

Right against Exploitation

- ↳ citizens
- ↳ non-citizens
- (a) Prohibition of traffic in human beings & forced labour (Article-23)
- Complete ban on traffic in human being (begar & all forms of labour)
- Violation under article-23 → labour without payment
- State can impose compulsory service for public purpose (ex. in army)
- labourer with payment against his desire

Traffic?
Dealing in men & women like goods

(b) Prohibition of employment of children (Article-24)

- Prohibits employment of children below 14 years in factory or mine
- Under the following acts:
 - Employment of children act, 1938
 - Mines Act, 1952
 - Factories Act, 1948
 - Apprentice Act, 1961
 - Child labour (prohibition & regulation) Act, 1986

Right to constitutional remedies

(Remedial, not substantive in nature)

Remedies for enforcement of fundamental rights

Cardinal principle → Ubique ubi remedium
(where there is a right, there is a remedy)

- ② whose fundamental rights all violated apply directly to Supreme Court (guarantor & protector of fundam)

Courts while discharging their duties, has to play the role of "sentinels on the qui vive"
(protect fundamental rights zealously & vigilantly)
[Daryao vs. State of U.P.]

Assam Samilata Mahasangha vs. Union of India

Court Held - Article 32 has been described as 'heart & soul' of COI guarantees right to move to supreme court for enforcement of fundamental rights.
Article 32 is also a fundamental right.

Supplementary provisions (Powers of parliament)

Article 33 - Parliament to restrict application of fundamental rights

Members of Armed forces
Police
Para Military forces
Analogous forces

Article 34 - Parliament may indemnify any person for act during martial law

Article 35 - Parliament to make law restricting fundamental rights

Q. Can parliament amend fundamental rights?
I.C. Gokulnath vs. State of Punjab (Supreme Court)

No part of our COI was unamendable. Parliament by passing COI Amendment Act (1) following Article 368
↓ Amend
Article 368 itself OR
Any part of COI

Keshavnandan Bharti vs. State of Kerala (Supreme Court)

Parliament can not alter the basic structure of COI
"Doctrine of basic structure" placed limits on powers of parliament
[No effect on Amendments / changes made before COI (42nd) Amendment, 1976]

Waman Rao vs. Union of India (1981) (Supreme Court)

Amendment to COI (restricted) because they damage basic structure of COI.

L. Chandra Kumar vs. Union of India (1997) (Supreme Court)

Power of judicial review of courts → essential feature of COI
(by)

G.V.K Industries vs. Income tax officer (2011)

Under COI, some parts are amendable under article 368.
Whereas amending basic structure of COI is beyond powers of parliament.

Directive Principles of State Policy (DPSP)

Fundamental Rights → Enforced in Courts (Fundamental Rights)
which can not be enforced in courts (DPSP)
DPSP → guidelines for future govt. to lead country (duty of state)
⊕ Not enforceable

Diff b/w

DPSP

Not enforceable in court

Do not create rights in favour of any person

Implemented by legislature

Do not give OR take away any power

Courts can not compel govt.

Duty of state to implement DPSP

Fundamental Rights

Enforceable in court (Article-32)

Creates rights in favour of individuals (citizens OR not) → Individual corp.

Provided by COI

gives rights to citizens

Courts ensure fundamental rights are not violated & protected

Q. DPSP vs. Fundamental Rights?

Ans: Fundamental Rights will prevail

DPSP has to conform as subsidiary of fundamental rights
(State of Madras vs. Champakam Dorairajan) (Supreme Court 1951)

Important DPSP

(1) State to secure a social order for promotion & welfare of people?

to promote welfare of people

⊕ promoting social order

→ minimise inequalities in income & endeavour to eliminate inequalities in status, facilities & opportunities

