



# KTU NOTES

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**KTU STUDY MATERIALS | SYLLABUS | LIVE  
NOTIFICATIONS | SOLVED QUESTION PAPERS**

## **MODULE III**

### **SYLLABUS**

- The union executive-the President-The vice President-The council of ministers-the Prime Minister-Attorney general-functions
- The parliament-composition-Rajya Sabha- Lok Sabha-qualification and disqualification of membership-functions of parliament
- Union judiciary-The Supreme court-jurisdiction-appeal by special leave

### **UNION EXECUTIVE**

In India, the constitution establishes a Parliamentary form of government. The essence of the Parliamentary type of government is that the head of the state is the constitutional head of the real Union. Executive powers are vested in the council of Ministers. The prime minister is the head of the Council of Ministers. Though the Union Executive power is vested in the President he exercises the power with the aid and advice of the council of Ministers. Union executive consists of:

President  
Vice president  
Council of Ministers  
Attorney general of India

### **The President**

Article 52 provides that there shall be a President of India. Article 53 provides that the Executive power of the union shall be vested in the President and it shall be exercised by him in accordance with the Constitution either directly or through officers subordinates to him.

### **Election**

The President of India isn't directly elected by the people. Article 54, provides that the President shall be elected by a body consisting of:

1. The elected members of both Houses of parliament.
2. The elected members of the legislative assembly of the state in accordance with the system of proportional representation by means of a single transferable vote by secret ballot

### **Term of the office**

Article 56 says that the President shall hold the office for a term of 5 years from the date on which he enters upon his office. This period can be shortened by:

1. Resignation- by writing under his hands addressed to the vice president.
2. Death

3. By reprimand. The President may, by infringement of constitution be expelled from office by the prosecution in the way gives in Article 61. In India, no President has been reprimanded.
4. Re-election- A person who holds or who has held office shall be eligible for re-election to that office (Article 51).

### **Qualifications for President**

Article 58 lays down the qualification which an individual must possess for being elected to the office of the president of India.

1. He must be a citizen of India.
2. He must have completed the age of 35 years.
3. He must be qualified for election as a member of the House of the people; he must be registered as a voter in any Parliamentary constituency.
4. He must 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 the government of the union of any state.

### **Conditions of President's Office**

Article 59 says that the President can't be a member of either House of Parliament or of a House of the legislature of any state. The President shall not hold the other office of profit.

### **Oath of the President**

According to Article 60 before entering upon his office, the President has to take an oath or an affirmation in the presence of the Chief Justice of India, or in his absence, the Senior most Judge of the Supreme court available to preserve, protect and defend the constitution and the law and to devote himself to the service and well being of the people of India.

### **Procedure for impeachment of the President**

Article 61 of the constitution sets out the Procedure for the indictment of the President. The President is frequently far away from his office by a procedure of prosecution for the infringement of the constitution.

### **Procedure**

1. The impeachment charge against him may be initiated by either House of Parliament.
2. The charge must come in the form of a proposal contained in a resolution signed by not less than one-fourth of the member of the members of the house and moved after giving a minimum of 14 days advance notice.
3. Such a resolution must be passed by a majority of not less than two-thirds of the total membership of the House.
4. The charge is then an investigation by the other House. The President features a right to seem and to be represented at such investigation.
5. On the off chance that the other House after examination passes a goal by 66% larger part pronouncing that the charge is demonstrated, such goals will have the impact of expelling the President from his office from the date on which the goals are so passed.

## **Powers of the President**

### **Administrative Powers**

- He is the head of Union of India.
- All the administrative actions of the union are done or carried in his name.
- The appointment transfers and removal of the high official are done under his power and in his name.

### **Military Powers**

- The President is the incomparable authority of the Defense Forces of the Country.
- He has powers to declare war and peace.
- The President is empowered to regulate or control the exercise of the military powers by the president.

### **Diplomatic Powers**

- The President sends and receives Ambassadors and other diplomatic representatives.
- All treaties and international agreements are made in his name though subject to ratification by Parliament.

