

# INDIAN CONSTITUTION

19MC004

## UNIT-III UNION GOVERNMENT

### **Powers and Functions of President**

- The President of India has many powers and is the head of the state, also called the first citizen of India.
- He forms an important part of Union Executive, provisions dealing with Article 52-78 which includes articles that are related to the President, including Articles 52 and 62.
- Under the provision of these articles, information is provided on how the election of the President is done, the powers and functions, also his impeachment process is also provided for.
- The President of India is part of the Union Executive along with the Vice-President, Prime Minister, Council of Ministers, and also to the Attorney-General of India.

#### **President of India:**

The powers are written in the Constitution as powers held by the Office of the President.

- He might order that the top of any leader division give him a composed assessment on any matter connecting with that office
- He might give absolves and respites for any sentenced criminal, with the exception of reprimand
- He might make arrangements with a 2/3 endorsement of the Senate
- He might choose ministers, Cabinet individuals, judges, and different situations with the endorsement of the Senate

- He might top off opportunities that happen while the Senate is on a break for the rest of that legislative term

### **Inferred Powers:**

These aren't written in the Constitution, yet they are jobs that the Office of the President has taken on over the long run.

1. Head of state and government
2. Boss representative
3. CEO

### **Functions of President:**

**The important functions of the president are as follows-**

#### **Chief of State:**

- This is an administrative task that requires the president to address, solace, and, without a doubt, he drives the country in the midst of stress, misery, or war.
- During FDR's four terms, he was called upon to answer stupendous public difficulties and by uprightness of his fireside visits and different endeavors he performed incredibly well.
- As Chief of State, the economy and its prosperity and future possibility are generally vital.

#### **Chief Executive:**

- The president is liable for one of the three parts of government and as such should work with the regulative branch and follow the legal arm.

- Additionally, the individual in question should work with his bureau and authoritative authorities to plan and carry out significant approaches and techniques effectively.
- Regular CEO obligations.

### **Legislative Power:**

- The president ought to have great relations with Congress and work with her party and the resistance to have bills and financial plans passed that benefit the country.
- In the event that he accepts any bill that doesn't meet that objective, he might reject it and work with the lawmaking body on a trade-off that does.

### **Chief Diplomat:**

- Like the Chief of State's inside job, the president's outer job as Chief Diplomat is to work with different countries and their chiefs on issues of significance to the United States and different nations.
- The president additionally, similar to any great CEO depends on his bureau, the assembly, and diplomats, among others in effectively carrying out the international strategy.

### **Commander-in-Chief:**

- The president is a definitive chief compared with military choices.
- Typically, obviously, his most elevated military counsels assume a significant part however it is his obligation to both select the best and insightfully pay attention to their recommendation.

### **Powers of President of India:**

- The president is the top of the Indian state.

- He is the main resident of India and goes about as an image of solidarity, respectability, and fortitude of the country.

### **Chief Powers:**

- All chief moves of GOI are made in his name.
- He delegates PM and different pastors and they hold office during his presence.
- He chooses lawyer general(AG), CAG, CEC, and other political decision chiefs, executives, and individuals from UPSC, Governors, etc.
- He straightforwardly oversees UTs through chairmen named by him.
- He chooses between state boards to advance participation.
- He can announce any region as booked region and has abilities in the organization of planned regions and ancestral regions.

### **Official Powers:**

- He can gather the sitting of both the places of Parliament which working closely together is managed by the speaker of the Lok Sabha.
- He chooses 12 individuals for the Rajya Sabha from among people having exceptional information or viable involvement.
- Literature, science, craftsmanship, and social assistance.
- He can assign 2 individuals to Lok Sabha from Anglo Indian people group.
- he can declare Ordinance when the parliament isn't in a meeting.
- He lays reports of CAG, UPSC, finance commission, and others before the parliament.
- He settles on questions as to the preclusion of MPs in counsel with the EC.
- He has blackball abilities under Article 111(like outright denial, suspensive rejection, and pocket blackball).
- He might give his consent to charge Withhold his consent to the bill.
- He can call or prorogue the Parliament and can break down the Lok Sabha.

## **Legal Powers:**

1. Selects the central equity and the adjudicators of the high court and high courts.
2. Can look for guidance from the Supreme Court on any inquiry of regulation or reality however the counsel offered by the high court isn't restricted to the president.
3. He can concede pardon, reprieve, respite, remit, and drive the discipline of any individual

## **Discretionary powers:**

- Worldwide deals and arrangements are arranged and closed for the president subject to the endorsement of parliament.
- He addresses India at worldwide gatherings and sends and gets negotiators.

## **Military powers:**

1. He is the preeminent administrator of guard powers.
2. He designates the heads of safeguard powers.
3. Can announce a war or finish up harmony subject to the endorsement of parliament.

## **Is the President Limited by the Gathering of Ministers?**

Indeed, the President will undoubtedly act as per the exhortation offered by the gathering of clergymen.

- Through the 42nd Amendment Act ( otherwise called little constitution ), The President was made limited by the exhortation of the gathering of clergymen headed by the PM.
- Through the 44th Amendment act, The President was engaged to restore the make a difference to the board of priests for reevaluation, however, when returned after reexamination, the President will undoubtedly acknowledge it.

- Article 74 of the Indian constitution says that " there will be a committee of ministers with the Prime Minister as its head to help and exhortation the President who will act as per such guidance.
- President might require the gathering of ministers to reevaluate the matter and should act as per the counsel offered after this reexamination.

Might the president at any point disregard the unlawful guidance of gathering of ministers? President is the First resident of India and designated Constitutionally. He is the guard dog for the Constitution. He isn't limited by the unlawful counsel/recommendation made by the Council of Ministers. In such a case he might like to step down.

### **The Vice-President Of India**

- Vice President is indirectly elected by means of a single transferable vote.
- State Legislatures do not take part in the election of the Vice-President.
- Article 66 – The electoral college for Vice-President consists of the members of both Houses of Parliament.

#### **Eligibility of vice president of India:**

- A citizen of India.
- Over 35 years of Age.
- Must not hold an office of profit save that of President, Vice-President, Governor or Minister for the Union of a state (Article 66)
- Qualified for election as a member of the Rajya Sabha.

