Subject :

Constitutional Law - II

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MIES R.M. Law College

Affiliated: Vidyasagar University

Approved by: Bar Council of India

SONARPUR
Near SBI
Kolkata-700 150
✆ 2428 3510

SUBJECT TOPICS

1. **THE PRESIDENT OF INDIA**
2. **PRIME MINISTER**

   (INCLUDING COUNCIL OF MINISTERS

   ANDCOLLECTIVE RESPONSIBILITY)
3. **GOVERNOR**
4. **PARLIAMENT**
5. **SUPREME COURT**
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THE PRESIDENT OF INDIA

(Articles 52-62)

Article 52 of the Constitution of India says that there shall be a President of India. India achieved independence from the British on 15 August 1947, initially as a Dominion within the Commonwealth of Nations with George-VI as king, represented in the country by a governor-general. Still, following this, the Constituent Assembly of India, under the leadership of Dr. B. R. Ambedkar, undertook the process of drafting a completely new constitution for the country. The Constitution of India was eventually enacted on 26 November 1949 and came into force on 26 January 1950, making India a republic. The offices of monarch and governor-general were replaced by the new office of President of India, with Rajendra Prasad as the first incumbent.

ELECTION

The office of the president is created by Article 52 of the constitution. The president is elected not directly by the people but my method of indirect election.

Election of President : The president of India is not directly elected by the people. Art 54 provides that the President shall be elected by an electoral college consisting of the:-

a) the elected members of both Houses of Parliament; and

b) the elected members of the Legislative Assemblies of the States. Explanation: In this article and in article 55, "State" includes the National Capital Territory of Delhi and the Union territory of Pondicherry.

Manner of election of President : Article 55 provides the following manner President is elected :

1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

2) For the purpose of securing such uniformity among the States inter se as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the legislative Assembly of each state is entitled to cast at such election shall be determined in the following manner; -

a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;

b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;

c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation : In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published:

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.

The following illustration makes it clear how the election of President takes place :

For Legislative Assembly of a State :

The formula for determining the number of votes which every member of a Legislative Assembly is —

$$\frac{\text{Population of the state}}{\text{Total number of elected members of the State Legislative Assembly}} \times \frac{1}{1000}$$

Suppose the population of a State "ABC" is 3,00,00,000 and the number of elected members of the Legislative Assembly of that state "ABC" is 300, the votes which an elected member of the Legislative Assembly is entitled to cast at election of the President will be as follows :

$$300 \qquad \frac{30000000}{1000} \times \frac{1}{10}$$

If there is any fraction and that fraction is one-half or above, it will be counted as one and if it is less than one-half, it will be ignored.

Thus each member of the Legislative Assemble will get 100 votes and the total votes cast by Legislative Assembly of State "ABC" would be 100 x 300 = 30,000

For Member of Parliament :

The formula for determining the number of votes which every Member of Parliament is —

$$\frac{\text{Total votes assigned to the members of all the Legislative Assemblies of the State}}{\text{The number of elected members of both houses of Parliament}}$$

For example, suppose total votes assigned to the members of all the Legislative Assemblies of the State are 9,90,000 and the number of elected members of both houses of Parliament is 900. Each elected member of either House of Parliament will be entitled to cast the following member of votes —

$$\frac{990000}{900} = 1100$$

If there is any fraction and that fraction is one-half or above, it will be counted as one and if it is less than one-half , it will be ignored.

Mode of voting :

President is elected with the system of proportional representation by means of the single transferable vote. A candidate will be elected as President as if he secures a minimum quota obtained by the following formula :

$$\frac{\text{Total valid votes cast at the election of the President}}{\text{Number of candidates contested to be elected as the President} + 1} + 1$$

Only one candidate to be elected as President. Suppose the total valid votes cast at the election of the President is 40,000.

A candidate to be elected has to acquire the votes = $\frac{40000 + 1}{1 + 1 = 2} = 20001$

Suppose there are three candidates and secured the following votes:

X = 15000
Y = 18000
Z = 7000

No candidate secured the minimum quota of 20001. A candidate who has secured leas number of votes will be eliminated and hid votes will be distributed among X and Y in accordance with the second preference indicate on the ballot paper recorded in his favour. Here Y is eliminated.

Suppose the second preference vote indicated on the ballet papers recorded in favour of Z is as follows:

X = 5500
Y = 1500

These votes will be added to the first preference votes of X and Y and there after it will be as follows :

15000 + 5500 = 20500
18000 + 1500 = 19500

X will be declared as elected as he has secured the minimum quota of 20001 votes although he has secured fewer first preference votes that Y.

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as reference to the 1971 census.

The President of India is, thus elected by method of indirect election by the elected members of both Houses of Parliament and Legislative Assemblies of the States. It is to be noted that the members of the Legislative Assemblies of the States. It is to be noted that the members of the Legislative Councils (the upper House in the states) are not eligible to vote. Similarly, nominated members of either House of Parliament or of the Legislative Assemblies of any State on the date of election of the President are not eligible to vote at the election of the President.

In ***re Presidential Election*** [AIR 1974 SC 1681], it has been held that if an elected member of a Legislative Assembly of a State ceases at the date of election of the President to be an elected member due to dissolution of the Legislative Assembly he will not be eligible to be a member of the Electoral College and cannot cast vote at the election of the President. In this case, the Supreme Court has held that election of the President can be held even when due to the dissolution of State Legislative Assembly under Article 356, its members are not eligible to cast vote at the election of the President.

According to ***Article 7(4)*** of the Constitution, the election of a person as president shall not be called in question on the ground of the existence of any vacancy for whatever reason, among the members of Electoral College electing him.

DISPUTE REGARDING THE ELECTION OF PRESIDENT OR VICE-PRESIDENT

Article 71. **Matters relating to, or connected with, the election of a President or Vice-President.**

1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.
2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.
3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.
4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

In ***Dr. N.B. Khare v. Election Commission of India*****, AIR 1957 SC 694**, a petition has been filed to withhold the election of the President on the ground that since the general election in certain parts of Punjab and Haryana had not taken place and the electoral college as envisaged by Arts 54 and 55 for the purpose would be incomplete and pleaded that the election of the President should be postponed until the completion of electoral college by election in the state. The court has held that the election of the President or Vice-President may only be challenged after the candidate is declared to be elected as the President-Vice-President as the case may be.

According to Section 14 and 14A of the Presidential and Vice-Presidential Election Act, 1952 an election of President may only be challenged by a candidate or by 20 or more electors joining as petitioners.

Article 57. Eligibility for re-election : — A person who holds, or who has held, office as President shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

Qualifications :

Article 58 **: Qualifications for election as President**

1) No person shall be eligible for election as President unless he -

a) is a citizen of India;

b) has completed the age of thirty-five years, and
c) is qualified for election as a member of the House of the People.

2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation : For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

As per Section 4 of the Representative of the People Act, 1951, a citizen can be elected as President of India only when he registered as a voter in any Parliamentary Constituency.

As per Constitution of India, any Citizen of India is eligible to be elected as President of India and it is not necessary that he should be a born Citizen of India. Unless and until, the Constitution is amended, a Citizen of India, whether or not born in India, may be elected as the President of India.

Article 59 **: Conditions of President's office :**

1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

2) The President shall not hold any other office of profit.

3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

4) The emoluments and allowances of the President shall not be diminished during his term of office.

Article 60 **: Oath or affirmation by the President :—** Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say-

"I, A.B., do swear in the name of God that I will faithfully execute the office solemnly affirm of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

Salary

The President of India shall be entitled to use his official residence free of rent. He is also entitled to such emoluments allowances and privileges, may be determined by Parliament by law and until provision is made. He is entitled for such emoluments, allowance and privileges as are specified in the Second Schedule. Initially the President of India used to receive Rs. 10,000 per month as per the Second Schedule of the Constitution. This amount was increased to Rs. 50,000. The salary of the President had been raised to Rs. 1,50,000 per month from Rs. 50,000 per month which was fixed by the President's Emoluments and Pension (Amendment) Act, 1998.

However, almost everything that the President does or wants to do is taken care of by the annual Rs. 225 million budget that the Government allots for his or her upkeep. Rashtrapati Bhavan, the President's official residence, is the largest Presidential Palace in the world. The Rashtrapati Nilayam at Bolarum, Hyderabad and Retreat Building at Chharabra, Shimla are the official Retreat Residences of the President of India. The official state car of the President is a custom-built heavily armoured Mercedes Benz S600 (W221) Pullman Guard.

***Article 61* : Procedure for impeachment of the President**

1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

2) No such charge shall be preferred unless -

a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

Article 61 of the Constitution lays down the procedure for the impeachment of the President. The president can be removed from his office by a process of impeachment for the „violation of the Constitution". The impeachment charge against him may be initiated by either House of Parliament. The charge must come in the form of a proposal contained in a resolution signed by not less than one-fourth of the total number of the members of the House, and moved after giving at least 14 days" advance notice. Such a resolution must be passed by a majority of not less than two-thirds of the total membership of the House. The charge is then investigated by the other House. The president has the right to appear, and to be represented at such investigation. If the other House after investigation passes a resolution by a majority of not less than two-thirds of the total membership of the House declaring that the charge is proved, such resolution shall have the effect of removing the President from his office from the date on which the resolution is so passed.

There is however only a remote possibility of this provision being invoked because the President acts on the advice of his Ministers who are responsible to Parliament. So long as he acts in this manner, the majority in Parliament need not invoke the provision regarding impeachment as it can easily remove the Council of Ministers. Nevertheless, the provision is salutary. Being otherwise immune from parliamentary and judicial control- he has a fixed term of office; his emoluments cannot be curtailed or diminished by Parliament during his term; he has immunity from judicial process and the courts are barred from probing into the relationship between the President and the Council of Ministers, the fear that he may be impeached will keep the President within the framework of the Constitution and he will not dare to violate it.

The power to impeach might possibly be invoked in the event of the Presiden acting independently of, or contrary to, ministerial advice, or for "treason, bribery or other high crimes or misdemeanours." Impeachment is a political instrument; what constitutes 'violation of the Constitution' is a matter to be decided by the House which tries the charge and the House is essentially a political organ. There is no difficulty in the House interpreting the phrase 'violation of the Constitution' in a wider sense and regard a violation of the conventions, usages and spirit of the Constitution as violation of the Constitution. When forms are maintained and maintained and the spirit is sapped away the Constitution is violated.

The idea of Impeachment seems to have been borrowed from the U.S. Constitution. This procedure for impeachment of the President is similar to that of the impeachment of the President of the USA under Article-II, Section 4 of the USA Constitution, the President, Vice-President and all Civil Officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and

misdemeanors. In America, the power to initiate the impeachment proceedings lies with the House of the Representatives (the Lower House) which appoints a committee to investigate the charge. The findings of the house are then sent to the Senate for action. The Senate which hears the impeachment is presided over by the Chief Justice of the Supreme Court of America. If the Senate by $^{2}/_{3}$rd majority of the members present at the trial agrees to the changes, The President is convicted and removed.

POWERS :

Part V of the Constitution (The Union) under Chapter I (The Executive) lists out the qualification, election and impeachment of the President of India. The President of India is the head of state of the Republic of India. The President is the formal head of the executive, legislature and judiciary of India and is also the commander-in-chief of the Indian Armed Forces. Although Article 53 of the Constitution of India states that the President can exercise his or her powers directly or by subordinate authority, with few exceptions, all of the executive authority vested in the President are, in practice, exercised by the Council of Ministers.

Article 53 of the Constitution of India states that the President can exercise his powers directly or by subordinate authority with few exceptions, all of the executive authority vested in the President are, in practice, exercised by the Prime Ministerwith the help of the Council of Ministers.

1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union Shall be vested in the President and the exercise thereof shall be regulated by law.
3) Nothing in this article shall —

a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

b) prevent Parliament from conferring by law functions on authorities other than the President.

1. Executive Power :

Though the expression 'executive power' is not defined in the Constitution in Ram JawayaKapur v. State of Punjab, AIR 1955 SC 549, the Court has observed. "Ordinarily, the executive power connotes the residue of government functions that remain after the legislative and judicial functions are taken of away." The executive function comprises both the determination of the policy as well as carrying it into execution, the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy; in fact, the carrying on or supervision of the general administration of the State.

In Madhav Rao v. Union of India, AIR 1971 SC 530, the Court has observed that "Executive power is the residue of functions of Government, which are not legislative or judicial."

In Maganabhai v. Union of India, AIR 1969 SC 783, it has been stated that executive power may be exercised without prior legislative support. Exercise of executive power is one of the functions of Executive to execute the laws. This does not mean, however, that the executive function is confined to the execution of laws or that in order to enable the Executive to function in respect of any subject there must be a law already in existence. Specific legislation, may, of course, be necessary to incur expenditure of the public funds or to encroach upon private rights, which cannot, under the Constitution, be done without legislation.

Head of the State — The President of India is the head of the executive of the Union Government. Therefore, all executive powers are vested in the hands of the President. He can exercise these powers either directly or through the subordinate officers.It has been held in the case of ***Shiv Bahadur Singh Rao v. State of U.P., 1953 SCR 1188 (1201): AIR 1953 SC 394***, that Ministers are officers subordinate to the President [Art. 53(1) or the Governor [Art. 154(1) as the case may be. Hence, they are also public servants within the meaning of section 21 of the Penal Code.

According to the Constitution of India, all executive action is also taken in his name. The President appoints the

Governors of the States, the Judges of the Supreme Court and High Courts of the States. The Prime Minister of India is appointed by the President. The President also appoints other Ministers in consultation with the Prime Minister. The President is responsible for the administration of the Union Territories. For this reason, he appoints Chief Commissioners and Lieutenant Governors of the centrally administered areas.

Power to appoint : The Constitution of India empowers the President to appoint the important officers of the Union Government including the Attorney-General for India, the Comptroller and Auditor-General of India, the Chairman of the Finance Commission, the Election Commissioners etc.The President has been empowered to set up a Commission for the settlement of disputes relating to the supply of water between two or more States.

Moreover, the Constitution has authorized the President to establish an Inter-State Council to enquire into disputes that may arise between, the States as well as to discuss the matters of the common interests between the Union and the States.

The President has the power to appoint and remove the following, amongst other officials, authorities and Commission :—

i) The Attorney General for India (Art. 76).
ii) The Comptroller and Auditor General of India (Art. 148)
iii) Chief Election Commissioner (Art. 324)
iv) Chairman and Members of Union Public Service Commission (Art. 316)
v) Joint Public Service Commission for a group of States (Art. 316)
vi) Finance Commission (Art. 280)
vii) Commission to investigate on the Condition of Backward Classes (Art. 340)
viii) Commission of report on the Administration of Schedule Areas (Art. 339)
ix) Commission to report on official languages (Art. 344)
x) Special Officer for Scheduled Castes and Scheduled Tribes (Art. 338, 338A)
xi) Special Officerfor Linguistic Minorities (Art. 350B)
xii) Ambassadors and High Commissioner and other dignitaries
xiii) Judges of the Supreme Court (Art. 124)
xiv) Judges of High Court (Art. 217)
xv) Governors of States (Art. 155)

Relation with Council of Ministers : According to ***Article 75(1)*** of the Constitution President appoints Prime Ministers and other Ministers on the advice of the Prime Minister and as per ***Article 75(2)***, they hold their office during the pleasure of the President. ***Article 77(3)*** of the Constitution, empowers the President to make rules for more convenient transaction of the business of the Government of India and for allocation of such business of the Government of India and for allocation of such business among the ministers. According to Article 78 of the Constitution, President may call for any information and it is the duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers and to furnish information which he calls for. The President alone can remove the Council of Ministers, the Governors of States and the Attorney-General for India. Union Council of Ministers normally remains in office for five years, unless dissolved earlier for any reason. The President must be satisfied that the Council of Ministers enjoys the confidence of the majority of the Lok Sabha. In case of any doubt he can ask the Council of Ministers to prove its majority in the Lok Sabha. The President can also dissolve the Union Council of Ministers in accordance with Article 75(2) of the constitution, if he finds that the Ministry does not enjoy the support of the majorities in the Lok Sabha.

Supreme Commander : As per ***Article 53(2)*** of the Constitution, the President of India is Supreme Commander-in-Chief of the Army, Navy and the Air Force of the Union. Parliament can regulate the exercise of this power of the President through enactments. The Parliament has the right for the raising, maintenance, control and employment of defence forces.

Diplomatic Power : The President also enjoys the diplomatic power. He appoints the diplomatic representatives of India to the foreign States. He also receives the credential letters of the diplomatic representatives of other States. The President of India represents India in international affairs. All treaties and international Agreements are entered into the name of the President. However, the President is to exercise this power on the advice of the Council of Ministers with the Prime Minister as the head and he is bound to act in accordance with the advice tendered by the Council of Ministers. The President represents India in international affairs. He has the power to conclude treaties with foreign States.

Contract making power : Article 299(1) of the Constitution, all contract made in the exercise of the executive power of the union or of a State shall be expressed to be made by the President and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or by such persons and in such manner as he may direct or authorize.

Power to Grant pardon : Article 72(1) of the Constitution of India, provides 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-

a) in all cases where the punishment or sentence is by a court martial,
b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends'
c) in all cases where the sentence is a sentence of death.

The President"s powers to pardon are independent of Judiciary. Pardon can be granted at any stage after the commission of the offence, before legal proceedings are taken during pendency of proceedings or after the conviction.

In ***Sher Singh v. State of Punjab, AIR 983 SC 361***, it has been advised to dispose of the mercy petition filed under Art. 72 within a period of three moths from the date when it is received and asked the government to follow a self-imposed rule to dispose as quickly as possible without long delay not to shake the confidence of the people in very system of justice.

In ***Kehar Singh v. Union of India, AIR 989 SC 653***, (the assassination of Indira Gandhi case) the court has observed that while exercising his pardoning power it was open to the president to scrutinize the evidence on the record and come to a different conclusion. The court need not spell out specific guidelines for the exercise of power under Art. 72 as the power under Art. 72 is of the widest amplitude and the president cannot be asked to give reason for his action. The power of pardon is part of the Constitutional Scheme. The order of the President cannot be subjected to judicial review on its merits.

The effect of a series of decisions of the Supreme Court on the pardoning power of the President under Art. 72 is as under :

1) The exercise of the power by the President under Article 72 is primarily a matter for his discretion and the courts would not interfere with his actual decision on the merits.
2) But courts exercise a very limited power of judicial review, to ensure that the president considers all relevant materials before coming to his decision.
3) The President can, in the exercise of this power, examine the evidence afresh. In doing so, he is not sitting as a court of appeal. His power is independent of the judiciary. He can, therefore, afford relief not only from a sentence which he regards as unduly harsh, but also from an evidence mistake.
4) The President is not bound to hear a petition for mercy before he rejects the petition.

2. Legislative Powers : The President of India also enjoys legislative powers. He is an integral part of Indian Parliament. Parliament consists of the President and two Houses-the House of the people (Lok Sabha) and the Council of States (Rajya Sabha).

The Constitution of India empowers the President to deliver an address to the Parliament at the commencement of the first session every year. He may also send messages to Parliament.

President is a part of Parliament: The Union Legislature or Parliament consists of the President and two Houses of Parliament. The President is, therefore, an integral part of Union Legislature. He shall summon from time to time, either separately or jointly, the Houses of Parliament. The President can prorogue the Houses or either House of Parliament and, if necessary, can dissolve the lower Chamber of Parliament, the Lok Sabha. For example, the President solved the twelfth Lok Sabha in early 1999 when the confidence motion in favour your of the Vajpayee government was lost in the Lok Sabha.

When the Parliament is not in session, the President may issue an ordinance. It has the same force as the law or Parliament. But it must be placed before the Parliament when it again assembles. If it is then approved by both the Houses of Parliament, it will cease to operate after six weeks of the date of meeting of Parliament. And the President can call a joint session of both Houses of Parliament to resolve a constitutional deadlock over a public bill.

Summons and Addresses Parliament: According to Article 85 of the Constitution :

1) The President shall from time to time summons each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the net session.
2) The President may from time to time-

a) Prorogue the Houses or either house i.e. termination of a session, adjournment is on interruption in the course of one and the same session.

b) Dissolve the House of the people i.e. to end the life of the House of the people for that term and calls for a fresh election.

Article 87(1) of the Constitution makes it obligatory on the President to address either or both House of Parliament. In such address, at the first session after general election to the Lok Sabha and at beginning of a joint session of Parliament each year, he may place the reasons for summoning it. Apart from addressing Parliament, the President may also, in case of necessities, send messages to either House, or to both Houses [Article 86(2)]. Normally, the President does not send such a message, unless however, he has a serious disagreement with the Council of Ministers. The President has the power not only to summon and prorogue both the House of Parliament. He can also dissolve the House of the People before the expiry of its term.

As per ***Article 108*** of the Constitution, the President shall also have the power to summon a joint sitting of both Houses of Parliament in case of a deadlock between then,

Nomination : The President nominates a number of members in both Houses. According to ***Article 80(1)(a)*** of the Constitution, for the Council of States, the President has power to nominate 12 members from among person having a special knowledge or practical experience of literature, science, art and social service. The chief purpose of the nomination is to ensure adequate representation in Parliament of all sections of population which many not always be achieved through elections.As per Article 331 of the Constitution, the President nominates two members to the Lok Sabha from the Anglo-Indian Community and twelve members to the Rajya Sabha from among the persons who have acquired special knowledge in art, science, literature and social service.

Power in respect of Bills : The President has certain functions in respect of passing of a Bill. A bill passed by both the Houses of Parliament requires his assent in order to become an Act. Article 111 of the Constitution provides that every Bill after being passed by both the Houses of Parliament, shall be presented to the President and it becomes law only after he gives his assent to the Bill. He may give his assent to a bill or can withhold assent when a bill, after getting approved in both the Houses, is placed before the President. But, if Parliament, acting on President's refusal to assent to a bill, passes it again with or without amendment, for the second time and presents it to the President for his approval, the President shall not withhold his assent. In other words, it becomes obligatory upon him to give his assent.

In certain cases, prior sanction of the President is required for initiating any legislation. For instance,

i) A Bill for formation of a new State (Art. 3) or altering the boundaries of the existing State or States is to be placed before Parliament with prior approval of the President.

ii) A Bill for acquisition of estates etc. (Art.31A)

iii) Money bill (Art. 117(1) is another example where obtaining of such approval of the President is a constitutional necessity.

iv) A Bill which would involve expenditure from the consolidated fund of India even though it may not strictly speaking, be a Money Bill (Art. 117(3)

v) A Bill affecting taxation (Art. 274(1)

vi) State Bills imposing restriction upon the freedom of trade (Art, 304)

Power to issue ordinance : ***Article 123*** of the Constitution empowers the President to promulgate ordinance as the circumstances appear to him to require, it at any time, except when both Houses of Parliament are in session and if he is satisfied that circumstances exist which render it necessary for him to take immediate action. The purpose of this provision is to meet some urgent situation while Parliament is not in session. This power under ***Article 123*** is subject to the following limitation —

i) Ordinance can be issued only when both the Houses of Parliament are not in session. It one house is sitting, the President can issue ordinance as for making a law the concurrence of both Houses is necessary.

ii) The President must have been satisfied that under the existing circumstances immediate action was necessary. Here satisfaction of the President means the satisfaction of the Council of Ministers on whose advice he issues ordinance.

iii) The President can issue ordinance only in respect of those matters in connection with which the Parliament has power to make laws. Thus an ordinance cannot violate the fundamental rights.

