

- Internal Disturbance replaced by armed rebellion.
- No proclamation of National Emergency without written recommendation of Union Cabinet.
- Approval of N.E - within 1 month of proclamation.
- Approval by special majority- (Article 368 vaali)
- Approval needs to be renewed every 6 months.
- Lok Sabha through simple majority can pass resolution to revoke proclamation.

44th Constitutional Amendment Act

Changes to Emergency : (National Emergency)

Article 19 will be suspended only in case of emergency by external aggression or war.

Article 20 and 21 can never be suspended during National Emergency

44th Constitutional Amendment Act

Changes to Emergency : (State Emergency Art 356)

➤ Approval of Six months at a time.

44th Constitutional Amendment Act

Changes to Emergency : (Financial Emergency)

- Proclamation may be revoked or varied by subsequent proclamation.

Emergency Provisions

**Article 352 – National
Emergency**

**Article 356 – State
Emergency**

**Article 360 – Financial
Emergency**

| Provision | National Emergency | State Emergency | Financial Emergency |
|------------------------|--|--|---|
| Article | 352 | 356 | 360 |
| Who Declares | President (Only on written recommendation of cabinet) | President | President |
| Grounds | 1. War 2. External Aggression 3. Armed Rebellion | Government of state cannot be carried out in accordance with provisions of constitution Art 365 spl mention | Financial Stability or credit of India or any part is threatened |
| Approval within | 1 month | 2 months | 2 months |

| Provision | National Emergency | State Emergency | Financial Emergency |
|---|---|---|---|
| Approval Frequency | Every 6 months | Every six months | Once only |
| Approval by | Special majority of both houses | Simple Majority of both houses | Simple majority of both houses |
| Revocation | 1. President 2. Parliament – Lok Sabha by simple majority | President only | President only |
| Effect on Centre State relations | 1. Centre can give executive directions on any matter. 2. Parliament becomes empowered to legislate on state subject | 2 months | 2 months |

| Provision | National Emergency | State Emergency | Financial Emergency |
|--|---|---|--|
| Effect on Centre State Relations | <ul style="list-style-type: none"> • President can issue ordinances on state subject • President can modify constitutional distribution of revenues | <p>President dismisses State Council of Ministers headed by CM</p> <p>President takes over functions of state government and transfers to governor</p> <p>Parliament can take over powers of state legislature in case of suspension.</p> | <p>Executive Authority centre extends to financial provisions like reduction of salaries of state officials.</p> <p>Reservation of all</p> |
| Effect on life of Lok Sabha and State Assembly | <ul style="list-style-type: none"> • Lok Sabha and Legislative assembly term can be extended one year at a time | N/A | N/A |

| Provision | National Emergency | State Emergency | Financial Emergency |
|---|---|----------------------------|--------------------------------|
| Effect on Fundamental Rights | 1. Article 358 – Article 19 automatic suspension | N/A | N/A |
| Effect on F.R | • Article 359 Any article except 20 and 21 | N/A | N/A |
| | | | |

355. Duty of the Union to protect States against external aggression and internal disturbance.—It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.

365. Effect of failure to comply with, or to give effect to, directions given by the Union.—Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.

239AB. Provision in case of failure of constitutional machinery.—If the President, on receipt of a report from the Lieutenant Governor or otherwise, is satisfied—

(a) that a situation has arisen in which the administration of the National Capital Territory cannot be carried on in accordance with the provisions of article 239AA or of any law made in pursuance of that article; or

(b) that for the proper administration of the National Capital Territory it is necessary or expedient so to do,

the President may by order suspend the operation of any provision of article 239AA or of all or any of the provisions of any law made in pursuance of that article for such period and subject to such conditions as may be specified in such law and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the National Capital Territory in accordance with the provisions of article 239 and article 239AA.]

Union/State Executive

Legislative Powers of President:

He can summon or prorogue the Parliament and dissolve the Lok Sabha. He can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.

He can address the Parliament at the commencement of the first session after each general election and the first session of each year. He can send messages to the Houses of Parliament, whether with respect to a bill pending in the Parliament or otherwise.

