

Unit- 2 COI

Rajya Sabha: Functions and Powers of the Rajya Sabha

Rajya Sabha: Functions and Position of the Rajya Sabha

The Rajya Sabha, i.e., the Council of States, is the Upper House of the Union Parliament. It gives representation to the States of the India. However, the states do not enjoy an equal representation in the Rajya Sabha. These have been given representations on the basis of the size of their populations.

I. Composition of the Rajya Sabha:

The Rajya Sabha can have a maximum strength of 250 members; out of these 238 are to be the representatives of the States and remaining 12 members are to be nominated by the President from amongst persons who have achieved distinctions in the fields of art, literature, science or social services.

At present, the Rajya Sabha has 245 members 233 elected and 12 nominated. Members of each State Legislative Assembly, together elect their allotted number of MPs for Rajya Sabha. The President nominates 12 MPs of Rajya Sabha.

II. Method of Election:

The members of the Rajya Sabha are elected indirectly by the people. The people of each state elect the members of their state legislative assembly who then elect the members of Rajya Sabha by a method of proportional representation—single transferable vote system. Each State

Legislative Assembly elects as many representatives as have been allocated to it by the Constitution.

III. Qualifications for the membership of Rajya Sabha:

(a) He must be a citizen of India.

(b) He must be above the age of 30 years.

(c) He must possess all other qualifications as laid down by the Parliament.

(d) He must not hold any office of profit under any government.

(e) He should not be an insane or a bankrupt.

(f) He should not have been disqualified under any law of the Parliament.

Now any person residing in any part of India can contest election to the Rajya Sabha from any state. For this purpose residence of the concerned state is not essential.

IV. Tenure:

The Rajya Sabha is a quasi-permanent House. It is not subject to dissolution as a whole. One third of its members retire after every two years and elections are held only for the vacant seats. The tenure of each member of the Rajya Sabha is six years.

V. Sessions:

The President convenes the sessions of the Rajya Sabha usually along with the sessions of the Lok Sabha or whenever he feels it necessary. However, there cannot be a gap of more than six months within the two sessions of the Rajya Sabha. The President can call a special session of Rajya Sabha for

getting approved an emergency declaration at a time when Lok Sabha stands dissolved.

VI. Quorum for the Meetings of Rajya Sabha:

The quorum for the meetings of Rajya Sabha is 1/10th of its members. It means that at least 1/10th of the members of the Rajya Sabha must be present for carrying out the work of the House.

VII. Privileges of Members:

The members of the Rajya Sabha enjoy several privileges. They enjoy unrestricted freedom to express their views in the House. They cannot be arrested for any civil offence during, and 40 days before and after the session of the Rajya Sabha. For protecting the privileges of the members of the House, the Committee on Privileges has been in existence since the inception of the Rajya Sabha.

VIII. Chairman and Deputy Chairman of the Rajya Sabha:

The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. He is not a member of the House. However, he presides over its meetings and conducts its proceedings. During the absence of the Vice-President, the Deputy Chairman of the Rajya Sabha presides over the meetings. The Deputy Chairman is elected by the Rajya Sabha MPs from amongst themselves.

Powers and Functions of the Rajya Sabha:

1. Legislative Powers:

In the sphere of ordinary law-making the Rajya Sabha enjoys equal powers with the Lok Sabha. An ordinary bill can be introduced in the Rajya Sabha and it cannot become a law

unless passed by it. In case of a deadlock between the two Houses of Parliament over an ordinary bill and if it remains unresolved for six months, the President can convene a joint sitting of the two Houses for resolving the deadlock.

This joint sitting is presided over by the Speaker of the Lok Sabha. If the bill is passed in the joint sitting, it is sent to the President for his signatures. But if the deadlock is not resolved, the bill is deemed to have been killed.

2. Financial Powers:

In the financial sphere, the Rajya Sabha is a weak House. A money bill cannot be introduced in the Rajya Sabha. It can be initiated only in the Lok Sabha. A money bill passed by the Lok Sabha comes before the Rajya Sabha for its consideration. However, if within a period of 14 days, the Rajya Sabha fails to pass the bill, the bill is taken to have been passed by the Parliament irrespective of the fact whether the Rajya Sabha has passed it or not. If the Rajya Sabha proposes some amendments and the bill is returned to the Lok Sabha, it depends upon the Lok Sabha to accept or reject the proposed amendments.

3. Executive Powers:

The Union Council of Ministers is collectively responsible before the Lok Sabha and not the Rajya Sabha. Lok Sabha alone can cause the fall of the Council of Ministers by passing a vote of no-confidence.

Although the Rajya Sabha cannot remove the Ministry from its office yet the members of the Rajya Sabha can exercise some control over the ministers by criticising their policies, by asking questions and supplementary questions, and by moving adjournment motions. Some of the ministers are also taken

from the Rajya Sabha. Now the Prime Minister can also be from Rajya Sabha if the majority party in the Lok Sabha may elect/adopt him as its leader.

4. Amendment Powers:

Rajya Sabha and Lok Sabha can together amend the constitution by passing an amendment bill with 2/3 majority in each House.

5. Electoral Powers:

The Rajya Sabha has some electoral powers also. The elected members of the Rajya Sabha along with the elected members of the Lok Sabha and all the State Legislative Assemblies together elect the President of India. The members of the Rajya Sabha Lok Sabha together elect the Vice- President of India. Members of the Rajya Sabha also elect a Deputy Chairman from amongst themselves.

6. Judicial Powers:

(a) The Rajya Sabha acting along with the Lok Sabha can impeach the President on charges of violation of the Constitution.

(b) The Rajya Sabha can also pass a special address for causing the removal of a judge of the Supreme Court or of any High Court.

(c) The charges against the Vice-President can be leveled only in the Rajya Sabha.

(d) The Rajya Sabha can pass a resolution for the removal of some high officers like the Attorney General of India,

Comptroller and Auditor General and Chief Election Commissioner.

