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① What are the basic functions of a constitution? Illustrate in the context of the Indian Constitution.

Ans.) A Constitution is the basic rule-book of a country having a sanctity. It governs the relationship between people and government and among people.

Constitution performs multiple functions:-

- 1) It tells the nature of the state eg India is a parliamentary democracy as per Article 79 to Article 123 of Indian Constitution.
- 2) It provides basic rights to citizens eg fundamental rights in Part III of Indian Constitution.
- 3) It tells the limitations of government eg Indian Constitution has provisions for Judicial review (A. 123); office of CAG (A. 148); etc.
- 4) It tells division of power between different layers of government eg Indian Constitution has vertical as well as horizontal separation of power (articles like 124, 168, 243 A-243 D; 7th Schedule; etc.)

5) It creates enabling provisions to fulfill aspirations of people eg DPSPs in Indian Constitution : A.15(4); A.16(3); etc.

6) It provides basic institutional structures for governance eg Parliament; Supreme Court; Municipalities; etc. in Indian Constitution.

7) It provides for co-ordination between centre and state and among states eg

A.263 of the Indian Constitution provides for inter-state council.

8) It helps in comparing constitution of different parts of the world. eg India has Constitutional supremacy while UK has parliamentary supremacy and USA has judicial supremacy.

Indian Constitution is the lengthiest constitution in the world because it has detailed provisions and performs many other functions than those mentioned above. As per Dr. Ambedkar, Indian Constitution is a tool for social revolution in India.

② Highlighting the functions of National Green Tribunal, discuss its importance and limitations.

Ans.) National Green Tribunal (NGT) is a statutory body set up under NGT Act, 2010 for effective and expeditious disposal of cases relating to environmental protection.

The functions of NGT are as follows:-

① It has jurisdiction over cases related to environment eg it adjudicates matters related to Air (Prevention and Control of Pollution) Act, 1981.

② It has powers to legally enforce environmental rights.

③ It provides compensation and relief to those affected. It can also impose penalties for non-compliance.

④ It has appellate jurisdiction against orders of lower courts.

⑤ It follows the principles like 'natural justice'; 'polluter pays'; etc.

Considering these functions, NQT is important due to following reasons:

- ① decreases burden of pendency on courts.
- ② Provides expert knowledge for dealing with environmental matters exclusively.
- ③ Increases the environmental jurisprudence i.e.; the idea behind justice is based on expert knowledge unlike courts where Code of Civil Procedure has to be strictly followed.
- ④ Easy access to citizenry on environmental grievances.
- ⑤ NQT leads to speedy disposal of cases, thereby increasing ease of doing business in India.
- ⑥ Better implementation of environment impact assessment.

~~However~~ In this manner, NQT has done a very good job in dealing with environmental issues eg it expeditiously imposed a penalty on 'ART OF LIVING' group for having

organised an event on flood-plains of River Yamuna. However, it suffers from certain limitations:-

- ① Experts are subject masters only in one particular field. They don't understand matters comprehensively.
- ② Environmental jurisprudence is ad hoc and sporadic. There is no one single pattern eg in 'ART OF LIVING' case, it was criticised for imposing a very small fine of ₹ 5 crores.
- ③ Most of the cases are appealed to in High Courts and Supreme Courts, thereby increasing burden on them. This decreases relevance of NGT.
- ④ no mechanism to ensure the implem-
entation of NGT's orders.
- ⑤ less financial and secretarial support.
- ⑥ Huge vacancies.

Environmental Authority of UK provides a good case to study for making NGT a better body. India can emulate this.

3. Bring out the difference between FPTP and PR systems. Also, explain the merits and demerits of each for a country like India.

Ans.) First Past the Post system (Plurality system) and Proportional Representation system are two types of voting systems.

In FPTP, the winner is the one who secures the highest number of total votes polled eg in Lok Sabha elections, while in PR system, seats are assigned in proportion to number of votes that a candidate wins.