## **Important Points related to the Vice-President of India:**

- In case a member of the Legislature is elected Vice-President, he shall be deemed to have vacated his seat in the House to which he belongs.
- The term of the office of Vice-President is five years from the date on which he enters upon his office. Office of Vice-President may terminate earlier than the fixed term either by resignation or by removal.
- A formal impeachment is not required for Vice-President's removal.
- Article 67 – The vice-President can be removed by a resolution of the Rajya Sabha passed by a majority of its members and agreed to by the Lok Sabha.
- A sitting Vice-President is eligible for re-election. Dr S. Radhakrishnan was elected as the Vice-President of India for a second term in 1957.
- No functions are attached to the office of the Vice-President is to act as the ex-officio Chairman of the Rajya Sabha.
- Article 65(1) – If any vacancy occurs in the office of the President, Vice-President acts as President until a new President is elected and enters his office
- For the first time during the 15-day visit of Dr Rajendra Prasad to the Soviet Union in June 1960, the then Vice-President, Dr S. Radhakrishnan acted as the President owing to the 'inability' of the President to discharge his duties.
- The power to determine when the President is unable to discharge his duties or when he should resume his duties is understood to belong to the President himself.
- If the offices of both the President and the Vice-President fall vacant by reason of death, resignation, removal etc. the Chief Justice of India or in his absence the senior-most Judge of the Supreme Court acts as President.

- For the first time in 1969 when President Dr Zakir Hussain died and the Vice-President V.V Giri resigned, the Chief Justice Md Hidayatullah acted as President.
- When the Vice-President acts as President, he gets the emoluments of the President; otherwise, he gets the salary of the Chairman of the Rajya Sabha. When the Vice-President acts as President, the Deputy Chairman of the Rajya Sabha acts as its Chairman (Article 91).
- Determination of doubts and disputes relating to the election of a President or Vice-President is described in Article 71. Main provisions are as follows:-
  1. Such disputes are decided by the Supreme Court whose jurisdiction is exclusive and final.
  2. No such dispute can be raised on the ground of any vacancy in the electoral college.
  3. If the election of the President is declared void by the Supreme Court, acts done by him prior to the date of such decision of the Supreme Court are not invalidated.
  4. Matters other than the decision of such disputes are regulated by law made by Parliament.

### **Election of the Vice President:**

- The Vice President is the deputy to the head of state of the Republic of India, the President of India.
- In terms of seniority and line of succession to the presidency, he or she holds the second-highest constitutional post after the President.
- Article 63 of the Constitution of India mentions the post of Vice President. He shall be the ex-officio Chairman of the Council of States (Rajya Sabha), as mentioned in Article 64.
- The current Vice President of India and the Chairman of Rajya Sabha is Muppavarapu Venkaiah Naidu.



### **Term of the Office of the Vice President:**

- The Vice President's tenure in office shall not exceed five years from the date on which he enters his office, as per Article 67 of the Constitution of India.
- He may, however, leave earlier than five years by submitting his resignation to the President. The Vice President is eligible to be re-elected any number of times.
- If the President's office is vacant and the Vice President assumes the role of President ( as per Article 65), the Vice President may continue to serve as a President for a maximum of six months before a new President is chosen.
- While in the case of succession to the office of Vice President in the event of an extraordinary vacancy, the Constitution does not provide any mechanism.
- However, in such a scenario, the Deputy Chairman of the Rajya Sabha might assume the Vice president's role as the Chairman of the Rajya Sabha.

### **Eligibility of the Vice President:**

**As mentioned in Article 66(3) and Article 66(4), to be qualified to be elected as the Vice President, an individual must-**

- Be an Indian Citizen
- Have completed the age of thirty-five years
- Be qualified to be elected as a Rajya Sabha member
- Not hold any office of profit

### **Election of the Vice President:**

- The Election Process for the Vice President is laid down in Article 66 of the Indian Constitution.
- There is no direct election for the Vice President of India, rather he or she is elected indirectly by an Electoral College consisting of the members of both Houses of

Parliament (both elected and nominated members) and not the members of the State Legislative Assembly.

- The election is held as per the system of proportional representation using a single transferable vote as mentioned in Article 66(1) and the Election Commission of India conducts the voting via secret ballot.
- Accordingly, the electors are expected to carefully maintain the secrecy of the vote.

**The important provisions for the Vice Presidential Elections are-**

1. On the expiry of the term of office of the outgoing Vice President, the next Election for the next Vice President is to be held within 60 days.
2. The Secretary-General of either House of the Parliament, in turn, is designated as the Returning Officer for the Vice- Presidential Election.
3. Any candidate qualified to be as the Vice President must have the support of at least 20 MPs (Member of Parliaments) as proposers and at least 20 MPs as seconders.
4. The Returning Officer examines the nomination papers on the designated day in the presence of the candidate, his proposer or seconder, and any other person lawfully authorized. Any candidate may present or have accepted by the Returning Officer a maximum of four nomination papers.
5. Any candidate can revoke his or her candidacy by delivering a written notification in the required format to the returning officer within the allotted period.
6. Each voter in an Election has a different set of preferences for each candidate. At each count, each piece of ballot paper corresponds to one vote.
7. After the Election has taken place and votes have been counted, the Returning Officer announces the result of the Election.

### **Who Decides in Disputes Regarding the Election of the Vice President?**

- The Supreme Court of India investigates and renders a final judgment on all doubts and disputes relating to the election of the Vice President as per Article 71(1) of the Indian Constitution.
- A five-member Supreme Court bench hears the petition and decides on the matter. The Supreme Court will not be questioned on that decision with any authority.
- And any dispute regarding the election of the Vice President can only be filed after the electoral process has been completed, not during it.

### **Conclusion:**

- The Vice President's position with specific functions has not been specified in the Constitution of India, 1950; instead, it has made it clear that the Vice President has to behave as a tail to the President of India.
- However, this unfamous position is important for preserving the democratic nation's political continuity. As a result, the job of Vice President of India is infamously famous.

### **Prime Minister and Council of Ministers**

- The prime minister, as the body's head, supervises the members of the particular government's council of ministers.
- The president appoints these ministers, who carry out executive functions, based on the prime minister's proposal.
- Articles 74 and 75 of the Indian Constitution discuss the Prime Minister and the Council of Ministers, respectively.
- The Lok Sabha is the primary accountability body for the Council of Ministers.