7. Miscellaneous Powers:

The Rajya Sabha and Lok Sabha jointly perform the following functions:

- (a) Approval of the ordinances issued by the President,
- (b) Ratification of an emergency proclamation,
- (c) Making any change in the jurisdiction of the Supreme Court and the High Courts, and
- (d) Making any change in the qualifications for the membership of the Lok Sabha and the Rajya Sabha.

8. Two Special Powers of Rajya Sabha. The Rajya Sabha enjoys two exclusive powers:

(i) The Power to declare a subject of State List as a subject of National Importance:

The Rajya Sabha can pass a resolution by 2/3rd majority of its members for declaring a State List subject as a subject of national importance. Such a resolution empowers the Union Parliament to legislate on such a state subject for a period of one year. Such resolutions can be repeatedly passed by the Rajya Sabha.

(ii) Power in respect of Creation or Abolition of an All India Service:

The Rajya Sabha has the power to create one or more new All India Services. It can do so by passing a resolution supported by 2/3rd majority on the plea of national interest. In a similar

way, the Rajya Sabha can disband an existing All India Service.

Position of the Rajya Sabha:

A study of the powers of the Rajya Sabha leads us to the conclusion that it is neither a very weak house like the British House of Lords nor a very powerful house as the American Senate. Its position is somewhat mid-way between the two. It has been less powerful than Lok Sabha but it has been not a very weak or insignificant House. Since 1950, the Rajya Sabha has been using its powers and functions in accordance with the provisions of the Constitution and performing its due role as the second House of Union Parliament.

Lok Sabha: Functions and Position of the Lok Sabha

The House of the People is popularly known as the Lok Sabha. It is the lower and powerful house of the Union Parliament. It represents the people of India. It is directly elected by all the people. It is fully democratic, representative and national House.

I. Composition:

The present membership of the Lok Sabha is 545, out of these 523 are elected by the people of all Indian States and 20 by the people of the Union Territories. The President nominates two members of the Anglo-Indian Community to the Lok Sabha. The maximum membership of the Lok Sabha stands fixed at 552 till the year 2010.

II. Method of Election of the Members of Lok Sabha:

The members of the Lok Sabha are elected on the basis of the following principles:

(a) Universal Adult Franchise:

Every citizen who has attained the minimum age of 18 years has the right to vote in the elections to the Lok Sabha. However, it is essential that his name should stand included in the voters list of his constituency.

(b) Reservation of Seats for SCs and STs:

Some constituencies are reserved for Scheduled Castes and Scheduled Tribes. These are called Reserved Constituencies. From each reserved constituency only candidates belonging to SCs or STs, as the case may be, can contest elections. However, all the voters of each such constituency exercise their right to vote for electing one candidate belonging SC or ST as their representative. Presently 131 seats stand reserved (84 for SCs and 47 for STs).

(c) Single Member Territorial Constituencies:

The whole country is divided into as many territorial constituencies as is the number of the members of the Lok Sabha to be elected. From each constituency one MP is elected.

(d) Secret Ballot:

The members of the Lok Sabha are elected by secret ballot and no one knows his voting decision. Now EVMs are being used in recording votes.

(e) Direct Election and Simple Majority Vote Victory system:

All the members of the Lok Sabha are directly elected by the people. Any voter can cast his vote to elect any candidate of his choice from his constituency. A candidate securing the largest number of votes from amongst all the contestants from

a constituency gets elected as the representative of the people of his constituency in the Lok Sabha.

III. Qualifications for Membership of the Lok Sabha:

- (1) He must be a citizen of India.
- (2) He must not be less than 25 years of age.
- (3) He must not hold any office of profit in the Government.
- (4) He should not have an unsound mind or be a bankrupt.
- (5) He should not be a declared offender of a grave crime by any court.
- (6) He should possess all such qualifications prescribed by the Parliament.

IV. Tenure:

The normal term of the Lok Sabha is five years. This term can be extended for one year during an emergency. But fresh elections to the Lok Sabha must be held within six months of the end of emergency. Further, the President can dissolve the Lok Sabha at any time when the Prime Minister may advise him to do so or when no party may be in a position to form a government. In this case also a new Lok Sabha has to be essentially elected within six months.

V. Sessions:

The President can call the session of Parliament at any time but the gap between two meetings of the Parliament cannot be

of more than six months. It means in one year, a minimum of two sessions of the Lok Sabha are essential.

VI. Quorum:

For a meeting of the Lok Sabha the presence of at least 1/10th of its total members is essential. If 1/10th of the members are not present in a meeting of the Lok Sabha, the Speaker of the House can adjourn the meeting for lack of quorum.

VII. Presiding Officers of Lok Sabha: Speaker and Deputy Speaker:

The Speaker is the chairman and presiding officer of the Lok Sabha. In its very first meeting, every new Lok Sabha elects one of its members as the Speaker and another one as the Deputy Speaker. The Speaker presides over the meetings of the Lok Sabha, conducts its proceedings and maintains discipline and decorum in the House. His authority is supreme in the House.

He acts as a neutral chairman in the House. In his absence these functions are performed by the Deputy Speaker. When both the Speaker and Deputy Speaker are not present in the House, one member from the panel of chairmen (List of some veteran and experienced MPs of the House) presides over the meeting.

VIII. Privileges of Members:

Lok Sabha MPs enjoy several privileges. They enjoy unrestricted freedom to express their views in the House. No action can be taken against them for anything said by them in the House. They cannot be detained for any civil offence

during and 40 days before and after the session of the Lok Sabha. Their arrest in criminal cases can be made only after the Speaker has been informed of it.

Powers and Functions of the Lok Sabha:

1. Legislative Powers:

An ordinary bill can become law only after it has been passed by both the Houses of Parliament. It can be introduced either in the Lok Sabha or the Rajya Sabha. When a bill is introduced and passed by the Lok Sabha, it is sent to the Rajya Sabha. After it has secured the approval of Rajya Sabha, it goes to the President for his signature.

After this it becomes a law. Although ordinary bills can be introduced in either of the two houses of Parliament, almost 90% of the bills are actually introduced in the Lok Sabha. In case the Rajya Sabha rejects a bill passed by the Lok Sabha and returns it with or without some amendments, the Lok Sabha reconsiders the bill.