- (2) State must direct policy equal pay for equal work
- citizens are treated equally
 - adequate means of livelihood
 - ownership & control of material resources are distributed for common good
 - operation of economic system (not for common detriment)
 - Health & strength of workers & children is not abused (forced by economic necessity)
- children & youth are protected against economic necessity (unsuited to age & strength)
- (4) operation of legal system on basis of legal aid (free) [by suitable ^{legislation} scheme]
- (3) State organise village panchayat (as unit of govt.)
- (4) State provision right to work • right to education (4) [public assistance ^{unemployed} old age]
- (5) Provision for just & humane conditions ^{work} maternity relief
- (6) Secure living wage (4) good standard of life to all types of workers
- (7) Provide uniform civil code for all citizens (Article 44)
- (8) promote educational & economic interest ^{SC ST} other weaker section (Article 46)
- (9) provide free & compulsory education to all children (upto 14 years) (Article 45)
- (10) primary duty to raise nutrition level & standard of living (4) improve public health (4) prohibition of consumption of intoxicating drinks & drugs injurious to health (except medical purpose)
- (11) Organise agricultural & animal husbandary on modern & scientific methods (4) prohibit slaughtering of cows
- (12) protect & improve environment & to safeguard forest & wildlife
- (13) protection of monuments & places of object of national importance
- (14) Separation of judiciary in public services of state

Fundamental Duties (Article - 51A)

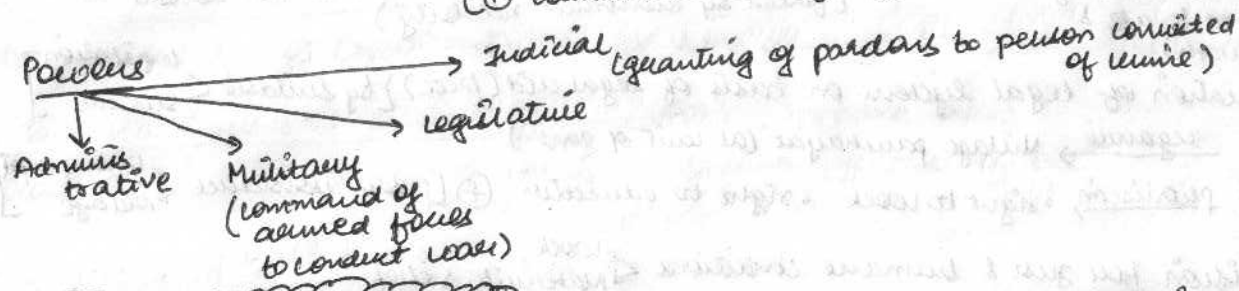
COI (42nd) Amendment Act, 1976

- To be abide by COI (4) respect its Ideals & institutions, national flag & national Anthem
- cherish & follow noble ideals which inspired our national struggle for freedom
- uphold & protect sovereignty, unity & integrity of India
- Defend country & render national service, whenever called upon to do so
- To promote harmony & spirit of common brotherhood amongst all people (without discrimination)
- To value & preserve rich heritage of our composite culture
- To protect & improve natural environment (4) to have compassion for living creatures
- To develop scientific temper, humanism & spirit of inquiry & reform
- To safeguard public property (4) oppose violence
- To strive towards excellence in spheres of all (Ind. & collective Activity) so that nation constantly rises to higher levels
- To provide opportunity to one's child (6-14 years of age)

Ordinance making powers

1) Of the president

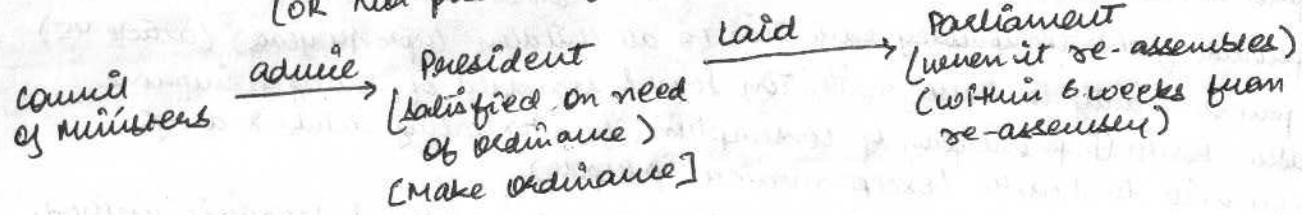
President → Head of Executive power of govt.
(power of carrying on business of govt.)
(⊕ administration of affairs of state)