He can appoint any member of the Lok Sabha to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant. Similarly, he can also appoint any member of the Rajya Sabha to preside over its proceedings when the offices of both the Chairman and the Deputy Chairman fall vacant.

He nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.

He decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission.

His prior recommendation or permission is needed to introduce certain types of bills in the Parliament such as money bills, bills to change boundaries and names of states etc.

When a bill is sent to the President after being passed by the Parliament, he can:

- (i) give his assent to the bill, or
- (ii) withhold his assent to the bill, or
- (iii) return the bill (if it is not a money bill) for reconsideration of the Parliament.

However, if the bill is passed again by the Parliament, with or without amendments, the President has to give his assent to the bill.

When a bill passed by a state legislature is reserved by the governor for consideration of the President, the President can:

- (i) give his assent to the bill, or
- (ii) withhold his assent to the bill, or
- (iii) direct the governor to return the bill (if it is not a money bill) for reconsideration of the state legislature. President not obligated to assent even if state legislature passes bill again.

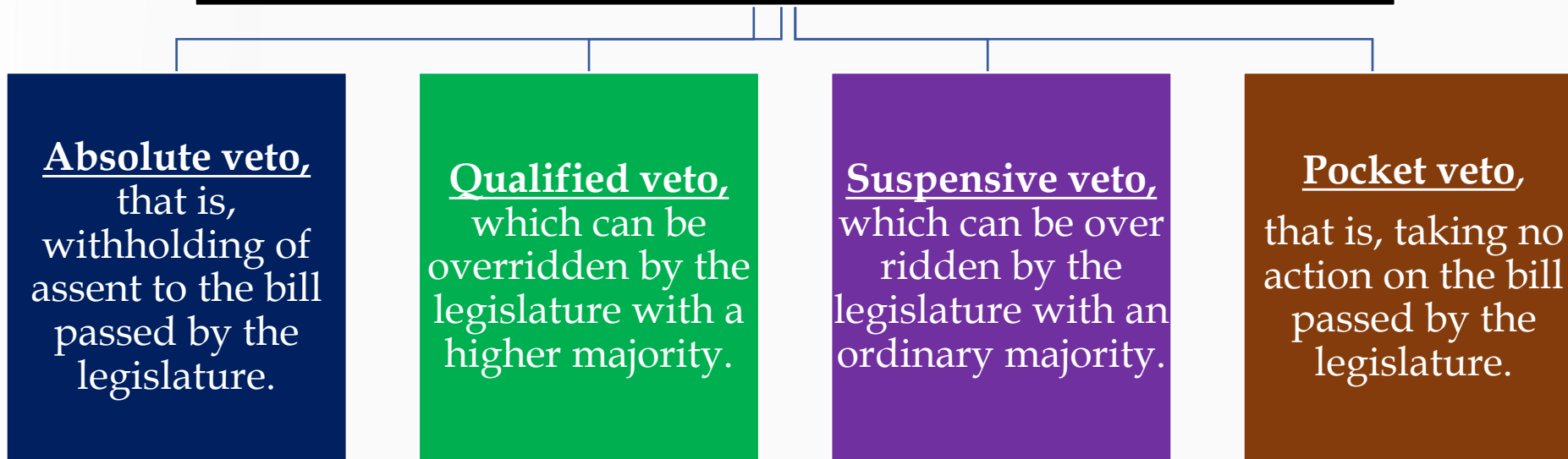
He can promulgate ordinances when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. He can also withdraw an ordinance at any time.

Bill related powers:

- President has the veto power over the bills passed by the Parliament, that is, he can withhold his assent to the bills. The object of conferring this power on the President is two-fold –
 - (a) to prevent hasty and ill-considered legislation by the Parliament; and
 - (b) to prevent a legislation which may be unconstitutional.

Of the above four, the President of India is vested with three – absolute, suspensive and pocket veto.

The veto power enjoyed by the executive in modern states can be classified into the following four types:



He lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.

He can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu. In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved.

Financial Powers

Money bills can be introduced in the Parliament only with his prior recommendation.

He causes to be laid before the Parliament the annual financial statement (ie, the Union Budget).

No demand for a grant can be made except on his recommendation.