If the Lok Sabha re-passes it and the Rajya Sabha is still not prepared to pass it, a deadlock occurs. If this deadlock remains unresolved for six months, the President summons a joint sitting of the two Houses. The decision of the joint sitting is accepted by both the Houses.

2. Executive Powers:

For all its work, the Council of Ministers is collectively responsible before the Lok Sabha. The leader of the majority in the Lok Sabha becomes the Prime Minister. Most of the ministers are from the Lok Sabha. The ministers remain in

office so long as they enjoy the confidence of majority in the Lok Sabha.

The Lok Sabha can remove the ministry from office by passing a vote of no- confidence against it. Thus, the life and death of the Ministry depends upon the Lok Sabha. The Lok Sabha maintains a continuous control over the Council of Ministers.

MPs can ask questions from ministers about their policies and activities of administration. They can criticise their policies. They can move and adopt several types of resolutions and motions (adjournment motion, call attention motion, censure motion and no-confidence motion) and can reject any bill of the government.

If the Lok Sabha:

- (i) Rejects any policy or decision of the Cabinet,
- (ii) Or disapproves the budget or a bill of the government, or
- (iii) Passes a vote of no- confidence against the Prime Minister, it is. Taken to be a vote of no-confidence against the entire Council of Ministers and it resigns in mass.

3. Financial Powers:

The Lok Sabha has vast financial powers. A money bill can be introduced only in the Lok Sabha. After having been passed by it, the money bill goes to the Rajya Sabha. Such a bill can be delayed by the Rajya Sabha for a maximum period of 14 days.

If the Rajya Sabha fails to pass a money bill and 14 days elapse from the date of the submission of the bill to it, the

money bill is deemed to have been passed by both the houses of Parliament. It is sent to the President for his signature.

In case of any dispute as to whether a particular bill is a money bill or not, the Speaker of the Lok Sabha gives the decision. His decision is final and it cannot be challenged in any court or even in the Rajya Sabha or the Lok Sabha. Thus, we can say that the Lok Sabha has the final control over the finances of state. No tax can be levied or collected or changed or abolished without the approval of the Lok Sabha. The fiscal policies of the government cannot be implemented without the consent of the Lok Sabha.

4. Judicial Powers:

The Lok Sabha also performs some judicial functions. The impeachment proceedings can be taken up against the President either in the Lok Sabha or the Rajya Sabha. The President can be removed from office only when an impeachment resolution is adopted by each of the two Houses with a 2/3 majority of its members.

The Lok Sabha also investigates the charges prepared by the Rajya Sabha against the Vice-President of India. The Lok Sabha and the Rajya Sabha can together pass a resolution for the removal of any judge of the Supreme Court or of a State High Court.

Both the Houses can jointly pass a special address and present it to the President for the removal of some high officers of the state like the Attorney General, the Chief Election Commissioner and the Comptroller and Auditor General of India. Lok Sabha can also take action against any member or any citizen who is held to be guilty of committing contempt of the House.

5. Electoral Functions:

The Lok Sabha also performs some electoral functions. The elected members of the Lok Sabha take part in the election of the President. Members of the Lok Sabha and the Rajya Sabha together elect the Vice-President of India. The members of the Lok Sabha also elect a Speaker and a Deputy Speaker from amongst themselves.

6. Some Other Powers of Lok Sabha:

The Lok Sabha and the Rajya Sabha jointly perform the following functions:

- (a) Approval of the ordinances issued by the President
- (b) Change of the boundaries of the states. State, creation of new states and change in the name of any state.
- (c) Changes in the jurisdiction of the Supreme Court and the High Courts.
- (d) Changes the qualifications of the members of the Parliament and State Legislatures.
- (e) Revising the salary and allowances of the members of Parliament,
- (f) The setting up of Joint Public Service Commission for two or more states.
- (g) Passing of a resolution for abolishing or creating the upper chamber of a state legislature,
- (h) Approval of a Declaration of Emergency.

Position of the Lok Sabha:

After studying the powers and functions of the Lok Sabha, we can say that the Lok Sabha is a very powerful House. The

Council of Ministers is responsible to the Lok Sabha and not to the Rajya Sabha. It remains in office so long as it enjoys the confidence of majority in the Lok Sabha.

The Lok Sabha has full control over the finances of the State. It dominates ordinary law-making bills as nearly 90% of the bills are introduced in it. The joint sitting method of resolving the deadlocks between the two Houses tends to favour the Lok Sabha. It also controls the executive.

The leader of majority in the Lok Sabha becomes the Prime Minister. Lok Sabha can cause the dismissal of the Council of Ministers by passing a vote of no-confidence or by rejecting a policy or law of the government. Hence, the Lok Sabha is a very powerful house of the Union Parliament.

Powers & Functions of Indian President

Powers & Functions of Indian President

Following are the powers and functions of the Indian President

1. Executive Powers
2. Legislative Powers
3. Financial Powers
4. Judicial Powers
5. Emergency Powers

Executive Powers

The supreme executive powers are vested by the President. He can directly exercise these powers and can do it through officers subordinate. As such all executive actions of the

Government of India will be expressed to be taken in the name of the-President.

1. He is responsible for the appointment the Prime Minister and on his advice other Ministers,
2. He makes rules for the smooth and easy transaction of the government business and distributes work and portfolios among the Ministers,
3. He has the power to make all important appointments like Governors of the States, Judges of the Supreme Court of India and High Courts of the Slates, the Auditor-General of India, Chairman and other members of the Union Public Service Commission, the members or the Election and Finance and other Commissions,
4. He is the Supreme Commander of the Armed Forces of India.
5. He also has the power to send Ambassadors. Commissioners and other diplomatic agents to other countries and to receive Ambassadors and other diplomatic representatives of foreign countries.
6. He makes and negotiate treaties and can declare war and conclude peace,
7. He governs the Union territories through chief Commissioners or Lieutenant Governors who are appointed by him.

