

## **Unit-2, Union Government**

**Administrative Framework:** The basic framework of the administration is based on the theory of decentralisation of structures and functions' under which autonomy and initiative are vested in the states and local units of Government. But, it, at the same time, accepts central planning and direction, articulated both through the Governmental machinery and the ruling political party which has enjoyed dominance almost continuously since independence — a dominance both at the centre as well as in most of the States.

Leadership is committed to the welfare state concept, and integration of the people into a nation. Emphasis is laid on participant administration, and on broadening the base of administration and penetrating it further into the remote sectors of the community. It is vital that the officials are committed to innovations and democracy, and can facilitate the involvement of the citizen.

### **Federalism**

In a federal system of governance, Government working at National level is called Central Government or Union Government which is government of India in our country. Regional government is known as State government i.e. our government of Rajasthan. In Federal System of governance, powers are equally distributed between Centre and State Government. We have 29 State and 7 Union Territories in our country at present. We have studied about State government in previous classes. Now we will study about Union government in detail.

### ***Federal System of Government***

Generally when all the powers of a country are centralised at one level, is a form of governance, known as unitary government. Contrary to this, in federal system all the powers are clearly defined between Centre and State.

### ***Salient Features of Federal system in India-***

- Supremacy of the Constitution
- Bicameral Legislature
- Written Constitution
- Clear division of governance powers between Centre and State
- Dual Government Polity means two different governments at the national and each state level.
- Independent Judiciary

We have federal structure of government in our country as above stated all the characteristics are integral part of our governance system. Our constitution has clearly distributed the powers and functions of Centre and State government under three categories, i.e. the Union List, state list and concurrent list of subjects. Union government is vested with more powers compared to state government. Despite having federal structure of government we have provision of single citizenship in India.

### ***Parliamentary form of Government***

India has a Parliamentary form of government in the federal structure because this system is comparatively better in the matter of responsibility. Here, the Executive is answerable to the Legislature. In this system, the President remains the formal head of the administration but actual powers are exercised by executive or council of ministers. There is a good coordination between executive and legislature in Parliamentary form of government.

Federal structure in India		
Executive President, Prime minister and council of ministers	Legislature Parliament • President • Lok Sabha	Rajya Sabha

The President is the part of both executive and legislature because all the bills passed by the Parliament become laws only when signed by the President. The President enjoys all the executive powers given by the constitution. He summons the sessions of the Parliament and addresses the first session of the Parliament. So the President of India is an integral part of the Union Parliament. The Parliament of the Union Government is competent to legislate on all matters that are enumerated in the Union List and the Concurrent List of the Constitution.

## Centre-State relationship in India

The constitution of India is based on the principle of federalism in which the powers are divided between the union and the states. However, the powers are not equally divided and the centre is given extra authority in case of adversities. Further, the states are not allowed to leave this federation and the centre can alter the boundaries of states. This complex interplay of power between the union and state government is known as the Centre-state relationship and it is elaborately explained in our Constitution. In this article, we will explore the legislative, administrative and financial relationship between the state and the centre. Further, we will also look into the impact of an emergency on the centre-state relationship.

### Elements of Centre-State Relationship

There are 3 main elements of the Centre-state relationship which is as follows –

1. Legislative relations
2. Administrative relations
3. Financial relations

### Legislative Centre-state relationship

The legislative relationship between the centre and the states is mentioned between Article 245 to 255 of the constitution. These legislative provisions enshrined under part XI of the constitution are as follows –

#### The extent of laws Making

The parliament of India is empowered to make law for any part of India including our union territory. Further, the parliament can make extra-territorial legislation for the security and well being of Indian's inhabitants residing in any other part of the world. On the other hand, the law-making areas of the states are confined to the geographical area of a particular state.

#### *Subject-matter of Legislature*

The constitution of India has divided the legislative authority of the centre and states into 3 lists namely union list, state list and concurrent list. The union list comprises 99 subjects including foreign affairs, defence, etc. and the union parliament has the sole authority to make law on these subjects. The state list

includes 61 subjects including health, public order, etc. and the state legislature has the exclusive jurisdiction to formulate laws on these subjects.

### **7th schedule of Indian constitution- Union list, State list and Concurrent list**

Lastly, the concurrent list has 52 subjects including education, family planning, criminal procedure code etc. It is important to note that under the concurrent list both the parliament and the state can frame laws. However, in case of conflict, the laws formulated by the parliament will prevail.

### ***Power to legislate on the residuary subject***

The constitution of India also contains provisions related to those subjects which are not mentioned in any of the aforesaid lists. These subjects are known as residuary subjects and the union parliament is given the authority to frame laws on these subjects. However, if any dispute arises, it is the duty of the court to determine whether a subject falls in the ambit of the residuary list or not.

### ***Parliament's Power to Legislate on the subjects falling in the domain of state legislature***

In ordinary circumstances, the law-making power between both the union and the state legislature is confined to their concerned list. However, the constitution of India can allow our union parliament to legislate on the state list under certain circumstances. These conditions are as follows –

- **To protect the National Interest**

This provision is given under Article 249 of the constitution and it allows the parliament to make law on any subject if the national interest is at stake. For using this provision, firstly a resolution is passed in Rajya Sabha with more than 2/3 members stating the need for making a law on the state list to protect our national interest. After the resolution is passed, the parliament is empowered to formulate the law and it remains in force for a maximum period of 1 year. However, the period can be extended by passing the subsequent resolution.

- **When National Emergency is in Operation**

This power is given under Article 250 of the constitution. As per this Article, the parliament is empowered to make the law even on the state subjects when the emergency is in operation. However, it is important to note that the laws made under this provision will lose their validity after 6 months from the date of emergency.

- **Agreement between States**

As per [Article 252 of the constitution](#), the parliament can make law on the state list if a particular state passes a resolution that it is lawful for the union parliament to make law for this state and they will abide by the law. Thus, any law passed by the union parliament will also have applicability to that state also. However, the parliament still possesses the right to amend or repeal such a law made under this provision.

- **For Giving Effect to any International Treaties**

As per Article 253 of the constitution, the president can enter into any bilateral or multilateral treaty and the union parliament had to make a domestic law for giving effect to any such treaty. Thus, the Parliament can enact any law for implementing any treaty or convention irrespective of the list the subject may belong.

- **When President's Rule is in operation**

The concept of imposing president rule is mentioned under Article 356 of the constitution. This Article empowers the president to suspend the state assembly on the ground of the breakdown of constitutional machinery in a state. During this period, the parliament formulated laws for that particular state and these laws have the validity of 6 months from the date of declaring president rule.

## **The control of Parliament over State Legislature**

The constitution of India is quasi-federal in nature with a strong centre that ensures that it keeps a vigil over the functioning of the states. The centre can exercise control over the state's legislature by the following methods

- The governor possesses the authority to transfer a bill to the president to seek his opinion. The president can exercise an absolute veto over such a bill.
- There are certain matters in the state list on which the bill can be introduced only before the prior consent of the president. These bills generally relate to the subject of trade and commerce.
- During a financial emergency, the president possesses the authority to direct the state authority for reserving money bills and other financial bills for his consideration before passing in the state legislature.