The ordinance can be withdrawn by the President at any time. It has to be laid before both Houses of Parliament when the session starts. If the Parliament considers it and passes the law, that will become an Act and if the Parliament takes no action at all, it will lapse after the expiry of six weeks from the reassembly of the Parliament.

Bill passed by a State Legislature : A bill passed by a State Legislature may also be reserved for the consideration of the President by the Governor of that State. The President enjoys this right in relation to a bill passed by a State Legislature only in such cases where those are referred to him by the Government of a State under ***Article 200***.

3. **Financial Powers :** The President of India also exercises financial powers. No money bill can be introduced in Parliament without the recommendations of the President.

According to the Constitution of India, the Annual Financial Statement is placed by the President before both the Houses of Parliament. This statement shows the estimates of revenue and expenditure of the central Government for the next year.

It may be pointed out that the proposal for taxation and expenditure cannot be made without the approval of the President.

4. **Judicial Powers :** The President of India grants, pardons, reprieves or remissions of punishment to any person who has been convicted by a Court of Law. Judicial Powers of the President are mainly two :

i) Power to grant pardons etc. under ***Article 72*** of the Constitution of India. It is also part of executive power of President.

ii) The power to consult the Supreme Court as per ***Article 143***. It provides that if at any time it appears to the President that a question of law or fact has arisen or is likely to arise, which is of such a nature and such public importance that it is expedient to obtain the opinion of Supreme Court upon it, he may refer the question to that court for consideration and the court may, after such hearing as it may think fit, report to the President its opinion thereon.

5. **Emergency Powers :** The President of India has been bestowed with emergency powers under Part XVIII (Article 352 to 360) of the Constitution of India. The emergencies envisaged under Constitution are of three kinds :

1. Emergency due to armed rebellion or external aggression; (Art. 352)
2. Emergency arising from the breakdown of constitutional machinery in a State;
3. Financial Emergency.

If the President is satisfied that the security of India is threatened by war, external aggression or armed rebellion (Art. 352), or if either on the receipt of report of the governor of the State or otherwise he is satisfied that a situation has arisen in which the government of State cannot be carried on in accordance with the Constitution (Art. 356) or a situation has arisen whereby the financial stability of India is threatened (Art. 360), he may proclaim an emergency.

During financial emergency under Art. 360 the President is empowered to issue necessary directions requiring Money Bills or other Bills of States to be reserved for his consideration and reduction of salaries serving under the union or States. A proclamation of emergency made under Article 352 may be revoked by subsequent proclamation. The proclamation of emergency must be laid before each House of Parliament and ceases to operate at the expiration of one month unless approved by both Houses,

6. Miscellaneous Powers :—

i) **Financial Matters :** The president has power to distribute between the Union and the States, shares from Income Tax and to assign to Assam, Bihar, Odisha and West Bengal grant-in-aid in lieu of their shares from jute export duty. The President is also empowered to set up a Finance Commission.

ii) **Power to remove difficulties :** ***Article 392*** of the Constitution provides powers to President to remove difficulties during the4 transition period up to the first meeting of Parliament after Constitution by issuing orders by way of modification, addition or omission as he may deem to be necessary or expedient and every such order made by the president shall be laid before Parliament.

Privileges of the President :

Article 361 of the Constitution guarantees the following privileges to the President of India.

i) **Not answerable to any court :** The President shall not be answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. However, the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under Article 61 (i.e. President is to be impeached for violation of the Constitution by the Parliament). The immunity afforded to the President will not restrict the right of any person to bring case against the Government of India.

No court can insist on the presence of the President in the Court. However, if the President so chooses, he can appear before the Court. There is one instance in which President V.V. Giri appeared in person before the Supreme Court in his election case.

ii) **No Criminal Proceeding :** No Criminal Proceedings whatsoever shall be instituted or continued against the President or the Governor of a State, in any court during his term of office.

iii) **No Process for arrest or imprisonment :** Nl Po process for the arrest or imprisonment of the President shall issue from the court during his term of office.

iv) **No Civil Proceedings :** No Civil Proceedings in which relief is claim against the President shall be instituted during his term of office in any Court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President until the expiration of two months next after notice in writing has been delivered to the president or left at his office stating the nature of the proceedings, the cause of action thereof, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

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PRIME MINISTER

India follows a parliamentary system in which the prime minister is the presiding, actual head of the government and chief of the executive branch. In such systems, the head of state or the head of state"s official representative (i.e., the monarch, president, or governor general) usually holds a purely ceremonial position.

The Prime Minister is the senior member of cabinet in the executive branch of government in a parliamentary system. The Prime Minister selects and can dismiss other members of the cabinet; allocates posts to members within the Government; is the presiding member and chairman of the cabinet. The resignation or death of the prime minister dissolves the cabinet.

ELIGIBILITY

According to ***Article 84*** of the Constitution of India, which sets the principal qualifications for member of Parliament, and ***Article 75*** of the Constitution of India, which sets the qualifications for the minister in the Union Council of Minister, and the argument that the position of prime minister has been described as „first among equals", A prime minister must :

- be a citizen of India.
- be a member of the Lok Sabha or the Rajya Sabha. If the person chosen as the prime minister is neither a member of the Lok Sabha nor the Rajya Sabha at the time of selection, he or she must become a member of either of the houses within six months.
- be above 25 years of age if he or she is a member of Lok Sabha or above 30 years of age if he or she is a member of the Rajya Sabha.
- not hold any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

If however a candidate is elected as the prime minister he/she must vacate their post from any private or Government Company / sector and may take up the post only on completion of his /her term.

The Prime Minister shall become a member of parliament within six months of beginning his/her tenure, if he/she is not a member already. He/She is expected to work with other central ministers to ensure the passage of bills by theParliament.

Constitutional framework and position of prime minister :

The Constitution envisages a scheme of affairs in which the President of India is the head of the executive in terms of Article 53 with office of the prime minister as heading the Council of Ministers to assist and advise the president in the discharge of the executive power. To quote, Article 53, 74 and 75 provide as under;

The executive powers of the Union shall be vested in the president and shall be exercised either directly or through subordinate officers, in accordance with the Constitution.

w Article 53(1), Constitution of India

There shall be a Council of Ministers with the prime minister at the head to aid and advise the president who shall, in the exercise of his functions, act in accordance with such advice.

w Article 74(1), Constitution of India

The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

w Article 75(1), Constitution of India

Like most parliamentary democracies, a President"s duties are mostly ceremonial as long as the constitution and the rule of law is obeyed by the Union Cabinet and the Legislature. The Prime Minister of India is the head of government and has the responsibility for executive power.

Role and power of the prime minister :

The prime minister leads the functioning and exercise of authority of the Government of India. He is invited by

the President of India in the Parliament of India as leader of the majority party to form a government at the federal level (known as Central or Union Government in India) and exercise its powers. In practice the prime minister nominates the members of their Council of Ministers to the president. They also work upon to decide a core group of Ministers (known as the Cabinet) as in-charge of the important functions and ministries of the Government of India.

The prime minister is responsible for aiding and advising the president in distribution of work of the Government to various ministries and offices and in terms of the Government of India (Allocation of Business) Rules, 1961. The co-ordinating work is generally allocated to the Cabinet Secretariat While generally the work of the Government is divided into various Ministries, the prime minister may retain certain portfolios if they are not allocated to any member of the cabinet.

The prime minister, in consultation with the Cabinet, schedules and attends the sessions of the Houses of Parliament and is required to answer the question from the Members of Parliament to them as the in-charge of the portfolios in the capacity as Prime Minister of India.

Some specific ministries/department are not allocated to anyone in the cabinet but the prime minister himself. The prime minister is usually always in-charge/head of:

- Appointments Committee of the Cabinet;
- Ministry of Personnel, Public Grievances and Pensions;
- Ministry of Planning;
- Department of Atomic Energy; and
- Department of Space
- Nuclear Command Authority

The prime minister represents the country in various delegations, high level meetings and international organisations that require the attendance of the highest government office and also addresses to the nation on various issues of national or other importance.

REMUNERATION :

By Article 75 of the constitution of India, remuneration of the prime minister as well as other ministers are to be decided by the Parliament[11] and is renewed from time to time. The original remuneration for prime minister and other ministers were specified in the Part B of the second schedule of the constitution, which was later removed by an amendment.

Salary in Oct 2009	Salary in Oct 2010	Salary in Jul 2012
Rs.100000 (US$1,500)	Rs. 135000 (US$2,000)	Rs.160000 (US$2,400)

Pension for Former PM

Former Prime Ministers of India are provided with :

- Rent-free accommodation for lifetime.
- Medical facilities, 14 secretarial staff, office expenses against actual expenditure, six domestic executive-class flight tickets, and unlimited
- free train travels for first five years.
- SPG cover for one year.
- After five years : One personal assistant and peon, free air and train tickets and Rs. 6,000 for office expenses.

CABINET SYSTEM

The Cabinet system of Government in India that works on the basis of several broad principles. The features of Cabinet System in India are summarized below :

Firstly, there is a constitutional head of the Government. The Queen in England and the President in India are the constitutional heads. The position of the constitutional head is one of dignity but not of power.

The governmental powers are exercised by a council of ministers headed by the Prime Minister. The Prime Minister is appointed by the President and all other ministers are appointed by the President on the advice of the Prime Minister. The Prime Minister and the Council of Ministers hold office during the pleasure of the President. But the pleasure of the President is political rather than personal. So long as the Prime Minister and the Council of Ministers enjoy the support of the majority in the Lower House of the Parliament, the President cannot withdraw his pleasure. In a real sense, the Prime Minister is not the President's nominee but the nation's choice.

Powers of the Government are exercised in the name of the President but the President acts only on the advice of the Council of Ministers. The 42nd amendment of the constitution has made it obligatory for the President to act only on advice.

Secondly, since the President acts only on advice given by the Council of Ministers, the responsibility for the President's action is of the Council of Ministers. The Prime Minister and the Council of Ministers are collectively responsible to the House of People. If any policy or action of the Government is not supported by the majority in the House of People, the Government is obliged to vacate office. It is because of this responsibility to the Lower House, the cabinet government is also known as the responsible government.

Thirdly, in the cabinet system of government, an inner ring in the Council of Ministers, acts as the policy making part of the ministry. This policy making part, is known as the Cabinet. The Cabinet consists of the Prime Minister and the senior ministers whom the Prime Minister includes in the Cabinet. The Cabinet is an extra-constitutional body. In the constitution there is no mention of the cabinet.

Fourthly, the cabinet works on the principle of political homogeneity, The Prime Minister and the members of the Council of Ministers belong to the same party except in the rare instances of Coalition Governments. In fact all ministers are important party leaders. Collective responsibility obliges the ministers to hold the same views and to champion the same policy. Differences between ministers are ironed out in the closed door meetings of the cabinet. In public they must give the impression of solid unity. For they all sail or sink together.

Fifthly, the Prime Minister and the Cabinet maintains a close and intimate relationship with the Parliament. The Prime Minister is often a member of the Lower House and the leader of the majority. Most other members of the cabinet are drawn from the majority party in the Lower House. Ministers take part in debates, defend the government against opposition criticism, pilot bills and make the Parliament pass desired legislation.

Finally, the cabinet government in India, as it is In Britain, is the Prime Minister's Government. The primacy of the Prime Minister is writ large everywhere. He is the leader of the Cabinet and the Council of Ministers. All other ministers are appointed on his advice. The Prime Minister may dismiss any inconvenient minister at any moment. He chairs the meetings of the Cabinet. In the policy making his word is final. He is also the leader of the Parliament. With his assured majority in the Lower House of the Parliament, he can get any law passed. He is also the country's top spokesman in foreign affairs.

Indian Cabinet : Powers, Functions and Role of Indian Cabinet

Cabinet is the supreme directing authority, the magnet of policy, which co-ordinates and controls the whole of the executive government of the Union and integrates and guides the work of Parliament.

A parliamentary system of government on the British model is operative in India, but the Cabinet in India performs certain functions which the British Cabinet dare not assume. For instance, Article 123 of the Constitution empowers the President to promulgate Ordinances which shall have the same force and effect as an Act of Parliament.

Such Ordinances are issued and promulgated on the advice of the Cabinet under the authority of the President. Fundamental Rights, as contained in Article 19, may be suspended when a Proclamation of Emergency is in force and the decision to declare Emergency and suspension of Fundamental Rights, as contained in the Presidential Order, including the enforcement of such rights, is that of the Cabinet and not of the Prime Minister alone.

POLICY FORMULATION :

Cabinet is a deliberative and policy formulating body. It discusses and decides all sorts of national and international problems confronting the country. The Cabinet always attempts to reach unanimous agreements embodying Government"s policy so that it presents to Parliament and to the world at large a unified policy of action. This is the essence of collective responsibility.

While the Cabinet has determined on a policy the appropriate Ministry carries it out either by administrative action within the framework of the existing law or by submitting a new proposal for legislation to Parliament. Legislation is the hand maid of administration and Cabinet is the instrument which links the Executive wing of Government to the Legislative. In this way, the Cabinet directs Parliament for action and it gets the approval of its policy with a majority in Parliament. Cabinet, as such, leads Parliament.

The Cabinet plans the legislative programme at the beginning of each session of Parliament and determines priorities. Legislative measures are introduced either by Cabinet Minister or by some other minister acting on the Cabinet's approval. No minister can introduce a legislative measure on his own initiative. It is for the Cabinet to decide what Bills shall be promoted in a session of Parliament.

In matters of legislation, therefore, the control of the Cabinet over the Council of Ministers is complete and unchallengeable. It will be more correct to say that the Cabinet Ministers formulate policies, make decisions and draft Bills on all significant matters which in their judgement require legislative attention, asking of Parliament, only that it give sanction to such decisions and policies by considering them and taking the necessary vote.

The Cabinet really legislates with the advice and consent of Parliament. The time of summoning and prorogation of Parliament is decided by the Cabinet. Dissolution of Parliament, which decides the fate of various parties, is the decision of the Cabinet, though the Prime Minister of India, like his British counterpart, exercises it as a matter of right.

Supreme Control over the Executive :

The Cabinet is not an executive instrument in the sense that it possesses any legal powers. The Constitution vests that executive authority in the President, exercisable by him either directly or through officers subordinate to him. The real functionaries are the Ministers. Minister presides over the Ministries of Government, and carries out the policy determined by .the Cabinet and approved by Parliament.

In carrying out the work of their Ministries, Ministers, whether in the Cabinet or not, must carefully follow the directions of the Cabinet in enforcing its decisions and polices. The Cabinet is the supreme executive body. It superintends, supervises and directs the work the civil servants do all over the Union.

All questions and problems which are likely to focus the attention of Parliament are considered in the Cabinet and decisions taken thereon to prevent a multiplicity of voices in important debates.

The power of delegated legislation has still more enhanced the executive authority of the Cabinet and the Ministers. Legislation during recent times has become more voluminous and more technical and Parliament very often passes laws in skeleton form leaving it to the Council of Ministers or Ministers in-charge of the appropriate Ministries to fill in the details and make rules and regulations in order to give effect to such laws.

The Cabinet as a Co-ordinator :

The essential function of the Cabinet is to co-ordinate and guides the functions of the several Ministries and Departments of Government. The emergence of the Cabinet and the increased problem of co-ordination in the context of the Welfare State and implementation of Five Year .Plans have brought about a significant expansion in the work of the Cabinet Secretariat.

Control over Finance :

Two more functions may be added to those enumerated above. The first is that the Cabinet is responsible for the whole expenditure of the State and for raising necessary revenues to meet it. The Cabinet does not discuss the Budget. But the Finance Minister generally keeps his colleagues in the picture so far as a proposal may affect matters which come within their purview. The final decision is that of the Finance Minister.

The detailed taxation proposals are shown to the Prime Minister. But the Cabinet is not taken by surprise. The proposals are discussed in the Cabinet at some stage in some form. Then it decides how far should the revenues of the state be collected and what tax relief should be given to the people.

Similarly, it is the responsibility of each Minister to see that budget proposals of his Ministry are approved by the House. In fact no budget proposal in the House can come unless that is initiated by a Minister. All plan proposals are approved by the Cabinet and that also decides plan policies and guidelines. Without its approval, the plan is not finally approved. The members of the Planning Commission are also appointed by the Cabinet.

Power of Making Appointments :

The President makes a large number of appointments. Most of these appointments are actually made on the recommendation of the Cabinet. Thus, such important persons as ambassadors and High Commissioners, Governors of the States, Judge so the Supreme Court and the High Courts, and members of the Union Public Service Commission are selected by the Cabinet, and their appointments; are announced by the President on the recommendation of the Cabinet.

COUNCIL OF MINISTERS :

The important principles of the cabinet system of government in India has been provided by the Articles 74 and 75 of the constitution. Art 74 (i) lay down that there shall be a council of ministers with the Prime-Minister at the head to aid and advise the President in the discharge of his functions. Art 75 (i) says that "The Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President on the advice of the Prime minister". The President of India has no choice but to accept the advice of the Council of Ministers as it remains responsible for all the action, on his behalf, to the Lower House of the India Parliament.

Article-74 : Council of Ministers to aid and advise President : (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

Before the 42nd amendment, Article 74(1) stated 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". However, there was a slight ambiguity whether the advice of the Council of Ministers is binding on the President. Forty-second Amendment of the Constitution of India (1976) made it explicit that the President shall, "act in accordance with such advice". The amendment went into effect from 3 January 1977.

The 44th Amendment (1978) however added that the President can send the advice back for reconsideration once. But if the Council of Ministers sends the same advice again to the President then the President must accept it. The amendment went into effect from 20 June 1979.

In ***S. R. Bommai v. Union of India (1994)***, case Supreme Court made some very important pronouncements regarding scope and effect of Cause (2) of Article 74. Article 74(2) barred courts from inquiring into the advice given by Council of Ministers to President. In a way the advice of Council of Ministers was kept out of Supreme Court's power of Judicial Review by this article. In this regard Supreme Court held that although Article 74(2) bars judicial review so far as the advice given by the Ministers is concerned, it does not bar scrutiny of the material on the basis of which the advice is given. It also said that the material on the basis of which advice was tendered does not become part of the advice and courts are justified in probing as to whether there was any material on the basis of which the advice was given, and whether it was relevant for such advice and the President could have acted on it.

Supreme Court also said that, when the Courts undertake an inquiry into the existence of such material, the prohibition contained in Article 74(2) does not negate their right to know about the factual existence of any such material.

As a matter of Parliamentary Practice the President appoints, the leader of the majority party or any person enjoying the support of the majority of members in the Lok Sabha as Prime Minister for five years. The President appoints the ministers and distributes portfolios among them on the advice of the Prime-Minister. On his advice the President can appoint an outsider, not a Member of Parliament a minister. However such a person has to be elected to either House of Parliament within six months from the date of his appointment. On his recommendation the President can dismiss any minister from the Council of Minister. Virtually the President has no say in these matters as these constitute the prerogatives of the Prime Minister.

The members of the Council of Ministers belong to different ranks. Normally there are four categories of ministers appointed by the President. The senior and experienced leaders of the party are appointed as cabinet ministers. They handle their portfolios independently with the assistance of the other kinds of ministers. The next category is Minister of State who are fairly senior and experienced good enough to assist the cabinet ministers. Sometimes the Ministers of state are given independent charge of the ministries also. Like cabinet minister they freely handle the affairs of these ministries and get assistance from the junior ministers. The only justification of giving independent charge of ministries to some ministers of state and denying this to other minister of this rank is the prerogative of the Prime Minister. The other two categories are Deputy Minister and Parliamentary Secretaries who are fairly younger with almost no experience.

They are inducted into the cabinet to acquire experience by assisting their senior ministers to discharge their functions well. No qualification or age limit is laid down for these different categories of ministers. The political wisdom as well as the compulsions of the Prime Minister decide which minister will belong to which category and handle which portfolio. The Council of Ministers is collectively responsible to the Lower House of the Parliament. The ministers also individually responsible for acts done on behalf the President.

The Council of Ministers hardly meets as a body. It is the cabinet, an inner body within the Council which assumes all authority and shapes the policy of the Government. Cabinet is the highest policy making body, consulted by the Prime Minister frequently while taking important policy decisions in matters of administration. Only the cabinet ministers attend the cabinet meetings as they constitute the core group of the Prime Minister. The other categories of Ministers, unless specially invited do not attend the cabinet meetings. That is why a distinction is always made between the council of ministers and the cabinet. The farmer is a larger body comprising of all categories of ministers, but the later is a smaller body of cabinet ministers. Thus all members of the cabinet are members of the council of minister while all members of the council of ministers are not members of the cabinet.

Since the Council of Ministers does not meet as a body, the cabinet being a smaller structure of senior and experienced ministers becomes the highest advisory body to the President of India. All policy decisions are taken in the Cabinet. The Prime Minister discusses all matters relating to administration with his colleagues in the cabinet and decides the policies to be adopted. Once the policy is formulated the entire Council of Ministers remains collectively responsible to that. Over and above the cabinet looks after the execution of the policy there is an experienced and well trained professional body of civil servants to assist the Prime Minister and the other ministers in the implementation of the policies. The cabinet settles all inter departmental and inter ministerial differences for smooth functioning of the government. It also determines the traits of our foreign policies and important appointments relating to that.

The cabinet also decides the finance policy and takes care of the Fiscal Management. Coordinating the functions of various Cabinet Committee is perhaps the most important function of the Cabinet. The Cabinet Committees formulate policy proposals of the government. These issues are examined in details by the Cabinet. On the whole the moral and political responsibility of the entire administration belongs to the cabinet inspite of the fact that there is a large and extended civil service to carry out the actual administration. In a cabinet-government the cabinet as a body exercises the real executive powers of the state.

Collective Responsibility

Collective Ministerial Responsibility in the sole crux of Parliamentary democracy. The principle of collective

responsibility represents ministerial accountability to the legislature. In India, the doctrine of collective responsibility of the Union Executive to the House of the People and of the State Executive to the Legislative Assembly is specifically enshrined in the Constitution. Article 75(3) lays down that the Council of Ministers shall be collectively responsible to the Lok Sabha. It means that the Government must maintain a majority in the Lok Sabha as a condition of its survival. The object of Collective responsibility is to make the whole body of persons holding ministerial office collectively, or, if one may so put it, "vicariously responsible for such acts of the others as are referable to their collective violation so that, even if an individual may not be personally responsible for it, yet, he will be deemed to share the responsibility with those who may have actually committed some wrong".

Lord Salisbury explained the principle of collective responsibility as : "For all that passes in the Cabinet, each member of it who does not resign is absolutely irretrievably responsible, and has no right afterwards to say that he agreed in one sense to a compromise while in another he was persuaded by his colleagues".