- On the Prime Minister’s recommendation, the President appoints the members of the Council of Ministers.
- Only members of **Parliament** are typically chosen to serve as ministers.
- Cabinet Ministers, Ministers of State, and Deputy Ministers are all represented in the Council of Ministers.
- Cabinet ministers, ministers of state, and deputy ministers are all represented in the Council of Ministers.
- The Cabinet is a smaller body made up of 15 to 18 senior ministers who are in charge of significant areas like the military, the economy, the railroads, etc.
- The other Ministers below the status of Cabinet Ministers may or may not be consulted by the Prime Minister.
- They are the Prime Minister’s closest friends and he always consults them.
- The Council of Ministers doesn’t frequently get together when the government is operating on a daily basis.

### **Categories of the council of ministers:**

#### **Three different types of ministers make up the Council of Ministers**

1. Cabinet Ministers.
2. State Ministers.
3. Deputy Ministers.

#### **Cabinet Ministers:**

- The Cabinet of India (Union Cabinet), known as the “collective decision-making body” of the Government of India, is made up entirely of Cabinet Ministers.
- The members of the Cabinet must be elected to one of the Houses of Parliament.
- Among the three types of ministers, including Minister of State (Independent Charges) and Minister of State, they have the highest position.

- In accordance with Article 75 of the [Indian Constitution](#), the President appoints Cabinet Ministers on the Prime Minister's recommendation.
  - Along with overseeing the development of a certain ministry, Cabinet Ministers are collectively answerable to the Lok Sabha's members.
  - They receive guidance from the Cabinet Secretary throughout their whole term.
- There are currently 24 cabinet ministers.

### **Indian Cabinet Ministers' significance:**

- The majority support the Prime Minister and his Cabinet Ministers receive in the Parliament gives them the authority to enact legislation through both houses.
- They also have the power to block a bill from becoming law if they oppose it.
- To put it into perspective, the power of Cabinet Ministers actually constitutes the legislative authority of the Indian Parliament.
- The Cabinet has the last decision in all financial matters. The Cabinet Ministers deserve praise for creating the annual budget and suggesting taxes and spending.
- The only function of the Parliament is to grant official authorization. The Union Cabinet has some influence over the courts as well.

### **State Ministers:**

- State ministers, like Chief Ministers, are responsible for the development of a specific state.
- Each state minister is equally responsible for their respective state.

### **Deputy Ministers:**

- The Deputy minister is a title held by politicians or officials in countries with parliamentary governments.

- A deputy minister works ‘under’ a minister, who is a full Cabinet member in charge of a specific standing policy portfolio and typically oversees an associated civil service department.
- Depending on the jurisdiction, a “Deputy Minister” may be a Cabinet minister who regularly acts as and for a more senior cabinet minister (rare except for the “Deputy Prime Minister”).
- The Parliament and the Council of Ministers work closely together.
- As a result, every member of the Council of Ministers who belongs to one of the two Houses of Parliament actively participates in the legislative process.
- He is responsible for upholding the government’s policies generally and those of his Ministry specifically.
- The “Lok Sabha” is ultimately responsible to the Council of Ministers. This means that all ministers, including those from the Rajya Sabha, must resign if the Ministry loses the “Lok Sabha’s confidence and the entire ministry must step down.

### **Is Prime Minister of India elected or appointed:**

- President of India appoints a person as the Prime Minister who is either the leader of the party which holds a majority of seats in the Lok Sabha or is a person who is able to win the confidence of the Lok Sabha by gaining the support of other political parties.
- All other ministers are appointed by the [President](#) on the advice of the Prime Minister.

## **Power and Function of Prime Minister:**

**Prime Minister of India serves the country by following various functions. He performs his functions taking responsibilities as:**

- **The leader of Country:** The Prime Minister of India is the Head of the Government of India.
- **Portfolio allocation:** The Prime Minister has the authority to assign portfolios to the Ministers.
- **Chairman of the Cabinet:** The Prime Minister is the chairman of the cabinet and presides the meetings of the Cabinet. He can impose his decision if there is a crucial opinion difference among the members.
- **Official Representative of the country:** Prime minister represents the country for high-level international meetings
- **The link between the President and the Cabinet:** The Prime Minister acts as the link between President and cabinet. He communicates all decisions of the Cabinet to the President which is related to the administration of the affairs of the Union and proposals for legislation.
- **Head:** The Prime Minister is the head of Nuclear Command Authority, NITI Aayog, Appointments Committee of the Cabinet, Department of Atomic Energy, Department of Space and Ministry of Personnel, Public Grievances and Pensions.
- **Chief Advisor:** He acts as the chief advisor to the President.

## **Who is eligible to be a Prime Minister?**

To become an Indian prime minister one has to be

- A citizen of India.
- A member of either Rajya Sabha or Lok Sabha
- He should have completed his 30 years if he is a member of the Rajya Sabha or can be 25 years of age if he is a member of the Lok Sabha

## **Position of the Prime Minister:**

- Right from the days of the first Prime Minister Pandit Jawaharlal Nehru, the Prime Minister is treated at a much higher pedestal.
- His preeminence rests on his commanding position in the Cabinet, coupled with fact that he is the leader of the majority party.
- All these positions of power when combined in one person make him rank much above an ordinary Minister.
- The death or resignation of the Prime Minister automatically brings about the dissolution of the Council of Ministers.
- It generates a vacuum.
- The demise, resignation or dismissal of a Minister creates only a vacancy which the Prime Minister may or may not like to fill.

The Government cannot function without a Prime Minister but the absence of a Minister can be easily compensated.



## **Council of Ministers:**

### **Which articles in the Constitution deal with the Council of Ministers?**

Two articles – Article 74 and Article 75 of the Indian Constitution deal with the Council of Ministers. Where article 74 mentions that the council will be headed by the Prime Minister of India and will aid and advise the President, article 75 mentions the following things:

- They are appointed by the President on the advice of Prime Minister
- They along with the Prime Minister of India form 15% of the total strength of the lower house i.e. Lok Sabha. (The number cannot exceed 15%)
- 91st Amendment Act provided for the disqualification of the minister when he stands disqualified as a member of Parliament. ([Difference between Lok Sabha and Rajya Sabha](#) can be referred to in the linked article.)
- A Minister ceased to exist as one if he is not a member of either house of Parliament for six consecutive months.
- Parliament decides the salary and allowances of the council of ministers.