## **Administrative Centre-state relationship**

As with the legislature authority, the administrative function of the centre and states are confined to the subjects mentioned in the union and the state list respectively. Thus, the administrative relation can be defined through the following –

### ***The extent of Executive power of State and Centre***

This provision is dealt with under Article 256 of the constitution. It states that the executive power of a state shall be exercised in a manner that complies with the union laws framed by the parliament. Similarly, the central government shall also issue its direction after having regard to the particular state laws.

### ***Duty on State to not interfere with the executive power of the union government***

As per Article 257 of the constitution, the state should exercise its executive power in a manner that doesn't contravene or prejudice the executive power exercised by the union government. However, the union government has broad powers and it is empowered to issue such directions that may result in the encroachment of state authority.

### ***To construct or maintain means of communication relating to military or national importance***

As per this provision, the central government is empowered to issue directions to the state government relating to the construction or the protection of the existing means of communication that are very important for the military and national interest. The state had to abide by the same.

### ***To Protect Railways:***

This provision states that the union government can issue directions to the state government pertaining to the protection of railways falling under the concerned state's jurisdiction. However, it is important to note that any expense incurred during this process of protection is reimbursed by the central government.

### ***For the welfare of Scheduled Tribes***

This provision states that the union government can direct the state government to launch any scheme or programme to ensure the welfare of the scheduled tribes of the state.

### ***To impart primary education in a mother-tongue language***

This provision is mainly used for the betterment and advancement of minority linguistic groups. The central government can issue directions to a state to make arrangements so that the children can learn their initial education in their mother tongue language.

### ***To ensure that the constitutional provisions are followed by the state government***

This provision is the heart of the centre-state relation. Under this, the central government is empowered to issue any direction to the state government to ensure that it is functioning as per the provision of the constitution. However, if a state doesn't comply with the provision of the constitution for a substantial period of time, then the central government is authorised to suspend the state government and impose president rule in that state.

### ***The power of the Union government to adjudicate the Inter-State River Water Disputes***

The constitution of India has provided our union government with the power to adjudicate any dispute that may arise in relation to the use or distribution of water or any other inter-river dispute. The pertinent thing to note is that the parliament is also empowered to exclude this kind of disputes from the jurisdiction of the Hon'ble supreme court or High court.

## **Administrative Relations During Emergencies**

- **President's Rule:** When a president's rule is imposed under Article 356 of the constitution, the union gets all the administrative power of the state.
- **National Emergency:** When a national emergency is in operation, then the central government is empowered to issue directions relating to those subjects which may fall in the domain of a state's executive power. It is mandatory for the states to follow these directions.
- **Financial Emergency:** When a financial emergency is declared by the central government, then it is empowered to issue directions to the states relating to reducing the salary or allowance of government servants or the judges of various courts etc. It can also direct the state government to put all the money bills before the president for his consent.

Thus, we can say that in the administrative field, the states can't work in isolation and they have to follow the directions of the central government.

## **Financial Centre-state relationship**

The financial relationship between the Centre and the state government is governed between Article 268 to 293 of the constitution. It provides detailed provision relating to the distribution of tax as well as non-tax revenue between the centre and the state.

### **Distribution of tax**

As per the constitution, the parliament has the exclusive or the sole jurisdiction to levy taxes on those subjects which are mentioned in the **union list** and the state government can impose a tax on the subjects falling under the **state list**. In the case of a **concurrent list**, both the centre and the states are eligible to levy taxes.

## **Grants-in-Aid from the Central Resources**

Apart from tax, the state government also received certain kinds of grants from the central government. These grants can be divided into 2 parts –

- **Statutory Grants:**

It refers to that grant which is given by the parliament from the consolidated fund of India. It is generally given to those states who are facing some financial adversity. The amount of grant is not certain and it keeps changing as per the requirement of the states. Sometimes, a specific grant is given by the central government to promote the welfare of scheduled tribes of a state.

- **Discretionary Grants:**

This provision is dealt with under Article 282 of the constitution. As the name suggests, this grant is discretionary in nature and is given on the basis of the recommendation received from the planning commission. The main objective of giving such grants is to assist the states in achieving the result of a

particular plan.

During a **National Emergency**, the union government can declare that the distribution of tax between the centre and states shall remain suspended. Further, it can also suspend or cancel any proposed grant in aid given to a particular state.

### **Finance Commission**

Article 280 of the constitution deals with the establishment of the finance commission. The main objective of setting this commission is to ensure the effective distribution of financial resources between the centre and the states. This commission works under the authority of the president and he can recommend changes every 5 years.

The commission mainly has 5 members including 1 chairman and 4 members. The chairman must have experience in public affairs. Other 4 member includes –

- A judge of the high court or a person having equivalent qualification
- A person having expertise in the field of finance and account of the government.
- A person having experience in public administration
- A person having expertise in the field of economics.

**Union executive** implements the law passed by the parliament. The union executive consists of the President, Prime Minister and Council of Ministers

### ***Indian Parliament***

Parliament is the supreme legislative body of India. The Parliament has the power of making law on union and Concurrent List in our country. In the Concurrent List, the Parliament and the State Legislatures have joint jurisdiction. However, in case of conflict over any law made under the Concurrent List, the Union Law will prevail upon the State Law. Like this Parliament had more power in making the law for the country. The Indian Parliament comprises of President, Lok Sabha and Rajya Sabha. It has two Houses - Rajya Sabha (Council of States) and Lok Sabha (House of the People).

**Lok Sabha**

The Lok Sabha is composed of representatives of people chosen by direct election on the basis of Universal Adult Suffrage. It is also known as Lower House. The Maximum strength of the House as laid down in the Constitution is 552. Currently, there are 545 members in the Lok Sabha out of those 530 members to represent the States, 13 members to represent the Union Territories, and 2 members are nominated by the President. The term of the Lok Sabha is five years. It can be dissolved earlier by the President on the advice of Council of Ministers. For this reason it is also known as Temporary House.

A person who contest election for Lok Sabha—

- Should be an Indian citizen
- Should be above the age of 25 years
- Should not hold any office of profit
- Should not be a bankrupt or mentally unstable

The Speaker and the Deputy Speaker are elected from among the member of Lok Sabha. The Speaker is the presiding officer of the Lok Sabha and he presides over the house.

### ***Rajya Sabha***

The second house of the Parliament is the representative of states. It is also known as upper house of the Parliament. Members of this house are elected by the members of State and Union Territories legislatures. Rajya Sabha can have at the most 250 members in it. 238 members of Rajya Sabha are elected by the members of State legislatures and 12 members are nominated by the President of India. The nominated members are the persons who have distinguished themselves in the field of Art, Literature, and Science & Social service.

Rajya Sabha is a permanent body; unlike Lok Sabha it cannot be dissolved. The term of each member of the Rajya Sabha is Six years. One third of its members retires after every two years and new members are elected to fill up the vacancies.

*To be eligible for membership in the Rajya Sabha,*

---a person must be a citizen of India and must be 30 years of age or older.

---He should not hold any office of profit.

---He must be mentally sound and should not be bankrupt and criminally convicted.

The Vice President of India presides over Rajya Sabha. He is the ex-officio chairperson. The members of Rajya Sabha elect the deputy chairperson from amongst themselves.

The member of both Lok Sabha and Rajya Sabha i.e. Parliament are called Member of Parliament (M.P.).