Legislative Powers

The President is a part of the Parliament, which consists of the President and the two Houses. He summons and prorogues either House of the Parliament and dissolves the Lok Sabha. He nominates 12 members of the Council of States (Rajya Sabha). He addresses the Parliament when it first meets and at

the first session of each year. He can send messages to either House of Parliament. In case of disagreement over a particular bill, he can summon a joint 'meeting of both Houses of Parliament. Every bill passed by Parliament must receive his assent to become an Act. He can withhold his assent and send it back to the originating House. If the bill is again passed by Parliament, the President must give his assent. When Parliament not in session, the President can promulgate Ordinances which remain, enforced for 6 weeks. Certain State bills can be reserved by the Governor of a State for the assent of the President.

Financial Powers

The President causes the annual budget of the Union to be laid before Parliament. No demand for grant can be made except on the recommendation of the President. He has been authorized to distribute between the Union & the States shares from the Income Tax.

Judicial Powers

The President has the power to grant pardon, reprieves respites or reductions of punishment or to suspend and remit the sentence of any person convicted of any crime against the Union law or even sentence is of death.

Emergency Powers

The constitution has given vast emergency powers to the President. There are three occasions when he can proclaim "State emergency" viz

- a. Emergencies arising out of war of aggression or threat or both,
- b. Emergency arising out of failure or breakdown of the constitutional machinery in the states,
- c. Financial emergencies.

In the period of emergency the Federal Constitution is suspended and the State system becomes unitary, with the state subordinated to the Centre. Their autonomy disappears. During the period of such a proclamation, the state authorities are required to comply with such directions and to observe such financial policies as may be issued to them by the President.

How the office of the US President is different from that of the Indian President?

Manner of election

US president is more or less directly elected whereas the Indian president is indirectly elected. The advantage of the directly elected head of the government is the stability of the government. Unlike Indian Prime Minister American President is not overpowered by the “compulsions of coalition politics”

Head of the State

The US President is both the *Head of the State and Head of the Government*, whereas the Indian president is only the head of the State. President of the US is the *real executive*. Indian President like the British monarch is only a *titular head*.

Term of office

American President holds the office for *4 years* and he can seek re-election only *once*, while the Indian president holds the office for *5 years* and is eligible for re-election any number of times.

Responsibility to Legislature

The US president is *not* part of any legislature and is not responsible to the legislatures. In India, the Parliament includes the President and the two houses- Lok Sabha and Rajya Sabha.

Removal process

Both the American and Indian Presidents can only be removed from the office through *impeachment*. In India *either house* can initiate impeachment proceedings against the president and with the concurrence of the other house can impeach the President. In US the power to impeach solely lies with the *Senate* (upper house).

Emergency powers

Indian President yields huge powers during emergency situations. He can proclaim both external and internal emergencies. Indian President can declare emergency in a state, dissolve state legislature and dismiss the state council of ministers. During financial emergency, he has the power to reduce the salaries of all the government officials including

that of the Supreme Court and High Court judges. He has a formidable list of executives, financial and legislative powers which he can exercise on the advice of the cabinet during emergency.

Independence of office

The Indian President needs to act as per the advice of the Council of Ministers (CoM) while discharging his duties. The CoM takes all the decisions pertaining to the affairs of the country and executes them under the President's name.

In the US, the members of the cabinet are not members of the Congress and are not responsible to it. The cabinet members are appointed by the President and they are liable to be dismissed by the President. The American President has the power to determine the policy of his government independently without any external interference.

Veto power

Indian President has comparatively lesser veto power than the President of US. The President of US can veto a bill passed by the Congress. He needs to sign the bill if it is once again passed by *two-thirds majority* of both the houses.

The Indian President on the other hand can send the bill for reconsideration only *once*. If the bill is passed again even by a simple majority in the Parliament he is obliged to sign the bill.

Pocket veto

US President can exercise his pocket veto power by not signing the bill for *10 days* if he knows the session of the congress will end within 10 days. In such cases the bill dies.

Indian President can keep the bill for *indefinite period* as there is no constitutionally prescribed time limit to give his assent. The President can use his pocket veto if the fall of the government appears imminent. However, he has to act as per the advice of the new government and cannot take his own decision if the current government falls. Pocket veto was first exercised by the President Giani Zail Singh with respect to the *Indian Postal Bill* which was passed by the Rajiv Gandhi government. Subsequently, the new government withdrew the bill in 1989.

State bills

Certain state bills need the previous consent of the president and he possess absolute veto power with respect to some types of state bills. The US President does not have such powers.

Dissolving the legislature

The Indian President can dissolve the Parliament while the US President does not have such powers.

10 Essential Powers and Functions of the Prime Minister of India

The Prime Minister occupies a unique position of power and prestige. His powers and functions are:

1. He prepares the list of the council of ministers. The president cannot drop any name from this list;
2. The Prime Minister distributes the work to the different ministers;
3. He can dismiss an erring minister;
4. He presides over the meetings of the Cabinet;
5. He supervises and co-ordinates the working of various departments;
6. He is the main spokesman of the ministry;
7. He is a link between the council of ministers and the President.
8. He advises the President on the issue of making appointments;
9. He advises the President to dissolve the Lok Sabha; and
10. He plays a leading role in making all policy statements as also the preparation of the annual budget.

JUDICIARY

What is the independence of the judiciary?

Independence of the judiciary (also judicial independence) is the principle that the judiciary should be politically insulated

from the legislative and the executive power. That is, courts should not be subject to improper influence from the other branches of government, or from private or partisan interests.

What is the rule of Law and judicial independence?

The rule of law, and judicial independence as its essential component, is a political achievement. All judges have a duty to take care to preserve political and public support for the rule of law; senior judges in particular have a duty to explain.