FPTP

- Country is divided into various geographical constituencies.
- Each constituency has one representative.
- Seats may be more than votes. eg in 16th Lok Sabha election, NDA won majority of seats in Parliament but only 38% of total votes polled.
- Not advantageous to small & new parties.

PR

- One constituency.
- Multiple representatives emerge post-election.
- Seats are always proportional to votes.
- Advantageous to every party that has managed to secure votes.

These types of voting systems have both merits as well as demerits.

① FPTP :-

a) Merits

- i) Very simple to understand. For a country like India, where most of the population don't understand technicalities of elections, this is a great advantage.
- ii) Provides more stability to government since majority of seats can be secured by one party.
- iii) Direct linkage to geographical areas.

b) Demerits :-

- i) It's not representative. Majority of electorate don't form government.
- ii) There's nothing for smaller parties. This in turn impacts voting behaviour.
- iii) Regional hegemony is promoted.

② PR System :-

a) Merits

- i) Complex to understand eg President's elections in India are unclear to many people.
- ii) Provides more representation.
- iii) Beneficial for smaller parties.
- iv) Decreases regional hegemony.
- v) Increases people's participation in democracy eg a small party gets a seat in lower house.

b) Demerits

- i) Complex to understand eg nuances of Presidential elections in India.
- ii) Provides lesser stability since coalition government would be the common pattern.
- iii) Whole country is represented by only one constituency. This is not beneficial for smaller states.

Law Commission has recommended a mix of FPTP and PR systems to make our government more representative. It has even recommended a pilot study for same.

4. The Indian Constitution strikes a balance between flexibility and rigidity. Comment.

Ans) Rigidity of a constitution implies that the Constitution isn't easy to be amended eg American Constitution whereas flexibility implies amendment is very easy eg UK Constitution.

As per Dr. Ambedkar, the Constituent Assembly provided for a 'facile procedure' for amending the Constitution. Thus, Indian Constitution strikes a balance between flexibility and rigidity.

Flexibility :-

- ① It's easy to amend the provisions of constitution via simple majority in cases like salaries, emoluments, etc. for various offices like Chief Justice of India.
- ② A Constitutional amendment bill can never be vetoed by President. Thus, once passed by Parliament, the bill ~~is~~ doesn't lapse.

Flexibility is required to keep up with the changing time and keep Constitution alive and organic. eg 73rd and 74th Amendment Acts.

② However, Indian Constitution is rigid in the sense that :-

① Article 368 provides for special majority and in some cases (eg office of President) ratification of at least 50% of total State legislatures for amending the Constitution.

② Joint sitting can't be held in case of disagreement between both the houses.

③ State legislatures cannot initiate the amendment process.

④ 'Basic structure' doctrine propounded by apex court in Keshavananda Bharti Case, 1973

makes it difficult for Parliament to amend some provisions. eg dispute between legislature and Judiciary over appointment of judges.

A rigid constitution ensures that the basic features of a constitution remain intact eg Parliamentary form of government in India.

Hence, as rightly pointed out by K.C. Wheare, Indian Constitution strikes a balance between flexibility and rigidity?

5. What is a pressure group? Describing the function that it performs, explain how it is different from a political party.

Ans.) A pressure group refers to a group of people who are organised actively for promoting and defending their common interest. eg Student organisations.

Pressure group perform various functions like:-

- 1) Identify and promote a particular interest eg Caste-based organisations create awareness against untouchability.
- 2) Influence government policy-making eg using petitions, protests, publications; etc.
- 3) Aggregates interest of different people on a common topic and gives them a concrete shape. eg 'Narmada Bachao Andolan'.
- 4) Create propaganda to generate public opinion. eg Tribal Sangh of Assam.
- 5) Act as an intermediary between government and people eg recent farm protests.

seeking an increase in MSP (Minimum Support Price).

6) Provides representation to common masses (eg Trade unions) where political party has limited outreach.

7) Generate awareness among people eg tribal organisations.