He can make advances out of the contingency fund of India to meet any unforeseen expenditure.

He constitutes a finance commission after every five years to recommend the distribution of revenues between the Centre and the states.

Judicial Powers:

He appoints the Chief Justice and the judges of Supreme Court and high courts.

He can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.

He can grant pardon, reprieve, respite and remission of punishment, or suspend, remit or commute the sentence of any person convicted of any offence:

- (i) In all cases where the punishment or sentence is by a court martial;
- (ii) In all cases where the punishment or sentence is for an offence against a Union law; and
- (iii) In all cases where the sentence is a sentence of death.

President has no veto power in respect of a constitutional amendment bill.
The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to give his assent to a constitutional amendment bill.

Another type of pardoning :

- The Code of Criminal Procedure (CrPC) provides for remission of prison sentences, which means the whole or a part of the sentence may be cancelled.
- Under Section 432, the 'appropriate government' may suspend or remit a sentence, in whole or in part, with or without conditions.
- This power is available to State governments so that they may order the release of prisoners before they complete their prison terms.
- Under Section 433, any sentence may be commuted to a lesser one by the appropriate government.
- However, Section 435 says that if the prisoner had been sentenced in a case investigated by the CBI, or any agency that probed the offence under a Central Act, the State government can order such release only in consultation with the Central government.

Another type of pardoning :

- Section 433A of CrPC, which was introduced in 1978, to prevent the premature release of some life convicts before they spend 14 years in jail.
- It said that in cases in which the death punishment was available in law, but a person was only given a life term, and in cases in which death sentences were commuted to life, such a prisoner cannot be released unless he had completed 14 years.

Pardoning power of President / Governor

- Supreme Court (SC) held that the Governor's power to pardon overrides Section 433A of Code of Criminal Procedure (CrPC).
- Earlier in January 2021, in a case of mercy petition, the SC noted that the Governor cannot reject the state's recommendation but there is no time prescribed to take a decision.

Pardoning power of President / Governor

- **Pardoning Power Overrides 433A:**
 - SC held that the Governor of a State can pardon prisoners, even before they have served a minimum 14 years of prison sentence.
 - The Governor's power to pardon overrides a provision in the CrPC Section 433A which mandates that a prisoner's sentence can be remitted only after 14 years of jail.

Pardoning power of President / Governor

- Section 433A states that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.
- Section 433-A cannot and does not in any way affect the constitutional power conferred on the President/Governor to grant pardon under Articles 72 or 161 of the Constitution.

Pardoning power of President / Governor

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

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence

against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

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

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor^{1***} of a State under any law for the time being in force.

Pardoning power of President / Governor

161. Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

Council of Ministers v/s Cabinet:

| <u>Council of Ministers</u> | <u>Cabinet</u> |
|---|--|
| It is a wider body consisting of 60 to 70 ministers, including all the three categories of ministers, that is, cabinet ministers, ministers of state, and deputy ministers. | It is a smaller body consisting of 15 to 20 ministers. It includes the cabinet ministers only. Thus, it is a part of the council of ministers. |
| It does not meet, as a body, to transact government business. It has no collective functions. | It meets, as a body, frequently and usually once in a week to deliberate and take decisions regarding the transaction of government business. Thus, it has collective functions. |
| It is vested with all powers but in theory. | It exercises, in practice, the powers of the council of ministers and thus, acts for the latter. |
| Its functions are determined by the cabinet and implements the decisions taken by cabinet. | It directs the council of ministers by taking policy decisions which are binding on all ministers and supervises CoM. |
| It is collectively responsible to the Lower House of the Parliament. | It enforces the collective responsibility of the council of ministers to the Lower House of Parliament. |

Governor

Chief executive head of the state

Like the President, he is a **nominal executive head** (titular or constitutional or de jure).

7th Constitutional Amendment Act of 1956 facilitated appointment of same person as a governor for two or more states.