The collective responsibility under Article 75 of the Constitution of India has two meanings: (I) All members of a Government are unanimous in support of its policies, (II) The ministers, who had an opportunity to speak for or against the policies in the cabinet are thereby personally and morally responsible for its success and failure. Collective cabinet responsibility refers to the accepted conduct of Government Ministers as part of the cabinet. Under this doctrine, ministers are bound to support publicly the decisions made by the Cabinet as a whole and will show no disagreement with these decisions outside the cabinet room. The doctrine has evolved as a means of maintaining the appearance of cabinet unity and party discipline and showing that the government is firmly behind the policies it promotes and seeks to pass through the parliament. The doctrine of Collective Cabinet Responsibility evolved as a means of giving a public appearance of cabinet unity and genuine collective decision making.

The principle of collective responsibility secures the unity of the Cabinet and the Council of Ministers. Prime Minister Nehru took occasion to expound the principle as follows in the context of State Governments,

"A Government after the parliamentary model, is one united whole. It has joint responsibility. Each member of the government has to support the others so long as he remains in the government. The Minister has to support his other Ministers and the other Ministers have to support each other and the Chief Minister. It is quite absurd for any Minister to oppose or give even the impression of opposing a colleague of his. Opinions may be freely expressed within the Cabinet. Outside, the government should have only one opinion. There is no question of a member of government being neutral in a controversial issue in which the government is concerned except in the rare cases which we may consider as matters of conscience, where freedom is given."]

The decisions of the Cabinet are regarded as the decisions of the whole Council of Ministers and binding on all Ministers. A Minister cannot disown responsibility for any Cabinet decision so long as he remains a Minister. He cannot both remain a Minister and criticize or oppose a Cabinet decision or even adopt an attitude of neutrality, or oppose a colleague in public. A Minister who disagrees with a Cabinet decision on a policy matter, and is not prepared to support and defend it, should no longer remain in the Council of Ministers and should better resign.

There have been a number of resignations in the past because of the differences with the Cabinet. Dr. Mathai resigned as a Finance Minister because he disagreed with the Cabinet on the question of scope and powers of the Planning Commission which was proposed to be set up then. C. D. Deshmukh resigned because he differed from the Cabinet on the issue of re-organization of States, especially on the question of Bombay. On September 5, 1967, Foreign Minister Chagla resigned because of his differences with the Government's language policy, especially the place of English. Several other Ministers have resigned from the Central Council of Ministers owing to their differences with the Cabinet. There is, however, a convention, that a resigning Minister may, if he so wishes may state the nature of his disagreement with the Cabinet in his letter of resignation and make a resignation speech in Parliament.

The principle of collective responsibility is both salutary and necessary. In ***S.P. Anand, Indore v. H. D. Deve Gowda AIR 1997 SC 272***, it was held that even though a Prime Minister is not a member of either House of Parliament, once he is appointed he has also his Ministers become answerable to the House and the principle of

collective responsibility governs the democratic process. On no other condition can a Council of Ministers work as a team and carry on the government of the country. It is the Prime Minister who enforces collective responsibility amongst the Ministers through his ultimate power to dismiss a Minister. The Supreme Court has ruled that the principle of collective responsibility is in full operation so long as the Lok Sabha is not dissolved. "But when it is dissolved the Council of Ministers cannot naturally enjoy the confidence of the House of People."

The Gujarat High Court in ***Dattaji Chirandas v. State of Gujarat***, AIR 1999 Guj. 48, has described the principle of collective responsibility as follows: "Collective responsibility means all Ministers share collective responsibility even for decisions in which they have taken no part whatsoever or in which they might have dissented at the meeting of the Council of Ministers. Collective Responsibility means the members of Council of Ministers express a common opinion. It means unanimity and confidentiality."

According to the Hon"ble Supreme Court in ***Common Cause v. Union of India, AIR 1999 SC 2979 at 2992*** : (1999) 6 SCC 667, collective responsibility means that "all members of a government are unanimous in support of its policies and would exhibit that unanimity on public occasions although while formulating the policies, they might have expressed a different view in the meeting of the Cabinet."

Ministers must not vote against Government Policy

Without this, it could be argued that a government has lost the right to exist, and is therefore the most fundamental part of the whole doctrine of Collective Cabinet Responsibility. When a Minister votes for his or her government, he/she is giving a public expression of support even though, in private, he or she may be less enthusiastic for the measure. Even as abstention would be seen as breaking the convention — it is not enough simply not to vote against, but a positive display of support is required.

Ministers must not speak against Government Policy

Voting against or abstaining are fairly clear breaches of the convention, yet speaking against the government is less clear-cut. In the age of spin, press briefing, and leaks, a Minister may always find a way to communicate his or her dissatisfaction with a particular Government position.

All decisions are decisions of the whole Government

A Minister should not brief or leak against a cabinet colleague in order to attack the position of an individual or group within the Cabinet or to place distance between themselves and the policy.

A former Minister must not reveal Cabinet secrets

To protect the unanimity and confidentiality of the Cabinet proceedings, a Minister must not reveal the secrets in any form.

The Convention of Collective Responsibility

Geoffrey Marshall has identified three strands within the convention of collective responsibility which are as follows :

1. **The Confidence Principle :** A government can only remain in office for so long as it retains the confidence of the House of Commons, a confidence which can be assumed unless and until proven otherwise by a confidence vote.
2. **The Unanimity Principle :** Perhaps the most important practical aspect is that all members of the government speak and vote together in Parliament, same in situations where the Prime Minister and Cabinet themselves make an exception such as a free vote or an 'agreement to differ'.
3. **The Confidentiality Principle :** This recognizes that unanimity, as a universally applicable situation, is a constitutional fiction, but one which must be maintained, and is said to allow frank ministerial discussion within Cabinet and Government.

Individual responsibility of Ministers.

Besides being collectively responsible, every Minister is also individually responsible to Parliament for actions

relating to his department. Parliament can ask questions regarding the affairs for his department rovppand he has to answer them. A Minister is responsible to Parliament for acts or neglects of his department personally and for the acts or neglects of the department of other Ministers collectively.

If the Minister has taken action without the Cabinet's approval, the Cabinet may and may not support him. If the Cabinet does not support his action, in that case, that the Minister has to go and not the whole Cabinet. But the Cabinet cannot retain the Minister and at the same time contend that the responsibility if all of his.

The principle of individual responsibility to the head of the State is embodied in Art. 75(2) thus : "The Minister shall hold office during the pleasure of the President."

Minister shall be individually responsible to the Executive head and shall be liable to dismissal even when they may have the confidence of the Legislature. Usually, as in England, the Prime Minister exercises this power by asking an undesirable colleague to resign which the latter readily complies with, in order to avoid the odium of a dismissal.

Legal responsibility :

Our Constitution does not expressly say that the President can act only through Ministers and leaves it to the President to make rules as to how his orders etc. are to be authenticated; and on the other hand, provides that the Courts will not be entitled to enquire what advice was tendered by the Ministers to the executive head. For the act made by the President, there is no scope for a Minister being legally responsible for the act even though it may have been done on the advice of the Minister.

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Powers and Functions of Governor of an Indian State

Under the Constitution of India, the machinery of the State Government is the same as that of the Central Government. Like the Union Government, the State Governments are also formed on the parliamentary pattern.

The Governor is the chief executive of a State in India. The powers and functions of the Governor of Indian State resembles that of the President of the Union Government. Like the President, the Governor is also a constitutional ruler, a nominal figure. He is not a real functionary. Generally speaking, the Governor acts on the advice of the Council of Ministers.

The Governor is appointed by the President of India. He holds office during the pleasure of the President. Under the Constitution of India, the Governor of a State possesses wide powers and functions - executive, legislative, financial and judicial.

Governor of States (Article 152-162)

PART VI of the Constitution deals with the other half of Indian federalism, ie the States. Article from 152-237 deals with various provisions related to States. It covers the executive, legislature and judiciary wings of the states. Article 152 clarifies about the definition of state, while the next set of articles lists the roles and responsibilities of the Governors of states.

Article 152 : Definition : In this Part, unless the context otherwise requires, the expression "State" does not include the State of Jammu and Kashmir.

Article 153 : Governors of States

There shall be a Governor for each State :

Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.

The State Executive consists of the Governor, who is the head of the State, and the Council of Ministers at its head. The pattern of the State Executive is very similar to that of the Central Executive which is based on the fundamental principle of accountability of the Executive to the Legislature. Like the Centre, the States also have

parliamentary form of government. Therefore, what has been said in Chapter-III as regards the Central Executive is applicable to the area of the State Executive as well.

The constitutional provisions dealing with the State Executive are more or less word to word similar to the constitutional provisions dealing with the Central Executive except for some differences arising out of the fact while the Constitution confers some discretion on the State Governor, it confers none on the President.

Article 155 : Appointment of Governor

The Governor of a State shall be appointed by the President by warrant under his hand and seal.

As per Art. 153, each State has a Governor, but two or more States may have a common Governor. The Governor is formally appointed by the President. The President appoints the State Governor on the advice of Prime Minister with whom, therefore, the effective power lies in this regard.

For a smooth functioning of the Indian federal structure, it is necessary that the persons to be appointed as the Governor should be such as to inspire confidence from both the Centre and the State concerned. The office of the Governor has now become a balance wheel of the Centre-State relationship. As the Governor has to discharge certain functions in the State as the Centre's representative independently of the State Government because of the Centre's ultimate responsibility to see that each State functions according to the Constitution. It is not possible for a State to claim a final say in the matter of the Governor's appointment. But, at the same time, Centre should not seek to force a person as Governor upon a State against its wishes otherwise relations between him and the State Government will always be strained.

As per Art. 157, a citizen of India who has completed the age of 35 years is eligible to be appointed as the Governor. As provided in Art. 159, before entering his office, a Governor has to make and subscribe, in the presence of the Chief Justice of the State High Court, an oath or affirmation in the prescribed form. In absence of the Chief Justice, the oath may be taken before the senior-most Judge of the High Court available at the time.

Article 157 : Qualifications for appointment as Governor

No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

The Governor cannot be a member of a House of Parliament, or of the State Legislature, and if a member of a House, at the time of his appointment as the Governor, he has to vacate his seat in the House on the date on which he enters upon his office of Governor.

The Governor cannot hold any other office of profit [Art. 158(2)]. He is entitled to the free use of his official residence and also to such emoluments, allowances and privileges as Parliament may determine by law [Art. 158(3)]. Where one person is appointed Governor of more than one State, his emoluments are allocated amongst the States in such proportion as the President may determine{158(3A)].

Article 156 : Term of office of Governor

1) The Governor shall hold office during the pleasure of the President.
2) The Governor may, by writing under his hand addressed to the President, resign his office.
3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office.

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

There is no provision such as Art. 62(1) or 68(1) in the scheme of the Governor's appointment. On the other hand, Art. 153 provides that there must always be a Governor. It is, of course, to be expected that new governor will be nominated in time but circumstances may come into being which may take the holder beyond his five years' term without a successor being named. It may not always be possible to appoint a Governor within the term of the incumbent. No doubt the provision of Art. 160 may be resorted to but even that may not be sufficient to prevent an interregnum. It is to avoid an interregnum in such cases that the Proviso to Art. 156(3)

has been provided. The successor may be appointed under Art. 155 or an order may be made under Art. 160, but whatever be the position, the former Governor continues to hold office till the new Governor enters upon his office.

But it has been held in the case of Krishna Ballabh Sahay v. Commission of Inquiry, AIR 1969 SC 258 (261): 1969(1) SCR 387, that there may be a cases where the neglect to appoint a Governor may lead to an inference of failure to act under the Constitution.

While there exist provisions in the Constitution for impeachment of the President, no such provisions exist concerning the Governor. The reason being that as he holds his office during the pleasure of the President, the Central Government can always recall him if the circumstances so require,

The Governor may be removed from his office at any time by President. The President acts on the advice of the Cabinet. The governor has no security of tenure. He may be removed at any time by an expression of Presidential displeasure. Thus, it lies within the power of the President to terminate in his discretion the term of the office of the Governor at his pleasure, though the term is five years.

The grounds upon which a Governor may be removed by the President are not laid down in the Constitution, but it is obvious that this power will be sparingly used to meet with cases of gross delinquency, such as bribery, corruption, treason and the like of violation of the Constitution.

Removal of Governors by Center : Disapproving the practice of replacing Governors after a new government comes to power at the Centre, the Supreme Court in 2010 had said that the Governors of states cannot be changed in an arbitrary and capricious manner with the change of power. A five-judge Constitution bench headed by Chief Justice K G Balakrishnan held that a Governor can be replaced only under "compelling" reasons for proven misconduct or other irregularities. The Bench also said the Governor can be removed only under "compelling reasons" and what the compelling reasons are depends on facts and situations of a particular case. The landmark decision came on a PIL filed was in 2004 by then BJP MP B P Singhal challenging the removal of Governors of Uttar Pradesh, Gujarat, Haryana and Orissa by the previous UPA government.

NB : The judgment had provided an important exception, which now allows the Union government to build a file containing the reasons for a governor's removal prior to the council of ministers headed by the PM making such a recommendation to the President. Though the President can return the file, he must sign the recommendation in the event of Cabinet reiterating its decision. (The case is even then open for Judicial review on grounds of "compelling" reasons for proven misconduct or other irregularities.)

Article 154 : Executive power of State

1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
2) Nothing in this article shall-

a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Powers and functions of the Governor of an Indian State :

1. **Executive :** Though the expression „executive power" is not defined in the Constitution in ***Ram Jawaya Kapur v. State of Punjab***, AIR 1955 SC 549, the Court has observed. "Ordinarily, the executive power connotes the residue of government functions that remain after the legislative and judicial functions are taken of away." The executive function comprises both the determination of the policy as well as carrying it into execution, the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy; in fact, the carrying on or supervision of the general administration of the State.

In ***Madhav Rao v. Union of India***, AIR 1971 SC 530, the Court has observed that "Executive power is the

residue of functions of Government, which are not legislative or judicial."

The Executive power of the State is vested in the Governor. He exercises this power either directly or through the officers who are subordinate to him. All executive actions of the State are taken in the name of the Governor.

An important function of the Governor is to appoint the Chief Minister of the State. Other ministers are also appointed by the Governor on the advice of the Chief Minister. The ministers including the Chief Minister hold office during the pleasure of the Governor.

He has also the power to appoint the higher officers of the State including the Advocate-General and the members of the State Public Service Commission. He has also a share in the appointment of the Judges of High Court.

He is responsible for the administration of the welfare schemes of the scheduled castes and other backward class. He may appoint a minister for this purpose. The Governor has the constitutional right to know the decisions of the Council of Ministers relating to the administrative affairs of the State and the proposals for legislation. But like the President of the Union, the Governor has no diplomatic or military power.

2. **Legislative :** Governor is an integral and indispensable part of the State Legislature. In some States, the State Legislature consists of the Governor and one House, the Legislative Assembly, while in other it consists of the Governor and the two Chambers known as the Legislative Assembly and the Legislative Council. The Governor possesses the powers to summon and prorogue the Houses of the State Legislature. He can also dissolve the Lower House-the Legislative Assembly-before the expiry of its term.

The Governor has been authorized by the Constitution to deliver an address to the State Legislature at the commencement of the first session of each year. He has also the power to send message to the State Legislature. The Governor has to nominate one member to Legislature. The Governor has to nominate one member to Legislature Assembly from the Anglo-Indian Community and also members to the Legislative Council (where it exists) from among the persons who have acquired special knowledge in art, literature, science, social service and co-operative movement.

In a State, a public bill cannot become an Act without the approval of the Governor. A bill passed by the State Legislature is presented to the Governor for his assent. The Governor may give his assent to the bill. Or he may withhold his assent from the bill. If the bill is again passed by the House or Houses of the State Legislature, the Governor is to give assent to the bill. He may also reserve certain bill for the assent of the President. This is an important function of the Governor of an Indian State.

When the State Legislature is not in session, the Governor may issue an Ordinance. It has same force as the law of the State Legislature. But it must be placed before the Legislature when it assembles again. If it is approved by the State Legislature, it will cease to operate after six weeks of the date of meeting of the State Legislature.

3. **Financial :** The Governor has also financial powers and functions. No money-bill can be originated in the State Legislature without the recommendation of the Governor. In every year, the budget is laid before the State Legislature by the Governor. No proposals for taxation or expenditure can be made without the approval of the Governor.

According to Article 202 of the Constitution, the Governor shall in respect of every financial year caused to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, called as "Annual Financial Statement".

As per Article 207(3), a Bill, which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State, cannot be passed by a House of the State Legislature, unless the Governor has recommended to the House the consideration of the Bill.

The Governor has the contingency fund of the State at his disposal for emergencies.

Subject to limits, if any, fixed by the legislature, the Governor can borrow money on the security of the Consolidated Fund of the State and guarantee the loans of any other local authorities.

4. **Judicial :** The Governor also exercises judicial powers. He has the power to grant pardons, reprieves or remissions of punishment to any person who has been convicted by courts of law. He has also a great share in the appointment of the judges of the subordinate courts. The Governor is consulted by the President in the appointment of the Chief Justice and the Judges of the High Court.

Article 161 : Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

The Governor of a State 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 against any law relating to a matter to which the executive power of the State extends. This power of the Governor is very much similar to the power of President under Art. 72.

The Governor's power, under any law in force, to suspend, remit or commute a death sentence have been saved by Art. 72(3). i.e. Though the Governor has the power to pardon, he cannot pardon a death sentence.

It has now been settled that the Governor does not exercise the clemency power in his own discretion but on the advice of his Council of Minister.

In Govt. of A.P. v. M.T. Khan, (2004), 1 SCC 616, 624: AIR 2004 SC 428, Dhananjay Chatterjee v. State of W.B., (2004), 9 SCC 751, 753: AIR 2004 SC 3454, etc. it has been followed that it is inconceivable that the Council of Ministers of one State can render any appropriate advice in respect of the accused persons convicted by Courts of another State or that it would be incompetent to do so. It has also been held that the appropriate government to exercise powers under Art. 161 of the Constitution in respect of convicts is the government within whose territorial jurisdiction the said convicts were convicted. The fortuitous circumstance of a convict serving the sentence inside the State would not empower the government to exercise power under Art. 161 of the Constitution so far as that convict is concerned.

In ***K. M. Nanawati v. State of Bombay***, AIR 1961 SC 99, the Supreme Court has held that the power of the Governor to suspend sentence under Article 161 is subject to the rules made by the Supreme Court with respect to only those cases which are pending before it is appeal. It is open to the Governor to grant a full pardon at any time even during the pendency of the case in the Supreme Court, but the Governor cannot exercise his power of suspension of the sentence for the period when the Supreme Court is seized of the case.

In ***Swaran Singh v. State of U.P.***, AIR 1998 SC 2026, it has been observed that if the order is passed by the Governor under Article 161 without being appraised of material facts, the order would be arbitrary and the Court is not precluded from judicially reviewing such other. If the power of the Governor under Article 161 is exercised arbitrarily, mala fide or in absolute disregard of the finer cannons of the constitutionalism, the byproduct order cannot get the approval of law and in such cases the judicial hand must be stretched to it.

5. **Discretionary Powers :** As for example, the Governor of Assam can exercise the administration of the tribal areas independently of his ministry. Again, the Governor of a State when he is appointed as the administrator of an adjoining Union Territory may exercise his function without the advice of the Council of Ministers.

It is true that Governor is constitutional ruler and a nominal figure. But he is not a magnificent cipher or a rubber stamp. The Governor enjoys wide powers in executive, legislative and financial spheres. He can exercise certain powers in his own discretion. The Governor has the power to advise to encourage and to warn the ministry irrespective of their party colors. The office of the Governor depends upon the personality and ability of the person who occupies it. If the Governor is a man of strong personality, he can easily influence his ministry. A weak and lazy Governor, on the other hand; will be influenced by the ministry. He will them exercise the functions according to the directions issued by the Council of Ministers.

Article 158 : Conditions of Governor's Office

1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the

Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

2) The Governor shall not hold any other office of profit.

3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

3A) Where the same person is appointed as Governor of two or more States, the emoluments and allowances payable to the Governor shall be allocated among the States in such proportion as the President may by order determine. [Added by the Constitution (7th Amendment) Act, 1956.]

4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

Article 159 : Oath or affirmation by the Governor

Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say —

"I, A. B., do swear in the name of God that I will solemnly affirm faithfully execute the office of Governor (or discharge the functions of the Governor) of ..... (name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of..... (name of the State)."

In ***S. R. Chaudhury v. State of Punjab***, (2001) 7 SCC 126, 146 : AIR 2001 SC 2707, Supreme Court held that the Governor must remain conscious of their constitutional obligations and not sacrifice either political responsibility or parliamentary conventions on the altar of "political expendiency".

Article 160 : Discharge of the functions of the Governor in certain contingencies

The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

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PARLIAMENT

CONSTITUTION OF PARLIAMENT

Article 79 : "Constitution of Parliament. There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People."

The Constitution has established a federal system of government with bi-cameral legislature i.e. Lok Sabha and Rajya Sabha at the centre. This is not something which was included in the Constitution in 1950 for the first time. Its history goes back to the Government of India Act of 1915 as amended in 1919. Even under the Government of India Act of 1935 the legislature at centre was bi-cameral which means that the "Council of States" under the Government of India Acts became the "Council of States" under this Article of the Constitution. The Council of States is the Upper Chamber in the Parliament of India whereas Lok Sabha is the Lower Chamber in the same. The Council of States consists of the representatives from the States whereas the House of People, Lok Sabha comprises of the members who are elected directly by the people of India through adult franchise.

This Article spells out that the Parliament of India consists of the President and the Lok Sabha and the Rajya Sabha. The President of India is a titular head of Parliament.

PRESIDENT OF INDIA

The President of India, the Head of State is a component of Parliament. Under Article 60 and Article 111,

President"s responsibility is to scrutinize that bills/laws passed by the parliament are in accordance with constitutional mandate and stipulated procedure is followed before according his/her approval to the bills. The President of India is elected by the members of the Parliament of India and the state legislatures and serves for a term of five years.

RAJYA SABHA (Article-80)

The Rajya Sabha (Council of States) or the upper house is a permanent body not subject to dissolution. One third of the members retire every second year, being replaced by newly elected members. Each member is elected for a term of six years. Its members are indirectly elected by members of legislative bodies of the states. The minimum age for a person to become a member of Rajya Sabha is 30 years.

Composition

It is composed of not more than 250 members. Of the 250 members, 238 are indirectly elected the legislative assemblies of the states and union territories. 12 members are nominated by the President from among Indians of exceptional achievements in literature, science, arts, etc. The members of the Rajya Sabha are elected by the state legislative assemblies on the basis of proportional representation by means of single transferable votes.

The Rajya Sabha reflects the federal principle in the Union Parliament. But the equality of representation of the states as in the composition of the U. S. Senate has not been accepted in India. Consequently, the more populous states like the Uttar Pradesh have a larger representation in the Rajya Sabha than the less populous ones like Arunachal or, Nagaland.