### **Is the advice tendered by the Council of Ministers' binding on the President?**

Yes, the advice is binding on the President and this provision was introduced by the 42nd Amendment Act 1976 and 44th Amendment Act 1978. The acts also mentioned that the advice given by the council cannot be inquired into by any court. Read about the 42nd Amendment Act and the 44th Amendment Act in the linked articles given below:

- 42nd Amendment Act
- 44th Amendment Act

## **Collective Responsibility of the Council of Ministers:**

- In England, the Cabinet system is based on conventions.
- The framers of our Constitution considered it fit to incorporate the system in the Constitution. The principle of collective responsibility finds a place in Art. 75(3) where it is stated that the Council of Ministers shall be collectively responsible to the Lok Sabha.
- In other words, this provision means that a Ministry which loses confidence in the Lok Sabha is obliged to resign.
- The loss of confidence is expressed by rejecting a Money Bill or Finance Bill or any other important policy measure or by passing a motion of no-confidence or rejecting a motion expressing confidence in the Ministry.
- When a Ministry loses the confidence of the Lok Sabha the whole of the Ministry has to resign including those Ministers who are from the Rajya Sabha.
- The Ministers fall and stand together. In certain cases, the Ministry may advise the President to dissolve Lok Sabha and call for fresh elections.

## **Types of Ministers:**

**The Indian Constitution does not categorize ministers into ranks, however, in practice seen in India, ministers are of four types:**

1. **Cabinet Ministers**—He is present and he participates in every meeting of the Cabinet.
2. **Minister of State with independent charge**—He is a Minister of State who does not work under a Cabinet Minister. When any matter concerning his Department is on the agenda of the Cabinet, he is invited to attend the meeting.

3. **Minister of State**—He is a Minister who does not have independent charge of any Department and works under a Cabinet Minister. The work to such Minister is allotted by his Cabinet Minister.
4. **Deputy Minister**—He is a Minister who works under a Cabinet Minister or a Minister of State with independent charge. His work is allotted by the Minister under whom he is working.

## **Composition and Functions of Parliament (Rajya Sabha and Lok Sabha)**

- The parliament of India consists of the president, Lok sabha, and Rajya sabha, which act as the highest legislative body of the Assembly.
- The Rajya Sabha and Lok sabha are the two integral houses of the parliament of India.
- There are 250 Rajya sabha members while Lok sabha has 543 members.
- Lok Sabha is the lower house while Rajya Sabha is the upper house of the parliament.
- Most state-related decisions are made based on voting by the Rajya sabha members, but no decision can be taken for the state if the Lok sabha members have not approved it.

### **Brief about Lok sabha:**

- Also known as the ‘House of People’, Lok sabha has 543 members directly elected by the country’s citizens responsible for the president’s confidence in choosing the country’s prime minister.
- Lok Sabha members have a tenure of 5 years, after which the Assembly and the members dissolve to have a fresh election.

- Rajya Sabha members can alter and review the bills passed by the assembly with proper voting.
- The members who appoint the prime minister of the country, Lok sabha members, have more powers than the Rajya Sabha members.
- One of the most powerful is that they can pass a no-confidence motion against the ruling party and can dissolve the existing Assembly.
- Responsible for the ruling government's proper functioning, Lok sabha introduces and passes bills for defence, finance, and home affairs of the country.

### **Functions of Lok sabha:**

- **Legislature:** Lok sabha has to pass bills and laws and reforms for state and union territories strengthening the national and interstate interests of the country
- **Finance matters of the country:** Lok sabha members are the enacting body of the financial bills and reforms of the country, which are to be successfully implemented in the country
- Consent to the Rajya sabha to make every national or state interest decision
- The country's parliament can only do high court or supreme court judge removal

### **Brief about Rajya sabha :**

- The upper house of the parliament, the Rajya Sabha, is responsible for the affairs of the state and the protection of state rights in response to the centre and union legislature.
- Implementing the passed bill in the state has to be passed in the Rajya Sabha.
- Rajya Sabha is a permanent house whose one-third of members are elected every two years.

- It consists of 250 Rajya Sabha members, with the vice-president as the head of the Sabha. Rajya Sabha is limited to some powers compared to Lok sabha; still, it can protect the various rights of state and union territories.

### **Functions of Rajya Sabha:**

- She represents various state and union territories of the country
- A bill can be amended in the country as the law only if it has been passed in both Rajya Sabha and Lok sabha
- Authority to alter and review the bills sent and passed by the Lok sabha. Only after acceptance from Lok sabha, a bill will become a law
- The president of the country selects twelve members of the Rajya sabha

### **Difference between Lok Sabha and Rajya sabha**

#### **Some of the significant differences between Lok Sabha and Rajya sabha:**

- While Rajya sabha is about protecting the several rights of the state, Lok sabha is about passing the bills and laws for the smooth running of the country
- While the Lok sabha members have five years, Rajya Sabha is a permanent body, with one-third of the members retiring after two years
- The speaker is the representative of the Lok sabha, while the vice president is the representative of the Rajya sabha
- While Rajya Sabha can pass no bills, Lok sabha can pass abrogate the existing one
- Lok Sabha is much more powerful than Rajya sabha in every aspect
- Rajya Sabha has special rights and power in preserving and protecting the rights of the state and union territories, while the Lok sabha has a significant role in maintaining the country's legislative Assembly

- The Assembly of the state elects the Rajya sabha members, while The country's people directly elect Lok sabha members
- The President of India, the Lok Sabha, and the Rajya Sabha make up the Indian Parliament. The Lower House of Parliament, or Lok Sabha, is known as the House of the People in India. India's government is parliamentary in nature.
- The country's top legislative body is the Union Parliament. The Lok Sabha and the Rajya Sabha are the two houses that make up the bicameral Indian Parliament.
- Through the voting process, the populace directly elects the members of the Lok Sabha (House of the People).
- The members of the state legislative assemblies elect the members of the Rajya Sabha (Council of States).

#### **Lok Sabha :**

- It is the Lower House, and it speaks for all of India's citizens.
- The Lok Sabha can have a maximum of 550 members, of which 530 must be state legislators and 20 must be from UTs.
- The number of members in the Lok Sabha at the moment is 543, of which 530 are from the states and 13 are from the UTs.
- Prior to the 95th Amendment Act of 2009, the President had also proposed two members from the Anglo-Indian community, however, this provision was only valid until 2020.
- The citizens of territorial constituencies within the states directly elect the representatives of the states.