Role of Judiciary

The Supreme Court of India is the highest authority of the judiciary. But, first of all, we need to understand the role of the judiciary system. Courts in India are responsible for handling and passing [decisions](#) on multiple issues

The Courts also have the right to punish people for the crimes they commit. Almost every social [situation](#) which needs a rule is managed by the judiciary, like-

- ***Dispute Resolution:*** Whenever there is a dispute, the courts intervene in providing [solutions](#). Whether it's a dispute between citizens, citizens, and government, or between two state governments or even the central and [state governments](#), the court is responsible for dispute [resolution](#).
- ***Judicial Review:*** The judiciary has the final hold on the [Constitution of India](#). As such, if there is any violation of the fundamentals of the constitution, the court can even overwrite laws passed by the [Parliament](#). This process is called Judicial Review.

- ***Upholding the Law and Enforcing Fundamental Rights:*** Almost all Fundamental Rights of Indian citizens are defined in our constitution. In case, any citizen feels that any of such rights are violated, they can approach their local high courts or the Supreme Court.

Structure of Courts in India

As per the judiciary system, there are three levels of courts in India

- ***District Courts:*** This is where most citizens go to for any dispute in their city or region. Each state comprises many districts and has its own district or subordinate courts. And, the entire district is presided over by the District Judge
- ***High Courts:*** Each state has its own High Court, which is most certainly the highest judicial authority of the state.
- ***Supreme Court:*** This is at the top of all state and district courts, presided by the Chief Justice of India. Because it is the highest authority of justice for the country, the decisions made by the Supreme Court stands above all other courts. The Supreme Court of India is located in Mandi House, New Delhi.

Appointment of Judges of the Supreme Court

According to the Constitution of India, the following are the rules for appointment of the Supreme court Judge.

- Every Judge of the Supreme Court shall be appointed by the President by warrant under his/her hand and seal after consultation with such of the Judges of the Supreme Court and of the High Court in the States as President

may deem necessary for the purpose and shall hold office until he attains the age of 65 years.

- Supreme Court held that the consultation with Chief Justice is not binding on the President. But the Court held that consultation should be effective.
- In Supreme Court Advocates-on-Record Association vs Union of India 1993, the Court states that the view of the CJI is binding on the President, the Court also held that while advising the President CJI is expected to consult two of the senior-most Judges.
 - CJI is the sole authority to initiate the process of appointment of Judges of the Supreme Court. In case of conflict of opinion between CJI and President, the view expressed by CJI will have primary.
- The crux is as follows:
 - In judicial appointments, it is obligatory for the President to take into account the opinion of the CJI.
 - The opinion of the CJI is binding on the Government. The opinion of the CJI must be formed after due consultation with a collegium of at least four senior-most judges of the Supreme Court.
 - Even if two judges give an adverse opinion, then he should not send the recommendation to the Government.

Eligibility Criteria for Supreme Court Judge

The Indian Constitution says in Article 124 [3] that in order to be appointed as a judge in the Supreme Court of India, the person has to fit in the following criteria:

- He/She is a **citizen of India** and

- has been for at least **five years a Judge of a High Court** or of two or more such Courts in succession; or
- has been for at least **ten years an advocate of a High Court** or of two or more such Courts in succession; or
- is, in the **opinion of the President**, a distinguished jurist.

Removal of Judges From Supreme Court

The Constitution of India also provides a set of regulations for the removal of the Supreme Court judge. **Article 124(4)** mentions those Removal regulations of the Supreme court judge as follows:

- 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 same session for such removal on the ground of proved misbehaviour or incapacity.

What is public interest litigation?

Public interest litigation is the use of the law to advance human rights and equality, or raise issues of broad public concern. It helps advance the cause of minority or disadvantaged groups or individuals.

Public interest cases may arise from both public and private law matters.

Public law concerns the various rules and regulations that govern the exercise of power by public bodies.

Private law concerns those cases in which a public body is not involved, and can be found in areas such as employment law or family law.

Public interest litigation is most commonly used to challenge the decisions of public authorities by judicial review.

Judicial review is a form of court proceeding in which a judge reviews the lawfulness of a decision or action, or a failure to act, by a public body. Judicial review is concerned with whether the law has been correctly applied, and the right procedures have been followed.

The value of public interest litigation

Public interest litigation can:

- . Clarify the law.**
- . Hold public bodies to account by ensuring that they make appropriate decisions, act fairly and transparently and within the remit of their powers.**
- . Help develop the law by giving judges the opportunity to interpret legislation.**
- . Give vulnerable people a voice by highlighting an important issue and providing a platform for advocating for their rights.**
- . Raise awareness of important issues encouraging public debate and media coverage.**

Judicial Activism

Judicial activism is the judicial philosophy that the courts can and should go beyond the words of the constitution or a statute to consider broader societal implications of its decisions.

It is sometimes used as an antonym of judicial restraint.

The definition of judicial activism and the specific decisions that are activist are controversial political issues.

The question of judicial activism is closely related to constitutional interpretation, statutory construction, and separation of powers.

What is Lokpal and Lokayuktas?

The **Lokpal and Lokayukta Act, 2013** mandated for the establishment of Lokpal at the Union level and Lokayukta at the State level.

Lokpal and Lokayuktas are statutory bodies and these do not have any constitutional status. These institutions perform the function and role of an “Ombudsman” (an official appointed to investigate individuals’ complaints against a company or organization, especially a public authority). They inquire into allegations of corruption

against certain public bodies/organizations and for other related matters.

Structure of the Lokpal

Lokpal is a multi-member body consisting of one chairperson and a maximum of 8 members.

The person to be appointed as the chairperson of the Lokpal must be either:

1. The former Chief Justice of India; or
2. The former Judge of the Supreme Court; or
3. An eminent person with impeccable integrity and outstanding ability, who must possess special knowledge and a minimum experience of 25 years in matters relating to:
 1. Anti-corruption policy;
 2. Public administration;
 3. Vigilance;
 4. Finance including insurance and banking;
 5. Law and management.

The maximum number of members must not exceed eight. These eight members must constitute:

- . Half members to be judicial members;
- . Minimum 50% of the Members should be from SC/ ST/ OBC/ minorities and women.

The judicial member of the Lokpal must be either:

- A former Judge of the Supreme Court or;
- A former Chief Justice of the High Court.