LOK SABHA (Article-81).

Composition

Lok Sabha (House of the People) or the lower house has maximum of 552 members i.e. 530 members directly elected from 29 States, 20 members representing 6 Union Territories India on the basis of universal adult franchise and 2 members representing Anglo-Indian communities, are appointed by the President of India. Every citizen of India who is over 18 years of age, irrespective of gender, caste, religion or race, who is otherwise not disqualified, is eligible to vote for the lok sabha. The Constitution provides that the maximum strength of the House be 552 members. It has a term of five years. To be eligible for membership in the Lok Sabha, a person must be a citizen of India and must be 25 years of age or older, mentally sound, should not be bankrupt and should not be criminally convicted. The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States.

Present strength of Lok Sabha is 543 [530 from 29 states and 13 from UT]

	STATE	Total	SC	ST	
1	Andhra Pradesh	42	6	2	Telengana
2	Arunachal Pradesh	2	-	-	
3	Assam	14	1	2	
4	Bihar	54	8	5	Jharkahnd
5	Goa	2	-	-	
6	Gujarat	26	2	4	
7	Haryana	10	2	-	
8	Himachal Pradesh	4	1	-	
9	Jammu and Kashmir	6	-	-	
10	Karnataka	28	4	-	
11	Kerala	20	2	-	
12	Madhya Pradesh	40	6	9	Chatrisgarh
13	Maharashtra	48	3	4	
14	Manipur	2	-	1	
15	Meghalaya	2	-	-	

STATE	Total	SC	ST	
16 Mizoram	1	-	1	
17 Nagaland	1	-	-	
18 Orissa	21	3	5	
19 Punjab	13	3	-	
20 Rajasthan	25	4	3	
21 Sikkim	1	-	-	
22 Tamil Nadu	39	7	-	
23 Tripura	2	-	1	
24 Uttar Pradesh	85	18	-	Uttarakhand
25 West Bengal	42	8	2	
TOTAL	530	78	39	
UNION TERRITORIES				
26 Andaman & Nicobar Islands	1	-	-	
27 Chandigarh	1	-	-	
28 Dadra and Nagar Haveli	1	-	1	
29 Daman & Diu	1	-	-	
30 NCT Delhi	7	1	-	
31 Lakshadweep	1	-	1	
32 Pondicherry	1	-	-	
TOTAL	13	-	2	
GRAND TOTAL	543	79	41	

The House elects a Speaker and a Deputy Speaker from among its members. The Speaker and in his absence, the Deputy Speaker presides over the sessions of the Lok Sabha.

The Lok Sabha is elected for a period of 5 years. However, the Lok Sabha may extend its own life by an act of the Parliament, not exceeding one year at a time, when a national emergency under Article 352 are in operation. In any case, such extension cannot continue beyond six months after the emergency is lifted.

Qualification for Member of Parliament in India.

Article 84 : Qualification for membership of Parliament : A person shall not be qualified to be chosen to fill a seat in Parliament unless he —

a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

The Indian Constitution is a detailed document, It provides everything in minute detail. This applies equally to the membership of the Parliament.

The constitution stipulates that only Indian Citizens of not less than 25 years of age are qualified to be members of the Lok Sabha. Similarly only Indian citizens of not less than 30 years of age may be members of the Rajya Sabha. The Parliament may prescribe additional qualifications under Art 84 of the constitution.

Parliament has made the Representation of the People Act, 1951 to be an elector for parliamentary Constituency in India and to become a Member of the Council of States, a person is required to be in elector for a Parliamentary Constituency in the concerned State or the Union territory.

It is to be noted that no educational qualification has been prescribed for membership of either the House of the people or the Council of States.

Disqualification for Member of Parliament of India :

Article 102 of the constitution stipulates that a citizen is disqualified to become a member of the Parliament :

1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

b) if he is of unsound mind and stands so declared by a competent court;

c) if he is an undischarged insolvent;

d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

e) if he is so disqualified by or under any law made by Parliament.

Explanation : For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

Additional criteria for disqualification may be provided by laws passed by the Parliament. Any dispute as to whether any disqualification has been incurred by a citizen is settled by the President in consultation with the election commission. In terms of Article 103, the decision given by the President is final. It should be noted that a person cannot remain simultaneously a member of both the Houses of the Parliament or a member of either House of the Parliament and a member of a state legislature.

An M.P. may forfeit his membership of the Parliament in a variety of ways.

If a member incurs any of the disqualification mentioned in the constitution, he loses his membership in the Parliament.

Membership of the Parliament may be vacated through resignation, or it may fail vacant through death.

Similarly, if any person is elected to both the Houses of the Parliament, he will have to relinquish his membership in either House of the Parliament.

In case of election to either House of the Parliament and to the Legislative Assembly in a state, the member concerned may retain his membership of only one body.

Finally continuous absence from the Parliament for 60 days or more without permission, may lead to expulsion of the member concerned by the House.

The expression „Office of profit" has not been defined in the Constitution or in the Representation of the People Act, 1951. The courts have, however, laid down certain tests to determine as to which office is an office of profit.

In ***S.S. Inamdar v. A.S. Andanappa***, (1971) 3 SCC 870, it has been held that the office of profit means an office to which some benefit is derived or might reasonable expressed to be made by the holder of the office. The actual making of profit is not necessary. Profit means pecuniary gain or any material gain.

In ***Jaya Bachhan v. Union of India***, AIR 2006 SC 2119, it has been held that if the pecuniary gain is 'receivable' in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not.

Power, Privileges and Immunities

The power, privileges and immunities of each House of Parliament and of the Members and the Committees of each House are set out in Article 105 of the Constitution.

Article-105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.-
(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

The Article comprises four clauses. Clause (1) says that "subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament". Clause (2) declares that "no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings". Clause (3), which has undergone an amendment under the Constitution 44th Amendment Act, 1978, read before the amendment as follows: "in other respects the powers, privileges and immunities of each House of Parliament, and of the Members and the Committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined shall be those of the House of Commons of Parliament of the United Kingdom and of its Members and Committees at the commencement of this Constitution". After the aforesaid amendment, clause (3) now reads as follows : "(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978." Clause (4) reads thus : "(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament."

Article 194 similarly sets out the powers, privileges and immunities of the House of the Legislature of a State, of its members and the committees of the House of such Legislature. The provisions of Article 194 are identical to the provisions in Article 105 in all respects. Hence, whatever is said hereinafter with respect to Article 105, applies equally to Article 194.

Clause (1) of Article 105 has been construed by the Supreme Court in several decisions, namely, ***MSM Sharma v. Shrikrishna Sinha*** (AIR 1959 SC 395), special reference number 1 of 64 Keshav Singh"s case (AIR 1965 SC 745) and recently in *PV Narasimha Rao v. State* (AIR 1998 SC 2120).

It has been held by the Court that the freedom of speech guaranteed by clause (1) to the Members of Parliament is in addition to the freedom of speech and expression guaranteed to the citizens of this country by Article 19(1)(a) and that the said freedom guaranteed to the Members of Parliament is not subject to the reasonable restrictions contemplated by clause (2) of Article 19. Of course the said freedom is available only within the Houses of Parliament and is "subject to the provisions of this Constitution" (which expression has been construed to mean subject to the provisions of the Constitution which regulate the procedure of Parliament, namely, Articles 118 and 121). The said right is also subject to the rules and standing orders regulating the procedure of Parliament. It has also been held that even if a Member of Parliament makes a statement in the House which is defamatory of a citizen, no action can be taken by a citizen for defamation against such member. Of course, if the member makes such an allegation or repeats the said allegation outside the House, he shall be liable to be sued for defamation or being proceeded against for libel in a criminal court.

Clause (2) is in two parts. The first part confers immunity upon a Member of Parliament in respect of anything said or any vote given by him in Parliament or any committee thereof; the immunity protects him from being proceeded against in a court of law. The second part confers immunity upon the person who publishes such proceedings by or under the authority of either House of Parliament; the publication may be of any report, paper, vote or proceedings. This immunity again is designed to confer upon the Members of Parliament an unrestricted freedom of speech and expression within the House.

Clause (3) speaks of powers, privileges and immunities of the Members of Parliament. The clause contemplates a law being made by Parliament defining them. Until such a law is made, it says, the powers, privileges and immunities shall be those of the House of Commons of Parliament of the UK and of its members and committees at the commencement of the Constitution. The amendment effected by 44thAmendment Act to this clause does not change this position notwithstanding the change in the language for the reason that the powers, privileges and immunities obtaining immediately before the coming into force of section 15 of the Constitution (44th) Amendment Act, 1978 are those very powers, privileges and immunities as were enjoyed by the members of the House of Commons in UK at the commencement of the Constitution.

Clause (4) extends the operation of clauses (1), (2) and (3) to persons who by virtue of the Constitution have the right to speak in and otherwise to take part in the proceedings of a House of Parliament or any committee thereof.

While interpretation of clause (1) of Article 105 has not attracted any controversy, the interpretation of clause (2) has given rise to acute controversy. The interpretation placed by the majority in the recent decision in PV Narasimha Rao v. State has indeed brought the said controversy to the fore. The majority judgment has been subjected to serious criticism from several quarters. It is therefore necessary to examine the position under this clause.

In ***Tejkiran Jain v. N. Sanjeeva Reddy*** (1970 (2) SCC 272), it was held that "the Article confers immunity inter alia in respect of „anything said … in Parliament". The word „anything" is of the widest import and is equivalent to „everything". The only limitation arises from the words „in Parliament" which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but is as it should be. It is of the essence of parliamentary system of government that people's representatives should be free to express themselves without fear of legal circumstances. What they say is only subject to the discipline of the rules of Parliament, the good sense of the Members and the control of proceedings by the Speaker. The courts have no say in the matter and should really being none".

Tejkiran Jain was a case where certain individuals had filed a suit for damages in respect of defamatory statements alleged to have been made by certain Members of Parliament on the floor of Lok Sabha during a call attention motion. Such action was held to be not maintainable.

In ***State of Karnataka v. Union of India*** (1977 (4) SCC 608), the court held that if any question of jurisdiction arose it has to be decided by courts in appropriate proceedings:

"Now, what learned Counsel for the plaintiff seemed to suggest was that Ministers, answerable to a Legislature were governed by a separate law which exempted them from liabilities under the ordinary law. This was never the Law in England. And, it is not so here. Our Constitution leaves no scope for such arguments, based on a confusion concerning the "powers" and "privileges" of the House of Commons mentioned in Articles 105(3) and 194(3). Our Constitution vests only legislative power in Parliament as well as in the State Legislatures. A House of Parliament or State Legislature cannot try anyone or any case directly, as a Court of Justice can, but it can proceed quasi-judicially in cases of contempt of its authority and take up motions concerning its "privileges" and "immunities" because, in doing so, it only seeks removal of obstructions to the due performance of its legislative functions. But, if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the ordinary courts in appropriate proceedings. For example, the jurisdiction to try a criminal offence, such

as murder, committed even within a House vests in ordinary criminal courts and not in a House of Parliament or in a State Legislature."

As stated hereinbefore, the interpretation of clause (2) arose again in PV Narasimha Rao v. State. The facts of this case are interesting. A charge sheet was filed against Shri PV Narasimha Rao and some others (Members of Parliament and others) under section 120B IPC and sections 7, 12, 13(2) read with section 13(1)(d)(iii) of the Prevention of Corruption Act, 1988. The substance of the charge was that PV Narasimha Rao and some others entered into a criminal conspiracy to bribe certain other accused, namely, Suraj Mandal and others (Members of Parliament), to induce them to vote against the motion of no confidence moved against Shri PV Narasimha Rao's government in Lok Sabha. Both the bribe givers and bribe takers were charge sheeted. A preliminary objection was raised on behalf of the accused before the special judge (in whose court the charge sheets were filed) contending that the jurisdiction of the court to try the accused for the aforementioned offences was barred by clause (2) of Article 105 of the Constitution inasmuch as the charges and the prospective trial is in respect of matters which relate to the privileges and immunities of the Members of Parliament. It was contended that inasmuch the foundation of the charge sheets is the allegation of acceptance of bribe by some Members of Parliament for voting against the no confidence motion, the controversy is in respect of the motive and actions of the Members of Parliament pertaining to the vote given by them in relation to the said motion. The special judge rejected the said contention. He held that the issue before him was not the voting pattern of the Members of the House but their alleged illegal acts, namely, demanding and accepting bribe for exercising their franchise in a particular manner. He held further that members of Parliament are holding a public office and accepting illegal gratification for exercising their franchise in a particular manner is an offence punishable under the P.C. Act. Certain other contentions raised by the accused were also rejected which we need not refer to at this stage. The matter was then taken to the Delhi High Court. The High Court agreed with the special judge and dismissed the revision petitions. It held, construing clauses (2) and (3) of Article 105, that to offer bribe to a Member of Parliament to influence him in his conduct as a member has been treated as a breach of privilege in England but by merely treating the commission of a criminal offence as a breach of privilege does not amount to ouster of the jurisdiction of the ordinary courts to try penal offences. The High Court held that the claim for such a privilege would amount to claiming a privilege to commit a crime which cannot be conceded. The High Court also rejected the contention that the Members of Parliament were not public servants within the meaning of the P.C. Act. Other contentions urged by the accused were also rejected. The matter was then carried to the Supreme Court. A five-judge Constitution Bench heard the matter. So far as the question whether a Member of Parliament is a 'public servant' within the meaning of the Prevention of Corruption Act is concerned, the Bench was unanimous that they are. But on the question of interpretation of clause (2) of Article 105, there was a sharp division of opinion. Two judges, S.C. Agrawal and A.S. Anand, JJ. held that "a Member of Parliament does not enjoy immunity under Article 105(2) or Article 105(3) of the Constitution from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or by giving his vote in Parliament or in any committees thereof". On the other hand, S.P. Barucha and Rajendra Babu, JJ. held that while bribe-givers (who are Members of Parliament) cannot invoke the immunity conferred by clause (2) of Article 105, the bribe-takers (Members of Parliament) can invoke that immunity if they have actually spoken or voted in the House pursuant to the bribe taken by them; if however a Member of Parliament takes a bribe for speaking or voting in the House in a particular manner but does not so speak or vote, the immunity cannot be invoked by him. This conclusion was arrived at on the construction of the words "in respect of" occurring in the said clause. The learned judges held that the said words were of wide amplitude and therefore the integral connection between the bribe taking and the vote in the House cannot be dissected or separated. G.N. Ray, J. agreed with Barucha and Rajendra Babu, JJ. on this question.

The learned judges differed on one more question which was raised before them viz. who is the authority competent to grant sanction required by section 19 of the Prevention of Corruption Act? S.C. Agrawal and A.S. Anand, JJ. held that even though the Members of Parliament are public servants within the meaning of section 2(c) of the Prevention of Corruption Act, 1988, no authority is specified as on today as the authority competent to remove a Member of Parliament and to grant sanction for his prosecution under section 19(1) of the said Act.

But, the learned judges held, that does not mean that the Members of Parliament cannot be proceeded against under the said Act. They held that until the law is amended suitably, the prosecuting agency shall, before filing a charge sheet in respect of offences under sections 7, 10, 11, 13 and 15 of the P.C. Act against a Member of Parliament in a criminal court, obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be. On the other hand, S.P. Bharucha and Rajendra Babu, JJ. held that since there is no authority competent to grant sanction under section 19 of the P.C. Act, they cannot be prosecuted for offences under sections 7, 10, 11 and 13 of the said Act. The learned judges expressed the hope that Parliament will address itself to the task of removing the said lacuna with due expedition. G.N. Ray, J. does not appear to have expressed himself on this question.

LEGISLATIVE PROCEDURE

The Parliament has functions and powers to enact laws by passing bills by following the legislative procedure laid down in the Constitution. The legislative procedure in Parliament falls into three classes, namely, procedure relating to —

i) Ordinary bills,

ii) Money bills and

iii) Other financial matters.

Legislative procedure relating ordinary Bills.

Ordinary Bill may be taken to mean „a Bill other than Money Bill and other Financial Bill".

Article 107. Provisions as to introduction and passing of Bills :

1) Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

2) Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall, subject to the provisions of article 108, lapse on a dissolution of the House of the People.

Each has made rules of procedure for passing of a Bill. According to the procedure of a House a Bill has to pass through three stages commonly known as Reading :

First Reading (Introduction) ; Second Reading (Motion after introduction), and Third Reading.

A Bill is the draft of a legislative proposal. It has to pass through various stages before it becomes an Act of Parliament.

First Reading (Introduction) :

The legislative process starts with the introduction of a Bill in either House of Parliament — Lok Sabha or Rajya Sabha. A Bill can be introduced either by a Minister or by a private member. In the former case it is known as a Government Bill and in the later case it is known as a Private Member's Bill.

If a Member desires to introduce a Bill, he has to give notice of his intention and to ask for leave of the House to introduce it which is, however, rarely opposed. If leave is granted by the House, the Bill is introduced. This stage is known as the First Reading of the Bill. If the motion for leave to introduce a Bill is opposed, the Speaker may, in his discretion, allow brief explanatory statements to be made by the member who opposes the motion and the member-in-charge who moved the motion. Where a motion for leave to introduce a Bill is opposed on

the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon. Thereafter the question is put to the vote of the House. However, the motion for leave to introduce a Finance Bill or an Appropriation Bill is forthwith put to the vote of the House.

Publication in Gazette

After a Bill has been introduced, it is published in the Official Gazette. Even before introduction, a Bill might, with the permission of the Speaker, be published in the Gazette. In such cases, leave to introduce the Bill in the House is not asked for and the Bill is straightaway introduced.

Reference of Bill to Standing Committee

After a Bill has been introduced, Presiding Officer of the concerned House can refer the Bill to concerned Standing Committee for examination and make report thereon.

If a Bill is referred to Departmentally Related Standing Committee, the Committee shall consider the general principles and clauses of the Bill referred to them and make report thereon. The Committee can also take expert opinion or the public opinion who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House. The report of the Committee, being persuasive value shall be treated as considered advice given by the Committee.

Second Reading (Motion after introduction)

After a Bill has been introduced, the Member in charge of the Bill may make one of the following motions in regards to the Bill, viz.,

i) that it be taken into consideration;

ii) that it be referred to a Select Committee;

iii) that it be referred to a Joint Committee of the House with the concurrence of the other House.

iv) that it be circulated for the purpose of eliciting public opinion thereon.

The Second Reading consists of consideration of the Bill which is in two stages.

First Stage : The first stage consists of general discussion on the Bill as a whole when the principle underlying the Bill is discussed. At this stage it is open to the House to refer the Bill to a Select Committee of the House or a Joint Committee of the two Houses or to circulate it for the purpose of eliciting opinion thereon or to straight-away take it into consideration.

If a Bill is referred to a Select/Joint Committee, the Committee considers the Bill clause-by-clause just as the House does. Amendments can be moved to the various clauses by members of the Committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House which considers the Bill again as reported by the Committee.

If a Bill is circulated for the purpose of eliciting public opinion thereon, such opinions are obtained through the Governments of the States and Union Territories. Opinions so received are laid on the Table of the House and the next motion in regard to the Bill must be for its reference to a Select/Joint Committee. It is not ordinarily permissible at this stage to move motion for consideration of the Bill.

Second Stage : The second stage of the Second Reading consists of clause-by-clause consideration of the Bill as introduced or as reported by Select/Joint Committee. Discussions takes place on each clause of the Bill and amendments to clauses can be moved at this stage. Amendments to a clause have been moved but not withdrawn are put to the vote of the House before the relevant clause is disposed of by the House. The amend-ments become part of the Bill if they are accepted by a majority of members present and voting. After the clauses, the schedules if any, clause 1, the Enacting Formula and the Long Title of the Bill have been adopted by the House, the Second Reading is deemed to be over.

Third Reading

Thereafter, the member-in-charge can move that the Bill be passed. This stage is known as the Third Reading of

the Bill. At this stage debate is confined to arguments either in support or rejection of the Bill without referring to the details thereof further than that are absolutely necessary. Only formal, verbal or consequential amendments are allowed to be moved at this stage.

In passing an ordinary Bill, a simple majority of members present and voting is necessary. But in the case of a Bill to amend the Constitution, a majority of the total membership of the House and a majority of not less than two- thirds of the members present and voting is required in each House of Parliament

Bill in the other House

After the Bill is passed by one House, it is sent to the other House for concurrence with a message to that effect, and there also it goes through the stages described above except the introduction stage.

Consideration of the Bill at a Joint Sitting:

If a Bill passed by one House is rejected by the other House, or, the Houses have finally disagreed as to the amendments to be made in the Bill, or more than six months elapse from the date of the receipt of the Bill by the other House without the Bill being passed by it, the President may call a joint sitting of the two Houses to resolve the deadlock. If, at the joint sitting of the Houses, the Bill is passed by a majority of the total number of members of both the Houses present and voting, with the amendments, if any, accepted by them, the Bill is deemed to have been passed by both the Houses.

There cannot be a joint sitting of both Houses on a Constitution Amendment Bill.

Article 108. Joint sitting of both Houses in certain cases — (1) If after a Bill has been passed by one House and transmitted to the other House-

a) the Bill is rejected by the other House; or

b) the Houses have finally disagreed as to the amendments to be made in the Bill; or

c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it, the President may, unless the Bill has elapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days.

3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting

a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed; and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.

For passing normal bill Indian Constitution has given same power to Lok Sabha and Rajya Sabha. Ordinary bill can be proposed in any houses. Until and unless a bill is passed in both houses it can not be stated that it is passes in parliament.

According to article 108 of Indian Constitution if there is a dispute in the both houses of the parliament on a bill, President of India calls for a Joint Sitting of both the houses. The speaker of Lok Sabha becomes the speaker of the joint sitting. This arrangement has increased the value of the speaker of Lok Sabha.

Any decision is taken by the support of the maximum number of the present members of the joint sitting. It has helped to establish the superiority of Lok Sabha over Rajya Sabha, because number members in Lok Sabha is greater than the doubles of Rajya Sabha. So it can be said that in certain condition the power of lok Sabha is more important in Indian Parliamentary democracy.

But in USA both the houses of Parliament, House of Commons and House of Senate have the same power for an ordinary bill. Without being passed in both the houses bill can not be transferred into a law. If there is a dispute in both the houses regarding a bill, the solution is not same as in India. They create a committee with equal number of members from both the houses and their decision is the last decision on this dispute.

ASSENT OF THE PRESIDENT

Article-111. Assent to Bills — When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent there from.

When a Bill is passed by both Houses, the Secretariat of the House which is last in possession of the Bill obtains the assent of the President. In the case of a Money Bill or a Bill passed at a joint sitting of the Houses, the Lok Sabha Secretariat obtains assent of the President. The Bill becomes an Act only after the President has given his assent to it.

The President may give his assent or withhold his assent to a Bill. The President may also return the Bill (except a Money Bill) with his recommendations to the Houses for reconsideration, and if the Houses pass the Bill again with or without amendments the President cannot withhold his assent to the Bill. The President, however, is bound to give his assent to a Constitution Amendment Bill passed by the Houses of Parliament by the requisite special majority and, where necessary, ratified by the States.

