

**INDIANCIVILS *Sample Material***  
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## CONSTITUTIONAL DEVELOPMENTS

### *Sample Material*

The struggle has begun when British left India on 15<sup>th</sup> Aug 1947. By gaining independence from the British is not the end. Standing virtue of independent nation is more trouble.... there started the development of constitution. So, let's have a brief definition of constitution.

***Q: What is Constitution? And why it is important for every nation?***

It is a document which gives what to do and what not to do for the government of a country and to brief more, a Constitution is the vehicle for every nation's progress on a system based. And, still the definition of the constitution differs from author to author.

Lord Bryce Said *“a frame of political society organized through and by law, that is to say, one in which law has established a permanent institutions with recognized function and definite rights.”*

Bryce Said *“it includes all rules which define the member of sovereign power, all rules which regulate the relation of such members to each other or which determine the mode in which the severing power , or the members thereof, exercise rules relating to fundamental concern of government.”*

Modern Authors stated that the constitution is just a relationship and arrangement between three organs (Executive, Judiciary and Legislative) inside the community.

Prof. Where stated as *“the constitution lies in a belief in limited government.”*

Carl J. Friedrich in his work says *“constitutional government and democracy”* observes *“A constitution is broadly speaking, a set of rules, written and unwritten, that seeks to establish the duties, power and functions of the various institutions of government, regulate the relationship between them and define the relationship between the state and the individuals.”*

And Our Understanding definition after gone though the Entire constitution is as follows”

1. Provides a set of basic rules that minimize the coordination between the societies.
2. Basic allocation of power in a society and gives the decision making body to the law makers.
3. Some limits that govt. can impose on its citizen
4. Enable the govt. to fulfil the aspirations of the society

***Q: What is a written constitution and unwritten constitutions?***

- A Written one which provides into a single codified legal document and it means to say systematic arrangement of various provisions of the constitutions  
E.g.: The US Constitution hailed for its (Brevity, restraint and Simplicity) and the Indian Constitutions.
- A Un Written Constitutions is embodied in customs, usages, and conventions, law of statue, court of content, treaties, and judgments. E.g.: The UK, the New Zealand and Israel

***Q: Who has given the idea of making constitution in India?***

The idea of making constitution is given by Mahatma Gandhi in 1922 Lahore session while explain the meaning of swaraj and indicated that we Indian's has write the constitution for us...First Expression about constitution. After 6 Years, 1928 the Indian constitution was drafted by Nehru Committee and headed by Moti Lal Nehru (father of Jawaharlal Nehru). Again after one year, in 1929 December, Lahore session, congress passed the Poorna swaraj resolution and breaking news of that time (*Jawaharlal Nehru elected as president of Indian national congress and dedicated entire life to the nation by serving it under the leadership of Mahatma Gandhi*).

Congress Passed Poorna Swaraj Resolution in Dec 1929 and after one month 26 Jan 1930, Pledge of Indian Independence = Declaration of Independence was drafted by Mahatma Gandhi in 1930 and it echoed as American Declaration of Independence. Jan 26, 1930 is the Independence Day by Indian national Congress.

When the idea is mooted about the making of constitution, and then comes into picture the constituent assembly.

**MAKING OF CONSTITUTION**

***Q: What is Constituent Assembly and How Constituent Assembly Formed?***

The idea generated from the mind of legendary freedom fighter M.N Roy (*Manabendra Nath Roy known as MN ROY, Indian nationalist and revolutionaries and international known as Radical Activist and theorist of politics*). But, it later becomes the official demand of INC 1935. The demand accepted in August 1940 offer by the British. This is called August offer of 1940. This offer gives full weight to minority opinion, recognizing the Indians to form their own constitution.

Under cabinet mission plan of 1946, constituent assembly and election were held for the first time.

British India Seats = 296  
Princely States = 093  
Total Strength of Constituent assembly = 389

British India Seats = 296, Out of these  
Eleven Governor Provinces = 292 Rest  
Chief Commissioner Provinces = 04 (Delhi, Ajmer, Coorg and British Baluchistan)

Elections of 296 seats of British India were completed by July – August 1946.

Congress = 208, Muslim League = 073. Since Muslims secured very less votes compared to INC, they refused to cooperate with congress. Riots Started between Hindus and Muslims, then the immediate action taken by the LAST Governor General of British India was Lord Mountbatten scrapped the Cabinet Mission Plan and culminated the Indian Independence Act to make separate nation for India and Pakistan and Constituent Assembly too. When our constitution enacted, the big laws, Govt. of India Act 1935 and Indian Independence Act 1947 were official cancelled by the Article 395.