Pressure groups thus act as an important bridge between people and government. It is different from Political Parties since:-

- 1) Pressure groups don't contest elections and don't try to capture political power.
- 2) Pressure groups are need-based organisations unlike political parties that promote whole country's or whole constituency's interest.
- 3) Pressure groups are voluntary and not registered. It's easy to join or leave a pressure group. whereas a political party is registered with ECI.

4) They have no ideology unlike political parties.

5) Pressure groups have a narrow base and limited support from people whereas a political party has huge support base at least locally.

6) May be temporary in nature whereas political parties are generally permanent.

Pressure groups are important for a democracy in several ways and have been a change-makers eg Environmental protection groups (Chipko movement); Student organisations (eg ABVP and NSUI); etc.

6. Mentioning the functions that are performed by UPSC, discuss its working as the 'watchdog of merit system' in India.

Ans) Union Public Service Commission (UPSC) is a constitutional body (Article 315 to 323 of Indian Constitution) created for acting as a central recruiting agency in India.

Functions performed by UPSC are as follows:-

① Regulatory functions:-

- a) It conducts examinations for all India Services, Central Services and public Services of centrally administered territories, in a transparent and independent way.
- b) It assists State public service commissions.
- c) Regulates the suitability of candidates for appointments to civil services.

② Executive functions

- a) It is responsible for conducting examinations for central services, all India services and public services of centrally administered territories.

b) It presents reports to the President on an annual basis.

c) It serves all or any of the needs of a State on the request of the state governs.

③ Quasi-Judicial functions :-

a) All disciplinary matters affecting a civil servant eg with-holding of promotions.

b) Any claim for award of a pension with respect to injuries sustained by a person serving under GOI.

c) Any claim for re-imbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him/her in capacity of his official duties.

Working as a watchdog of merit system :-

① Positives :-

a) Provides competent, impartial and efficient civil servants via robust examination process.

⑤ Thus, UPSC has tried to maintain the competency of steel frame of India.

② Negatives :-

a) It doesn't take inputs from industries; research associations & universities and thus exam process is not too diverse and out-of-sync of demand.

b) It's only an advisory body and can only make recommendations. Out of sync.

c) Handling a very small proportion of employees in India. eg no role in heads of tribunals; group C civil services; etc.

d) Reservation matters are outside its mandate.

e) CVC has diluted some roles on government consultations.

Way Forward :-

a) There needs to be a link between examination pattern and research organisations.

b) It should be given a wider jurisdiction so that UPSC acts as an effective 'watchdog of merit system'.

7. What are the various instruments available to the legislature to uphold the accountability of the executive in India?

Ans) India follows a parliamentary form of government where executive is held accountable by legislature.

As per Article 75 of Indian Constitution, the executive (Council of Ministers) is responsible to House of People. Various instruments

for this are:-

1.) Debates and Discussions → eg Question Hour; Zero hour; etc. in Parliament.

2.) Motions and Resolutions → eg Calling-attention motion; Adjournment motion; no-confidence Motion; etc.

3.) Vote on ~~How~~ Motion of Thanks.

4.) Committee Systems → Standing Committees present report on recent happenings in India; Department Related Standing Committees discuss demand on grants for budget; etc.

5.) Budget → A great tool for financial accountability. It involves policy-cut motion, economy-cut motion; Token cut motion, etc.

6.) General process of passage of bills in Parliament involves lots of debates and discussions.

7.) President causes the reports of important bodies like UPSC, NCSC, NCST, CAG, etc. to be laid before the Parliament.

In case of non-acceptance of recommendations of these bodies, government is answerable.

8.) In case of imposition of emergency, executive has to ~~be~~ get it approved by parliament within a stipulated time-frame.

9) If government brings ordinance in case house wasn't in session, government has to explain the reasons for bringing the ordinance in the house of people.

10) Houses have power to punish ministers for breach of privilege eg if a minister gives wrong information to the house.

These tools enable legislature to have an effective control over executive and thus prevent abuse of power or tyranny of the elected.

8. Discuss the federal and unitary features of the Indian Constitution.

India is a quasi-federation. As per Article 1, India is a 'union of States'.