MONEY BILLS

Article-110. Definition of —Money Bills|| — (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:-

a) the imposition, abolition, remission, alteration or regulation of any tax;

b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;

c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;

d) the appropriation of moneys out of the Consolidated Fund of India;

e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or

g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Article-109. Special procedure in respect of Money Bills —

1) A Money Bill shall not be introduced in the Council of States.

2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

As per Article 117(1) of the Constitution of India, a Money Bill can only be introduced in the House of the People (Lok Sabha) with the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States (Rajya Sabha). However no recommendation of the President is necessary for the moving of an amendment making provision for the reduction or abolition of any tax (Art. 117(1) Proviso).

Bills which exclusively contain provisions for imposition and abolition of taxes, for appropriation of moneys out of the Consolidated Fund, etc., are certified as Money Bills. Money Bills can be introduced only in Lok Sabha. Rajya Sabha cannot make amendments in a Money Bill passed by Lok Sabha and transmitted to it. It can, however, recommend amendments in a Money Bill, but must return all Money Bills to Lok Sabha within fourteen days from the date of their receipt. It is open to Lok Sabha to accept or reject any or all of the recommendations of Rajya Sabha with regard to a Money Bill. If Lok Sabha accepts any of the recommendations of Rajya Sabha, the Money Bill is deemed to have been passed by both Houses with amendments recommended by Rajya Sabha and accepted by Lok Sabha and if Lok Sabha does not accept any of the recommendations of Rajya Sabha, Money Bill is deemed to have been passed by both Houses in the form in which it was passed by Lok Sabha without any of the amendments recommended by Rajya Sabha. If a Money Bill passed by Lok Sabha and transmitted to Rajya Sabha for its recommendations is not returned to Lok Sabha

within the said period of fourteen days, it is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha.

As per Article 111 of the Constitution, when a Bill has been passed by the House of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent there from. As the Money Bill is introduced in the House of People, only on the recommendation of the President, he is bound to give his assent to Money Bill. He can use the power to veto a Bill only on the advice of the Cabinet, but the Cabinet should not wish to advice the President to veto the Money Bill for passage of which it had been responsible.

Difference between Ordinary Bills and Money Bills.

The following are the differences between an Ordinary and a Money Bill :

1) An Ordinary Bill can be introduced in any of the Houses of Parliament whereas a Money Bill can be introduced in the House of People only but not in the Council of States.

2) To introduced an ordinary Bill no certificate is necessary from the Speaker, while the Speaker has to give a certificate to a Money Bill by endorsing on it.

3) An Ordinary Bill is a Bill which is not Money Bill and Financial Bill. A Money Bill has been defined in Article 110(1)as a Bill which contains only provisions with respect to all or any of the six matters mentioned in it.

4) An Ordinary Bill is introduced by any private Members by giving notice of his intention and by asking for leave of the House to introduce or by a Minister whereas a Money Bill can be introduced only on the recommendation of the President.

5) When an Ordinary Bill is passed in one House, and it is sent to the other House for passing, the other House may keep that Bill for six months with it. While a Money Bill is passed by House of the People, thereafter it is sent to Rajya Sabha for recommendations and the Council of States must return it within 14 days, with or without recommendations.

6) If both the Houses agree by majority, the Ordinary Bill becomes an Act. If there is any conflict or disagreement between two Houses, then a dead-lock occurs but in case of a Money Bill there is no question of deadlock even the Council of States disagreed.

7) When an Ordinary Bill is rejected by the other House or the Houses have finally disagreed as to the amendments to be made in the Bill or more than six months elapsed from the date of the reception of the Bill by the other House without the Bill being passed by it, then the President may call for Joint Session of both the Houses, unless the Bill has elapsed by reason of a dissolution of the House of People. If at the joint sitting of the two Houses the Ordinary Bill with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses. In case of Money Bill, no Joint Session of Houses is necessary as the House of the People may consider or may not consider the recommendations of the Council of States pertaining to Money Bill and the Bill shall be deemed to have been passed by the House of the People though the Council of States disagreed and the Act is also valid.

8) Regarding to Ordinary Bill, the President may return a Bill to the Houses for reconsideration with or without a message suggesting such amendments as he may recommend. When a Bill is so returned, the Houses shall reconsider in the light of the Presidential message. However, if the Bill is again passed by the Houses with or without amendment and presented to the President for assent, the President shall not withhold his assent. But in case of a Money Bill the President has no such power to return the Money Bill to the Houses as it is introduced in the House of the People only on the recommendation of the President.

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SUPREME COURT

Introduction :

The Supreme Court is the highest court of India. It is at the apex of the Indian judicial system. Union legislature, which is known as Parliament, makes laws for the whole country in respect of the Union and the Concurrent Lists and the executive comprising the President, Council of Ministers and bureaucracy enforces them. Judiciary, the third organ of the government, has an equally important role to play. It settles the disputes, interprets laws, protects fundamental rights and acts as guardian of the Constitution.

India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back into the centuries, forming a living tradition which has grown and evolved with the lives of its diverse people. India's commitment to law is created in the Constitution which constituted India into a Sovereign Democratic Republic, containing a federal system with Parliamentary form of Government in the Union and the States, an independent judiciary, guaranteed Fundamental Rights and Directive Principles of State Policy containing objectives which though not enforceable in law are fundamental to the governance of the nation.

SOURCES OF LAW

The fountain source of law in India is the Constitution which, in turn, gives due recognition to statutes, case law and customary law consistent with its dispensations. Statutes are enacted by Parliament, State Legislatures and Union Territory Legislatures. There is also a vast body of laws known as subordinate legislation in the form of rules, regulations as well as by-laws made by Central and State Governments and local authorities like Municipal Corporations, Municipalities, Gram Panchayats and other local bodies. This subordinate legislation is made under the authority conferred or delegated either by Parliament or State or Union Territory Legislature concerned. The decisions of the Supreme Court are binding on all Courts within the territory of India. As India is a land of diversities, local customs and conventions which are not against statute, morality, etc. are to a limited extent also recognised and taken into account by Courts while administering justice in certain spheres.

ENACTMENT OF LAWS

The Indian Parliament is competent to make laws on matters enumerated in the Union List. State Legislatures are competent to make laws on matters enumerated in the State List. While both the Union and the States have power to legislate on matters enumerated in the Concurrent List, only Parliament has power to make laws on matters not included in the State List or the Concurrent List. In the event of repugnancy, laws made by Parliament shall prevail over law made by State Legislatures, to the extent of the repugnancy. The State law shall be void unless it has received the assent of the President, and in such case, shall prevail in that State.

APPLICABILITY OF LAWS

Laws made by Parliament may extend throughout or in any part of the territory of India and those made by State Legislatures may generally apply only within the terrirory of the State concerned. Hence, variations are likely to exist from State to State in provisions of law relating to matters falling in the State and Concurrent Lists.

JUDICIARY

One of the unique features of the Indian Constitution is that, notwithstanding the adoption of a federal system and existence of Central Acts and State Acts in their respective spheres, it has generally provided for a single integrated system of Courts to administer both Union and State laws. At the apex of the entire judicial system, exists the Supreme Court of India below which are the High Courts in each State or group of States. Below the High Courts lies a hierarchy of Subordinate Courts. Panchayat Courts also function in some States under various names like Nyaya Panchayat, Panchayat Adalat, Gram Kachheri, etc. to decide civil and criminal disputes of petty and local nature. Different State laws provide for different kinds of jurisdiction of courts. Each State is divided into judicial districts presided over by a District and Sessions Judge, which is the principal civil court of original jurisdiction and can try all offences including those punishable with death. The Sessions Judge is the highest judicial authority in a district. Below him, there are Courts of civil jurisdiction, known in different States as Munsifs, Sub-Judges, Civil Judges and the like. Similarly, the criminal judiciary comprises the Chief Judicial Magistrates and Judicial Magistrates of First and Second Class.

Article 124 of the Constitution of India provide that :

Art. 124 : Establishment and constitution of Supreme Court :

1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the National Judicial Appointments Commission referred to in article 124A and shall hold office until he attains the age of sixty-five years :

Provided that —

a) a Judge may, by writing under his hand addressed to the President, resign his office;

b) a Judge may be removed from his office in the manner provided in clause (4).

2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and

a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

c) is, in the opinion of the President, a distinguished jurist.

Explanation I : In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II : In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

99th Amendment brought amendment in Article 124 and inserted new Articles 124A, 124B and 124C.

According to the Ninety Ninth Amendment in the Constitution which received the assent of the President on the 31st December, 2014, Article 124 stands amended:

In Article 124 of the Constitution, in clause (2),-- (a) for the words "after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose", the words, figures and letter "on the recommendation of the National Judicial Appointments Commission referred to in Article 124A" shall be substituted; (b) the first proviso shall be omitted; (c) in the second proviso, for the words "Provided further that", the words "Provided that" shall be substituted.

INSERTION OF NEW ARTICLES

After Article 124 of the Constitution, the following Articles shall be inserted, namely :—

"124A. (1) There shall be a Commission to be known as the National Judicial Appointments Commission

consisting of the following, namely:-- (a) the Chief Justice of India, Chairperson, ex officio; (b) two other senior Judges of the Supreme Court next to the Chief Justice of India --Members, ex officio; (c) the Union Minister in charge of Law and Justice--Member, ex officio ; (d) two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of Opposition, then, the Leader of single largest Opposition Party in the House of the People -- Members:

Provided that one of the eminent persons shall be nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women:

Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for re-nomination.

(2) No act or proceedings of the National Judicial Appointments Commission shall be questioned or be invalidated merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.

124B. It shall be the duty of the National Judicial Appointments Commission to- (a) recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts; (b) recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court; and (c) ensure that the person recommended is of ability and integrity.

124C. Parliament may, by law, regulate the procedure for the appointment of Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and empower the Commission to lay down by regulations the procedure for the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary by it."

Establishment of National Judicial Appointments Commission (NJAC)

National Judicial Appointments Commission (NJAC) is a proposed body responsible for the appointment and transfer of judges to the higher judiciary in India. The Commission is established by amending the Constitution of India through the Ninety-Ninth Constitutional Amendment vide the Constitution (Ninety-Ninth Amendment) Act, 2014 passed by the Lok Sabha i.e. Lower House of Parliament on 13 th August, 2014 and by the Rajya Sabha i.e . Upper House of Parliament on 14 th August, 2014. The NJAC replaces the collegium system for the appointment of judges as invoked by the Supreme Court via judicial fiat by a new system. Along with the Constitutional Amendment Act, the National Judicial Appointments Commission Act, 2014, was also passed by the Parliament of India to regulate the functions of the National Judicial Appointments Commission. The NJAC Bill and the Constitutional Amendment Bill, was ratified by 16 state legislatures in India, and subsequently assented by the President of India on 31st December, 2014. The NJAC Act and the Constitutional Amendment Act came into force from 13th April, 2015.

The National Judicial Appointments Commission (NJAC) is a constitutional body proposed to replace the present Collegium system of appointing judges.

In Supreme Court Advocates-on-Record Association & Another Vs. Union of India. [Writ Petition (Civil) No.13 of 2015, The Supreme Court rejected the National Judicial Appointments Commission (NJAC) Act and the 99th Constitutional Amendment which sought to give politicians and civil society a final say in the appointment of judges to the highest courts. The system of appointment of Judges to the Supreme Court, and Chief Justices and Judges to the High Courts; and transfer of Chief Justices and Judges of High Courts from one High Court, to another, as existing prior to the Constitution (Ninety-ninth Amendment) Act, 2014 (called the "collegium system"), is declared to be operative.

Collegium system :

The Collegium system is one where the Chief Justice of India and a forum of four senior-most judges of the Supreme Court recommend appointments and transfers of judges. However, it has no place in the Indian Constitution. The system was evolved through Supreme Court judgments in the Three Judges Cases (October 28, 1998).

What is a Collegium System?

- A forum which decides on appointments and transfers of judges
- Comprises of the Chief Justice of India and the four senior-most judges of the Supreme Court
- It is born from 'Three judges cases' which gave primacy to the Chief Justice of India's call on appointments or transfers; the President merely approves the CJI's choice.
- Judiciary gets greater say than the executive on the appointments or transfers of judges.
- The system was evolved through Supreme Court judgments in the Three Judges Cases dated October 28, 1998.

Appointments and the Collegium :

As per the Constitution, as held by the court in the Three Judges' Transfer Cases - (S.P.Gupta v. Union of India, AIR 1982 SC 149, Supreme Court Advocates-on-Record Association & Others v. Union of India, (1993) 4 SCC 441, In re Presidential Reference, 'Appointment and Transfer of Judges Case III, AIR 1999 SC 1, October 28, 1998), a judge is appointed to the Supreme Court by the President of India on the recommendation of the collegium - a closed group of the Chief Justice of India, the four most senior judges of the court and the senior-most judge hailing from the high court of a prospective appointee. This has resulted in a Memorandum of Procedure being followed, for the appointments.

Judges used to be appointed by him on the advice of the Union Cabinet. After 1993 (the Second Judges Case Supreme Court Advocates-on-Record Association & Others v. Union of India, (1993) 4 SCC 441), no minister, or even the executive collectively, can suggest any names to the President, who ultimately decides on appointing them from a list of names recommended only by the collegium of the judiciary. Simultaneously, as held in that judgment, the executive was given the power to reject a recommended name. However, according to some, the executive has not been diligent in using this power to reject the names of bad candidates recommended by the judiciary.

The collegium system has come under a fair amount of criticism. One recommendation by a collegium came to be challenged in court. The court held that who could become a judge was a matter of fact, and any person had a right to question it. But who should become a judge was a matter of opinion and could not be questioned. As long as an effective consultation took place within a collegium in arriving at that opinion, the, the court has invited everyone, including the public, to suggest by mid-November 2015, how to improve it, broadly along the lines of - setting up an eligibility criteria for appointments, a permanent secretariat to help the collegium sift through material on potential candidates, infusing more transparency into the selection process, grievance redressal and any other suggestion not in these four categories, like transfer of judges.

The position of Chief Justice of India is attained on the basis of seniority amongst the judges serving on the court. Parliament may by prescribe a larger number of judges.

CONSTITUTION OF SUPREME COURT

On the 28th of January, 1950, two days after India became a Sovereign Democratic Republic, the Supreme Court came into being. The inauguration took place in the Chamber of Princes in the Parliament building which also housed India's Parliament, consisting of the Council of States and the House of the People. It was here, in this Chamber of Princes, that the Federal Court of India had sat for 12 years between 1937 and 1950. This was to be the home of the Supreme Court for years that were to follow until the Supreme Court acquired its own present premises.

After its inauguration on January 28, 1950, the Supreme Court commenced its sittings in a part of the Parliament House. The Court moved into the present building in 1958. The building is shaped to project the image of scales of justice. The Central Wing of the building is the Centre Beam of the Scales. In 1979, two New Wings - the East Wing and the West Wing - were added to the complex. In all there are 15 Court Rooms in the various wings of the building. The Chief Justice's Court is the largest of the Courts located in the Centre of the Central Wing.

The original Constitution of 1950 envisaged a Supreme Court with a Chief Justice and 7 Judges - leaving it to

Parliament to increase this number. In the early years, all the Judges of the Supreme Court sat together to hear the cases presented before them. As the work of the Court increased and arrears of cases began to cumulate, Parliament increased the number of Judges from 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978, 26 in 1986 and 31 in 2008 (current strength). As the number of the Judges has increased, they sit in smaller Benches of two and three - coming together in larger Benches of 5 and more only when required to do so or to settle a difference of opinion or controversy.

The Supreme Court of India comprises the Chief Justice and not more than 30 other Judges appointed by the President of India. Supreme Court Judges retire upon attaining the age of 65 years. In order to be appointed as a Judge of the Supreme Court, a person must be a citizen of India and must have been, for atleast five years, a Judge of a High Court or of two or more such Courts in succession, or an Advocate of a High Court or of two or more such Courts in succession for at least 10 years or he must be, in the opinion of the President, a distinguished jurist. Provisions exist for the appointment of a Judge of a High Court as an Ad-hoc Judge of the Supreme Court and for retired Judges of the Supreme Court or High Courts to sit and act as Judges of that Court.

The Constitution seeks to ensure the independence of Supreme Court Judges in various ways. A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehaviour or incapacity. A person who has been a Judge of the Supreme Court is debarred from practising in any court of law or before any other authority in India.

The proceedings of the Supreme Court are conducted in English only. Supreme Court Rules, 1966 are framed under Article 145 of the Constitution to regulate the practice and procedure of the Supreme Court.

Qualification for appointment as a Supreme Court Judge

Article 124 (3) of the constitution prescribes that for appointment as a judge of the Supreme Court a person must he

a) a citizen of India,

b) has been a judge of any High Court for at least 5 years, or

c) has been an advocate in a High Court for 10 years or is in the opinion of the President a distinguished jurist.

There is no fixed tenure of service for a judge. He continues in service till the completion of 65th year of age.

It is thus possible to appoint an eminent non-practicing, academic lawyer to the Supreme Court. This provision has been inspired by the American example where distinguished law teachers have often been appointed to the Supreme Court and they have proved to be successful Judges.

DISQUALIFICATION OF JUDGES

As a general rule, judges are required to disqualify themselves from hearing a case when the judge's impartiality might reasonably be called into question. There is a fundamental right to an impartial tribunal, and a biased judge robs a party of due process of law.

Situations Where Disqualification is Appropriate

The following example situations would warrant the judge to disqualify themselves :

J If the judge has a personal interest in the outcome of the case or has a family member or close relative who is a party to the case

J If the judge has more than a minimal financial interest in the outcome of the case

J If the judge has a close social relationship with a litigant, lawyer, or witness in the case

J If the judge was previously a lawyer on the same or a related case or was associated with the lawyers on the case or a related case

J If the judge has been a material witness on the case or a related case

J If the judge has prior personal knowledge of disputed facts in the case

J When the judge's campaign coordinator or campaign committee member is a party or lawyer in the case.

VACANCY OF POST OF JUDGE OF SUPREME COURT IN INDIA

Article 124 (4) prescribes the methods how the post of a judge may fall vacant. These are

a) retirement on completion of 65th year of age,

b) resignation and

c) removal through impeachment.

Tenure :

As per Article 124(2A) of the Constitution of India, the age of a Judge of the Supreme Court shall be determined by such authority and in such manner as parliament may by law provide. According to Article 124(2) of the Constitution of India, every Judge of the Supreme Court holds office until he attains the age of 65 years. However, a Judge of the Supreme Court may, by writing under his hand address to the President, resign his office.

No minimum age is prescribed for appointment as a judge of the Supreme Court, not any fixed period of office. Once appointed, a Judge of the Supreme Court may cease to be so on the happening of

a) attaining the age of 65 years or

b) resigning of his office by writing or

c) being removed by the President.

REMOVAL OF SUPREME COURT JUDGE IN INDIA

The framers of the constitution took great pains to ensure the independence of the Supreme Court judges. There is independence of Judiciary in India. Thus a judge may be removed only through impeachment. This is the only way for the removal of a judge. A judge may be impeached only on grounds of proved misbehavior and incapacity.

The question of removal of a Judge before the age of retirement is an important one as it has a significant bearing on the independence of the judiciary. If a Judge of the Supreme Court could be removed by the Executive without much formality, then it can be imagined that the Court would lose its independence and become subject to the control of the Executive.

In every democratic country swearing by the Rule of Law, therefore, special provisions are made making removal of judges an extremely difficult exercise. In Britain, for example, Judges hold office during good behavior and can be removed only on an address from both Houses of Parliament. In the U.S.A., a Supreme Court Judge holds office for life and is removable only by the process of impeachment in case of treason, bribery or other high crimes and misdemeanors. Provision has however been made by law for voluntary retirement on full salary after ten years of service and attainment of the age of seventy.

The Constitution of India also makes a provision for the removfal of a Supreme Court Judge under Article 124 (2) proviso (b); Article 124(4) and Article 124(5).

In the case of K. Veeraswamy v. Union of India, (1991) 3 SCC 655, it has been held that the President connot remove a Supreme Court Judge except in accordance with the procedure laid down in Art. 124(4). Thus the President cannot remove a Judge unless each House of Parliament passes an address for the removal of the Judge supported by a majority of the total membership of the House and by majority of not less than two-thirds of the members present and voting on the ground of proved misbehavior and incapacity. Unless such an address is presented to the President in the same session by the two Houses, the President is not empowered to remove a Judge.

It is clear that Supreme Court judges enjoy security of tenure, and the executive cannot arbitrarily remove them. In the case of C.K. Daphtary v. O.P. Gupta, AIR 1971 SC 1132, it has been held that even if a Judge commits errors, even gross errors, it does not amount to misbehaviour on his part.

It has also been held in C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, (1995) 5 SCC 457, also in Re. Mehar Singh Saini, (2010) 13 SCC 586 (627), that every action or omission by a Judge in the performance of

his duties which may not be regarded as 'misbehaviour' for purposes of Art. 124(4) indictable by impeacement.

No person who has held office of a judge of the Supreme Court is allowed to plead as an advocate in any court or before any authority within the territory of India.

The judges of the Supreme Court are paid such salaries as are determined by the Parliament from time to time. The salaries and allowances of a judge cannot be varied to his disadvantage except during a financial emergency under Article 360. The administrative expenses of the Supreme Court are changed on the revenues of India. Finally a judge may not engage in legal practice after retirement.

Powers and Jurisdiction of The Supreme Court.

The powers and jurisdiction of the Supreme Court of India are in their nature and extent wider that those exercised by the highest Court of any other country. Our Supreme Court possesses larger powers than the Supreme Court of the U.S.A.

The Supreme Court of India is a multi-jurisdictional Court and may be regarded as the most powerful Apex Court in the World. The Constitution of India confers very broad jurisdiction on the Court. The jurisdiction of the Court may be put under the following heads:

i) As per Art. 129, the Court has power to commit a person for its contempt.

ii) As per Art. 131, the Court has original jurisdiction to decide inter-governmental disputes.

iii) As per Art. 1132 to 134, the Court has appellate jurisdiction. It is the highest court of appeal in the country in all matters, civil or criminal.

iv) As per Art. 136, the Court has a very extensive appellate jurisdiction from any court or tribunal in the country in matters not falling under heading (iii) above.

v) As per Art. 32, the Court has power to enforce Fundamental Rights under Writ.

vi) As per Art. 143, the Court has advisory jurisdiction.

vii) As per Art. 137, the Court has power to review its own decisions.

viii) As per Art. 142, the Court has power to make order necessary for doing completer justice in any case.

The Jurisdiction of the Supreme Court may be classified as follows :

I. Jurisdiction of Ordinary Court of Records (Art. 129).

II. Original Jurisdiction.

1) Exclusive original jurisdiction (Art. 131).

2) Writ jurisdiction Art. 32).

3) Disputes relating to election of a president or Vice President (Art.71).

4) Transfer of cases (Art. 139-A).