- The Union Territories Act of 1965 stipulates that Lok Sabha representatives from UTs must be elected directly.
- The Lok Sabha's selection of the executive, a team of people who collaborate to carry out the laws passed by the Parliament, is one of its most significant duties.
- When we use the word government, we frequently mean this executive.
- The Lok Sabha's typical duration is five years. However, it may be dissolved earlier than the five-year period on the advice of the Council of Ministers.
- Its duration may be increased during a national emergency by one year at a time. But after the emergency is passed, it won't last longer than six months.
- The speaker is the title of the Lok Sabha's presiding official.

### **Powers of Lok Sabha:**

- Every regular law must be approved by both Houses.
- However, if there is a disagreement between the two Houses, a combined session of both Houses is called to make the final judgment.
- The Lok Sabha's viewpoint is more likely to succeed in such a conference due to its greater strength.
- In terms of finances, the Lok Sabha has more authority.
- The Rajya Sabha cannot reject the government's budget or any other measure pertaining to money once it has been approved by the Lok Sabha.
- It can only be changed or delayed by 14 days by the Rajya Sabha; the latter may or may not accept these changes.
- The Council of Ministers is under the Lok Sabha's jurisdiction.

- The Prime Minister and all other ministers must resign if the majority of Lok Sabha members vote “no confidence” in the Council of Ministers.
- This authority does not lie with the Rajya Sabha.

**Rajya SabhaL:**

- The Indian Union’s states and union territories are represented in the Upper House.
- Since it is never completely disbanded, the Rajya Sabha is known as the permanent House of Parliament.
- The distribution of Rajya Sabha seats to the states and UTs is covered under the fourth schedule of the Indian Constitution.
- Rajya Sabha can have a maximum of 250 members, of which 238 are representatives of states and UTs (elected indirectly), and 12 are president-nominated.
- The number of members in the house is currently 245, of whom 12 are president-nominated and 229 represent the states.
- Members of state legislative assemblies choose the representatives for each state.
- Members of an electoral college created especially for the purpose of indirectly electing the MPs from each UT in the Rajya Sabha.
- Rajya Sabha only has representation for three UTs (Delhi, Puducherry, and Jammu & Kashmir); the other UTs do not have enough people to qualify.
- Members with unique expertise or real-world experience in the arts, literature, sciences, or social services make up the president’s list of nominees.



## **Comparison of Powers:**

### **Rajya Sabha**

1. The States are represented in the Rajya Sabha. Therefore, it must be consulted before making any decisions that have an impact on the States. The Rajya Sabha must approve any removal or transfer of a topic from the State list requested by the Union Parliament.
2. It may provide Parliament the power to establish new All-India Services that are available to both the Center and the States (Article 312).
3. If a proclamation is made by the president to impose a national emergency, president's rule, or financial emergency when the Lok Sabha has already been dissolved or within the time frame allotted for its approval, the proclamation will still be valid even if it is only given the Rajya Sabha's approval.

### **Lok Sabha:**

1. The Rajya Sabha cannot reject the government's budget or any other measure pertaining to money once it has been approved by the Lok Sabha. It can only be changed or delayed by 14 days by the Rajya Sabha; the latter may or may not accept these changes.
2. Every regular law must be approved by both Houses. However, if there is a disagreement between the two Houses, a combined session of both Houses is called to make the final judgment.
3. The Council of Ministers is governed by the Lok Sabha.

## **Organization and Jurisdiction of Supreme Court**

- The meaning of jurisdiction refers to the authority which is given to a legal body like that of a court for administering justice which is within the defined field of responsibility.

- Three types of jurisdictions are present in the Supreme Court of India- original, appellate, and advisory, which are provided in Articles 131, 133,136, and also 143 of the Constitution of India.

### **Jurisdiction and Its Types:**

- The word jurisdiction has its roots in Latin, a combination of “Juris” meaning “law” and “Dicere” meaning “to speak”.
- Hence, the whole meaning of jurisdiction is the scope of the supreme court hearing to decide cases and settle disputes.
- The supreme court is the apex body of the Indian judiciary framework to maintain the constitution in India and uphold the values of the rule of law in the nation, thus it is known as the final interpreter and custodian of the constitution of India.
- The Constitution has conferred an extensive range of extensive jurisdiction and powers to the supreme court.
- In addition, it has advisory and supervisory powers. The Supreme Court has jurisdiction and constitutional powers as defined in Articles 124 to 147 of the Constitution of India.
- The Supreme Court of India plays the role of a federal court like the United States Supreme Court and a final court like the British House of Lords.
- A member of the drafting committee of the constitution Alladi Krishnaswamy Ayyar quoted the supreme court as “The Supreme Court of India has more powers than any other supreme court in any part of the world”.

**The jurisdiction of the Supreme Court can be classified in the following ways :**

1. Original Jurisdiction
2. Appellate Jurisdiction
3. Advisory Jurisdiction

**1. Original Jurisdiction:**

The constitution of India Article 131 confirms the Original Jurisdiction of the supreme court. As a federal court, its exclusive original jurisdiction extends to decide any disputes between different states of the Indian Federation. These disputes are :

- Dispute between The Union Government and one (or) more state governments.
- Dispute between the one-to-one (or) more state governments.

The Supreme Court has exclusive original jurisdiction to adjudicate the above-mentioned federal disputes in the sense that no other court can hear and decide such federal disputes. Article 139A of the Constitution of India allows certain cases involving fundamental rights disputes to be transferred from a High Court or multiple High Courts to the Supreme Court. According to Article 138 of the Constitution of India, original jurisdiction can be conferred on the Supreme Court through the medium of Acts of Parliament. The supreme court has the jurisdiction and power to hear such disputes in the first instance, rather than by way of appeal.

**The following matters are not within the original jurisdiction of the Supreme Court :**

- A dispute over a pre-constitutional agreement or treaty under Article 363 (1).
- Water disputes between state governments such as the distribution of inter-state river water [Article 260].
- Disputes concerning damage recovery between the union government and state government.

- Disputes relating to Finance Commission such as the presidential recommendation to the finance commission [Article 280].
- Disputes between the union government and state government regarding commercial activities.
- Dispute between the union government and state government concerning adjustments of some expenses and pensions under article 290.
- The dispute made the adjustment of expenses between the union government and the state government under articles 257(4) and 258(3).