The Indian Independence act was passed on July 18, 1947. Earlier it is declared via Cabinet Mission Plan as June 1948 but by scrapping the act by Lord Mountbatten. Indian got independence earlier on

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15 August 1947. Cabinet elected for Undivided India is on June 9, 1946 but it reassembled on 14<sup>th</sup> August 1947 as sovereign body and took the power in the night from the British. As a result, Pakistan Got separate constituent assembly was set up for Pakistan on June 3, 1947. The person who represented the areas from Pakistan are ceased to be the members of Constituent assembly of India. Fresh election was held for two places for west Punjab and east Bengal. Now the members of Indian Constituent assembly were 299 and met again on 31<sup>st</sup> Dec 1947.

- Constituent Assembly had been elected firstly for undivided India and first sitting is 9<sup>th</sup> Dec 1946 and re-assembled again on 14<sup>th</sup> Aug 1947.
- Members are indirectly elected from provisional legislative assembly's established in 1935.
- Constituent Assembly was mostly based on cabinet mission Plan.
- Proportional representative population

### ***Q: Who are the Founding members and later members of Constituent assembly?***

As we cited above the Constituent Assembly met for first time for undivided India on 9<sup>th</sup> Dec 1946. The Muslim League has got low seats and because of some inferior of their words will not access by the Indian Constituent assembly. Basing on the strings, they boycotted the meeting and insisted separate nation for them as we called today PAKISTAN. The meeting attended by 211 members and presided by Dr Sachidananda Sinha as an interim president.

11<sup>th</sup> Dec 1946 - Dr. Rajendra Prasad elected as president of Constituent Assembly. Shri B.N Rau appointed as Legal Advisor of the Constituent assembly.

Vice President of CA is H C Mookerjee, Former Vice Chancellor of Calcutta University and chairman of Minority Committee in CA. He was appointed as governor of West Bengal after India become republic.

### ***Q: What is OBJECTIVE RESOLUTION and who moved it?***

It is a document to the CA to provide the direction towards Constitution (or) Aims of the CA was moved by Pandit J.L. Nehru in 13<sup>th</sup> Dec 1946. It showed the path and enshrined the values and aspiration behind the Constitution making and it unanimously accepted on 22<sup>nd</sup> Jan 1947; India's Constitutional expression to fundamental commitment as "Equality, Liberty, Democracy, Sovereignty, and a cosmopolitan identity". To make it more simply.....

The US Constitution (Brevity, restraint and Simplicity)

The USSR Constitution (Social, Economic and Political)

The French Constitution (Liberty, Equality and Fraternity)

The Indian Constitution (Equality, Liberty, Democracy, Sovereignty, and a cosmopolitan identity)

### ***Q: What are the important Committees constituted in the Constituent assembly?***

In the mid night of 14<sup>th</sup> August 1947, the assembly took the charge of legislative assembly of an independent India. They are numerous committees appointed by the CA for making a Constitution.

Major Committee – 8

Minor Committee – 15

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Important Committees are as follows:

- Rajendra Prasad – Committee on the Rules of Procedure, Steering Committee, Finance and Staff Committee and Adhoc Committee on the National Flag.
- Pandit Jawahar Lal Nehru - State Committee, Union Power Committee, union Constitution Committee.
- Alladi Krishna Swamy Iyer – Credential Committee
- B. Pattabhi Sitaramayya – House Committee
- G V Mavalankar – Functions of CA
- Sardar Vallabhbhai Patel – Advisory Committee on Fundamental Rights, Minorities, and Tribal and Excluded areas
  - Minorities Sub Committee – H C Mookerjee
  - FR Sub Committee – J B Kripalani
  - North East frontiers Tribal areas and Assam Excluded partially excluded areas subcommittee – Gopinath Bordoloi
  - Excluded and Partially excluded areas – AV Thakkar
- The least but the gigantic is DRAFTING Committee – Dr. B R Ambedkar

### ***Q: How the drafting Committee helped to enact the constitution?***

Drafting Committee was headed by Dr. B R Ambedkar and it is very important committee among the CA. It set up on 29<sup>th</sup> Aug 1947 to draft the Constitution. The members as follows...