India thus is a federation with centralising tendencies. The federal features of the Indian Constitution are as follows:-

- ① Dual Polity i.e., government at centre as well as state levels.
- ② Written Constitution → States don't get power from union. Rather, it gets power from Constitution itself.
- ③ Division of Powers → Schedule Seven of the Constitution creates union, state and concurrent lists.
- ④ Constitution is Supreme → Thus, dual polity operates under constitutional provisions.
- ⑤ Rigid Constitution → Federal features can only be amended with state reco-

amendments ratification as per Article 368.

⑥ Independent Judiciary → With Supreme Court having original jurisdiction over federal disputes.

⑦ Bicameralism → To ensure federal equilibrium, there is Rajya Sabha.

While these are federal features, there are unitary features that make India a quasi-federation:

① Provision of Emergency → National, State and Financial Emergencies under Article 352, Article 356 and Article 360.

② Appointment of Governor → He/she is seen as an agent of Centre.

③ Veto power of President and Governor over state bills. eg recent NEET bill by Tamil Nadu Assembly.

④ All-India Services → They are recruited and trained by the Centre but work under States. Centre has ultimate control.

⑤ Territorial integrity is in the hand of Centre. The states have no right to secede.

⑥ Parliament's authority over state list eg when Rajya Sabha passes a resolution asking Parliament to enact a law for states.

⑦ Single Citizenship

⑧ Office of CAG → He can also audit state's accounts but removal of CAG is only in the hand of Centre.

⑨ States can't initiate Constitutional Amendment bills

Hence, as rightly pointed by Dr. Ambedkar, India is both unitary as well as federal as per the requirements of time and circumstances.

Q. Compare and Contrast the Indian judicial system with the American judicial system.

Ans. Indian judicial system has both borrowed many provisions from American judicial system eg Judicial Review; Equal Protection of law; Independence of Judiciary; etc.

As such there are many similarities and differences between the two judicial systems.

Similarities

- ① Independence of judiciary.
- ② Both have provisions for judicial review.
- ③ President appoints the judges.
- ④ Both work on ~~prev~~ principle of complete justice eg Article 142 of Indian Constitution. In case of America, judiciary can over-ride legislature to do complete justice.

Differences :-

- ① India has an integrated judiciary while USA has separate judiciary for Centre and States.

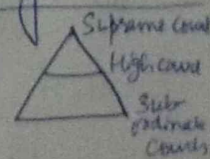


Fig: Indian Judiciary.

② Indian judiciary follows a hierarchy while USA doesn't.

③ Jurisdiction :-

a) Original	Indian narrow eg no armed forces; naval forces	American Supreme Court wider eg naval forces are included.
b) Advisory	It has	It doesn't have
c) Appellate	Civil, Criminal and Constitution al	Only Constitution al cases.

④ American judiciary follows 'due process of law' whereas in Article 21 of Indian Constitution, 'procedure established by law' is mentioned.

⑤ Indian ^{Supreme Court} judiciary has 'special leave' petition power but American Supreme Court doesn't have such a power.

⑥ Indian judiciary follows 'Collegium system' for appointment whereas American judiciary doesn't.

With introduction of PIL and Maneka Gandhi judgement, jurisdiction of Indian judiciary has become much more wider than any judiciary in the world.

10. Give an account of the functions performed by the National Commission for Backward Classes.

National Commission for Backward Classes (NCBC) was set up in 1993 after Indra Sawhney judgement and it has been given a constitutional status in 2018.

Article 338B provides following functions:

- ① To investigate and monitor ~~on~~ matters related to constitutional and other legal safeguards for socially and educationally backward class (SEBC) and to evaluate their working.
- ② To inquire into complaints on rights being deprived of SEBC.
- ③ To participate and advise on socio-economic development of SEBC, under State and union government.
- ④ Present an annual report to the President on working of safeguards available for SEBC.

- (5) To make recommendations to the union or a state for the effective implementation of available safeguards.
- (6) To discharge other functions in relation to SEBC as the President may specify.