The non-judicial member of the Lokpal needs to be an eminent person with flawless integrity and outstanding ability. The person must possess special knowledge and an experience of a minimum of 25 years in matters relating to:

- Anti-corruption policy;
- Public administration;
- Vigilance;
- Finance including insurance and banking;
- Law and management.

Term and appointment to the office of Lokpal

Lokpal Chairman and the Members can hold the office for a term of 5 years or till they attain the age of 70 years, whichever is earlier. The members and the chairman of Lokpal are appointed by the president on the recommendation of a selection committee.

The selection committee consists of:

- The Prime Minister of India;
- The Speaker of Lok Sabha;
- The Leader of Opposition in Lok Sabha;
- The Chief Justice of India or any Judge nominated by Chief Justice of India;

- One eminent jurist.

The Prime Minister is the Chairperson of the selection committee. The selection of the chairperson and the members is carried out by a search panel of at least eight persons, constituted by the selection committee.

Jurisdiction and powers of Lokpal

The Jurisdiction of Lokpal extends to:

- Prime Minister, Ministers,
- Members of Parliament,
- Groups A, B, C and D officers,
- Officials of Central Government.

The Jurisdiction of the Lokpal extends to the Prime Minister, except in the cases of allegations of corruption relating to:

- International relations;
- Security;
- The public order;
- Atomic energy and space.

The jurisdiction of the Lokpal does not include ministers and members of Parliament in the matter relating to:

- Any speeches delivered in the Parliament or;
- For a vote cast in the Parliament.

Lokpal's jurisdiction also includes:

- . Every person who is or has been in charge (director/ manager/ secretary) of a body or a society set up by the act of central government,
- . Any society or body financed or controlled by the central government,
- . Any person involved in act of abetting,
- . Bribe giving or bribe-taking.

The Lokpal and Lokayukta Act states that all public officials need to furnish their assets and liabilities as well as their respective dependents.

The Lokpal also possesses the powers to superintendence over the CBI.

It also has the authority to give direction to CBI.

If a case is referred to CBI by the Lokpal, then the investigating officer in such a case cannot be transferred without the prior approval of the Lokpal.

The powers of a civil court have been vested with the Inquiry Wing of the Lokpal.

The Lokpal also possesses powers regarding the confiscation of assets, proceeds, receipts, and benefits arisen or procured by means of corruption in special circumstances.

It also has the power to make recommendations regarding the transfer or suspension of public servants connected with the allegations of corruption.

Lokpal is capable of giving directions to prevent the destruction of records during the preliminary inquiry.

Limitations

The institution of Lokpal came up as a much-needed change in the battle against corruption.

The Lokpal was a weapon to curtail the corruption that was spreading in the entire administrative structure of India. But at the same time, there are loopholes and lacunae which need to be corrected.

The appointing committee of Lokpal consists of members from political parties that put Lokpal under political influence.

There are no criteria to decide who is an 'eminent jurist' or 'a person of integrity' which manipulates the method of the appointment of Lokpal.

The Lokpal and Lokayukta Act 2013 failed to provide any kind of concrete immunity to the whistleblowers.

The provision related to the initiation of inquiry against the complainant, in cases where the accused is found innocent, leads to discouraging people from making complaints.

One of the biggest lacunae is the exclusion of the judiciary from the ambit of the Lokpal.

The Lokpal does not have any constitutional backing.

Also, there are no adequate provisions for appeal against the actions of Lokpal.

The states have complete discretion with respect to the specific details in relation to the appointment of Lokayukta.

The need for functional independence of the CBI has been catered to some extent, by the change brought forth in the selection process of CBI's Director, by the Lokpal and Lokayukta Act.

The Lokpal and Lokayukta Act also mandates that no complaint against corruption can be registered after a period of seven years from the date on which the mentioned offense is alleged to have been committed.

What are the powers and functions of the Governor?

The Constitution confers on the Governor a large number of powers which may be classified under the following heads-namely (1) Executive, (2) Legislative, (3) Financial. (4) Judicial, and (5) Miscellaneous.

(1) Executive Powers:

The Executive Power of the State is vested with the Governor who is empowered to exercise it either directly or through officers subordinate to him.

All executive actions of the State Government are done in his name. He is authorized to make rules regarding the way in which orders and instructions made and

executed in his name are to be authenticated.

His executive power includes the power of appointment. He appoints the Chief Minister of the State and other Ministers are appointed by him on the advice of the Chief Minister. He allocates the various portfolios among the members of the Council of Ministers.

He also appoints the Advocate-General, the Chairman and members of the Public Service Commission. He is consulted in the appointment of the Judges of the High Court of the State.

The Governors of Bihar, Madhya Pradesh, and Orissa have a special responsibility to see that the Councils of Ministers in their respective States have a Minister in charge of Tribal Affairs. The Governor exercises the general supervision over the State administration. He can submit for the consideration of the Council of Ministers any matter which in his opinion requires due consideration.

It is the duty of the Chief Minister to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the State and proposal for legislation. Under Article 167 (c) of the Constitution, the Governor is empowered to ask the Chief Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but it has not been considered by the Council.

Under normal circumstances the Governor is bound to act according to the advice of the Ministers. His executive power also extends to matters in which the State Legislature has power to make law.

(2) Legislative Powers:

The Governor is closely connected with the Legislative Assembly of the State. He summons, prorogues and dissolves the State Legislature. He convenes the State Legislature, addresses it in person, and sends messages to it. All bills passed by the Assembly in order to be placed in the Statute Book must receive the assent of the Governor. He may assent to a bill or withhold it and return it for the re-

consideration of the State Legislature. If the bill, which is returned by the Governor, is again passed with or without amendments, the Governor must give his assent thereto. He has, however, no power to return a Money Bill.

There is another provision under Article 200 of the Constitution, which empowers the Governor to reserve a Bill for the consideration of the President, when a bill is reserved by the Governor for the consideration of the President, the President shall declare either that he assents to the bill or that he withholds assent there from. However, there is no remedy to the Presidential veto over the bills reserved for his assent.