Ordinance making power

Article 123

President shall have power to promulgate ordinance
(when parliament is not in session)
(OR not possible for parliament to enact law)



Both Houses of parliament → Re-assemble → to hold the assembly here (within 6 weeks)

Diff. dates

2) Of the governor (Executive power of State)



→ Appointed as governor of 2 or more states

President appoints governor (never elected)

- power of making law (same as president) + process
- governor can not promulgate ordinances
 - previous sanction of president is needed
 - Resembles for consideration of president
 - Assent of president needed (Act has same provisions of COI)

Legislative powers of Union & the States

1) Two sets of govt.

Indian constitution is essentially Federal.

(C) jurisdiction over whole country

↳ means distribution of power of state among number of co-ordinative bodies, each originating & controlled by COI

↓ (Agencies of C)

(S) Exercise jurisdiction in one of the states (divided by COI)

legislative sphere (divided on basis)

- territory
- subject matter

(2) Territorial Distribution

(A) Parliament (Supreme legislative body)

- ↳ may make laws for whole of India (+ beyond India) (as per international co-operation)
- ↳ Parliament to create local legislatures OR Council of Ministers OR Union territories

(B) State Legislature

- ↳ make laws only for state concerned
- ↳ beyond territorial extent of state (on basis of territorial nexus)
- law made beyond territorial limit of state is valid
- If 2 conditions are fulfilled → connection must be real (not illusory)
- then its valid
- liability imposed must be pertinent to connection
- (otherwise not)
- (State of Bombay vs. R.M.D.C.)

(3) Distribution of Subject Matter of Legislation (VII Schedule)

3 list of subjects & respective powers

- Concurrent (CQ) + (SQ) (47 entries) [local interest needs importance at national level]
- State (SQ) (66 entries) (Regional Int.)
- Union (CQ) (97 entries) (National Interest)

Ex. Tax → Union ✓
→ State list ✓

(4) Legislative powers of Union & States w.r.t Legislative Subjects

(a) Union parliament $\xrightarrow{\text{exclusive power}}$ List I (Union list)

State (power to make laws) → State list

(b) State (exclusive power) → List II (State list)

(c) Concurrent list (powers) → CQ

SQ

Q. Law made on same subject by CQ & SQ in concurrent list. which will prevail?
Ans. Law made by CQ / parliament will prevail, so far applicable w.r.t inconsistency.

Residuary power to make laws → CQ

(5) Power of parliament to make laws on State list

(i) In National Interest

2/3rd Members (present & voting) (Council of States) → 1 year validity (max.)
[fresh resolution after 1 year to extend validity]
[If fresh resolution not passed in 6 months, law made by parliament becomes inoperative]

(ii) During proclamation of Emergency

During proclamation, Parliament → make laws → Any part of India

law operative → till proclamation
after 6 months from end of proclamation
law will become inoperative

[Actual war is not necessary, satisfaction of president is required]

Proclamation valid (law) effective each House of Parliament

Approved → 2/3rd of members (present & voting)
→ by both Houses within 30 days

(iii) Breakdown of Constitutional Machinery in State (Article 356)

• Governor (believes) → report → President (conditional power)

State can not be run as per COI

Power of State legislature → Parliament can make laws w.r.t state matters

• Proclamation (suspension of state legislature) → valid
↓ signed
Approved by Both Houses of Parliament (within 2 months) - approve (6 months - valid)

President's conditional power? dependant on Report of Governor

• Power of president → constitutional function ⊕
Judicial review

(iv) On Request of 2 or more States (Article - 252)

Agreement b/w 2 or more States → requesting → Parliament (will make law)
to make law on specified subject (common legislation)

But bad me States ne apra law bana la → invalid to the extent of inconsistent → law made by parliament