However, NCBC suffers from several limitations:-

- (1) It's only an advisory body and its recommendations can be ignored by government.
- (2) It has only recently become a constitutional body. Thus, throughout years prior to 2018, it functioned with certain limitations.
- (3) It doesn't have experts to look into ground realities of day-to-day functional concerns of ~~NC~~ SEBC.

Way Forward :-

- ① Providing for different branches of NCBC at state level and local level.
- ② Rather than being arm-chair experts, they should involve fieldworkers eg. local representatives, and civil societies.

11. Explain the significance of local bodies in strengthening the democratic spirit in India.

Ans.) In India, local bodies came into existence via. 73rd and 74th Constitutional Amendment Acts in pursuance of Article 40 of the Constitution.

It's for the democratic decentralisation at the grassroot level i.e., administration closer to people. Its significance are :-

- 1.) Provides a platform for participation
eg Gram Sabha — participation in decision-making.
- 2.) Makes responsive citizens since citizens themselves are part of decision-making. There's a sense of ownership among people.
- 3.) Accountability in governance increases since people can directly hold those in power accountable.

- 4.) Enhances transparency in governance.
- 5.) Consensus-based decision making ensures that what is good for larger society is ensured.
- 6.) It builds leadership at grassroots level.
- 7.) It breaks the traditional hierarchy,
eg upper-caste traditional hierarchy,
male hierarchy.
- 8.) Empowers backward classes and women through reservation of seats.
- 9.) Better planning with respect to functional items placed in Eleventh and Twelfth Schedule of the Constitution eg roads; social forestry; urban forestry; cattle ponds; etc.
- 10.) Direct collection of revenue taxes, tolls and fees at local level eg water tax; library cess; etc.

However, there are certain issues these bodies are facing eg lack of revenue granted by respective states. Corrective measures in this direction will go a long way in strengthening democratic decentralisation in India.

12. Highlighting the reasons behind judicial pendency in India, mention the steps, which can be taken to address this problem.

According to Law Commission (2009), it would take 464 years to clear the pendency with the then strength of judges. Still, at all three levels of judiciary, there is huge pendency of cases.

The reasons behind judicial pendency in India are as follows:-

① Judiciary-related reasons

a) Shortage of judges → India has only 17 judges per million population while Law Commission (1987) had proposed 50 judges per million population.

b) Judges vacation → Supreme Court works on an average for 188 days a year.

c) under-utilisation of court managers potential.

d) lack of court management systems.

② Other Reasons

a) Government is the biggest litigant →

46% of all litigation across courts.

b) Huge workload → Average time that

the judges have for each hearing could be as little as 2 minutes.

c) Huge Vacancy and impasses over appointment of judges.

d) Increasing admission of Supreme Court's Special leave Petition and Public Interest litigation.

e) Inefficient investigation by police leads to long delays in trial.

This has huge impact on people as "justice delayed is justice denied". Thus, following steps can be taken :-

1.) Improving infrastructure for quality justice.
Presently, India spends only 0.09% of GDP on this.

2.) 230th Law Commission has recommended:

a.) Cases of similar nature can be clubbed.

b.) Vacations in higher judiciary should be curtailed.

c.) Length of oral arguments shouldn't exceed $1\frac{1}{2}$ hours, unless cases involve complicated questions of law or constitution.

3.) Addressing the issues of vacancies - 120th law commission report had suggested a judge strength fixation formula.

4.) Strict regulation of adjournments and imposing costs for seeking it on flimsy grounds.

5.) Strengthening ADR mechanisms.

The fundamental requirement of a good judicial administration is time bound judicial pronouncements. Thus pendency must be reduced.

13. The position of legislative councils in state legislatures is much weaker than the Rajya Sabha in Parliament. Analyse.

Ans) While Rajya Sabha is a necessary and basic feature of Indian Constitution, (Article 79), legislative councils are voluntarily formed by state legislatures (Article 169).

It's said that Rajya Sabha is much stronger than legislative councils. This is because:-

① Rajya Sabha has equal power with Lok Sabha with respect to all matters except money bill in Parliament.