- Dr. B R Ambedkar (Chairman)
- N. GopalaSwami Ayyangar
- Alladi Krishnaswamy Iyer
- Dr K M Munshi
- Syed Muhammad Saadulla
- N. Madhava Rao (Replaced by B L Mitter – Resigned due to ill health problems)
- T.T Krishnamachari (Replaced by D P Khaitan – Died in 1948)

The Drafting Committee after taking proposals of various committees prepared the first document and published in Feb 1948 and now it is open to comment and the reviews and adopting of comments and the second draft published in Oct 1948. Dr B R Ambedkar introduced the final draft of constitution into CA on 4<sup>th</sup> Nov 1948.

First Reading of Constitution in CA - 4<sup>th</sup> Nov 1948

Second Reading of Constitution in CA – 15<sup>th</sup> Nov 1948

Third Reading of Constitution in CA – 14<sup>th</sup> Nov 1949. On the third reading, Dr B R Ambedkar moved the Draft constitution and it set to be passed on 26<sup>th</sup> Nov 1949 and received signatures of members present 284.

- The bill passed day 26th Nov 1949 is called National law Day.
- On the day when constitution was being signed, it was drizzling outside and it was interpreted as good sign of omen.
- It took 2 years 11 months and 18 days and spent around Rs. 6.4 Crores n preparation.
- Final Outcome is 22 Parts, 395 Articles and 8 Schedules.
- Some provision given immediate effect relating to Citizenship, Elections, provisional Parliament, temporary and Transitional Provision.

Indian Polity and Governance – Sample Copy

**Q: What are the Sources of Indian Constitution?**

The constitution of India is unique in its structure, vastness and inter-related compendium.

Govt. of India Act 1935	<ul style="list-style-type: none"> <li>• Federal Scheme (Also from Canadian Constitution)</li> <li>• Governor Office</li> <li>• Judiciary</li> <li>• Public Service Commission</li> <li>• Emergency Provision and</li> <li>• Administrative Details</li> </ul>
British Constitution	<ul style="list-style-type: none"> <li>• Parliamentary Govt.</li> <li>• Rule of Law</li> <li>• Legislative Procedure</li> <li>• Single Citizenship</li> <li>• Cabinet System</li> <li>• Prerogative writs</li> <li>• Parliamentary privileges and bicameralism</li> </ul>
US Constitution	<ul style="list-style-type: none"> <li>• Fundamental Rights</li> <li>• Independent of judiciary</li> <li>• Judicial review</li> <li>• Impeachment of the president</li> <li>• Removal of Judges of Supreme and High Court</li> <li>• Post of Vice President</li> </ul>
Irish Constitution	<ul style="list-style-type: none"> <li>• Directive Principles of State Policy</li> <li>• Nomination of members of Rajya Sabha</li> <li>• Method of election of President</li> </ul>
Canadian Constitution	<ul style="list-style-type: none"> <li>• Federal Structure</li> <li>• Appoint of Governors by centre</li> <li>• Advisory Jurisdiction</li> </ul>
Australian Constitution	<ul style="list-style-type: none"> <li>• Concurrent List</li> <li>• Freedom of Trade</li> <li>• Commerce and Inter - Course</li> <li>• Joint sitting of Two houses</li> </ul>
Weimer Constitution	<ul style="list-style-type: none"> <li>• Suspension of Fundamental Rights during Emergency</li> </ul>
USSR Constitution	<ul style="list-style-type: none"> <li>• Fundamental Duties</li> <li>• Ideal of Justice(Social, Economic and Political)</li> </ul>
French Constitution	<ul style="list-style-type: none"> <li>• Republic and Ideals of Equality, liberty and Fraternity</li> </ul>
South African Constitution	<ul style="list-style-type: none"> <li>• Amendment of Constitution</li> <li>• Election of Rajya Sabha</li> </ul>
Japanese Constitution	<ul style="list-style-type: none"> <li>• Procedure Established by law</li> </ul>