Governor's Appointment

- Neither directly elected by the people nor indirectly elected.
- He is appointed by the President by warrant under his hand and seal.
- **Qualification** - Should be a citizen of India and should have completed the age of 35 years.
- Additionally, **two conventions have developed.**
 - **First, he should be an outsider**
 - **Second, before appointing, the President is required to consult the Chief minister of the state concerned**

Conditions of Governor's office –
Should not be a member of either House of Parliament or a House of the state legislature, should not hold any other office of profit (Same as President)

Term of Governor's Office

Holds office for a term of five years from the date on which he enters upon his office. However, this term of five years is subject to the pleasure of the President. Constitution does not lay down any grounds for removal of Governor.

Further, he can resign at any time by addressing a resignation letter to the President.

The President may transfer a Governor from one state to another for the rest of the term. Further, a Governor whose term has expired may be reappointed in any state.

Term of Governor's Office

A governor can hold office beyond his term of five years until his **successor assumes charge**. The underlying idea is that there must be a governor in the state and there cannot be an interregnum.

President can make provisions for the discharge of functions of Governor in any contingency.

Constitutional Position of Governor

- Governor has **constitutional discretion** in the following cases:
 - Reservation of a bill for the consideration of the President.
 - Recommendation for the imposition of the President's Rule in the state.
 - While exercising his functions as the administrator of an adjoining union territory (in case of additional charge).

Constitutional Position of Governor

- **Governor has constitutional discretion in the following cases**
 - Determining the amount payable by the Government of Assam, Meghalaya, Tripura and Mizoram to an autonomous Tribal District Council as royalty accruing from licenses for mineral exploration.
 - Seeking information from the chief minister with regard to the administrative and legislative matters of the state.

Constitutional Position of Governor

- Further, the governor, like the President, **also has Situational discretion.**
- Governor has certain **special responsibilities to discharge according to the directions issued by the President.** In this regard, the governor, though has to consult the council of ministers led by the chief minister, acts finally on his discretion.
 - Maharashtra–Establishment of separate development boards for Vidarbha and Marathwada.(371)
 - Gujarat–Establishment of separate development boards for Saurashtra and Kutch.(371)
 - Nagaland–With respect to law and order in the state for so long as the internal disturbance in the Naga Hills-TUensang Area continues.(371-A)

Constitutional Position of Governor

- Assam–With respect to the administration of tribal areas.(371-B)
- Manipur–Regarding the administration of the hill areas in the state.(371-C)
- Sikkim–For peace and for ensuring social and economic advancement of the different sections of the population.(371-F)
- Arunachal Pradesh–With respect to law and order in the state.(371-H)
- Karnataka - Establishment of a separate development board for Hyderabad-Karnataka region(371-J)

Current updates

- Kerala's Governor **Arif Mohammed Khan** recently threatened to sack ministers who "lowered the dignity" of his office.
- The Governor tweeted from his twitter handle "the CM and Council of Ministers have every right to advise Governor but statements of individual ministers that lower the dignity of the office of the Governor, can invite action including withdrawal of pleasure".
- **Article 164(1)** says state "**Ministers shall hold office during the pleasure of the Governor**".
- However, Constitutional experts say the Governor cannot remove a minister in their own capacity without obtaining the sanction of the Chief Minister or consulting with the latter.
- If a Governor removes a minister in their own capacity, that will result in 'parallel governance'.
- Only when the Chief Minister allows it, then the Governor is empowered to remove the minister.

Current updates

Various judicial pronouncements for Pleasure of the Governor

o **Mahabir Prasad v. Prafulla Chandra 1969**, the governor's pleasure under article 164(1) is subject to Article 164(2).

✓ Thus the withdrawal of the governor's pleasure must coincide with the withdrawal of support to the government by the assembly.

Current updates

Shamsher Singh & Anr vs State Of Punjab (1974) -

The Supreme Court held that the President and Governor shall exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers except in a few well known exceptional situations.

The Court also added that even in case of the Prime Minister/Chief Minister cease to command majority in the House **OR** the government loses majority but refuses to quit office **OR** for “the dissolution of the House where an appeal to the country is necessitous” -

The Head of the State (President/Governor) should avoid getting involved in politics and must be advised by his Prime Minister (Chief Minister) who will eventually take the responsibility for the step.