The Governor has the power of promulgating ordinance during the recess of the Legislature. The ordinances so promulgated cease to operate at the expiration of six weeks from the re-assembly of the State Legislature or earlier, if a resolution disapproving such an ordinance is passed by the State Legislature. The Constitution provides that the Governor

shall not, without instructions from the President, promulgate any such ordinance,

(a) If a Bill containing the same provisions would have required the previous sanction of the President for the introduction thereof into the legislature or

(b) If the Governor would have reserved Bill containing the same provisions for the consideration of the President, or

(c) If an Act of the State Legislature containing the same provisions would have been invalid unless having been reserved for the consideration of the President, it had received the assent of the President.

Thus, the ordinance making power of the Governor is limited in the above-mentioned specified subjects where he must obtain prior approval of the President. Further, this power of promulgating ordinance is to be exercised with the aid and advice of the Council of Ministers.

(3) Financial Powers:

The annual budget of the State is laid before the State Legislative Assembly with the approval of the Governor. He shall cause it

to be laid before the State Legislature. No proposals for higher taxation or greater expenditure can be discussed in the State Legislature without prior permission of the Governor. Besides, the Governor may place supplementary budgets before the Legislature. A State Contingency Fund has been created and is placed under the Governor of a State to authorize immediate expenditure pending future legislative sanctions.

(4) Judicial Powers and Immunity:

The Governor has power to pardon, commute and suspend sentences of any person affected on any offences against any law relating to matters to which the executive power of the State extends. These powers are not expected to be exercised arbitrarily except for good and sufficient reasons. Senior Judicial appointments in States are also made in the name of the Governor. The Governor is above law. He cannot be sued in any Court for civil and criminal matters. These immunities are generally accorded to all Heads of the States. He is also consulted in case of appointment of Judges of the High Court of the State.

(5) Miscellaneous Functions:

Apart from these powers, the Governor performs a few miscellaneous functions. He is the Ex-Officio Chancellor of the Universities of the State. Here he performs a number of functions, which are primarily of ceremonial character like the conferment of degrees, appointment of the Vice-Chancellor, etc. He may, patronize the Red Cross Society and similar philanthropic organizations. He receives the annual report of the State Public Service Commission and passes it to the Legislature for discussion.

Similarly, he receives the report of the Accountant-General of the State and submits it for the consideration of the Legislature. Under Article 356 (I) of the Constitution he is authorized to submit a report to the President for the proclamation of Emergency in the State, if he is satisfied that, the situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. During such Emergency, he may exercise tremendous powers as the agent of the President. The Governor of

Assam possesses a discretionary power for administration of Tribal Affairs in the State.

The Chief Minister: Appointment, Power, Function and Position

The Chief Minister is appointed by the governor. Art. 164 of the Constitution provides that there shall be a Council of Ministers with the Chief Minister at its head to aid and advise the governor.

Once the election to the Legislative Assembly is over the task of forming the government begins. The party with the majority in the Legislative Assembly (Vidhan Sabha) is entitled to form the government. It is upon his recommendation that ministers are appointed. However, some of the important powers and functions of the Chief Minister are as under:

Powers and Functions of the Chief Minister:

The Chief Minister holds a pivotal position in the working of the State Government. He has enormous powers and vast responsibilities.

1. To Aid and Advise the Governor:

The Chief Minister is the link between the Cabinet and the Governor. It is he who communicates to the Governor all decisions of the Council of Ministers. He has to furnish such information

relating to the administration of the State as the Governor may call for.

The Governor can submit to the consideration of the Council of Ministers any matter on which decision has been taken by a Minister but which has not been considered by the Council of Ministers.

The Governor appoints a large number of top officials of the State. He also summons and prorogues the sessions of State Legislature. All such powers are exercised by the Governor on the advice of the Chief Minister. The Chief Minister, however, has no right to give advice to the Governor in relation to the functions which he exercises in his discretion.

2. The Chief Minister is at the Head of the Council of Ministers:

As Head of the State Cabinet, the Chief Minister enjoys the following powers:

(i) Formation of the Ministry:

The other Ministers are appointed by the Governor on the advice of the Chief Minister. The Chief Minister has a free hand in preparing the list of his colleagues. The Governor may suggest the names of the persons to be included in the Ministry, but he cannot insist upon any person to be included in the Ministry. Assigning departments or portfolios to the Ministers is done by the Governor on the advice of the Chief Minister.

(ii) Removal of Ministers:

The Ministers hold office during the pleasure of the Governor. This, however, does not mean that the Governor can dismiss his

Ministers at his will. The Government is in fact dependent on the Chief Minister. Therefore, the Chief Minister can reconstruct his Ministry as and when he likes. He may ask anyone of his colleagues to resign. If he declines, he will be dismissed by the Governor.

(iii) The Chief Minister Presides over the Meetings:

As Chairman of the Cabinet, the Chief Minister has a position which enables him to impose his decision. It 'is he who controls the agenda for the Cabinet meetings. It is for the Chief Minister to accept or reject proposals for Cabinet discussion.

(iv) Co-ordinates the Working of various Departments:

The Chief Minister supervises and coordinates policies of the several Ministers and Departments. Several ministries are involved in the formulation and implementation of a policy.

The Chief Minister must bring these activities into reasonable relationship with one-another. In matters of public order, roads and bridges agriculture, land revenue and production, supply and distribution of goods, he plays a special role in directing the policy of the Government.

3. The Chief Minister is the Leader of the House:

The Chief Minister is the leader of the State Legislative Assembly. All principal announcements of policy are made by him. The Chief Minister intervenes in debates of general importance. He can appease an angry House by promising immediate relief or concessions when needed.

Position of the Chief Minister:

The Chief Minister's position is pre-eminent in the State governmental system. In practice, his position will be imposing only when his party commands a clear majority in the State Legislature.

When it is a coalition government, it becomes difficult to safeguard the principle of collective responsibility also. Much of the time and energy of the Chief Minister will, in that case, be wasted on keeping his team united and sufficiently disciplined.