III. Appellate Jurisdiction.

1) Interpretation of the Constitution (Art. 132).

2) Civil Appellate jurisdiction (Art. 133).

3) Criminal Appellate jurisdiction (Art. 134).

4) Federal Court's jurisdiction (Art. 135).

5) Special leave to appeal jurisdiction (Art. 136).

IV. Advisory jurisdiction (Art. 143).

V. Miscellaneous.

I. Jurisdiction of Ordinary Court of Records (Art. 129)

Article 129 of the Constitution provides that the Supreme Court shall be a Court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Dr. Ambedkar defined a Court of record as "a Court of record of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any Court."

A Court of record is "a Court of record is a Court whereof the acts and judicial proceedings are enrolled for a perpetual memorial and judicial proceedings are enrolled for a perpetual memorial and testimony and which has power to fine and inflict imprisonment for contempt of its authority.

The Indian Constitution declares the Supreme Court as the Court of Record in Article 129, and has stated that it has inherent power to punish for contempt.

CONTEMPT OF COURT

There is no definition of „Contempt of Court" in the Constitution of India. The term „Contempt of Court" has been defined in Section 2(a) of the Contempt of Court Act, 1971 as "Contempt of Court means civil contempt and criminal contempt". Section 2(b) of the Contempt of Court Act, 1971 provides that „civil contempt" means willful disobedience to any judgment, decree, direction, order, or other process of a Court or willful breach of an undertaking given to a Court. Section 2(c) of the Contempt of Courts Act, 1971 provides that 'criminal contempt' means the publication whether by words spoken or written or by signs or by visible representations or otherwise of any matter or the doing any act, whatsoever which —

i) Scandalized or tends to scandalized or lowers or tends to lower, the authority of any Court; or

ii) Prejudice or interferes or tends to interfere with, the due course of any judicial proceeding; or

iii) Interfere or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any other manner.

The power of the Supreme Court under Art. 129 cannot be restricted and trammeled by any ordinary legislation including the provisions of the Contempt of Courts Act, 1971 and the inherent power of the Supreme Court is elastic, unfettered and not subjected to any limitation.

In E.M.S. Namboodiripad v. T.N. Nambiar, AIR 1970 SC 2015, it has been held that the State or the Chief Minister may be liable for contempt of Court.

II. Original Jurisdiction

1) The Exclusive original jurisdiction (Art. 131).

There are certain cases which fall within the exclusive jurisdiction of the Supreme Court. It means that all such cases begin or originate in the Supreme Court, only. It also means that such cases cannot be initiated in any other court. The cases or disputes that come under the original jurisdiction are given below:

i) a) Disputes between the Government of India on the one side and one or more States on the other side.

b) Disputes between the Government of India and one or more States on one side and one or more States on the other side.

c) Disputes between two or more States.

ii) The Supreme Court has been invested with special powers in the enforcement of Fundamental Rights. In this connection, it has the power to issue directions or writs.

iii) Cases under Public Interests Litigation (PIL) can also be heard directly. (This is an extra Constitutional practice; there is no mention of PIL in the Constitution).

The disputes between different units of the federation i.e. between States and between States and Union are within the exclusive original jurisdiction of the Supreme Court. The original jurisdiction of the Supreme Court will be exclusive, which means that no other Court in India shall have the power to entertain any such suit. On the other hand, the Supreme Court in its original jurisdiction will not be entitled to entertain any suit where both the parties are not units of the federation. If nay suit is brought either against the State or the Government of India by a private citizen, that will not lie within the original jurisdiction of the Supreme Court but will be brought in the ordinary Courts under the ordinary law.

In M/s. Tashi Delek Gaming Solutions Ltd. And another v. State of Karnataka and others, AIR 2006 SC 661, the Court has observed that Article 131 of the Constitution will not be applicable where citizens or private parties either jointly or in alternatively with State.

2) Writ jurisdiction (Art. 32)

Writ : It is an order issued to a lower Court or a functionary of the State to take steps to restore rights of the people. An order or mandatory process in writing issued in the name of the sovereign or of a court or judicial officer commanding the person to whom it is directed to perform or refrain from performing a specified act

Article 32 of Constitution of India guarantees fundamental rights. Article 32(1) provides the means to go to Supreme Court for the enforcement of the fundamental rights. The Supreme Court is made the protector and guarantor of the fundamental rights.

PROTECTOR OF FUNDAMENTAL RIGHTS STRUCTURE OF GOVERNMENT

The Supreme Court has concurrent right with the High Courts to issue directions, orders and writs for enforcement of fundamental rights. These are in the nature of the writs of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto. These writs make the Supreme Court a protector and guarantor of fundamental rights. The idea is that in case of violation of a law or right, the Court may issue directions for compliance with the Constitution. Thus, the citizens of India are secure as far as fundamental rights are concerned.

1. Habeas Corpus :

High Court can cause any person who has been detained or imprisoned (this means violation of his fundamental right to liberty) to be physically brought before the court. The court then examines the reason of his detention and if there is no legal justification of his detention, he can be set free.

2. Mandamus :

The High Court orders a person, corporation, lower court, public authority or state authority to do something which is their duty to do.

3. Quo Warranto :

High Court may issue the writ which restrains the person or authority to act in an office which he/she is not entitled to. This writ is applicable to the public offices only.

4. Certiorari :

By this writ the High court can transfer a matter from a lower court to a higher court.

5. Prohibition :

The High Court may prohibit the lower courts such as special tribunals, magistrates, commissions, and other judiciary officers who are doing something which exceeds to their jurisdiction or acting contrary to the rule of natural justice.

The Supreme Court has the right to declare a law passed by the legislature null and void if it encroaches upon our fundamental rights. It has rejected much legislation, which violated fundamental rights. This shows how the Supreme Court has always served as the guardian of fundamental rights.

3) Disputes relating to election of a president or Vice President (Art.71)

The Supreme Court has original jurisdiction to decide all doubts and disputes arising out of or in connection with the election of a President or Vice President and its decision will be final.

4) Transfer of cases (Art. 139-A).

As per Article 139-A, which was inserted by 42nd Amendment Act, 1976, the Supreme Court has the original power to transfer the cases from one High Court to another High Court on the application of the Attorney-General or suo motu transferring of a case from one High Court to another High Court.

III) Appellate Jurisdiction

The Supreme Court is the highest Court of Appeal in the country. The power of a superior/higher court to hear and decide appeals against the judgment of a lower court is called appellate jurisdiction. The Supreme Court has vast appellate jurisdiction. It hears appeals against the judgment of the High Courts. Thus, it is the highest and the final Court of Appeal. If one of the parties to a dispute is not satisfied with the decision of the High Court, one can go to the Supreme Court and file an appeal. The appellate jurisdiction of the Supreme Court can be divided into the following categories:

1) Interpretation of the Constitution (Art. 132)

Article. 132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.- (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Explanation : For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

Article 132 deals with the appellate jurisdiction of the Supreme Court in constitutional case. It must be read with Article 134A, (inserted by the Constitution (44th Amendment) Act, 1978) under which, inter alia, if a substantial question of interpretation of the Constitution is involved, the High Court must grant a certificate. Under Article 134-A, the High Court can grant a certificate for appeal to the Supreme Court under Article either on its own motion or on „oral" application of the aggrieved party immediately after passing the judgment, decree or final order. Prior to this, the High Court could do so only on the application of the aggrieved party.

A constitutional case is neither a civil dispute, nor concerning a crime. It is a case arising out of different interpretations of Constitution, mainly regarding the fundamental rights. In such Constitutional Cases an appeal can be taken to the Supreme Court only if a High Court certifies that the matter in dispute involves a substantial question of law.

If the High Court denies a certificate of fitness to appeal to the Supreme Court, the Supreme Court can use its discretion and grant special leave to appeal to itself in any case it deems fit.

2) Civil Appellate jurisdiction (Art. 133).

Article 133 of the Constitution provides that :

Article. 133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.- (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A-

a) that the case involves a substantial question of law of general importance; and

b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

Disputes relating to property, marriage, money, contract and service etc are called civil cases. If a civil case involves a substantial point of law of public importance needing interpretation of the Constitution or law, an appeal against the High Court decision can be made to Supreme Court. Earlier the financial limit of such civil cases was Rs. 20,000/- but now according to the 30th Amendment of 1972, there is no minimum amount for taking a civil appeal to the Supreme Court. If substantial question of interpretation of law or Constitution is involved, appeal may be made against the decision of the High Court.

In Prasanna Kumar Ray Karmakar v. State of West Bengal, AIR 1996 SC 1517, it has been observed that there is no ground for restricting the expression 'civil proceedings' to those proceedings which arise out of civil suit; nor is there any rational basis for excluding from its purview, proceedings instituted and tried in the High Court in exercise of its jurisdiction under Article 226, where the aggrieved party seeks the relief against infringement of civil rights by authorities purporting to act in the exercise of the powers conferred upon them by revenue statutes, or disputes between landlord and tenant.

3) Criminal Appellate jurisdiction (Art. 134).

Article 134 of the Constitution provides that :

Article. 134. Appellate jurisdiction of Supreme Court in regard to criminal matters : (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court —

a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

c) certifies under article 134A that the case is a fit one for appeal to the Supreme Court :

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

An appeal may be brought to the Supreme Court against a High Court decision in a criminal case in a number of situations. Firstly, if a High Court sets aside an appeal or an order of acquittal passed by a lower court and awards death sentence to the accused, he may bring an appeal to the Supreme Court by right.

Secondly, appeal can also be made to the Supreme Court if the High Court withdraws a case from a lower court to itself, declares the accused guilty and awards death sentence.

In this situation also appeals can be made as a matter of right and without certificate from the High Court.

The appeal in cases other than these two categories may also be brought to the Supreme Court provided the High Court grants a certificate that the case is fit for appeal to the Supreme Court.

In ***Babu v. State of U.P. AIR 1965 SC 1467***, it has been observed tha the High Court should grant the certificate only when the case involves a substantial question of law or principles. The certificate shuld not be granted if the question involved in the case of fact only.

In case where the High Court refuses to certify a case to be fit for appeal to the Supreme Court, one may seek special leave to appeal from the Supreme Court itself. The Supreme Court may grant such a special leave in its discretion but only in rare cases.

4) Federal Court's jurisdiction (Art. 135).

Article 134 of the Constitution provides that:

Article. 135. Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court : Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

Before the commencement of our Constitution, there was a Federal Court constituted under the Government of India Act, 1935. The Federal Court used to hear appeals from the High Courts. The Federal Court had the jurisdiction to entertain and hear appeals from the decree of the High Court which reversed the lower Court's decree as regards properties of the value of more than Rs. 10,000/-

Under the Constitution of India, Supreme Court shall exercise its jurisdiction under Article 135 if two conditions are satisfied.

a) Article 133 and 134 do not apply to the case;

b) It is a case in regard to which the Federal Court had the jurisdiction to entertain appeals.

5) Special leave to appeal jurisdiction (Art. 136).

Article 164 of the Constitution provides that :

Article. 136. Special leave to appeal by the Supreme Court.-(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

While the Constitution provides for regular appeals to the Supreme Court from decision of the High Courts in Articles 132 to 134, there may still remain some cases where justice might require the interference of the Supreme Court with decisions not only of the High Courts outside the purview of Articles 132 to 134 but also of any other court or tribunal within the territory of India. Such residuary power outside the ordinary law relating to appeal is conferred upon the Supreme Court by Article 136.

Article 136 vest in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals by granting special leave, against any king of judgment or order made by granting special leave, against any kind of judgment or order made by any Court or tribunal (except a military tribunal) in any proceedings and the exercise of the power is left entirely to the discretion of the Supreme Court unfettered by any restrictions and this power cannot be curtailed by any legislation short of amending the Article 136. This Article is worded in the widest possible terms.

In Ashok Nagar Welfare Association v. R.K. Sharma, AIR 2002 SC 335, it has been held that Article 136 does not confer a right of appeal on any party, but if confers a discretionary power on the Supreme Court to interfere in suitable cases.

The power of a superior/higher court to hear and decide appeals against the judgment of a lower court is called appellate jurisdiction. The Supreme Court has vast appellate jurisdiction. It hears appeals against the judgment of the High Courts. Thus, it is the highest and the final Court of Appeal. If one of the parties to a dispute is not satisfied with the decision of the High Court, one can go to the Supreme Court and file an appeal. The appeals can be filled in Civil, Criminal and Constitutional cases.

M. Advisory jurisdiction (Art. 143).

The Supreme Court of India exercise the powers to give advisory opinion to the President as provided in Article 143 of the Constitution of India.

Article 143 of the Constitution provides that :

Article. 143. Power of President to consult Supreme Court : (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

This power implies Court's right to give advice, if sought. Under advisory jurisdiction, the President of India may refer any question of law or public importance to Supreme Court for its advice. But the Supreme Court is not bound to give advice. In case, the advice or the opinion of the Court is sent to the President, he may or may not accept it. The advice of the Court is not binding on the President. So far, whenever the Court has given its advice, the President has always accepted it.

In re Special Courts Bill, AIR 1979 SC 478, it has been observed that the President may for the opinion of the Supreme Court, refer to the Supreme Court any question (whether of law or fact) which is of such a nature and of such public importance that it is expedient to obtain of such public importance is an issue to be determined by the President and it is not open to question. The satisfaction of the President on this issue would justify the reference of the question of law or of fact to the Supreme Court for its opinion. It is not necessary that the question referred to the Supreme Court for opinion must have arisen actually, it may be referred if the President is satisfied that such question is likely to arise.

In re Kerala Education Bill, Air 1958 SC 533, the Supreme Court, as regards the issue, whether or not the President is bound by the advisory opinion of the Supreme Court stated that the President is not bound by the

opinion and he may or may not accept the opinion of the Supreme Court.

In Dr. M. Ismail Faruqui v. Union of India, (1994) 9 SCC 360, the Supreme Court has observed that it can decline to answer the question referred to under Article 143(1) regarding the question whether a temple existed at the spot, where Babri Masjid was built at Ayodhya.

V. Miscellaneous

GUARDIAN OF THE CONSTITUTION

The Constitution of India is the supreme law of the land and the Supreme Court is its interpreter and guardian. It does not allow the executive or the Parliament to violate any provision of the Constitution. It can also review any action of the Government, which allegedly violates any provision of the Fundamental Rights. This power of the Supreme Court is called Judicial Review. If it finds violation of any provision of the Constitution, it may declare the concerned law as ultra-vires, or null and void. It is on the basis of this power of Judicial Review of the Supreme Court that it is called guardian of the Constitution. It is also called 'a champion of liberties' and 'a watchdog of democracy'. In this context the role and the functions of the Supreme Court are wide and constructive.

Review Power of Supreme Court (Art. 137).

Article. 137. Review of judgments or orders by the Supreme Court.-Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

It is a process through which judiciary examines whether a law enacted by a legislature or an action of the executive is in accordance with the Constitution or not. The power of the judicial review was first acquired by the Supreme Court of the United States. Now it is freely exercised by the Supreme Court of India and in many other countries. Our High Courts also exercise this power.

Judicial Review does not mean that every law passed by the legislature is taken up by the Supreme Court for review. It only means that the Court will review the law as and when it gets an opportunity. This is possible in two ways. First, the Court can review the law if its validity is challenged. The Supreme Court or High Court may get an opportunity to review a law in another situation also. If a person or institution feels that his/her rights are violated, or a certain benefit due to him under a law is being denied, the Court while examining such a petition may come to the conclusion that the law, under which relief is sought, is itself unconstitutional. Therefore, relief may not be granted.

In a democratic country like India the power of Judicial Review is an important guarantee of the rights of the people. Besides, the Supreme Court has been interpreting various provisions of the Constitution. Its rulings are treated as law of the land.

Enlargement of the jurisdiction of the Supreme Court (Art. 138)

Article. 138. Enlargement of the jurisdiction of the Supreme Court : (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

Parliament may, by law, enlarge the jurisdiction and powers of the Supreme Court with respect to any matter in List I (Union List) of the 7th Schedule of the Constitution in such condition no agreement with the State is necessary. However, if the matter stands outside List I (Union List) of the 7th Schedule, the jurisdiction of the Supreme Court can be enlarged by Parliament by law only if the State Government agrees.

Ancillary powers of Supreme Court (Art. 140)

Art. 140. Ancillary powers of Supreme Court : Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the

jurisdiction conferred upon it by or under this Constitution.

Rule making power (Art. 145).

Article. 145. Rules of Court, etc. : (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including —

a) rules as to the persons practising before the Court;

b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

cc) rules as to the proceedings in the Court under article 139A;

d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;

e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;

f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

g) rules as to the granting of bail;

h) rules as to stay of proceedings;

i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five :

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

In ***Pratap Chandra Parija v. Pramod Chandra Patnaik, AIR 2002 SC 296***, it has been held that the only situation when a two judge bench may refer a matter directly to a Constitution Bench when the provisions of clause (3) of Article 145 are attracted.

In ***Golak Nath v. State of Punjab, AIR 1967 SC 1643***, it has been held that the rules so made under Art. 145 cannot override the provisions of the Constitution.

Supreme Court as a custodian of the civil liberties and in particular of the fundamental rights.

The Right to Equality is an important right, which ensures equality before law. The Right to Equality also means absence of special privileges and inequality of treatment. So, the Supreme Court in the name of Protective

Discrimination has justified the benefits or concessions in the form of reservations or relaxation of eligibility conditions.

The Right to Freedom has given various kinds of freedoms to all of us. But the freedom of press was not mentioned in the Constitution. It was decided by the Supreme Court that freedom of press as a right is implied in right to freedom of expression. Thus, the Court expanded the right to freedom.

The Supreme Court has regarded the Right to Know as an important right to be able to take part in the participatory process of development and democracy. The Court had ruled that the Right to life in, Artile 21 implies and includes the right to education and clean environment also.

Regarding the delay in deciding the cases, the Supreme Court has held that delay in trial constitutes denial of justice. It has also laid down that speedy trial, release on bail of under trials, free legal aid to the poor and accused are also the fundamental rights.

The Supreme Court has used its power of judicial review and given various historic decisions to safeguard the rights of the individuals. It has stood guard of linguistic rights of minorities, religious rights of the people, welfare of the workers and daily wage earners.

If has also taken action to protect bonded labour, prevent exploitation of women, children and deprived sections of society.

No doubt, the Supreme Court through its power of judicial review has guarded our rights in various walks of life. The Supreme Court has given momentous decisions. Through, what is called "judicial activism", the Court has given such rulings as compulsory use of CNG fuel for the use of public transport vehicles in Delhi so that pollution could be brought under control. Similarly, for the protection of lives of people, it has made the use of helmets compulsory for two-wheeler users, and even the pillion riders.

The power of judicial review is an important guarantee of the rights of the people. It does not allow any violation of the Constitution. It has given several new interpretations to the Constitutional provisions. Thus, it has protected as well as expanded the Constitution.

PUBLIC INTEREST LITIGATION (PIL)

Earlier, the judiciary, including Supreme Court, entertained litigation only from those parties that were affected directly or indirectly by it. It heard and decided cases only under its original and appellate jurisdiction. But subsequently, the Court permitted cases on the ground Structure of Government of public interest litigation. It means that even people, who are not directly involved in the case, may bring to the notice of the Court matters of public interest. It is the privilege of the Court to entertain the application for public interest litigation (PIL). The concept of PIL was introduced by Justice P.N. Bhagwati. PIL is important because justice is now easily available to the poor and the weaker sections of society. The Supreme Court on the basis of letters received from journalists, lawyers and social workers and even on the basis of newspaper reports has taken up a number of matters of public interest. Let us take some examples to know how PIL has helped the people to get justice.

Under PIL, the rights of under trials held under illegal detention have been restored. The Supreme Court ordered the release of many detenues without trial on the ground of their personal liberty, which could not be curbed due to judicial or bureaucratic inefficiency.

The Supreme Court has also taken up steps to free bonded labourers, tribals, slum dwellers, women in rescue homes, children in juvenile homes, child labour etc.

In case of environmental pollution, the Supreme Court has ordered closure of a few factories near Kanpur, Delhi and other places.

With more and more decisions coming from the Supreme Court, the scope of PIL has widened. Now a person can approach the Court through a letter and if the Supreme Court believes that the matter is of public interest, it can consider the letter to be a petition and direct the hearing of the matter so that public interest may be protected. The process of PIL has led to increased judicial activism.

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HIGH COURT

Introduction :

The High Court is the second highest judicial authority in the country. It comes next to the Supreme Court of India. All the States have their respective High Courts, but in some cases, their maybe a single High Court for two or more states. High Courts of India are at the top of the hierarchy in each State. These courts have control over a state, a union territory or a group of states and union territories. Below the High Courts are secondary courts such as the civil courts, family courts, criminal courts and various other district courts. High Courts are established under Part VI, Chapter V of the Constitution of India. The High Courts are the principal courts of original jurisdiction in the state, and can try all offences including those punishable with death.

Article 214 of the Constitution of India states that there shall be a High Court for each of the states. In addition to that, Article 231 of the Constitution empowers the Parliament to set up one High Court for two or more states. For example, Gauhati High Court has jurisdiction over the State of Tripura and some other states of North- East India besides its jurisdiction over the State of Assam. However, works of most High Courts consists of Appeals from lowers courts and summons, petitions in terms of Article 226 of the Constitution of India. The precise jurisdiction of each High Court varies from each other.

A High Court is composed of a Chief Justice and as many other judges as the President of India may from time to time deem it necessary to appoint. The President can appoint additional judges also for a maximum period of two years. The number of judges in a Court is decided by the dividing the average institution of main cases during the last five years by the national average. The average rate of disposal of main cases per judge per year in that High Court is also taken into consideration. Ordinarily, the judges remain in office till the age of 62. In appointing the chief Justice of High Court, the President consults the governor and the Chief Justice of the Supreme Court. In appointing other Judges the President consults the Chief Justice of the Supreme Court and the Chief Justice of the High Courts of India.

Though the judges of the High Courts of India can remain in office till the age of sixty two, the judges may resign from their posts prematurely by applying in writing to the President. Besides, the judges of a High Court can be removed from office on various grounds like misdemeanour and corruption. The judges of the High Court may be transferred to another High Court of another state or Supreme Court. The judges of the High Court must be an Indian citizen and must have ten years of experience in adjudication or in legal practice. To ensure independence of judiciary, a special mode of removal of the judge has been prescribed in the Constitution of India. The proposal of removal of the judges must be passed by a two thirds majority of the members present in the Legislature. The proposal then shall have to be sent to the President for his assent. The President will then ask the judge to resign.

The High Courts of India act as the Court of Original Jurisdiction and the Court of Appellate Jurisdiction at the same time. As a Court of original Jurisdiction the High Court can try original cases. The Constitution has vested the High Court with Power of trying revenue cases also. The High Court in every state is the highest court of appeal in respect of any criminal or civil cases of the State. The High Court may either give its verdict on constitutional point only and leave it to the lower court concerned to pass verdict on the other issues or try the cases as a whole.