However, legislative council is much weaker in the sense that legislative Assembly can over-ride the legislative council in case of any bill.

② In case of Rajya Sabha, a deadlock occurs with Lok Sabha if bill is not passed by both houses within 6 months.

However, no deadlock can ever occur between legislative assembly and legislative council.

③ There is a special mechanism for joint sitting between the two houses in case of deadlock.

There's no such mechanism for bicameral state legislatures.

The reasons for making legislative councils much weaker vis-a-vis Rajya Sabha are as follows: -

- 1.) Rajya Sabha is a Council of States and thus ensures states' check on center in federation. Legislative Council has no such purpose.
- 2.) Composition of Rajya Sabha is homogeneous i.e., members are elected. Only a few are nominated. But, composition of a legislative council is very heterogeneous, representing diverse interests. This reduces latter's effectiveness.

3.) Rajya Sabha is a permanent house and it has immense roles to perform eg creation of all-India services; approving Emergency; removal of vice-president of India; etc. legislative council has no such roles and can be abolished anytime.

Though weaker than legislative assembly of respective state and Rajya Sabha, legislative councils perform immensely important roles such as delaying hasty legislations and representing those who can't face direct elections.

Hence, 2nd ARC has recommended that legislative councils be given required powers to work for strengthening the local governance.

14. Explaining the meaning of Contempt of Court, discuss the arguments that are advanced in its favor as well as against it.

Article 129 and Article 142(2) give Supreme Court the power to punish for Contempt of itself. Contempt of Court Act, 1971 provides this power to judiciary. Article 215 for High Court also ensures this for High Court.

Meaning of Contempt of Court:-

- Contempt of Court Act, 1971 has defined two types of contempt - civil and criminal contempt.
- Civil Contempt means wilful disobedience or breach of court's orders, or undertakings.
- Criminal Contempt is when either by publication or any other means, one tries to scandalise judiciary or interferes in judicial process.

Rationale behind Contempt of Court :-

- ① To help judges counter pressure and help them practice freely against media criticisms or general public opinion.
- ② Prevent interference with the due course of any judicial proceedings.
- ③ Prevent scandalisation or lowering the authority of any court.
- ④ Ensure one could not defy orders of court according to one's own free will.
- ⑤ Strengthening image of judiciary in perception of people.
- ⑥ Legitimacy and credibility to judicial pronouncements.

However, there are certain arguments against contempt powers :-

- ① Colonial era power when people didn't have enough respect for colonial laws.

② Effect of muzzling free speech guaranteed under A.19(1)(a) of constitution.

③ In liberal democracies, such powers are rare.

④ Very less cases of contempt of court are found and these can be dealt with via other laws.

⑤ Judicial accountability is rare in India and judges should be open to new ideas and constructive criticisms.

⑥ Wider interpretation of cases involving contempt of court eg what constitutes 'scandalising' the image of judiciary is undefined and thus at discretion of judges concerned.

⑦ Violates principle of natural justice.

There is a huge scope of misuse of these powers by judiciary but courts can themselves balance between freedom of speech and expression and contempt powers for permitting fair criticism as permitted under 1971 Act.

15. What are the grounds of disqualification of membership of the Parliament and state legislatures, as mentioned in RPA, 1951?

Representation of People Act, 1951 provides 8 grounds for disqualification for membership of Parliament and state legislatures.

Grounds :-

- 1) Sec 8(1) → on conviction for certain offences eg Protection of Civil Rights Act, 1955; Customs Act, 1962; FERA, 1973; ~~IPC~~ IPC 1860 (eg cruelty toward women; office of bribery); etc.
- 2) Sec 8(2) → eg a person who is convicted for contravention of any law regarding prevention of hoarding or profiteering; adulteration of food; Dowry Prohibition Act; etc.
- 3) Sec 8(3) → a person convicted of any offence other than those mentioned

under section 8(1) and 8(2) and sentenced to imprisonment for at least 2 years. He/she will be further disqualified for 6 years since his/her release.