**Power and Functions of Indian Parliament**

1. The primary function of Parliament is to make laws for governance of the country.
2. The Parliament exercises control over the Executive through question-hour, zero hour, calling attention motion, Adjournment Motion, No- Confidence Motion and other discussions.
3. The Government can neither impose any tax upon the public nor can it spend the money without the approval of the Parliament. The Government places the budget before the start of the financial year. The Parliament discusses the budget & gives its assent to the Bill.
4. The Parliament has the power to make amendment in the constitution.
5. The Parliament participates in the election of the President, the Vice- President and its members to various Committees of the Parliament.
6. The Parliament can remove the President and the judges of the High Courts and Supreme Court from office through impeachment for violation of the Constitution.

**The Union Executive**

The union executive consists of the President, Prime Minister and Council of Ministers. The union executive executes or puts into action the laws passed by the legislature.

## ***THE PRESIDENT***

At the head of the Union Executive stands the President of India. The executive power of the Union including the Supreme command of Defence Forces is vested in him. But the executive power of the Union vested in the President must be exercised in accordance with the Constitution and the Constitution prescribes that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions (Article 74).

**Qualifications:** In order to be qualified for election as President, a person must

- (a) be a citizen of India;
- (b) have completed the age of 35 years;
- (c) be qualified for election as a member of the House of the People; and
- (d) Must not hold any office of profit under the Government of India or the Government of any State or under any local or any other authority, subject to the control of any of the said Governments (Article. 58).



**Election of the President:** The President of India is indirectly elected through an electoral college consisting of

- (a) The elected members of both the Houses of Parliament;  
and
- (b) The elected members of the Legislative Assemblies of the State.

The election takes place on the basis of proportional representation by means of the single transferable vote system. The voting is done by secret ballot. For ensuring uniformity in the scale of representation of different States at the election of the President the formula used is as follows :

(a) ***The value for MLA is calculated based on the formula***

$$\text{Value of an MLA vote} = \frac{\text{Total population of the state}}{\text{Total number of elected members} \times 100}$$

(b) Similarly, ***the value calculation for MP is done as***

$$\text{Value of an MP} = \frac{\text{The sum of vote value of elected members of all the Legislative Assemblies}}{\text{The sum of elected members of both the houses of Parliament}}$$

(c) The winning candidate has to secure the required quota of votes to be declared elected. The formula may be represented as follows:

$$\text{Quota} = \frac{\text{Total number of valid votes cast}}{\text{Total number of seats to be filled} + 1}$$

**Terms of Office :** The President holds office for a term of five years from the date on which he enters upon his office. However, this term may be cut short if he resigns from office before the expiry of five years by writing addressed to the Vice-President; or if he is removed from office through impeachment on grounds of violation of the Constitution. Similarly, his term stands automatically extended beyond the expiry date if his successor is not elected or does not assume office.

Under the Constitution, the President is eligible for re-election. Here it may be noted that the Constitution of U.S.A. imposes a ban on the re-election of the President for more than two full terms.

**Impeachment of the President:** The President of India can be removed from his office before the expiry of his normal term through the process of impeachment. He can be impeached only on grounds of violation of the Constitution.

An impeachment is a quasi-judicial procedure in Parliament. Either House may prefer the charge of violation of the Constitution before the other House which shall then either investigate the charge itself or cause the charge to be investigated. But the charge cannot be preferred by a House unless —

- (a) A resolution containing the proposal is moved after a 14 days' notice in writing signed by not less than one-fourth of the total number of members of that House; and
- (b) The resolution is then passed by a majority of not less than two-thirds of the total membership of the House.

The President shall have the right to appear and to be represented at such investigation. If, as a result of the investigation, a resolution is passed by not less than two-thirds of the total membership of the House



before which the charge has been preferred declaring that it sustained, such resolution shall have the effect of removing the President from his office with effect from the date on which such resolution is passed.

**Vacancy in the Office of the President:** If the office of the President falls vacant due to death, resignation or removal of the President, fresh elections must be held within six months of the occurrence of the vacancy. The person elected to fill the vacancy is entitled to hold the office for the full term of five years from the date on which he enters upon his office. During the interval between the date of vacancy and the date when the new President assumes office, the Vice- President of India acts as the President.

Similarly, if the President is unable to discharge his functions owing to absence, illness or any other reason, the Vice-President discharges his functions until the date on which the President resumes his duties.

While the Vice-President acts as the President or discharges the functions of President, he enjoys all the powers and immunities of the President and is entitled to such emoluments, allowances and privileges as are enjoyed by the President.

It may be noted that if per chance the Vice-President is not available to discharge the duties of the President, the Chief Justice of India and in his absence the senior-most judge of the Supreme Court acts as President.

The Constitution of India provides for a Parliamentary System of Government in which the formal executive power of the Union is vested in the President. The 'executive power' primarily means the execution of the laws enacted by the Legislature. The executive power may, in short, be defined as 'the power of carrying on the business of Government' or 'the administration of the affairs of the State', excepting functions which are vested by the Constitution in any other authority. The ambit of the executive power has been explained by the Supreme Court as "the residue of Governmental functions that remain after legislative and judicial functions are taken away."

The President of India enjoys vast administrative, legislative and various other powers. However, the President exercises his executive powers under various Constitutional limitations. The limitations may be, briefly, mentioned as follows :

- (1) The Constitution explicitly requires that Ministers other than the Prime Minister can be appointed by the President only on the advice of the Prime Minister.
- (2) According to Article 74(1) the executive powers shall be exercised by the President of India in accordance with the advice of the Council of Ministers.

Prior to 1976 there was no express provision in the Constitution that the President was bound to act in accordance with the advice tendered by the Council of Ministers. It was judicially established that the President of India was not a real executive, but a Constitutional head, who was bound to act according to the advice of Ministers, so long as they commanded the confidence of the majority in the House of People.

Refusal to act according to the advice given to the President by the Council of Ministers, headed by the Prime Minister, will render the President liable to impeachment.

The various powers included within the comprehensive expression 'executive power' can be classified under the following heads:

**Administrative Powers:** In the matter of administration, the Indian President is not a real head of the executive like the American President. However, though the various Departments of Government of the Union will be under the control and responsibility of the respective Ministers in charge, the President will remain the formal head of the administration. And so, all executive action of the Union is expected to be taken in the name of the President. All contracts and assurances of property made on behalf of the Government of India is expected to be made by the President and executed in the manner as per the direction of the President.

Again, though he may not be the 'real' head of the administration, all officers of the Union are considered to be his subordinates and the President has a right to be informed of the affairs of the Union.

The President's administrative power includes the power to appoint and remove the high dignitaries of the State like the Prime Minister and other Ministers of the Union, the Attorney-General, the Comptroller and Auditor-General and so on.

However, the Indian Constitution does not vest in the President any absolute power to appoint inferior officers of the Union as is to be found in the American Constitution. The Indian Constitution, thus, seeks to avoid the undesirable 'spoils system' of America under which about twenty per cent of the federal civil officers are filled in by the President without consulting the Civil Service Commission. In the matter of removal of civil servants (who are serving under the Union and hold office during the President's pleasure), the Constitution has provided certain conditions and procedures subject to which only the President's pleasure may be exercised, (Article 311(2)).

**Military Powers:** The Supreme command of the Defence Forces is vested in the President of India, but the Constitution expressly lays down that the exercise of this power shall be regulated by law.