(v) Legislation for enforcing International Agreements

Parliament make laws to implement

- any treaty, agreement or convention with other country
- any decision made by International conferences, association or other body

(6) Interpretation of Legislative List

(a) Plenary powers

legislative power is granted with respect to a subject ⊕ no limitations imposed

- liberal construction
- power extends to all incidental & auxiliary matters
- power to make retrospective law

(b) Harmonious Construction

- Different entries in different list → to avoid conflict ⊕ give them effect
- when there is conflict between 2 entries in diff. list
↓ Interpretation
 - Each of them is given effect
 - No dispute should arise

(C) Pith & Substance Rule

One entry in a list

touches

Another entry in Another list

Article 6, List II

Public Health & Sanitation

(Restraining use of sound
Amplifier)

Article 31, List I

Post, telegraph, telephones, radio
broadcast & other forms of communication

Supreme Court (G. Chandu vs. State of Rajasthan)

Sound → dono me present hai (kisi bhi?) (List I) (List II)

Object is to prohibit unnecessary noise affecting health of public and not to make law on broadcasting.

Where a law in reality & substance falls on an item which the legislature is incompetent to legislate, such law shall not become invalid just because it is covered in another list also.

(A) Colourable legislation

Law passed by legislature

COI

colour

{ Every law should be
made as per COI, not
against COI }

Kameshwar Singh vs. State of Bihar

Bihar Land Reforms Act, 1950

[Total rent was
given to state by
Tenant]

② Tenant

(Unpaid Rent)

Half → State (Kis baar ke paise?)

Half → landlord

Law → No property should be acquired without payment.

Supreme Court

Colourable exercise of power by state. Taking full amount from tenant & giving half to landlord, is naked confiscation.

Freedom of Trade, Commerce & Intercourse (Article 301 - 307)

(Article 306 - Repealed)

shall be free throughout the territory of India

→ open to commercial & non commercial dealings

→ applies to Inter state & Intra state (trade & commerce)

• Gambling is not a trade.

Purse competitions being of gambling in nature is not trade.

Not protected under Article - 301

(State of Bombay vs. R.M. DC)

(a) Parliament can make restrictions

(b) Parliament can make preference or discrimination (in situation of scarcity)

(c) Power of State legislature (with president approval only)

→ impose tax on goods imported from other states ①

→ impose such restrictions (required in public interest)

(Kalyani Stores vs. State of Orissa)

(Supreme Court) → tax imposition wali baar ①

(d) Saving of laws providing for state monopoly

in respect of - road
- transport etc.
- railway

{ Transporters can not complain
that their fundamental rights
are violated }

(No one can complain
as violation of freedom)

State Monopoly

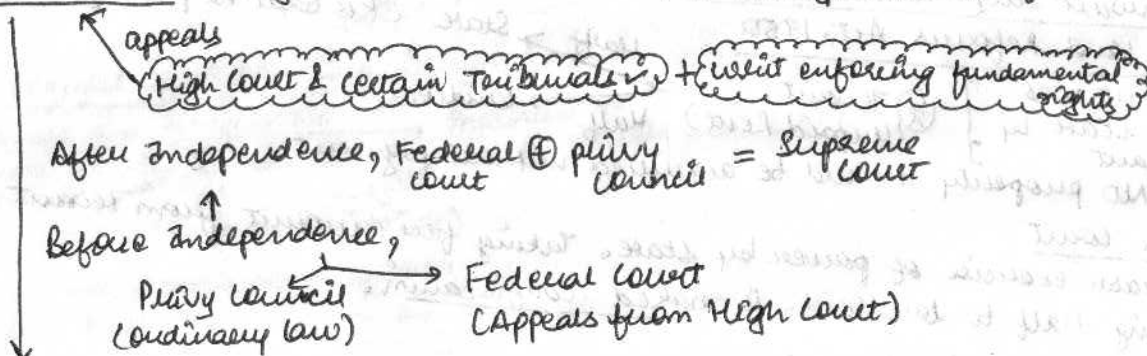
Creation of monopoly rights in favour of body of persons to carry
on trade, affects freedom of trade.