**Q: What are the salient Features of Indian Constitution?**

1. **Largest and Most Comprehensive Constitution:** Our Constitution when enacted contained 395 Articles, 22 Parts and 8 Schedules. But Today our constitution comprises of
  - 25 Parts
  - 12 Schedules
  - 448 Articles
  - 97 Amendments
2. **Fully Patch Work:** As we can see from the above question, the constitution has drawn from different sources.
3. **Simple and tough:** Our Constitution is simple and as well as tough under circumstances. In India Making law is quite flexible than amending.
4. **Sovereign, Democratic State, Republic, Socialist state and Secular:** The Preamble declares all these issues.
5. **Parliamentary of Govt.:** We have a parliamentary type government and it means “Ministers get their legitimacy from a legislative body”. We have two houses called as BICAMERLISM parliament.
6. **Features of both Federal and Unitary System:** India as federal govt because we have different govt. around us and there is division and distribution of power. Even though, some parts of constitutions has envisaged with unitary sprit by making more power to the centre. They are as follows
  - Single citizenship all over the country
  - Parliament can legislate the over state matters
  - Emergency provision make completely unitary.
  - Changes of name and boundary of the states are with centre
  - All Indian Services
  - Governor are appointed by the centre
  - Planning Commission
  - States have to dependent for assistance of economic grants
  - Election commission and judiciary
  - Unequal representation in Rajya Sabha
7. **Universal Adult Franchise:** Indian has given voting rights to the age of 18 years without any discrimination.
8. **Fundamental Rights and Duties**
9. **Directive Principle of State policy**
10. **Starts with Preamble:** Indian constitution starts with preamble which gives the inner sight of the constitution with a philosophical touch. **Please note preamble is a part of Constitution.** Initially it was not considered as a part of Constitution hence amendment can't be accepted. But by later, Kesavananda Bharati VS State of Kerala 1973 Case, the Supreme Court rules it is a part of the constitution and it can be amended subject to not violating the basic structure of the constitution.

## THE PREAMBLE

### *Q: What is Preamble?*

The preamble indicates the source of organ of the constitution and state of ideal, values and objective to be pursued by the state as well as political group.

### *Q: Give a Glimpse of preamble?*

WE, THE PEOPLE OF INDIA, have solemnly resolved to constitute India into a SOVEREIGN  
**SOCIALIST SECULAR DEMOCRATIC**  
**Republic** and to secure to all its citizens;  
**Justice**, Social, Economic and political;  
**Liberty** of thought, expression, belief, faith and worship;  
**Equality** of status and of opportunity and to promote among them all  
**Fraternity** assuring the dignity of the individual and the unity and **INTEGRITY** of the nation;  
IN OUR CONSTITUENT ASSEMBLY this twenty – sixth day of November, 1949, do HERE BY  
ADOPT, ENACT AND GIVE OURSELVES THIS CONSTITUTION

### *Q: Who has given the Shape of preamble?*

The preamble-page, along with other pages of the Constitution of India, was designed and decorated solely by renowned painter Beohar Rammanohar Sinha of Jabalpur who was at Shantiniketan with Acharya Nandalal Bose. As such, the page bears Beohar Rammanohar Sinha's short signature Ram in Devanagari lower-right corner.

### *Q: Can the Preamble is enforceable by Court of Law?*

The preamble is a part of our constitution but it is not enforceable by court of law and non – Justifiable. The Courts can take as recourse to explain the provision of constitution. This view expressed by the Supreme Court in two cases as follows

- Berubari Union Case 1960
- Kesavananda Bharati Case 1973 VS State of Kerala

### *Q: What are the comments and Quotes of Preamble?*

According to KM Munshi – Horoscope of our Sovereign Democratic and Republic  
According to Pandit Thakur Das Bhargava – Key to Constitution  
According to Sir Ernest Barker – Key Note to Constitution  
According to NA Palkhivala – Identity Card of Constitution  
According to Thakurdas – Soul of Constitution

### *Q: What is the Underline philosophy of Preamble Words?*

**Socialist:** Added by 42<sup>nd</sup> Amendment Act and it implies the Social and Economic Equality.

**Secular:** In India Secularism means the “state” shall respect all religion equally and there will be no special provision for any one.

**Democratic:** The first words and the last words give the true spirit of democracy...We THE PEOPLE OF INDIA.....GIVE OURSELVES THIS CONSTITUTION. Vaishali is the first democratic in the world. However India has borrowed its present form of democracy from western side.