**Diplomatic Powers:** The President represents the nation in international affairs, appoints Indian representatives to other countries; receives diplomatic representatives of other States; and has the power of making treaties and implementing them, subject, of course, to ratification by Parliament.

**Legislative Powers:** Like the Crown of England, the President of India is a component part of the Union Parliament. The legislative powers of the President, to be exercised according to Ministerial advice, includes —

- (i) Summoning, prorogation of both Houses of Parliament, and dissolution of the lower House.
- (ii) The right to address and to send messages to either House of Parliament either in regard to any pending Bill or to any other matter.
- (iii) Nomination of members to the Houses. The President nominates 12 members to the Council of States from persons having special knowledge or practical experience in the fields of literature, science, art and social service. He is also empowered to nominate not more than two members to the House of People from the Anglo-Indian community, if he is of opinion that the Anglo-Indian community is not adequately represented in that House.

(iv) Laying reports, etc. before Parliament like the budget, report of the Auditor-General relating to the accounts of the Government of India, recommendations of the Finance Commission, reports of the UPSC, the Special Officer for SCs and STs, Commission on backward classes, the Special Officer for linguistic minorities etc.

(v) Previous sanction of legislation relating to formation of new States or the alteration of boundaries, a Money Bill, a bill involving expenditure from the Consolidated Fund of India, a bill affecting taxation in which States are interested or affecting the principles laid down for distributing moneys to the States and so on.

(vi) Assent to legislation and veto.

(vii) Disallowance of State legislation: There is no provision in the Constitution of India for a direct disallowance of State legislation by the President, but there is provision for disallowance of such bills as are reserved by the State Governor for the assent of the President. The President may also direct the Governor to return the Bill to the State Legislature for reconsideration; if the Legislature again passes the Bill by an ordinary majority, the Bill shall be presented again to the President for his reconsideration. But if he refuses his assent again, the Bill fails.

(viii) **Ordinance-making power:** The President enjoys the power to legislate by ordinance when Parliamentary enactment on the subject is not possible. An ordinance may relate to any subject in respect of which Parliament has the right to legislate and is subject to the same limitations as legislation by Parliament. Thus, an ordinance cannot contravene the Fundamental Rights any more than an Act of Parliament.

The ordinance must be laid before Parliament when it reassembles, and shall automatically cease to have effect at the expiration of six weeks from the date of re-assembly unless disapproved earlier by Parliament.

**Judicial Powers, :** Article 72(1) of the Constitution of India states that the President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

**Emergency Powers:** The President has extraordinary powers to deal with emergencies. He is given the power to make a proclamation of emergency on the ground of threat to the security of India or any part thereof, by war, external aggression or armed rebellion. He also has the power to make a proclamation that the Government of a State cannot be carried on in accordance with the provisions of the Constitution (i.e., breakdown of Constitutional machinery).

The President is empowered to declare that a situation has arisen whereby the financial stability or credit of India or of any part thereof is threatened (Article 360).

**Discretionary Powers:** There can be at least two situations in which the President may have to take a decision in his discretion, because the advice of the Ministers may not be available. Such a situation arose in 1979 after Morarji Desai's resignation as Prime Minister. The President did not invite Jagjivan Ram. He accepted the advice of Charan Singh, and dissolved the Lok Sabha. The President took his action in his discretion.

There is no mention of the term 'discretion', in the Constitution, in connection with the powers of the President. However, eminent Constitutional experts like D.D. Basu, N.A. Palkhiwala, T.K. Tope, H.M. Seervai and V.M. Tarkunde are of the opinion that like the Queen of England, the President of India has discretion in the appointment of Prime Minister, and dissolution of Lok Sabha. In normal times, the President acts according to well established customs.

## Vice President

The office of the Vice President is the second highest constitutional post in India.

The qualifications needed to become a Vice President of India are the following:

- He must be a citizen of India.
- He must be over 35 years of age.
- He must be qualified for election as a Member of the Rajya Sabha.

The members of both the houses of parliament elect the Vice President through an electoral college. Like the election of the President, the election of the Vice President is also held in accordance with the system of proportional representation, through the concept of a single transferable vote by secret ballot. The office of the Vice President is for a period of five years. The Vice President is the ex-officio chairman of the Rajya Sabha. The Vice President shall act as the President, in case of any vacancy in the office of the President by reason of his death, resignation, removal through impeachment or otherwise. Parliament can remove him before completion of his tenure.

## ***THE PRIME MINISTER AND THE UNION COUNCIL OF MINISTERS***

The Union Council of Ministers, headed by the Prime Minister, is the real executive of the country. The President has to exercise all his powers in accordance with the advice tendered by the Council of Ministers.

### **Composition of the Union Council of Ministers:**

The Council of Ministers consists of the Prime Minister and other Ministers. The number of Ministers is not fixed. It varies from time to time.

The Prime Minister and other Ministers are appointed by the President. The President has to appoint the leader of the majority party as the Prime Minister. It is in accordance with the advice of the Prime Minister that the President appoints other Ministers.

Following are the four categories of Ministers in the Council of Ministers:

**(a) Cabinet Ministers :** Cabinet Ministers are those Ministers who hold very important portfolios like Defence, Home and Foreign Affairs, etc. They are highest in status, emoluments, and powers. It is these Ministers who constitute the Cabinet which has been described as a wheel within a wheel. Their number varies from time to time but seldom exceeds twenty. Cabinet Ministers and senior Ministers collectively formulate the policy of the Government and are entitled to attend all meetings of the Cabinet. Occasionally, senior leaders are included in the Cabinet as Ministers without portfolio.

**(b) Ministers of State:** They are next in seniority and hold independent charge of a department or a sub-department generally included in the portfolio of a Cabinet Minister. They have no share in the formulation of the Government's general policy and attend Cabinet meetings only when specially invited and when affairs of their departments are to be considered.

**(c) Deputy Ministers :** Deputy Minister, who are next in rank to Ministers of State do not hold independent charge of any department and perform such functions as the Minister-in-charge may delegate to them.

**(d) Parliamentary Secretaries :** They have no independent powers or functions. They assist the Ministers to whom they are attached in the Parliamentary work. They are, in fact, probationers under

training and may hope to rise to higher ranks if they make good.

Thus, we can say that whereas the Council of Ministers includes all categories of Ministers, Cabinet is only a part of the Council of Ministers and includes only some important Ministers. The Council of Ministers meets very rarely; Cabinet meets quite frequently.

### **Functions of the Cabinet**

**Policy Formulation:** The Cabinet is responsible for policy formulation, both with regard to national and international problems. All policy decisions are taken by consensus and are conveyed by the Prime Minister to the President.

**Control over Administration:** The types of control over administration can be broadly divided into two—Internal Control and External Control. Internal controls form part of the administrative machinery and work automatically and spontaneously with the movement of the machinery. They comprise of the following:

1. Budgetary Control
2. Personnel Management Control
3. O and M System
4. Administrative Ethics and Professional Standards
5. Leadership

External controls work within the general Constitutional machinery, e.g. legislative control, executive control and judicial control. Public control is also a form of external control.

**Legislative Powers:** All the Ministers are members of Parliament and, thus, participate in legislation. Most of the Bills are introduced in the Parliament by the Ministers and are always passed by the Parliament because of the support they enjoy. The Bills to be introduced by the Ministers are considered by the Cabinet and approved. The Cabinet may make such changes in the Bills as it thinks are necessary.