The Union Parliament has been empowered to either enlarge or restrict the jurisdiction of the High Court. The High Courts of India have the power of superintendence over all the lower Courts of a State except the Military Tribunals. The High Court can also issue various writs in order to safeguard the fundamental rights of the citizens of India. The writs are in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. Apart from all these, the High Court has the authority of making laws regarding the appointment of its own officials and other internal affairs. As the head of the judiciary in the state, the High Court has got administrative control over the subordinate in the state. The High Court is a Court of Record. This means that all records that regarding all cases that come to the High Court are kept with the extreme care possible and these records are later referred to in dealing with other cases. The 42nd Amendment Act of 1976 curtailed the jurisdiction of the High Courts in various spheres. However, the 44th Amendment Act of 1979 restored the original jurisdiction and

position of the High Courts.

Composition, Appointment of Judges and other Details

Article. 214. High Courts for States : There shall be a High Court for each State.

Article. 231. Establishment of a common High Court for two or more States :

1) Notwithstanding anything contained in the preceding provisions of this Chapter, Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

2) In relation to any such High Court :—

a) the reference in article 217 to the Governor of the State shall be construed as a reference to the Governors of all the States in relation to which the High Court exercises jurisdiction;

b) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts, be construed as a reference to the Governor of the State in which the subordinate courts are situate; and

c) the references in articles 219 and 229 to the State shall be construed as a reference to the State in which the High Court has its principal seat :

Provided that if such principal seat is in a Union territory, the references in articles 219 and 229 to the Governor, Public Service Commission, Legislature and Consolidated Fund of the State shall be construed respectively as references to the President, Union Public Service Commission, Parliament and Consolidated Fund of India.

Article 214 of the Constitution of India states that every State has a High Court operating within its territorial jurisdiction. But the Parliament has the power to establish a common High Court for two or more States (Article 231). For Instance, Punjab and Haryana have a common High Court. Similarly there is one High Court for Assam, Nagaland, Meghalaya, Manipur and Tripura.

In India, neither the State executive nor the State Legislature has any power to control the High Courts or two after its Constitution or organisation. It is only Parliament which can do it. In case of Union Territories the Parliament may by law extend the jurisdiction of a High Court to or exclude the jurisdiction of a High Court from any Union Territory, or create a High Court for a Union Territory.

Thus Delhi, a Union Territory, has a separate High Court of its own while the Madras High Court has jurisdiction over Pondicherry, the Kerala High Court over Lakshadweep and Mumbai High Court over Dadra and Nagar Haveli, the Kolkata High Court over Andaman and Nicobar Islands, the Punjab High court over Chandigarh.

Composition of High Courts :

We see that, Article 214 of the Constitution of India states that there shall be a High Court for each of the states

i) Every High Court shall consists of a Chief Justice and such other judges as the President of India may from time to time appoint.

ii) Besides, the President has the power to appoint

a) Additional Judges for a temporary period not exceeding two years, for the clearance of areas of work in a High Court.

b) an acting judge, when a permanent judge of a High Court (other than Chief Justice) is temporarily absent or unable to perform his duties or is appointed to act temporarily as Chief Justice.

But neither an additional nor an acting Judge can hold office beyond the age of 62 years (by 15th Amendment) Act age of retirement raised from 60 to 62.

In addition to that, Article 231 of the Constitution empowers the Parliament to set up one High Court for two or more states. For example, Gauhati High Court has jurisdiction over the State of Tripura and some other states of North- East India besides its jurisdiction over the State of Assam. However, works of most High Courts consists of Appeals from lowers courts and summons, petitions in terms of Article 226 of the Constitution of India. The precise jurisdiction of each High Court varies from each other.

A High Court consists of the Chief Justice and such other Judges as the President may appoiont from time to

time. In this way, the number of Judges in a High Court is flexible and it can be settled by the Central Executive from time to time keeping in view the amount of work before a High Court.

The question of justifiability of the adequacy of the Judge-strength in a High Court has been considered by the Supreme Court in ***Supreme Court Advocate-on-Record Association v. Union of India, AIR 1994 SC 268: (1993) 4 SCC 441***. The Court has emphasized that it is necessary to make a periodical review of the Judge strength of every High Court with reference to the felt need for disposal of ensure speedy justice. Article 216 casts a duty on the Central Executive to periodically assess the Judge strength of each High Court. Article 216 is to be interpreted not in isolation, but as a part of the entire constitutional scheme, conforming to the constitutional purpose and its ethos.

Appointment and Conditions of Office of a Judge of a High Court :

Every Judge of a High Court shall be appointed by the President. In making the appointment, the President shall consult the Chief Justice of India, the Governor of the State (and also the Chief Justice of that High Court in the matter of appointment of a Judge other than the Chief Justice).

Article 217(1) of the Constitution of India provides that :

1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years.

Provided that —

a) a Judge may, by writing under his hand addressed to the President, resign his office;

b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;

c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

As mentioned above, the provision of Article 217(1) says that the President appoints these judges after consulting the Chief Justice of India, the State Governor and the Chief Justice of the High Court concerned. The Central Executive and the State Executive provide the political input in the process of selection of the Judges.

Since the inauguration of the Constitution, the question has been considered by some authorities; how to ensure that Judges are selected on non-political considerations? It is thought that it is necessary for securing the independence and objectivity of the Judiciary that Judges be selected on merit and not on political considerations. Such an objective can be achieved only if the role of the political elements is reduced in the process of selection of the Judges of the High Courts.

Appointments and the Collegium :

As per the Constitution, as held by the court in the Three Judges' Transfer Cases - (S.P.Gupta v. Union of India, AIR 1982 SC 149, Supreme Court Advocates-on-Record Association & Others v. Union of India, (1993) 4 SCC 441, In re Presidential Reference, 'Appointment and Transfer of Judges Case III, AIR 1999 SC 1, October 28, 1998), a judge is appointed to the Supreme Court by the President of India on the recommendation of the collegium - a closed group of the Chief Justice of India, the four most senior judges of the court and the senior-most judge hailing from the high court of a prospective appointee. This has resulted in a Memorandum of Procedure being followed, for the appointments.

Judges used to be appointed by him on the advice of the Union Cabinet. After 1993 (the Second Judges Case ***Supreme Court Advocates-on-Record Association & Others v. Union of India, (1993) 4 SCC 441)***, no minister, or even the executive collectively, can suggest any names to the President, who ultimately decides on appointing them from a list of names recommended only by the collegium of the judiciary.

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Qualification :

Article 217(2) of the Constitution of India provides that :

A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and-

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession.

Explanation : For the purposes of this clause —

a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

aa)in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate;

b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.

A person to be appointed as a High Court Judge should be a citizen of India, he must have held a judicial office in India, or been an advocate of a high Court, for at least ten years. Unlike the Supreme Court, the Constitution makes no provision for appointment of a jurist as a High Court Judge.

Article 217 was amended by Constitution (42nd Amendment) Act, 1976 which made an eminent jurist eligible to become a judge of a High Court but the Constitution (44th Amendment) Act, 1978 has deleted this provisions. So an eminent jurist can be appointed as a Judge of the Supreme Court but he cannot be appointed as Judge of a High Court.

The expression „judicial office" has not been defined in the Constitution. However, Article 236(b) defines „judicial service" to mean District Judges and Judges subordinate thereto.

In the case of ***Shri Kumar Padma Prasad v. Union of India, AIR (1992)*** 2 SCC 428, the Supreme Court quashed the appointment of K.N. Srivastava as a Judge of the Gauhati High Court on the ground that he never held a judicial office before being appointed a Judge of High Court. The Court held that the holder of „Judicial Office" under Article 217(2) of the Constitution meant a person who exercises only judicial functions and rendered decision in a judicial capacity free from executive control.

Therefore, explanation to Article 217(2), it can conclude that a citizen of India who has worked for ten years as an advocate or judicial officer or held for ten years as an advocate or judicial officer or held for ten years the judicial office or the office as member of a tribunal or any post under the Union or a State requiring special knowledge of law or holding two or more categories of the above for ten years is qualified for appointment as judge of a High Court.

Disqualification of Judges

As a general rule, judges are required to disqualify themselves from hearing a case when the judge's impartiality might reasonably be called into question. There is a fundamental right to an impartial tribunal, and a biased judge robs a party of due process of law.

Situations Where Disqualification is Appropriate

The following example situations would warrant the judge to disqualify themselves :

- If the judge has a personal interest in the outcome of the case or has a family member or close relative who is a party to the case
- If the judge has more than a minimal financial interest in the outcome of the case
- If the judge has a close social relationship with a litigant, lawyer, or witness in the case
- If the judge was previously a lawyer on the same or a related case or was associated with the lawyers on the case or a related case
- If the judge has been a material witness on the case or a related case
- If the judge has prior personal knowledge of disputed facts in the case
- When the judge's campaign coordinator or campaign committee member is a party or lawyer in the case.

Removal of High Court Judge :

Article 217(1) of the Constitution provides that every judge of a High Court shall hold office, in the case of an additional or acting judge, as provided in Article 124, and in any other case, until he attains the age of sixty two years.

A High Court Judge may be removed from office in the same manner as a Supreme Court Judge, i.e. on the two Houses of Parliament passing a resolution for his removal, by a special majority, for proved misbehavior or incapacity.

The question of removal of a Judge before the age of retirement is an important one as it has a significant bearing on the independence of the judiciary. Article 218 of the Constitution of India, The provisions of clauses (4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

Article 124(4) of the Constitution of India provides that:

A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

Article 124(5) of the Constitution of India provides that :

Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

Tenure :

A Judge of the High Court shall hold office until the age of 62 years.

Every Judge, permanent, additional or acting, may vacate his office earlier in any of the following ways;

(i) by resignation in writing addressed to the President;

(ii) by being appointed a Judge of the Supreme Court or being transferred to any other High Court, by the President;

(iii) by removal by the President on an address of both Houses of Parliament (supported by the vote of 2/3 of the members present) on the ground of proved misbehaviour or incapacity,. The mode of removal of a Judge of the High Court shall thus be the same as that of a judge of the Supreme Court.

Any question as to the age of a High Court Judge is to be decided by the President after consulting the Chief Justice of India, and his decision is final. Thus, the jurisdiction to determine the Judge's age is vested exclusively in the President. Consultation with the Chief Justice of India is, however, mandatory, but his advice is not binding on the President.

No Court can claim jurisdiction to decide the question of age of a high Court Judge. No question of propriety, correctness or validlity of the decision by the President can be raised before a Court.

It has been held in the case of ***J. P. Mitter v. Chief Justice of Calcutta High Court, AIR 1965 SC 961***, that the president should follow natural justice, and before reaching his decision on the question, he ought to give to the judge concerned a reasonable opportunity to give his version and produce evidence in support of the age stated by him at the time of his appointment. How this should be done, is, of course, for the President to decide, but the requirement of natural justice that the Judge must have a reasonable opportunity in put before the President his contention, his version and his evidence, is obviously implicit in the provision itself.

Salary and Allowances of the Judges :

It is provided that the judges of the High Court shall draw such salaries and allowances, as the Parliament may by law fix from time to time. According to the revision in 1998 the salaries are: the Chief Justice Rs. 30,000 p.m.; any other judge Rs. 26,000 p.m. In addition they will also be entitled to receive other prescribed allow-ances. Further the salary was enhance by Parliament and Chief Justice gets a salary of Rs. 90,000 p.m. while the other judges are paid a monthly salary of Rs. 80,000. They are also entitled to free furnished accommodation. These pay and allowances cannot be changed to their disadvantage.

The salaries are not put to vote in the State Legislatures. This provision ensures that the judges remain insulated from any kind of political pressure or influence. The Judges however are barred from pleading or acting in a court except at the Supreme Court or a High Court other than the one in which he held office.

By providing the expenditure salaries and allowances the judges shall be charged on the consolidated fund of State Article 360 (4) (b).These cannot be reduced except in financial emergency. Nor can the allowances and rights be varied by Parliament to the disadvantage of a judge during his/her term of office.

Independence of Judges Ensured :

As in the case of the Judges of the Supreme Court, the Constitution seeks to maintain the indepen-dence of the Judges of the High Court's by a number of provisions :

(i) By laying down that a Judge of the High Court shall not be removed, except in the manner provided for the removal of a Judge of the Supreme Court (Article 218);

(ii) by providing that the expenditure in respect of the salaries and allowances of the Judges shall be charged on the Consolidated Fund of the State [Article 202 (3)(d)];

(iii) by specifying in the Constitution the salaries payable to the Judges and providing that the allow-ances of a Judge or his rights in respect of absence or pension shall not be varied by Parliament to his disadvantage after his appointment (Article 221) except under a Proclamation of Financial Emergency [Article 360 (4)(b)]

(iv) by laying down that after retirement a permanent Judge of High Court shall not plead or act in a Court or before any authority in India, except the Supreme Court and a High Court other than the -High Court in which he had held his office (Article 220).

Control of the Union over High Court :

The control of the Union over a High Court in India is exercised in the following matters :

(i) Appointment, (Article 217), transfer from one High Court to another (Article 222) and removal [Article 217(1)] and determination of dispute as to age of Judges of High Courts [Article 217 (3)];

(ii) the Constitution and organisation of High Courts and the power to establish a common High Court for two or more States (Article 231); and

(iii) to extend the jurisdiction of a High Court to, or to exclude it jurisdiction from, a Union Territory, are all exclusive powers of the Union Parliament (Article 231).

POWERS :

Power to punish for contempt of Court as Court of Record.

According to Article 215 of the Constitution of India, every High Court shall be a Court of Record and shall have all the powers including the power to punish for contempt of itself. The Court of Record is a Court whose records are admitted in evidence and cannot be questioned when they are produced before the Court. The power of the High Court to punish for contempt of itself is an extraordinary power. This power enables the Court to prevent and punish the act which undermines the confidence of the people, in the competency of integrity of the Judges, and, thus, this power is necessary to maintain the dignity of the Court. Hence this power should be exercised in accordance with the procedure prescribed by law.

Power of Superintendence :

Article 227 of the Constitution provides:

A High Court has also the power of superintendence over all Courts and Tribunals through out the territories in relation to which it exercises jurisdiction, except those dealing with the armed forces functioning in the State. In exercise of this power it may —

(i) Call for return from such Courts.

(ii) May issue general rules and prescribe forms for regulating the practice and proceedings of such Courts, and

(iii) Prescribe forms in which books and accounts are being kept by the Officers of any Court.

This power has made the High Court responsible for the entire administration of Justice in the State. It is both judicial as well as administrative in nature. The Constitution does not place any restriction on its power of superintendence over the subordinate Courts. It may be noted the Supreme Court has no similar power vis-a-vis the High Court.

The High Court have not only power to superintendence but also it is its duty to see that the inferior courts do what their duty requires and that they do it in a legal manner.

The power of superintendence has been conferred on the High Court so as to enable it to keep the courts and tribunals within the bound of their authority and jurisdiction.

Usually, the power of superintendence is not exercised if some alternative, however, the existence of alternative remedy does not preclude the High Court from exercising its power under Article 227 in exceptional cases.

In ***East India Commercial Co. v. Collector of Customs, AIR 1962 SC 1893***, the Supreme Court has held that the law declared by the High Court in the State is binding on authorities or tribunals under its superintendence, and they cannot ignore it either by initiating a proceedings or deciding the rights involved in such proceedings.

The power under Article 227 does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the court or tribunal.

In Mani v. Phiroz, AIR 1991 SC 1494, it has been observed that the High Court would not interfere with a finding of fact, within the jurisdiction of the inferior tribunal, except where it is perverse or not based on any material whatever, or the conclusion arrived at is such that no reasonable tribunal could possibly have come to, or it has resulted in manifesting justice.

Power of Transfer of Cases to High Court :

If the High Court is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of the Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may :—

(a) Either disposes of it. *OR*

(b) Determine the said question of law and return the case to the

Court from whom it had been withdrawn together with a copy of its judgment on such question and the said Court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

By vesting these powers in the High Court the framers of our Constitution have safeguarded the possible multiplicity of constitutional interpretation at the level of subordinate Court.

The High Court has also got ample powers to call for the records of any case from any subordinate Court to satisfy itself about the correctness and legality of the orders passed by the subordinate Courts.

The High Court may either be moved by any interested party to exercise its power of revision. Even without being so moved, it can suo moto call for records and pass necessary order.

Power to Transfer cases from Subordinate Courts :

Article 228 of the Constitution provides :

If the High Court is satisfied that a case pending in a Subordinate Court involves a substantial question of law as to the interpretation of the constitution, it may withdraw the case to itself and do either of the following two—

(i) it will dispose of the case; or

(ii) it will determine the question of law and return the case to the concerned court along with its judgement and direct that court to dispose of the case in conformity with this judgement.

The exercise of this power by this High Court serves a good purpose. It prevents multiple and conflicting interpretations of tile constitutions by Subordinate Courts.

The High Court has also the power to call for any records from any Subordinate Court to examine the orders passed by them. In exercising this power, the High Court seeks to ensure that the orders passed by the Subordinate Courts are legal and correct.

Article 228 does not mention 'tribunals' and therefore, the High Court cannot exercise the power to withdraw certain cases from tribunals. It can withdraw cases from subordinate courts only.

The High Court is the sole interpreter of the Constitution in a State and to deny to the subordinate courts a right to interpret the Constitution for the sake of attaining some degree of uniformity as regards constitutional decisions.

The High Court can exercise the power to withdraw cases from subordinate courts if the following conditions exists :

i. A case is actually pending in a court subordinate to the High Court.

ii. The case involves a substantial question of law as to the interpretation of the Constitution. The question of law must be as to the interpretation of the Constitution and it must be substantial. A question of law which has been settled by the decision of the Supreme Court cannot be called substantial and

iii. The High Court is satisfied that the determination of the question is necessary for the disposal of the case.

Control over its Officers and Employees :

Article 229 of the Constitution provides :

The High Court has complete control over its officers and employees. Appointments of officers and servants are to be made by the Chief Justice or such other Judge or Officer of the High Court as the Chief Justice may direct.

However, the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court except after consultation with the State Public Service Commission.

Subject to any of the Act of the State Legislature, the conditions of service of those officers and servants of the High Court are to be such as may be prescribed by rules made by the Chief Justice of the High Court or by some other Judge or Officer of the High Court authorised by the Chief Justice to be make such rules.

The power of appointment also includes powers to suspend or dismiss. The administrative expenses of the High

Court, including all salaries, allowances and pensions payable to its officers, are charged upon the Consolidated Fund of the State

Finally, a High Court is also a Court of Record. Its decision will be binding on its subordinate Courts. Its proceedings and decisions have evidential value and they cannot be questioned by the subordinate Courts. Further, it can punish for contempt of itself.

Some High Courts exercise jurisdiction over the Union territories. To make the exercise of this jurisdiction effective, the restrictions are imposed on the power of the State Legislatures to make law with respect to that jurisdiction. When a High Court exercises jurisdiction in relation to a Union territory, the Legislature of that State has no power to increase, restrict or abolish that jurisdiction of the High Court.

In ***H. C. Puttaswamy A v. Chief Justice of Karnataka High Court, AIR 1991 SC 295***, it has been held that rule made under Article 229 (1) and (2) proviso must be observed. An appointment made by the Chief Justice without consulting the Public Service Commission is not proper.

Jurisdiction of High Courts :

The constitution does not attempt detailed definitions or classification of the different types of juris-diction of the High Courts. It was presumed that the High Court's which were functioning with well- defined jurisdiction at the time of the framing of the Constitution would continue with it and maintain their position as the highest courts in the States.

The Constitution, accordingly, in Article 225 provides that subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on the Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

The jurisdiction of the High Court may be divided into following parts.

1. Original Jurisdiction.
2. Appellate Juridiction.
   i) Civil matters,
   ii) Criminal matters and
   iii) Revenue matters.
3. Writ Jurisdiction.

1. Original Jurisdiction :

The Constitution of India does not give a detailed description of the original jurisdiction of the High Court. It is accepted that the original jurisdiction of a High Court is exercised by issue of Writs to any person or authority including Government.

Article 226 of the Constitution vests in the High Court the power to issue writs for the restoration of fundamental rights. It reads, "Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them for the enforcement of any of the rights conferred by part III and for any other purpose".

This power of the High Court does not derogate the similar power conferred on the Supreme Court in Article 32 of the Constitution.

The original jurisdiction of the High Courts also extends to the matters of admiralty, probate, matrimonial and

contempt of Court cases. The High Courts have also full powers to make rules to regulate their business in relation to the administration of justice. All matters relating to revenues are included in the original jurisdiction of the High court. Besides, civil and criminal cases are also supposed to belong to the original jurisdiction. But only the High Courts at Kolkata, Mumbai and Chennai can have the first trial in civil and criminal cases. The original criminal jurisdiction of the High Court has, however, been abolished by the Criminal Procedure code, 1973. At present the criminal cases are tried in the city sessions Courts in Kolkata, Mumbai and Chennai.

These are the matters that can be directly brought to the High Court. Under the Code of Civil Procedure, a High Court can handle all civil suits unless barred by some act or law. Generally it is the High Court Rules of the respective High Courts which specify these details.

The High Courts are primarily courts of appeal. Only in matters of admiralty, probate, matrimonial, contempt of Court, enforcement of Fundamental Rights and cases ordered to be transferred from a lower court involving the interpretation of the Constitution to their own file, they have original jurisdiction.

The High Courts of Bombay, Calcutta and Madras exercise original civil jurisdiction when the amount involved exceeds specified limit. In criminal cases it extends to case committed to them by Presidency Magistrates.

For example, all the matters that exceed Rs. 1 crore can be brought to the High Court of Bombay. This has been mentioned in the Bombay High court (Original Side) Rules, 1980.

Appellate Jurisdiction :

The High Court is the highest court of appeal in the state. It has appellate jurisdiction in civil and criminal cases. In civil cases, its jurisdiction extends to cases tried by Courts of Munsifs and District judges. In the criminal cases it extends to cases decided by Sessions and Additional Sessions Judges.

Thus, the jurisdiction of the High Court extends to all cases under the State or federal laws as follows :.

a. In civil cases, appeal can be made to the High Court against the decisions of the District Judges and the Subordinate Judges.
b. Again, when any court subordinate to the High Court decides an appeal from the decision of an inferior court, a second appeal can be made to the High Court only on question of law and procedure.
c. Besides, appeal from the decision of a single Judge of the High Court itself also lies to the High Court. In criminal cases appeals against the decisions of :

A Sessions Judge or an Additional Sessions Judge, where the sentence is of imprisonment exceeding 7 years; or

Assistant Sessions Judge, Metropolitan Magistrate or other Judicial Magistrates in certain specified cases other than 'petty' cases can be made to the High Court.

Its jurisdiction can be enlarged by the Parliament and the State Legislature. The Parliament exercises exclusive power to make laws touching the jurisdiction and power of all Courts with respect to the subjects on which it is competent to legislate. It can also legislate on subjects enumerated in the Concurrent List.

Likewise a State Legislature has power to make laws touching the jurisdictions and powers of all Courts within the Stare with respect to all subjects enumerated in the State List and the Concurrent List. But as regards the subjects in the Concurrent List the Union law prevails in case of conflict.