### **Executive Powers**

- According to Article 53, the Executive power of the Union vested in the President.
- According to Article 77, the Executive action of the government of India is to be taken in his name.
- Power in relation to the council of Ministers President appoints prime- minister and other members of the council.
- It is the duty of the prime ministers to communicate to the President all decisions of the council of Ministers and to furnish information, which he calls for.

### **Legislative Powers**

- Power in relation to House of Parliament, The President is an integral part of Parliament as Article 79 provides that Parliament shall consist of the President and two House to the council of state and House of people, therefore, the President has various important in relation to the parliament which is as under:
- President has the power to nominate 12 members in the council of state, i.e. Rajya Sabha under Article 80(1).
- To address and send messages to House Article 86, the President may address either or both the House of Parliament assembled together.
- To send messages as to pending Bill's Article 86(2), The President may send to either House of Parliament with respect to pending Bill's or otherwise.
- Assent to bill Article 111, every bill after being passed by both the House of the parliament it becomes law only after he gives his assent to the bill.

### **Powers to make rules**

President has the power to make rules according to the provision of the constitution.

### **Power to issue ordinances**

Article 123 empowers the President to issue ordinances, if at any time when both Houses of the Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may issue such ordinances as the circumstances appear to him require. The purpose of the provision is to meet some urgent situation while Parliament is not in session. An ordinance cannot violate the fundamental rights.

### **Judicial Powers**

- Under Article 124 (2), the judge of the Supreme Court or High court shall be appointed by the President.
- Under Article 76 the President shall appoint attorney general.
- Under Article 72 the President may grant pardon, reprieves, or remission of punishment or to suspend remit or sentence of any person convicted of any offences

### **Emergency Powers**

Article 352 to 360 of the constitution arms the President with enormous emergency powers, the emergence of envisaged under the constitution are of three kinds:

- Emergency arising out of the war, external aggression or armed rebellion.
- Emergency due to the failure of constitutional machinery in the state.
- Financial emergency.

### **Prime Minister**

Article 75 of the Indian Constitution mentions that Prime Minister is appointed by the President. There is no specific procedure for his election or appointment. Article 74(1) state that there shall be a Council of Ministers with a Prime Minister at the head to aid and advise the President.

President of India appoints a person as the Prime Minister who is either the leader of the party which holds a majority of seats in the Lok Sabha or is a person who is able to win the confidence of the Lok Sabha by gaining the support of other political parties. All other ministers are appointed by the President on the advice of the Prime Minister. President can also appoint Prime Minister on his own discretion but only when no party has a clear majority in the Lok Sabha.

### **Power and Functions of Prime Minister**

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

- **The leader of Country:** The Prime Minister of India is the Head of the Government of India.
- **Portfolio allocation:** The Prime Minister has the authority to assign portfolios to the Ministers.

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

### Qualifications for Prime Minister

To become an Indian prime minister one has to be

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

### Council of Ministers

The State Council of Ministers is the real executive of the state. The Governor acts as the constitutional executive head of a state and the Constitution provides for each state a Council of Ministers with the Chief Minister as its head for aiding and advising the Governor in the exercise of his functions.

### Types of Ministers

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

1. **Cabinet Ministers**—He is present and he participates in every meeting of the Cabinet.
2. **Minister of State with independent charge**—He is a Minister of State who does not work under a Cabinet Minister. When any matter concerning his Department is on the agenda of the Cabinet, he is invited to attend the meeting.
3. **Minister of State**—He is a Minister who does not have independent charge of any Department and works under a Cabinet Minister. The work to such Minister is allotted by his Cabinet Minister.
4. **Deputy Minister**—He is a Minister who works under a Cabinet Minister or a Minister of State with independent charge. His work is allotted by the Minister under whom he is working.