(Can not be used to prevent other persons from carrying on any
trade, business OR profession) (completely OR partially)

Monopoly created in favour of State (valid)

THE - JUDICIARY

Supreme Court highest court in country → Ordinary law
Interpretation of law



High Court (Civil, Criminal & Appellate Jurisdiction) → on lower courts

Before Independence
High courts existed
(Under High Court Act, 1861)

2 writ jurisdiction

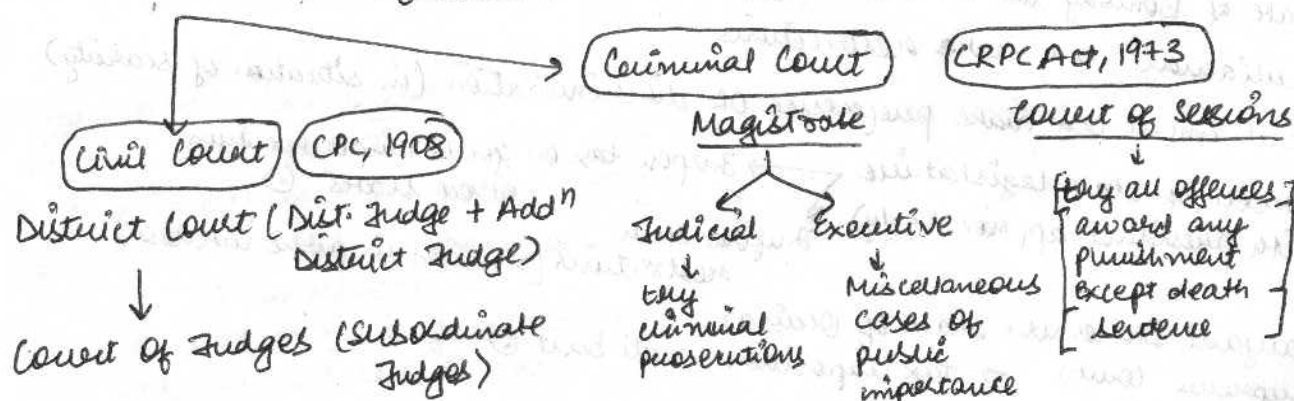
High Court

• Bombay { Presidency }
• Calcutta { Towns }
• Madras

Subordinate Courts

• created not under COI

• created under laws of competent legislature



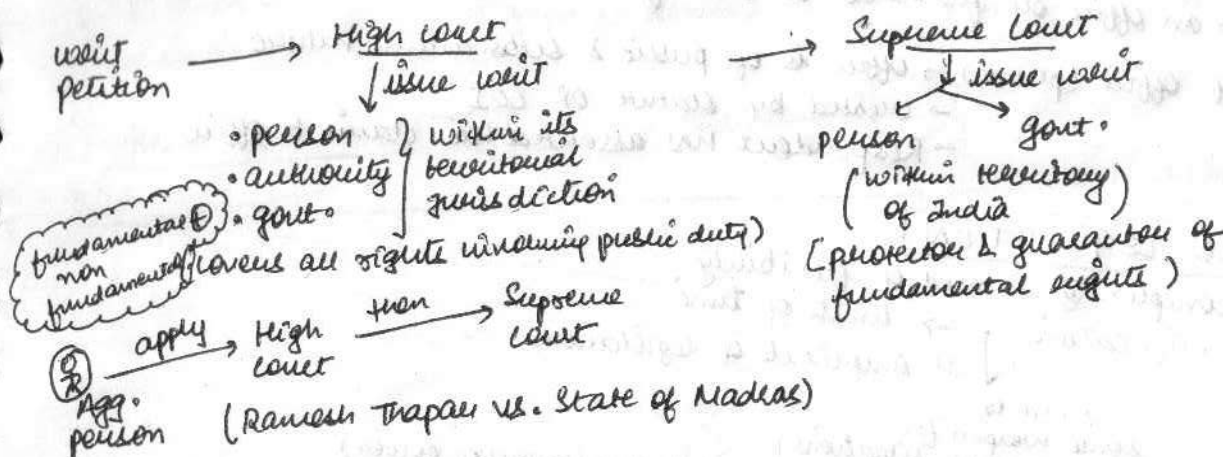
Judicial Magistrate → First class [divided on basis of power]
 → Second class
 → Third