Current updates

Nabam Rebia And Etc. vs Deputy Speaker And Ors (2016) -

The Constitution Bench judgment of the Supreme Court in Nabam Rebia versus Deputy Speaker on July 13, 2016, held that a Governor is bound to convene a meeting of the Assembly for a floor test on the recommendation of the Cabinet

The Supreme Court cited the observations of **B R Ambedkar** -

“The Governor under the Constitution has no function which he can discharge by himself; no functions at all. While he has no functions, he has certain duties to perform, and I think the House will do well to bear in mind this distinction.

The court said the Governor’s discretionary powers are limited to specified areas like giving assent or withholding/referring a Bill to the President or appointment of a Chief Minister or dismissal of a government which has lost of confidence but refuses to quit, etc

Current updates

Governor Role in Universities

- Kerala High Court recently refrained the Governor in his capacity as Chancellor from passing final orders in show cause notices sent to 8 Vice Chancellors of universities.
- Also, on 9 November Kerala government voted to pass an ordinance to remove Governor Arif Mohammed Khan as the Chancellor of Universities.

Current updates

Governor Role in Universities

- On June 13, 2022, the West Bengal government passed a Bill to replace the Governor with the Chief Minister, as the Chancellor of 31 state public universities (such as **Calcutta University, Jadavpur University**).
- However, in July, West Bengal Governor Jagdeep Dhankar returned the Bill on the ground of “incompleteness of compliance”
- State public universities are established through laws passed by state legislatures.
- In most laws the Governor has been designated as the Chancellor of these universities.
- The Chancellor functions as the head of public universities, and appoints the Vice-Chancellor of the university.
- The Chancellor can declare invalid, any university proceeding which is not as per existing laws.
- In some states (**such as Bihar, Gujarat, and Jharkhand**), the Chancellor has the power to conduct inspections in the university.
- The Chancellor also presides over the convocation of the university, and confirms proposals for conferring honorary degrees.



Current updates

Governor Role in Universities

- This is different in Telangana, where the Chancellor is appointed by the state government.
- The Chancellor presides over the meetings of various university bodies (such as the Court/Senate of the university).
- The Court/Senate decides on matters of general policy related to the development of the university, such as: (i) establishing new university departments, (ii) conferring and withdrawing degrees and titles, and (iii) instituting fellowships.
- In **1997**, the Supreme Court held that the Governor was not bound by the aid and advice of the Council of Ministers, while discharging duties of a separate statutory office (such as the Chancellor).
- The **Sarkaria and Punchhi** Commission also dealt with the role of the Governor in educational institutions.
- Both Commissions concurred that while discharging statutory functions, the Governor is not legally bound by the aid and advice of the Council of Ministers.

Current updates

Governor Role in Universities

- Recently, some states have taken steps to reduce the oversight of the Governor in state public universities.
- In April 2022, the Tamil Nadu Legislative Assembly passed two Bills, to transfer the power of appointing the Vice-Chancellor (in public universities) from the Governor, to the state government.
- The Bills passed in Tamil Nadu stress that **“every appointment of the Vice-Chancellor shall be made by the Government from out of a panel of three names”** recommended by a **search-cum-selection committee**.

Current updates

Governor Role in Universities (Why the clash)

- Education comes under the **Concurrent List**, but **entry 66 of the Union List** – “coordination and determination of standards in institutions for higher education or research and scientific and technical institutions” – gives the **Centre substantial authority over higher education**
- The "Visitor/Chancellor" – typically the Governor in states – shall appoint the vice chancellor from a panel of names recommended by search-cum-selection committees, as per the UGC (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018.
- Higher education institutions are required to abide by its rules, especially those that receive UGC funding.
- In the case of central universities, these are typically adhered to without issue, but in the case of state universities, the states occasionally oppose them.

Current updates

- Governor Role in President's Rule proclamation - Harish Singh Rawat versus Union of India and others
- Governor's role in summoning/prorogation of session
- Nabiam Rabia Case 2016 : On July 13th 2016, a five-judge Bench of the Supreme Court comprising Justices J.S. Khehar, Dipak Misra, M.B. Lokur, P.C. Ghose and N.V. Ramana unanimously held that the Governor's powers to summon, dissolve and advance a session is within the scope of judicial review.