**Justice:** Social, Political and Economical Justice explained in the Preamble.

**Liberty:** Essential requirement of democracy

***Q: What are the Judgments Related to Preamble?***

The Main Controversy about preamble is whether it is part of constitution or not. The case is as follows:

1. Berubari Union Case (1960): Preamble shows the general purpose of the constitutional and it is a key to find the mind of makers of constitution – PREAMBLE IS NOT A PART OF CONSTITUTION
2. Kesavananda Bharati case (1973): However Supreme Court Over rules it verdict and said” preamble is of extreme important and the constitution should be read and interpreted in the light of noble vision expressed in the preamble.
3. LIC of India case (1990): Supreme Court said preamble is an Integral part of the Constitution.
4. SR Bommai Case: Supreme Court reiterated that preamble indicates the basic structure of the constitution.

- So far Preamble amended once through 42nd constitutional amendment act 1976. To add three words as SECULAR, SOCIALIST AND INTEGRITY.
- Govt. of India Act 1935 had no preamble where as Govt. of India Act 1919(Montague – Chelmsford) had a preamble.
- The Idea of Preamble is borrowed from USA.
- France was the first country which provided universal Male Suffrage in 1792.

## **SALIENT FEATURES OF PEOPLE'S REPRESENTATION ACT**

### ***Sample Material***

Representation of People's Act is enacted by Parliament even before First general elections (Provincial Parliament). It provides the code of conduct of elections and also deals with qualification and disqualification of members of both the houses of parliament (Lok Sabha + Rajya Sabha) and the state legislature (Legislative Assembly and Legislative Council). The Act is of special significance to the smooth function of Indian democracy as, it checks the entry of persons with criminal background into politics was amended many times, and the major amendment being made in 1966. The act was enacted by the provisional parliament under the Art 379 of Indian constitution vide act no 43 of 1951 for the first general election conducted on 25<sup>th</sup> Oct 1951.

***Q: How it been framed?***

When India becomes independent in Aug 15<sup>th</sup> 1947, an elected constituent assembly was set up to frame the constitution. When the law was apprehend on 26<sup>th</sup> Nov 1949(National Law Day) and waited till one month 26<sup>th</sup> Jan 1950 as republic day. Most of the important provisions are enacted on the national law day namely, elections, citizenship, provisional and transitional parliament and some other features. The provisional parliament enacted the act Vide Act No 43 of 1951for the first general elections conducted on 25<sup>th</sup> Oct 1951.

***Q: What are the important Acts related elections?***

The important act related to the elections is as follows,

1. Constitution of India
2. Representation of people's Act 1950, 1951 with their amendments and rules made under them.
3. Parliament (prevention of disqualification) Act 1959 and
4. Delimitation of council constituencies' orders.

***Q: What are the Overall Salient Features of Representation of People Act***

1. Part 21 of Indian constitution mentioned the provisional parliament and the provisional parliament enacted representation of people act 1951, so that general elections could be conducted according to the rules mentioned.
2. The representation of People's Act contains 13 parts (2 parts added as amendments). Each part is divided into different sections making it a total 171 numbered sections.
3. In the whole document, EXPRESSION was not used in 1951 act but it does have the meaning in Art 43 of 1951 Act.
4. Chief electoral officer is mentioned in Sec 13 A
5. Corrupt practices are mentioned in Section 123
6. ELECTION means an election to fill a seat or seats in either the House of parliament or in the house of legislator of the state other than state of J and K.

*Q: Difference between the two Acts?*

Questions	Representation of People Act, 1950	Representation of People Act, 1951
Deal with	Preparation and revision of electoral rolls.	Actual conduct of elections.
Acts Supplemented by Election Commission	<b>Registration of Electors Rules 1960</b> , made by the Central Government, in consultation with the Election Commission.	<b>Conduct of Elections Rules 1961</b> framed by the Central Government, in consultation with the Election Commission.
What did Electors Rule Says?	It deal with all the aspects of <ul style="list-style-type: none"> <li>✓ Preparation of electoral rolls</li> <li>✓ Their periodic revision and updating</li> <li>✓ Inclusion of eligible names</li> <li>✓ Exclusion of ineligible names</li> <li>✓ Correction of particulars, etc.</li> <li>✓ These rules also provide for the issue of electoral identity cards to registered electors bearing their photographs at the State cost.</li> <li>✓ These rules also empower the Election Commission to prepare the photo electoral rolls containing photographs of electors, in addition to their other particulars.</li> </ul>	It deal with <ul style="list-style-type: none"> <li>✓ issue of writ notification</li> <li>✓ calling the election,</li> <li>✓ filing of nominations,</li> <li>✓ scrutiny of nominations,</li> <li>✓ withdrawal of candidatures,</li> <li>✓ taking of poll,</li> <li>✓ counting of votes and</li> <li>✓ Constitution of the Houses on the basis of the results so declared.</li> </ul>
Election Disputes	All <b>post election matters to resolve doubts and disputes arising out of or in connection with the elections</b> are also dealt in accordance with the provisions of the RPA 1951. Under this Act, all such doubts and disputes <b>can be raised before the High Court of the State</b> concerned, but <b>only after the election is over and not when the election process is still on.</b>	