• Special courts (forms a part of judicial setup)
 ↳ Most of special tribunals dealing with → direct tax
 ↳ labour
 ↳ custom
 ↳ copyright etc.

Writ Jurisdiction of High Court & Supreme Court

Article 32 - Right to constitutional remedy

① Article 226 - Constitutional remedy is available to ② whose fundamental rights are violated



Types of writs

1. Habeas Corpus (means to have a body)
 ↳ Remedy available to a person who is confined without legal justification.
 ↳ Notional order to let the court know on what grounds he has been confined (justification for his detention)

② person OR person on his behalf to safeguard his liberty

2. Mandamus (issued against any public authority)

↳ we command

↳ (command) to do particular thing in public duty

• person
 • corporation
 • inferior court
 • govt. (Not against president OR governor OR private individual OR private body)

3. Prohibition Issued

preventing from usurping jurisdiction

inferior court OR Tribunal

(acts in excess OR without jurisdiction) (Abuse of power)

Judicial OR Quasi-judicial body

[Not against public officer]

(4) Centonari (After exercise of power)
High Courts

Subordinate
Judicial
Authority

Acted → without OR excess jurisdiction
 → Contravention of Rules of Natural Justice
 → Commit an error apparent on face of record

(5) Quo Warranto (to check unlawful claimant does not hold public office)
 → enables enquiry into legality of claim which a person asserts, to an office or franchise to exist from his position (if he is usurper)

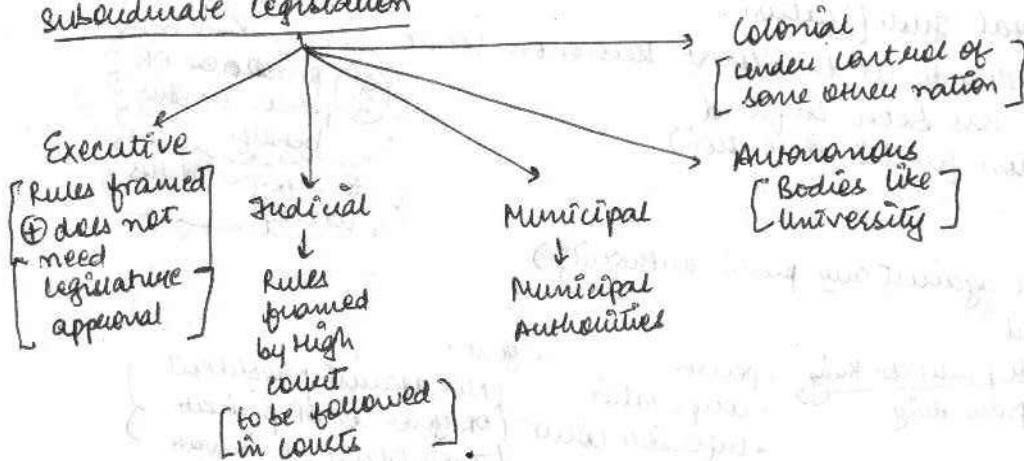
Holder of office (person) → office is of public & substantive nature
 → created by statute OR COI
 → Respondent has asserted his claim to office

DELEGATED - LEGISLATION

Increasing complexity → need of flexibility
 3 relevant justifications → limits of time
 → amplitude of legislature

legislation → need of some weapon for emergency situations
 → Supreme (proceeds from supreme / sovereign power)
 → subordinate (proceeds from any authority)