### **Writ Jurisdiction:**

The Constitution of India ensures that the Supreme Court is the guarantor and protector of the fundamental rights of the citizens. Article 32 of the Constitution of India empowers the Supreme Court to issue writs to enforce fundamental rights in the country. The Supreme Court is empowered to issue the following [types of writs](#), which include :

- Habeas Corpus – You may have the body.
- Mandamus – We command.
- Prohibition – To prohibit
- Quo-Warranton – What is your authority?
- Certiorari – To be certified.

The supreme court has original jurisdiction concerning writ jurisdiction, which confirms that any aggrieved person can directly go to the supreme court, not necessarily by way of appeal.

About the Writ, The jurisdiction of the Supreme Court is not an exclusive power as the High Courts can also issue writs in respect of the enforcement of fundamental rights.

Here we have to note that the Supreme Court can issue only writs for the enforcement of fundamental rights and not for any other purpose, on the other hand, the High Courts can issue writs for the enforcement of fundamental rights as well as for other purposes. That

means the writ jurisdiction of the High Court is wider than the writ jurisdiction of the Supreme Court.

## **2. Appellate Jurisdiction:**

The Supreme Court is not only a federal court but also the highest court in India, which clearly states that the Supreme Court is primarily a court of appeal against the judgments of lower courts and tribunals. Articles 132 and 133 of the Constitution of India establish the appellate jurisdiction of the Supreme Court. The Supreme Court enjoys wider appellate jurisdiction which can be classified into four categories :

1. Appeals with regards to constitutional category.
2. Appeals by special leave
3. Appeals with regards to the civil category.
4. Appeals with regards to the criminal category.

### **Constitutional Appellate Category:**

As regards the Constitution, the judgment of the High Court may be appealed to the Supreme Court, when the High Court has confirmed and given a certifies that the particular case involved a significant question of law requiring the interpretation of the Constitution.

### **Special Leave Appellate Category:**

The Supreme Court has authorized exclusive power to grant in its discretion special leave to appeal from any judgment in any matter passed by matter any court or tribunal in the country except military tribunal and court martial. The Supreme Court has exclusive power concerning selective ability in its discretionary to grant special leave to appeal from any judgment on any matter passed by any court or tribunal in the nation except Military Tribunals and Courts Martial.

Consequently, the extent of this provision of discretionary power is exceptionally more extensive and vests the supreme court with an entire purview to hear appeals. It is a discretionary power of the Supreme Court, therefore it cannot be sued in respect of a matter of right and it can be granted in any final or interim judgment. Note that this discretionary power may be connected with any aspect of constitutional, civil, or criminal cases, where it is not necessarily granted against the High Court.

**Civil Cases Appellate Category:**

In respect of civil cases, the judgment of the High Court may be appealed to the Supreme Court if the High Court grants a certificate as follows, That particular civil case might involve a significant substantial question of law of general importance, and note the observation here that the supreme court only has the power to decide that substantial question concerning the general importance.

**Criminal Cases Appellate Category:**

The Supreme Court can hear an appeal against the judgment of the High Court in criminal cases if the judgment of the High Court appears as follows :

- The High Court quashed the acquittal of an accused and sentenced him to death.
- The High Court itself takes over any case from any subordinate court and convicts the accused and sentences him to death.
- A proper certificate is provided by the High Court that the particular criminal case is fit for appeal in the Supreme Court.

**3. Advisory Jurisdiction:**

Article 143 of the Constitution of India confers the advisory jurisdiction of the supreme court which provides that the President of India may seek the opinion of the Supreme Court in the following categories :

- Any question of law may likely be with respect view of public importance where the President deems it expedient to obtain such an opinion and On any dispute arising out of any prior constitutional agreement or treaty.
- The Supreme Court can tender or reject its opinion to the President of India in the first case but the Supreme Court has to tender its opinion to the President in the second case.
- Here we have to note that, in both these cases, the opinion expressed by the Supreme Court is merely advisory and not a legal pronouncement, so the judiciary opinion of the Supreme Court is not binding on the President.

### **Review Jurisdiction:**

**Review Jurisdiction is covered under Article 137, through which the Supreme Court has the authority for the reviewal of its judgments. There are two grounds for reviews:**

1. Apparent error on the face of recording which leads to judgment or
2. If in case new evidence has been unearthed which was not available earlier despite the best attempt by the party.

### **Powers and Functions of Supreme Court:**

- The highest judicial court of India is the Supreme Court of India and is also the final court of appeal in the country.
- It is the most senior constitutional court, and also has the final decision to make when it comes to all legal matters except in case of personal laws and interstate river disputes, and the power of judicial review also lies with them.

- The Chief Justice of India is the Head and also Chief Judge of the Supreme Court, which includes a maximum of around 34 judges, and has enormous powers in terms and form of original, advisory, and appellate jurisdictions.

On, November 9, 2022, Justice D.Y.Chandrachud took oath as the 50th Chief Justice of India.

|                        |  |
|------------------------|--|
| Established            | 1 October 1937 ( as Federal Court of India)<br>28 January 1950 (as Supreme Court of India) |
| Location               | Tilak Marg, New Delhi  |
| Motto                  | Yato Dharmastato Jayah   |
| Composition Method     | Collegium of Supreme Court of India  |
| Authorized by          | Constitution of India  |
| Judge termed Length    | Mandatory retirement at 65 years of age  |
| Chief Justice of India | D.Y.Chandrachud  |



## Supreme Court of India

- According to the [Indian Constitution](#), the Supreme Court of India is the highest judicial court in India and the ultimate court of appeal.
- It is also the highest constitutional court with judicial review authority. The first Supreme Court was established in Calcutta as a superior court, and the first Chief Justice, Sir Elijah Impey, was appointed.
- The court was formed to settle disputes in Bengal, Orissa, and Patna. As a result, King George III founded the other two Supreme Courts in Bombay and Madras in 1800 and 1834, respectively.
- The Supreme Court is our country's highest appeals court.
- The people of India are announcing justice with its establishment. It requires safeguarding the fundamental rights of the Citizens and also settles disputes between various government authorities as well between different levels of the government in the country.
- The Supreme Court's authority is to provide a proper hearing in cases involving the Indian Constitution. This court can also override the legislature in the favour of basic structures of the Indian Constitution.
- Law which is declared by the Supreme Court is binding for all the courts present at all levels within India and also for Union and State Governments.
- As per, Article 142 of the Indian Constitution, it is the duty of the President of India to enforce decrees of the Supreme Court, and the court is conferred with inherent jurisdiction.