Legislation system

In India, the bicameral legislature is present both at the central and the state level. In the states, the bicameral structure composes of the Legislative Assembly, Legislative Council and the Governor.

However, it can be found only in 5 states while the rest 23 states follow unicameral legislature, i.e. the Legislative Assembly and Governor. The **Legislative Assembly** or **Vidhan Sabha** is the lower house of the legislature, whose powers and functions are equal to the Lok Sabha working at the central level.

The powers and functions of the State Legislature

(a) Legislative Powers

The Legislature of each State is empowered to frame laws on all matters included in the **State List and the Concurrent List**.

But laws made by the State Legislature on the subject in the Concurrent List will be null and void in case they conflict with the laws of the Union on the same subject provided the relevant laws of the State Legislature have not obtained the assent of the President.

Thus, the Constitution has imposed certain restrictions on the powers of the State Legislature.

Another limitation on the power of the legislature is that during an emergency, the Parliament of India may make laws on the State List.

According to Article 249 of the Constitution, even in normal times, if the Council of States passes a resolution by Two-thirds majority that in the national interest the Union Parliament should make law on any matters in the State List, the Parliament of India is competent to make laws.

Further, the Governor at his discretion may reserve certain bills like acquisition of private property, bills seeking to impose restrictions on freedom of trade and commerce, bills affecting powers of High Courts, etc. for presidential assent.

Under such circumstances, the President of India may give assent to such bills or send them back for the reconsideration of the State Legislature.

If such bills are again passed by the State Legislature, the President is not bound to give his assent.

Thus the President can veto the bills in entirety, if he so desires. Thus the legislative power of the State legislative Assembly is limited.

(b) Financial Powers:

The Legislature of a State also controls the finances of a State. Without the legislative sanction, a single paisa cannot be spent. The budget is introduced every year in the State Legislature.

The State Legislature may pass, reduce, or reject the demands for grants made in the budget.

It is its duty to find ways and means to meet the budget expenditure.

Proposal for increase or decrease of taxes are to be approved in the Assembly.

In a bi-cameral legislature, the position of the Legislative Assembly superior to that of the Legislative Council in respect of financial matters. Excepting the expenditure charged on the Consolidated Fund of the State (which is non-votable) all other items of expenditure must be submitted to the Legislative Assembly in form of demands for grants. In financial matters, the Legislative Assembly is supreme in the State.

(c) Control over Executive

The Constitution introduced parliamentary type of Government in the Centre as well as in the States. Consequently, the Council of Ministers is collectively made responsible to the State Legislature.

The Legislature exercises supervision and control over the Ministers.

The common method used to make the Ministers responsible to the Legislature is through question, censure motion, amendment to Government's policy, vote of no confidence, etc.

There are also Committees, which exercise control on the Government on behalf of the State Legislature.

In controlling the Executive, the Legislative Assembly is more powerful than the Legislative Council.

A vote of no confidence in the Legislative Council may not lead to the resignation of the Council of Ministers. However, such a vote of no confidence if passed in the Legislative Assembly compels the Ministry to tender its resignation.

(d) Electoral Functions

The elected members of the Legislative Assembly constitute a part of the Electoral College provided for the election of the President of India.

The Legislative Assembly also elects the representatives of the State to the Rajya Sabha and 1/3rd of the members of the Legislative Council of the State concerned. It also elects its Speaker and Deputy Speaker. Legislative Council also elects a Chairman and Vice-Chairman from among its members to preside over the meeting of the Council.

(e) Constituent Functions

The State legislatures in India have no power to propose any amendment of the Constitution. All initiatives for the amendment of the Constitution are vested in the Union Parliament.

In America, both the Union and the States have equal power with regard to the amendment of the Constitution. However, there are certain categories of amendments of the Indian Constitution (such as the election of the Indian President, High Courts, the representation of States in the Parliament, Article 368 of the Constitution etc.) which are to be ratified by one half of the Legislatures. In these respects, the State Legislatures also take part in the amendment of the Constitution. The 15th and 16th Amendment Bills were referred to the State Legislatures. Only when they received the support of half of the State Legislatures, the amendment became valid. Thus unlike U.S.A., the State legislatures in India has limited voice in the amendment of the Constitution.

Powers and Functions of the High Court

The High Court is the highest court in a state in India. Articles 214 to 231 in the Indian Constitution talk about the High Courts, their organisation and powers.

The Parliament can also provide for the establishment of one High Court for two or more states.

For instance, Haryana, Punjab and the Union Territory of Chandigarh have a common High Court.

The northeastern states also have one common High Court. In addition, Tamil Nadu shares a High Court with Puducherry.

Currently, there are 25 High Courts in India.

The High Courts of Calcutta, Madras and Bombay were established by the Indian High Courts Act 1861.

What are the functions of the High Court?

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

High Court Jurisdiction

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

Original Jurisdiction

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

Appellate Jurisdiction

- In civil cases: an appeal can be made to the High Court against a district court's decision.
- An appeal can also be made from the subordinate court directly if the dispute involves a value higher than Rs. 5000/- or on a question of fact or law.
- In criminal cases: it extends to cases decided by Sessions and Additional Sessions Judges.
 - If the sessions judge has awarded imprisonment for 7 years or more.
 - If the sessions judge has awarded capital punishment.
- The jurisdiction of the High Court extends to all cases under the State or federal laws.
- In constitutional cases: if the High Court certifies that a case involves a substantial question of law.

High Court Powers

Apart from the above, the High Courts have several functions and powers which are described below.

As a Court of Record

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

Administrative Powers

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

Power of Judicial Review

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

Power of Certification

A High Court alone can certify the cases fit for appeal before the Supreme Court.

High Court Autonomy

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

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

- 5. Conduct of judges: Unless a motion of impeachment has been moved, the conduct of the High Court judges cannot be discussed in the Parliament.**
- 6. Retirement: After retirement, High Court judges cannot hold an office of emolument under the Government of India or that of a state. There is an exception to this clause, however, when, with the consent of the Chief Justice of India, retired judges can be nominated to a temporary office, and in the situation of emergencies.**