Current updates

- In November 2015, a constitutional crisis arose in Arunachal Pradesh when 21 Congress MLAs rebelled against Chief Minister Nabam Tuki.
- On November 19th 2015, 13 members of the Assembly – 11 BJP MLAs and 2 Independent MLAs – sent a letter to the Governor to communicate their displeasure with the Speaker and the Government.
- Furthermore, 21 Congress MLAs also refused to attend party meetings citing mismanagement by the Chief Minister.

Current updates

- The Governor acting without the advice of the Chief Minister, advanced the Assembly session from January 14th 2016 to December 16th 2015 and listed the removal of the Speaker on the legislative agenda.
- On December 15th 2015, the Speaker, Nabam Rebia, preemptively disqualified the rebel MLAs on the grounds of defection before the Assembly could meet.
- On December 16th, 2015, the resolution to remove Speaker Nabam Rebia was adopted.

Current updates

- Supreme Court Observations :

[Article 163](#) of the Constitution requires the Governor of a State to act in consultation with the Council of Ministers in the exercise of his functions. The Court confirmed that the Governor does not enjoy broad discretionary powers and is always subject to constitutional standards.

[Article 174](#) confers the Governor with the power to summon, prorogue or dissolve the legislature of the State.

The Court concluded that the Governor's discretion did not extend to the powers conferred under Article 174. Hence, he could not summon the House, determine its legislative agenda or address the legislative assembly without consultation.

Current updates

- Next, the Court considered whether the Speaker may disqualify rebel MLAs while a motion to remove him was pending in the House.
- The Court concluded that Speaker Rebia's decision to disqualify rebel MLAs was an attempt to overcome voting by 'all the then members' and evade disqualification.
- On January 6th 2016, while the matter was being argued before the Court, the Union government dismissed the ruling State government and imposed President's rule. For the first time in its history, the Court effectively nullified the President's rule and restored the previous State government with Nabam Tuki as Chief Minister.

Current updates

- In a significant judgment delineating the limits of the gubernatorial powers, the Supreme Court on Friday (November 10) held that it is not open for a Governor to withhold assent to bills by doubting the validity of the legislative session in which they were passed.
- The Court held that the Punjab Governor Banwarilal Purohit must proceed to decide on the four bills which have been submitted for his assent. The Punjab Governor had withheld assent on the bills by doubting the validity of the June session of the Punjab Vidhan Sabha, in which they were passed.
- The bench passed a categorical declaration that the June Session of the Punjab Assembly was valid.
- The bench held that it was within the powers of the Speaker to adjourn the budget session convened in March 2023, instead of proroguing it, and calling back the session again in June.
- Casting doubt on the validity of the session of the house is not a constitutional option open to the governor. The legislative assembly comprises of duly elected members of legislature"

Parliament

Readjustment after each Census:

- The expression 'population' means the population as ascertained at the preceding census of which the relevant figures have been published. After every census, a readjustment is to be made in (a) allocation of seats in the Lok Sabha to the states, and (b) division of each state into territorial constituencies.
- Parliament is empowered to determine the authority and the manner in which it is to be made. Accordingly, the Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose.
- The 42nd Amendment Act of 1976 froze the allocation of seats in the Lok Sabha to the states and the division of each state into territorial constituencies till the year 2000 at the 1971 level.

Delimitation Commission :

- The job of delimitation is assigned to a high power body. Such a body is known as Delimitation Commission or a Boundary Commission.
- In India, such Delimitation Commissions have been constituted 4 times – in 1952 under the Delimitation Commission Act, 1952, in 1963 under Delimitation Commission Act, 1962, in 1973 under Delimitation Act, 1972 and in 2002 under Delimitation Act, 2002.