Subordinate Legislation



In Re: Delhi Laws Act, 1912

Essential features of legislation can not be delegated

→ primary duty of law making → legislature (can not be delegated)

(1) → essential features shall not be delegated
 (policy of law making)
 (guidance to rule making body)

→ proper procedure & standard should be followed (else invalid)

→ Court shall consider preamble of act (to check essential features)

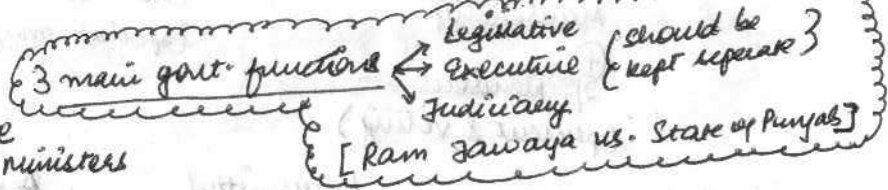
→ Delegated legislation → Conditional supplementary subordinate
 In each form limits of authority are specified constitutionally

RECENT AMENDMENTS

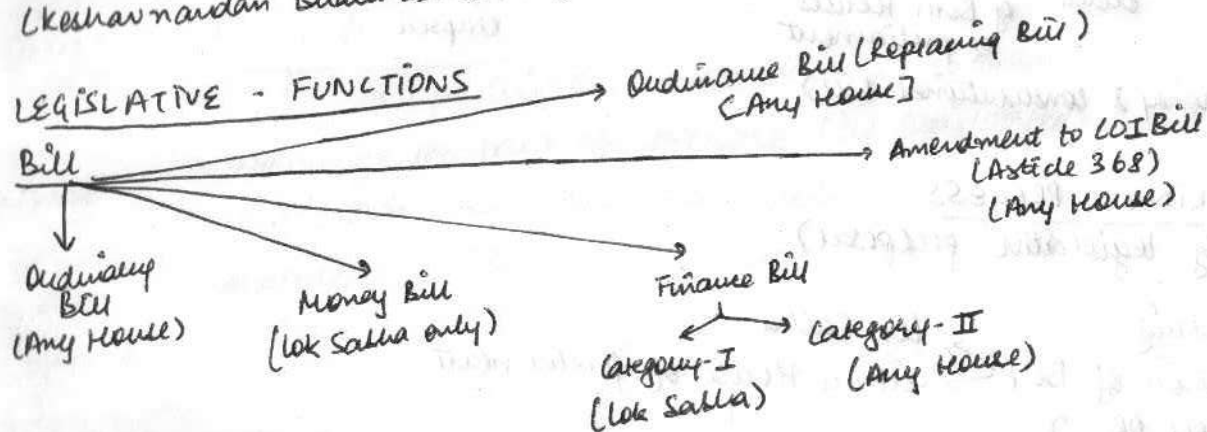
- 102 - National Commission for Backward Classes & provisions for socially & educationally backward classes
- 103 - Advancement of EWS
- 104 - Extended period of Reservation of SC/ST to 80 years from COI

SEPERATION OF POWERS

- President is head of Executive
 - ① acts on advice of Council of Ministers
- None of the organs can take over function of other organs
(Keshavnandan Bhadrar vs. State of Kerala)



LEGISLATIVE - FUNCTIONS



Types of Bills & features

- Bill
 - Govt. Bill
 - Private Member Bill

(On basis of who will present)

- Content wise
 - (i) Ordinary Bill - New policy
 - (ii) Amending Bill - Amend, modify existing act
 - (iii) Consolidating Bill - consolidate all existing bills on same subject
 - (iv) Expiring Bill - Acts for specific time period

- (vi) Validating Act - to give validity
- (vii) Bills to replace ordinance
- (viii) Money & fiscal bill
- (ix) COI Amendment Bill

- (v) Repealing & Amending Bill
 - ↳ to clean statute book
- Procedure wise
 - Ordinance Repealing Bill
 - Money & Finance bills
 - Ordinary Bills
 - COI Amendment Bills