**Financial Powers:** The Cabinet is responsible for all expenses of the Government and the sources of revenue to finance the expenditure. The annual budget prepared by the Finance Minister is controlled by the Cabinet.

Here, it may be noted that the budget proposals are kept strictly secret and the Finance Minister takes the Cabinet into confidence only an hour before the introduction of the budget in Parliament. The Cabinet cannot make any changes in the budget. But in the light of discussion on the budget proposals in the Parliament, the Cabinet makes alterations. The alterations thus made are subsequently announced by the Finance Minister.

The Cabinet is responsible for approving the economic and fiscal policies and also for taking decisions on the reports submitted by the Finance Commission and the Comptroller and Auditor-General of India.

**Power of making Appointments:** The President enjoys vast powers of appointing high dignitaries of the State. These appointments are in reality made by the President on the recommendation of the Cabinet.

The advice of the Cabinet is binding on the President and virtually all the functions of the President are performed by this body. The President may ask the Cabinet to reconsider its advice but only once. The advice given after reconsideration is binding on the President.



The Cabinet is a corporate body. It not only co-ordinates the work of various departments but also resolves the inter-departmental disputes. M.V. Pylee calls the Cabinet “the formulator of national policies, the highest appointing authority, the arbiter of inter-departmental disputes and the supreme organ of co-ordination in Government”.

**Cabinet Meetings:** The Cabinet, ordinarily, meets once a week, and more often if the occasion demands. The Prime Minister presides over its meetings. But in case the Prime Minister is out of town for some length of time, a senior Minister, nominated by the Prime Minister himself, presides over Cabinet meetings. After the meeting is over, the Cabinet Secretary, who remains present in it, prepares and circulates a summary embodying the decisions reached.

### **Cabinet Committees**

To relieve the Cabinet of some burden of work, Cabinet committees have been set up. N. Gopalaswamy of the Machinery of Government (1949) recommended setting up of standing committees of Cabinet over defined fields, with appropriate strengthening of the secretariat and other organs of these committees. These were the instruments to ‘organize co-ordination on a decentralized basis’.

The Cabinet Committees should cover between them all important areas of Governmental activity. It is also essential that they meet regularly so that sustained attention is given to complex problems and the progress of implementing important policies and programmes is kept under constant review. The number and names of the Cabinet committees do not remain unchanged. But three or four such committees have existed under all Governments in power at the centre, namely:

- (a) Political Affairs Committee: It is chaired by the Prime Minister. Its other members include the Home Minister, the Defence Minister, and the External Affairs Minister. The committee deals with all important matters relating to both internal developments and foreign relations.
- (b) Economic Affairs Committee: Its members are the Prime Minister (Chairman), Finance Minister, Rural Development Minister, and Industry Minister. Its main function is to direct and co-ordinate Governmental activities in the economic field and generally to regulate the working of the national economy.
- (c) Committee on Parliamentary Affairs: Its members include Information and Broadcasting Minister, Minister for Labour and Parliamentary Affairs, Law Minister, with the Home Minister as its chairman. The committee looks after the progress of Government business in Parliament to secure the smooth passage of legislation and determine the Government’s attitude to non-official Bills and resolutions coming up before Parliament.
- (d) Appointment Committee: The members of the Appointment Committee are the Prime Minister who is also its chairman, the Home Minister and the Minister concerned.

*Its main function is to take decisions in respect of*

- Secretariat appointments of the rank of Deputy Secretary and above;
- Chairman, Managing Directors and General Managers and state-owned public corporations, companies and enterprises including Governor of Reserve Bank;
- Other appointments which are made by the Government or which require the approval of the Government of India, and which carry a salary;
- To decide all cases of disagreement between the Union Public Service Commission and the Department concerned in regard to any appointment.

Five other ad hoc committees have also been set up out of which two deal with the problem of prices. The Third Cabinet Committee reviews the performance of the public undertakings including export promotion and import substitution and also covers denudation of forests and trees. The fifth one deals with the question of rise in all minimum prices in view of the increased power rates.

## **The Prime Minister**

The Constitution of India gives formal recognition to the pre-eminent position which the Prime Minister enjoys in relation to the Council of Ministers. Article 74(1) says, "There shall be a Council of Ministers with the Prime Minister at the head to aid and advice the President in the exercise of his functions."

**Functions of the Prime Minister:** The Prime Minister is the key stone of the Cabinet arch. He controls the entire administration. Unlike the powers of the President which are in name only, the powers of the Prime Minister are real and vast. The Prime Minister is the central figure in the formation, existence and termination of the Cabinet. In Britain, the position of the Prime Minister has been described by Lord Morley as 'primus inter pares', i.e., 'first among equals'. In theory, all Ministers or members of the Cabinet have an equal position, all being advisers of the Crown, and all being responsible to Parliament in the same manner. Nevertheless, the Prime Minister has a pre-eminence, by convention and usage. The position of the Ministers and the Prime Minister is similar in India. Thus,

- The Prime Minister is the leader of the party in majority in the popular House of the Legislature.
- He has the power of selecting the other Ministers and also advising the President to dismiss any of them individually, or require any of them to resign.
- The allocation of business amongst the Ministers is a function of the Prime Minister.
- He is not only the chairman of the Cabinet, but is also the chairman of important Cabinet committees.
- He summons the meetings of the Cabinet and presides over them.
- While the resignation of other Ministers merely creates a vacancy, the resignation or death of the Prime Minister dissolves the cabinet.
- The Prime Minister is the link between the President and the Cabinet.
- Though individual Ministers have the right of access to the President on matters concerning their own departments, and important communication, particularly relating to policy, can be made only through the Prime Minister.
- The Prime Minister is in charge of coordinating the policy of the Government and has, accordingly, a right of supervision over all the departments.

In short, the Prime Minister is head of the ruling party, the Parliament and the Government at the same time. He is chief advisor to the President and working head of the Union of India. He is the main spokesman of the country in national and international matters. However, the actual position of the Prime Minister depends greatly upon his or her personality and political situation in the country.

## ***THE CENTRAL SECRETARIAT***

The word 'Secretariat' means the Secretary's office. The Secretary, being the principal adviser to the Minister, needs to be equipped with an office to assist him in the performance of his functions. For the purpose of good administration, the Government of India is divided into Ministries and Departments which together constitute the Central Secretariat.



**Role and Objectives of the Secretariat:** It assists the Ministers in the formulation of Governmental policies. The Ministers present to the electorate, broad programmes of action which need to be provided with content and shape in order to be made workable. Besides, Ministers have to finalise policies on various unforeseen problems. For the formulation of policies on all these matters, adequate precedents and other relevant information is required. The Secretariat makes these available to the Minister, thus enabling him to formulate policies.

The legislative leadership in the Parliamentary system of Government like ours rests with the Government. Thus, the Secretariat prepares drafts of legislations to be introduced in the Legislature. It is also responsible for collecting relevant information for answering Parliamentary questions and also for various Parliamentary committees. In the words of Prof. Maheswari, “the Secretariat acts as an institutionalised memory to enable the Government to examine the emerging problems in the light of precedents and past practices, which is essential for ensuring objectivity, consistency and continuity”. The Secretariat acts as the clearing house, preliminary to Governmental decisions. This is done by carrying out a detailed scrutiny of a problem. It brings to bear an overall comprehensive viewpoint on the matter, gets the approval, if necessary, of other lateral agencies like the Ministry of Law and the Ministry of Finance, and also consults other organisations concerned with that particular matter.