Delimitation Commission :

- The Delimitation Commission in India is a high power body whose orders have the force of law and cannot be called in question before any court.
- These orders come into force on a date to be specified by the President of India in this behalf.
- The copies of its orders are laid before the House of the People and the State Legislative Assembly concerned, but no modifications are permissible therein by them.
- Members mostly include :
 - A retired judge of the Supreme Court
 - The Chief Election Commissioner
 - State Election Commissioners (of the respective states)

106th Constitutional Amendment Act

Context:

- Recently, The President gave her assent to the Women Reservation Bill which seeks to provide 33% reservation to women in the Lok Sabha and State Assemblies. Though, it was introduced as the Constitution (128th) Amendment Bill in the Lok Sabha, now it will be known as the Constitution (106th Amendment) Act.

Parliamentary privileges can be classified into two broad categories:

Collective Privileges: These privileges that belong to each House of Parliament collectively are:

1. It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same. The 44th Amendment Act of 1978 restored the freedom of the press to publish true reports of parliamentary proceedings without prior permission of the House. But this is not applicable in the case of a secret sitting of the House.
2. It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
3. It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
4. It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
5. It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
6. It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.
7. The courts are prohibited to inquire into the proceedings of a House or its committees.
8. No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

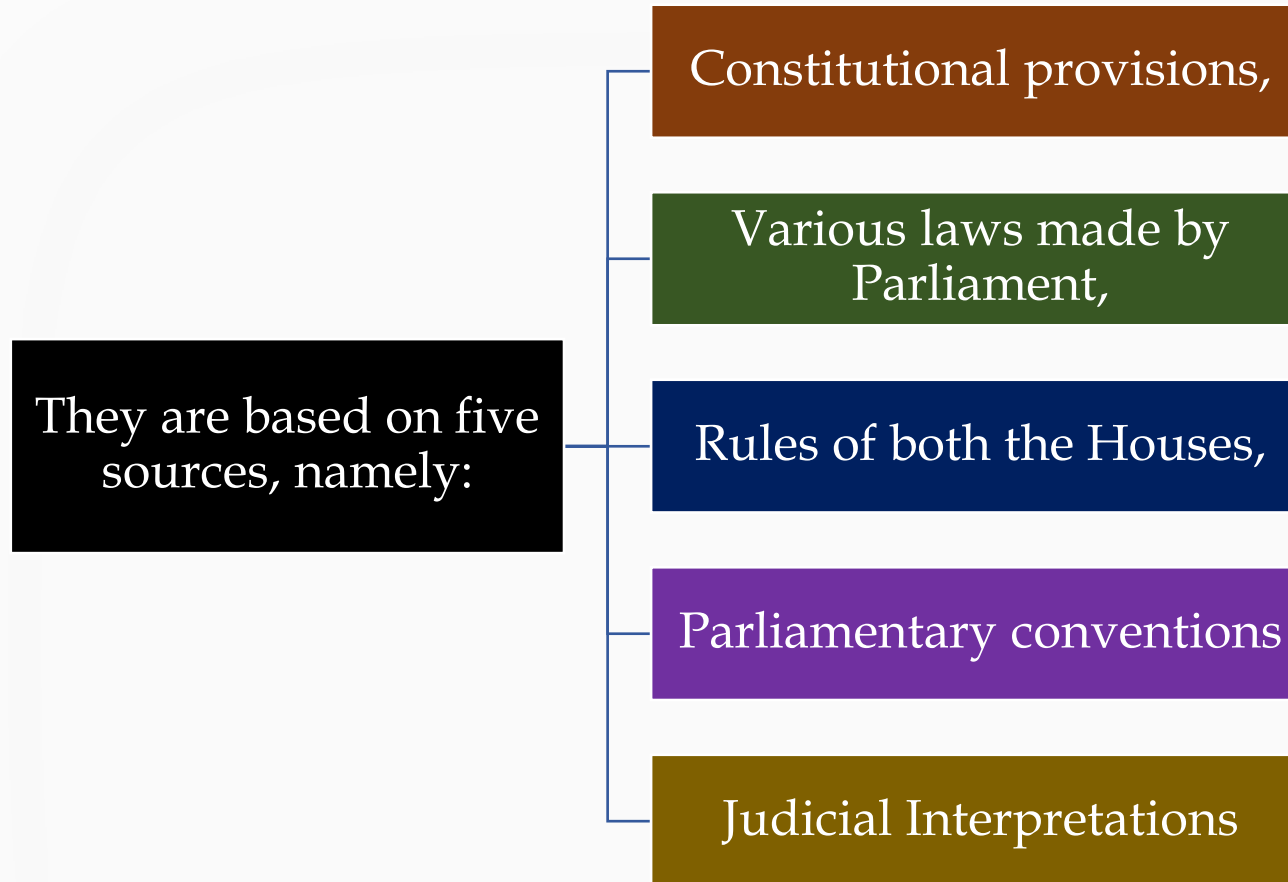


Parliamentary privileges can be classified into two broad categories:

Individual Privileges: The privileges belonging to the members individually are:

1. They cannot be arrested during the session of Parliament and 40 days before the beginning and 40 days after the end of a session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases. (Section 55 of cpc)
2. They have freedom of speech in Parliament. No member is liable to any proceedings in any court for anything said or any vote given by him in Parliament or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament.
3. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when Parliament is in session.

- The Indian Parliament, till now, has not made any special law to exhaustively codify all the privileges.



Disqualifications:

Under the Constitution, a person shall be disqualified for being elected as MP:

1. if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by Parliament).

2. if he is of unsound mind and stands so declared by a court.

3. if he is an undischarged insolvent.

4. 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.

5. if he is so disqualified under any law made by Parliament.

- The Parliament has laid down the following additional disqualifications in the Representation of People Act (1951):
 1. He must not have been found guilty of certain election offences or corrupt practices in the elections.
 2. He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
 3. He must not have failed to lodge an account of his election expenses within the time.
 4. He must not have any interest in government contracts, works or services.
 5. He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
 6. He must not have been dismissed from government service for corruption or disloyalty to the State.
 7. He must not have been convicted for promoting enmity between different groups or for the offence of bribery.
 8. He must not have been punished for preaching and practising social crimes such as untouchability, dowry and sati.
- On the question whether a member is subject to any of the above disqualifications, the president's decision is final. However, he should obtain the opinion of the election commission and act accordingly.

| S.no. | Section | Disqualification | Duration |
|-------|---------|--|---------------------------|
| 1. | 8 | Disqualification on conviction for certain offences section 153A, section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband ,UAPA,NDPS Act,PCA, Sati etc. | 6 years (from release) |
| 2 | 8A | Corrupt Practices under Section 99 | 6 years |
| 3 | 9 | Dismissal for corruption and Disloyalty | 5 years from dismissal |
| 4 | 9A | Government Contracts | As long as contract runs |
| 5 | 10 | Office under government company | As long as office is held |
| 6 | 10A | Failure to lodge election expense | Three Years |

Money Bill:

Parliament can reduce or abolish a tax but cannot increase it.

The imposition, abolition, remission, alteration or regulation of any tax;

The regulation of the borrowing of money by the Union government;

The custody of the Consolidated Fund of India or the contingency fund of India, the payment of moneys into or the withdrawal of money from any such fund;

The appropriation of money out of the Consolidated Fund of India;

Declaration of any expenditure charged on the Consolidated Fund of India or increasing the amount of any such expenditure;

The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money, or the audit of the accounts of the Union or of a state; or

Any matter incidental to any of the matters specified above.

Article 110 of the Constitution deals with the definition of money bills. It states that a bill is deemed to be a money bill if it contains 'only' provisions dealing with all or any of the following matters:

Financial Bills (I)

It is a bill that contains not only any or all the matters mentioned in Article 110, but also other matters of general legislation. For instance, a bill that contains a borrowing clause, but does not exclusively deal with borrowing.

In two respects, a financial bill (I) is similar to a money bill – (a) both of them can be introduced only in the Lok Sabha and not in the Rajya Sabha, and (b) both of them can be introduced only on the recommendation of the President.

In all other respects, a financial bill (I) is governed by the same legislative procedure applicable to an ordinary bill.

Financial Bills (II)

It contains provisions involving expenditure from the Consolidated Fund of India, but does not include any of the matters mentioned in Article 110.

It is treated as an ordinary bill and in all respects, it is governed by the same legislative procedure which is applicable to an ordinary bill. The only special feature of this bill is that it cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the bill.