4) Sec 8A provides for disqualification on ground of corrupt practices, as specified in Sec 123 of RPA, 1951.

5) Section 9 → When a government servant has been dismissed for corruption or disloyalty to the state. He/she will be disqualified for 5 years from date of dismissal.

6) Sec 9A → for subsisting a government contract.

7) Sec 10 → If a person is a managing agent, manager or secretary of any company or corporation (other than a co-operative society) in the capital of which government has at least 25% of share.

8) Section 10A → disqualification for failure to lodge account of election expenses.

However, Sec 11 mentions that ECI may remove any of the above disqualification except under Sec 8A or reduce the period of any such disqualification.

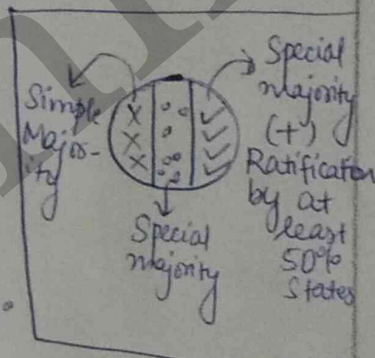
16. Explain the procedure through which the Constitution of India can be amended. Also, discuss its limitations.

Constitutional amendments are done to ensure that Constitution is a living document and in line with the views and demands of society.

There are three methods by which constitution of India can be amended:-

① Simple Majority :- Some provisions are directly amendable by $\frac{2}{3}$ of total membership present and voting.

eg Article 2; Article 3; 2nd Schedule; Use of official language; etc.



② Article 368 :-

a) Special Majority i.e., majority of total membership of house and $\frac{2}{3}$ of total members present and voting.

eg Fundamental rights; DPSPs; etc.

② Special majority of Parliament plus ratification by at least half of the total state legislatures → This is used when the amendment seeks to alter the federal set-up. eg. Election of President and its manner, GST Council, Seventh Schedule, etc.

The above procedure for constitutional amendment has certain limitations such as:-

- ① States can't initiate the amendment process.
- ② no provision of joint sitting in case of deadlock between Lok Sabha and Rajya Sabha.
- ③ Only in very few cases the consent of state legislatures is required and that too, only half of them.

- ④ The provisions related to amendment procedures are too sketchy, leading to confrontations between judiciary and legislatures.
- ⑤ no provision for a special body like Constitutional Convention in USA.
- ⑥ no time-limit within which states should ratify/reject the amendments.

Despite these defects, the process has proved to be simple and easy eg. US Constitution has been amended only 27 times in about 270 years while India has seen more than 100 amendments in nearly 70 years. The procedure is facile.

17. The union list prevails over the other lists in terms of distribution of legislative powers in the Indian Constitution. Discuss.

There are three lists (Union, State and Concurrent) under Seventh Schedule of Indian Constitution in accordance with Article 246.

The union list prevails over other lists :-

- 1) In case of conflict between union and State lists.
- 2) In case of law made by union as well as states on same subject.

Doctrine of Repugnancy.

- 3) In certain cases where union can make laws for states as well :-

- i) Article 249 - Rajya Sabha passes a resolution.
- ii) Article 250 - In case of national Emergency.
- iii) Article 252 - when states pass a resolution.

iv) Article 253 → for enforcing international agreements.

4.) There are cases where governor can withhold assent to a bill and send to President for his/her assent.

5.) In case of Constitutional amendment, states only have to ratify by a simple majority and that too in ~~no~~ very few cases (Article 368(2)).

6.) States are required to take prior approval for inter-state trade and commerce related laws.

This unitary feature of Indian Constitution ensures:-

- 1.) Homogeneity of laws made in India.
- 2.) Avoid conflicting laws in case of inter-state trade and commerce.
- 3.) Maintain a central control over Union of India so as to avoid secessionist tendencies.

Thus, through above-mentioned provisions, we see that there's a heavy-handedness of union over state matters and number of subjects mentioned under list-I of 9th schedule is maximum.