The Secretariat is the main channel of communication between the States or with agencies like the Planning Commission, Finance Commission, etc. It ensures that field offices execute, with efficiency and economy, the policies and decisions of the Government.

The functions of the Secretariat may be broadly divided into two categories—general and specific. They may be briefly mentioned as follows :

***General Functions :***

- Policy-making;
- Framing rules and principles of procedure;
- Exercise of financial control;
- Work associated with legislation;
- Guiding and directing the executive agencies in the performance of their tasks, and also evaluating their work.

***Specific Functions:***

- Assisting the Minister in policy-making and in modifying policies from time to time, as and when necessary;
- Framing legislation and rules and regulations;
- Sectoral planning and programme formulation;
- Budgeting and control of expenditure in respect of activities of the Ministry/department;
- According or securing administrative and financial approval to operational programmes and plans and their subsequent modifications;
- Supervision and control over the execution of policies and programmes by the executive departments or semi-autonomous field agencies and evaluation of the results;
- Assisting the Minister in the discharge of his Parliamentary responsibilities;
- Initiating measures to develop greater personnel and organisational competence both in the Ministry or department and its executive agencies;

- Co-ordination and interpretation of policies;
- Assisting other branches of the Government; and
- Maintaining contact with State Governments.

**Central Secretariat Service:** The need for a Central Secretariat Services (CSS) was felt even before 1947. A scheme for setting up of CSS was approved by the Central Secretariat Reorganisation and Reinforcement Schemes. The CSS which replaced the old Imperial Secretariat Service, was originally organised in four grades:

1. Under Secretary Class-I
2. Section Officer Class-I
3. Section Officer Class-II
4. Assistants - Class III (Non-Gazetted)

In 1959, the Section Officer Class I and II categories were merged into one continuous Class-II grade. A new selection grade above Grade-I, was also created which was to consist of the post of Deputy Secretary and above.

#### **Characteristics of CSS :**

- (1) The CSS provides staff for the Central Secretariat and for most of the attached and subordinate offices.
- (2) All posts from the level of Assistants up to the Under Secretaries are included in this service.
- (3) The former departmentalization of the Imperial Secretariat Service was given up and the new service was made a common service for all the Ministries. This improved the opportunities for promotion of all the employees of the service.

However, it was decided to introduce some element of decentralization in the service. The assistants and section officers are now divided into Ministry-wise cadres which mean that the control over these levels now rests in the hands of the administrative Ministries concerned. But for purpose of promotion to Grade-I, the field of choice consists of all the officers in the section officers grade in all the cadres. The control over Grade-I and selected posts vested in the Department of Personnel.

- (4) The scheme visualized a deputation reserve in order to enable officers of the service to be appointed to the outside executive posts in attached and subordinate offices. The merit of this provision is that it widens the outlook of the service and strengthens the outside agencies.

- (5) A Secretariat training school was established in 1948 to provide systematic pre-entry training to the new entrants. It has now been upgraded to the status of the Institute of Secretariat Training and Management (ISTM).

- (6) Posts in selection grade are filled by promotion on the basis of merit from officers of Grade-I having five years service in that grade.

- (7) Recruitment to the vacancies in the grade of Section Officers is made in a number of ways. One-sixth of the posts are filled through UPSC on the basis of the results of the IAS examination. The remaining vacancies and also the temporary vacancies are filled by promotions of Assistants to the extent of two-third of the vacancies and through a departmental examination conducted by UPSC for the remaining one-third.

For the grade of Assistants the original scheme envisaged a reservation of seventy-five per cent of vacancies to be filled by direct recruitment on the basis of open competitive examination conducted by the UPSC. However, to take care of the promotional opportunities of the UDCs, the quota of direct recruitment has been reduced to fifty per cent. The open competitive examination for the grade of

Assistants is now conducted by the Staff Selection Commission. The qualifications prescribed for the direct recruitment is a University degree. The remaining fifty per cent vacancies are filled by the promotion of meritorious UDCs of the Central Secretariat Services.

## ***THE CABINET SECRETARIAT***

The efficiency of the Cabinet depends, to a large extent, on the Cabinet Secretariat whose duty is

- To prepare the agenda of the Cabinet meeting,
- To provide information and material necessary for its deliberations,
- To draw up records of the discussions and decisions both of the Cabinet and its committees,
- To oversee the implementation of the necessary decisions by the Ministries concerned. This involves the calling of information from various Ministries and departments.
- To keep the President, the Vice-President and all the Ministries informed of the major activities of the Government conducted in several Ministries by undertaking the circulation of monthly summaries and brief notes on important matters.
- To service the Committees of Secretaries which meet periodically under the chairmanship of the Cabinet Secretary to consider and advise on problems requiring inter-ministerial consultation and co-ordination.
- To finalise the rules of business and allocate the business of the Government to the Ministries and departments under the direction of the Prime Minister and with the approval of the President.
- To give secretarial assistance to the Cabinet committees.

**Organization of the Cabinet Secretariat:** The Cabinet Secretariat is headed by the Prime Minister who is assisted by a Cabinet Secretary and other secretariat staff. The Secretariat was re-organized in 1961 and consists of two Departments, viz., the Department of Cabinet Affairs, and the Department of Statistics.

**Department of Cabinet Affairs:** The Department of Cabinet Affairs is divided into four wings

(a) **Main Civil Secretariat:** The main secretariat is headed by the Cabinet Secretary. Below him, there are three Secretaries including one Secretary (Co-ordination), followed by one Additional Secretary, four Joint Secretaries and one Secretary (TPIC), an ex-officio Joint Secretary and six Deputy Secretaries.

The main civil wing is the institutional machinery through which the Cabinet Secretary provides the secretarial service to the Cabinet and its Committees. It also provides secretarial service to the Committees of Secretaries which function under the chairmanship of the Cabinet Secretary. The civil wing is divided into four sections:

- Co-ordination Section
- Cabinet Section
- General Section
- Administrative Section

(b) **O and M Division:** The Organization and Methods Division was created in March, 1954. It functions directly under the Prime Minister. It pays attention not only to what is done but also to how it is done and at what cost in time, labour, money and also pays attention to the design of the machinery and its working processes.

The work of O and M Division is carried on through the O and M units set up in each Ministry, each unit being under the charge of a Deputy Secretary functioning as an O and M officer in addition to his own duties. The Director, O and M Division exchanges ideas and experiences with the O and M officers of various Ministries from time to time by holding joint meetings. The Deputy Director, O and M Division, pays informal visits to the various Ministries to see whether the prescribed procedures are being followed or not. He also tenders advice on various problems of O & M work.

(c) **Military Wing:** The function of the Military wing is to provide secretarial service to the Defence Committee of the Cabinet, National Defence Council, Military Affairs Committee, the Defence Minister's Committee, the Defence Minister's Production Committee and a host of other committees dealing with matters relating to defence.

(d) **Economic Wing:** The Economic wing is responsible for all secretariat work connected with the Economic Committee of the Cabinet, the Committee of Economic Secretaries and the Supply Committee.