### Powers of Council of Ministers

The powers of the Council of Ministers include:

- Formulation of policies
- Administering and Maintaining Public order
- To aid and advice the President
- Execution of laws and decisions passed by the Union Government

## UNION LEGISLATURE

🏛️ The Union Legislature of India is not only the lawmaking body, but the center of all democratic political process.

🏛️ The Parliament is the central legislature and the legislature of the state is known as ‘State Legislature.’

🏛️ The Parliament of India is **bicameral** (i.e. consists of two houses) namely **Rajya Sabha** (the Council of States) and **Lok Sabha** (the House of the People).

### **Rajya Sabha**

🏛️ The Rajya Sabha is an indirectly elected body and represents the States of India.

🏛️ The elected members of State Legislative Assembly elect the members of Rajya Sabha.

🏛️ In India, states with larger size of population get more representatives than states with smaller population. For example, Uttar Pradesh (the most populated state) sends 31 members to Rajya Sabha; on the other hand, Sikkim (the least populated state) sends only one member to Rajya Sabha.

🏛️ The number of members to be elected from each State has been fixed by the fourth schedule of the Constitution.

🏛️ Members of the Rajya Sabha are elected for a term of **six** years and then they can be re-elected.

🏛️ Members of Rajya Sabha are elected in such a manner that they do not complete their tenure altogether; rather after every two years, one-third member complete their term and elections are held for those one-third seats only.

🏛️ Likewise, the Rajya Sabha never gets fully dissolved and hence, it is known as the **permanent House** of the Parliament.

🏛️ Apart from the elected members, the President appoints **12** members from the fields of literature, science, art, and social service.

### Lok Sabha

Lok Sabha is composed of representatives of the people chosen by direct election on the basis of the adult suffrage. The maximum strength of the House envisaged by the Constitution is 552, which is made up by election of up to 530 members to represent the States, up to 20 members to represent the Union Territories and not more than two members of the Anglo-Indian Community to be nominated by the President, if, in his/her opinion, that community is not adequately represented in the House. 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.

### **Functions of the Parliament**

1) **Legislative Powers-** The primary function of Parliament is a law making function. Lok Sabha plays an important part. It can pass bills concerning to those entire subject which have been included in Union and Concurrent list. No bill can become law unless it has been passed by Lok Sabha. In case of any disagreement between the two Houses, the will of Lok Sabha will prevail in joint sitting with the Rajya Sabha because Lok Sabha has more members than Rajya Sabha.

2) **Executive Powers-** According to parliamentary form of government executive is responsible to the parliament for its acts and policies. Hence parliament exercises control by various measures like committees, question hour, zero hour etc. ministers are collectively responsible to the Parliament.

3) **Financial Powers-** It includes enactment of budget, scrutinizing the performance of government with respect of financial spending through financial committees (post budgetary control)

4) **Constituent Powers-** Example - To amend the constitution, to pass any laws required

#### **5) Judicial Powers- Includes**

- (i). Impeachment of President for violation of constitution
- (ii). Removal of judges of Supreme Court and High court
- (iii). Removal of Vice- President
- (iv) Punish members for breach of privileges like sitting in the house when the member knows he is not an eligible member, serving as member before taking oath etc.

6) **Electoral Powers-** It has its participation in the election of President and Vice-President. The members of Lok Sabha elect speaker and deputy speaker from among its members. Similarly members of Rajya Sabha elect deputy chairman.

#### **7) Other Powers-**

- (i). To discuss various issues of national and international importance



- (ii). Imposing emergency
- (iii). Increase or decrease area, change names, alter the boundary of the states
- (iv). Create or abolish state legislature etc any powers can be added from time to time

## **UNION JUDICIARY**

Article 124 to 147 in part V of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court. The Parliament is also authorised to regulate them.

Supreme Court is the final interpreter and guardian of our Constitution. It is also the guardian of Fundamental rights of the people.

It decides the disputes between Centre and States regarding encroachment of power, thus maintains the supremacy of the Constitution.

It is the highest court of appeal in India.

Originally the total number of judges was 7, but in 1977, their number was increased to 18. In 1986, it was further raised to 26 (including CJI). Presently there are 31 Judges in Supreme Court.