18. The doctrine of Separation of Powers is the bedrock of Indian parliamentary democracy. Discuss.

Ans.) Montesquieu in his work the Spirit of Laws in 1748 coined the term "separation of powers". This inspired the declaration of the Rights of Man and the USA Constitution.

It provided for a strict tripartite separation of power among legislature, executive and judiciary. However, this isn't ideally possible practically.

In democracies like India, there is a weak ^{separation} of power.

① In Indian parliamentary democracy, constitution doesn't explicitly vest different kinds of power in different organs of the state.

② Indian Constitution even goes for a functional overlap eg quasi-judicial functions by SDM.

However, there are features that provide for separation of power :-

- ① Article 50 of Constitution :- State shall take steps to separate judiciary from the executive.
- ② Article 122 and 212 → Validity of proceeding in Parliament and state legislature can't be called into question in any court.
- ③ Article 121 and 211 → Judicial conduct of High Court and Supreme Court judges cannot be discussed in Parliament and State legislatures.
- ④ Article 53 and 154 → The executive power of union and state shall be vested in President and Governor respectively and they enjoy immunity from civil/criminal liability.
- ⑤ Article 361 → President and Governors aren't answerable to any court for their official duties.

⑥ There are checks and balances :-

- i) On Judiciary - eg impeachment process
- ii) On Executive - eg no-confidence motion ensures legislature check and judicial review ensures judicial check.
- iii) On legislature - eg judicial review.

Finally, in Keshavananda Bharti Case (1973), Supreme court acknowledged doctrine of separation of Powers as the basic feature of Indian Constitution.

Hence, India follows its unique style of 'Separation of Powers' to suit its special needs and it has stood test of time.

19. Explaining the power of President to promulgate ordinances, mention the various limitations that exist in this context.

Article 123 of the Constitution provides power to President to promulgate ordinances as per the situations mentioned therein.

Power to promulgate ordinances and its limitations :-

- 1) It can only be used when both the Houses of Parliament are not in session.
- 2) It can only be done with respect to subjects on which union has the power to make laws.
- 3) It has same effect as the law of Parliament.
- 4) However, as per Article 123(2), every such ordinance has to be laid before both the houses of Parliament when the houses reassemble and a 'statement of Reasons' has to be provided.

5) Ordinance shall cease to operate at the expiration of 6 weeks from reassembly if houses don't approve it within the said period.

6) President may withdraw the ordinance at any time.

7) President's power to promulgate ordinance is subject to judicial review under Article 13. (Cooper case).

Way Forward :-

1) These powers should be used sparingly i.e., only when emergency situations arise (D.C. Wadhwa case)

2) Re-promulgation should not be done.

3) Shouldn't be used as a substitute for legislation.

20) Despite often being described as "first among equals", the position of the PM vis-a-vis other ministers in the Council of Ministers is one of pre-eminence.

India follows a parliamentary democracy where Prime Minister (PM) and his Council of Ministers is directly responsible to Lok Sabha (collective responsibility).

Since Council of Ministers are collectively responsible, so, it's said that PM is "first among equals".

But, there are various reasons as to why we say that his position is of pre-eminence: -

- ① PM is the leader of house in Parliament (lower house or upper House - whichever member PM is).
- ② PM heads Council of Ministers to aid and advise President (Article 74)

- ③ Article 75 → President appoints PM and PM advises President on appointment of other Ministers.
- ④ Article 78 → Duty of PM as respects the furnishing of information to the President.
- ⑤ Other ministers can't function if PM resigns or dies.
- ⑥ PM allocates portfolios to different ministers.
- ⑦ PM summons and presides over the meeting of Council of Ministers.
- ⑧ PM is the chief spokesman of the Union government.
- ⑨ PM is the political head of the services.
- ⑩ PM plays a significant role in shaping the foreign policy of the country.
- ⑪ PM is the chairman of important bodies eg NITI Aayog.

Since, prime minister enjoys so many powers, parliamentary democracy has come to be called a prime-ministerial form of government and PM is called "keystone of the Constitution"; "moon among stars"; "captain of the ship of the state"; etc.