While making an appeal it is to be made sure that the amount in concern is within the monetary limits on which the court can entertain a petition. These monetary values for appeals to High Court are specified in the High Court Rules of different High Courts. These High Court Rules also specify the types of orders against which these appeals can be made to it.

GROUNDS FOR AN APPEAL :

a. A judgement/decree can be challenged in the first appeal on varied grounds both on basis of facts of the case and as well the legal interpretation of various legal provisions involved.
b. The second appeal can be filed only if there exists a substantial question of law. In the case the question of law would be substantial if it is of general public importance or which directly and substantially affects rights of the parties.

No Appeal Can Be Filed in the Following Situations :

a. Against a decree/judgement which has been passed by the court with the consent of the parties

b. From a decree in any suit of the courts of small causes, when the value of the subject matter of the suit is less than Rs. 3000/-, unless it is a question of law

c. Where a decree/judgement is passed by a single judge of the High Court in second appeal, the said decree/judgement is not appealable.

3. Writ Jurisdiction :

Article 226 of the Constitution empowers every High Court, throughout the territories in relation to its which exercises jurisdiction to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari, or any of them, for the enforcement of any of the Fundamental Rights and for any other purpose.

The Constitution by Forty-second amendment omitted the provision "for any other purpose", but the Forty-fourth amendment has restored it. The peculiarity of this jurisdiction is that being conferred by the Constitution, it cannot be taken away or abridged by anything short of an amendment of the Constitution itself.

Although the Supreme Court and the High Courts have concurrent jurisdiction in the enforcement of Fundamental Rights, the Constitution does not confer to the High Court's the special responsibility of protecting Fundamental Rights as the Supreme Court is vested with such a power.

Under Article 32 the Supreme Court is made the guarantor and protector, of Fundamental Rights whereas in the case of High court the power to enforce Fundamental Rights is part of their general jurisdiction.

The jurisdiction to issue writs under these Articles is larger in the case of High Court in as much as while the Supreme Court can issue them only where a fundamental right has been infringed, a High Court can issue them not only in such cases but also where an ordinary legal right has been infringed, provided a writ is a proper remedy in such cases, according to well-established principles.

There are five types of writs :

1. Habeas Corpus :

High Court can cause any person who has been detained or imprisoned (this means violation of his fundamental right to liberty) to be physically brought before the court. The court then examines the reason of his detention and if there is no legal justification of his detention, he can be set free.

2. Mandamus :

The High Court orders a person, corporation, lower court, public authority or state authority to do something which is their duty to do.

3. Quo Warranto :

High Court may issue the writ which restrains the person or authority to act in an office which he/she is not entitled to. This writ is applicable to the public offices only.

4. Certiorari :

By this writ the High court can transfer a matter from a lower court to a higher court.

5. Prohibition :

The High Court may prohibit the lower courts such as special tribunals, magistrates, commissions, and other judiciary officers who are doing something which exceeds to their jurisdiction or acting contrary to the rule of natural justice.

(d) Court of Record :

The High Court is a court of record and has all the powers of such a court including the power to punish for contempt of itself. The two characteristics of a court of record are that the records of such a Court are admitted to be of evidentiary value and that they cannot be questioned when produced before any court and that it has

the power to punish for contempt of itself. Neither the Supreme Court nor the Legislature can deprive a High Court of its power of punishing contempt of itself.

In ***M. M. Thomas v. State of Kerala and another, AIR 2000 SC 540***, it has been held that High Court as a Court of Records has inherent power to correct the records.

In ***Bal Thackrey v. Harish Pimpalkhute and another, AIR 2005 SC 396***, it has been held that suo motu action for contempt by Supreme Court directly does not curtail the jurisdiction of the High Court.

APPLICATION FOR A STAY :

A stay on the execution of a decree can be granted, against the court which passed the decree, if an application is made to the effect before the expiration of the time allowed for filing an appeal against it. Such an application must disclose sufficient cause for granting the stay.

APPLICATION FOR A REVIEW :

a. A person aggrieved of a decree of a court may instead of filing an appeal seek review of the decree and judgement from the same court, which has made it. A Review can be sought in cases where no appeal is allowed from the original decree/judgement.
b. The procedure for making an application for review is similar to that of making an appeal. If it appears to the court that there is no sufficient ground for a review it can reject the application. But where the court opines that the application for review should be granted, it could grant the same and review its judgement after giving notice to the opposite party and enabling him to appear before it and submit its objections against the review.
c. An order of the court rejecting the review application is not appealable but an order granting such an application is appealable. The order or decree finally passed after a review is also appealable.

APPLICATION FOR A REVISION :

The High Court in exercise of its revisionary powers can call for the record of any case which has been decided by any of its subordinate courts in which no appeal lies thereto if it appears that the subordinate court has exercised :

a. A Jurisdiction not vested in it by law or
b. failed to exercise a jurisdiction vested in it by law or
c. acted in the exercise of its Jurisdiction illegally or with material irregularity.

The High Court in exercise of its revisionary powers can make any orders, as it thinks fit, but the High Court cannot vary or reverse any order deciding an issue unless such order is unjust or has a material and decisive bearing in the case of party applying for revision.

LIMITATION PERIOD :

Any appeal made to the High Court has to be brought to it within a specific duration after the passing of the order against which the appeal has been made. The various types of limitation periods are :

a. The appeal to a High Court from any decree or order of a subordinate court has to be filed within 90 days from the date of decree or order,
b. The appeal to a High Court against a decree or order of that High Court has to be filed within 30 days of the date of decree and order,
c. The period of limitation for seeking review is 30 days and
d. For revisionary jurisdiction of the High Court is 90 days.

COURT FEES :

The court fee in High Courts is specified in their respective High Court Rules and also in the Court Fees Act, 1870.

For the example the court fees to be paid in the Courts of Mumbai is specified in the Schedules in the Bombay Court Fees Act, 1959. The court fees to be paid depends on the total amount which has been claimed in the suit.

PROCEDURE AND DOCUMENTS :

The procedure of filing various documents in different courts is again specified in their High Court Rules. There are separate procedures for suits filed under Original and Appellate jurisdiction of the High Court.

For example for the Bombay High Court has different procedures for the Appellate and Original Jurisdictions of the High Court. For civil suits under the Original Jurisdiction of the High Court, Chapter IV - Institution of the suit' of The Bombay High Court (Original Side) Rules, 1980 lays down the elaborate procedure and also the documents required. The matters which come as an appeal, for them the procedure of filing an appeal is given in Part II - Procedure and Practice' of the Bombay High Court (Appellate Side) Rules, 1960.

The formats of various forms that need to be submitted can be found in the Schedules appended to the High Court Rules. For example: For the Bombay High Court, there is a 'Schedule of Forms' appended to the Bombay High Courts (Original Side) Rules, 1980.

HIGH COURTS AND SUBORDINATE COURTS :

Just below the Supreme Court, there are High Courts which are the highest courts of law in States. The High Courts are part of the Indian judiciary, and function under the supervision, guidance and control of the Supreme Court. As highest court in the State, a High Court supervises the subordinate courts in the State. The High Courts are mainly courts of appeal. These Courts hear appeals from numerous subordinate courts working at district level. The system of appointment of judges, their qualifications and the working of subordinate courts is under the direct control and supervision of the High Court of the State concerned

Qualifications and Appointment of Judges of District Judges.

Article. 233. Appointment of District Judges : (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

As per Article 236 of the Constitution the expression „Judicial Service" means a service consisting exclusively of person intends to fill the post of District Judge.

The judges of subordinate courts are appointed by the Governor in consultation with the Chief Justice of the High Court of the concerned State. These days, in most of the States judicial service officers including the magistrates are selected through competitive examinations held by the State Public Service Commission. They are finally appointed by the Governor.

In ***M. S. Jain v. State of Haryana, AIR 1977 SC 276***, it has been observed that the final appointment of District Judges under Article 233 is within the exclusive jurisdiction of the Government after consultation with the High Court. The High Court recommends the names of the persons for appointment, but it is not obligatory on the Governor to accept the recommendation. Nor is the Government bound to give reasons for not accepting the recommendation of the High Court.

In ***Prakash Singh Badal v. State of Punjab (2007) 1 SCC 1***, it has been observed that the control of High Court over subordinate judiciary is comprehensive, exclusive and effective and it is to subserve a basic feature of the Constitution i.e. independence of judiciary.

Any person who has been an advocate for at least seven years or one who is in the Structure of Government service of the State or the Central Government is eligible to be a judge of the District Court provided he/she possess the required legal qualifications.

Control over subordinate Courts :

All the lower courts function under the superintendence control and guidance of the High Court in the State.

Article.235. Control over subordinate courts : The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial

service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

The object of Article 235 is to secure judicial independence by making judicial officers free from control of the executive.

The initial appointment and promotion of a District Judge have been vested in the Government under Article 233, but after they are appointed or promoted to be the District Judge they come under the control of the High Court. Conformation of District Judge is vested in the High Court and not in the Governor. The transfer of a District Judge is within the control of the High Court and the Governor has no authority in the matter.

The control over District Court and subordinate courts thereto is vested in the high Court by Article 235 including the posting and promotion and grant of leave to officers of the State Judicial services inferior to the post of District Judge. The High Court can hold enquiries, impose punishment other than dismissal or removal or reduction in rank which is with the Governor.

In ***State of Gujarat v. Ramesh Chandra, AIR 1977 SC 1619***, it has been held that Registrar of the Court of small causes is in judicial service and under the disciplinary jurisdiction of the High Court.

In ***Shashikanata S. Patil v. State, AIR 2000 SC 22***, it has been observed that the High Court functions through the Disciplinary Committee of Judges in respect of punishment of judicial officers. Such function involves the exercise of the powers envisaged in Article 235 of the Constitution. It is the constitutional duty of every High Court, on the administrative side, to guard over the subordinate judiciary functioning within the domain. While it is imperative for the High Court to protect the honest judicial officers against all itt-conceived and motivated complaints the High Court cannot afford to bypass any dishonest performance of a member of the subordinate judiciary.

High Courts hear appeals against the judgements of the subordinate courts. In civil cases, appellate jurisdiction extends to all such cases which involve an amount exceeding Rs. 5 lakh. Any party to a civil dispute, which is dissatisfied with the decision of the District Court may appeal against the decision of the District Court in the High Court. It Structure of Government also hears cases relating to patents and designs, succession, land acquisition, insolvency and guardianship.

The High Courts hear and decide appeals against decisions of the sessions courts in criminal cases. An accused who is found guilty by a sessions court, and awarded a sentence may file an appeal against the verdict of the sessions court. Sometimes even State may appeal against a sessions court judgement for enhancement of punishment. The High Court may accept the decision of the sessions court, or alter it and increase or reduce the sentence, or change the nature of sentence, or may acquit an accused. However, if an accused is awarded death sentence by the sessions court, the sentence must be confirmed by the High Court before the person is hanged to death. Even if the accused does not file an appeal against death sentence, the State refers it to the High Court for confirmation.

Superintendence of Subordinate Courts :

A High Court has the right of superintendence and control over all the subordinate courts in all the matter of judicial and administrative nature. In the exercise of its power of superintendence, the High Court may call for any information from the lower courts; may make and issue general rules and prescribe norms for regulating the practice and proceedings of these courts; and it may issue such directions, from time to time, as it may deem necessary.

It can also make rules and regulations relating to the appointment, demotion, promotion and leave of absence for the officers of the subordinate courts.

In each district of India there are various types of subordinate or lower courts. They are civil courts, criminal courts and revenue courts. These Courts hear civil cases, criminal cases and revenue cases, respectively.

Civil cases pertain to disputes between two or more persons regarding property, breach of agreement or contract,

divorce or landlord - tenant disputes. Civil Courts settle these disputes. They do not award any punishment as violation of law is not involved in civil cases.

Criminal cases relate to violation of laws. These cases involve theft, dacoity, rape, pick pocketing, physical assault, murder, etc. These cases are filed in the lower court by the police, on behalf of the state, againt the accused. In such cases the accused, if found guilty, is awarded punishment like fine, imprisonment or even death sentence.

Revenue cases relate to land revenue on agriculture land in the district.

Civil Courts :

The Court of the District Judge is the highest civil court in a district to deal with civil cases.

Very often the same court is called the Court of District and Sessions Judge, when it deals with both civil and criminal cases at the district level. The judge of this court is appointed by the Governor of the State.

Below the Court of District Judge, there may be one or more courts of sub judges in the district. Separate family courts, which are equal to courts of sub judge, have been established in districts to exclusively hear cases of family disputes, like divorce, custody of children, etc. Below them there are courts of munsifs and small causes courts which decide cases involving petty amounts. No appeal can be made against the decisions of the small causes courts. All these courts hear and settle civil disputes.

The Court of the District Judge (called the District Courts) hears not only appeals against the decisions of the courts of sub judges, but also some of the cases begin directly in the Court of District Judge itself. Appeals against the decisions of this court may be heard by the High Court of the State.

Civil Courts deal with cases pertaining to disputes between two or more persons regarding property, divorce, contract, and breach of agreement or landlord - tenant disputes.

Criminal Courts :

The Court of the Sessions Judge (known as Sessions Courts) is the highest court for criminal cases in a district. Below this court, there are courts of magistrates of First, Second and Third class. In metropolitan cities like Delhi, Calcutta, Mumbai and Chennai,

First Class Magistrates are called Metropolitan Magistrates. All these criminal courts are competent to try the accused and to award punishment, as sanctioned by law, to those who are found guilty of violation of law.

Criminal Courts hear criminal cases which are related to violation of laws. These cases involve theft, dacoity, rape, arson, pick-pocketing, physical assault, murder etc. In such cases the guilty person is awarded punishment. It may be fine, imprisonment or even death sentence.

Normally every accused is presented by the police before a magistrate. The magistrate can finally dispose off cases of minor crime. But, when a magistrate finds prima-facie case of serious crime he/she may commit the accused to the sessions court. Thus, sessions courts try the accused who are sent upto them by the magistrate concerned.

As mentioned above, an accused who is awarded death sentence by the sessions court, can be hanged to death only after his sentence is confirmed by the High Court.

Revenue Courts :

Revenue courts deal with cases of land revenue in the State. The highest revenue court in the district is the Board of Revenue. Under it are the Courts of Commissioners, Collectors, Tehsildars and Assistant Tehsildars. The Board of Revenue hears the final appeals against all the lower revenue courts under it.

INDEPENDENCE OF JUDICIARY IN INDIA :

INTRODUCTION

The framers of the Indian Constitution at the time of framing of our constitution were concerned about the kind of judiciary our country should have. This concern of the members of the constituent assembly was responded by Dr. B. R. Ambedkar in the following words :

"There can be no difference of opinion in the House that our judiciary must be both independent of the executive and must also be competent in itself. And the question is how these two objects can be secured".

The question that arises at first instance in our minds is that what made the framers of our constitution to be so much concerned about providing the separate entity to the judiciary and making it self competent.

The answer to this question lies in the very basic understanding that so as to secure the stability and prosperity of the society, the framers at that time understood that such a society could be created only by guaranteeing the fundamental rights and the independence of the judiciary to guard and enforce those fundamental rights. Also in a country like India, the independence of the judiciary is of utmost importance in upholding the pillars of the democratic system hence ensuring a free society.

It is a well-known fact that the independence of the judiciary is the basic requisite for ensuring a free and fair society under the rule of law. Rule of law that is responsible for good governance of the country can be secured through unbiased judiciary.

The doctrine of Separation of Powers which was brought into existence to draw upon the boundaries for the functioning of all the three organs of the state: Legislature, Executive and the Judiciary, provides for a responsibility to the judiciary to act as a watchdog and to check whether the executive and the legislature are functioning within their limits under the constitution and not interfering in each others functioning. This task given to the judiciary to supervise the doctrine of separation of powers cannot be carried on in true spirit if the judiciary is not independent in itself. An independent judiciary supports the base of doctrine of separation of powers to a large extent.

It is theoretically very easy to talk about the independence of the judiciary as for which the provisions are provided for in our constitution but these provisions introduced by the framers of our constitution can only initiate towards the independence of the judiciary. The major task lies in creating a favorable environment for the functioning of the judiciary in which all the other state organs functions in cooperation so that the independence of the judiciary can be achieved practically. The independence of the judiciary has also to be guarded against the changing economic, political and social scenario.

Whenever there is a talk regarding the independence of the judiciary, there is also a talk of the restrictions that must be imposed on the judiciary as an institution and on the individual judges that forms a part of the judiciary. In order to ensure smooth functioning of the system there must be a right blend of the two.

MEANING - THE INDEPENDENCE OF THE JUDICIARY

The meaning of the independence of the judiciary is still not clear after years of its existence. Our constitution by the way of the provisions just talks of the independence of the judiciary but it is no where defined what actually is the independence of the judiciary.

The primary talk on the independence of the judiciary is based on the doctrine of separation of powers which holds its existence from several years. The doctrine of separation of powers talks of the independence of the judiciary as an institution from the executive and the legislature.

The other meaning of the judicial independence can be found out by looking at the writings of the scholars who have researched on the topic. Scholars have followed the "constituent mechanism" (i.e. what constitutes the judiciary) to define the independence of the judiciary. Scholars try to define judiciary by talking about the independence of the judges which constitutes judiciary. Therefore the independence of the judiciary is the independence of the exercise of the functions by the judges in an unbiased manner i.e. free from any external factor.

So the independence of the judiciary can be understood as the independence of the institution of the judiciary and also the independence of the judges which forms a part of the judiciary.

Shetreet in his work tries to explain the words "Independence" and "Judiciary" separately, and says that the judiciary is "the organ of the government not forming a part of the executive or the legislative, which is not subject to personal, substantive and collective control, and which performs the primary function of adjudication".

The final outcome that can be derived from Shetreet's writings is that the independence of the judiciary as an institution and the independence of the individual judges both have to go hand in hand as the independence of the judiciary as an institution is not possible without the independence of the individual judges and is the institution of the judiciary is not independent, there is no question of the independence of the individual judges.

NEED FOR THE INDEPENDENCE OF THE JUDICIARY

The basic need for the independence of the judiciary rests upon the following points :

1. To check the functioning of the organs: Judiciary acts as a watchdog by ensuring that all the organs of the state function within their respective areas and according to the provisions of the constitution. Judiciary acts as a guardian of the constitution and also aids in securing the doctrine of separation of powers.
2. Interpreting the provisions of the constitution: It was well known to the framers of the constitution that in future the ambiguity will arise with the provisions of the constitution so they ensured that the judiciary must be independent and self-competent to interpret the provision of the constitution in such a way to clear the ambiguity but such an interpretation must be unbiased i.e. free from any pressure from any organs like executive. If the judiciary is not independent, the other organs may pressurize the judiciary to interpret the provision of the constitution according to them. Judiciary is given the job to interpret the constitution according to the constitutional philosophy and the constitutional norms.
3. Disputes referred to the judiciary: It is expected of the Judiciary to deliver judicial justice and not partial or committed justice. By committed justice we mean to say that when a judge emphasizes on a particular aspect while giving justice and not considering all the aspects involved in a particular situation. Similarly judiciary must act in an unbiased manner.

COMPONENTS – THE INDEPENDENCE OF THE JUDICIARY

The components of the independence of the judiciary as talked of here refers to some of the requisite terms and conditions which are so necessary that if they are absent, the independence of the judiciary also cannot exist.

It is very difficult to lay down certain set conditions as law is dynamic in itself and of the changing economic, political and social scenario.

CONSTITUTIONAL PROVISIONS – THE INDEPENDENCE OF THE JUDICIARY

Many provisions are provided in our constitution to ensure the independence of the judiciary. The constitutional provisions are discussed below:

Security of Tenure : The judges of the Supreme Court and High Courts have been given the security of the tenure. Once appointed, they continue to remain in office till they reach the age of retirement which is 65 years in the case of judges of Supreme Court (Art. 124(2)) and 62 years in the case of judges of the High Courts (Art. 217(1)). They cannot be removed from the office except by an order of the President and that too on the ground of proven misbehavior and incapacity. A resolution has also to be accepted to that effect by a majority of total membership of each House of Parliament and also by a majority of no less than two third of the members of the house present and voting. Procedure is so complicated that there has been no case of the removal of a Judge of Supreme Court or High Court under this provision.

Salaries and Allowances : The salaries and allowances of the judges is also a factor which makes the judges independent as their salaries and allowances are fixed and are not subject to a vote of the legislature. They are charged on the Consolidated Fund of India in case of Supreme Court judges and the Consolidated Fund of state in the case of High Court judges. Their emoluments cannot be altered to their disadvantage (Art. 125(2)) except in the event of grave financial emergency.

Powers and Jurisdiction of Supreme Court : Parliament can only add to the powers and jurisdiction of the Supreme Court but cannot curtail them. In the civil cases, Parliament may change the pecuniary limit for the appeals to the Supreme Court. Parliament may enhance the appellate jurisdiction of the Supreme Court. It may confer the supplementary powers on the Supreme Court to enable it work more effectively. It may confer power to issue directions, orders or writs for any purpose other than those

mentioned in Art. 32. Powers of the Supreme Court cannot be taken away. Making judiciary independent.

No discussion on conduct of Judge in State Legislature / Parliament : Art. 211 provides that there shall be no discussion in the legislature of the state with respect to the conduct of any judge of Supreme Court or of a High Court in the discharge of his duties. A similar provision is made in Art. 121 which lays down that no discussion shall take place in Parliament with respect to the conduct of the judge of Supreme Court or High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge.

Power to punish for contempt : Both the Supreme Court and the High Court have the power to punish any person for their contempt. Art. 129 provides that the Supreme Court shall have the power to punish for contempt of itself. Likewise, Art. 215 lays down that every High Court shall have the power to punish for contempt of itself.

Separation of the Judiciary from the Executive : Art. 50 contains one of the Directive Principles of State Policy and lays down that the state shall take steps to separate the judiciary from the executive in the public services of the state. The object behind the Directive Principle is to secure the independence of the judiciary from the executive. Art. 50 says that there shall be a separate judicial service free from executive control.

CONCLUSION

The independence of the judiciary as is clear from the above discussion hold a prominent position as far as the institution of judiciary is concerned. It is clear from the historical overview that judicial independence has faced many obstacles in the past specially in relation to the appointment and the transfer of judges. Courts have always tried to uphold the independence of judiciary and have always said that the independence of the judiciary is a basic feature of the Constitution. Courts have said so because the independence of judiciary is the pre-requisite for the smooth functioning of the Constitution and for a realization of a democratic society based on the rule of law. The interpretation in the Judges Case giving primacy to the executive, as we have discussed has led to the appointment of at least some Judges against the opinion of the Chief Justice of India. The decision of the Judges Case was could never have been intended by the framers of the Constitution as they always set the task of keeping judiciary free from executive and making it self-competent. The decision of theSecond Judges Case and the Third Judges Case is a praiseworthy step by the Court in this regard.

There is a saying that "Power tends to corrupt, and absolute power corrupts absolutely".

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