### **Qualifications to be appointed as a judge of Supreme Court:**

- He must be a citizen of India.
- He must either be a distinguished jurist, or one who has been a High Court judge for at least 5 years or an advocate of a High Court (or 2 or more such courts in succession) for at least 10 years (Article 124).

### **Appointment and Removal of Judges**

No minimum age is fixed for the appointment of a judge. The Chief Justice of India is appointed by the President. In this matter, the President shall consult such judges of the Supreme Court and the high courts as he may deem necessary. A 9 judge bench of the SC has laid down that the senior most judge of Supreme Court should be appointed as Chief Justice of India.

In the appointment of other judges, the President shall always consult the Chief Justice of India. He 'may' consult other judges of SC and high courts as he may deem necessary [Article 124(2)].

Power of appointment is exercised by the President on the advice of Council of Ministers.

There is no fixed period of office for Supreme Court judges. Once appointed, they hold office till the age of 65 years. He can quit office earlier by submitting his resignation to the President.

He can be removed by an order of President only on the grounds of proved misbehavior or incapacity. The order of President in this regard can only be passed after it has been addressed to both houses of parliament in the same session, by special majority (majority of the membership of house and majority of not less than 2/3 of members of that house present and voting).

### **Jurisdictions of the Supreme Court**

The Supreme Court has original, appellate and advisory jurisdiction.

#### **Original Jurisdiction**

- As a Federal court, the Supreme Court decides disputes between different units of the Indian Federation. More elaborately, any dispute between:
  - the Centre and one or more states; or
  - the Centre and any state or states on one side and one or more states on the other; or between two or more states.
- In the above federal disputes, the Supreme Court has **exclusive original jurisdiction**.

#### **Writ Jurisdiction**

Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari to enforce them.

#### **Appellate Jurisdiction:**

A superior or higher court's authority to hear and resolve appeals against the lower court's decision is called appeal jurisdiction. For political, civil and criminal cases, the Supreme Court is a court of appeal. It will hear appeals against the High Courts' decisions. It has the authority to review its own decisions as well. It may grant special leaves to appeal against any judgement or order delivered or issued by any court or tribunal within the territory of our country, at its own discretion.

In addition, in any criminal case, an appeal can be brought before the Supreme Court if the High Court certifies that the case is eligible for an appeal before the Supreme Court. In order to challenge decisions relating to elections and Labour and Industrial Tribunals, the special appeal power has become a convenient tool in the hands of the Court.

#### **Advisory Jurisdiction:**

In matters that may be expressly referred to by the President of India, the Supreme Court has special advisory jurisdiction. If it is evident to the President at any time that a question of law or fact has arisen, or is likely to arise, which is of such public interest that it is imperative to obtain the opinion of the Supreme Court on that question, he/she may refer it to the Supreme Court. The Supreme Court may report its opinion to the President after such a hearing as it considers necessary. The report or the Supreme Court's decision is of course, not binding on the President. There is, equally, no compulsion for the Court to offer its advice.

### **Review Jurisdiction**

If the Supreme Court discovers that there are some new facts or evidences or if it is satisfied that some mistake or error took place in its previous decision, it has the power to review the case and alter its previous decisions. This is generally done when a review petition is filed. Normally, review is done by a bigger bench than the one that originally decided the case.

### **Special leave to appeal by the Supreme Court**

It is also called Special leave petition (SLP). After a judgement has been passed by a court lower in a hierarchy, any party, unsatisfied or aggrieved by the outcome may go in for an appeal in the appellate court: which in India is generally a High court. However, if any of the parties is unsatisfied by the appellate courts decisions, a further appeal can be made to the supreme court of India. This is a special class of appeals, which may not follow the general hierarchy of the courts and tribunals known as SLPs. Article 136 of the constitution allows Supreme Court to grant special leave to appeal against any judgement or order in any matter or case, made by any court or tribunal in the country.