**Department of Statistics:** The Department of Statistics was created in April, 1961 as a central statistical body.

- It considers statistical methods;
- It advises and issue general directions regarding the setting up of standards, norms, and method of collection to all the central and State agencies and to deal with references from them on such questions;
- It co-ordinates the activities of various statistical agencies; and
- It promotes, in general, the collection and compilation of statistics on scientific lines.

Besides, the Department also provides administrative support to the Central Statistical Organisation (C.S.O.), National Sample Survey (N.S.S.) and the Indian Statistical Institute. (I.S.I.). Whereas C.S.O and I.S.I, are attached offices, the N.S.S. is a subordinate office of the Cabinet Secretariat.

**The Cabinet Secretary:** In the official Warrant of Precedence, the Cabinet Secretary has been given the highest place among the civil servants. He sits near the Prime Minister in the Cabinet meetings and briefs him on various points on the agenda. He is the chairman of the Senior Selection Board and, also, of the Committee of Secretaries on Administration. Again, it is the Cabinet Secretary who presides over the Chief Secretaries' Conference.

The Ayyangar Report described the Cabinet Secretary as an administrative officer of the highest rank selected for the office for his special qualities of tact, energy, initiative and efficiency, and recommended that he should be entrusted, as head of the Cabinet Secretariat, with the positive function of securing co-ordination as well as timely and effective action by all departments of the Government of India in all matters in which the Cabinet as a whole or the Prime Minister is interested. He should be a person commanding the respect and confidence of all ranks of the permanent services there is need for a senior officer of ripe experience to be placed at the head of the Cabinet Secretariat. In U.K. it is said that "The Cabinet Secretariat is under a Cabinet Secretary. He is a very senior civil servant. He is almost the pivot of the Cabinet system. From the account of his relationship with permanent officials it would appear that he is a sort of adviser and conscience-keeper to all the permanent officials. They come for advice and guidance whenever there are inter-departmental difficulties. He seems to be a man in whom all permanent officials have great confidence..."

## ***THE PRIME MINISTERS'S OFFICE***

The Prime Minister's Office, known as the Prime Minister's Secretariat till June 1977, came into existence in August 1947, when India emerged as an independent nation. It took the place of the Secretary to the Governor-General (Personal), as the Prime Minister assumed functions which, prior to August 15, 1947, the Governor-General performed as head of the Government. The Prime Minister's Office (PMO) occupies the status of a department of the Government of India under the Allocation of Business Rules, 1961. It is a link between the Prime Minister and his Ministers, the President, Governors, Chief Ministers and Foreign Representatives. The Prime Minister's Secretariat assists the Prime Minister in his public activities and functions as head of the Government. Its functions are :

- a) To deal with all references which under the Rules of Business have come to the Prime Minister
- b) To help the Prime Minister in respect of his responsibilities as the Chairman of the Planning Commission and the National Development Council.
- c) To look after public relations, such as, contact with the press and general public.

## **Supreme Court of India:**

India is a federal State having a single and unified judicial system with three-tier structure, i.e., Supreme Court, High Courts and Subordinate Courts.

### **Introduction**

The Supreme Court in India was established through an enactment passed in pre-independent India, with the introduction of the Regulating Act, 1773. The 1st Supreme Court started its function as a court of record at Calcutta, and the 1st Chief Justice Sir Elijah Impey was appointed. The court was established to resolve the disputes in Bengal, Orissa, and Patna. Consequently, in 1800 and 1834, the King George-III established the other two Supreme Courts in Bombay and Madras.

However, soon after the enactment of the Indian High Court Act, 1861, the Supreme Courts in Calcutta, Bombay, and Madras were consequently abolished and the courts in Calcutta, Bombay, and Madras resumed its functioning as High Court. In 1935, the British Parliament enacted the Government of India Act, 1935, after a resolution was passed by the Joint Select Committee.

The Government of India Act, 1935, led to the establishment of the Federal Court in India, which has vested more judicial power than the High court with original, appellate, and advisory jurisdiction. After independence, the Constitution of India was adopted on 26th January 1950, and the Federal Court of India resumed functioning as the Supreme Court of India on 28th January 1950, which was presided by Hon'ble Mr. Justice Harilal Jekisundas Kania.

As per article 124(1) of the Constitution, there should be a Supreme Court in India that will be presided by the Chief Justice of India with additional seven Judges until the parliament passes precedent for increasing the number of Judges. However, currently, there are 34 judges in the Supreme Court, and the current Chief Justice of India is Mr. Justice N.V.Ramana.

### **Importance of the Supreme Court in India:**

In the Constitution of India, part 5, chapter 6 deals with the power, function, appointment, retirement, jurisdiction, etc. from Article 124 to Article 147 of the Supreme Court. The followings are the importance of the establishment of the Supreme Court:

- 1) The Supreme Court is the highest appeal court that is also known as the apex court of India and even the last resort, where the citizens of India can seek justice if they are not satisfied with the judgment of the High court.
- 2) The citizens of India, as per Article 32 of the Constitution, can even directly sort for remedy through writs if their fundamental rights are violated.
- 3) The Supreme Court has Judicial Review power that is being vested through Article 13 of the Constitution, which means the Supreme Court has the power to strike down any legislation and executive action if such acts are found to be inconsistent with the Constitution of India.

### **Supreme Court of India**

Supreme Court at the apex of the Indian Judiciary is the highest authority to uphold the Constitution of India, to protect the rights and liberties of the citizens, and to uphold the values of rule of law. Hence, it is known as the *Guardian of our Constitution*.

The Indian Constitution provides for a provision of the Supreme Court under Part V (The Union) and Chapter 6 titled 'The Union Judiciary'. The Constitution of India has provided an independent judiciary with a hierarchical setup containing High Courts and Subordinate Courts under it.

### **Composition of the Supreme Court**

Article 124(1) and Amendment act of 2008 states that there shall be a Supreme Court of India consisting of a Chief justice of India (CJI) and 34 judges including the CJI. Article 124(2) states that every judge of the Supreme Court shall be appointed by the President of India by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the states.

Here, the collegium system (appointment of judges to the courts) was followed which is also known as the three judges cases, which comprises of the Chief Justice of India (CJI) and four senior-most judges of the SC, one Chief Justice of the High Court and two of its senior-most judges. This system demanded a consensus decision of all the senior-most judges in conformity with the Chief Justice of India.

### **The Supreme Court has the following powers that are jurisdiction:**

#### **Original Jurisdiction- (Art 131)**

This jurisdiction extends to cases originating in the Supreme Court only and states that the Supreme Court of India has original and exclusive jurisdiction in cases between:

- The government on one hand and one or more states on the other
- Government and one or more states on one side and other states on the other
- Two or more states

#### **Appellate Jurisdiction- (Art 132,133,134)**

The appeal lies with the Supreme Court against the High court in the following 4 categories:

1. Constitutional matters- If High court certifies that the case involves a substantial question of law that needs interpretation of the constitution.
2. Civil matters- If the case involves a substantial question of law of general importance.
3. The criminal matters- If High court has on appeal reversed the order of acquittal of an accused and sentenced him to death or has withdrawn for trial before itself any case from subordinate court.



4. Special leave to appeal is granted by SC if it is satisfied that the case does not involve any question of law. However, it cannot be passed in case of the judgment passed by a court or tribunal of armed forces.

However, under this jurisdiction, the Supreme Court can transfer to itself cases from one or more high courts if it involves the question of law in the interest of justice.