- Finance Bill
 - Category A (Introduced in Lok Sabha)
 - Category B (Introduced in either house of parliament)

• COI Amendment Bill

Simple Majority

Special Majority
Majority of total membership

④ $\frac{2}{3}$ members
(present & voting)

Special Majority

passed by atleast $\frac{1}{2}$ of states ④

Each House of parliament
(Special majority)

• Bill passed by one house ——— transmitted ———>

Another House

- Rejected
- Disagreed
- More than six months elapsed

Parliament may order Joint Sitting of Both Houses of parliament

(Not for money & constitutional bill)

LAW MAKING PROCESS

(Draft of legislative proposal)

First Reading

Introduction of Bill $\leftrightarrow$ Lok Sabha or either House of parliament

(by Minister OR private Member)

$\rightarrow$ Private Member Bill

② $\rightarrow$ ask to introduce the Bill (first reading)
(speaker allow)

may be opposed (due to outside legislative competence)

Speaker may permit full discussion

Publication in Gazette

Introduction OR before introduction

$\rightarrow$ with permission of Speaker

• Reference to Standing Committee

Presiding Officer (House)

refer examination

submit

Standing Committee

(Report)

Second Reading

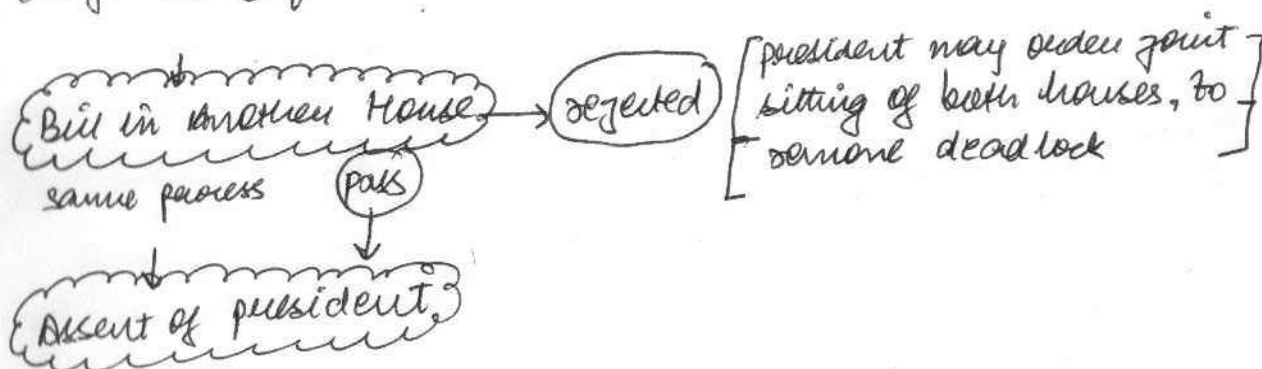
1st stage - General discussion on Bill

2nd stage - clause by clause discussion of Bill

Third Reading

Debate
(Argument $\oplus$ favor)

→ passed by simple majority



Parliamentary Committees

→ Expertise in matters referred to them

- Need
 - vigilance on part of executive (by legislature)
 - legislatures are over-burdened
- Assist legislatures in discharging duties & regulating functions effectively
- function in non partisan manner & their deliberations & conclusions have been objective.

Ad Hoc Committee & Standing Committee

- appointed for specific purpose
 $\oplus$ cease to exist after submission of report
- principal committees → Select & Joint committees on Bills
- Standing committees (like) → committee on petition, committee on Rules, privileges → Business Advisory committee

Other Committee

- parliament's watch dog over executives
- committee on Subordinate legislation, govt. assurances, estimates, public AC, PSUs $\oplus$ Department Related Standing Committee (DRSC)

Skil logo solutions vs. Union of India

Taxation of lottery ticket & prize money as constitutionally lawful fall under GST purview & legitimate under law.

Municipal Corp. of Greater Mumbai vs. Ankita Sinha

NQT can exercise suo moto jurisdiction by giving RDBH to parties.