**Some more Salient features of representation of people act 1951**

1. The Lok Sabha seats are to be filled with direct elections and one seat for every constituency and one person for one seat.
2. Election commission can also been conferred the power to determine the constituency to be reserved for SC in the states of Meghalaya, Mizoram, Nagaland and Tripura.
3. President of India can conferred the power to amend orders delaminating constituency, only after consultation the election commission.
4. Each state to have a chief electoral officer nominated or designated by election commission in consolation with the state government. The election commission will also appoint district level election commissioners in consultation with the state government.
5. Each constituency has to have an electoral roll. No person to be registered in electoral rolls of more than one constituency. No person to be registered more than once in any constituency. A person shall b disqualified for registration in an electoral roll if h is either not a citizen of India or is of unsound mind or is disqualified from voting.

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6. The electro roll for each constituency has to be prepared in the prescribed manner. Any person whose name is not included in the electoral roll of a constituency may apply to the elector registration officer for the inclusion of his name in that roll.
7. Power to make rules under this act conferred to the central government, which can exercise this power in consultation with election commission. The civil courts have also been barred to the question the legality of any action of electoral registration officer regarding revision of such electoral roll.

### **Some more Salient features of Representation of people act 1951**

This act deals with the qualification matters, disqualification matters, provision related to political party, and appeal structuring.

#### **Qualification Matters**

1. Only elector can be representative of the constituency. If a person is not eligible to vote, so he can't contest the election in Lok Sabha and Rajya Sabha.
2. In case of Lok Sabha, if the seat is reserved for SC, a non SC voter cannot be elected to that seat, if the seat is reserved for ST, a non ST voter cannot be elected to that seat. He must be from these categories however; he may be a voter registered from any other constituency within India. However, in case of autonomous districts of Assam, Sikkim, ST seat for Lakshadweep, the electors should be enrolled as a voter in the same constituency.
3. The same criteria are followed in the legislative assembly of the state, barring that the elector should be an eligible voter in the same state.

#### **Disqualification Matters**

1. If a person is convicted under a punishable offence related to promoting enmity, bribery, undue influence, or presentation at an election, rape, cruelty towards a woman, creating or promoting enmity, hatred or ill will between classes, promoting religious acrimony, practice of untouchability, import and export of prohibited goods, any other unlawful activities, FEMA, laws related to narcotics, terrorism acts, offence related to religious places and religious practices, offences related to insulting the national insignia, constitution of India, offence related to practice of sati and so on... will be disqualified if sent to jail for at least 2 years. This disqualification is for six years after the person is released from jail.
2. The other grounds for disqualification are as follows
  - a) If found guilty of corrupt practices
  - b) Dismissed for corruption
  - c) Disqualified for a contract entered into with government related matters
  - d) A person remains disqualified as long as he managing agent, manager or secretary of any government company or corporation
  - e) If fails to lodge expense accounts of elections.
3. Provision related to political parties
  - a) Every association or body which calls itself a political party shall have to apply to election commission of India for registration. The election commission will register that party after considering all the particulars, relevant factors and after hearing the representative of the party.
  - b) The election commission decision regarding registration will be final