### **Advisory Jurisdiction (Art 143)**

Article 143 authorizes the President of India to seek an advisory opinion from the Supreme Court in the two categories of matters:

- (a) Matters of public importance
- (b) Of any question arising out of pre-constitution, treaty, agreement, engagement, Sanad or other similar instruments.

Also, Article 144 states that all authorities civil and judicial in the territory of India shall act in aid of the Supreme Court.

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

1. Power to punish for contempt (civil or criminal) of court with simple imprisonment for 6 months or fine up to Rs. 2000. Civil contempt means wilful disobedience to any judgment. Criminal contempt means doing any act which lowers the authority of the court or causing interference in judicial proceedings.
2. Judicial review to examine the constitutionality of legislative enactments and executive orders. The grounds of review is limited by Parliamentary legislation or rules made by the Supreme Court.
3. Deciding authority regarding the election of President and Vice President.
4. Enquiring authority in the conduct and behaviour of UPSC members.
5. Withdraw cases pending before High Courts and dispose of them itself.
6. Appointment of ad hoc judges- Article 127 states that if at any time there is lack of quorum of Judges of Supreme Court, the CJI may with the previous consent of the President and Chief Justice of High Court, concerning request in writing the attendance of Judge of High Court duly qualified to be appointed as Judge of the Supreme Court.
7. Appointment of retired judges of the Supreme Court or High Court - Article 128 states that the CJI at any time with the previous consent of the President and the person to be so appointed can appoint any person who had previously held the office of a Judge of SC.
8. Appointment of acting Chief Justice- Article 126 states that when the office of CJI is vacant or when the Chief Justice is by reason of absence or otherwise unable to perform duties of the office, the President in such case can appoint Judge of the court to discharge the duties of the office.
9. Revisory Jurisdiction- The Supreme Court under Article 137 is empowered to review any judgment or order made by it with a view to removing any mistake or error that might have crept in the judgement or order.
10. Supreme Court as a Court-of Record the Supreme Court is a court of record as its decisions are of evidentiary value and cannot be questioned in any court.

### **Removal of Supreme Court Judge:**

A judge of Supreme Court can be removed only from the office by the President of India on the basis of a resolution passed by both the Houses of Parliament (Lok Sabha and Rajya Sabha) with a majority of the total membership and a majority of not less than two-thirds of the members present and voting in each House, on the grounds of proved mis behaviour or incapacity of the judge in question.



Hence, a democratic country like India needs a judiciary because democratic values tend to lose their prominence without proper checks and balances.

## ***High Court Powers and Functions***

High Courts are the highest courts in a state. Presently, there are 25 High Courts in India, with some states having a common High Court. They are an important part of the judicial system in India and hence, very important from the point of view of Indian polity for the UPSC exam.

High Courts and their functions, powers, jurisdiction, along with the rules for the appointment of High Court judges are fundamental concepts in the polity section of the IAS syllabus. In this article, we present this very vital information in a crisp manner for students to study easily.

### ***Powers and Functions of the High Court***

The High Court is the highest court in a state in India. Articles 214 to 231 in the Indian Constitution talk about the High Courts, their organization and powers. The Parliament can also provide for the establishment of one High Court for two or more states.

For instance, Haryana, Punjab and the Union Territory of Chandigarh have a common High Court. The northeastern states also have one common High Court. In addition, Tamil Nadu shares a High Court with Puducherry. Currently, there are 25 High Courts in India. The High Courts of Calcutta, Madras and Bombay were established by the Indian High Courts Act 1861.

### ***What are functions of High Court?***

The functions of the High Court are described in the below section under subsections such as its jurisdiction, powers, role, etc.

#### **High Court Jurisdiction**

The various kinds of jurisdiction of the High Court are briefly given below:

##### **Original Jurisdiction**

- The High Courts of Calcutta, Bombay and Madras have original jurisdiction in criminal and civil cases arising within these cities.
- An exclusive right enjoyed by these High Courts is that they are entitled to hear civil cases which involve property worth over Rs.20000.
- **Regarding Fundamental Rights:** They are empowered to issue writs in order to enforce fundamental rights.
- With respect to other cases: All High Courts have original jurisdiction in cases that are related to will, divorce, contempt of court and admiralty.
- Election petitions can be heard by the High Courts.

#### **Appellate Jurisdiction**

- **In civil cases:** an appeal can be made to the High Court against a district court's decision.
- An appeal can also be made from the subordinate court directly, if the dispute involves a value higher than Rs. 5000/- or on a question of fact or law.
- **In criminal cases:** it extends to cases decided by Sessions and Additional Sessions Judges.
  - If the sessions judge has awarded an imprisonment for 7 year or more.

- If the sessions judge has awarded capital punishment.
- The jurisdiction of the High Court extends to all cases under the State or federal laws.
- **In constitutional cases:** if the High Court certifies that a case involves a substantial question of law.

## High Court Powers

Apart from the above, the High Courts have several functions and powers which are described below.  
As a Court of Record

- High Courts are also Courts of Record (like the Supreme Court).
- The records of the judgements of the High Courts can be used by subordinate courts for deciding cases.
- All High Courts have the power to punish all cases of contempt by any person or institution.

## Administrative Powers

1. It superintends and controls all the subordinate courts.
2. It can ask for details of proceedings from subordinate courts.
3. It issues rules regarding the working of the subordinate courts.
4. It can transfer any case from one court to another and can also transfer the case to itself and decide the same.
5. It can enquire into the records or other connected documents of any subordinate court.
6. It can appoint its administration staff and determine their salaries and allowances, and conditions of service.

**Power of Judicial Review:** High Courts have the power of judicial review. They have the power to declare any law or ordinance unconstitutional if it is found to be against the Indian Constitution.

**Power of Certification:** A High Court alone can certify the cases fit for appeal before the Supreme Court.

**High Court Autonomy:** The independence of the High Courts can be corroborated by the points given below:

1. **Appointment of Judges:** The appointment of judges of the High Courts lies within the judiciary itself and is not connected to the legislature or the executive.
2. **Tenure of the Judges:** High Court judges enjoy security of tenure till the age of retirement, which is 62 years. A High Court cannot be removed except by an address of the President.
3. **Salaries and allowances:** The High Court judges enjoy good salaries, perks and allowances and these cannot be changed to their disadvantage except in case of a financial emergency. The expenses of the High Court are charged on the Consolidated Fund of the State, which is not subject to vote in the state legislature.
4. **Powers:** The Parliament and the state legislature cannot cut the powers and jurisdiction of the High Court as guaranteed by the Constitution.
5. **Conduct of judges:** Unless a motion of impeachment has been moved, the conduct of the High Court judges cannot be discussed in the Parliament.
6. **Retirement:** After retirement, High Court judges cannot hold an office of emolument under the

Government of India or that of a state. There is an exception to this clause, however, when, with the consent of the Chief Justice of India, retired judges can be nominated to a temporary office, and in situation of Emergencies.

**How many High Courts are there in India?** Currently, in India, there are 25 High Courts.

**Which is the first High Court in India?** The first High Court in India is the Calcutta High Court. It was established in 1862 as the High Court of Judicature at Fort William.

**What is the salary of Chief Justice of India?** At present, judges of the High Courts get a monthly salary of Rs.2.5 lakh.

Unit-2-Cont