### **History of Supreme Court:**

- The Federal Court of India was established as per the Government of India Act in 1935. This Court is important as it settles the disputes between the provinces and the federal states and also hears appeals against the judgments of the high courts.
- After Independence, the Federal Court and also the Judicial Committee of the Privy Council was replaced by what came to be known as the Supreme Court of India, which came to be on January 1950.
- The Constitution of 1950 envisaged Supreme Court with one Chief Justice and around 7 other Judges.
- The count of Judges in the Supreme Court was increased by the Parliament and is around 34 judges now including the Chief Justice of India.

### **Significance of Supreme Court of India:**

- The Indian Constitution deals with the Supreme Court's power, function, nomination, retirement, jurisdiction, and so on, from Article 124 to Article 147.

### **The following are the reasons why the Supreme Court was established:**

1. The Supreme Court possesses Judicial Review power under Article 13 of the Constitution, which means it has the authority to reject any law or executive action that is determined to be incompatible with the Indian Constitution.
2. The Supreme Court is India's highest court ruling, commonly referred to as the country's top court or even the final chance, where people can seek justice if they are dissatisfied with a High Court decision.
3. If certain [fundamental rights](#) are violated, Indian individuals can claim compensation immediately through writs under Article 32 of the Constitution.

## **Functions of the Supreme Court:**

1. It functions as a medium for settling disputes between various governmental entities, the federal government, and state governments.
2. In accordance with Article 141 of the Constitution, all courts in the Indian Territory must obey legislation made by the Supreme court.
3. In response to an appeal from one of the High courts or another subordinate court, the Supreme court gives the final decision.
4. The Supreme Court can make decisions and act independently in specific cases.
5. It is the highest court of appeals in civil and criminal cases.

## **Composition of Supreme Court:**

Along with the Chief Justice of India, there are around 34 judges in the Supreme Court. The judges sit in benches of 2 or 3, which is known as the Division Bench, or in benches of 5 or more, known as the Constitutional Bench when there are some matters which include the fundamental questions of the law which are to be decided.

## **Supreme Court Jurisdiction:**

**The Jurisdiction of the Supreme Court are of three types mostly and each of them is discussed in detail below:**

- Original Jurisdiction
- Advisory Jurisdiction
- Appellate Jurisdiction

## **Powers of the Supreme Court:**

**The Supreme Court has the following judicial powers:**

1. Original Jurisdiction
2. Appellate Jurisdiction
3. Advisory Jurisdiction
4. Review Jurisdiction

### **Original Jurisdiction:**

- In cases when there are disagreements between the Central government and the state government or between two or more state governments, the Supreme Court serves as the original jurisdiction authority under Article 131 of the Constitution.
- According to Article 139A of the Constitution, the Supreme Court may, at its judgment or on the advice of the Attorney General of India, accept matters from the high courts while they are still pending if they involve the same legal problem that has to be decided by the Supreme Court.
- Additionally, it has the power to transfer cases that are still ongoing, appeals, or other legal actions from one High Court to another High Court.
- The Supreme Court has the authority to issue writs, orders, or directions under Article 139 of the Constitution.
- The Supreme Court is also able to uphold fundamental rights, according to section 32 of the Constitution.

### **Appellate Jurisdiction:**

The Supreme Court has administrative authority in cases involving civil, criminal, or constitutional law, according to articles 132, 133, and 134 of the Constitution. Additionally, under article 136, the Supreme Court has the authority to grant exceptional leave requested by any Indian judicial court, but not by Army courts.

**Advisory Jurisdiction:**

According to article 143 of the Constitution, the Supreme Court may provide the President of India with legal advice where the basis of the issue is related to the public interest.

Additionally, the President has the right to consult others on problems relating to Article 131 of the Constitution.

**Review Jurisdiction:**

The Supreme Court has the authority to examine any laws that are being approved by the legislature under article 137 of the Constitution.

**Court of Record:**

The Supreme Court is a Court of Record whose judgments are recorded as evidence and testimony.

**Various Provisions Regarding Supreme Court of India:**

- The Constitution of India provides the provision of the Supreme Court under Part V (The Union) and Chapter 6 ( The Union Judiciary).
- Articles 124 to 147 in Part V of the Constitution deals with the organization, independence, jurisdiction, powers as well as procedures of the Supreme Court.
- Indian Constitution in Article 124(1) states there will be a Supreme Court of India constituting Chief Justice of India and until Parliament by the law prescribes a large number of around 7 judges.

**Judicial Independence:**

- The independence of the Supreme Court judges is sought by the Constitution.

- According to Article 50 of the Directive Principles of the State policy, State will be taking steps to separate the judiciary from the executive.
- Some of the basic structures of the Constitution include the independence of the Judiciary, supremacy of the Constitution, and the rule of law.
- Supreme court and also the high courts are empowered to frame what is called “suo moto” cases without receiving formal petitions on any suspected injustice including in contempt of court.
- It is considered to be one of the most known independent courts in South-East Asia.

**The main purpose of the Supreme Court is to decide constitutional issues. Some important aspects are discussed below:**

**Tenure:**

- Judges of the Supreme Court retire at the age of 65.
- But there have been some suggestions from the judges of the Supreme Court of India for providing fixed terms for judges including the Chief Justice of India.

**Salary:**

- According to Article 125, Indian Constitution leaves it to the Indian Parliament to determine the salary, allowances, leaves, etc. of the Supreme Court Judges.
- A Judge of the Supreme Court draws around Rs 2.5 lakhs per month, which is almost equivalent to the most senior civil servant of the Indian Government, while a Chief Justice earns around 2.8 lakhs per month.

**Oath:**

- As per Article 124 and the third Schedule of the Constitution, the Chief Justice of the Supreme Court of India is to make and also subscribe in the presence of the President's [Oath](#) or Affirmation.

**Removal:**

- Article 124(4) of the constitution subscribe that the President can remove a judge on proof to the points of misbehavior or incapacity when the Parliament approves with the majority of the total membership of each house in favor of the impeachment and not less than 2/3rd of members of each house present.

**Post-Retirement:**

- A person after retiring as a judge of the Supreme Court is debarred from the practice of any court of law or before any other authority of India.
- However, many times the Supreme Court and High Court judges are appointed to various positions in tribunals and commissions. after their retirement.