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- c) If a political party changes its name or address, it shall communicate the election commissioner as soon as it does so.
  - d) A registered political party may accept any voluntary contribution by any person or company within India other than a government company. Political party is not allowed to seek and receive contribution from foreign sources.
  - e) Each political party has to prepare the report related to contribution more than 20000 from persons and companies in year and submit to the election commission.
4. Appealing structure
- a) Every elected candidate shall submit the declaration of his assets and liabilities within 90 days from taking oath
  - b) Every contesting candidate is required to maintain account of election expenses.
  - c) Election petitions are to be heard in high court and appeal to Supreme Court. High court has to conclude such petition within six months from the date of petition. High court can intimate its decision to election commission and speaker / chairman. Appeal to Supreme Court can be made within 30 days.
  - d) The corrupt practices which can lead to cancelling of an election include bribery, undue influence, promotion of enmity, hiring of vehicles to and from polling stations.
  - e) The often listed in the acts are as follows
    - i) Promoting enmity
    - ii) Public meetings within prior 48 hours of polling
    - iii) Creating disturbances
    - iv) Restrings on the printing of pamphlets, posters etc
    - v) Officer acting for a candidate
    - vi) Canvassing in or near polling stations
    - vii) Illegal hiring or procuring of conveyance
    - viii) Breach of official duty
    - ix) Removal of ballot papers
    - x) Booth capturing
    - xi) No liquor sale within 48 hours to the polling to the conclusion of polling
  - a) In case of enquiry, the EC decision is final and can enforce any action. The election has power to regulate its own procedure
  - b) For election related works, the following are to be made available to the election commission via every local authority, university, Government Company, any other institutions undertaking under the control of state or central government.

### **Q: What are the Recent Judgments and why the Representation of people Act 1951 is in news?**

The two recent judgments of Supreme Court on electoral laws to cleanse the politics:

*Lily Thomas Vs Union of India*: ruled that Section 8(4) of the Representation of the People Act (RPA) was ultra virus since it provides a three-month window to legislators to file an appeal against conviction of crimes.

- Why ultra virus? (Court says once convicted, article 101 will come into picture which disqualifies persons according to provisions of article 102).
  - However art. 102 say person is disqualified according to law made by parliament.
  - And parliament made RPA according to which person stands disqualified on conviction; so once convicted art.101 will come into picture, thereby nullifying provisions of sec 8(4) – (constitution is supreme to ordinary laws).

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- But constitutional expert Acharya (former secretary-general of parliament says there's no immediate disqualification)
- Article 101(3)(a) of the constitution which provides that "if a member of either house of parliament- becomes subject to any of the disqualifications mentioned in Article 102 (detailed provisions of the article are mentioned below), his seat shall thereupon become vacant.
- *Chief Election Commissioner Vs Jan Chaukidar*: more controversial ruling as it bars those in police custody or under arrest from contesting elections. The court concluded that section 8(4) of RPA, which defers the date on which the disqualification will take effect, is ultra-virus the constitution because it is inconsistent with articles 101(3)(a) and 190(3)(a). It is important to note that the court didn't go into the question of whether section 8(4) infringes the equality provision in Article 14.

It is obvious that the second ruling is ripe for misuse. If the view of the Supreme Court it is accepted, then a rival politician need only get a false First Information Report (FIR) filed against his political rival and have him sent to police custody or jail to disqualify him. A large number of criminal cases against politicians, in any case, are of a "political" nature – an outcome of agitation politics, protests, civil disobedience and so on. Even in the past and the present, some of our best law-makers have been part of various civil disobedience and protest movements.

### ***Q: What are Effects of recent Judgments by Supreme Court?***

Supreme Court in their recent judgment of Lilly Thomas Vs Union of India ruled that MP/MLA/MLC who is convicted of a crime will be disqualified as an elected representative on the date of conviction. Furthermore, section 8(4) of the representation of people act, which allowed elected representation three months to appeal their convictions, was declared unconstitutionally by the bench of Justice AK Patnaik and Justice S J Mukhopadhaya. In an attempt to overturn this decision, the bill was introduced by Mr. Kapil Sibal in Rajya Sabha with a new amendment i.e. Indian government also filed a review petition in Supreme Court BUT Supreme Court dismissed. On 24<sup>th</sup> Sep 2013, fodder scam verdict, the government tried to bring the bill into effect as an ordinance. However, Rahul Gandhi, Vice President of Indian national Congress made his opinion of the ordinance clear in a press meeting. It's complete non sense. It should be torn up and thrown away. But later with some discussion, both the ordinance and bill were withdrawn on 2<sup>nd</sup> Oct 2013.

### **List of Disqualified elected representatives**

Representative	party	Representation	Case	Status
Rushed Mason	Congress	Rajya Sabha MP from UP	Convicted for 4 years in MBBS Seats Scam	Disqualified
Lalu Prasad Yana	RJD	Lok Sabha MP from Saran	Convicted for years in Fodder Scam	Disqualified
Jadish Sharma	RJD	Lok Sabha MP from Jahanabad	Convicted for 4 years in Fodder Scam	Disqualified