## **Judicial Review**

**Judicial Review:**

- Judicial review refers to the doctrine because of which executive as well as legislative actions are reviewed by the judiciary.

**In India power is divided along the three arms of the state:**

- Executive, Legislature, and Judiciary.
- The Judiciary is however vested with the power of review over the actions of the other two.
- The scope of Judicial review in India is less than in the USA because the American Constitution provides for ‘due process of law’ whereas on another hand there is ‘the procedure established by law ‘ contained in the Constitution of India.
- The judicial review followed by India is a synthesis of both the American principle of judicial supremacy and the British principle of parliamentary supremacy.
- The Constitution of India itself provides the power of judicial review over the judiciary itself through the Supreme Court and the High Courts.
- Moreover, the Supreme Court has declared the power of judicial review to be a basic structure of the Constitution.
- Therefore, the power of judicial review cannot be reduced or excluded by the Constitutional Amendment.

**Justice Syed Shah Mohammad Quadri characterized the judiciary Review into the following 3 classes:**

1. Judicial review of the acts which are related to the Constitutional Amendment.
2. Judicial review of the legislation process of the Parliament and State Legislatures.
3. Judicial review on administrative actions which are taken by the Union government or State government and authorities within the State.

**Judicial Review and Constitution:**

- The Judicial review is called upon for ensuring and also protection of Fundamental Rights that are guaranteed in Part III of the Constitution.



- The power of the Supreme Court of India enforces the Rights which is derived from Article 32 of the Constitution.

**The following are the Constitutional provisions that enforce Judicial review:**

- **Article 13 (2)** confirms that all laws and regulations that are made by the Union or the States conflicting with or in the discrediting of Fundamental Rights will be invalid and void.
- **Article 32** ensures the option to move the Supreme Court for the enforcement of the Fundamental Rights and enables the Supreme Court to give orders or directs or writs for that purpose.
- **Article 131** affirms the Supreme Court's original jurisdiction concerning the Centre-State and Inter-State disputes.
- **Article 132** accommodates that Supreme Court has re-appraising and appellate jurisdiction concerning Constitutional cases.
- **Article 135** enables the Supreme Court to practice the jurisdiction and powers of the Federal Court under any pre-constitutional law.
- **Article 137** confers an exclusive power to the supreme court to review any judgment articulated or order passed by it.
- **Article 143** empowers the President to seek the opinion of the Supreme Court on any matter relating to the judiciary or fact and any judicial-related doubts before the Constitution.
- **Article 226** authorizes the High Courts to give orders or directions or writs for the implementation of the Fundamental Rights and any of some other purposes.
- **Article 245** deals with the extension of the territorial scope of laws and regulations made by the Parliament and the Legislature of the States.

- **Article 372 (1)** authorizes the continuation of pre-existing provisions of the Constitution.

### **Judicial Review Classification:**

#### **The classification of judicial review classification:**

1. **Reviews of Judicial Decisions-** This can be seen in the example of the Bank nationalization case, the privy purse abolition case, and so forth.
2. **Reviews of Legislative Actions-** This type of review ensures that the law passed by that legislature is incompetent with the provision of the Constitution.
3. **Reviews of Administrative Actions-** This is for ensuring the enforcement of constitutional discipline over that of administrative agencies while exercising their powers.

#### **Importance of the Judicial Review:**

- Judicial review is necessary to align the supremacy of the Constitution in a nation, and to safeguard the Fundamental Rights of the citizens.
- It is essential to preserve the independence and autonomy of the judiciary in India. This is necessary to maintain a federal balance between the Central Government and the State Governments.
- It is fundamental to curb the conceivable abuse of power by the legislature and the executive and act as a safeguard for the basic structure of the constitution of India.
- Judicial Review is also known as the role of reviewer, and the role of Eyewitnesses.
- It invalidates the provisions which are made by the Parliament or State legislature when those are against the provisions of the Constitution.
- It is a ‘basic feature ‘ of the Constitution of India and cannot be taken away by putting a law under the 9th Schedule which violates the fundamental rights

guaranteed under Articles 14, 15, 19, and 21. Also, the 'basic structure' of the Constitution cannot be declared invalid and void.

### **Limitations of Judicial Review:**

- Any law already exercised by the Constitution can be superseded by the judiciary with the exclusive power of judicial review, but we have to note that the Indian Judiciary does not have unlimited powers like the USA or extremely limited powers like the UK.
- Judicial review restricts the working of the public authority.
- It has so far been created only for the Supreme Court and the High Courts, not for any subordinate courts or local courts and these courts have only major interaction with the mass public.
- The repeated interference by the courts in executive affairs might erode the public confidence in the integrity, quality, competence, and proficiency of the ruling governments.
- In the Indian Judiciary, the legal opinions of the Judges of the higher courts, once taken in respect of any case, become the means of standard for judging in other cases, and the judgments of the lower Courts, which limits own their judgment in fresh cases.
- Judicial review can also cause great detriment to society as the judgment is likely to be affected by the private or egotistical or malevolent thought processes of judges.
- The judicial review in India looks only into the constitutionality of the laws and regulations concerning the government, not for speedy judgments, effective justice, the reality of society, etc.

## **Important Judgments on Judicial Review:**

- The Supreme Court gave a key judgment in the I R Coelho case (2007), ruled that there is no immunity from judicial review for laws included in the 9th Schedule and it also held that Judicial Review is a 'basic feature' of the constitution.
- Supreme Court ruled that which of the laws placed in the Ninth Schedule on or after April 24, 1973, could be challenged in court if they violate the fundamental rights guaranteed by the Constitution of India.
- In the case of Indira Gandhi v. Raj Narayan in 1975, the Supreme Court gave a landmark judgment that judicial review should be considered a fundamental structure of the Constitution.
- In 2015, the Supreme Court announced both the 99th Constitutional Amendment, 2014, and the National Judicial Appointments Commission (NJAC) Act, 2014 as unlawful, invalid, and unconstitutional.
- The Supreme Court struck down Section 66(A) of the amended Information Technology Act, 2000 as this section was outside Article 19(2) of the Constitution which deals with freedom of speech.
- The Supreme Court has exercised the power of judicial review in various cases, for example, Golaknath Case (1967), Bank Nationalization Case (1970), Privy Purse Abolition Case (1971), Kesavananda Bharati Case (1973), Minerva Mills Case (1980), and so on.